

# **Final Draft Response to the 2010-11 Grand Jury Final Report**



## **El Dorado County Board of Supervisors**

**September 13, 2011**

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## Explanation of Response Format

Many of the Grand Jury Reports contain findings and recommendations for both the Board of Supervisors as well as other county elected officials. Not all findings and recommendations will warrant a response from the Board of Supervisors.

Board of Supervisors Policy A-11 provides guidance on the response format for Grand Jury reports. Specifically:

1. In order to meet response deadlines the Grand Jury is encouraged to:
  - a. work with the Chief Administrative Officer to provide a Final Report copy in a computer format compatible with the County;
  - b. to have all findings and recommendations individually identified in sequential order.
2. Each Grand Jury Finding and Recommendation should be individually identified in sequential order. The Response must clearly indicate which Finding and which Recommendation is being responded to.
3. All responses shall be organized similarly to the Grand Jury's final report. Each Finding and Recommendation shall be responded to separately.
4. Finding responses shall follow the format in Section 933.05 (a) of the Penal Code.
5. Recommendation responses shall follow the format and timelines specified in Section 933.05 (b) of the Penal Code.

All county responses to each finding and recommendation are embedded within each Grand Jury report using *italicized* font.



## **EL DORADO COUNTY GRAND JURY 2010 - 2011**

### **EL DORADO COUNTY SHERIFF'S OFFICE INCENTIVE PAY**

Case Number GJ10-011

#### **REASON FOR REPORT**

In February 2010, a candidate for El Dorado County Sheriff dropped out of the race after newspaper stories alleged that his college degree was not issued by an accredited college or university.

In April 2010, the interim El Dorado County Sheriff ordered an internal investigation to determine whether any employees of El Dorado County Sheriff's Office (EDCSO) receiving Educational Incentive Pay (EIP) had degrees from questionable sources. At that time, it was determined that of the 194 sworn personnel on duty, 79 were receiving EIP. Additionally, there were eighteen Correctional Officers of the EDCSO receiving EIP who were not included in this audit.

EDCSO Internal Affairs reviewed the training files of all 79 sworn personnel receiving EIP. Each file documented the type of degree held and the college or university attended. The 79 files also contained either the college transcript, a copy of the diploma or both.

The EDCSO Internal Affairs investigation determined that two Deputies, two Sergeants and one Lieutenant were receiving EIP based upon degrees issued by unaccredited institutions, which did not require appropriate levels of coursework when issuing diplomas. The matter was turned over to the District Attorney's Office for further investigation.

Pending the results of the District Attorney's investigation, EDCSO Internal Affairs suspended its administrative investigation. EDCSO also modified its procedure for receiving EIP, requiring a copy of the diploma. However, the controlling document is the labor agreement in force between El Dorado County and the two bargaining units representing EDCSO sworn personnel.

EIP provisions in these agreements do not require applicants to provide diplomas from accredited colleges and have no requirements for validating the legitimacy of the degrees.

On May 28, 2010, an anonymous letter was sent to the Board of Supervisors (BOS) and to the Grand Jury alleging that EDCSO had awarded EIP based upon degrees issued by “diploma mills”. Webster’s Third New International Dictionary defines a diploma mill as “*an institution of higher education operating without supervision of a state or professional agency and granting diplomas which are either fraudulent or because of the lack of proper standards worthless.*”

## **BACKGROUND**

On December 15, 2009 the El Dorado County Board of Supervisors (BOS) signed Resolution NO. 270-2009 stating that an impasse had been reached in negotiating a good faith labor agreement with the Deputy Sheriff’s Association Law Enforcement Unit. The resolution adopted a Modified Last Best Final Offer that remains in effect currently and is subject to renegotiation. In addition, the agreement with the El Dorado County Law Enforcement Manager’s Association expired on June 30, 2010 and is also subject to renegotiation.

EDCSO sworn personnel are represented by two different bargaining units. Deputies and Sergeants are represented by the Deputy Sheriff’s Association, Law Enforcement Unit. Lieutenants and Captains are represented by the El Dorado County Law Enforcement Manager Association. While both agreements provide longevity pay as a benefit for extended service, the amounts available differ, as illustrated below:

| <u>Longevity Pay</u>           |                                  |
|--------------------------------|----------------------------------|
| <u>Deputies and Sergeants:</u> | <u>Lieutenants and Captains:</u> |
| 5 Years = 2.5% of Base Pay     | 10 Years = 5.0% of Base Pay      |
| 15 Years = 5.0% of Base Pay    | 15 Years = 10.0% of Base Pay     |
| 20 Years = 7.5% of Base Pay    | 20 Years = 13.0% of Base Pay     |
|                                | 25 Years = 15.0% of Base Pay     |
|                                | 30 Years = 18.0% of Base Pay     |

In 2001, the Memorandum of Understanding (MOU) for both bargaining units was modified to include incentives for achieving California Peace Officers Standards and Training (POST) Certificate awards.

POST Certificates are available to law enforcement personnel, based upon a combination of law enforcement experience, POST training points and education. POST requires that all college degrees or college unit courses shall be by a national or regional accrediting body that is recognized by the Secretary of the United States Department of Education. Degrees or course credits not issued by an accredited institution, as described above, are only allowed if they are accepted and recorded on transcripts of a college that is accredited.

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Certificates are awarded by POST for multiple levels of education and service in law enforcement. POST Certificate incentive pay was included in the MOU as an alternative to longevity pay. Personnel could elect to receive either incentive, but not a combination of the two. The election to take either POST Certificates incentives or longevity pay is irreversible. The incentive pay for POST Certificate awards is different for each of the two bargaining units, as illustrated below:

| <u>POST Certificates</u> | <u>Deputies and Sergeants</u> | <u>Lieutenants and Captains</u> |
|--------------------------|-------------------------------|---------------------------------|
| Intermediate POST        | 6.5% of Base Pay              | 5.0% of Base Pay                |
| Advanced POST            | 12.5% of Base Pay             | 10.0% of Base Pay               |
| Supervisory POST         | N/A                           | 12.0% of Base Pay               |
| Management POST          | N/A                           | 13.0% of Base Pay               |
| Executive POST           | N/A                           | 15.0% of Base Pay               |

The POST requirements for certificate awards are illustrated below:

Intermediate Certificate (with Basic Certificate)

| <u>Degree or Ed. Points</u> |       | <u>Law Enforcement Experience</u> |        | <u>Training Points</u> |
|-----------------------------|-------|-----------------------------------|--------|------------------------|
| Bachelor's Degree           | (and) | 2 years                           | (plus) | 0                      |
| Associate Degree            | (and) | 4 years                           | (plus) | 0                      |
| 45 Ed Points                | (and) | 4 years                           | (plus) | 45                     |
| 30 Ed Points                | (and) | 6 years                           | (plus) | 30                     |
| 15 Ed Points                | (and) | 8 years                           | (plus) | 15                     |

Advanced Certificate (with Intermediate Certificate)

| <u>Degree or Ed. Points</u> |       | <u>Law Enforcement Experience</u> |        | <u>Training Points</u> |
|-----------------------------|-------|-----------------------------------|--------|------------------------|
| Master's Degree             | (and) | 4 years                           | (plus) | 0                      |
| Bachelor's Degree           | (and) | 6 years                           | (plus) | 0                      |
| Associate Degree            | (and) | 9 years                           | (plus) | 0                      |
| 45 Ed Points                | (and) | 9 years                           | (plus) | 45                     |
| 30 Ed Points                | (and) | 12 years                          | (plus) | 30                     |

Education points achieved through college course work and training points awarded for completion of POST training modules may be combined to achieve POST certificates without completion of an Associate or Bachelor degree.

Supervisory POST Certificates require possession of, or eligibility for, an Intermediate POST Certificate plus a minimum of 60 college semester units, completion of a POST-certified Supervisory Course and a minimum of two years law enforcement experience as a permanent first-level supervisor or higher.

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Management Certificate awards require possession of or eligibility for a POST Advanced Certificate, plus completion of a POST- certified Management Course and two years experience in law enforcement as a permanent middle manager or higher.

Executive POST Certificates include the same requirements as a Management Certificate, plus a minimum of two years law enforcement experience as a permanent department head with the current employing agency. The department head for the Sheriff's Office is the Sheriff, an elected official who is not eligible for incentive pay. Consequently, the MOU for the El Dorado County Law Enforcement Manager's Association contains a benefit for which no one is eligible.

In addition to incentive pay for POST Certificates, the County added EIP to the labor contracts issued in 2001. Unlike POST Certificates, EIP can be combined with longevity pay and does not require degrees or college course credits to be issued from an accredited college or university. The MOU does not require applicants to provide sealed transcripts with the diploma when applying for EIP.

While POST Certificate Incentive Pay cannot be combined with longevity pay, it can be combined with EIP. The only differences between the requirements for POST Certificates and the County requirement for EIP is that POST requires accredited degrees and two years of law enforcement experience. Consequently, an individual with a POST Certificate is also qualified for EIP and can combine either POST with EIP or EIP with longevity pay. A Captain, for example, with a Management POST Certificate may receive an incentive equal to 13% of base pay for POST and another 5% incentive for EIP. This 18% increase in total pay may be earned in much less time than the 30 years of service that would be required for the 18% available in longevity pay. As a result of these benefits, a Captain with a base pay of \$144,441 is paid as much as \$170,044. This \$26,000 in benefits is PERS eligible and would be worth over \$500,000 to the employee over the course of a 20-year retirement.

It should be noted that at the time EIP was added as a provision of the EDCSO Labor Agreements, "Catalog Colleges" were commonplace and Internet "Diploma Mills" had also become available. Furthermore, the minimum qualifications specified in the job classifications for all EDCSO sworn personnel state that, "*Where college degrees and/or college course credits are required, degrees and college units must be obtained from an accredited college or university.*" Nevertheless, the MOU provided in the labor agreements does not specify that college degrees must be issued by accredited colleges or universities. The MOU only specifies a "four year Bachelor degree" or a "two year Associate degree" as the requirement for EIP. The determination of the types of degrees acceptable for EIP is left to the discretion of the Sheriff or his command designees.

The lack of a defined standard in the MOU for acceptable institutions issuing degrees complicates the process of auditing the legitimacy of an applicant's diploma. Had the MOU specified a degree from a college or university accredited by a governing body recognized by the Secretary of the United States Department of Education, a simple web search could easily validate the legitimacy of the institution. Alternatively, the MOU could have specified a "state approved college or university." The California Private Postsecondary Education Act of 2009 (AB48) established a regulatory agency for institutions approved by the State of California.

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Either governing authority provides easy verification that the institution granting the degree is not a “diploma mill.”

As a means of remaining competitive for recruitment purposes, other local law enforcement agencies offer POST Certificate Incentives and Educational Incentives. In Folsom, for example, Police Officers and Sergeants may apply for either an Educational Incentive or a POST Certificate, but not both. The Folsom Police Department provides a 5% incentive for an A.A. Degree or an Intermediate POST Certificate and a 10% incentive for a B.A. Degree or a POST Advanced Certificate.

Placerville Police Department provides an Educational Incentive of \$125 per month for possession of a POST Intermediate and/or AA Degree or \$400 per month for a POST Advanced Certificate and/or a BA/BS Degree.

The City of Roseville provides Police Officers and Sergeants with a 5% incentive for either a POST Intermediate Certificate or an Associate Degree or a 10% increase in pay for a Police Officer or Sergeant with a POST Advanced Degree or Bachelor Degree.

It is noteworthy that these three cities do not allow Officers and Sergeants to combine POST incentives with EIP. All three cities provide personnel with a choice of POST or EIP and none offers a maximum benefit greater than 10%. It is also noteworthy that Lieutenants and Captains are not eligible for incentive pay.

As a result of vague language in the current EDCSO Labor Agreements, two deputies, two sergeants and one lieutenant of EDCSO received EIP after providing Bachelor degrees from universities that are currently being investigated by the United States Attorney General as “Diploma Mills.” Richardson University, also known as Hamilton University, has been under investigation for selling college diplomas. Hamilton University was first established in Hawaii as American State University and then moved to Evanston, Wyoming. The school issued degrees based upon “life experiences.” Candidates obtained degrees after answering a few questions from a booklet and submitting a paper of approximately 2,000 words.

In 2004, CBS News reported that Hamilton University was operated by Rudy Marn, who pled guilty to tax fraud in 2008 and was sentenced to two years in federal prison. Hamilton University has since changed its name to Richardson University and moved its “campus” to the Bahamas.

The District Attorney’s Office is concluding its criminal investigation into the EIP awarded to the five individuals in the Sheriff’s Office. The investigation revealed the five officers in question have received a total of \$166,459.72 in additional pay since their application for EIP was approved. One officer applied for entrance into Richardson University on August 20, 2004, and graduated with a Bachelor’s Degree in Criminal Justice only 27 days later, after completing 22 classes.

Only one of the five individuals investigated agreed to be interviewed by the District Attorney’s investigator. This deputy stated that the Lieutenant under investigation encouraged him to obtain



a degree from Hamilton University. The investigation also revealed that all five of the applications for EIP were approved by the EDCSO command staff. These approvals for EIP were granted even though the “four year degrees” were earned in as little as four weeks.

As of this writing, the District Attorney has not determined there is sufficient evidence to prosecute for the following reasons:

- The MOU was the controlling document for EIP and the wording in this document was vague.
- At least one Deputy was encouraged by his superior officer to attend Hamilton University, and all of the EIP applications were approved by EDCSO Commanders.
- Many of the actual admission records of the institutions in question had been destroyed and the difficulty in obtaining admissible evidence that could prove guilt beyond a reasonable doubt made successful prosecution questionable.

## METHODOLOGY

Interviews were conducted with the following officials:

- El Dorado County Director of Human Resources
- El Dorado County Auditor-Controller
- El Dorado County Sheriff
- El Dorado County Sheriff’s Office Internal Affairs
- District Attorney’s Investigator, and
- Staff of the EDC Payroll Department.

The Grand Jury reviewed the following websites and documents:

- El Dorado County Human Resources document, *Employee Count by Position for Sheriff’s Department*, pages 9-10, not dated.
- EDCSO document, *Education List Sworn*, EDCSO Internal Affairs, pages 1-2, April 28, 2010
- El Dorado County Website, [www.edcgov.us/Government/HumanResources/Labor](http://www.edcgov.us/Government/HumanResources/Labor)
- El Dorado County Website, [www.edcgov.us/sigma/jobclass](http://www.edcgov.us/sigma/jobclass), Minimum Qualifications, page 4.
- Memorandum of Understanding Between City of Folsom and Folsom Police Officers Association, *Educational Incentive Pay*, article V (e), pages 11-13, July 1, 2010.
- Resolution NO. 7432 of the City of Placerville and the Memorandum of Understanding by and Between Placerville Police Officers Association and the City of Placerville, *POST/Educational Incentive Maintenance*, article 17, pages 12 & 14, September 26, 2006.
- Memorandum of Understanding for El Dorado County Law Enforcement Manager’s Association, *Education Incentive*, article 10, section 7, page 18 dated June 30, 2010.

- Modified Last Best Final Offer for El Dorado County Sheriff's Association, Law Enforcement, article 6, (d, e & f), *Longevity Pay/POST Certificate Pay/Education Incentive Pay*, pages 7-8, dated 12/15/2010
- Memorandum of Understanding for Roseville Police Officer Association, chapter 2, article III, *Educational Incentive*, page 3, October 8, 2009 – December 31, 2012.
- POST Administrative Manual, *Certificate Terminology and Policy*, § 9070 (c-k), chapter 7, pages 3-8.

## FINDINGS

1. According to sworn testimony given to the Grand Jury, EDCSO Internal Affairs audited the degrees of EIP recipients in 2002 and found one individual with a degree from Hamilton University. This individual did not appear to warrant EIP. Internal Affairs reports directly to the Under-sheriff and does not conduct investigations without direction from or approval by the Under-sheriff or Sheriff. Testimony indicated that when approached by Internal Affairs, the Under-sheriff ordered Internal Affairs to cease any further investigation. However, when Internal Affairs was interviewed by the District Attorney's investigator, this audit was said to have been conducted in 2008.
2. A simple Web search provided information that Hamilton University was operated by a convicted felon. Hamilton University changed its name to Richardson University and relocated to the Bahamas after Hamilton University was shut down by authorities.

***Response to Finding 2: The respondent agrees with the finding.***

3. In 2010, the issue of questionable degrees resurfaced. An Internal Affairs investigation revealed three individuals with diplomas from Hamilton or Richardson University and two other individuals with degrees from other questionable institutions. Internal Affairs turned the matter over to the District Attorney's office to determine if criminal charges should be brought against these five sworn personnel. Internal Affairs did not obtain statements from the accused officers before turning the matter over to the District Attorney.
4. The District Attorney's Office spent eight months investigating the issue but has elected not to prosecute any of the individuals involved, due to a lack of sufficient evidence.
  - Four of the accused deputies declined to provide statements to the District Attorney's Office.
  - The District Attorney's investigation revealed that the five officers in question received a total of \$166,459.72 in additional pay after the EDCSO Commanders approved their application for EIP.

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- The investigation revealed that the “four year degrees” were approved by EDCSO Commanders even though they were obtained in as little as four weeks of coursework.
5. EDCSO Internal Affairs delayed any administrative investigation while the District Attorney’s investigation was ongoing. During this time, two of the individuals in question retired and the other three have remained employed.
  6. The Modified, Last, Best and Final offer for the EDCSO Deputy Sheriffs Association, Law Enforcement Unit and the El Dorado County Law Enforcement Manager’s Association are the two labor agreements currently in force between El Dorado County and the sworn personnel of the Sheriff’s Office. Both agreements are subject to renegotiation.

### ***Response to Finding 6: The respondent agrees with the finding.***

7. Both labor agreements provide incentives for longevity pay, POST Certificate Awards and Educational Incentive Pay. POST incentives are available as an alternative to longevity pay and these two incentives may not be combined. However, EIP may be combined with either POST incentives or longevity pay. A Captain, for example, receiving the maximum benefit for EIP and longevity pay could receive nearly \$32,000 in additional pay.

### ***Response to Finding 7: The respondent agrees with the finding.***

8. In 2010, the County paid in excess of \$300,000 in EIP to EDCSO personnel. At the current rate, this incentive program will cost the County in excess of \$3,000,000 over the next ten years.

### ***Response to Finding 8: The respondent agrees with the finding.***

9. Neither labor agreement provides a standard for evaluating the legitimacy of college degrees and diplomas. The language of the agreements does not specify either “accredited colleges” or “State approved” colleges as a means of identifying legitimate institutions.

### ***Response to Finding 9: The respondent agrees with the finding. The new MOU with the Deputy Sheriff’s Association contains the following language:***

*Eligible employees...shall receive a 5% Education Incentive Differential for the possession of a four-year college degree (Bachelor of Arts and/or Bachelor of Sciences degree) from an accredited University and/or College as recognized by the United States Department of Education for Postsecondary Institutions and Programs and/or another authorized source as approved by the appointing authority in writing and submitted to Human Resources for verification. The educational incentive is not cumulative.*

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*Any and all submittals for additional pay in regard to this section is subject o periodic review for validation of, accreditation of institution and any employee may be subject to full re-payment of any funds received and/or subject to discipline if the degree the employee submitted is found to be invalid as defined above.*

*The Law Enforcement Manager Association has signed a tentative agreement with the County and this language is expected to be incorporated into the new MOU.*

10. Two deputies, two sergeants and one lieutenant received degrees from unaccredited institutions that are being investigated by the U.S. Attorney General as “diploma mills.” All five of these individuals applied for and received EIP. Applications were approved by EDCSO Commanders.

***Response to Finding 10: The respondent agrees with the finding.***

11. There is no requirement for personnel applying for EIP to provide a duplicate diploma and/or sealed transcripts to the El Dorado County Human Resource Department for independent verification.

***Response to Finding 11: The respondent agrees with the finding.***

12. The District Attorney’s investigation confirmed that the five employees investigated were the only then current sworn personnel receiving EIP based upon degrees issued by questionable institutions.

***Response to Finding 12: The respondent agrees with the finding.***

13. Other local law enforcement agencies offer EIP and POST but the incentives cannot be combined, are currently limited to a maximum benefit of 10% of base salary, and are not available to command rank (Lieutenants and above).

***Response to Finding 13: The respondent agrees with the finding.***

14. The EDCSO reviewed the training files of 79 sworn personnel in 2010 to determine the legitimacy of college degrees. However, there were an additional 18 Correctional Officers receiving EIP who were not included in that review.

## RECOMMENDATIONS

1. As provisions of the EDCSO labor agreements are renegotiated, the provision for providing EIP should be modified to include a standard for measuring the legitimacy of

the institutions providing the qualifying degrees. Either “accreditation by a governing body recognized by the Secretary of the United States Department of Education” or “State Approved Colleges” recognized by the bureau established by the California Private Postsecondary Education Act of 2009 provides easy verification of the legitimacy of the institutions.

***Response to Recommendation 1: The recommendation has been implemented.***

*Appropriate language has been included in agreements with bargaining units. Additionally, Human Resources has notified all departments in writing that all EIP must be processed through the HR department and must be accompanied by official transcripts.*

2. Accreditation by a governing body recognized by the United States Department of Education would be preferred because it is consistent with the standards required by POST.
3. A memorandum from the Sheriff should be sent to all employees clarifying that the current MOU language means “two year” or four year” degrees must be Associate and Bachelor degrees from colleges or universities which are accredited by an accrediting agency recognized by the Secretary of the United States Department of Education.
4. Any future applications for EIP by sworn personnel should include sealed transcripts and a diploma from the accredited college or university. Copies of these documents should be provided to both the Under-sheriff for approval and the Director of El Dorado County Human Resources for independent review.

***Response to Recommendation 4: The recommendation has been implemented. As noted above, Human Resources has notified all departments in writing that all EIP must be processed through the HR department and must be accompanied by official transcripts.***

5. An administrative investigation by EDCSO Internal Affairs should determine whether any of the five sworn officers investigated for EIP abuse were culpable of any violation of department policy that would warrant administrative penalties. Appropriate penalties including termination or demotion should be enforced if justified.
6. The El Dorado County Department of Human Resources should be required to verify the accreditation status of any college or university granting degrees for which EIP is currently being paid or for which an application is submitted. No payment should be made for EIP or POST Award certificates without pre-specified evidence of eligibility from both the Sheriff’s Office and the El Dorado County Human Resource Director.

***Response to Recommendation 6: The recommendation will not be implemented because it is not warranted. Following an extensive audit of current and past employee records, the District Attorney’s Office concluded that other than five deputy sheriff’s, no other county employees have inappropriately received EIP. The Human Resources***

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*Department will verify accreditation status of educational institutions for which EIP is granted in the future.*

7. In order that the paid compensation of the EDCSO is consistent with other local law enforcement agencies, the CAO should direct the Department of Human Resources to periodically conduct compensation reviews of those other local agencies to ensure that the compensation is consistent and competitive with local standards.

***Response to Recommendation 7: The recommendation will not be implemented because it is not reasonable.*** County staff does review outside agency agreements with their bargaining units to ensure El Dorado County compensation is consistent with other local law enforcement agencies. The Human Resources Department is required by County Charter to annually review and compare base salary of sworn personnel to three other jurisdictions: CA Highway Patrol, Amador County Sheriff's Office and the South Lake Tahoe Police Department. Additional pays are reviewed and compared as part of preparation for negotiations of successor MOU's. All additional pays are subject to negotiation.

8. In addition to the EDCSO the personnel files of all past and present County, City and Special District employees receiving EIP should be reviewed by an independent auditor to evaluate the legitimacy of all degrees on file.

***Response to Recommendation 8: The recommendation will not be implemented because it is not reasonable.*** The county is not responsible for the employees of cities and special districts.

## RESPONSES

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the El Dorado County Sheriff, the El Dorado County Human Resources Department and the El Dorado County CAO for response.

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.



## **EL DORADO COUNTY GRAND JURY 2010-2011**

### **SHERIFF'S OFFICE OPERATIONS BUDGET ANALYSIS**

Case Number GJ010-015

#### **REASON FOR REPORT**

The El Dorado County Sheriff's Office (EDCSO) accounts for approximately 20% (\$41 million) of the County's General Fund. This investigation examines the historical and current Sheriff's Office Operations budget, including cost and revenue implications, with the goal of determining how and where cost savings are possible. The Grand Jury's emphasis was to identify potential cost savings through means other than staff reductions.

#### **BACKGROUND**

The Mission Statement of the EDCSO states that *"The Sheriff's Office is responsible for law enforcement in the unincorporated areas of the County, liaison, coordination and cooperation with other law enforcement agencies at the local, State and Federal levels; court security and inmate transportation; service of Civil processes and warrants; operation of the County's adult detention facilities. The Sheriff also functions as the County Coroner and Public Administrator."*

The EDCSO is made up of three Divisions; Custody, Patrol-Investigative Services, and Support Services. The Department is headed by the Sheriff and Undersheriff. According to the EDCSO, as of January 2011, there are 364.5 allocated positions, of which 20 are vacant and 180 are sworn deputies.

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The EDCSO has experienced substantial budget reductions over the past three years and operates at reduced staffing levels. This report demonstrates there are significant budget reduction opportunities.

Comparative data for El Dorado and Placer Counties:

|                                | <u>Placer County</u> | <u>El Dorado County</u> |
|--------------------------------|----------------------|-------------------------|
| Total Population               | 348,432              | 178,447                 |
| Incorporated Population        | 236,439 (6 cities)   | 34,409 (2 cities)       |
| Unincorporated Area Population | 112,000              | 144,038                 |
| Square miles                   | 1,404                | 1,711                   |
| Allocated positions            | 451                  | 364.5                   |
| Sworn positions                | 212                  | 180                     |

The population of Placer County is almost twice as large as EDC but its geographical area is about 20% smaller. The Placer County Sheriff's 2010-2011 budget is \$83 million which represents 13% of their General Fund. It is important to note that there are six cities in Placer County. Placer County Sheriff's Office provides law enforcement services in two of these cities (Colfax and Loomis) on a contract basis. There are approximately 6.5 deputies assigned to contract duties (2 in Colfax, 4.5 in Loomis). Contract patrol service is divided into beat areas which overlap adjacent unincorporated County land. Since these deputies provide service in both contract and unincorporated areas they are included in the number of sworn positions for Placer County listed above.

## **METHODOLOGY**

The Grand Jury interviewed the following persons:

- The immediate past El Dorado County Sheriff
- El Dorado County Undersheriff
- Placer County Undersheriff
- Sheriff's Captains
- Sheriff's Lieutenants
- Correctional Lieutenant
- Chief Administrative Officer (CAO) analysts
- Sheriff's Dispatch Manager
- El Dorado County Sheriff's Financial Manager
- Placer County Sheriff's current and former Financial Managers
- Sheriff's Financial Technician

The Grand Jury reviewed the following documents:

- 2008 South Lake Tahoe Patrol Allocation Study (March 31, 2010 by Lt. Marc Adams)



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- 2009 Patrol Allocation Study West Slope Patrol (undated document)
- Budget Reduction Impacts to Sheriff's Office from former Sheriff Fred Kollar (11/1/2010)
- CAO memorandum to Board Of Supervisors Re: Agenda Item #10-0990 FY 2011-2012 Budget Reduction Plan (October 29, 2010)
- CAO recommendation for 2011-2012 Budget Reductions dated 10/18/2010
- Computer generated list from EDCDOT showing EDCSO vehicle usage and maintenance data for F/Y 2009-2010 (3 pages, undated document)
- Computer generated list of all EDCSO Vehicles (93) and marked Take Home (63) or At Office (30) (undated document)
- Cook/Chill introduction information from "Victory" web site, printed from web March 25, 2011 (no URL or page numbers available)
- EDCBOS Special Meeting Agenda For Law and Justice Departments (November 1, 2010)
- EDCSO Ten Year budget history (fiscal years 2001-2002 to 2010-2011)
- El Dorado County Crime Statistics for 2007 (Criminal.com website 11/17/2010)
- El Dorado County Crime Statistics for 2007 (historical data from 1998-2006)
- FBI news story "Some Good News" (from the FBI website 01/12/2009)
- Patrol Staffing and Deployment Study (International Association of Chiefs of Police – undated)
- Placer County Annual Report from 2009
- Placer County Sheriff's Office Strategic Plan (January 1, 2006)

## FINDINGS

During this investigation the Grand Jury focused on the areas listed below.

1. **Salaries:** Salary schedules were reviewed for Sheriff's Departments in the following Counties: Amador, El Dorado, Placer, and Yolo. Some of these agencies report actual base salaries, while others show salaries including incentives. For comparison purposes the lowest and highest base salaries of each agency were used and compiled to form a median salary, which was \$5,264 per month. The median salary for El Dorado County deputies is \$5,420. While El Dorado County is slightly above the median (\$156), the variables mentioned indicate El Dorado County deputy salaries are in line with those in several nearby jurisdictions.

***Response to Finding 1: The respondent partially disagrees with the finding. The voters of El Dorado County approved a county charter including section 504 which requires the Board of Supervisors to set salaries for EDSO deputies equal to the average salaries of the Amador County Sheriff's Office, the South Lake Tahoe Police Department, and the California Highway Patrol.***

2. **Overtime:** EDCSO achieved a substantial reduction in overtime. It is reported that at the end of Fiscal Year 2007-08, overtime costs were \$4,095,143. In the third quarter of Fiscal Year 2009-2010, overtime costs were \$2,015,511. When extrapolated to a full year, that number is \$2,687,348, a reduction of \$1,407,795, or approximately 34%.

*Response to Finding 2: The respondent partially disagrees with the finding. The overtime savings are attributable to the Board of Supervisors' direction that the Memorandum of Understanding be changed with respect to the calculation of overtime.*

3. **Budget:** The CAO budget proposal for F/Y 2010-2011 provides a ten year history of Sheriff's Office financials and staffing patterns. In F/Y 2001-2002 the Sheriff had 362 Full Time Equivalent (FTE) positions and a budget of \$22.5 million. The budget and staffing peaked in F/Y 2007-2008 at 399 FTE and a budget of \$43.3 million. During the three intervening years since F/Y 2007-2008, the Sheriff's Office had to adapt to substantial reductions in budget and staff, with staffing reduced from 399 FTEs to 377, and the budget reduced from \$43.3 million to \$40.5 million, a \$2.8 million reduction.

*Response to Finding 3: The respondent agrees with the finding.*

4. **Position classifications:** Sworn deputy sheriffs are the front line for law enforcement responsibilities. Sworn positions have a rank structure including deputy sheriff, sergeant, lieutenant, captain, undersheriff, and sheriff (an elected official). The majority of jail personnel are non-sworn correctional personnel, but also have a rank structure including correctional officer, sergeant, and lieutenant. Many other civilian personnel are assigned who perform financial, dispatch, and other administrative support functions throughout the Department.

*Response to Finding 4: The respondent agrees with the finding.*

5. **Patrol Staffing:** It is incumbent on law enforcement to deploy their limited resources in the most efficient and cost-effective manner possible. The EDCSO deploys patrol personnel based on a nationally recognized Patrol Allocation and Deployment Study developed by the International Association of Chiefs of Police (I.A.C.P.). This study is a workload-based analysis using information produced by the Computer Aided Dispatch system (CAD). The computer captures raw data and compiles it in ten different categories of officer status. The predominant category is dispatch related activity which includes calls for service, report writing, and time spent at the jail resulting from an arrest. Also factored into the equation are vacation, sick time and training. The compilation of this data is used to make staffing decisions for the number of deputies required in each of the EDCSO patrol zones. The Patrol Allocation Study indicates the South Lake Tahoe patrol zone has three to four more positions than are justified by the workload. These figures were affirmed by the former Sheriff in printed material used in his budget presentation to the EDCBOS November 1, 2010. The Patrol Allocation Study contrasts sharply with the historical method of making decisions based on one officer per 1,000 population. This had been the historic method used in making patrol deployment decisions and is still used in many patrol jurisdictions. The CAD based patrol staffing

and deployment approach is a superior method in making sound personnel and geographic patrol coverage decisions.

- 6. Vehicle “take home” policy:** Currently, all EDC Sheriff’s detectives, managers above the rank of sergeant, and selected other positions are authorized take home County vehicles without restriction. This policy represents significant cost to the County and does not appear to be in line with current trends in law enforcement. The ability for employees to take EDC vehicles home seems to fall somewhere between operational need and a departmental perk, depending on the position. There are approximately 63 EDC Sheriff’s Office take home vehicles being driven by staff.

A vehicle summary prepared in January, 2011 showed the following costs associated with the 63 take home vehicles:

|             |           |
|-------------|-----------|
| Fuel        | \$134,883 |
| Maintenance | \$346,500 |
| Total       | \$481,383 |

In addition to the above costs, three vehicles listed as “take home” are unassigned (two in narcotics, one in detectives). A Ford F350 crew-cab diesel truck for boat patrol is listed as “take home.” This is a particularly expensive commute vehicle.

Recently, Placer County Sheriff’s Office restricted the practice of “take home” vehicles and saved approximately \$500,000.

*Response to Finding 6: The respondent partially disagrees with the finding. The assignment of take-home vehicles is not without restriction. Board of Supervisors Policy D-4 requires that the Board initially approve the initial assignment of take-home vehicles. The Chief Administrative Officer has the authority under Policy D-4 to review and either continue or rescind the assignment of take-home vehicles.*

- 7. Fleet Management of Patrol Vehicles:** Until recently deputies assigned to patrol were not assigned a particular vehicle for their shift, but would obtain a vehicle based on personal preference. This practice was not a good model for fleet management. EDC Department of Transportation (EDCDOT) and EDC Sheriff’s Office informed the Grand Jury this practice has changed. Vehicles are now being assigned to and shared by one officer on day shift and another on night shift. It is reported that in addition to the obvious benefits of improved accountability, maintenance, and damage tracking, the vehicles are receiving better care as the assigned officers tend to take greater pride in assigned equipment they feel is “theirs.”

*Response to Finding 7: The respondent agrees with the finding.*

- 8. Institutional Food:** Food served to inmates meets State standards for nutrition and quantity. It is currently prepared on site by a combination of county employees and inmates.

The South Lake Tahoe Jail Facility runs a model culinary program in partnership with the local community college. In addition to preparing food for inmates and staff, food is prepared for community events on a contract basis.

A significant cost reduction of \$12,000 per year for inmate food was achieved recently by shifting the cost of condiments from the County to the inmate population through the commissary program.

***Response to Finding 8: The respondent agrees with the finding.***

9. **New Personnel:** Two key vacant positions have been filled in the EDCSO since January 1, 2011, which will potentially contribute significant improvement in the organizational development and management of the EDCSO, particularly as it relates to financial and operational controls.

First, the new Undersheriff brings qualifications and experience to the agency which will allow him to employ effective management of day to day operations, and apply discipline to financial controls. Second, the appointment of a new financial manager brings a background in financial management to the Department, gained as a senior staff member for the Los Angeles County Board of Supervisors. Both of these individuals bring what has been missing in the management of the Sheriff's Office, and both fill critical positions that have been vacant for more than one year. The fact that both are new to the department and neither is tied to the past in the organization is a major plus.

***Response to Finding 9: The respondent agrees with the finding.***

## RECOMMENDATIONS

1. It is imperative that future cost cutting be achieved through careful analysis, rather than simply eliminating staff by across the board cuts.

***Response to Recommendation 1: The recommendation has been implemented. The identification of spending reductions is always done through careful analysis to the extent feasible and reasonable. However, while the law gives the Board of Supervisors authority over total appropriations and number of personnel in the Sheriff's Office, it is ultimately up to the Sheriff to identify specific reductions in order to achieve a balanced, sustainable budget.***

2. **Take Home Vehicles:** The EDCSO practice on take home county vehicles should be revised and made job related, which would provide substantial savings. Take home vehicles for command staff may be appropriate. Other take home vehicle assignments

should be made based on careful analysis. For example, a take home vehicle policy should consider how frequently an employee is called from home outside of normal working hours. Detectives should not be taking cars home just because they are detectives, the weekly on-call detective should be the only detective to routinely take a vehicle home. It is rare that numerous detectives are required to respond to a crime scene without delay. Some other disciplines require a great deal of personal gear (SWAT Team, Bomb Squad, and K-9), although the 24/7 on-call factor should apply here as well. An exception to this would be with the narcotics unit, since the nature of this job and working hours required must remain flexible.

Even where it is deemed proper for an employee to take a county vehicle home, there should be restrictions. Some jurisdictions restrict commute driving only to locations within the county of employment. It would, by extension, seem proper to restrict vehicles to the State of California as well. Employees living outside these boundaries can leave their vehicles at the duty station nearest their residence and commute from there. Another option would be to charge the current county mileage rate for all commute driving.

A reform of the take home vehicle policy may not be popular among the staff, but it represents a prudent use of public funds. As mentioned earlier Placer County realized substantial savings by implementing such a policy.

The Grand Jury was informed there is no written policy on vehicles or take home vehicles. A written policy on vehicles should be developed as soon as possible and distributed to all personnel in the office.

3. **Patrol Staffing:** Staffing in the SLT patrol zone should be reduced to the level indicated by the Patrol Allocation Study.
4. **Re-classifying Positions:** In other jurisdictions cost savings have been achieved by reclassifying positions and staffing them with civilian personnel. Further study is required to determine if any potential cost saving with the EDCSO could be achieved. Several job functions that could lend themselves to potential savings include:
  - Converting sworn civil court bailiffs to civilian court attendants
  - Civilian personnel monitoring building security X-ray machines
  - Lower level process serving in the Civil Unit
  - Vehicle abatement (abandoned vehicle removal)

There may be merit and cost savings associated with the consolidation of some support staff positions. This would be done by cross-training selected personnel who are currently performing support services in a single unit. By cross-training, their skills would be enhanced, enabling them to assume responsibilities in multiple units and broader job responsibilities.

This concept has the potential to reduce personnel costs while affording greater flexibility in staffing patterns. Such a practice follows a general trend in law enforcement in moving from specialist to generalist duties, and it has been adopted in other jurisdictions successfully.

5. **Institutional Food Reform:** Another area for potential savings may exist if the method for food preparation is modernized. This could be accomplished by switching from traditional food preparation to a “Cook/Chill” system. Cook/Chill is a process whereby food is prepared on or off site, chilled for preservation, reheated and kept warm at the service area just prior to serving. While Cook/Chill is commonly associated with larger institutional food service operations, new compact quick chill equipment designs place a Cook/Chill system within the reach of many types and sizes of food service operations. Cook/Chill methods are used extensively by restaurants, hotels, caterers, and on airplanes and ships. It was learned during interviews that a Cook/Chill program had been considered, but was not adopted. The projected savings of \$50,000 was not considered cost effective. However, if substantial annual savings can be achieved in a reasonable time frame, it is worth further consideration.
6. **Additional areas worthy of mention:** Two additional areas of potential savings were brought to our attention by an official outside EDC. These were not investigated by the EDCGJ due to time constraints but are mentioned here as being deemed worthy of consideration;
  - **Telephones:** A substantial amount of money is spent each month by duplicating telephone service. Basically all EDCSO personnel have a desk set telephone in their work area, the cost of which (currently about \$179,000 per year) is billed to the Sheriff’s Office. Some of these same employees may be assigned cell phones. It seems prudent to maintain a limited number of desk telephones to guarantee service in the event of a cellular outage, but routinely maintaining both types of telephones for an employee seems to serve no purpose other than spiking the cost of communication.
  - **Service Centers & Leased Facilities:** The Sheriff’s Office currently spends approximately \$200,000 per year on rent or leases. Also, the leased facility on Pierroz Road in Placerville houses the investigative unit and narcotics units. We understand this space was leased in anticipation of planned expansion of the investigative section which has not occurred. It would be beneficial for the EDCSO to evaluate physical plant needs at all Sheriff’s facilities, and analyze those needs to identify areas which might lend themselves to space consolidation and ultimately a cost saving.

## RESPONSES

## Final Draft Response to the 2010-11 Grand Jury Final Report

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the El Dorado County Sheriff, El Dorado County BOS, and El Dorado County CAO for response.

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.



## **EL DORADO COUNTY GRAND JURY 2010-2011**

### **INVESTIGATION OF GENDER BIAS IN THE SHERIFF'S OFFICE** Case Number GJ010-001

#### **REASON FOR REPORT**

An anonymously written letter dated May 28, 2010 was forwarded to the current El Dorado County Grand Jury (EDCGJ) by the 2009-2010 Grand Jury. This letter, purportedly written by a Sheriff's Office employee, described a work environment in the Sheriff's Department that was disrespectful and discriminatory to female members of the department. In addition, the public's concern over gender bias in the Sheriff's Department increased when articles appearing in the Mountain Democrat and Sacramento Bee described two lawsuits filed by Sheriff's Department employees alleging sexual harassment. To address concerns regarding gender bias in the Sheriff's Department, the EDCGJ opened an investigation to review related written policies and practices within the Department.

#### **BACKGROUND**

In 2010, there were 386 men and women working in the Sheriff's Office. Of this total, 119 were female (30.8%). Of the 184 sworn officers, ten were women (5%). In a study undertaken by the Bureau of Justice in 2003 (the latest data available), the national average of female officers (deputies, sergeants, lieutenants and captains), for communities with a population between 100,000 and 249,000 was 12.8%. El Dorado County (EDC) employed 4.5% females in sworn positions in 2003. The Department's turnover rate for sworn and civilian personnel (not including retirement) in 2010 for women was 6.7% and 1.1% for men. There were 12 gender bias complaints in 2010, which was twice the number filed in 2008 and 2009 combined.



Nine out of the 12 complaints in 2010 were filed by civilian Community Service Officers (CSO) or sworn deputies. Six female deputies and all eight CSOs were interviewed by the EDCGJ. Areas of concern included the selection process for lateral, specialized assignments and the Internal Affairs investigation process. Some interviewees stated that they would not recommend without reservation, employment with the Sheriff's Office to other women. Almost half of the interviewees indicated that they experienced gender bias at some time during their career at the EDC Sheriff's Office.

## **METHODOLOGY**

1. The EDCGJ conducted the following interviews:

- Six female deputies for El Dorado County were subpoenaed to appear before the grand jury.
- Eight female Community Service Officers for El Dorado County were subpoenaed to appear before the Grand Jury.
- Director of Human Resources for El Dorado County
- EDC Sheriff's Department Support Services Division Commander
- Interim Sheriff for El Dorado County
- Current Sheriff for El Dorado County
- Detective, El Dorado County Sheriff's Office

2. The EDCGJ examined the following written sources during the investigation period of July 1, 2010 through April 30, 2010:

- El Dorado County Sheriff's Office Policy Manual
- County of El Dorado Policy Prohibiting Discrimination, Harassment and Retaliation, and Reporting and Complaint Procedure
- 2007 complaint alleging sexual harassment and gender bias
- Letter of Counseling dated May 31, 2007, subject "Complaint"
- 2009 complaint alleging misconduct of a command officer
- Sheriff's Office memorandums dated June 13, 2009 and June 17, 2009, subject "Complaint"
- Copies of e-mails dated June 4, 2009 subjects "Complaint" and "Inappropriate"
- Letter of Counseling dated September 16, 2009

3. The EDCGJ obtained statistical data from the following sources:

- Website <http://bjs.ojp.usdoj.gov/index> accessed March 14, 2011 regarding statistics on female employment in Sheriffs' Departments
- El Dorado County Human Resources Department
- Telephone inquiries to Shasta, Placer, Amador, King, and Madera counties
- El Dorado County Sheriff's Office, Investigative/Detective Unit.

## FINDINGS

1. A total of 18 gender bias/sexual harassment complaints originating in the Sheriff's Office were filed over the last three years. Three were filed in 2008, three filed in 2009 and twelve filed in 2010. Six of the 18 complaints were sustained (found to be true).

***Response to Finding 1: The respondent agrees with the finding.***

2. Of the six sustained allegations, three individuals did not have records of disciplinary action related to the complaints in their files in the El Dorado County Human Resources Office. Of the remaining three complaints, one of the accused retired and one was terminated. The third complaint involved multiple accused employees and the final discipline resulted in one termination, a forty-hour suspension, and a Letter of Reprimand.

***Response to Finding 2: The respondent agrees with the finding.***

3. There are two pending lawsuits filed with the United States District Court against the County of El Dorado, El Dorado County Sheriff's Department, and individual plaintiffs within the Sheriff's Department alleging discrimination, harassment, and retaliation.
4. Operations within the Sheriff's Department are governed by the following:
  - El Dorado County Sheriff's Office Policy Manual
  - Memorandum of Understanding (MOU) with applicable bargaining units
  - County of El Dorado Policy Prohibiting Discrimination, Harassment and Retaliation and Reporting and Complaint Procedure
  - Federal and State regulations outlined by the Equal Employment Opportunity Commission and enforced by the El Dorado County Human Resources Department
5. El Dorado County Sheriff's Office Policy 329, "Discriminatory Harassment", prohibits and defines discrimination, harassment and retaliation.
  - Section 329.2 states that "*Employees . . . found to be participating in any form of employment-based harassment, discrimination or retaliation against any applicant or employee may be subject to disciplinary action up to and including termination from employment.*"
  - Section 329.4.1 states that for Department Heads, Management and Elected Officials, "*Failure to take corrective action when a department head/manager/elected official knew, or should have known, that an employee was being subjected to unlawful discrimination, harassment or retaliation on the job is a violation of this policy and may subject the . . . official to a disciplinary action up to and including termination or other appropriate sanctions.*"

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- Section 329.4.1 states that *“A failure to report conduct that may constitute unlawful discrimination, harassment and/or retaliation to the Department of Human Resources (Equal Employment Officer) or CAO (Chief Administrative Officer) . . . may result in disciplinary action up to and including termination.”*
  - Section 329.4.3 states that the Human Resources Director and Department shall be responsible for *“Scheduling and auditing periodic training of County management and employees in the area of unlawful workplace discrimination, harassment, retaliation including identification of prohibited conduct, procedures for reporting the occurrence of such conduct and prohibition against retaliation for complaints.”*
  - Section 329.5.3 states that *“if the determination is made that discrimination, harassment and/or retaliation occurred which violates County policy, the Director of Human Resources (Equal Employment Officer) or CAO (Chief Administrative Officer) shall take and/or recommend prompt and effective remedial action commensurate with the severity of the offenses(s), taking into account the principles of progressive discipline as well as the County’s zero tolerance policy towards unlawful discrimination, harassment and retaliation.”*
6. Forty-two percent (6 of 14) women interviewed by the EDCGJ indicated that they have experienced gender bias at some time during their careers with the EDC Sheriff’s Department. Three women stated they would not recommend employment with the Sheriff’s Department to other women. Two stated that they would recommend the Sheriff’s Department only after they explained the difficult working conditions. Nine said they would recommend the Sheriff’s Department to other women.
7. In addition to the 18 complaints filed since 2008, the Grand Jury examined three sustained complaints that originated from an allegation in 2007 by three male deputies who reported events where females were subjects of gender bias. The El Dorado County Human Resources Office forwarded the complaint to an outside attorney for review. The attorney recommended that three of the reported incidents outlined in the complaint had sufficient evidence to sustain the allegations, specifically stating that one of the comments *“was reasonably understood as a sexual innuendo that others would reasonably find inappropriate or offensive in a work environment.”* In a second incident the agency found *“The comments were obviously sexual in nature, directed toward specific female employees . . . and could be offensive to a reasonable person in a workplace environment.”* The deputy was disciplined with a Letter of Counseling, considered to be one of the least severe forms of discipline, for failing to follow Policy 340.3 “discourteous, disrespectful or discriminatory treatment of any member of the public or any member of the Department”, and “conduct which any employee knows or reasonable person should know is unbecoming a member of the Department . . .”

### ***Response to Finding 7: The respondent agrees with the finding.***

8. The above referenced individual was promoted to a command position in 2009 and during his probationary period for that promotion, received another Letter of Counseling for an additional sustained complaint involving conduct which reflects unfavorably upon the Department. Using a Letter of Counseling twice for the same ranked individual does

not adhere to section 329.5.3 of the Policy Manual “. . . *taking into account the principles of progressive discipline. . . .*”

9. The Sheriff’s Office Policy Manual states that discriminatory behavior based on gender, ethnicity, religion, and sexual orientation is prohibited. There are no written guidelines for disciplinary action if these policies are violated. When asked if mandatory discipline for violating such policies should be delineated in the Policy Manual to serve as a deterrent, one Sheriff’s Office Commander stated that doing so would take away the discretion of supervisors and managers in assigning punishment.
10. Some of the women interviewed expressed a lack of confidence in Internal Affairs to handle a gender bias complaint. Their concerns included a lack of objectivity, as well as the potential for compromised confidentiality that could lead to possible retaliation by co-workers.
11. Although formal training on rules and regulations regarding Equal Employment Opportunity is given every two years for sergeants and above, no formally scheduled training takes place for sworn and civilian members in the Sheriff’s Department.
12. The El Dorado County Recruitment and Selection section 1000.3.6 lists discipline for acts constituting racial, ethnic or sexual harassment or discrimination as disqualifying for applicants of positions within the County. Section 1000.3.4 also requires that applicants must be effective in dealing with people without arousing antagonism. In at least one promotion the EDCGJ reviewed, an applicant who received a Letter of Counseling for discourteous, disrespectful or discriminatory treatment, was promoted to a command rank two years after he received the discipline.
13. The Grand Jury’s review of two sustained complaints found no verification that the Sheriff was informed about the content of the complaint or took part in disciplining the guilty individuals.
14. Although El Dorado County ranks second from the bottom among Shasta, Placer, Amador, Kings, and Madera counties in the number of female deputies with a rank of sergeant or above, the majority of the female deputies did not have any concerns about the process used to promote candidates for sergeant or above. The process involves testing facilitated by an outside consulting company. However, it should be noted as stated in Finding 21, gaining experience to be successful in promoting to sergeant or above is controlled in part by the lateral assignment process. There were four attempts by women to obtain a promotion to sergeant since 2003, and only one woman was successful. Twenty-six men were promoted to sergeant or above during the same time frame.
15. Sergeant openings in the West Slope area are typically filled by sergeants with higher seniority, leaving the South Lake Tahoe position vacant when they transfer. The vacant position is then filled by a newly promoted sergeant with less seniority. This practice can

discourage potential candidates with families or other responsibilities rooted in the West Slope to seek promotion.

16. Policy 1001 of the Sheriff's Office Policy Manual defines the process that is used to select individuals for specialized job assignments. All employees are notified via e-mail of job openings, and applicants are ranked by a panel of supervisors within the Department. If the position has three or more candidates, is full time or involves skill pay, only the top three candidates ranked by the panel are invited to compete in an oral interview. After the interviews are concluded and final ranking is tabulated, the panel's numerical ranking is forwarded to the Division Commander.
17. Personnel in the Sheriff's Office provided the following information regarding detective positions:
  - There is no mandatory rotation of detective positions.
  - There are currently 20 male and zero female detectives in the EDCSO.
  - Over the last five years no women were added to the Detective Unit.
  - In 2008, one female detective left the Investigative Detective Unit because she was promoted to sergeant.
  - Detectives receive a 5% pay increase and a take home vehicle, making this a coveted position for deputies.
18. According to the Bureau of Justice Statistics website, data from a 2003 census (the latest available) showed that the national average for the percentage of sworn female officers in communities between 100,000 and 249,000 is 12.8%. The percentage of sworn female deputies in 2003 in EDC was 4.5%, less than half the national average. In 2010 the percentage was 5%. There is one female sergeant out of 35 supervisory or command deputy sheriffs. El Dorado County is second from the bottom among Placer, Shasta, Amador, Kings, and Madera Counties in the percentage of females in sergeant or above positions.
19. In testimony, the Sheriff indicated there are no plans to recruit female deputy applicants to bridge the Department's existing gender gap in sworn positions.
20. Although there is a written policy that defines the process for selecting candidates for lateral assignments, the majority of the six deputies interviewed expressed dissatisfaction with the methods used to select candidates for lateral, specialized work assignments. Concerns include:
  - The selection process was too subjective since most assignments did not involve written testing, relying instead on the ranking of candidates by a selected panel.
  - Not having a chance to appear before the selection panel if they did not receive one of the top rankings.
  - Not getting any feedback or coaching on how they can improve their chances for being selected in the future.

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- The low number of openings due to non-rotation of some assignments such as detective.
21. The Grand Jury finds that lateral assignments such as Detective, Field Training Officer, and River Patrol are a gateway for promotion into the ranks of sergeant or above. In addition, the El Dorado County Grand Jury concludes that the selection process for lateral assignments is subjective and somewhat arbitrary.

Without experience gained from lateral assignments a candidate who applies for sergeant or above has a slim chance of succeeding when competing against a candidate who has detective or other lateral assignment experience. It is not surprising that only one woman achieved the rank of sergeant since female detectives have been almost nonexistent. Having female deputies on the force who have gained experience from lateral assignments also contributes to a more effective and culturally competent law enforcement organization for El Dorado County.

## RECOMMENDATIONS

1. The EDCGJ strongly urges the Sheriff's Office to implement the following regarding lateral, specialized assignments:
  - Implement a plan to rotate specialized lateral assignments such as detective with the goal of creating more opportunities for deputies to gain valued job skills while at the same time ensuring that expertise within the Department is preserved.
  - Establish objective means wherever possible to measure candidates' abilities against written job qualifications.
  - Give *all* qualified candidates the opportunity to compete in oral examinations conducted by the selection panel.
  - Consider alternatives to the practice of allowing sergeants with seniority to force newly hired sergeants with less seniority to locate in South Lake Tahoe since it has the unintended consequence of discouraging those with family or other responsibilities rooted in the West Slope to apply for promotion.
  - Provide a venue for unsuccessful candidates to receive feedback from the selection panel.
2. The Sheriff's Office must identify and recruit qualified female and other minority candidates to apply for future openings in the Sheriff's Office. This outreach would enable the Sheriff to take a leadership role in eliminating bias and the appearance of discrimination that exposes El Dorado County to civil liability.

3. The Sheriff's Office zero tolerance policy regarding discriminatory harassment must be better communicated and implemented by:
- Establishing set scheduling of formal training for all employees on proper workplace behavior.
  - Ensuring that sustained allegations of sexual harassment and/or gender bias discrimination are duly weighed against individuals applying for promotion.
  - Aggressively implementing Policy 329.4.1 advocating disciplinary action for supervisors when complaints are filed in their sphere of influence and it is determined that they "*knew, or should have known, that an employee was being subjected to unlawful discrimination, harassment or retaliation on the job*".
  - Performing a review of Internal Affairs to eliminate perceptions of lack of objectivity and confidentiality.
  - Routing all allegations of sexual harassment/gender bias complaints through Internal Affairs to the Sheriff.

## **RESPONSES**

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the El Dorado County Sheriff and the Director of Human Resources for El Dorado County for response.

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.



## **EL DORADO COUNTY GRAND JURY 2010-2011**

### **PREVENTION AND INTERVENTION FOR MENTAL HEALTH CRISES**

Case Number GJ 010-007

#### **REASON FOR REPORT**

The El Dorado County Grand Jury (EDCGJ) learned that a number of recent encounters between law enforcement and persons in emotional crisis have resulted in confrontations leading to injury or even death. An investigation was initiated to develop workable recommendations for interagency collaboration that would reduce risks to officers, subjects and citizens.

#### **BACKGROUND**

Local law enforcement services within El Dorado County (EDC) are provided by the Placerville Police Department, South Lake Tahoe Police Department, and the El Dorado County Sheriff's Department. The California Highway Patrol provides back up to local law enforcement as needed. Emergency calls regarding community disturbances or life threatening behavior are responded to by the appropriate law enforcement agency. When a call involves a report of violent acts that have been committed or are in progress, a tactical law enforcement response is initiated. When a call involves threats of violence or suicide, officers are dispatched to respond, assess, and investigate. If initial attempts to de-escalate the situation fail, a quick assessment must be made in the interest of public and officer safety.

Nationwide calls for assistance involving threatening behavior now account for 15 to 20 percent of the total number of calls. This percentage is anticipated to increase as the at-risk population expands and mental health resources diminish. Recent encounters in El Dorado County culminating with the death of a mental health patient in Placerville in March of 2010 caused local authorities to acknowledge this disturbing trend. They have expressed a commitment to participate in an effort to strengthen prevention by developing effective, tested, intervention protocols designed to de-escalate potentially violent encounters.



## METHODOLOGY

- The Grand Jury conducted multiple interviews with law enforcement and persons involved in the administration and delivery of mental health programs, attended meetings, and collected information from a variety of sources. Persons from the following organizations were interviewed:
  - Commission on Accreditation for Law Enforcement Agencies
  - District Attorney Office, EDC
  - Emergency Services Authority, EDC
  - Health Services Department, Mental Health Division, EDC
  - Human Services Department, EDC
  - Marshall Hospital
  - Mental Health Commission
  - Multidisciplinary Team, EDCSO
  - National Alliance on Mental Illness
  - Placer County Sheriff Office
  - Placerville Police Department
  - Probation Department, EDC
  - Public Defender, EDC
  - Rocklin Police Department
  - Veterans Affairs, EDC
  - Veterans Affairs, Sacramento County
- The Grand Jury reviewed relevant portions of the following documents (August 2010 to April 2011):
  - Analysis of Crisis Services Provided 10/25/10 through 1/21/2011 by EDC Mental Health Division (2/8/11)
  - Autism Registry Guidelines -El Dorado County Sheriff Department (not dated)
  - Behavioral Health Team Guidelines - El Dorado County Superior Court May 2006
  - California Association of Mental Health Patient Rights Advocates, Rights Manual, 2011
  - Cooperative Law Enforcement Agreement between the Sheriff of El Dorado County and the Pacific Southwest Region of the USDA Forest Service. 5/23/03
  - CPES Estimates of Need for Mental Health Services For El Dorado County for 2007
  - Crisis Intervention 2.0: Law Enforcements Expanded Role; Pickens, Kirkham & Hammitt, 2009.
  - District Attorney Office Mental Health Statistics Summary, (4/1/2011)
  - District Attorney's Report of the Investigation of the Incident of 3/28/10 (8/10)
  - El Dorado County Multi-agency Memo of Understanding addressing mental health custody issues – drafted February, 2011
  - El Dorado County Sheriff's Office Policy Manual

- Guide for Families of Arrested Mental Health Patients, Alameda County Sheriff's Office, 3/20/11
- Guidelines for Recognizing Mental Illness, Rocklin Police Department Procedures Manual, revised November 2010
- Incident Report, USDA Forest Service, 3/27/10
- Mental Health Commission Mission and Organizational Underpinnings.
- Mental Health Commission/West Slope Report to BOS 2009
- Mental Illness And The Potential For Violence, Cato News Journal, summer 2010
- National Alliance On Mental Illness Resource Information, 10/27/10
- Placer County 5150 Emergency Response, 2/16/11
- Placerville Police Department Policy Manual
- Print Media Reports Regarding Mental Health Related Actions
- San Joaquin County Mental Health Services Policy and Procedure Manual- Revised May 21, 2004
- Security Management Guidelines-Marshall Hospital, revised 2010
- Welfare & Institutions Code §5150

## **FINDINGS**

1. Agencies which have signaled an interest in participating in joint efforts to improve prevention and response to mental health crises include: El Dorado County Sheriff's Office, EDC Mental Health, Placerville Police Department, EDC District Attorney, National Alliance on Mental Illness, EDC Emergency Services Authority, EDC Mental Health Commission EDC Probation Department and Marshall Hospital.

***Response to Finding 1: The respondent agrees with the finding.***

2. This commitment to move forward resulted in written agreements, augmented participation in training programs, and expanded use of the Sheriff's Department sponsored Multi-Disciplinary Team.

***Response to Finding 2: The respondent agrees with the finding.***

3. There is a lack of leadership structure supported by agency heads and the Board of Supervisors. This deficiency could make the joint effort less effective and subject to collapse should interagency conflict arise or public interest wane.

***Response to Finding 3: The respondent disagrees with the finding. Agency heads have participated in the establishment of a Multi-Disciplinary Team for response to mental health issues.***

4. The potential for continued or increased encounters with persons in crisis is apparent according to available data. There is a significant increase in the at-risk population.

For example, in El Dorado County there are 521 veterans who have been diagnosed with Post Traumatic Stress Disorder and 681 veterans receiving care for other mental health disorders. This group represents a small portion of the at-risk population in the county.

***Response to Finding 4: The respondent agrees with the finding.***

5. Declining revenues limit the ability of organizations to commit resources to these mental health incidents.

***Response to Finding 5: The respondent agrees with the finding.***

## **RECOMMENDATIONS**

1. The EDC Board of Supervisors should immediately appoint an ad hoc committee to develop a plan for prevention of and response to emergency health crises and make recommendations for the creation of an official structure to implement and manage this plan.

This committee would be chaired by the Director of Health Services and will be comprised of executive representatives of the Sheriff, the District Attorney, the Chiefs of South Lake Tahoe and Placerville Police Departments, EDC Emergency Services Authority and other entities as necessary (e.g. Mental Health Commission, National Alliance for Mental Illness).

The committee should meet and make its recommendations within ninety days from the date of its creation which will then be considered for adoption by the BOS.

The recommended official mental health emergency response organization might be a variation of the Incident Command System that originated in California to respond and fight fires and has been adopted nationally to respond to all emergencies, large and small.

***Response to Recommendation 1: The recommendation will not be implemented because it is not warranted. A new committee is unnecessary. Agencies involved already participate in a Multi-Disciplinary Team for mental health issues. Many of the agencies also participate in the Community Corrections Partnership. These venues afford ample opportunity for affected agencies to address mental health crisis prevention and response.***

2. The recommended emergency mental health crisis plan should also address conflict intervention training, required drills, intervention strategies, identification of warning signs, communication and notification protocols.

***Response to Recommendation 2: The recommendation will not be implemented because it is not warranted. See response to recommendation 1.***

## RESPONSES

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the following for response:

- El Dorado County Sheriff
- EDC Director of Mental Health
- Placerville Chief of Police
- EDC District Attorney
- Director, National Alliance on Mental Illness
- EDC Director of Emergency Services Authority
- President, EDC Mental Health Commission
- EDC Chief of Probation
- Director of Marshall Hospital Placerville, CA

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.



## **EL DORADO COUNTY GRAND JURY 2010-2011**

### **MENTAL HEALTH DETENTION POLICY AND PROCEDURES**

Case Number GJ010-009

#### **REASON FOR REPORT**

As a result of a complaint, the El Dorado County Grand Jury investigated the policies and procedures applicable to mental health patients held on the Western Slope of the county under the Welfare and Institutions Code §5150.

#### **BACKGROUND**

In March 2010, a United States Department of Agriculture Forest Service Officer took a citizen into custody who appeared to be a danger to self and severely impaired. This was done under the authority of Welfare and Institutions Code §5150 (5150) that establishes requirements and procedures for law enforcement and hospital personnel for taking such a person into custody for 72 hours of evaluation and treatment. The officer transported this citizen to the Crisis Center of the El Dorado County Mental Health Psychiatric Health Facility for a mental health evaluation. After approximately four hours, the patient was transported to Marshall Medical Center for a required medical clearance. Four hours later, a Marshall Emergency Department physician medically cleared the patient. About 10 hours later, while arrangements were being made for continuing care in a Sacramento psychiatric facility, the patient walked out (eloped) from the hospital emergency department. An ambulance with keys on the floor was parked outside of the emergency department. The patient found the keys and drove away. Immediately, the Placerville Police Department was called. Subsequent events resulted in the death of the patient.

Department of Mental Health statistics revealed an average of 27 individuals per month held under §5150 on the Western Slope of El Dorado County for a three month period from October 25, 2010 through January 21, 2011.

## **POLICY AND PROCEDURE REVISIONS**

### **MENTAL HEALTH**

Under previous policies, some Western Slope 5150 patients detained by law enforcement were transported to the Crisis Center of the El Dorado County Psychiatric Health Facility (PHF commonly pronounced "puff") prior to being medically cleared at Marshall Medical Center.

After review, the State Department of Mental Health ordered that the Crisis Center not be used for evaluation and treatment of 5150 patients. Now, all Western Slope 5150 patients are taken directly to Marshall Medical Center for evaluation and treatment. The clearance is the physician's determination that the patient has no medical conditions that would preclude placement.

Mental Health Psychiatric Emergency Services is notified when a patient is being transported to Marshall and makes every effort to have a mental health crisis worker at Marshall within 20 minutes. If this is not possible, Marshall is notified when the mental health crisis worker will arrive. The purpose of this mental health crisis worker is to provide mental health care support but not to provide security.

Several subdivisions of the Department of Health Services participate in the Multi-Disciplinary Team coordinated effort to develop protocols in crisis prevention and intervention.

### **MARSHALL MEDICAL CENTER**

As of March 2010, 5150 patients were observed by mental health workers, nursing staff and hospital security personnel under the supervision of the charge nurse. Communication between these groups was inconsistent and sometimes ineffective.

After March 2010, Marshall Medical Center developed a Plan of Correction in response to a list of serious federal violations received from the Department of Health and Human Services Centers for Medicare and Medicaid. This plan includes a commitment by Marshall for constant observation of 5150 patients, rapid response and triaging by nurses and physicians, and additional training of the nursing and other staff.

Emergency Department policies have been revised to clearly state that the hospital is solely responsible for the custody of persons suspected of being mentally ill.

Designated hospital personnel will be given Crisis Intervention Team (CIT) training including Emergency Medical Technicians (EMT) and paramedics. Supervisors will receive a 40-hour course and other employees will receive an eight-hour course.

## **MARSHALL MEDICAL CENTER SECURITY**

Security is provided by Healthcare Security Services (HSS), a private security company. There are a total of 10 officers, including one supervisor. Two officers each staff three shifts per day, providing 7-day weekly coverage.

Neither the HSS Supervisor nor any of the other officers is required to have law enforcement training or experience. The officers have California state certificates and receive about two hours of 5150 training at the Northern California District Office of HSS in Livermore. The HSS officers received a local training course related to observing dementia patients taught by the Coordinator of Crisis Services for Mental Health Services.

In March 2010, under the previous policies, security officers were called on as needed to watch 5150 patients. Otherwise, the nursing staff or a mental health worker would observe the patients. Under the new policies, security will keep all 5150 patients under continuous observation. If a patient attempts to leave the area, security or emergency department staff will guide the patient back to bed. However, the security guard will not physically prevent an elopement; in that event, law enforcement would be called.

There is a video surveillance system in the Marshall Emergency Department consisting of two cameras and one monitoring station. The recordings are retained for one week and are available for investigations. Monitoring the video is not a priority duty.

## **AMBULANCE**

Under the previous policy, ambulance keys were left on the floor of the ambulance. No keys were hidden. Under revised rules dated July 29, 2010, the keys may no longer be left in the ambulance, but instead the driver and both medics retain their own set of keys at all times.

## **LAW ENFORCEMENT AND FIRE DEPARTMENT**

A Multi-Disciplinary Team (MDT) has been formed on the Western Slope of El Dorado County. The MDT provides a resource for mental health crisis prevention and intervention. Team member assistance can potentially de-escalate encounters between law enforcement and mentally ill persons. The Sheriff's Office has been an active and involved participant in the MDT; the Placerville Police Department's involvement has been less evident.

A Crisis Intervention Team (CIT) has also been formed. Crisis Intervention Team Cards (formerly called Yellow Cards) are being used to record and report contacts with individuals who have mental health issues. These cards are used in all law enforcement vehicles, ambulances, and fire trucks. The cards are forwarded to the Sheriff's Department where the information is evaluated by a team with Crisis Intervention Training. This evaluation may help law enforcement improve decision making during encounters in the field. In the future, it may also help identify

means of providing individuals with needed assistance. This system was put in place in conjunction with the MDT. It is envisioned that in the future there will be a feedback mechanism so that information can be provided to officers on duty in the field.

The functions of the CIT system and the MDT are also referenced in the accompanying 2011 El Dorado County Grand Jury Report GJ010-007 entitled Mental Health Crisis Intervention.

## **METHODOLOGY**

The 5150 policies and procedures of the various organizations in effect in March 2010 were reviewed. The revisions that were made from that date through March 30, 2011, were evaluated with particular attention to their effectiveness in preventing another incident.

The following persons were interviewed:

- Deputy District Attorney, El Dorado County
- Coordinator, Crisis Services, El Dorado County Mental Health Department
- Manager, Marshall Medical Center Emergency Department
- House Supervisor, Marshall Medical Center
- Current Sheriff, El Dorado County
- Director, El Dorado County Public Health Services/Mental Health
- Officer, United States Department of Agriculture Forest Service
- Parent of the mental health patient
- Supervisor, Hospital Security Services, Marshall Medical Center
- Executive Director, El Dorado County Emergency Services Authority

Documents Reviewed and Date Referenced:

- Marshall Medical Center Emergency Department Manual of Protocols, dated 7/10 (11/10)
- Cooperative Law Enforcement Agreement Between the Sheriff of El Dorado County and the Pacific Southwest Region of the USDA Forest Service, dated 5-23-03 (1/11)
- Amador County Health Services Department Policies and Procedures Manual, 5150 Hospital Call Out Routine, dated 9-15-09 (2/11)
- County of Sacramento Division of Behavioral Health Services policy #05-03 entitled 5150 Welfare & Institutions Code Certification & Designation (2/11); Mental Health Treatment Center policy #04-02 entitled 5150 Designation policy (2/11); Mental Health Treatment Center policy #04-03 entitled 5150 Application (2/11); Mental Health Treatment Center policy #0-01 entitled Intake Team (2/11)
- Placer County Mental Health Policy and Procedures for Adult System of Care and 5150 Memorandum of Understanding among partner agencies, Effective Date 11-06-09 (2/11)
- San Joaquin County Mental Health Service Policy and Procedure Manual – Revised May 21, 2004 (3/11)



## Final Draft Response to the 2010-11 Grand Jury Final Report

- El Dorado County Emergency Medical Services Authority, Draft of 5150 Patients Policy, dated 10-25-10 (3/11)
- District Attorney's Official Report of Investigation of the incident, dated 3-28-10 (8/10)
- Department of Health & Human Services Centers for Medicare and Medicaid Services letter to Marshall Medical Center, dated 6-30-10 (12/10)
- Department of Health & Human Services Centers for Medicare and Medicaid Services Statement of Deficiencies and Plan of Corrections to Marshall Medical Center, dated 7-12-10 (12/10)
- El Dorado County Department of Mental Health Psychiatric Emergency Service Policies and Procedures - West Slope, dated 1-20-08 (1/11)
- El Dorado County Western Slope Agencies, MOU, Policy and Procedures Regarding Detention of Persons Pursuant to WIC §5150 Agreement #833-M0810, dated 6-08 (1/11)
- California Department of Mental Health to El Dorado County Health Services Department, Mental Health Division, Re: Notice of Completed Review with Deficiencies, dated 11-11-10 (1/11)
- California Health Services Department, Mental Health Division Correspondence from Director to County of El Dorado Grand Jury, dated 3-31-2011 (3/11)

## FINDINGS

### MENTAL HEALTH

1. A major causal factor in the March 2010 incident was the fact that previous to March 2010, attention to detail and awareness of the agencies involved in the care and observations of 5150 patients had lapsed.

***Response to Finding 1: The respondent disagrees wholly with the finding. The involvement of agencies in the care and observation of 5150 patients has always been and remains a priority of the Mental Health Division. The Mental Health Division has always enjoyed a strong working relationship with its partners and has continually interacted with those partners to ensure that the protocols and procedures regarding the care and observation of 5150 patients are appropriate. Each agency including law enforcement, hospital staff and employees of the Mental Health Division, is aware of its responsibilities for the care and observation of 5150 patients.***

2. The March 2010 incident shed light on the oversight of the agencies that relate to 5150 patients.

***Response to Finding 2: The respondent agrees with the finding. The treating hospital is not a county agency but rather is a private entity. As a private entity, the oversight of the hospital is vested with a state agency.***

### MARSHALL MEDICAL CENTER SECURITY

3. Hospital security, as currently provided by HSS, is marginally adequate. There is only one officer with law enforcement training. The other security officers were not extensively trained when hired and their training has not been updated.
4. The HSS Supervisor at Marshall spends a significant portion of his day doing administrative work and attending meetings. This leaves the only other day shift officer alone to deal with both the ordinary security functions as well as 5150 surveillance. In addition, the supervisor is the only designated on call person in case of an emergency.
5. Currently, hospital staff and HSS officers provide continuous 5150 patient observation within the emergency department. However, Marshall Medical Center is not a designated mental health facility with a locked, secure area for 5150 patients.
6. Hospital security failed to document important events and information from their shifts.
7. The video camera system is inadequate. There are areas in the Marshall Emergency Department that are not covered by cameras. The video recordings are retained for one week.

## **AMBULANCE**

8. As of October 25, 2010, revisions to the ambulance policy have been under discussion. Proposed changes would require that all 5150 patients riding in El Dorado County Emergency Service Authority vehicles be secured. Gravely disabled and incapacitated patients would be secured with gurney straps. Patients, who have a history of violence or are violent, agitated or angry, coupled with the physical capability of inflicting harm and endangering themselves, would be placed in a four-point restraint.

## **MULTI-DISCIPLINARY TEAM**

9. Marshall Medical Center, Healthcare Security Services officers, Director of the Emergency Services Authority, and the USDA Forest Service Law Enforcement has expressed an interest in participating in the MDT.

## **RECOMMENDATIONS**

Based on the Grand Jury's evaluations and findings, recommendations were developed for further policy and procedure changes to decrease the likelihood of another incident involving 5150 patients.

## **MENTAL HEALTH**

1. The Mental Health Division of the El Dorado County Health Services Department should be the lead agency in an annual reminder of the March 2010 incident and training for all agencies involved in the care and monitoring of 5150 patients.

*Response to Recommendation 1: The recommendation will not be implemented because it is not reasonable. The Health Services Department participates in training but is not in a position to lead or provide training for other involved agencies given their unique roles and responsibilities with regard to mental health issues.*

## **MARSHALL MEDICAL CENTER SECURITY**

2. Coordination and communication between hospital personnel and the security guards is essential. All Marshall HSS security personnel should be trained to deal with mentally impaired patients.

3. HSS security staff needs training in documenting important events that occur on their shifts related to the monitoring of 5150 patients. All daily security notes regarding 5150 patients should be provided to the Charge Nurse.

4. The purpose, current usage and configuration of the video monitoring system should be re-evaluated. The current system must be upgraded if it is going to be of any use in preventing another incident.

## **AMBULANCE**

5. The Executive Director of the El Dorado County Emergency Medical Authority has proposed changes to the Ambulance 5150 policy that are intended to reduce the likelihood that a patient would harm themselves or others. The proposed changes should be reviewed by other agencies; especially Marshall Medical Center, which has policies and procedures for transporting persons with mental health issues.

## **MULTI-DISCIPLINARY TEAM**

6. Marshall Medical Center, Healthcare Security Services officers, Director of the Emergency Services Authority, and USDA Forest Service Law Enforcement should be included in MDT training.

## **EL DORADO COUNTY**

7. El Dorado County should have a designated health facility where 5150 patients and others with mental health impairments would be evaluated and treated in a safe, secured environment.

***Response to Recommendation 7: The recommendation has been implemented. The County has a licensed, locked, 10-bed, 24-hour, adult psychiatric health facility (PHF) for persons requiring intensive psychiatric care, many of whom are involuntarily hospitalized in accordance with Welfare and Institutions Code, Division 5, Part 1, Chapter 2, Article 1, Section 5150 et seq. The facility has been approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation pursuant to the aforementioned code.***

## RESPONSES

Responses to findings and recommendations in this report are required in accordance with the California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided for a response to the following agencies:

- Director, Health Services Department, 670 Placerville Drive Suite 1B, Placerville, CA 95667
- Chief Executive Officer, Marshall Medical Center, 1100 Marshall Way, Placerville, CA 95667
- Healthcare Security Services Supervisor, Marshall Medical Center, 1100 Marshall Way, Placerville, CA 95667
- Executive Director, Emergency Services Authority, 480 Locust Road, Diamond Springs, CA, 956667
- El Dorado County Sheriff, 300 Fair Lane, Placerville, CA 95667
- Chief, Placerville Police Department, 730 Main Street, Placerville, CA 95667
- Chairperson, El Dorado County Board of Supervisors, 330 Fair Lane, Placerville, CA 95667
- Patrol Captain, El Dorado National Forest, 100 Forni Road, Placerville, CA, 95667

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.



## **EL DORADO COUNTY GRAND JURY 2010 - 2011**

### **OPERATIONS REVIEWS AND THE POTENTIAL FOR PUBLIC/PRIVATE PARTNERSHIPS**

Case Number GJ010-018

#### **REASON FOR REPORT**

Grand Jury investigations and reports on El Dorado County government have produced a recurring picture. Though there is an increasing need for government to become more efficient and effective at less cost, there has been a lack of initiative and due diligence in assessing and evaluating the operations and performance of county government.

The functions and operations of county government, the mechanics of actual governance, have not been reviewed or updated, to the point where it is now out-of-step with the need and demand for change.

The County should show a willingness to utilize relevant experience and expertise from outside county government...from the various sectors of business, education, professional services, non-profits, even the general public...to participate in much needed operations reviews of departments, functions, systems, operations and processes. Such an outreach effort could provide valuable perspectives and relevant knowledge when properly focused.

This investigation reveals that relevant and needed experience and expertise exists in abundance among the citizenry of El Dorado County, and is just waiting to be tapped and incorporated in long overdue operations reviews of county government.

#### **BACKGROUND**

Grand juries are charged with the responsibility to be a citizen watchdog on county government. In so doing they regularly investigate and report on various aspects of county government. All one has to do is visit the Grand Jury website and peruse a series of reports over the years that point with regularity to inefficient and ineffective county operations. But grand juries were not designed to perform the actual practical function of county governance in an ongoing manner, and cannot supplant the work that needs to be done under the auspices and control of the county.

The last several decades have produced enormous changes in how we conduct business, utilize the Internet, produce and purchase products, and radically changed how services are accessed by and provided to the public. Changes in what we do, and how and why we do it, are being substantially driven by the need to conserve resources and provide better products and services at less cost.

El Dorado County government has experienced significant change as well, especially in the last three budget cycles. But the changes have been substantially negative in their nature and signify more of a retrenchment than a rethinking of what county government does and how it does it.

Amid all of this dramatic change, the Grand Jury has repeatedly and frustratingly discovered that the way in which El Dorado County government functions and conducts business, how it provides services to the public, is too-often outmoded, perhaps even hidebound, and substantially resistant and unresponsive to the increasingly desperate need to be even more, not less, responsive.

Some of the reasons for this lack of positive change at the county level are certainly attributable to diminishing financial and personnel resources. But this is far from the only reason...indeed it may not even be the primary reason explaining...why policies, operations, procedures and practices have not kept up with the times.

What seems to have been lacking in county government in substantial part is a serious and consistent effort to improve the operations of actual day-to-day governance.

The evaluation and assessment of legal authority, governing missions, organizational structure and working relationships, systems, functions, operations and processes seem a perfect sleep aid to many if not most people. But it is the stuff of which government is made. It is how services or deliverables are constructed and provided. It is how the proverbial pothole is filled. Assessments and evaluations of county government – why and what is done and how well it is done - may address issues involving a key service function, a departmental mission, management, staff, administrative system, policy, operation or process.

What are summarily referred to in this report as “operations reviews” actually encompass organizational, procedural and workload assessments and evaluations of what, whether and/or how work is currently being performed. Specific recommendations to improve efficiency and effectiveness, products and deliverables to and for the public, are the intended result of such reviews. Some may refer to this type of process as trying to get a “bigger bang for the buck,” or simply identifying ways government can operate more efficiently and at less cost. Others may

think of these processes as also including ways to make government more accountable and user-friendly to the public.

The vast majority do not know and may not care about such details...until there is a direct impact upon them. We lack the time and energy to engage...unless perhaps we are directly affected. Yet, if the functions and services of our county government are not working, and not working well, each and every one of our lives, our businesses, our communities, are adversely affected. We may be among the first to complain, vote in frustration and anger, or, sadly, simply throw up our hands, give up and tune out.

During the 2009-2010 El Dorado County Grand Jury session, a report was produced that addressed the need for a significant restructuring and consolidation of county administrative services. Over two million dollars of annual cost savings was identified. Among the recommendations was the need to establish an internal management auditor function in the County Administrative Office. This official would be charged with the objective of evaluating operations and processes and acting to make them more efficient and effective. But the official County response to the report was extremely brief and even dismissive.

When evaluating and assessing how functions are performed, the Grand Jury frequently discovers not only the lack of any internal review and action to improve service delivery, but also the lack of an approach or practice of incorporating experienced members from the private sector with relevant expertise as part of any operations review. There has been no serious and concerted effort to systematically identify and bring in to long overdue reviews of county operations members of the public who have something to bring to the table, and who have deep and even recent and relevant experience and expertise. The Grand Jury has developed a concern that valuable and useful perspectives and advice are not only going unheeded, they have been largely unsolicited, even disdained.

But there are several reasons why the time is ripe for a new and fresh approach to review and renew county government operations:

- The public is increasingly and justifiably concerned about the ability of county government to spend tax dollars in the most efficient and productive manner.
- The Board of Supervisors, according to highly placed public and private county sources, is increasingly receptive to new ways of doing business.
- El Dorado County has a new Chief Administrative Officer ready and able to provide leadership.
- A new process has just begun involving “action teams” to review certain high priority county operations and functions designated by the CAO, and
- The general downturn in the economy places an added emphasis on doing more with less.

The Grand Jury asked those interviewed for this report, among other wide-ranging questions, to specifically respond to a proposal to establish a registry or clearinghouse containing a list of individuals from outside county government who were qualified and experienced with relevant knowledge, skills and abilities in certain areas of need. For example, various professional

services come to mind such as engineering, human resources, accounting, contracting, purchasing, legal, educational, marketing, and various levels of administrative management. The idea was to reach out to members of the El Dorado County community and perhaps beyond to obtain information concerning individuals in a position to lend their expertise who would be willing to participate as part of a review team that would carefully assess and evaluate county operations.

At the same time the basic idea of the equivalent of a registry or clearinghouse function was suggested, interviewees were invited to propose alternative mechanisms to accomplish the same end. In actuality, there could be many ways for a CAO to implement such an idea. Looking at the county organization chart one can readily identify the kinds of experience and expertise, the knowledge, skills and abilities that could be utilized by county government. These needs could be categorized. Those with relevant experience and expertise could be listed and their qualifications vetted. But first they would have to be asked to participate.

In recognition of the need for a timely and serious review of what is done in county government, and how it is done, the Grand Jury has discovered a wealth of expertise and experience just waiting to be tapped throughout the county. Fresh eyes and experienced perspectives could be included on a review or action team otherwise comprised of county directors and/or staff. A mixed review team composed of participants representing a balance of public and private sector experience and expertise would result. Fresh insights, experience, contacts, and perspectives would be brought to bear on what is done and how and why it is done. A creative dynamic would be initiated whereby policies, operations and processes could be compared and contrasted. An existing monopoly of history, data and contacts would compete with private sector counterparts. Government processes, even at relatively low and operational levels, could be rethought and recreated. At the very least, even if a particular process could not be improved upon, everyone engaged in attempting to make it more efficient and effective would know why it was apparently operating at optimal levels.

According to the March 17, 2011 article, "Taming Leviathan, A Special Report on the Future of the State," in the Economist magazine, "In the surveys that measure people's happiness, decent government is as important as education, income and health (all of which are themselves dependent on government). To business, government can make an enormous difference. Even if government were to cost the same but produce more, the effect on private sector productivity would be electric."

## **METHODOLOGY**

Interviews have been conducted with a wide variety of community organizations and groups. Documentation has been referenced from prior Grand Jury reports, and relevant studies, articles and websites.



## Final Draft Response to the 2010-11 Grand Jury Final Report

The Grand Jury interviewed officials from county government and the following community organizations:

- Chief Administrative Officer, El Dorado County
- Staff, Chief Administrative Office, El Dorado County
- Executive Director, El Dorado Community Foundation, an umbrella agency over a substantial number of non-profit organizations.
- Past President, League of Women Voters
- Director, Economic Development Advisory Committee
- Chief Executive Officer, El Dorado County Chamber of Commerce
- Director of Governmental Relations, Parker Development Company, El Dorado Hills
- President, Folsom Seniors in Retirement (SIR), with approximately one-third of the membership of this 180 plus member organization residing in El Dorado County.

Particular documentation referenced included recent Grand Jury reports such as the following:

2008-2009 El Dorado County Grand Jury:

- El Dorado County Charter Review
- El Dorado County Adult Protective Services
- El Dorado County Zones of Benefit
- El Dorado County Roadside Memorials

2009-2010 El Dorado County Grand Jury:

- Energy Conservation and Cost Savings
- Administrative Services Consolidation Cost Savings and Efficiencies
- Purchase of the Animal Control Shelter Property
- Fee Waivers

The 2010-2011 El Dorado County Grand Jury reports include a variety of findings and recommendations, including this particular report, that directly concern the operations of county government.

In addition, other documentation was referenced for this report, including:

- The Economist Magazine, "Taming Leviathan, A Special Report on the Future of the State," March 17 and 19, 2011 Edition.
- The Economic Development Advisory Committee, (EDAC) El Dorado County, website. (April 10, 2011)
- El Dorado County Board of Supervisors, January 10, 2011 Agenda and Minutes
- EDAC Presents: Recommendations for Regulatory Reform through a review of the General Plan and Other Regulations

- El Dorado County Economic and Demographic Profile, 2007-2008, Center for Economic Development, California State University, Chico
- El Dorado County Chamber of Commerce website, Clubs and Organizations, (April 10, 2011)
- The website for “CatchaFire,” a non-profit business model that facilitates matching business start-ups with experienced and expert volunteers.

## FINDINGS

1. The new Chief Administrative Officer for El Dorado County has identified four top priority county functions warranting review and improvement:
  - Information Technology
  - Human Resources
  - Management
  - Financial Accounting

These four functional areas are being reviewed at a department head level and have broad affects throughout all county operations.

***Response to Finding 1: The respondent agrees with the finding.***

2. There is an increasing recognition that county government operations are behind the times, insular in outlook, and stagnating from lack of competition...or at least the competition of new ideas. According to one prominent county official, “The County has a monopoly on the provision of certain services. We are lacking public feedback. We are discovering that the county is pretty good at compliance, but not so good at service delivery.”

***Response to Finding 2: The respondent partially disagrees with the finding. There are numerous opportunities for public feedback in County operations.***

3. As evidenced most recently by the use of the Economic Development Advisory Committee (EDAC), the clear potential exists to mobilize volunteer resources available in the wider community. El Dorado County has a diverse, rich and deep skill set of those who are still working or who recently worked in professions and occupations directly relevant to county operations. Whether it was a business, non-profit, social or charitable group, private association or community group surveyed during this report, there was a uniform and clear consensus that substantial experience and expertise exists and could be made available to meaningfully participate as part of a review team focused on improving a particular segment of county operations. In several instances the Grand Jury received comments like, “Nobody from the county has ever asked for our help.”

***Response to Finding 3: The respondent partially disagrees with the finding. The County already works with numerous volunteers and nonprofit organizations in programs such as Parks, Animal Services, Museum, Rubicon Trail, University of California Cooperative Extension, and the Library to name a few. In addition, committees such as the Economic Development Advisory Committee, the Integrated Natural Resources Management Plan Stakeholders Advisory Committee, and the Plant and Wildlife Technical Advisory Committee further exemplify the County's use of volunteer experience and expertise.***

4. Every representative of a group interviewed for this report immediately and forthrightly stated that there would be “no problem” in obtaining volunteers from the community to assist in the conduct of operational reviews. Not one person interviewed for this report indicated otherwise. In one instance a prominent private sector individual in El Dorado County volunteered on the spot to participate as a member on a review team comprised of county officials and qualified individuals from the private sector.

There was a clear consensus among those groups contacted for this report that there would be two key areas of vulnerability for a proposed mechanism to produce qualified individuals for participation on review teams. Those two areas were either a lack of leadership from the County Administrator's Office and/or a lack of willingness of individuals to volunteer their time and expertise for their county. A third area of vulnerability endangering potential success would be lack of acceptance of the review group at a departmental level.

***Response to Finding 4: The respondent disagrees partially with the finding. It appears the Grand Jury is conflicted with regard to the use of volunteers by simultaneously finding that there would be “no problem” obtaining volunteers while citing three problems in obtaining volunteers.***

5. A major determinant of success for the establishment and good use of public/private review teams was how the CAO reached out to and invited the meaningful participation of the public.

***Response to Finding 5: The respondent agrees with the finding.***

6. Participation on operations review teams could entail very different levels of commitment ranging from a few weeks to six to twelve months. This did not cause any party interviewed for this report to change their assessment about the potential participation of individuals from outside county government.

***Response to Finding 6: The respondent disagrees partially with the finding. Varying levels of commitment on any project utilizing volunteers is expected. However, varying levels of commitment also impacts the quality of the project.***

7. There was a strong recognition by everyone interviewed for this report that it would be very important to understand that county government exists to protect and further the

greater good or public interest. Review teams could not be comprised of individuals or representatives from an interest group whose primary or exclusive reason for participating was to enhance their own or their own group's interest at the expense of everyone else's interest. One interviewee perhaps put it best when they said, "The greater the private interest, the greater the risk." This concern pointed to the need for clear standards to avoid conflicts of interest by participating members of a review team.

***Response to Finding 7: The respondent agrees with the finding.***

8. A significant benefit of such collaboration between public officials and private individuals (between the local public and private sectors) would be to foster a greater understanding of the professional environment, the unique challenges and demands, and yes, the inherent differences in operational flexibility, accountability, and speed of the sectors and how each may function. The rhetorical if not the practical clash of cultures between the public and private sectors could be diminished with greater cooperation, collaboration and communication focused on a specific and tangible need and objective. Mutual benefit would be the preferred goal of such reviews, with both government employees and members of the public seeking and obtaining a "win-win" of less cost, less time, greater productivity, and enhanced service delivery, with ultimate benefits to both a renewed faith in the ability of local government to function as well as an improved local economy.

***Response to Finding 8: The respondent agrees with the finding.***

## **RECOMMENDATIONS**

1. The CAO should clearly express and publicize an operating principle and preferred method for county government operations reviews. The stated policy or operating principle should make clear a strong preference for a balanced approach that incorporates both internal and external personnel (public and private sector participants) on any significant operational, procedural, functional or systemic review of county government. Such a commitment would signal the value of outside perspectives as well as the likely benefit of comparing and contrasting public and private sector initiatives focused on improving the efficiency and effectiveness of county operations.

***Response to Recommendation 1: The recommendation will not be implemented because it is not warranted. Operational reviews require a situation specific approach.***

2. An emphasis needs to be placed on the deliberate and careful selection of participating members of review teams. Among the qualities expected for participating members would be their experience and expertise, as well as their ability to work as part of a team with a specific charge and within specified timeframes. There would need to be openness to information that contrasted with one's own experience and perceptions, a willingness to compare and contrast information in general, and the ability to "roll up their sleeves"

and engage in the sometimes laboriously detailed information used to find their way toward considered and deliberate recommendations for change.

***Response to Recommendation 2: The recommendation has been implemented.***

*Volunteers are selected deliberately and carefully in many areas of County operations.*

3. Operations review teams should seek and incorporate in their deliberations relevant information from all primary stakeholders, public or private.

***Response to Recommendation 3: The recommendation has been implemented. As evidenced by volunteers groups such as the Economic Development Advisory Committee, it seems clear that volunteers want to incorporate all relevant information in their deliberations.***

4. Operations review teams should be charged with making their findings and recommendations advisory to both the CAO and the Board of Supervisors with concurrent reports going to each entity.

***Response to Recommendation 4: The recommendation has been implemented.***

*Current operational teams already make present their recommendations publicly to the Board of Supervisors.*

5. The CAO should identify and generally prioritize the need for operations reviews to include at least all large and medium size departments and key functions and systems across county departments.

***Response to Recommendation 5: The recommendation will not be implemented because it is not reasonable. The size of the department is not necessarily a good indicator of the need for review.***

6. The Chief Administrative Officer's office itself should be among the first to be the subject of an operations review. This would serve as an example to other county departments and underscore the commitment of the CAO to achieve meaningful and beneficial results.

***Response to Recommendation 6: The recommendation will not be implemented because it is not reasonable. While the Chief Administrative Officer desires to break down barriers between the Chief Administrative Office and departments, and between the County organization and the public, reviewing the Chief Administrative Office now is premature. The Board of Supervisors appointed the new CAO in January, a new Assistant CAO was just hired, and two principal analysts are currently assigned as acting department heads.***

7. Various methods could be employed to initially identify top priority departments or functions for operations reviews. Undoubtedly the CAO will give due consideration to

the factors governing prioritization of such reviews. However, at least four key elements are important considerations for a prioritization of operations reviews:

- Size of the department or pervasive impact of the function or system on county government operations
- Impact of the department or function on the county budget
- The potential for establishing workable public/private partnerships in the construction of a product or delivery of a service, and the
- Impact of the department or function on the local economy

***Response to Recommendation 7: The recommendation has been implemented. The Chief Administrative Office will continue to consider these and other factors when implementing organizational reviews.***

8. The CAO should establish a workable mechanism for obtaining, listing and utilizing private sector members for operations review teams based upon their experience, particular expertise, and overall ability to function as a productive member of such a team. The registry or clearinghouse concept is but one option to be considered as a workable structure or process.

***Response to Recommendation 8: The recommendation will not be implemented because it is not reasonable. Operational reviews will be conducted on a case by case basis. Consequently, an advanced registry of volunteers will not be required. In addition, building and maintaining a registry as contemplated in the recommendation would be an inefficient use of resources.***

9. The El Dorado County Board of Supervisors should support and encourage the CAO in the pursuit of a balance of public and private sector membership and participation on operations review teams and should seriously consider the findings and recommendations of such teams when approving changes in policy or process.

***Response to Recommendation 9: The recommendation has been implemented. The Board of Supervisors does support and encourage the CAO with regard to review of county operations. The Board already gives due consideration to the recommendations of staff, volunteers, and the public generally in its deliberations.***

It is time for county government to reach out and incorporate in a very practical way the substantial and relevant experience and expertise of the very community it is intended to serve.

## RESPONSES

## Final Draft Response to the 2010-11 Grand Jury Final Report

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the El Dorado County Chief Administrative Officer, Auditor/Controller, and the Chairperson of the Board of Supervisors for response. Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.



## **EL DORADO COUNTY GRAND JURY 2010-2011**

### **CONSENT CALENDAR**

Case Number GJ010-010

#### **REASON FOR REPORT**

On June 17, 2008 and October 21, 2008 important items referring to an agreement between the South Lake Tahoe Area Transit Authority and El Dorado County (EDC) were placed on the Consent Calendar for consideration by the El Dorado County Board of Supervisors (BOS). A complaint was lodged with the Grand Jury alleging that placement of these items on the Consent Calendar was improper, and constituted an abuse of the process since it was later determined these items required additional review.

BOS Policy B-12 limits the dollar amount of contracts acted on by the BOS without Auditor review up to \$100,000. The contention is that these transactions were complex, involved substantial legal issues, and far exceeded the limitations on cost for agenda items as described in BOS Policy B-12. In addition, these actions violate generally accepted government practices of handling a Consent Calendar.

#### **BACKGROUND**

The following definition and examples of items appropriate for a Consent Calendar were obtained from two sources referenced as follows:

[www.BOSsource.org](http://www.BOSsource.org) 09/23/2010 BoardSource is a nationally recognized organization based in Washington, D.C., dedicated to building effective non-profit boards.



[www.garberconsulting.com](http://www.garberconsulting.com) 09/23/2010 Nathan Garber & Associates is a consulting firm based in Ontario, Canada, dedicated to assisting nonprofit organizations in organizational development, governance, strategic and program planning.

A Consent Calendar (or Consent Agenda) is a component of a general meeting agenda that enables a BOS to group routine items and resolutions under one umbrella and approve all these items together. It differs from the regular BOS agenda in that regular items may involve substantial discussion, while Consent Agenda items involve no discussion. The EDC Chief Administrative Officer (CAO) directs which items are placed on the calendar. Any member of the BOS may pull or transfer an item from one category to the other. A member of the public may request transfer of an item from the Consent Calendar, but may not require that it be done. Members of the public may comment on items on the Consent Calendar before action is taken.

Unless a BOS member requests the removal of that item, the entire Consent Calendar is voted on as a package.

It is generally accepted in business and government that proper use of a Consent Calendar is vital to the conduct of business. Without use of a Consent Calendar some working bodies might grind to a halt.

Sample items which are generally considered appropriate for a Consent Calendar are listed below:

- Committee and previous BOS meeting minutes
- Office reports
- Routine correspondence
- Minor changes in procedure
- Routine revisions in policy
- Updating documents
- Standard contracts that are regularly used
- Final approval of proposals or reports that the BOS has been dealing with for some time and all members are familiar with the implications
- Committee appointments
- Staff appointments requiring BOS confirmation
- Reports provided for information only
- Correspondence requiring no action

#### **2000-2001 EDC Grand Jury – Government and Administration Committee “Procedures for BOS Meetings”**

The 2000-2001 EDC Grand Jury recommended that all written recommendations to the BOS concerning items of large financial impact should be submitted to the Auditor-Controller for consultation prior to submission to the BOS. This item was intended to apply to items involving potential cost or liability exceeding the sum of \$10,000.

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The BOS adopted a modified version of the recommendation, BOS Policy B-12 on 03/01/2005. This policy raised the dollar amount on contracts from \$10,000 to \$100,000 before a contract is sent to the Auditor-Controller for review.

The 2000-2001 EDC Grand Jury addressed the manner in which last minute unpublished and unnoticed changes to the agenda of public legislation and administrative bodies within the County were accomplished.

“In theory, Consent Calendar items are supposed to include only items as to which no possible controversy can reasonably be envisioned, e.g., payment of ongoing bills, resolutions for certificates or appreciation, etc. In the past, however, the Consent Calendar has included items involving some controversy. In the opinion of the Grand Jury, this has had the appearance of an attempt to evade public scrutiny of the items.”

The BOS should adopt and adhere to a policy prohibiting the placement on the Consent Calendar of any items which could reasonably be anticipated to be controversial to a significant number of members of the public.

## METHODOLOGY

The EDC Grand Jury interviewed several staff members and elected officials:

- Auditor/Controller staff
- BOS staff
- Members of the BOS

The EDC Grand Jury reviewed relevant portions of the following documents:

- 2000-2001 EDC Grand Jury Report pages 92, 93, 98, 99, 100
- 2000-2001 EDC Grand Jury Report Responses to Finding F-7; Recommendation R-4; Response to Recommendation 4; Recommendation R-9; Response to Recommendation 9; Recommendation R-10; Response to Recommendation 10
- Amador County Policy & Procedures Manual policy 1-300 Agenda and Consent Agenda process (page 1 only) issued 02/05/2002
- Boardsource Organization (internet Q&A regarding Consent Agenda or Consent Calendar) 09/23/2010
- BOS Policy B-12 adopted 03/01/2005
- Contract routing sheet – Contract AGMT 08-1691 between EDC Department of Transportation and Area Transit Management, Inc. 05/07/2008
- EDC BOS Policy H-1: Written Communications to BOS from Non-County Agencies and Individuals 10/20/2010
- EDC Ordinance Chapter 2.03 – BOS Meetings 11/21/2010

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- E-mail correspondence between EDC Principal Financial Analyst and Bluego Transit Administrator regarding further concerns about the legal structure and nature of STATA 12/08/2008
- First amendment to the Transfer Agreement between the STATA and EDC regarding funding of BLUE GO On Call Demand Responsive Transit Services (no date on document), effective date 11/01/2008
- Garber Consulting (internet Q&A regarding Consent Agenda) 09/23/2010
- Internet copies of articles appearing in the Tahoe Daily Tribune dated 7/2/2008, 6/6/2009, 5/25/2010, 6/1/2010, 10/15/2010
- Letter from EDC Auditor-Controller to TRPA dated December 11, 2008, expressing concerns on the legality of their allocation instructions. The letter specifically states the “entity” of STATA may not fall within the definition of a consolidated transportation service agency eligible for TRPA designation under California Law
- Letter from EDC County Counsel to EDC BOS recommending approval of the First Amended agreement 02/23/2009
- Memorandum from Tahoe Regional Planning Agency (TRPA) staff to TRPA Governing Board dated November 12, 2008, consisting of a resolution allocating Local Transportation Funds and State Transit Assistance funds to the South Tahoe Area Transit Authority for the operation of BLUE GO Transit Services in the City of South Lake Tahoe and EDC
- Placer County BOS policy Sec. 15.7 Agendas (d) 11/23/2010
- STATA Executive Committee Agenda 10/15/2009
- Transfer agreement between South Tahoe Area Transit Authority (STATA) and EDC 10/21/2008
- EDC Meeting Agenda Tuesday, March 15, 2011 (pages 1 & 2)
- South Lake Tahoe City Council Meeting Agenda January 3, 2006 (page 2)

## FINDINGS

1. EDC does not have a written policy or procedure to direct the handling of a Consent Calendar. Past practice has been for the CAO to review all agenda items and indicate by writing on the item the letter “C” for consent, or “D” for discussion. The contract matter under review had neither letter designation. According to one prominent official the CAO knew that at least one member of the BOS was very interested in having the contract move forward, and allowed this item to “slip by.”

***Response to Finding 1: The respondent disagrees with the finding. The system of manually writing letters on an agenda transmittal has not been utilized since the County fully converted to the Legistar agenda system, which most likely explains the lack of letter designation. However, it is impossible to validate or invalidate the unnamed person’s opinion about the motive of a previous CAO in handling this agenda item.***

2. The EDC Fiscal Review Process (Policy B-12) was adopted March 1, 2005. The policy was not followed in this case.

***Response to Finding 2: The respondent agrees with the finding.***

3. The items under review substantially exceeded the dollar amount specified in BOS Policy B-12. In addition, the contract had been reviewed by Human Resources on 4/25/08, Risk Management and County Counsel on 5/14/08, none of whom detected the problems later discovered by the Auditor/Controller Office.

***Response to Finding 3: The respondent agrees with the finding.***

4. EDC does not have a written policy delineating guidelines covering what items are appropriate for inclusion in a Consent Calendar and the mechanics of inclusion (or removal) of such items. Development and implementation of, and adherence to such a policy, are seen as key components for the efficient function of EDC Government, and a positive step forward building confidence in the BOS.

***Response to Finding 4: The respondent partially disagrees with the finding. While not a written policy, as mentioned in the Grand Jury report, the County has a long standing practice that any member of the Board of Supervisors may pull an item from the Consent Calendar. While the public may not require that an item be pulled, the Board has always obliged and entertained discussion on items the public wishes to discuss.***

5. The EDC Grand Jury was informed that in addition to any member of the BOS, any member of the public may request an item be pulled for further discussion or correction.

***Response to Finding 5: The respondent agrees with the finding.***

6. Printed copies of EDC BOS meeting agendas contain no information informing the public how to have an item pulled from the Consent Calendar for discussion.

***Response to Finding 6: The respondent agrees with the finding. However, the Board Chair always verbally asks the public if there are items to be pulled from the Consent Calendar for discussion.***

## **RECOMMENDATIONS**

1. The BOS should adopt a written policy for use of the Consent Calendar.

***Response to Recommendation 1: The recommendation will not be implemented because it is not warranted. As noted in the response to Finding 6, the Board Chair always verbally asks the public if there are items to be pulled from the Consent Calendar for discussion.***

2. The EDC BOS should revise Policy B-12 to require Auditor/Controller review of contracts exceeding \$100,000.

***Response to Recommendation 2: The recommendation will not be implemented because it is not warranted. Other controls area already in place which involve the Auditor-Controller's office.***

3. EDC should provide instruction for the public on printed agendas explaining the method for pulling a Consent Calendar item for discussion.

***Response to Recommendation 3: The recommendation has been implemented. The Board Clerk has added language to the agenda which describe how members of the public can request to have items pulled from the Consent Calendar.***

## **RESPONSES**

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the BOS Chairperson for response.

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.



## **EL DORADO COUNTY GRAND JURY 2010-2011**

### **DEVELOPMENT SERVICES DEPARTMENT CUSTOMER SERVICE INVESTIGATION**

Case Number GJ010-017

#### **REASON FOR REPORT**

The El Dorado County Grand Jury received complaints about the service provided by the El Dorado County Development Services Department (commonly referred to as the Building Department or Planning Department). El Dorado County officials reported receiving a large number of complaints regarding this Department. The number of complaints has not been quantified.

#### **BACKGROUND**

The Development Services Department is comprised of two parts. Building Services processes all requests for building permits and building inspections. It corrects and approves applications for building permits. Planning Services processes the collection of fees for El Dorado County and some special districts. The Development Services Department, located in Building C of the Government Center, is the first point of appeal for persons wishing to dispute a decision by the Department or oppose a building project within El Dorado County.

The complaints received covered all aspects of the Development Services Department.

#### **METHODOLOGY**

The El Dorado County Grand Jury investigation included the following:

Reviewed correspondence and documents:

- Individual complaint letters to the Development Services Department (12/10)
- Individual Building Services Project Files (1/11)
- Building Applications, fee schedules, and filing instructions (2/11)
- Uniform Building Codes (1/11; 2/11)
- Superior Court "Small Claims Advisor" Brochure (1/11)

Conducted the following interviews:

- A member of the El Dorado County Board of Supervisors (BOS)
- The El Dorado County Chief Administrative Officer
- Director of the Development Services Department
- Development Services Department personnel
- A member of the BOS staff
- Members of the public

Members of the El Dorado County Grand Jury conducted user interfaces to determine the manner and style used by the counter personnel.

## FINDINGS

1. The current Department procedure requires consumer complaints and any responses be filed in individual building files, but does not require retention of all complaints in a single collective file. This procedure makes reviewing, monitoring and use for personnel customer service training difficult because of the overwhelming number of individual building files.

***Response to Finding 1: The respondent disagrees partially with the finding. The type of complaint is critical to the development of potential resolutions, and the Grand Jury has provided no specific information as to the nature of the alleged complaints.***

2. The Department processes two types of complaints: first, those received from applicants; second, those received from persons or groups who have been impacted by Department decisions and wish to alter or void them. According to county public officials and members of the public, there is concern among both types of applicants who felt the Department does not "listen" or pay sufficient attention to their complaints.

***Response to Finding 2: The respondent disagrees with the finding. The Department does pay attention to complaints. However, general frustrations with the permitting process such as the time it takes to process a permits, the cost of permits, or the complexity of building codes are largely beyond the control of the Department.***

3. Applicants to the Department are of two general groups. The first group are professionals such as builders, architects and planners. This group generally understands the planning and building process and has fewer complaints. The second consists of members of the general public who possess little or no experience in building issues such as codes and fees. Our interviews indicate this group generates the most complaints.

***Response to Finding 3: The respondent disagrees partially with the finding. It is generally understood that applicants which do not have significant building construction background will need additional guidance through the building permit process.***

4. When anyone approaches the Development Services Department, they are given a large packet of papers containing applications, instructions and fee schedules. To the untrained person, this packet generally is perceived as overwhelming and unclear because the building codes are complex.

***Response to Finding 4: The respondent disagrees partially with the finding. The complexity of the building code is attributable to the State Building Standards Commission. As a result, applicants for a building permit (Building Division) are provided an application with additional paperwork intended to assist the applicant through the process. Similarly, Planning Applications contain forms and checklists which are necessary to review in order to submit the application. The purpose of the forms and checklists are to minimize the cost and processing time for the permits.***

5. The Department demonstrated an inconsistent quality of customer service during Grand Jury user interfaces. During interviews, county officials reported hearing complaints from the general public regarding customer service.

***Response to Finding 5: The respondent disagrees partially with the finding. Customer service is important however the Grand Jury has not identified a specific customer service issue to which the County can adequately respond.***

## **RECOMMENDATIONS**

1. In addition to the current individual files, establish and maintain a central repository of complaints and subsequent responses. This system would make complaints and subsequent responses available for management monitoring, department accountability and personnel training.

***Response to Recommendation 1: The recommendation will not be implemented because it is not warranted. Development Services started such a file in October 2009, but due to lack of complaints, the file was closed a year later. The nature of "complaints" in the Development Services Department is extremely varied in nature. The majority of complaints are issues that are discussed and resolved at the staff level or first line of supervision. The***



*Deputy Director Building Official would resolve any other issues for the Building Division and the Director would resolve any issues with the Planning Division and all other elements of the Department. The management team meets weekly to resolve any ongoing issues.*

2. Provide readily available customer service feedback forms. Written feedback would assist the Department in monitoring and improving customer service.

***Response to Recommendation 2: The recommendation has been implemented. Customer service feedback forms are available at the front counter and via the Department website.***

3. Train personnel in effective customer service. It would improve the Department's customer service, enhance public perception of the Department, and reduce public complaints.

***Response to Recommendation 3: The recommendation has been implemented. The Department has created a team to strategically plan appropriate training throughout the Department, along with timelines and budget. Training has historically been disorganized and unfocused. The new team will set up a Department training schedule in FY11/12. Customer service training has been conducted in the past and will be part of the ongoing training effort by the Department.***

4. Create a network of volunteers who are professionals in the building trades to guide the nonprofessional builder through the process. This group of volunteers would be available by telephone to the public for inquiries regarding applications and complaints. This group could be similar to the 'Small Claims Advisor' created by the courts to assist non-lawyers in the policies and procedures regarding small claims actions.

***Response to Recommendation 4: The recommendation will not be implemented because it is not warranted. The small claims advisor is necessary in the small claims court because the staff are not permitted to provide legal advice. The Legal Services of Northern California staff the small claims advisor position and the Courts find this service invaluable. However, the construction and development industry is not the legal industry. In the construction and development industry there are vast arrays and wide ranges of professionals that make a business out of providing services to the general public. It is not the place for the Development Services Department to organize a "free advisory body" to supplant these services. If such professionals want to organize and provide such services, like the Legal Services of Northern California did, the Department would welcome it. However, it is beyond the core responsibility of the Department to develop that program. There are organizations such as the El Dorado Builders Exchange which assist the general public in finding the proper professional services.***

5. The following sample script could be used when training Department personnel in how a volunteer group could be used to promote customer service.

The Department customer service personnel could make a simple inquiry, "Are you familiar with the building permit process and the fees?" If the answer is, "No," the applicant would be

advised of the volunteer group and be given a printed sheet with names and phone numbers of those available to assist. It could contain a disclaimer such as, "The volunteers are available to assist you through the permit or dispute process. They can only give information on the application process, fees and cost, or advise you on a potential protest. They are not available to instruct you on construction or to prepare plans." The intent is to inform, educate, and extend to the public a "helping hand."

***Response to Recommendation 5: The recommendation will not be implemented because it is not warranted. See response to recommendation number 4.***

6. The complainants affected by Department decisions could be supported by the same volunteer advisory group. The volunteer professional could explain the complex details of the codes, planning, and appeals process. Public understanding of the building codes, planning process and accessibility to a hearing may help avoid many of the nonprofessional complaints.

***Response to Recommendation 6: The recommendation will not be implemented because it is not warranted. See response to recommendation number 4.***

7. Implementing best practices will improve the overall operation of the Department, including customer service. To accomplish this, it would be beneficial to compare and contrast the Department's current system of management practices with those best practices of other counties.

***Response to Recommendation 7: The recommendation will not be implemented because it is not warranted. Each County has different challenges and priorities. The Grand Jury has provided no evidence that other counties have better customer service than the County of El Dorado. If a specific complaint can be identified, then a specific course of action to resolution can be developed. Until such specificity is revealed, the Department cannot expend valuable resources and taxpayer dollars to compare and contrast the Department's system with other counties.***

## **RESPONSES**

Responses to both numbered findings and recommendations in this report are required in accordance with the California penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

Reports have been provided to the Director of the El Dorado County Development Services Department and the Chairperson of the El Dorado County Board of Supervisors for responses.

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## **EL DORADO COUNTY GRAND JURY 2010-2011**

### **COUNTY PRESCRIPTION DRUG CARE PLAN**

Case Number GJ010-004

#### **REASON FOR REPORT**

The El Dorado County (EDC) Grand Jury received a referral from the 2009-2010 Grand Jury regarding the potential abuse of EDC health care prescription service for County employees. The concern was that proper safeguards were not in place to monitor and prevent fraud and abuse which represented a significant potential cost to the County.

#### **BACKGROUND**

Caremark LLC is one of the largest national prescription service providers. Caremark and EDC executed a prescription services contract in June 2007 for one year, which is annually renewable unless either party gave notice of intent to terminate the contract. The annual cost of the contract was \$3,136,480 for 2010. Under the terms of the contract Caremark would cover the cost of prescriptions for a plan participant up to \$50,000 per year. EDC is self-insured for amounts above the maximum plan participant limit. The Caremark contract was annually renewed through June 2011.

In the Spring of 2010, Caremark made a presentation to the EDC Health Plan Advisory Committee. This is an ad hoc committee formed to select a plan provider for prescription drug services. It is comprised of four members from County management, four members from County unions, and chaired by the Director of the EDC Human Resources Office. The purpose of the presentation was to propose an Enhanced Safety and Monitoring Program to identify patterns of potential overuse or misuse of prescription drugs by plan participants.

About the time this plan amendment was discussed, it was determined that one employee of EDC was receiving an alarming amount of highly addictive prescription medication totaling roughly \$50,000 per month. This employee's prescription costs were tracked for a period of at least four years and amounted to \$2.4 million. This circumstance was a significant factor in EDC executing the Enhanced Safety and Monitoring Program with Caremark in June 2010. The cost of adding this plan amendment in 2010 was \$49,000 annually.

## METHODOLOGY

The current EDC Grand Jury interviewed the complainant along with several EDC staff members and elected officials:

- Members of the Board of Supervisors
- Auditor/Controller staff
- Human Resources staff
- District Attorney staff
- Health Plan Oversight Committee members

The EDC Grand Jury reviewed the following documents:

- EDC contract with Caremark (7/1/07)
- Amendment #4 to EDC contract with Caremark (7/1/10)
- Sample letters from Caremark's Monitoring and Safety Program that are sent to EDC employees and doctors when prescriptions are under scrutiny (12/2010)
- EDC health plan rates (as of 01/2011)
- EDC prescription drug report from Caremark for a six month period (July 1, 2010-December 31, 2010)

## FINDINGS

1. An audit was conducted by Caremark into this abnormally high use of addictive prescription medication by the EDC employee referenced above, and Caremark determined that there was no evidence of criminal or fraudulent conduct.

*Response to Finding 1: The respondent agrees with the finding. Caremark conducted the audit at the insistence of the HPAC committee and the Director of Human Resources.*

2. Two significant positions with EDC responsible for monitoring prescription health care services were vacated (2005 and 2007) and not backfilled. In mid-2010 the

Director of the Department of Human Resources unsuccessfully attempted to monitor costs.

**Response to Finding 2: The respondent disagrees partially with the finding.** *At the insistence of the the Director of Human Resources, Caremark investigated and monitored the employee in question. Usage began to reduce prior to the purchase of the monitoring program.*

3. Shortly after the provision for monitoring prescription health care services was contracted at an annual cost of \$49,000, the costs for the employee declined by almost half.

**Response to Finding 3: The respondent disagrees partially with the finding.** *The cost for the employee has continued to decline and has been approximately reduced by 95%.*

4. Amendment #4 to the original contract includes safeguards to protect EDC from excessive prescription costs by providing the following programs:
  - **“Point of Sale Safety Edits Program:** *Caremark shall provide in accordance with Section 2.8 of the Agreement its automated concurrent Drug Utilization Review (DUR) services. The Point of Sale Safety Edits Program is necessarily limited by the amount, type and accuracy of Plan Participant information made available to Caremark.*
  - **Retrospective Safety Review Program:** *Caremark shall provide client retrospective Drug Utilization Review services, which are designed to provide appropriate clinical information concerning plan participant drug utilization for specific prescriptions. Caremark shall provide Prescribers with a Plan Participant-specific communication that identifies clinical issue and suggests alternative therapies, as appropriate.*
  - **Safety and Monitoring Solution Program:** *“On a calendar quarterly basis Caremark shall evaluate claims for patterns of potential overuse or misuse, including without limitation, the use of multiple Prescribers or multiple pharmacies. For circumstances that Caremark identifies patterns of potential overuse or misuse, Caremark may provide Prescribers or pharmacies with written notice of such issues.”*

**Response to Finding 4: The respondent agrees with the finding.**

## RECOMMENDATION

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1. EDC should ensure that all future health care prescription service contracts include a strong provision for monitoring waste, fraud and abuse.

***Response to Recommendation 1: The recommendation has been implemented.***  
*Effective July 1, 2011 the County ended its contract with Caremark and switched to Medco under the CSAC-EIA Health Program. The Medco program includes all the safeguards as previously purchased from Caremark.*

## **RESPONSES**

Responses are not required.