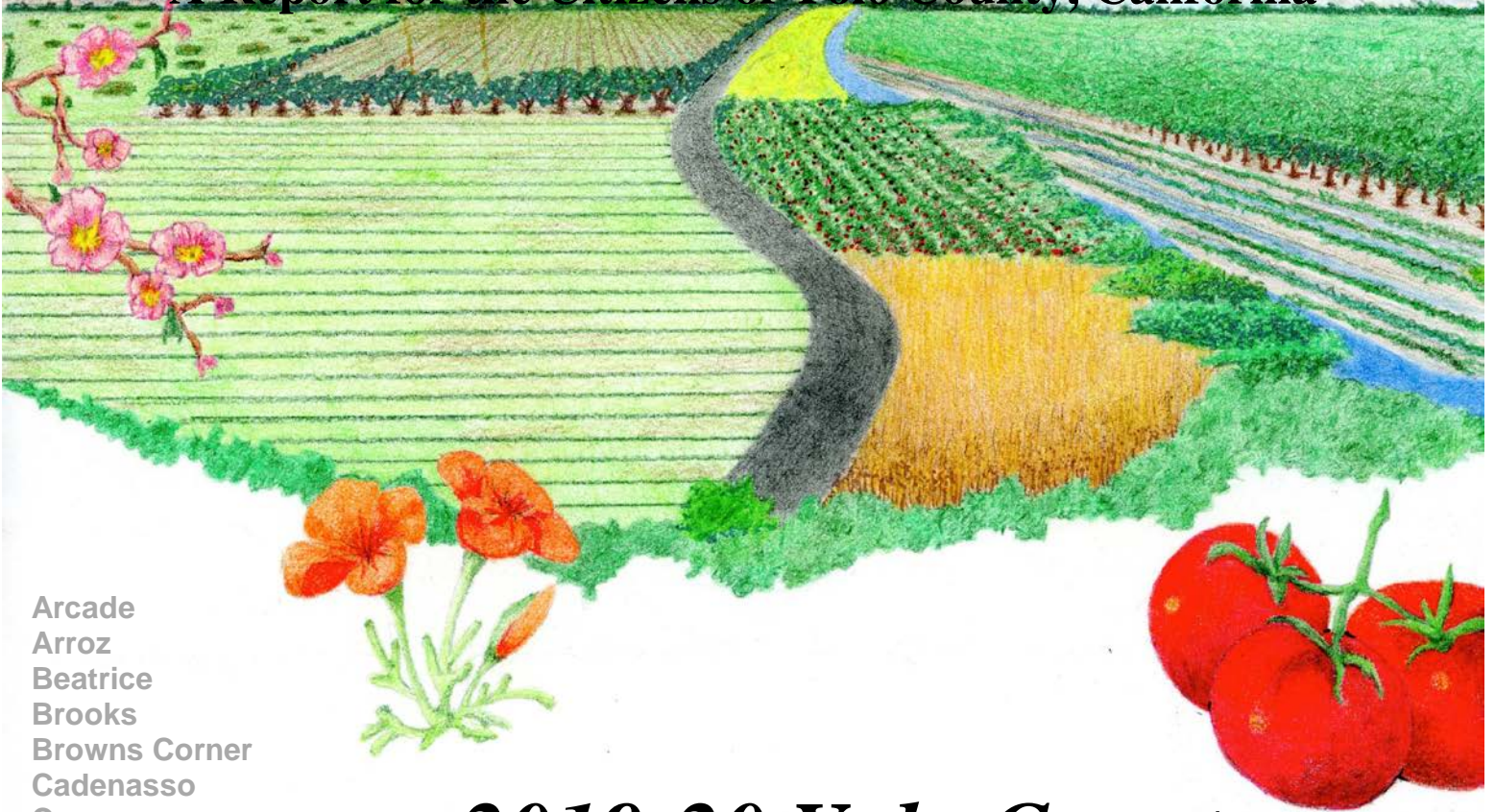


FINAL CONSOLIDATED REPORT

A Report for the Citizens of Yolo County, California



Arcade
Arroz
Beatrice
Brooks
Browns Corner
Cadenasso
Capay
Central
Citrona
Clarksburg
Conaway
Coniston
Daisie
Davis
Dufour
Dunnigan
El Macero
El Rio Villa
Esparto
Fremont
Green
Greendale
Guinda
Hershey
Jacobs Corner

Kiesel
Kings Farms
Knights Landing
Lovdal
Lund
Madison
Merritt
Monument Hills
Norton
Peethill
Plainfield
Riverview
Rumsey
Saxon
Sorroca
Sugarfield
Swingle

2019-20 Yolo County Grand Jury

Tancred
Tyndall Landing
University of California Davis
Valdez
Vin
Webster
West Sacramento
Willow Point
Winters
Woodland
Yolo
Zamora



September 24, 2020
Woodland, California

2019-2020
YOLO COUNTY GRAND JURY
FINAL CONSOLIDATED REPORT

A Report for the Citizens of Yolo County, California

September 24, 2020
Woodland, California



Acknowledgements

Special thanks to jurors Lisa DeSanti, Ann Kokalis, Richard Kruger, Sherwin Lee, Lynn Otani, and Laurel Sousa for their extra time and effort in performing important officer duties during our term.

Thanks also to all the jurors during our tenure who gathered information, contributed to the writing of the various individual committee reports, and worked the many hours required for thorough investigations.

Cover Art by Judy Wohlfrom, 2017-2018 Foreperson

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GRAND JURY
County of Yolo
P.O. Box 2142
Woodland, California 95776

Honorable Sonia Cortés
Judge, Superior Court of California
1000 Main Street
Woodland, CA 95776

Dear Judge Cortés,

The 2019-2020 Yolo County Grand Jury is honored to prepare and present our Final Consolidated Report to you and to the citizens of Yolo County.

In early March 2020, the Grand Jury ceased meeting in person and went to remote meetings and interviews due to COVID-19. In May 2020, with consultation from the Court, the Yolo County Board of Supervisors voted to extend our term from June 30, 2020 to December 31, 2020. This unprecedented extension allowed the Grand Jury time to finish our investigations and reports under these challenging circumstances.

The Grand Jury received and reviewed 19 citizen complaints. Of those complaints, four were referred to the different Grand Jury Committees, and two were declined. Due to the timing of some submitted complaints, five are being forwarded to the incoming Grand Jury so the complaints may receive adequate review and investigation.

The Grand Jury inspected the Yolo County Monroe Detention Facility (Women's section) as stipulated by the California Penal Code. In its Final Consolidated Report, the Grand Jury presents six reports based on investigations initiated by the Grand Jury, and one based on citizen complaints.

The 2019-2020 Yolo County Grand Jury is composed of a diverse group of selfless volunteers from throughout the county. The Final Consolidated Report represents the commitment and hard work of the Jurors, who were dedicated to finding the truth and improving the county community. I personally wish to express my sincere gratitude and admiration to all those who applied their various skills and interests in accomplishing this task.

The Grand Jury appreciates and thanks all the Yolo County employees and officials, as well as those in Jury Services, providing us with outstanding support and guidance throughout the process. It has been our honor and privilege to serve the citizens of Yolo County.

Leslie Field

Leslie Field, Foreperson
2019-2020 Yolo County Grand Jury

The 2019-2020 Yolo County Grand Jury

Leslie Field, Foreperson ~ Davis

Lynn Otani, Foreperson Pro Tem ~ West Sacramento

John Arnold ~ Davis

Lisa DeSanti ~ Davis

Lisa Klotz ~ Davis

Ann Kokalis ~ Davis

Richard Kruger ~ Davis

Sherwin Lee ~ Davis

James McFarland ~ Davis

Mohamed Sidahmed ~ Davis

Laurel Sousa ~ Davis

Alan Uota ~ Davis

Rick von Geldern ~ Winters

We also wish to thank those members who were unable to complete their volunteer service ~ Charlene Chick, Catherine Doherty-Handy, Adam Gardizi, Clayton Morgan, Janice Palmer, Melesio Perez, Eli Richman, Jonathan Rothman, Joe Sanchez, Stuart Williams, Enas Wilson, and Audrey Ybarra



ABOUT THE GRAND JURY

The United States Constitution's Fifth Amendment and the California Constitution require that each county appoint a Grand Jury to guard the public interest by monitoring local government. Per California Penal Code Section (§) 888, the Yolo County Superior Court appoints 19 Grand Jurors each year from a pool of volunteers. These Yolo County citizens, with diverse and varied backgrounds, serve their community as Grand Jurors from July 1st to June 30th. The Yolo County Grand Jury is an official, independent body of the court, not answerable to administrators or to the Board of Supervisors.

FUNCTION

The California Grand Jury has three basic functions: to weigh criminal charges and determine whether indictments should be returned (Penal Code §917); to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office (Penal Code §992); and to act as the public's "watchdog" by investigating and reporting on the affairs of local government (e.g., Penal Code §§919, 925, et seq.). The purposes of any Grand Jury civil investigation are to identify organizational strengths and weaknesses and to make recommendations aimed at improving the services of county and city governments, school districts, and special districts under study. Based on these assessments, the Grand Jury publishes its findings and may recommend constructive action to improve the quality and effectiveness of local government.

Recommendations from the Grand Jury are not binding on the organization investigated. The governing body of any public agency must respond to the Grand Jury findings and recommendations within 90 days. An elected county officer or agency head must respond to the Grand Jury findings and recommendations within 60 days. The following year's Grand Jury will then evaluate and report on the required responses.

The findings in this document report the conclusions reached by this year's Grand Jury. Although all the findings are based on evidence, they are the product of the Grand Jury's independent judgment. Some findings are the opinion of the Grand Jury rather than indisputable statements of fact. All reports included in the document have been approved by at least 12 jurors. Any juror who has a personal interest or might be perceived to have a personal interest in an investigation, is recused from discussion and voting regarding the matter. All reports are reviewed by the Grand Jury's lead advisors to ensure conformance with prevailing laws.

While the Yolo County Grand Jury's primary function is civil review of government agencies, it is also called upon periodically to participate in criminal indictments, usually based on evidence presented by the District Attorney. On its own initiative, the Grand Jury may investigate charges of malfeasance (wrongdoing), misfeasance (a lawful act performed in an unlawful manner), or nonfeasance (failure to perform required duties) by public officials.

The Grand Jury investigates complaints from private citizens, local government officials, or government employees; initiates investigations based on ideas generated from the jury; and follows California Penal Code that requires it to inspect the county's jails.

Copies of the Grand Jury's Final Consolidated Report, consisting of each year's individual reports on departments and agencies and responses to the prior year's report, are available in hard copy at the courthouse, in all public libraries, and on-line via the Grand Jury's website, <http://www.yolocounty.org/grand-jury>. Grand Jurors and all witnesses are sworn to secrecy and,

except in rare circumstances, records of meetings may not be subpoenaed. This Secrecy ensures that neither the identity of the complainant nor the testimony offered to the Grand Jury during its investigations will be revealed. The Grand Jury exercises its own discretion in deciding whether to investigate or report its findings on citizen complaints.

HOW TO SUBMIT A COMPLAINT

Complaints must be submitted in writing and should include any supporting evidence available. A person can pick up a complaint form at the county courthouse, the jail, or any local library; can request a form be mailed by calling 530-406-5088, or by writing to the Grand Jury at P.O. Box 2142, Woodland, CA 95776; or by accessing the Grand Jury's website at <http://www.yolocounty.org/grand-jury>. Complaints should be mailed to P.O. Box 2142, Woodland CA 95776 or sent to the Grand Jury's email address, grandjury@yolocounty.org. It is not necessary to use the printed form as long as the essential information is included in the complaint. Complaints received after February, when the Grand Jury's work is coming to a close, may be referred to the next year's Grand Jury for consideration.

REQUIREMENTS AND SELECTION OF GRAND JURORS

To be eligible for the Grand Jury you must meet the following criteria:

- You must be a citizen of the United States;
- You must be 18 years of age or older;
- You must have been a resident of Yolo County for at least one year immediately before selection;
- You must be in possession of your natural faculties, of ordinary intelligence, of sound judgement and fair character;
- You must possess sufficient knowledge of the English language;
- You are not currently serving as a trial juror in any court of this state during the time of your Grand Jury term;
- You have not been discharged as a Grand Juror in any court of this state within one year;
- You have not been convicted of malfeasance in office or any felony; and
- You are not serving as an elected public officer.

In addition to the requirements prescribed by California law, applicants for the Grand Jury should be aware of the following requirements:

- Service on the Grand Jury requires a minimum of 25 hours per month at various times during the day, evening and weekend. During peak months, 40 hours a month is typical, with more hours for those in leadership positions.
- Jurors must maintain electronic communications to participate in meeting planning, report distribution, and other essential jury functions. Such communications can be supported by computers at local libraries or personal electronic devices.

Each spring, the Yolo County Superior Court solicits applicants for the upcoming year's Grand Jury. Anyone interested in becoming a Grand Juror can apply to the Court in the spring, usually in April. Application forms are available at the courthouse or from the Grand Jury's website at <http://www.yolocounty.org/grand-jury>. Applications are managed by the Jury Services Supervisor, Yolo County Courthouse, 1000 Main Street, Woodland, CA 95695, telephone 530-406-6828. The Court evaluates written applications and, from these, identifies and interviews potential jurors to comprise the panel of nineteen citizens and alternates. Following a screening process by the Court, Grand Jurors are selected by lottery as prescribed by California law.

INVESTIGATIONS

2019-2020 YOLO COUNTY GRAND JURY FINAL CONSOLIDATED REPORT



Monitoring Compliance with 2017-2018 Yolo County Grand Jury Recommendations

SUMMARY

The 2017-2018 Yolo County Grand Jury (Grand Jury) published six investigative reports, with a combined total of 30 Findings and 26 Recommendations. The six investigative reports were:

1. Inmate Visitation Policy at the Monroe Detention Center
2. Juvenile Detention Facility Investigation
3. Follow-up: Elections Office Indiscretions and Culpability
4. Improving the Yolo County Libraries and Archives
5. The Looming Crisis of City Pension and Retirement Medical Costs
6. Reporting and Analysis of Child Welfare Statistics

The 2019-2020 Grand Jury followed up on seven of the 26 recommendations to assess their implementation status. Representative and important recommendations were selected from each of the investigative reports, except the Juvenile Detention Facility Investigation, since aspects of this facility were also investigated by the 2018-2019 Grand Jury.

Those seven recommendations (in order of appearance in the original report) are:

- Funding for and implementation of an online system for making visiting appointments at the Yolo County Monroe Detention Center;
- Funding for and implementation of a video visiting system at the Yolo County Monroe Detention Center;
- The Elections Office should maintain documentation of all training classes and individual instruction that includes, at minimum: signatures of individuals attending with date and topic covered;
- Provide a social worker to assist Yolo County Library staff in dealing with homeless, substance-abusing, and mentally ill individuals and families;
- Post a code of appropriate behavior for library patrons;
- Create a simple statistical template and/or graph that shows three-year past (actual) and projected (look back, look forward) pension costs and liabilities and their impact on city budgets;

- The Child, Youth and Family Branch of the Yolo County Health and Human Services Agency should submit a proposal to the Board of Supervisors for a continuous quality improvement unit.

This investigation was undertaken to determine the progress made in response to these previous Grand Jury recommendations and to provide a public update on that progress. The 2019-2020 Grand Jury found that agencies have implemented, or are in the process of implementing, all seven recommendations.

For recommendations that have not been fully implemented, the 2019-2020 Grand Jury recommends further updates from the Yolo County Sheriff's Office. The Grand Jury also recommends that the City of West Sacramento and City of Woodland post budget and/or retiree medical and pension costs on their websites.

On March 19, 2020 Governor Gavin Newsom issued Executive Order N-33-20, a statewide "stay home" order, in response to the COVID-19 pandemic. This investigation, the data gathered, and recommendations generated from it occurred prior to the COVID-19 pandemic and ensuing orders.

ACRONYM

BOS Yolo County Board of Supervisors

BACKGROUND

Each year, the Yolo County Grand Jury (Grand Jury) publishes reports of its yearlong investigations for the citizens of Yolo County. Elected officials or heads of agencies investigated by the Grand Jury are required to comment on the findings and recommendations within 60 days, and governing bodies such as boards and councils are required to comment within 90 days.

Penal Code section (§) 933.05 guides the format of the responses to Grand Jury findings and recommendations. For findings, respondents must indicate whether there is full or partial agreement or disagreement with each finding and specify the disputed portion of the finding, with an explanation of the reasons for the dispute.

For recommendations, respondents must include one of the following:

- The recommendation has been implemented. This response must include a summary of the implemented action.
- The recommendation has not yet been implemented but will be in the future. This response must include a timeframe for implementation.

- The recommendation requires further analysis. This response must explain the scope and parameters of an analysis or study and include a timeframe for the review, not to exceed six months from the date of publication of the Grand Jury Report.
- The recommendation will not be implemented. The respondent must provide an explanation for the negative response.

There are a number of reasons for an agency not to implement an otherwise valid recommendation: (1) the agency has already implemented a program that addresses the recommendation's goal; (2) the recommendation duplicates a function or activity of another agency; (3) the agency is aware of information not available to or not considered by the Grand Jury, leading the agency to believe that the recommendation will not achieve its intended purpose.

It is the prerogative of subsequent grand juries to follow up on the implementation of previous recommendations. Due to the large number of recommendations made by each Grand Jury, and the constraints of the 12-month Grand Jury service year, only a limited number of recommendations can be reviewed in a given year.

The current Grand Jury reviewed the 2017-2018 Grand Jury report for recommendations that were to have been implemented by June 30, 2019. Seven of those recommendations were selected to be reviewed.

APPROACH

For this investigation, the Yolo County Grand Jury reviewed agency websites, made onsite inspections, requested and reviewed documents, and contacted respondent agencies by mail and email.

DISCUSSION

The recommendations in this section are listed under their corresponding investigative report title, in the order they appear in the 2017-2018 Grand Jury report. After each recommendation is a table that reproduces those required and invited responses the Grand Jury received (with date of receipt). These responses were published in the 2018-2019 Grand Jury report. Following each table are the results of this follow up investigation of that recommendation, including verbatim responses to the current Grand Jury's inquiries.

Inmate Visitation Policy at the Yolo County Monroe Detention Center

Recommendation 2: The Yolo County Board of Supervisors should allocate funding for implementation of an online system for making visiting appointments (to be implemented by Dec. 31, 2020 with evidence of planning by Oct. 31, 2018).

Agency responses to Recommendation 2:

<p>Yolo County Board of Supervisors (July 10, 2018)</p>	<p>The Board of Supervisors maintains an IT Innovation Fund to fund innovative online projects and welcomes an application by the Sheriff should he seek to implement such a system</p>
<p>Yolo County Sheriff (May 25, 2018)</p>	<p>This recommendation requires further analysis</p>

In response to the follow up status inquiry dated January 23, 2020, the Sheriff’s Office submitted the following updated response in a letter dated February 4, 2020:

“The Sheriff’s Office purchased a new Jail Management System (JMS) in October 2019 and is in the beginning phases of project implementation. The new system is scheduled to go live the end of 2020. Although the new JMS does manage inmate visitation, unfortunately it does not offer an online portal for family and friends to schedule visitation. Family and friends would still need to call Records in the jail to schedule visits. For this reason, once the new JMS is live, the Sheriff’s Office will contract with a third party software vendor and develop an interface with the new JMS to offer seamless online visitation scheduling. The Sheriff’s Office is asking County BOS to include this cost in the FY20/21 budget. It is therefore expected that online scheduling for visitation will be an option for family and friends of inmates in 2021.”

Recommendation 3: The Yolo County Board of Supervisors should allocate funding for implementation of a video visiting system (to be implemented by Dec. 31, 2020 with evidence of planning by Oct. 31, 2018.)

Agency responses to Recommendation 3:

<p>Yolo County Board of Supervisors (July 10, 2018)</p>	<p>The Board of Supervisors maintains an IT Innovation Fund to fund innovative online projects and welcomes an application by the Sheriff should he seek to implement such a system</p>
<p>Yolo County Sheriff (May 25, 2018)</p>	<p>This recommendation requires further analysis. While the Detention Center is not currently equipped to allow videoconference visitations, this is a technology that will be included with the upcoming jail expansion.</p>

In response to the follow up status inquiry dated January 23, 2020, the Sheriff’s Office submitted the following updated response in a letter dated February 4, 2020:

“In 2007, the concept of video visitation was adopted as part of the jail expansion project. We broke ground on construction mid-year of 2018. Since that date, we have been working to implement both in person and video visitation for all inmates.

“Currently the visitor center is built and awaiting installation of hardware, in-person phones and video kiosks. The Sheriff’s Office is currently coordinating with the contractors and phone vendor to plan the complex rollout. This will involve installing in-person visiting phones in the visiting center, installing video kiosks in the visiting center and converting the in-person visiting booths in the housing units to video kiosks.

“The project will be completed in phases so inmates will not lose any visiting privileges while the conversion is taking place. For example, B-1 pod inmates will be escorted to the visiting center for in person visiting while that housing unit’s visiting phones are being converted to video kiosks. Once the kiosks are completed, the B-1 pod inmates will have video visitation while the next housing unit is being converted. This phased rollout, will continue until all housing units are converted to video kiosks. Once the conversion has been completed, all inmates will have the opportunity of in-person and/or video visitation throughout the facility. We anticipate the conversion project to be completed within the next 6 months barring any major setbacks.”

Follow-Up: Elections Office Indiscretions and Culpability

Recommendation 1: Because of the critical need for ongoing training in all areas, the Elections Office should maintain documentation of all training classes and individual instruction that includes, at minimum: signatures of individuals attending with date and topic covered.

Agency responses to Recommendation 1:

<p>Yolo County Board of Supervisors (July 10, 2018)</p>	<p>This recommendation will be implemented</p>
<p>Assessor / Clerk-Recorder / Registrar of Voters (June 29, 2018)</p>	<p>We will work with HR and management staff to research best practices and develop a more holistic and centralized tracking and documentation structure that we can begin implementing in 2018-19.</p>

The Grand Jury requested copies of the Elections Office training documents on February 3, 2020 and received a comprehensive listing of all training on February 20, 2020. The list was sorted by Branch Office, Name, Date Attended, Conference Name / Training Class, Topic, and Location of event.

Improving the Yolo County Libraries and Archives

Recommendation 1: By December 31, 2018, the Yolo County Librarian, the Yolo County Department of Social Services, and the Yolo County Board of Supervisors should provide for a social worker, either full- or part-time, to assist library staff in dealing with homeless, substance-abusing, and mentally ill individuals and families who appear at libraries. This professional would speak appropriately with such people, establish connections for them with appropriate county services, and advise library staff about ways to deal with such people if and when they present problems for library patrons.

Agency response to Recommendation 1:

<p>Yolo County Board of Supervisors (July 10, 2018)</p>	<p>This recommendation will be implemented as follows. By 12/31/18, the Yolo County Library will collaborate with the Yolo County HHS; the Cities of Davis, West Sacramento and Winters; and nonprofit health, medical and social service providers in Yolo County to obtain ongoing and consistent informational outreach and service referral at branch libraries in Yolo County. Service providers will also offer further training for library staff to effectively work with Library users to inform them of free and low cost housing, transportation, food, medical and mental health resources.</p>
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The 2019-2020 Grand Jury requested an update on February 4, 2020 as to the steps taken toward obtaining ongoing consistent informational outreach and service referrals, as well as the specified training for library staff. The following response from the Yolo County Librarian is dated February 28, 2020:

“1. Beginning in late 2018, Yolo County Library (YCL) coordinated with Yolo County Health and Human Services Agency (HHS) to start offering on-site weekly visits by case managers with the Yolo County First Responders Mental Health Urgent Care unit at the Arthur F. Turner Community Library in West Sacramento. Library patrons who may be experiencing homelessness can get free information and assistance connecting to community resources including mental health services, housing and food resources, and crisis resources.

“2. In 2017, 2018, and 2019, YCL hosted I SEE YOU art programs for persons experiencing homelessness at the Mary L. Stephens Davis Branch Library and the Arthur F. Turner Community Library in West Sacramento. The program provides free access to art teachers, art supplies, meals, and resources for persons experiencing homelessness in Yolo County. Artwork created by local artists is sold at the end of the program. All proceeds raised are given directly to the artists in the program.

“3. YCL participates in the Yolo County Homeless and Poverty Action Coalition, attends meetings bi-annually, monitors email correspondence from the Coalition, and participates when there is a library-related issue discussed.

“4. In January 2019, YCL partnered with HHS to install self-service kiosks at the Esparto Regional Library and Knights Landing Branch Library to connect residents to various federal, state and local assistance programs including CalFresh. YCL staff have been trained to assist residents with this service.

“5. In January 2019, in West Sacramento, YCL staff met with representatives from the Yolo County Administrator’s Office, the West Sacramento Police Department and the Yolo County Sheriff’s office to review and implement strategies to keep library users and employees safe while on-site at YCL facilities. A similar meeting was held with the Davis Police Department in June 2019. These meetings provided opportunities to discuss strategies for staff to de-escalate situations in branch libraries that may involve individuals who may be experiencing homelessness and/or struggling with mental illness and/or substance abuse challenges.

“6. Since early 2019, YCL has participated in the HHSA Homeless Multidisciplinary Team meetings in West Sacramento on a monthly basis. Case managers and support staff from various County agencies convene to discuss resource needs and treatment strategies for individuals experiencing homelessness. If YCL needs information, referrals, assistance or other support related to residents who are experiencing homelessness, troubleshooting is done in this forum.

“7. Throughout 2019, library staff at the Arthur F. Turner Community Library in West Sacramento partnered with the West Sacramento Friends of the Library after receiving grant funding from the West Sacramento Community Foundation to purchase and distribute free healthy snacks to individuals experiencing homelessness at the library. Additional donations funded a free clothes closet at this branch library for people in need of clean and warm clothing.

“8. From June-August 2019, staff at the Arthur F. Turner Community Library in West Sacramento and Clarksburg Branch Library received grant funding from the California Library Association to offer free meals to children and teens. Meals were provided five days a week for eight weeks. More than 1,100 free meals were served at these two locations.

“9. On June 13, 2019, three YCL employees participated in the Davis Homeless Solutions Summit to help create a timeline for a three-year Community Action Plan to address homelessness in Davis.

“10. In July 2019, YCL collaborated with HHSA to co-author the *Yolo County Street Sheet Informational Resource Guide* for emergency, temporary and permanent housing resources in Yolo County. The Guide is available at all YCL branches and includes information on day shelters and resource centers, free meal programs, clothes closets, children and teen services, residential drug treatment, veteran services, emergency shelters, transitional housing, permanent supportive housing, permanent affordable housing, and transportation.

“11. In October 2019, YCL partnered with the Yolo County District Attorney’s Office to install self-service kiosks at the Clarksburg Branch Library and the Yolo Branch Library to connect residents to various federal, state and local victim’s assistance programs. The kiosks will be installed at these branch libraries in early 2020. YCL staff will receive training on these kiosks to assist residents if they have questions.

“12. Beginning in November 2019, YCL partnered with HHSA to host a life-skills class at the Arthur F. Turner Community Library in West Sacramento. The class is the first of its kind in Yolo County, and teaches life, employment and reading skills to 20 single mothers who were recently housed in West Sacramento.

“13. On January 16, 2020, YCL provided a 90-minute All Staff Training workshop on resources in Yolo County for persons experiencing homelessness at the Arthur F. Turner Community Library in West Sacramento. More than 50 employees attended the workshop.

“14. In January and February 2020, YCL partnered with HHSA to offer library staff two 90-minute Mental Health First Aid Training sessions at the Mary L. Stephens Davis Branch Library and the Arthur F. Turner Community Library in West Sacramento.”

Recommendation 2: By October 1, 2018, all Yolo County libraries should post a code of appropriate behavior for library patrons. This code should appear in large print and in the most frequently used local languages. It should be visible in several places within the library. When a library staff person speaks with a patron about misbehaving in the library, the patron should be asked to read a copy (in the person’s primary language) and sign and date it to indicate that it was read.

Agency responses to Recommendation 2:

<p>Yolo County Board of Supervisors (July 10, 2018)</p>	<p>This recommendation will be implemented as follows. By 10/1/18, the Yolo County Library will create an 11x17-inch sized Code of Behavior poster in English, Spanish, Chinese, and Russian which will be featured prominently in all branch libraries. Library staff will also have copies of the Code of Behavior to distribute to individuals in these languages at service points at all branch libraries.</p> <p>For the following reasons, the recommendation to require individuals to read and sign a copy of the Library's Code of Behavior will not be implemented: 1) This action could further escalate difficult and tense interactions with individuals who are already agitated, thereby jeopardizing the health and safety of staff and other library users. 2) This action assumes all individuals have the ability to read and comprehend the Library's Code of Behavior, which is an incorrect assumption based on the knowledge and experience of Library staff. 3) This action would create barriers for individuals with social, emotional or cognitive differences. The Yolo County Library will continue with its current practice to have Library staff de-escalate a situation with an individual who has violated the Code of Behavior, communicate directly with the individual to help them understand the type of behavior that is appropriate in the facility; provide a warning; and if the conduct continues, require the individual to leave the facility for a specified period of time (most suspensions last one day). If the individual commits further Code of Behavior violations upon their return to the Library, further suspensions are issued escalating progressively from one week up to six months in duration. All steps in this process are documented in writing; Library staff deliver a suspension letter to the individual that include the conduct leading to the suspension determination, the length of the suspensions and the right to appeal the determination to the County Librarian.</p>
<p>Woodland Library (Invited Response) (August 15, 2018)</p>	<p>This recommendation will be implemented as follows. By October 1, 2018, the Woodland Public Library will create an 11x17 inch sized "Library Rules and Regulations Governing Public Behavior" poster in English and Spanish which will be prominently displayed in the library. Library staff will also have copies of the rules to distribute to individuals in these languages at each service desk. The Woodland Public Library will not be implementing the recommendation for individuals to sign the library rules. The Library works with staff and the security guard to enforce the rules through an established system of warning and suspensions from the library. Suspensions are documented and those that are longer than a week are discussed with the patron and the patron receives a letter that includes the conduct leading to the suspension and the date they may return to the library.</p>

Members of the 2019-2020 Grand Jury visited several Yolo County libraries in November and December 2019 to evaluate the degree of actual implementation as specified by the Board of Supervisors. The findings of the visits were as follows:

Davis – The Code of Behavior was posted in a prominent location in all four languages and of the specified size.

Winters – The Code of Behavior was posted in a prominent location and of the specified size, but in only English and Spanish, and was partially hidden.

West Sacramento – The Code of Behavior was posted in a prominent location in all four languages and of the specified size.

The Woodland Library while not a branch of the Yolo County library system, did agree to post their Code of Behavior. Three different Grand Jury members visited the library on three different days, and they were unable to locate the posting inside the library.

See Appendix A for the County’s Code of Behavior in English and Appendix B for the Woodland Public Library Rules and Regulations Governing Public Behavior posted on the Woodland Library’s website.

The Looming Crisis of City Pension and Retirement Medical Costs

Recommendation 2: By February 1, 2019, city councils and staff should create a simple statistical template and/or graph that shows three-year past (actual) and projected (look back, look forward) pension costs and liabilities and their impact (% of total) on the city budget General and All Fund base. This is necessary to assure transparency to the public (for an example developed by the Grand Jury, see the Appendix C on page 49).¹

Agency responses to Recommendation 2:

<p>Davis City Council (July 10, 2018)</p>	<p>City staff will work with our fiscal consultant to incorporate a graph in our forecast model to address the look back/look forward information. City of Davis staff has reached out to the other Yolo cities, as well as Yolo County. All are committed to working together and sharing information and ideas to address pension and related retirement costs. The City of Davis is also working on an outreach document that is easy to understand. We anticipate sharing this with the public in a variety of ways by 2019.</p>
<p>West Sacramento City Council (August 23, 2018)</p>	<p>The City's Long-Term Financial Forecast looks at historical trends for a 5-10-year period and forecasts several years into the future, focusing on major revenue sources, major expense categories and wages, benefits pension and OPEB costs in-depth. A summary of the forecast will be included in the City's adopted FYs 2019/20 and 2020/21 budget document which will be accessible on the City's website once adopted.</p>
<p>Winters City Council (September 4, 2018)</p>	<p>The City of Winters utilizes a 10-year financial forecast that includes all obligations, including pensions and retiree medical cost assumptions for the period.</p>
<p>Woodland City Council (August 30, 2018)</p>	<p>The City can easily incorporate this recommendation to supplement existing charts and graphs already used to convey pension and retiree medical cost data to the City Council and the public.</p>

The 2019-2020 Grand Jury reviewed city websites to determine whether the cities had followed through on their promises in response to this recommendation.

City of Davis offers a substantial Financial Forecast as part of its Fiscal Budget.² The city also summarized pension related matters in an insert sent to Davis property owners with their city services bill in late 2019; this insert is available on the city website.³ The City of Davis is offering its citizens the information this recommendation suggested.

The 2019-2020 Grand Jury could not find comparable information consistent with the responses from the other cities. In January 2020, the Grand Jury sent letters to the City Managers of the other cities requesting an update on this issue. Their responses are as follows:

City of West Sacramento: (response letter dated February 14, 2020)

“The City Council adopted the budget for FYs 2019-20 and 2020-21 on June 19, 2019; however, that budget document, including the long-term projections and pension/OPEB projections, is not yet posted to the City's website. Finance staff is

in process of developing a new, more transparent and user-friendly budget document that will be posted to the City's website once it is completed. Our goal is to have the new budget document developed and posted to the City's website before the end of calendar year 2020. Finance staff is also working on developing a more robust long-term financial plan, diving deeper into the pension and OPEB liability forecasts to help develop proposed funding strategies to address the significant projected increases in annual cost related to these unfunded liabilities. Once that model is completed, it will be presented to the City Council annually, in a public meeting, and will be posted to the City's website separate from the adopted budget document.”

City of Winters: (response email dated March 26, 2020)

"The City of Winters utilizes a 10-year financial forecast that includes all obligation, including pensions and retiree medical cost assumptions for the period (from the Appendix of the 2018-2019 Grand Jury report, pp. 109-110).

“You stated that our current budget, 2018-2019 and 2019-2020 does not appear to address pension and retirement medical costs explicitly in detail. This is a correct statement. The City of Winters adopted the referenced budgets on June 19, 2018, and this was prior to the Grand Jury report. While the current budget does not include detailed information for the pension and retiree medical costs, the costs that are projected and provided by the CalPERS for the pension, and the retiree costs are included in the projections going out 10 years. The City of Winters is dedicated to providing our citizens with the most transparent information possible, and 2020-2021 and 2021-2022 budgets that are currently under development will have detailed information on the pension and retiree medical costs included in the narrative, including the impact on the City General Fund as well as all funds. New schedules will be developed and included with the 10-year projections presented in the City Budget.

“The City of Winters approved a Pension and OPEB Policy in June 2019 to begin addressing the unfunded liabilities created by the Pension and OPEB liabilities. This Policy includes a multiyear, multi-fund approach to provide additional discretionary payments in order to pay down the CalPERS unfunded liability as well as an approach to funding the OPEB liability for the City of Winters. This policy was recently amended to allow greater flexibility in selection of the 115 Trust Administrators, and staff is working with both CalPERS and various providers of 115 Trusts to implement the policy as adopted. This policy is posted on the Finance Department tab of the City of Winters Website along with the staff report that accompanied it when the Policy was presented to the City Council for approval.

“The City of Winters is currently working on providing the 3-year look back/look forward schedule as requested by the Grand Jury. This should be completed in April of 2020.

“The City of Winters understands that we have not completed all tasks recommended by the Grand Jury within the time frame recommended by the Grand Jury, however, the City of Winters does strive keep the City Council and the citizens of the City of Winters informed of the impact of the pension and OPEB changes and impacts on the budget, as we provide a review each year as the Actuarial Valuations are completed.”⁴

City of Woodland: (response letter dated February 14, 2020)

“In response to your comments and to improve transparency and accessibility of the City's information, we will be updating existing data and posting new information in the Financial Transparency section of the website. Specifically, we will isolate the history of expenditures, and future projections for costs associated with both retiree medical and pension costs. We will also ensure that all information provided is consistent with the information displayed and available in both the "OpenGov" transparency portal and the City's adopted budget. Staff believes the updates can be completed within two weeks, by February 28, 2020.”

Reporting and Analysis of Child Welfare Statistics

Recommendation 1: By October 31, 2018, the Child, Youth and Family Branch of the Yolo County Health and Human Services Agency should submit a proposal to the Board of Supervisors for a continuous quality improvement unit charged with streamlining data collection and introducing tools that will enable the Branch to use data to drive decisions and measure success.

Agency response to Recommendation 1:

<p>Yolo County Board of Supervisors (July 10, 2018)</p>	<p>This recommendation will be implemented. Development of the statewide Child Welfare System database continues to move forward with the Child, Youth and Family Branch analyst team participating, along with the other 57 counties, in a work group to provide input on design and the functioning of the system. Thus far, a web-based search engine has been prototyped and tested. Additional components to support intake, emergency response and on-going programs have yet to be piloted or completed, and full implementation appears to be several years away. The Child, Youth and Family Branch is unable to substantially influence the State's timeline for full implementation.</p>
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The 2019-2020 Grand Jury sent a letter to the Child, Youth and Family Branch of the Yolo County Health and Human Services Agency on January 22, 2020 requesting an

update as to the progress made toward full implementation of the 2017-2018 Grand Jury recommendation. The Child, Youth and Family Branch response dated April 2, 2020 to the update request is as follows:

“The Child, Youth and Family Branch of the Yolo County Health and Human Services Agency would like to provide the following update regarding the progress made toward full implementation to this recommendation:

“The Child, Youth and Family Branch has implemented a Continuous Quality Improvement (CQI) unit charged with streamlining data collection and introducing tools that will enable the Branch to use data to drive decisions. The CQI unit is comprised (sic) of one (1) Senior Administrative Services Analyst and six (6) Administrative Services Analysts. One (1) of the six (6) Administrative Services Analyst positions in this unit is currently vacant. The CQI unit has developed regular data collection and review processes to analyze both quantitative and qualitative data and develop quality improvement processes to improve service delivery and outcomes for children, youth and families. Information and data gleaned from a variety of sources help to inform quality improvement efforts and includes case reviews, Results Based Accountability (RBA) outcome measure reviews, customer satisfaction surveys, stakeholder feedback, focus groups and staff input. These data provide critical information to Child Welfare Services (CWS) leadership to assess various aspects of the Child Welfare System and to facilitate planning processes that enhance CWS and its practices with a sharp focus on improving outcomes.

“In regards to the development of the statewide Child Welfare System database, in 2019 the State reviewed the progress to date and ultimately reworked the roadmap for this project. This State-led project is the Child Welfare Services-California Automated Response and Engagement System (CWS-CARES) and remains under development.

“Thus far, the following components have been developed and piloted: identity management, Child Welfare history snapshot, facility search and profile, and the Child and Adolescent Needs and Strengths (CANS) assessment tool. As mentioned in the previous Yolo County Board of Supervisors response, additional components of this system related to the full array of intake, emergency response, and ongoing services are either under development or are not yet developed and full implementation continues to be several years away. The Child, Youth and Family Branch remains unable to substantially influence the State’s timeline for full implementation. Representatives from the Child, Youth and Family Branch’s CQI team continue to actively participate, along with the other 57 counties, in various workgroups to provide input on the design and functioning of the system.”

FINDINGS

- F1. The Yolo County Sheriff's Office has made progress toward implementation of an online visitation scheduling system and a video visiting system.
- F2. The detailed training list submitted by the Yolo County Elections Office meets the requirement of the Recommendation.
- F3. The Yolo County Library has implemented a range of programs and trainings to assist the homeless and low income families in Yolo County.
- F4. The main libraries in Davis, Winters and West Sacramento have posted their Code of Conduct as recommended by the 2017-2018 Grand Jury.
- F5. The City of Davis complied fully and the City of Winters has met their goal regarding the posting of pension information on their respective city websites.
- F6. The City of West Sacramento said a summary forecast of pension benefits and OPEB costs would be included in the City's adopted FYs 2019-2020 and 2020-2021 budget document, but this document had not been posted on their website as of May 2020.
- F7. The City of Woodland's future projections of retiree medical and pension costs have not been posted on their website as of May 2020.
- F8. The Child, Youth and Family Branch established a Continuous Quality Improvement Unit as recommended by the 2017-2018 Grand Jury.

RECOMMENDATIONS

- R1. By July 1, 2021 the Yolo County Sheriff's Office should provide a status update to the Grand Jury on the new Jail Management System, specifically its ability to provide online visitation scheduling.
- R2. By July 1, 2021 the Yolo County Sheriff's Office should provide an update to the Grand Jury on the operational status of the video kiosks.
- R3. The City of West Sacramento should post their budget no later than July 1st of each fiscal year and include future retiree medical and pension costs to provide timely access for their citizens.
- R4. By January 1, 2021 the City of Woodland should post updated information regarding projections of future retiree medical and pension costs on its website.

REQUIRED RESPONSES

Pursuant to Penal Code section 933.05, the grand jury requests responses as follows:

From the following individuals:

- Yolo County Sheriff – R1, R2

From the following governing bodies:

- Yolo County Board of Supervisors – R1, R2
- West Sacramento City Council – F6; R3
- Woodland City Council – F7; R4

Note: The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

ENDNOTES

- 1 Sample of statistical template developed by the 2017-2018 Grand Jury [2017-18 Grand Jury Report](#) (Appendix C, page 49) (Accessed: April 25, 2020)
- 2 City of Davis Financial Forecast <http://documents.cityofdavis.org/Media/Default/Documents/PDF/Finance/2019-2021-Budget/Adopted/04-Financial-Forecast-Adopted-19-20.pdf> (Accessed: December 19, 2019)
- 3 City of Davis utility invoice insert (Winter 2019) <https://www.cityofdavis.org/home/showdocument?id=14289> (Accessed: December 19, 2019)
- 4 City of Winters website showing pension expenditures http://www.cityofwinters.org/wp-content/uploads/2019/10/2020_04PensionOPEB.pdf (Accessed: May10, 2020)

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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APPENDIX A

Yolo County Library provides access for all to ideas that inform, entertain and inspire. In order to maintain a clean, efficient, pleasant, and safe environment for everyone using the library, the Yolo County Library has adopted the following Code of Behavior:

LIBRARY CODE OF BEHAVIOR

- 1. Treat people, materials and furniture with respect.**
- 2. Speak and act in a manner that doesn't disturb others.**
- 3. Leave pets, bicycles and any large objects outside the building.**
- 4. Young children must be closely supervised by a responsible adult.**
- 5. Honor all library rules and procedures.**
- 6. Immediately report suspicious, unsafe or discourteous behavior to a staff member.**
- 7. Consume food and drink outside the library or in designated areas.**

Any person who intentionally interferes with the business of the library by obstructing or intimidating those attempting to carry on business in the library and who refuses to leave the library after being requested to do so by the library management is guilty of a misdemeanor crime under California Penal Code Section 602.1.

Any person who defaces, damages, destroys or steals library property is guilty of a misdemeanor crime under California Penal Code Section 490.5 or Section 19910 of the California Education Code.

All other laws pertaining to behavior in a public place apply, including California Penal Code Sections 314,415,647 and 653b.

APPENDIX B

Woodland Public Library Rules and Regulations Governing Public Behavior

Woodland Public Library is committed to promoting and maintaining a safe, pleasant, and efficient environment for the public and staff. Patrons can help maintain a harmonious and safe library for all by complying with the following rules and regulations:

1. Respect the rights and privileges of all other Library users.
2. Talk in quiet tones and low voices.
3. Refrain from improper conduct. Conduct is regarded as improper if it includes one or more of the following, all of which are violations of criminal or civil codes of law. (Please ask at the desk for the complete text of the codes):
 - a. Creating a public disturbance
 - b. Obscene and/or abusive language, verbal or written
 - c. Mutilating, damaging or defacing any books, map, chart, picture, engraving, manuscript, cassette, or other Library property
 - d. Sexual acts
 - e. Smoking in or on library grounds
 - f. Gambling
 - g. Playing a portable audio device without headphones
 - h. Loitering on Library premises, such as sitting or standing idly about, sleeping, or lingering aimlessly.
 - i. Use of alcohol, narcotics, tobacco, e-cigarettes, and/or hallucinogens on Library premises.
 - j. Soliciting or panhandling
 - k. Physical or verbal harassment or abuse of Library users or staff.
4. Maintain an acceptable standard of personal hygiene. Unpleasant body odor which substantially interferes with the use and enjoyment of the Library by other patrons or with the ability of staff to work is unacceptable. Shirts and shoes are required.
5. Keep food and drink outside the Library except for bottled water in a secure container.
6. Make sure that all Library materials are checked out before removing them from the premises.
7. Personal property brought into the library is subject to the following:
 - a. Items inappropriate to Library use, including but not limited to bicycles, wagons, shopping carts, luggage, large grocery bags, large trash bags, bedrolls, and strollers without children are not allowed in the Library.
 - b. Personal possessions must not take up seating or space needed by others.
 - c. Personal possessions such as grocery bags, trash bags, backpacks, bedrolls, shopping bags, and luggage left outside the Library are subject to disposal.
 - d. The Library is not responsible for personal belongings left unattended.
8. Leave bicycles, shopping carts, skateboards, or other wheeled conveyances off Library grounds, with the exception of wheelchairs and baby strollers/carriages being used to transport persons. A bicycle rack is provided outside the Library.
9. Skateboarding is not allowed on Library premises, and signage is posted to indicate such.
10. Stay with your children or keep them with you. A responsible adult, older sibling, or babysitter must accompany any child under the age of seven.
11. Only service animals are allowed in the Library.

Every School is Vulnerable: Staff and Students Must Feel Safe for Learning to Occur

SUMMARY

When it comes to public education, few issues command attention like school safety. As threats change and evolve, so, too, must the preparation and response. The 2016-2017 Yolo County Grand Jury (Grand Jury) investigated Comprehensive School Safety Plan (CSSP) compliance and found vulnerabilities that prompted changes in the school districts in Yolo County to make campus access more restricted and secure. Three years later, the current 2019-2020 Grand Jury sought to understand school safety from the perspective of those developing, training in, and carrying out safety protocols. The Yolo County Office of Education, providing alternative and special education to students throughout the county, was also included in this current investigation.

The Grand Jury found that all Yolo County school districts have made safety improvements in the past three years to “harden” their campuses, to include increased visitor signage, check-in procedures, and collaboration with first responders (e.g. police, fire department) to further secure each school. These measures also raise the prominence of the front office, creating additional responsibilities for those staff members.

The California Education Code requires all school districts to prepare site-specific CSSPs. All school districts in Yolo County are current and in compliance with the requirements for preparing and filing CSSPs. The Grand Jury found that small districts, such as Esparto Unified School District (EUSD) and Winters Joint Unified School District (WJUSD), can prepare a district-wide CSSP. WJUSD includes individual campus school safety plans in its CSSP, whereas EUSD does not.

Tracking which teacher has or has not attended safety training is inconsistent between districts. Although there is an expectation that all teachers, substitute teachers, and school staff be able to respond to a variety of emergencies, substitute teachers or staff hired after the beginning of the school year may miss important training. Measures of the effectiveness of the safety training are lacking and missing from CSSPs.

The Grand Jury also found that past high-profile school shooting incidents put great pressure on school administrators to lockdown campuses when facing a variety of potential threats. Additionally, the increasing incidence of trauma-impacted students is presenting new challenges, prompting school staff to adjust their focus from instruction to providing student support.

The Grand Jury recommends: (1) the Esparto Unified School District develop individual safety plans for each school site for its CSSP submission, (2) all school districts identify further plans for hardening campuses, (3) all districts identify staff to engage in train-the-

trainer classes to build internal capacity and share resources across the county districts, (4) all districts require online, on-demand safety training modules be provided to school staff and particularly to staff hired after the beginning of the school year, (5) all districts identify safety training that all substitute teachers must complete before reporting to work, (6) all districts create a method or tool to assess safety training effectiveness, to include an annual survey of participants, and, (7) all districts develop an attendance record and tracking mechanism for safety training participation at each specific site.

On March 19, 2020 Governor Gavin Newsom issued Executive Order N-33-20, a statewide “stay home” order, in response to the COVID-19 pandemic. This investigation, the data gathered, and recommendations generated from it occurred prior to the COVID-19 pandemic and ensuing orders.

ACRONYMS

CDE California Department of Education

CSSP Comprehensive School Safety Plan

EC California Education Code

BACKGROUND

The topic of school safety often triggers tragic images and headlines. As a society, we are conditioned to anticipate the worst – and with good reason. In 2019, there were 25 school shootings in the United States.¹ Two of those occurred in California, leaving four injured and two students dead.² Though reports of an active shooter at Woodland High School in May 2019 later proved false,³ the actions of first responders and the emotional responses among students and school personnel were no less real. Despite research reporting that school shootings are rare,⁴ schools must be prepared for any crisis, from accidents and broken bones, to power outages and wildfires – as well as the resulting trauma.

The 2016-2017 Yolo County Grand Jury (Grand Jury) reported on safety concerns related to the physical layout and ease of entry to school campuses.⁵ Following the report’s publication, each district within the county (Davis Joint Unified School District, Esparto Unified School District, Washington Unified School District [in West Sacramento], Winters Joint Unified School District, and Woodland Joint Unified School District) responded to the recommendations by making some structural changes and/or creating protocols that better secured their schools.⁶

In revisiting the topic of school safety, the 2019-2020 Grand Jury found improvements in visitor signage and check-in procedures, fencing, installation of new locks, collaboration

with first responders, communication, and after-action debrief sessions following live incidents or practice drills.

Though each district is making tremendous strides in “hardening” efforts to further secure campus access, this year’s Grand Jury extended the previous investigation to examine safety beyond physical access to school grounds. The 2019-2020 Grand Jury wanted to understand what school safety looks like from the inside, from the perspective of those developing, training in, and/or carrying out new protocols. Again, the Grand Jury focused on the five school districts within Yolo County as well as the Yolo County Office of Education (YCOE). YCOE operates similarly to a school district by providing alternative and special education to students throughout the county.

APPROACH

The Yolo County Grand Jury (Grand Jury) reviewed the most recent Comprehensive School Safety Plans (CSSPs) from each of the school districts in Yolo County: Davis Joint Unified School District (DJUSD), Esparto Unified School District (EUSD), Washington Unified School District (WUSD) in West Sacramento, Winters Joint Unified School District (WJUSD), and Woodland Joint Unified School District (WJUSD) as well as from the Yolo County Office of Education (YCOE).

School officials, administrators, and/or representatives from each of these districts were interviewed. Protocols, procedures, checklists, and other public and internal documents specific to each district were requested and reviewed.

Additional references include the 2016-2017 Yolo County Grand Jury Report: “Are Yolo County Schools in Compliance with School Safety Plans?”⁷ and Responses to the 2016-2017 Yolo County Grand Jury Final Report: “Are Yolo County Schools in Compliance with School Safety Plans?”⁸

The California Education Code (EC), sections (§§) 32280-32289, the School Accountability Report Cards,⁹ and California School Dashboards¹⁰ for schools in Yolo County were also reviewed.

DISCUSSION

Based on interviews and documents reviewed, every indication is that school officials are fully aware of the challenges in making schools safe and are committed to taking the necessary steps to keep them that way. Given each school’s unique physical setting, structural features, community climate, and local laws, there is no one-size-fits-all solution to school safety. Clearly, the challenges are vast, as documented in the Comprehensive School Safety Plans (CSSPs). Though school shootings demand attention

and scrutiny, additional safety threats are experienced with far greater regularity and frequency. Safety drills and protocols intended to prepare students and staff to respond to an array of threats can also, according to witness interviews, have the adverse effect of heightening fear and anxiety.

Interviews with personnel from each school district and the YCOE, and a review of school safety documents suggest that while improvements were made, the following areas warrant attention:

- Comprehensive School Safety Plans (CSSPs): Anticipating Change & Preparing for Ongoing Improvement
- Safety Training: Voids in Who Gets Trained and Measures of Effectiveness
- Trauma-Impacted Students & Staff: Increasing Incidence & Additional Support

A discussion of each of these topics follows.

CSSP: Anticipating Change & Preparing for Ongoing Improvement

California Education Code (EC) sections (§§) 32280–89 mandate that all schools and districts develop CSSPs for adoption by March 1 of each year. The CSSPs document how each campus will deal with safety issues and emergencies, ranging from an active shooter and crime on campus to explosions and earthquakes. Included in these plans are preparations, as well as actions during and in the immediate aftermath of a crisis. The mandate to develop, update and certify CSSPs annually only applies to public schools, per EC §32280:

“It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies . . . develop a comprehensive school safety plan . . .”¹¹

Every year, the California Department of Education (CDE) notifies county superintendents and administrators of changes in EC §§32280-89 that need to be included in the following year’s CSSPs. In a letter dated February 18, 2020, State Superintendent of Public Instruction, Tony Thurmond, also encouraged schools to:

“...include policies and practices that go beyond EC sections 32280–32289 requirements, including but not limited to threat assessment protocols, mental health policies, bullying/cyberbullying prevention procedures, active intruder/shooter protocols, lockdown and shelter-in-place procedures, family reunification plans, and regular drills and exercises for all staff and students.”¹²

Here, Dr. Thurmond speaks to safety concerns that are beyond the EC requirements and yet represent risks warranting attention. Interestingly, interviews with school officials

conducted *prior to* the release of Dr. Thurmond’s letter brought up the same issues and priorities.

The CDE provides districts with a template¹³ to guide their development of CSSPs, and some districts engage consultants to assist them. The Yolo County Office of Education (YCOE) recently initiated efforts to standardize the CSSPs for all school districts within Yolo County. An initiative still in development, these templates are aligned to those provided by the CDE. Districts have the flexibility to develop their own plans and to “go beyond” the basic EC mandates. That flexibility allows school officials to tailor the CSSPs to their specific needs and to determine their own policies and procedures, training approaches, and protocols.

All CSSPs for schools within Yolo County are current and in compliance with EC mandates. Except for Esparto, the CSSPs include individual safety plans for each school site within a district. Designated as a “small school district” with 940 students,¹⁴ Esparto Unified School District has in place a district-wide safety plan that meets EC requirements for districts with fewer than 2,501 students.¹⁵

Some CSSPs have in place very detailed protocols that “go beyond” the mandates and address many of the areas called out by Dr. Thurmond. A review of the most recent CSSPs submitted by each school district within Yolo County might give the impression they are more boilerplate than tailored. There is more to school site safety planning than appears in the public document. To avoid disclosing sensitive information to potential wrongdoers, the details and tactics developed for the districts and their sites are restricted to school and first-responder personnel as an additional safety measure (as recommended in EC §32281).¹⁶

Several witness interviews credited the 2016-2017 Yolo County Grand Jury (Grand Jury) investigation on school safety as a catalyst for making signage more visible to visitors, for hardening access to campuses, and for collaborating with all stakeholders of the school community. These improvements were also documented in each school district’s response to the recommendations made by the 2016-2017 Grand Jury.¹⁷ In addition, the Grand Jury found some of these actions were already underway when the initial report was published.

The increased prominence of the front office at each campus and tighter check-in procedures also present new vulnerabilities that may require additional safety improvements to make the physical office and the people who work there more secure.

The effectiveness of a CSSP is created in the process of its development, by making sure discussions include all stakeholders (e.g. principals, teachers, parents, students, first responders, community members), by continual re-assessment of new threats or potential threats and concerns, and the implementation of new strategies, protocols, and practices.

Critical, too, is a feedback mechanism for determining how well these changes are working. Such a metric is missing from all safety plans as well as from the CSSP template itself.¹⁸ Granted, there is no clear cause-and-effect methodology for evaluating these changes. However, that should not prevent each district from exploring other qualitative options, such as asking those responsible for carrying out the safety protocols and procedures for their feedback.

Safety Training: Voids in Who Gets Trained & Measures of Effectiveness

Creating a safe environment is fundamental for learning to occur. Yet, establishing and maintaining safety is becoming more difficult as schools must contend with a barrage of changing threats and conditions. Ensuring that teachers and staff are well-prepared to meet these challenges through effective training is vital to enabling schools to go beyond EC safety standards. Herein lies the dilemma: how to balance the mounting demands on the school community with limited resources – time, trainers, and money?

Within this environment, each district is forced to make difficult but informed decisions that prioritize and accommodate for its unique needs. Contract agreements between the school district and its unions must also be considered. Most school districts have opted to prioritize the training of certificated personnel (e.g. teachers) in safety protocols and procedures but not classified employees (e.g. para-educators, noon / yard duty aides, and transportation workers). This year, some districts, such as the Washington Unified School District in West Sacramento, are training their classified staff in emergency and safety procedures.

Schools typically train teachers on safety drills and procedures just prior to the start of each school year. Supplemental refreshers and updates are incorporated into regular drills, tagged onto staff meetings, or discussed as part of an after-incident session throughout the year. Training is provided in many forms, ranging from in-service sessions, to online and practice drills at the school site. Arrangements are also coordinated with vendors who offer specific kinds of expertise (e.g. active shooter training), when warranted. Teachers hired after the start of the school year typically miss these early opportunities, creating a potential vacuum in preparedness.

Another gap in training pertains to substitute teachers. Substitute teachers are a significant part of the educational community. However, districts do not require prospective substitute teacher applicants to participate in formalized safety training prior to reporting for work at any school. Among the largest school districts in the county (Davis Joint Unified School District, Washington Unified School District, and Woodland Joint Unified School District), there are, on average, a total of 155 substitute teachers working in a classroom on any given day. With more than 1,600¹⁹ teachers employed in Yolo County schools, substitute teachers represent nearly 10% of those providing in-class instruction – a significant daily presence.

Once checked in at the front office, substitute teachers typically receive a packet or binder that contains a class roster, lesson plan, daily schedule, and basic safety documents (e.g. floorplans and evacuation routes). Some schools may include posters or flipcharts in each classroom with instructions on what to do in specific emergency situations. Given the nature of this on-call type of work, substitutes may not have time to review the folder in its entirety before meeting with his/her class. If an emergency drill or incident occurs, substitute teachers by necessity may be required to look to other teachers and/or their students for direction in how to respond. Several of those interviewed described examples in which this occurred.

In some districts, inconsistencies in tracking attendance at training sessions add to uncertainty and makes it difficult to determine who has participated. Additionally, districts have no mechanism in place, other than occasional informal check-ins, for assessing the effectiveness of the training or level of confidence among the teachers and staff responsible for carrying out the drills.

Though safety or emergency drills can provide important refreshers and on-the-job-training for new hires and substitutes, the drills can also increase the stress level of an already anxious staff and student body.

Trauma-Impacted Students & Staff: Increasing Incidence & Additional Support

An integral component of the learning process is safety. If the school environment is perceived by students and/or staff as unsafe, learning will be inhibited. Though new fencing, visitor check-ins, and safety training can mitigate threats, the environment within and outside of the school can present ongoing challenges. In response, districts stated to the Grand Jury that they continually monitor and assess for the social/emotional impacts of these challenges and have in place a well-defined process for providing counselors and emotional support for students and staff. The threats are real. So, too, are the emotional impacts related to the loss of life, neglect, bullying, and abuse.

News of any school shooting often generates fears throughout the school community and increases concern. This cycle repeats itself with every tragic occurrence and each time places pressure on school officials to treat all threats the same.²⁰ School officials and representatives interviewed described heightened concern for the emotional well-being of students and staff. They also spoke of several events that continue to impact members of the school community, expressed for some in the form of trauma. Trauma is an emotional response to a terrible event that can cause sufferers to experience extreme anxiety, sadness, anger, sleeplessness, physical pain, and headaches.²¹

When reports came in May 2019 of an active shooter at Woodland High School, first responders arrived in full force. The school went into lockdown, along with a nearby elementary school. Shelter-in-place orders were issued for yet another campus. For six

hours, students and teachers waited while police conducted room-by-room searches until they were certain no threat existed. Though the initial call was later determined a false report, the experience, according to personnel interviewed, left some teachers and students visibly shaken and/or dealing with post-traumatic stress disorder.

More recently, the accidental off-campus shooting of a Davis High School senior,²² the killing of a 16-year-old who attended school within Woodland Joint Unified School District,²³ the unexpected death of a Davis elementary school teacher,²⁴ and reports of a “man covered in blood” who threatened a teacher and attempted to carjack her vehicle outside Esparto High School²⁵ have been covered by the local papers. Many other, similar incidents are shared by way of Facebook, Instagram, or other outlets. Whether accurate or rumors, word travels fast across social and virtual networks, further compounding the fear and anxiety.

Less publicized but nevertheless traumatic is the uptick in abuse, neglect, and domestic violence in Yolo County. The numbers are documented by several sources, including Yolo County Child Abuse Prevention Council,²⁶ the Yolo County Health Council,²⁷ and kidsdata.org²⁸ (a resource on children’s health in California). Interviewees also reported teachers are seeing more incidence of students dealing with homelessness and broken homes, and in turn, extreme acting out behaviors.

In recognition of these threats, as well as the injuries inflicted by bullying and misuse of social media, school officials and representatives are responding by making counseling more available to employees and students, providing training, and increasing awareness about the importance of mental health. Nurses, too, are available at some schools on a regular basis. According to witness interviews, members of the school community are increasingly taking advantage of this support.

School safety encompasses far more than installing new locks, fencing, and check-in procedures. School districts within Yolo County also recognize the emotional health and well-being of students and staff as yet another critical resource to protect.

FINDINGS

- F1. The California Education Code requires, with the exception of small districts, that individual safety plans be developed for each school site. Esparto Unified School District qualifies as a small district, and has a single district-wide Comprehensive School Safety Plan (CSSP) that applies to all school sites in the district, not individual plans for each school site.
- F2. Districts made safety improvements, including increased visitor signage and tighter check-in procedures, installed new fencing and locks, collaborated with first

responders, engaged in after-action debrief sessions to further secure (i.e. “harden”) school campuses and facilities, and continue to plan for further actions.

- F3. Increased efforts to harden schools and direct visitors to the front office with improved signage creates additional responsibilities for those working this vital gateway and exposes them to more safety threats.
- F4. Tracking of who has or has not participated in safety training events is inconsistent in Yolo County schools.
- F5. Measures or approaches for assessing the quality or effectiveness of safety training are missing from the CSSPs.
- F6. There is an expectation that all teachers and substitute teachers have a depth and breadth of safety training that enables them to respond to a variety of threats.
- F7. Because substitute teachers and teachers hired after the start of the school year are not present for the launch of safety training, their ability to respond to emergency situations is compromised.
- F8. In the wake of past high-profile school shootings, school officials face great pressure to react to any threat of potential violence by locking down schools.
- F9. Increasing incidence of trauma-impacted students call on teachers and staff to shift focus from instruction mode to providing support they may not be fully trained to offer.

RECOMMENDATIONS

- R1. Prior to the start of the 2021-2022 school year, Esparto Unified School District should develop individual safety plans tailored to each school site’s particular needs and environment (as opposed to a district-wide Comprehensive School Safety Plan [CSSP]) to enhance the overall value of the CSSP.
- R2. Prior to the start of the 2021-2022 school year, District officials should identify additional approaches in their CSSPs for hardening access to areas of schools that remain vulnerable.
- R3. Prior to the start of the 2021-2022 school year and each subsequent school year, District officials should identify administrative, certificated, and classified employees to engage in train-the-trainer classes to build internal capacity and share resources across districts.
- R4. Prior to the start of the 2021-2022 school year, District officials should require online, on-demand safety training modules be provided and completed by all staff, particularly those hired after the start of the school year, to assure consistency in and breadth of training in safety protocols and procedures.

- R5. Prior to the start of the 2021-2022 school year and each subsequent school year, District officials should identify safety training that all substitute teachers must complete before reporting for work in any district.
- R6. Prior to the start of the 2021-2022 school year and each subsequent school year, District officials should identify a method and/or tool for measuring the effectiveness of safety training, including an annual survey of all staff.
- R7. Prior to the start of the 2021-2022 school year and for use in each subsequent school year, each school principal or designee should develop an attendance and tracking mechanism for determining who has or has not participated in safety training offerings.

COMMENDATIONS

All school officials and representatives recognize the value of maintaining the emotional health and well-being of students and staff. School districts are to be commended for their ability to mobilize resources quickly and provide onsite counseling support following a tragic incident (e.g. sudden loss of teachers, students, and alumni).

REQUIRED RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following individuals:

- Superintendent of Schools, Yolo County Office of Education – F1, F2, F3, F4, F5, F6, F7, F8, F9; R1, R2, R3, R4, R5, R6, R7

From the following governing bodies:

- Board of Education/Trustees, Davis Joint Unified School District – F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7
- Board of Education/Trustees, Esparto Unified School District – F1, F2, F3, F4, F5, F6, F7, F8, F9; R1, R2, R3, R4, R5, R6, R7
- Board of Education/Trustees, Washington Unified School District – F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7
- Board of Education/Trustees, Winters Joint Unified School District – F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7
- Board of Education/Trustees, Woodland Joint Unified School District – F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7

- Board of Education/Trustees, Yolo County Office of Education – F1, F2, F3, F4, F5, F6, F7, F8, F9; R1, R2, R3, R4, R5, R6, R7

Note: The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

INVITED RESPONSES

From the following individuals:

- District Superintendent, Davis Joint Unified School District – F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7
- District Superintendent, Esparto Unified School District – F1, F2, F3, F4, F5, F6, F7, F8, F9; R1, R2, R3, R4, R5, R6, R7
- District Superintendent, Washington Unified School District – F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7
- District Superintendent, Winters Joint Unified School District – F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7
- District Superintendent, Woodland Joint Unified School District F2, F3, F4, F5, F6, F7, F8, F9; R2, R3, R4, R5, R6, R7

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Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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Reorganization of the Public Guardian and Public Administrator: Needed Change and Continuing Challenges

SUMMARY

Prior to January 2017, the Yolo County Public Guardian / Public Administrator (PG / PA) was an elected office. In late 2016 the Board of Supervisors voted to eliminate the elected office, moving the Public Guardian to the Health and Human Services Agency and placing the Public Administrator in the Office of the Sheriff / Coroner. A comprehensive audit of the PG / PA requested by the Board of Supervisors after the split exposed disorganization and numerous deficiencies in the operation of the previously combined office. Some of the difficulty arose from the severe contraction of the PG / PA budget following the Great Recession of 2007-2008, with the accompanying decrease in staffing and increase in workload and stress. Staffing has improved since its lowest point, but is still below pre-recession levels.

The Yolo County Grand Jury found that the reorganization has been beneficial. Many of the problems documented in the audit have been or are being addressed by the now separate functions. Leaders at the Public Guardian and Public Administrator are dedicated and knowledgeable, and each office is making progress on lingering issues. Nevertheless, staffing remains a concern. With a growing population in Yolo County, both the Public Guardian and Public Administrator offices are experiencing increased demands for their services. While Public Administrator staffing appears to be adequate for now, the Public Guardian continues to suffer from excessive caseloads, employee turnover, and heavy demands on senior staff.

The Public Guardian needs additional personnel to deal with these workload issues. The Grand Jury recommends that Yolo County conduct an analysis to determine appropriate staffing levels for the near and long term for both the Public Guardian and Public Administrator. Additionally, the Public Guardian should develop internship opportunities with local area colleges and universities to cultivate a pool of candidates to fulfill their ongoing staffing needs.

On March 19, 2020 Governor Gavin Newsom issued Executive Order N-33-20, a statewide “stay home” order, in response to the COVID-19 pandemic. This investigation, the data gathered, and recommendations generated from it occurred prior to the COVID-19 pandemic and ensuing orders.

ACRONYMS / GLOSSARY

Conservatee	An individual under conservatorship.
Conservatorship	A legal arrangement wherein an individual or organization is chosen by the Court to protect and manage the personal care and/or finances of a person found to be unable to manage his or her affairs
CAP	Corrective Action Plan
CO	Conservatorship Officer
FTE	Full-Time Equivalent
HHS A	Health and Human Services Agency
LPS	Lanterman-Petris-Short
PA	Public Administrator
PG	Public Guardian

BACKGROUND

The Yolo County Public Guardian (PG) provides support to some of the county's most vulnerable residents. When ordered by the court, the PG serves as the legally appointed guardian for persons determined to be gravely disabled¹ and incapable of caring for themselves, most commonly as a result of dementia or severe mental illness, and who have no one else to provide this support and oversight. This assignment is termed a conservatorship, and can be of a person or an estate. Conservatorship of a person involves helping the conservatee with matters such as healthcare, clothing, and shelter. Estate conservatorship includes the handling of all financial matters. Many cases involve tending to the needs of both the person and his or her estate. Historically, the PG has averaged about 160 conservatees in a given fiscal year in Yolo County. The relevant law is provided in California Probate Code² and California Welfare & Institutions Code.³ Guidance is also found at California Courts: The Judicial Branch of California.⁴

There are two classes of conservatorship administered by the PG:

- Lanterman-Petris-Short (LPS) Conservatorship – Named after the authors of the enabling legislation. LPS conservatees are at risk individuals with incapacitating mental illness referred to the PG by mental health professionals from hospitals and, more recently, penal facilities.⁵ Though typically resistant, LPS conservatees receive treatment, possibly in a locked facility, but with the expectation of improvement and eventual release from conservatorship.

- Probate Conservatorship – These conservatees are generally older, often with dementia. Probate conservatees can be referred to the PG or the court by a community agency (e.g. Adult Protective Services), institution, physician or other concerned individual. The PG is always the last resort for probate conservatorships, with family much preferred.⁶ Probate conservatees assigned to the PG may stay with the PG for long periods, often until death.

In both types of conservatorship, the PG is required to make a thorough investigation of the individual's circumstances at the initial referral and, if conservatorship is granted, at mandated intervals thereafter. If the PG believes the situation warrants, the findings of the investigation are presented to the court, where it determines whether or not to impose conservatorship.

The Yolo County Public Administrator (PA) can be charged with administering the estate of a county resident who dies without a will and has no family, or none willing, to assume responsibility. In conjunction with the court, the PA will identify and disburse the deceased's assets, if any. The PA also supervises the Indigent Burial Program, which provides for cremation and burial of those who die without resources.

Until January 2017, the Yolo County Public Guardian's and Public Administrator's functions were jointly held by one elected official. Yolo was one of only three counties in California that had an elected PG / PA that combined both roles. In 2016, the long-term incumbent retired at mid-term, presenting an opportunity for the county to reconsider the structure of the two functions.⁷ In light of the organization of the PG and PA in most other counties and with input from analysts and interested parties, the Board of Supervisors voted to eliminate the elected PG / PA position and separate the functions of the office.⁸ This decision was not without controversy.^{9,10} There was concern that non-elected leaders would not bring the same passion and commitment to the work, that the loss of independence would lead to conflict of interest problems, and that it was wrong to deny voters their say. The final vote of the Board of Supervisors was 4-1 in favor of the realignment.¹¹

The PG was moved to the Yolo County Health and Human Services Agency (HHS). Yolo County Code stipulates the PA be elected, a requirement satisfied by placing the PA in the Office of the elected Sheriff / Coroner.¹² The director of HHS is the titular Public Guardian, and there is a Chief Deputy Public Guardian who runs the daily operation under the Adult & Aging Branch Director. The Sheriff / Coroner is the titular Public Administrator; the daily operation is performed by an Assistant Public Administrator under the Chief Deputy Coroner (see organization charts in the Appendix).

The Grand Jury was interested in determining how well these changes in structure and responsibility are progressing.

APPROACH

Members of the Yolo County Grand Jury (Grand Jury) conducted interviews of representatives of the Yolo County Health and Human Services Agency, the office of the Public Guardian, the office of the Public Administrator, as well as others whose work touched on the role of the PG or PA. The Grand Jury reviewed county documents, Board of Supervisors meeting reports, newspaper articles, public information from relevant organizations and associations, as well as some internal county documents.

DISCUSSION

Public Guardian / Public Administrator: Operational Issues

Coincident with the realignment, in January 2017, the County Administrator and Board of Supervisors requested an audit of the previously combined Public Guardian / Public Administrator (PG / PA) by the County Division of Internal Audit. This comprehensive audit covering primarily the period July 1, 2013 to December 31, 2016 was submitted on October 30, 2017.¹³ The intention was to understand the history and current state of the function as a baseline from which to move forward as separate entities. Its purpose was "... to assist the County in identifying potential areas of concern regarding the administrative and fiduciary functions of the office with respect to the management of conservatees (clients) funds, case management, and estates, and the handling of indigents and their estates."¹⁴

The report revealed many weaknesses and inefficiencies in both functions of the PG / PA as it had previously operated. It described in detail problems with inadequate staff training, lack of written policies and procedures, mishandling of conservatee assets, and disorganized record keeping. To quote from the Executive Summary of the audit:

"Based on the results review and the determination that, prior to the 2017 reorganization, the office mismanaged the estates of office clients and neglected other fiduciary duties, and the incomplete and poorly organized ... condition of the files, the auditors are unable to confirm that misappropriation or misuse of conservatees or decedents assets did not occur." (emphasis in the report)¹⁵

As a remedy for these problems, the audit stated:

"Auditors recommend that both PG and PA work with the County's Division of Internal Audit to develop a comprehensive Corrective Action Plan (CAP) that addresses each area of responsibility according to governing codes and laws. The CAP should have performance based results that are measurable and timelines for

completion. The auditors will perform a review on work completed and work in progress annually until CAP has been fully implemented.”¹⁶

The Director of the Health and Human Services Agency (i.e. the new Public Guardian) and the Sheriff (i.e. the new Public Administrator) each agreed to develop a Corrective Action Plan (CAP) to address these deficiencies. In January 2018, the Health and Human Services Agency (HHS) adopted a three-year CAP with a completion date of June 30, 2021. Per the CAP, the PG focused mainly on implementing tighter controls on how monies and client assets are handled by the PG and HHS staff, particularly systemized checks and balances, separation of duties, and improved record keeping. HHS has periodically updated the Board of Supervisors on progress on the CAP, most recently on February 11, 2020.¹⁷ At that time, the PG stipulated that they were:

“...currently on track to complete the CAP on time or ahead of schedule, having already completed 14, and making active progress on another 14, of the 29 Total Policy and Procedures due by June 30, 2021.”

In the audit, problems within the PA part of the office dealt with the timely disposition of case files and handling of client assets. Information provided from witness interviews indicated that many of these issues persisted after the reorganization, and the Grand Jury was unable to confirm that a CAP for the PA was produced as quickly as the auditors requested. The Sheriff brought in a consultant (a retired Assistant PA from another county) as early as 2017 to assist with installing the requisite organization and developing appropriate formal policies and procedures. A CAP now exists, policies and procedures are codified,¹⁸ and the PA believes it currently conforms to best practices. Updates pertaining to the PA transition, as presented by the Sheriff’s Office to the Board of Supervisors, have been limited to discussion of a software upgrade.¹⁹

The Grand Jury did not specifically consider whether conservatees are receiving an appropriate level care or whether the PG and PA are adhering to relevant statutes and regulations. Many such matters were covered in the Special Audit and are still subject to oversight and remediation by way of the respective CAPs.

PG and PA Staffing

Conservatorship Officers (COs) are those on the PG staff who are most directly involved with clients. Their role is especially demanding. The ideal CO candidate for Yolo County would have a Bachelor of Arts degree with a major or emphasis in psychology, sociology, social welfare, social work or behavioral sciences, and some relevant experience. A partial listing of job functions states the CO:

- “Investigates the financial, medical, psychological, vocational and social backgrounds of clients by interviewing proposed conservatees or wards, their relatives, friends, and appropriate public and private agencies.

- “Researches records for pertinent clinical history, diagnosis and prognosis;
- “Analyzes compiled information to determine whether the person is gravely disabled and substantially unable to provide for their own personal care, shelter and financial needs;
- “Interprets and applies the Welfare and Institution and Probate Codes;
- “Prepares reports and recommendations regarding establishment of conservatorship or guardianship, the powers and duties of proposed conservator, or suitable alternatives;
- “Testifies in court as required;
- “Explains conservatorship to proposed conservatees and wards, their families, and other involved persons or agencies;
- “Serves as clients' rights advocate;
- “Works with community health, welfare and other agencies to arrange for a delivery of services to clients;
- “Develops, plans, and monitors financial resources of clients.”²⁰

Additionally, conservatorship requires someone with oversight authority to be available 24 hours a day / seven days a week. The responsibility of being on-call at all times rotates among the deputized staff, which are the COs, the Chief Deputy PG, and the Adult & Aging Branch Manager (see HHS organization chart in the Appendix).

In Fiscal Year (FY) 2006-2007, before the Great Recession of 2007-2008, the PG / PA had 11.75 Full-Time Equivalent (FTEs), including the elected PG / PA and 5.0 COs. As with all municipal government functions, the PG / PA was severely impacted by the fiscal constraints of the economic downturn. By FY 2010-2011, the PG / PA had reduced its staff by nearly half, leaving 6.0 FTEs (including the elected PG / PA) and 2.0 COs.²¹ These reductions in staff occurred with little change in the number of conservatees in need of support. In FYs 2006-2007 to 2008-2009, there was an average of 170 conservatees being served. Following the reductions, the PG / PA office served an average of 138 conservatees from FYs 2009-2010 to 2011-2012 (see Figure 1 below). From FYs 2006 to FY 2012, there was essentially no change in the number of decedents that the office was handling (FYs 2006-2007 to 2008-2009 averaged 92 decedents; FYs 2009-2010 to 2011-2012 averaged 91 decedents).

The CO caseload went from an average of 34 before the Recession to 69 in the years immediately following. This continued to increase in subsequent years as additional conservatees (FYs 2012-2013 to 2014-2015 average 162) and decedents (FYs 2012-2013 to 2014-2015 average ~115) came under care of the PG / PA. Interviews indicated that this likely contributed to the problems documented in the audit report, including instances of referrals that were denied without investigation, contrary to statute.

Management and turnover issues were also identified in the audit.²² The office continued to reduce in staff such that by the time the Board of Supervisors voted to split the office in October 2016, only four employees remained in the PG / PA.²³

Within the last few years, the budget for the PG / PA has substantially recovered from its lowest point in FY 2011-2012, especially after the re-organization.

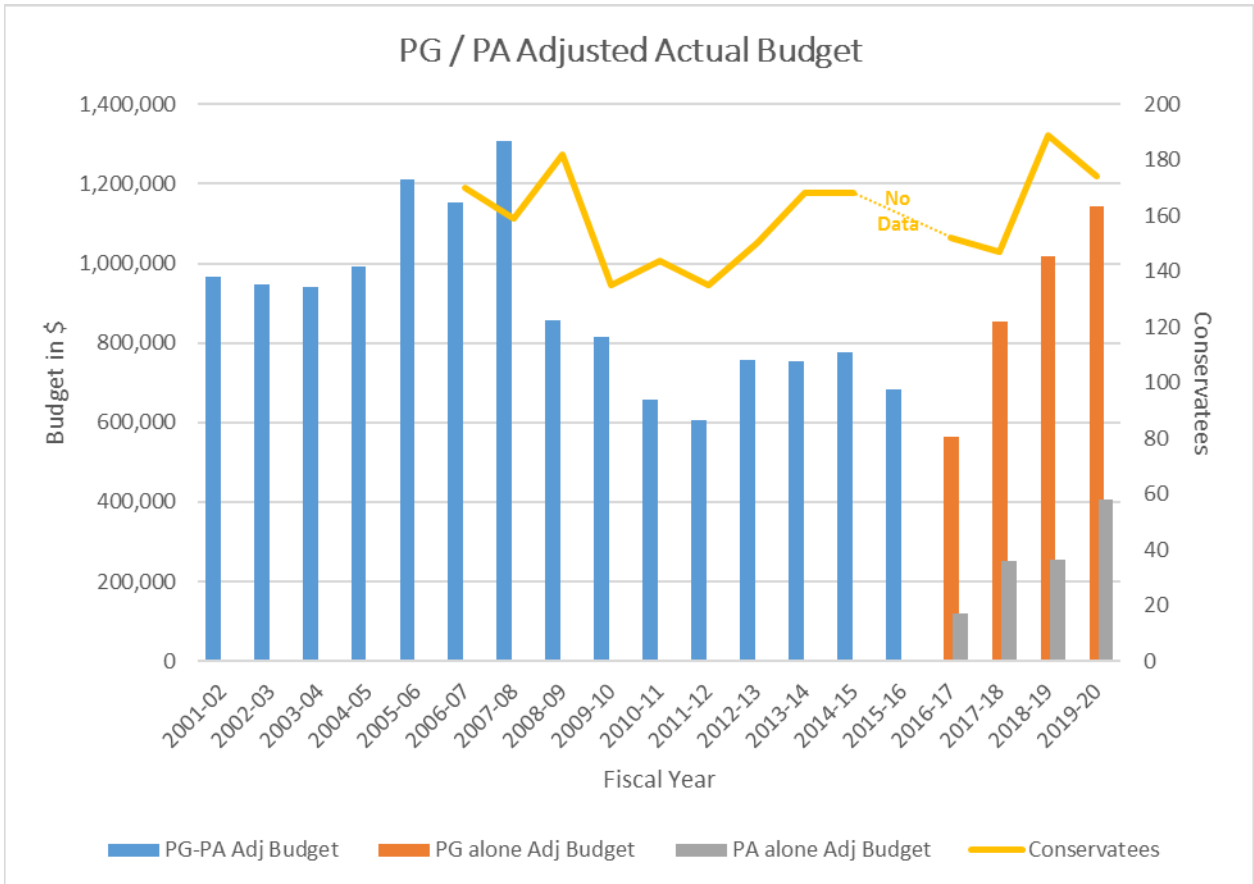


Figure 1: PG / PA Adjusted Actual Budget. Budgets were obtained from Yolo County Budget documents²⁴ and Yolo County OpenGov listings;²⁵ both were inflation-adjusted to 2019 dollars with a Consumer Price Index table.²⁶ Since post-reorganization budgets do not include the salary of the titular PG or PA, the salary of the pre-reorganization elected PG / PA was subtracted from the presented pre-reorganization budgets using actual salary figures where available from budget documents,²⁷ online resources,²⁸ and estimated for intervening years. Values for 2019-2020 are budgeted amounts rather than actual. Conservatee numbers are from budget documents for 2006-2007 to 2014-2015 and from PG presentations^{29,30,31} for later years; the figure for 2019-2020 represents July-December only.

A review of the funding history for the PG and PA functions, when combined as a single entity and more recently, following its split, shows that funding dropped by more than half from its peak prior to the 2007-2008 recession, and did not recover significantly until after the reorganization. The PG / PA budgets rely exclusively on Yolo County General

Fund monies. Even with the improvement in the economy (prior to the COVID-19 crisis), General Fund resources were and remain very limited in Yolo County. In the introduction to the proposed FY 2019-2020 County Budget, the County Administrator states:

“The 2019-20 budget represents marginal growth in both discretionary funding as well as State and Federal revenue receipts in most areas. However, rapidly rising pension costs combined with an increase in retiree medical prefunding continue to deplete any growth in General Fund revenues. As a result, the majority of budgets are status quo.”³²

The County Administrator included essentially the same language in Yolo County’s proposed budgets since at least FY 2014-2015.

Since the reorganization, the increased PG and PA budgets allowed for additional hires, but not to the level of 2007 (see Figure 2). The PG now has 6.0 FTEs (not including the titular PG, who is also Director of HHSa) and 3.0 COs. Taking advantage of its integration into a much larger department, conservatee receipts and payments are now handled by HHSa financial staff, freeing COs from this responsibility.

Comparison of PG / PA Staffing

2006-2007 Position	FTE	2019-2020 Position	FTE
Assistant Public Guardian/Administrator	1.0	Chief Deputy Public Guardian/HHSa Manager II	1.0
Conservatorship Officer	5.0	Conservatorship Officer	3.0
Administrative Clerk II – 1	1.0		
Office Support Specialist	1.0		
Senior Accounting Technician	0.75	Administrative Services Analyst (reclassified from Senior Accounting Tech)	1.0
		Guardian Technician	1.0
Extra Help		Extra Help Administrative Clerk II	<1.0
		Undergraduate Social Work Intern (16 hours per week)	Temp
Total Public Guardian	8.75		6.0 +
Deputy Public Administrator	2.0	Assistant Public Administrator	1.0
		Deputy Public Administrator	1.0
Total Public Administrator	2.0		2.0
TOTAL	10.75		8.0 +

Figure 2: Comparison of PG / PA Staffing - Extra Help employees are limited to 1,000 hours employment per fiscal year.³³

In addition, currently two HHSa Fiscal Staff spend a percentage of their time on PG conservatee fiscal duties. One is an Accountant II and the other is a Senior Accounting Technician, but these are not PG positions. Sheriff’s Finance handles some financial matters for the PA.

The current CO caseload for the Yolo County PG is about 60 clients, much higher than the pre-recession average. Of course, each jurisdiction in the nation has unique needs and challenges, so there is no uniform one-size-fits-all ratio of COs to conservatees. However, there is guidance from relevant organizations such as the National Guardianship Association in their Standards of Practice which states:

“The guardian shall limit each caseload to a size that allows the guardian to accurately and adequately support and protect the person, that allows a minimum of one visit per month with each person, and that allows regular contact with all service providers.”³⁴

All interviewees with direct knowledge of the PG were in agreement that CO caseloads in Yolo County are too high. COs are constantly “putting out fires” and often do not have the time to do site visits and other routine oversight. The office of the PG receives a large amount of correspondence and other paperwork, including mandated court documents, that are also a substantial drain on CO resources. CO burnout and turnover is a continuing concern. As new people are brought in to what is still a small team, additional strain is placed on remaining staff to provide training.

Further, there is an expectation that total PG cases will rise in the future. In addition to forecasts of an increasing population in Yolo County overall, earlier this year Governor Newsom highlighted the issues of homelessness, mental health, and conservatorships, stating:

“Clearly, it’s time to respond to the concerns of experts who argue that thresholds for conservatorships are too high and should be revisited.”³⁵

The most comprehensive survey of national public guardian programs found a very wide range of guardian qualifications and caseload.³⁶ This report reiterated a previous recommendation that a “one-to-twenty ratio would best enable adequate individualized ward attention.”³⁷ Some jurisdictions have attempted to place a cap on caseloads:

- Nebraska, which only established a statewide Office of the Public Guardian in 2015, set the average caseload at 40. A year later Nebraska decided that was unworkable and changed the target average to 20.³⁸
- Most counties in Oregon do not have a Public Guardian, so Oregon established a statewide Office of Public Guardian which is limited to 80 clients and is not currently accepting new referrals.³⁹ California statute requires referrals to be investigated and disallows blanket denial or wait-listing.
- Washington state allows contract service providers to do PG functions but says that there should still be monthly visits, that the standard caseload should not be more than 20, and never more than 36.⁴⁰

In California, the 2014-2015 Contra Costa County Grand Jury published an investigative report on their Public Guardian.⁴¹ This report stated that the average caseload of their deputy conservators was 23. Though the Contra Costa Grand Jury came to many critical findings in their investigation of the PG, over-staffing was not one of them.

The newly formed office of the PA under the Yolo County Sheriff / Coroner as originally constituted had a single employee reporting to the Chief of Finance in the Sheriff's Office. In this configuration the PA was unable to rectify the concerns raised by the audit. In 2019 the PA was put under the Coroner and now reports to the Chief Deputy Coroner. As of this fiscal year, this office now has 2.0 FTEs, an Assistant PA and a Deputy PA. This is still not equivalent to the pre-recession staffing, which was 2.0 Deputy PAs under an Assistant PG / PA, but the PA has been able to make significant progress clearing old case files while staying on top of their current work.

Advantages/Disadvantages of the 2017 Reorganization

No disadvantages were identified in the course of the Grand Jury investigation or from witness interviews. All interviewees were in agreement that operations in both offices had improved. It could be argued that the audit-mandated CAPs could have been implemented under the old organization. However, the audit provided summaries of issues raised by three previous, more limited reviews of the PG / PA from 2008, 2011, and 2013. In each case, the audit concluded:

“Based on our review and current findings these matters continued and no action has been taken to resolve the findings.”⁴²

A change in management and organization proved necessary to address these issues.

It is advantageous for the PG to be part of the large HHS organization. The PG is now able to utilize the expertise of a dedicated financial services section. There is potential for closer collaboration with other offices housed under HHS that touch upon the mission of the PG, including Mental Health, Adult Protective Services, and Veteran's Affairs.

The PA also benefits from being in a large organization, the Sheriff / Coroner's Office. Many PA referrals come from the Coroner's Office, and the PA is now in close proximity and works closely with them. Additionally, the PA has access to resources in the Sheriff's Office not readily available before the reorganization.

FINDINGS

- F1. Reorganization of the Public Guardian / Public Administrator has improved oversight and brought these offices into compliance with best practices with respect to fiduciary matters.

- F2. Caseloads for Conservatorship Officers are too high, leading to excessive employee stress and sub-optimal oversight of conservatees.
- F3. Recruitment and retention of Conservatorship Officers is an ongoing challenge.
- F4. Substantial turnover in Conservatorship Officers leads to a repeating cycle where remaining staff are providing training while managing an already overloaded caseload.
- F5. Public Administrator staffing is adequate for now.
- F6. Trends indicate the number of people referred to the Public Guardian and Public Administrator will increase.

RECOMMENDATIONS

- R1. By June 30, 2021, Yolo County should conduct an analysis to determine appropriate staffing for the Office of the Public Guardian and the Office of the Public Administrator in the immediate and longer term (three to five years).
- R2. By June 30, 2021, the Public Guardian should develop internship opportunities with area colleges and universities to cultivate a pool of Conservatorship Officer applicants.

COMMENDATIONS

Public Guardian staff are to be commended for accomplishing their difficult work while managing extraordinarily high caseloads. This is facilitated by leadership at the Public Guardian and Public Administrator that is dedicated, knowledgeable and experienced.

REQUIRED RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following individual:

- Yolo County Sheriff / Coroner – F1, F5, F6; R1

From the following governing body:

- Yolo County Board of Supervisors – F1, F2, F3, F4, F5, F6; R1, R2

Note: The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown act.

INVITED RESPONSES

From the following individual:

- Director of Yolo County Health and Human Services – F1, F2, F3, F4, F6; R1, R2

ENDNOTES

- 1 California Welfare and Institutions Code §5008 (h)(1) (A) defines the term “gravely disabled” as a condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter
- 2 California Probate Code, §§7600-7666
- 3 California Welfare and Institutions Code, §§5000-5556
- 4 California Courts: The Judicial Branch of California: Conservatorships. Online at <https://www.courts.ca.gov/selfhelp-conservatorship.htm> (Accessed: May 2020)
- 5 California Courts: Mental Health (LPS) Conservatorships
- 6 California Courts: Who Can File for Conservatorship
- 7 Lauren King. “Changing of the Guardian: Yolo’s public guardian steps down,” The Daily Democrat (Woodland, CA), 6/1/2016. Online at <https://www.dailydemocrat.com/2016/06/01/changing-of-the-guardian-yolos-public-guardian-steps-down/> (Accessed: May 2020)
- 8 Yolo County Board of Supervisors, Agenda 10/25/2016 Item 32. “PG-PA Organizational Structure.” Online at https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=&mt=BOS&get_month=10&get_year=2016&dsp=agm&seq=5383&rev=0&ag=1643&ln=53327&nseq=5330&nrev=0&pseq=5246&prev=0#ReturnTo53327 (Accessed: May 2020)
- 9 Lauren King. “Yolo supervisors OK department consolidation,” The Daily Democrat (Woodland, CA), 11/22/2016. Online at <http://www.dailydemocrat.com/government-and-politics/20161122/yolo-supervisors-ok-department-consolidation> (Accessed: May 2020)
- 10 Anne Ternus-Bellamy. “Supervisors vote to eliminate elected public guardian,” The Davis Enterprise (Davis, CA), 11/23/2016. Online at <https://www.davisenterprise.com/local-news/county-government/supervisors-vote-to-eliminate-elected-public-guardian/> (Accessed: May 2020)
- 11 Yolo County Board of Supervisors, Minutes 10/25/2016 Item 32. “PG-PA Organizational Structure.” Online at https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=&mt=BOS&get_month=10&get_year=2016&dsp=min&seq=1646 (Accessed: May 2020)

- 12 Yolo County, CA Code of Ordinances §2-5.117. Consolidation of Offices: Sheriff-Coroner and Public Administrator. Online at <https://codelibrary.amlegal.com/codes/yolocounty/latest/yolo/0-0-0-34109> (Accessed: May 2020)
- 13 Mary E. Khoshmashrab. Yolo County Internal Audit Reports 2018. “Special Review Report of the Public Guardian and Administrator.” Online at <https://www.yolocounty.org/home/showdocument?id=51135>; with “Attachment A- PA- Office of the Sheriff Response” <https://www.yolocounty.org/home/showdocument?id=51129> and “Attachment B- PG- Health and Human Services Agency Response” <https://www.yolocounty.org/home/showdocument?id=51131> (Accessed: May 2020)
- 14 Khoshmashrab, Special Review Report, Executive Summary, 1
- 15 Khoshmashrab, Special Review Report, Executive Summary, 8
- 16 Khoshmashrab, Special Review Report, 17
- 17 Yolo County Board of Supervisors, Agenda 2/11/2020 Item 25. “Public Guardian Presentation.” Online at https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=0&mt=BOS&get_month=2&get_year=2020&dsp=agm&seq=9219&rev=0&ag=3105&ln=83582&nseq=&nrev=&pseq=&prev=#ReturnTo83582 (Accessed: May 2020)
- 18 Yolo County Sheriff’s Office Policy Manual, Chapter 11 – Public Administrator. Online at https://www.yolocountysheriff.com/wp-content/uploads/2020/05/RELEASE_20200505_T153409_Yolo_County_Sheriff_s_Office_Policy_Manual.pdf (Accessed: May 2020)
- 19 Yolo County Board of Supervisors, Agenda 3/20/2018 Item 29. “Receive Sheriff/Coroner/Public Administrator Department Update.” Online at https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=0&mt=BOS&get_month=3&get_year=2018&dsp=agm&seq=7164&rev=0&ag=1893&ln=66244&nseq=&nrev=&pseq=&prev=#ReturnTo66244 (Accessed: May 2020)
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- 21 Yolo County 2010-2011 Budget. Online at <https://www.yolocounty.org/general-government/general-government-departments/county-administrator/budget-finance/2010-11-county-budget> (Accessed: May 2020)
- 22 Khoshmashrab, Executive Summary, 4: there was a toxic work environment “... which over the years left staff demoralized with some fleeing the county unable to work in the environment.”
- 23 Don Saylor, Yolo County Supervisor, 10/28/2016. “Transition Underway in Yolo County Public Guardian/Public Administrator Office”. Online at <https://www.donsaylor.org/single-post/2016/10/28/Transition-Underway-in-Yolo-County-Public-GuardianPublic-Administrator-Office> (Accessed: May 2020)
- 24 Yolo County Budget Documents 2003-2004 to 2019-2020. Online at <https://www.yolocounty.org/general-government/general-government-departments/county-administrator/budget-finance> (Accessed: May 2020)
- 25 Yolo County Annual Budget to Actual 2013-2014 to present. OpenGov (Financial Transparency). Online at <https://yolocounty.opengov.com/transparency#/5175/accountType=expenses&embed=n&breakdown>

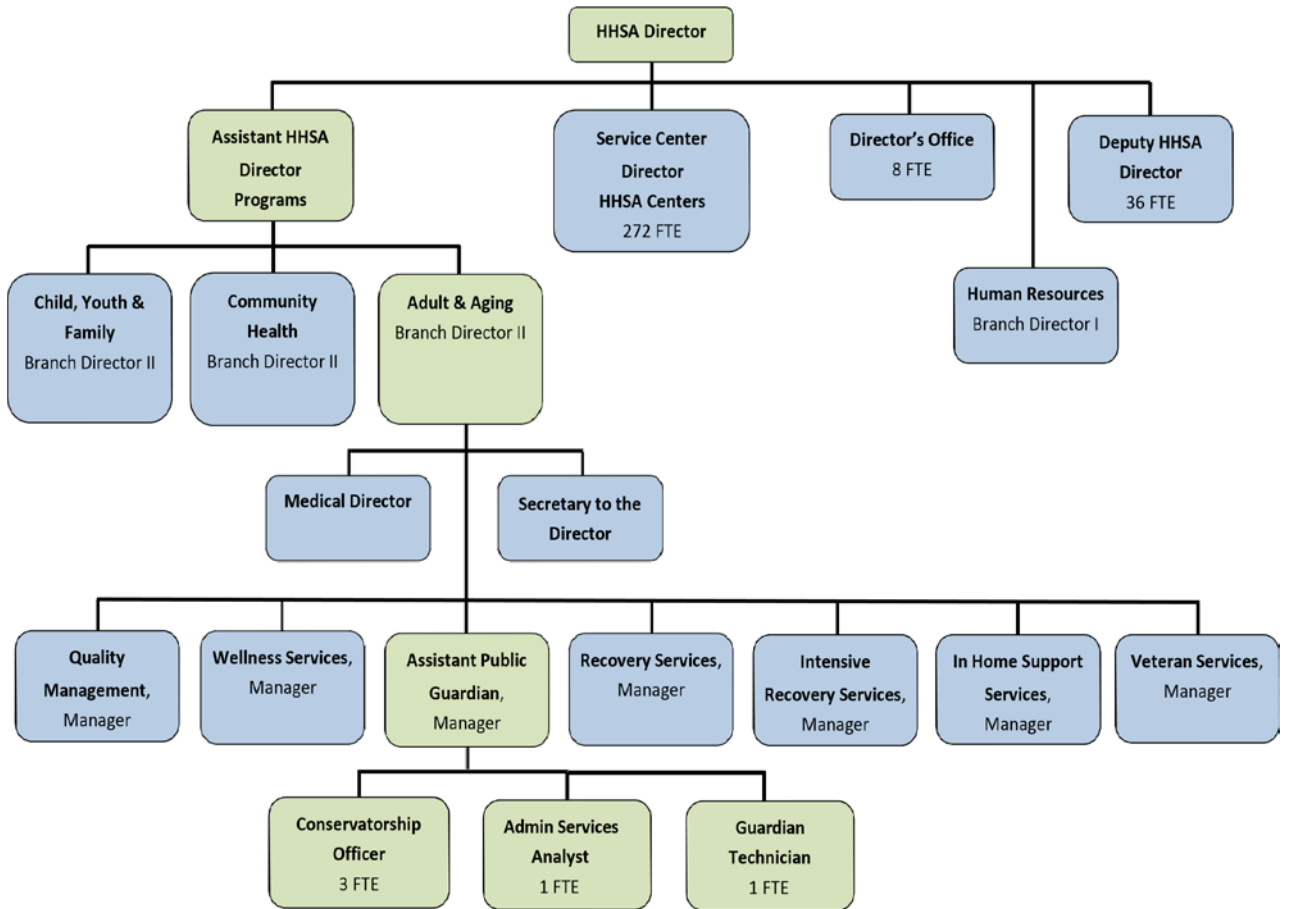
- [=0d44fac0-8358-451a-b3e8-19eaa988d1c9¤tYearAmount=cumulative¤tYearPeriod=years&graph=bar&legendSort=desc&proration=true&saved_view=null&selection=DDEA114E23820843989D1AB8399EBF35&projections=null&projectionType=null&highlighting=null&highlightingVariance=null&year=NaN&selectedDataSetIndex=null&fiscal_start=earliest&fiscal_end=latest](#) (Accessed: May 2020)
- 26 “CPI for All Urban Consumers.” U. S. Bureau of Labor Statistics, Series ID CUUR0000SA0. Online at <https://data.bls.gov/cpi/data.htm> (Accessed: January 30, 2020)
- 27 Yolo County Budget Documents 2003-2004 to 2005-2006
- 28 “Kathleen Sylvia, Public Guardian/Administrator” 2011 to 2017. Transparent California, online at <https://transparentcalifornia.com/salaries/search/?a=yolo-county&q=kathleen+sylvia&y=2011> through <https://transparentcalifornia.com/salaries/search/?a=yolo-county&q=kathleen+sylvia&y=2017> (Accessed: May 2020)
- 29 Yolo County Board of Supervisors, Agenda 12/11/2018 Item 52. “Public Guardian Update.” Online at https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=0&mt=BOS&get_month=12&get_year=2018&dsp=agm&seq=8157&rev=0&ag=1913&ln=75426&nseq=&nrev=&pseq=&prev=#ReturnTo875426 (Accessed: May 2020)
- 30 Yolo County Local Mental Health Board, Agenda 10/28/2019 Item 8. “Public Guardian Update.” Not currently available online
- 31 Yolo County Board of Supervisors, Agenda 2/11/2020 Item 25. “Public Guardian Presentation.” Online at https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=0&mt=BOS&get_month=2&get_year=2020&dsp=agm&seq=9219&rev=0&ag=3105&ln=83582&nseq=&nrev=&pseq=&prev=#ReturnTo83582 (Accessed: May 2020)
- 32 Yolo County Budget 2019-2020. Online at <https://www.yolocounty.org/general-government/general-government-departments/county-administrator/budget-finance/2019-20-county-budget> (Accessed: May 2020)
- 33 County of Yolo Administrative Policies and Procedures Manual. “Procedures for filling short term personnel needs.” “Employees hired as extra help can serve continuously for up to ninety (90) days. In no case may the employee work one thousand (1000) hours or more in a fiscal year.”
- 34 National Guardianship Association, “Standards of Practice.” Online at <https://www.guardianship.org/wp-content/uploads/2017/07/NGA-Standards-with-Summit-Revisions-2017.pdf> (Accessed: May 2020)
- 35 Office of the Governor. “Governor Newsom Delivers State of the State Address on Homelessness” 2/19/2020. Online at <https://www.gov.ca.gov/2020/02/19/governor-newsom-delivers-state-of-the-state-address-on-homelessness/> (Accessed: May 2020)
- 36 P. B. Teaster, E. F. Wood, S. A. Lawrence, and W. C. Schmidt, Jr. “Wards of the State: A National Study of Public Guardianship,” *Stetson Law Review* 37, 193-242 (2007). Online at <https://www.stetson.edu/law/lawreview/media/wards-of-the-state-a-national-study-of-public-guardianship.pdf> (Accessed: May 2020) (A more detailed version of this study with the same title is available online from other sources, including https://www.americanbar.org/content/dam/aba/administrative/law_aging/wardofstatefinal.pdf)
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- 38 State of Nebraska Judicial Branch, Office of Public Guardian. “2016 Report.” Online at <https://supremecourt.nebraska.gov/sites/default/files/opg-2016-report.pdf> (Accessed: May 2020)
- 39 Oregon Public Guardian: About Us. Online at <https://www.oltco.org/programs/opg-about-us> (Accessed: May 2020)
- 40 Washington State Legislature, Chapter 2.72 RCW. Online at <https://app.leg.wa.gov/RCW/default.aspx?cite=2.72> (Accessed: May 2020)
- 41 “Office of the Public Guardian: Caring for Those Who Can No Longer Care for Themselves,” A Report by the 2014-2015 Contra Costa Grand Jury. Online at <https://www.cc-courts.org/civil/docs/grandjury/1506%20Office%20of%20the%20Public%20Guardian.pdf> (Accessed: May 2020)
- 42 Khoshmashrab, Special Review Report. 5- 6

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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APPENDIX

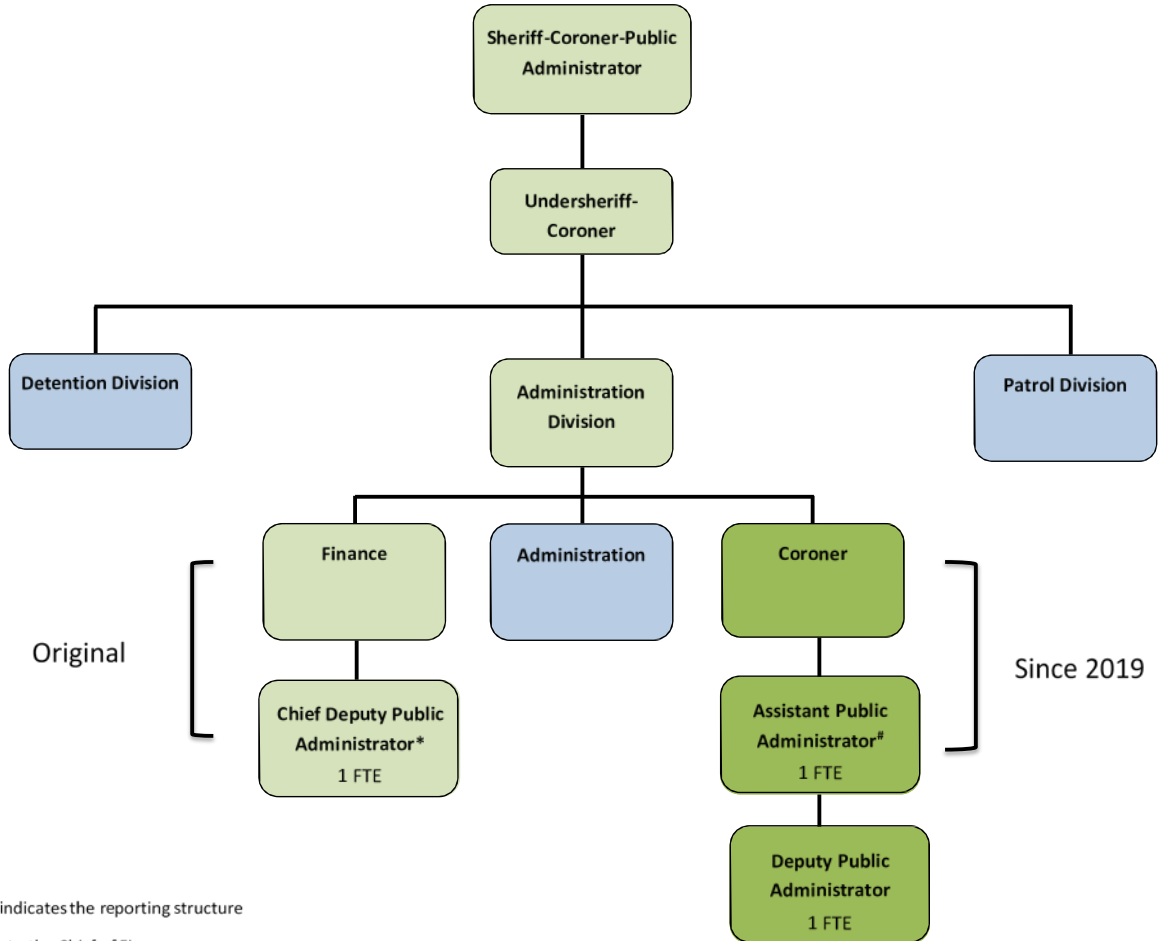
Public Guardian Integration with HHS



Note: Green indicates the reporting structure

(May 2020)

Public Administrator Integration with Sheriff's Office



Notes: Green indicates the reporting structure

* Reports to the Chief of Finance

Reports to Chief Deputy Coroner

(May 2020)

The Hawk, the Beetle, and the Budget: An Evaluation of the Approved Yolo Habitat Conservation Plan in its First 16 Months

SUMMARY

The Yolo Habitat Conservancy (YHC) is a Joint Powers Agency (JPA) established to develop and implement a regional Yolo Habitat Conservation Plan / Natural Community Conservation Plan (the Plan) for Yolo County, California.

The YHC developed the Plan, obtained state and federal approval, and currently is in the process of implementing the Plan. The development and approval of the Plan took many years and cost millions of dollars. The YHC was criticized by the 2015-2016 Yolo County Grand Jury (Grand Jury) for both the length of time it was taking to develop a plan and plan preparation costs incurred to that point.

The Plan provides a process for landowners and developers to comply with the requirements of federal and state endangered species law without having to work directly with federal and state conservation agencies. In exchange for obtaining the Plan's benefits, landowners and developers must pay a fee to the YHC for mitigation of the adverse effects of their development on the Plan's 12 covered species and their habitat.

The Plan was fully approved and permitted as of January 11, 2019. Implementation of the Plan has proceeded from that date. The 2019-2020 Grand Jury found that the Plan as developed and approved is well-constructed to accomplish its species and habitat conservation goals. The Plan provides a centralized process for the coordinated establishment of contiguous conservation land reserves in Yolo County, which effectively benefits the Plan's 12 covered species.

During the first 16 months of the Plan's implementation, mitigation fees received are significantly below the current fiscal year budget and far below the annualized projections in the 50-year model. Under the Plan, a portion of the mitigation fees received is allocated to the YHC's administrative costs. If revenue from mitigation fees are less than expected, fewer dollars are available to pay administrative expenses.

The JPA has three options for management of the Plan: (1) Partner with an existing contract plan operator that already has the expertise / experience needed to operate a successful plan; (2) Directly hire an executive director and staff as employees of the YHC to operate the Plan; (3) Contract with the Yolo County Administrator's Office to provide the administrative structure and services necessary to operate the Plan.

The Grand Jury found that if the Plan is to endure and prosper, the YHC requires leadership from a person with a business management skillset who has some knowledge of conservation, as opposed to a conservation-oriented person who has some knowledge

of business. As written, the Plan fails to anticipate a sound business and financial model for its ongoing success over its 50-year term. If the business model fails (due to poor management or insufficient revenue), the Plan's conservation objectives will not be accomplished.

The Grand Jury found that the future survival of the Plan depends upon the YHC Board of Directors' ability to limit its administrative expenses to match that portion of its revenue allocated to administration staff size and composition (a balance of YHC staff and consultants). The availability of backup funding from the cities and county in the JPA is necessary for the Plan to survive.

The Grand Jury found that a key component of a sound business model for the YHC includes a businessperson to act as executive director. An executive director's daily responsibilities must focus on managing money, people, and risk. Such a person was not in place at the start of the Plan's implementation in January 2019. Currently, the YHC still does not have a clear strategy to have an executive director in place with that business skill set.

The Grand Jury recommends that the YHC Board of Directors immediately find a person, plan operator, or other entity with the business skills needed to manage and lead the Plan in the short-term as the interim executive director's contract expires in August 2020. In the longer term, the Board must identify the specific business qualifications and skill set required for an executive director or a plan operator to manage and lead the YHC. Further, the Board must match the YHC's staff size and composition (a balance of employees and consultants) with both its revenue and its conservation mission.

The Grand Jury further recommends that the YHC Board of Directors should evaluate how well the person, plan operator, or other entity chosen to manage and lead the YHC is serving the needs of the Plan and how well the Plan is serving Yolo County and the four cities that comprise the JPA. That evaluation should be made available to the public on the YHC website.

Finally, the Grand Jury recommends that the YHC Board of Directors and the member agencies of the JPA should evaluate whether the Plan would be best served by partnering with an existing plan operator, such as the Natomas Basin Conservancy.

On March 19, 2020 Governor Gavin Newsom issued Executive Order N-33-20, a statewide "stay home" order, in response to the COVID-19 pandemic. This investigation, the data gathered, and recommendations generated from it occurred prior to the COVID-19 pandemic and ensuing orders.

ACRONYMS / GLOSSARY

Carrying Capacity	The maximum population of a species that a given geographical area can support
Easement, Conservation Easement	A permanent agreement between a landowner and another entity that specifies what the landowner may or may not do with all or part of their owned lands
Fee Simple Title	Fee simple landowners hold title to real property in perpetuity, which includes the right to possess, use, and dispose of the land and any improvements.
HCP	Habitat Conservation Plan – a required part of an application for an Incidental Take Permit. An HCP may be developed either on a project-by-project basis or on a regional scale
Incidental Take Permit	A permit issued under the United States Endangered Species Act that allows a permittee to “take” an endangered / threatened species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful project. These permits are most commonly issued for construction, utility, transportation, and other infrastructure-related projects. Permittees must implement species-specific minimization and avoidance measures, and fully mitigate the impacts of the project.
JPA	Joint Powers Agency – a formal agreement among two or more public agencies to operate as a single unified organization to accomplish the agreement’s specified goal(s). In the case of the YHC, the public agencies that form the JPA are Yolo County and the Cities of Woodland, Davis, Winters, and West Sacramento.
Land Cover Fee	A fee charged to a developer who has applied to the Plan for an incidental take permit covering development that negatively impacts habitat and/or vegetation types critical to one or more covered species in the Plan.
Wetlands Fee	A fee charged to a developer wishing to develop land that is subject to seasonal or perennial flooding / ponding or possesses saturated soil conditions and supports predominantly water loving herbaceous plant species. This fee is in addition to the land cover fee.

Mitigation	Activities that compensate for negative impacts on endangered / threatened species and their habitat
NCCP	Natural Community Conservation Plan – the California state counterpart to the federal HCP; it provides a means of securing take authorization at the state level. The state requirements of an NCCP go beyond a federal HCP in that conservation actions must improve the overall condition of a species, whereas an HCP typically requires only an avoidance of a net adverse impact on a species. Unlike an HCP, an NCCP may only be applied on a regional scale.
Permittees	Yolo County and the Cities of Woodland, Davis, Winters, and West Sacramento. The YHC is also a permittee under the Plan.
SPE	Special Participating Entities – agencies or individuals not subject to the jurisdiction of the permittees but who undertake projects within Yolo County affecting listed species that require a take authorization from the U.S. Fish and Wildlife Service or California Department of Fish and Wildlife.
Take	Loss or potential loss of an endangered / threatened species or its habitat
The Plan	Yolo Habitat Conservation Plan / Natural Community Conservation Plan or YHCP / NCCP or the Yolo Habitat Conservation Plan
YHC	Yolo Habitat Conservancy

BACKGROUND

The 2015-2016 and the 2016-2017 Yolo County Grand Juries previously investigated the Yolo Habitat Conservancy (YHC). The 2015-2016 Grand Jury reported unauthorized and misappropriated spending, mismanagement, and a lack of oversight by the Joint Powers Agency (JPA). The 2015-2016 report was highly critical of the YHC for the length of time and the cost involved in creating a plan.

The 2016-2017 Grand Jury found the JPA's operation to be much improved and was satisfied that many of the previous problems had been eliminated.

The 2019-2020 Yolo County Grand Jury received multiple citizen complaints related to the YHC. The first of these was passed on to the current Grand Jury by the 2018-2019 Grand Jury. These complaints raised questions that justified another investigation.

California Penal Code section (§) 925a states that a grand jury may at any time examine the books and records of any incorporated city or JPA located within the county that empaneled the grand jury. The YHC is a JPA located primarily in Yolo County.

APPROACH

The Grand Jury used three primary methods for this investigation: background research; interviews of local government members, local agency members, Habitat Conservation Plan (HCP) knowledgeable individuals; and review of pertinent documentation, including budgets, contracts, audit reports, and the 2015-2016¹ and 2016-2017² Grand Jury Reports. Grand Jurors also attended several YHC Board of Directors meetings.

Additional documents and websites reviewed by the Grand Jury are as follows:

- Yolo Habitat Conservancy³
- California Department of Fish and Wildlife⁴
- United States Fish and Wildlife Service, Habitat Conservation Plans⁵
- Newspapers including The Sacramento Bee, The Davis Enterprise, The Winters Express, and The Woodland Daily Democrat
- Natomas Basin Conservancy⁶
- Independent audits of the YHC conducted by Maze & Associates, Accountancy Corporation⁷
- Responses to the 2015-2016 Yolo County Grand Jury Report⁸

DISCUSSION

Endangered / Threatened Species Conservation Philosophy

When the United States Congress passed the Endangered Species Act in 1973, it recognized that the country's rich natural heritage is of "esthetic, ecological, educational, recreational, and scientific value to our Nation and its people."⁹ It further expressed concern that many of our nation's native plants and animals were in danger of becoming extinct.

Some plants and animals present in Yolo County are listed by the United States Fish and Wildlife Service or the California Department of Fish and Wildlife as endangered or threatened.¹⁰ Once listed each is referred to as a "covered species" and each one and its habitat is protected.

When a building or land-use project is undertaken there are environmental effects of that activity that are incidental to but nevertheless result from that activity. Some of these

effects may impact endangered species and/or their habitat. For development or land-use projects to proceed, there must be a determination of whether there is an impact on one or more endangered species or their habitat. If a species or habitat is impacted by the development, an incidental take permit is required.

The incidental take permit recognizes that the developer or landowner may unintentionally harm one or more listed species or their habitat while completing proposed projects. In exchange for a permit and the incidental take of a species, landowners agree to compensate for the harm by pursuing specific management protections or mitigation activities for endangered and threatened species.

To obtain an incidental take permit the developer submits an application to the United States Fish and Wildlife Service. A required part of the application for this permit is a Habitat Conservation Plan (HCP). The HCP describes the anticipated species / habitat impacts, how those impacts will be minimized or mitigated, and how the HCP will be funded.

Usage of HCPs grew slowly until United States Fish and Wildlife Service implemented the “no surprises” policy in 1994.¹¹ This policy assured that the applicant would not incur additional costs or be required to take additional actions once the incidental take permit was issued, regardless of new biological or ecological findings.

A Natural Community Conservation Plan (NCCP) is California’s counterpart to the federal HCP. An NCCP provides a means of securing incidental take authorization at the state level. The primary objectives of the NCCP program are broader than a federal HCP. An NCCP seeks to promote the long-term recovery of covered species, protect habitat, diversity of species, and conserve natural communities on an ecosystem scale.

Regional plans, such as the one developed by the YHC, provide state and federal wildlife agency approved mitigation methods that will compensate for a development’s predicted negative impacts on habitat and/or one or more of a plan’s covered species. This regional process seeks to ensure conservation of endangered species and allows the landowner flexibility in conducting their land-related activities, with the assurance that they are complying with federal and state environmental requirements.

History of the YHC and the Development of the Plan (Yolo Habitat Conservation Plan / Natural Community Conservation Plan)

From 1993 through 2001, governmental entities within Yolo County undertook an extensive effort to produce an HCP. That effort failed in 2001 when no agreement was reached to adopt the draft HCP.

In 2002, Yolo County and the four incorporated cities, formed the Yolo Habitat Conservation Plan / Natural Community Conservation Plan Joint Powers Agency. That

Joint Powers Agency (JPA) decided to pursue a comprehensive conservation plan, a combined HCP / NCCP that would be larger in scope and scale and result in more comprehensive conservation outcomes.

In 2007, the Board of Directors changed the JPA's name to Yolo Natural Heritage Program. In 2012, the Yolo Natural Heritage Program was re-structured to improve the transparency and accountability of its entire operation. A 2010-2011 fiscal year audit found \$1.8 million in unauthorized and misappropriated spending. During further investigation, it was also determined that the agency, with little to no oversight, had been mismanaged. Prior to 2012, expenditures incurred toward development of a conservation plan were \$6.53 million. Although draft plans were prepared, no plan was finalized, adopted, or approved.

In 2014, the Board of Directors again changed the JPA's name, this time to the Yolo Habitat Conservancy (YHC). The YHC name was officially adopted as the name of the JPA when the First Amended JPA was signed on June 1, 2018.¹²

JPA members have equal standing within the JPA. The individual members have no obligation to make advances (loans to be repaid) or contributions (not required to be repaid) to the YHC and may withdraw at any time with 60 days' notice. The debts, liabilities, and obligations of the YHC belong to the YHC alone, not to any of the individual member agencies.

From the formation of the JPA to the approved and fully permitted plan, the Yolo Habitat Conservation Plan / Natural Community Conservation Plan (the Plan), took 17 years. In addition to the \$6.53 million expended prior to 2012, another \$4.9 million was spent from 2012 to final plan approval in early 2019.¹³

The Plan is a combined Habitat Conservation Plan (HCP)¹⁴ and Natural Community Conservation Plan (NCCP).¹⁵ The Plan is used by landowners and developers to comply with the requirements of federal and state endangered species laws. The Plan covers all of Yolo County, approximately 653,549 acres and an additional 1,174 acres along Putah Creek in Solano County. The goal of the YHC is to preserve, restore, and enhance habitat for endangered and threatened species in Yolo County while permitting development to proceed according to local land use plans.

The Plan, as approved, establishes a multi-species conservation program to mitigate the expected loss of wildlife habitat and incidental take of protected species that would result from land development. Development includes planned residential, industrial, commercial, mixed use, recreational and open space, and public / quasi-public land uses (roadways and bridges, schools, public parks, water, wastewater, energy generation and distribution, landfills, levees, airports, and other infrastructure).

In the absence of the Plan, the county, cities, developers, and agencies in Yolo County would be required to apply individually to state and federal wildlife agencies for an incidental take permit and to mitigate the impacts of their development in compliance with the federal Endangered Species Act, the California Endangered Species Act, and the California Environmental Quality Act. The required mitigation includes a report that evaluates the development activity's impact on covered species and their habitat, the proposed mitigation actions, locating appropriate replacement habitat, ensuring that those actions are taken, and all paid by the applicant.

With the Plan in place, the developer still applies to a city or county planning department but no longer deals directly with the state and federal agencies and no longer prepares an individualized mitigation plan. Instead, the YHC reviews the impact report prepared at the request of the developer and, if the report is acceptable, the YHC determines the mitigation actions to be taken and a mitigation fee to be paid by the developer. Once the fee is paid and the development is approved by one of the permittee's planning departments, the developer may start the project. The YHC is now responsible for carrying out the mitigation actions. The mitigation fee is generally payable before the grading permit is issued by a city or the county.

Added advantages of having the Plan are: the mitigation fees stay in Yolo County for purchase of easements within the county; the YHC can co-ordinate mitigation actions among multiple developments to benefit multiple species and produce larger scale conservation areas rather than individual and possibly unconnected conservation plots.

Without the Plan in place, mitigation would take place in a "one at a time" process for each impacted species and each development, with no coordination among developments. Replacement habitat could be located anywhere, not necessarily in Yolo County and are more likely to be disconnected small plots.

The Plan relies upon purchase of conservation easements on existing undeveloped land to compensate for the impact of development within Yolo County on covered species and their habitat. The Plan protects habitats and preserves cultivated land for agricultural purposes, although the easements will enhance these lands for covered species through crop restrictions and in some cases through adding hedgerows and other features to improve the cultivated land's habitat value. The easements do not restore agricultural land to its pre-agricultural state.

These conservation easements, along with any YHC-owned land, are what make up the Plan's land reserve. The easements and YHC-owned lands are key parts of the Plan to preserve and/or restore habitat for one or more of the threatened or endangered species. By coordinating the acquisition of easements over multiple development projects, the YHC seeks to ensure sufficient contiguous habitat for an impacted species, thereby increasing the likelihood that the species will survive and hopefully thrive. This land

reserve is established forever, and the Plan includes the funding of an endowment to pay for the monitoring, maintenance, and support of the reserve lands in perpetuity.

Under the Plan there are 12 covered species: Swainson's Hawk, White-tailed Kite, Valley Elderberry Longhorn Beetle, Palmate-bracted Birds-beak, Western Yellow-billed Cuckoo, California Tiger Salamander, Western Burrowing Owl, Western Pond Turtle, Least Bell's Vireo, Giant Garter Snake, Bank Swallow, and Tricolored Blackbird. The hawk and the beetle were the two species most frequently mentioned during this Grand Jury's interviews and research and are included in the title of this report.

Development within Yolo County, given its mainly rural agricultural character, is likely to impact one or more of these 12 species and their habitat. Some of the species covered by the Plan have adapted over time to use agricultural land as habitat. The Yolo County Plan thus became one of the first conservation plans in California to focus primarily on conserving habitat on working agricultural land.

In return for the incidental take permits, the YHC anticipates protecting over 33,000 acres of primarily agricultural land over the 50-year life of the Plan. The YHC purchases habitat conservation easements from willing landowners. These easements primarily prevent the landowners from converting their agricultural operations to orchards and vineyards since row crops and alfalfa provide better habitat for the species covered by the Plan.

The Hawk



The Swainson's Hawk was listed as a threatened species by the California Fish and Game Commission in 1983.¹⁶ It is not listed as a federally threatened or endangered species. Urban development within Yolo County has the potential to impact hawk habitat as does increased farm acreage dedicated to tree crops and vineyards (decreasing the hawk's foraging acreage).

The JPA's role in overseeing habitat mitigation for the Swainson's Hawk arose out of a 2002 Memorandum of Understanding between the JPA and the California Department of Fish and Wildlife. The Memorandum of Understanding established a process for land development activities to proceed during the development of the Plan as it now exists.

According to a report prepared in 2014,¹⁷ the Swainson's Hawk was at "carrying capacity" in Yolo County as of the time of the most recent nesting census survey in 2007. The hawk is only one of 12 "species of concern" listed in the Plan, which has led to questions as to why the hawk is still included in the Plan if Yolo County can support no increase in its population.

The habitat needs of several of the other covered species overlap significantly with the habitat needs of the hawk. Accordingly, the specific habitat requirements of several other covered species will be incorporated and met within the land reserve system components that provide Swainson's Hawk habitat.

Similarly, a question was raised in a complaint to the Grand Jury as to why "half" of the Plan's 50-year budget for a land reserve system is directed toward benefiting the hawk. The 50-year budget amount allocated to the land reserve is \$218 million, which is slightly more than 50 percent of the anticipated 50-year funding for the Plan.

No evidence was found to support a conclusion that there has been a specific budget dollar amount allocated for the benefit of any one of the 12 covered species. The land reserve system benefits many species included in the Plan, not just the hawk.

The Beetle



The Valley Elderberry Longhorn Beetle is listed as a federally threatened species, but it is not listed as threatened or endangered by the state. The beetle is found only in riparian areas of California's Central Valley. It is completely dependent on its host plant, the elderberry bush. This shrub is a component of riparian forests throughout the Central

Valley. The greatest historical threat to the beetle has been the elimination, loss, or modification of its habitat by urban, agricultural, or waterway developments that reduce or eliminate its host plants.¹⁸

Protection of the beetle under the Plan is accomplished through natural community restorations. During calendar year 2019, the YHC assisted three organizations – Yocha Dehe Wintun Nation, Granite Construction Company, and Spring Lake Development – with mitigation activities associated with transplanting 13 elderberry shrubs to the Woodland-Reiff site, a former gravel mine west of Woodland owned by Yolo County. Further natural community restoration involved the planting of elderberry seedlings for the future benefit of the beetle.

Since the approval of the Plan and its implementation in early 2019, fees collected for beetle impact mitigation have provided a major portion of the total fees collected to date. During the first six months of fiscal year 2020 (July 1 to December 31, 2019) mitigation fees related to the elderberry beetle and natural community restoration of elderberry bushes totaled \$189,390. Total mitigation fees collected in that period were \$211,543. Accordingly, 89.5% of mitigation fees collected during that six-month period were related to restoration of habitat for the beetle.

The Budget – Current Implementation of the Plan

The Plan was fully approved and permitted as of January 11, 2019. The Plan depends on mitigation fees, paid by developers and landowners, for 66% of its funding. Other revenue sources are local funding (10%), interest income (2%), and state and federal funding (21%) (see Appendix A).

The YHC projects revenue of approximately \$425 million over the 50-year life of the Plan, an average of \$8.12 million per year. This 50-year Plan would be primarily funded through mitigation fees on development projects (~\$282.5 million), with additional funding from local, state, and federal sources (~\$133 million) and other funding sources (~\$9.5 million).

The YHC allocates the mitigation fees it receives to the following cost categories:

- 50.8% Reserve System Establishment¹⁹
- 2.3% Plan Preparation²⁰
- 15.4% Management, Enhancement, Monitoring & Research²¹
- 14.8% Administration²²
- 14.2% Contingency²³
- 2.5% Post-permit Endowment Fund²⁴

The primary type of mitigation fee, described above, is the land cover fee. Developers with projects that affect wetlands are required to pay a wetland fee in addition to the land cover fee. The wetland fee is allocated separately for natural community restoration projects and management.

The YHC projects cost of approximately \$406 million over the 50-year term of the Plan (see Appendix B). Of that amount, \$218 million is allocated to establish a land reserve (habitat for species of concern). About \$68 million is budgeted for “restoring natural communities.”

During the first 16 months of the Plan’s implementation, the YHC’s administrative costs have been significantly higher than the portion of mitigation fees allocated to administration. During fiscal year 2019-2020 (beginning July 1, 2019), the YHC spent \$149,573 for administrative costs but has only allocated \$27,143 to administration from mitigation fees received (for period ending February 29, 2020).²⁵

Based on the total mitigation fees received in the 16 months since implementation began, a question exists as to whether there will be enough development in Yolo County over the life of the Plan to provide sufficient revenue for the Plan’s ongoing viability. In calendar year 2019, mitigation fee revenue collected was \$651,821. This compares to average anticipated mitigation fees of \$5.6 million per year.

The Plan acknowledges that the participants in the JPA are not expected to, nor are they required to, utilize local general funds for the Plan’s implementation in the event of funding shortfalls.²⁶ The YHC has obtained advances and contributions from the cities and the county in the past, and continued revenue shortfalls will result in future requests for similar non-mandatory advances and contributions.

Ongoing Management of the Plan

The executive director who led the YHC through the Plan’s development and approval process chose to step down upon final approval of the Plan. She continues to advise the YHC as a paid consultant. The YHC retained an interim executive director on a one-year contract, which is scheduled to end in August 2020. Two of the critical tasks of the interim director (for approval by the YHC Board of Directors) are developing a management structure and identifying personnel to administer the Plan.

During interviews conducted by the Grand Jury, interviewees agreed that an HCP / NCCP is best served when its executive director has experience as an accountant, a business manager, and an organizer of contract services. This means engaging an experienced business person whose skill set includes managing money, people, and risk. A critical responsibility for any HCP / NCCP executive director is risk management including financial, litigation, persons on reserve lands, and dangers to protected species.

A prospective director's interest in conservation can be considered, but actual conservation-related services (e.g. wildlife biology, restoration ecology) can be contracted as needed. Interviewees stated that based on their experience individuals whose primary skills are in the conservation area rarely have developed the necessary business skills to manage an HCP / NCCP. Being the executive director of such a plan requires business knowledge and skills far more often than conservation knowledge and skills.

Interviewees further stated that the attention of the YHC must now evolve from simply pursuing an environmental cause to managing a business to further that cause. Starting with the implementation of the Plan in January 2019, the role of the YHC changed from writing a plan to protect covered species and their habitat, to managing a business that is dependent on mitigation fee revenue to purchase and maintain property easements and land reserves.

Those interviewed by the Grand Jury, together with other sources, identified three administrative plan options:

1. Partner with a contract plan operator who already has the expertise / experience needed to operate a successful plan;
2. Hire as YHC employees an executive director and staff to operate the Plan; and,
3. Contract with the Yolo County Administrator's Office to provide an administrative structure to operate the Plan.

The Plan, as written and approved, assumed that the YHC would administer the Plan by hiring and managing its own staff in its own facilities. This assumption was made to ensure that the Plan did not understate the potential costs of staffing and administration.

Written into the Plan, however, was a recognition that the YHC could realize cost savings in administration by partnering with existing land management agencies that already have staff in place with the required qualifications and the infrastructure to hire and manage such a staff.²⁷

One example of a plan operator that administers multiple HCPs is the neighboring Natomas Basin Conservancy. This Conservancy operates two plans: the Natomas Basin Habitat Conservation Plan, and the Metro Air Park Habitat Conservation Plan. The Natomas Basin Conservancy owns or manages reserve lands in Sutter County that border on eastern Yolo County. It also shares a commonality of some species among the plans it currently operates and the YHC Plan.²⁸ The Natomas Basin Conservancy has 21 years of peer-reviewed, performance-based mitigation work. It has also gone through multiple litigation challenges and has earned the confidence of federal and state wildlife agencies.

A management proposal put forward to the YHC Board of Directors at its April 20, 2020 meeting included two potential options for executive leadership:²⁹

1. Hire a new executive director as permanent staff; or
2. Integrate YHC operations into the Office of the Yolo County Administrator with 20% of a Manager position and 50% of an Analyst position.

Currently, the Plan's management is budgeted to cost \$296,000 per year. The 2020-2021 fiscal year cost for Option 1 is projected at \$236,000 and for Option 2, \$158,000. Based on a 14.8% allocation of mitigation fees toward administration, Option 1 would require \$1.6 million in annual mitigation fees and Option 2 would require \$1.1 million in annual mitigation fees.

Mitigation fees received in fiscal year 2018-2019 (six months only) were \$440,278 and mitigation fees in the first eight months of fiscal year 2019-2020 (July to February) were \$384,888. These actual receipts of mitigation fees should be contrasted with the \$1.1 million to \$1.6 million needed during fiscal year 2020-2021 to fund Option 1 or Option 2. Further comparison can be made to the Plan's anticipated average mitigation fees of \$5.6 million per year (\$466,667 per month). Total mitigation funding over the 50-year term of the plan is \$282.4 million, which averages \$5.6 million per year (see Appendix A).

Implementation of the Plan is still in the startup phase. The YHC interim executive director publicly stated to the Board of Directors that the YHC currently has sufficient funds on hand to deal with administrative costs that exceed mitigation fee revenue allocated to administration.³⁰ The short timeframe since approval of the Plan provides insufficient data for the Grand Jury to determine whether this is a startup issue or a Plan structural problem that will need to be addressed by a Plan adjustment or amendment.

Special Participating Entities

A positive message heard during the Grand Jury's investigation was the extremely positive response to the Plan by Special Participating Entities (SPE). SPEs are non-participants in the development of the Plan, but willing users of the Plan's incidental take permit. Pacific Gas & Electric, Caltrans, and the Yocha Dehe Nation are examples of SPEs or potential SPEs. These SPEs have paid mitigation fees that have provided critically important support for the Plan since implementation began. In addition, the SPEs pay an extra fee intended to offset a portion of the Plan's preparation and approval costs.

In calendar year 2019, total mitigation fees received by the YHC were \$651,821. Of that amount, \$296,281 (45%), was received from SPEs. Reliance upon SPEs for funding the Plan is not certain over the life of the Plan.

Some SPEs who currently utilize the Plan's incidental take permit process may develop their own HCP. One such SPE, Pacific Gas & Electric, is seeking approval of a Multiple Region Operations and Maintenance Habitat Conservation Plan covering routine maintenance and minor construction projects on natural gas pipelines and electric transmission lines in 34 Northern California counties, including Yolo County.³¹ Pacific Gas & Electric has similar habitat conservation plans in place for its operations and maintenance work in the San Francisco Bay Area and San Joaquin Valley.

The Plan's Challenges

The Plan's future challenges include the cyclic nature of land development (with the associated variability in fee revenue). Interviewees indicated that the executive director must be an individual with financial analytical skills, with an interest in conservation, rather than a conservationist who will need to learn administration on the job. This individual will have the skills to adjust forecasting for the multiple boom and bust cycles in the economy over the 50-year life of the Plan. The YHC interim executive director reported to the Board of Directors in January 2020 that there were not many large development projects in the pipeline.

The durability and enforceability of easements in the very long term is another challenge to be faced by the YHC. Easement defense involves response to easement violations by subsequent property owners, neighboring landowners, and third-party trespassers as well as legal defense against claims by affected parties such as subsequent property owners and neighboring landowners.

Conservancy plan operators outside the YHC recognize that the YHC will likely need to retain lawyers to aggressively enforce its easements and lobbyists to engage in advocacy work if a government agency wants to change the nature of the land use on property where the YHC holds either a conservation easement or fee simple title. Those plan operators also recognize the need to engage staff or contractors to conduct inspections of easements and land held in fee simple title to ensure there are no encroachments or other impermissible use of the land.

The current grantor of an easement may be more than willing to work with the YHC and reap the monetary benefit of giving an easement, but issues may arise with subsequent landowners questioning the easements, particularly when they are receiving no financial benefit from the easement.

The appearance of the COVID-19 virus in early 2020 presents another challenge to the Plan. The Plan is funded from fees paid by developers and the virus's impact on development in Yolo County is as yet unknown. A down-turn in development means a decrease in fee income for the Plan, presenting additional financial challenges.

FINDINGS

- F1. The YHC is a business attached to a cause (habitat and species conservation). If the business model fails (due to poor management or insufficient revenue), the Plan's conservation objectives will not be accomplished.
- F2. The Plan as developed and approved is well constructed to accomplish its species and habitat conservation goals.
- F3. The Plan provides a centralized process for the mitigation of covered species / habitat impacts, for obtaining incidental take permits, and for the coordinated establishment of contiguous conservation lands in Yolo County that effectively benefit the Plan's 12 covered species.
- F4. The Swainson's Hawk is the covered species most associated with agricultural landscapes in Yolo County. Developing a workable conservation strategy for the hawk balances maintaining an economically viable agricultural landscape with protecting foraging and nesting habitats.
- F5. The Plan as developed by the YHC focused primarily on its conservation goals but failed to anticipate a sound financial model for its implementation and its ongoing success over a 50-year term.
- F6. For the Plan to endure and prosper, the YHC requires leadership from a person with a business management skill set who has some knowledge of conservation, as opposed to a conservation-oriented person who has some knowledge of business.
- F7. The YHC Board of Directors has not developed a clear strategy that includes having an executive director in place whose daily responsibilities focus on managing money, people, and risk.
- F8. The future survival of the Plan depends upon the YHC Board of Directors' ability to limit its administrative expenses to match that portion of its revenue allocated to administration staff size and composition (a balance of YHC staff and consultants).
- F9. The Plan provides the YHC Board of Directors with the authority to partner with an existing land management agency (a plan operator) such as the Natomas Basin Conservancy that has an existing staff with the required qualifications and infrastructure to manage the Plan and to hire and manage the necessary environmental consultants.
- F10. The YHC Board of Directors has the authority to approve integration of YHC operations into the Office of the Yolo County Administrator with that office providing 20% of a manager position and 50% of an analyst position.
- F11. The availability of backup funding from JPA members is necessary for the Plan to survive.

RECOMMENDATIONS

- R1. By October 1, 2020, the YHC Board of Directors should find a person, plan operator, or other entity with the business skills needed to manage and lead the Plan in the short term as the interim executive director's contract expires.
- R2. By December 31, 2020, the YHC Board of Directors should identify the specific business qualifications and skill sets required for an executive director or a plan operator to manage and lead the YHC in the long term.
- R3. By December 31, 2020, the YHC Board of Directors should do an analysis to match the YHC's staff size and composition (a balance of employees and consultants) with both its revenue and its conservation mission.
- R4. By March 31, 2021, the YHC Board of Directors should evaluate how well the person, plan operator, or other entity chosen to manage and lead the YHC is serving the needs of the Plan and how well the Plan is serving Yolo County and the four cities that comprise the JPA.
- R5. By April 15, 2021, the evaluation of the person, plan operator, or other entity chosen to manage and lead the YHC should be made available to the public on the YHC website.
- R6. By June 30, 2021, the YHC Board of Directors and the member agencies of the JPA should evaluate whether the Plan would be best served by partnering with an existing plan operator, such as the Natomas Basin Conservancy.

REQUIRED RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- YHC Board of Directors – F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11; R1, R2, R3, R4, R5, R6
- Yolo County Board of Supervisors – F1, F2, F4, F5, F6, F7, F8, F9, F10, F11; R2, R3, R4, R6
- City Council, City of Davis – F1, F2, F4, F5, F6, F7, F8, F9, F10, F11; R2, R3, R4, R6
- City Council, City of West Sacramento – F1, F2, F4, F5, F6, F7, F8, F9, F10, F11; R2, R3, R4, R6

- City Council, City of Winters – F1, F2, F4, F5, F6, F7, F8, F9, F10, F11; R2, R3, R4, R6
- City Council, City of Woodland – F1, F2, F4, F5, F6, F7, F8, F9, F10, F11; R2, R3, R4, R6

Note: The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

INVITED RESPONSES

From the following individual (this response is requested from the person managing the daily operations of the Plan at the time the response is due):

- YHC Executive Director / Yolo County Administrator – F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11; R2, R3, R4, R5, R6

APPENDIX A

Yolo HCP / NCCP 50-Year Funding Plan (amounts stated in 2017 Dollars with no adjustment for inflation)³²
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	Amount (In 2017 Dollars)	Percent of Total Funding
Mitigation Funding		
Land Cover Fee	\$ 215,882,000	51%
Wetland Fee	\$ 66,526,000	16%
Subtotal Mitigation Funding	\$ 282,408,000	66%
Conservation Funding		
Local Sources		
Davis Open Space Program	\$ 5,146,000	1%
Cache Creek Area Plan	\$ 16,666,000	4%
Lower Putah Creek	\$ 10,437,000	2%
Local Foundations & Other Non-Profits	\$ 10,000,000	2%
Subtotal Local Sources	\$ 42,249,000	10%
State & Federal Sources	\$ 72,569,000	17%
Other Local, State & Federal Sources	\$ 18,287,000	4%
Subtotal Conservation Funding	\$ 133,105,000	31%
Other Funding		
Endowment Fund Investment Income	\$ 8,149,000	2%
Operational Fund Interest Income	\$ 1,300,000	<1%
Subtotal Other Funding	\$ 9,449,000	2%
Total YHC Funding	\$ 424,962,000	100%
YHC 50 Year Costs		
Plan Implementation (50-Yr. Permit Term) – See Appendix A (above)	\$ 406,187,000	96%
Endowment Fund Balance, Yr. 50	\$ 13,699,000	3%
Plan Preparation	\$ 5,076,000	1%
Total Yolo HCP/NCCP Costs	\$ 424,962,000	100%
YHC Net Revenue Surplus / (Deficit)	Zero	

APPENDIX B

**Yolo HCP / NCCP Implementation Cost Summary by Cost Category, 50-Year Permit Term
 (rounded to nearest thousand; amounts stated in 2017 Dollars with no adjustment for inflation)³³**

	Establish Reserve System	Restore Natural Communities	Manage & Enhance Easement & Pre-Permit Reserve Lands	Monitoring, Research & Scientific Review	Administration of Plan	Local Partner Activities in Riparian Corridors	Contingency	5 Year Total
Years 1-5	\$24,531,000	\$7,738,000	\$1,405,000	\$1,240,000	\$3,590,000	\$2,152,000	\$3,267,000	\$43,923,000
Years 6-10	\$24,270,000	\$7,944,000	\$1,478,000	\$1,415,000	\$3,598,000	\$2,152,000	\$3,287,000	\$44,144,000
Years 11-15	\$24,270,000	\$8,086,000	\$1,352,000	\$1,642,000	\$3,454,000	\$2,152,000	\$3,297,000	\$44,253,000
Years 16-20	\$24,270,000	\$8,204,000	\$1,417,000	\$1,689,000	\$3,462,000	\$2,152,000	\$3,321,000	\$44,515,000
Years 21-25	\$24,270,000	\$8,292,000	\$1,365,000	\$1,917,000	\$3,567,000	\$2,152,000	\$3,358,000	\$44,921,000
Years 26-30	\$24,270,000	\$8,398,000	\$1,431,000	\$1,953,000	\$3,429,000	\$2,152,000	\$3,365,000	\$44,998,000
Years 31-35	\$24,270,000	\$8,552,000	\$1,497,000	\$2,181,000	\$3,437,000	\$2,152,000	\$3,410,000	\$45,499,000
Years 36-40	\$24,099,000	\$8,693,000	\$1,563,000	\$2,408,000	\$3,347,000	\$2,152,000	\$3,445,000	\$45,707,000
Years 41-45	\$24,126,000	\$1,073,000	\$1,634,000	\$2,375,000	\$3,209,000	\$2,152,000	\$3,225,000	\$37,794,000
Years 46-50	\$0	\$1,169,000	\$1,327,000	\$1,982,000	\$3,053,000	\$2,152,000	\$753,000	\$10,436,000
50 Year Total	\$218,376,000	\$68,149,000	\$14,469,000	\$18,802,000	\$34,146,000	\$21,520,000	\$30,728,000	\$406,190,000
Average Annual Cost	\$4,367,520	\$1,363,000	\$289,360	\$376,040	\$682,900	\$430,400	\$614,540	\$8,124,000

ENDNOTES

- 1 2015-2016 Grand Jury Report <https://www.yolocounty.org/home/showdocument?id=35630> (Accessed: June 12, 2020)
- 2 2016-2017 Grand Jury Report, pages 21-25
<https://www.yolocounty.org/home/showdocument?id=43338> (Accessed: June 12, 2020)
- 3 YHC website, <https://www.yolohabitatconservancy.org> (Accessed: June 12, 2020)
- 4 U.S. Fish and Wildlife Service website, <https://www.wildlife.ca.gov> (Accessed: June 12, 2020)
- 5 U.S. Fish and Wildlife Service, HCPs, <https://www.fws.gov/endangered/esa-library/pdf/hcp.pdf> (Accessed: June 12, 2020)
- 6 Natomas Basin Conservancy website, <http://www.natomasbasin.org> (Accessed: June 12, 2020)
- 7 Independent audit of YHC, <https://www.yolohabitatconservancy.org/copy-of-documents-1> (Accessed: June 12, 2020)
- 8 Required Responses to 2015-2016 Grand Jury Report <https://www.yolocounty.org/residents/grand-jury/yolo-county-grand-jury-reports/responses-to-2015-2016-grand-jury-report> (Accessed: June 12, 2020)
- 9 Endangered Species Act, 16 U.S.C. §1531(a)(3) <https://www.govinfo.gov/content/pkg/USCODE-2012-title16/html/USCODE-2012-title16-chap35-sec1531.htm> (Accessed: June 12, 2020)
- 10 YHC website <https://www.yolohabitatconservancy.org/documents> Final Yolo HCP/NCCP, Appendix C. (Accessed: June 12, 2020)
- 11 Although the “no surprises” policy was initially announced in 1984, it was not adopted as a regulation until 1997. See 50 C.F.R. (Code of Federal Regulations) §§ 17.22(b)(5) and 17.32(b)(5). The “no surprises” regulations apply only to incidental take permits where the conservation plan is being properly implemented and apply only with respect to species covered by the conservation plan. Pursuant to the “no surprises” regulation, the U.S. Fish and Wildlife Service shall not require permittees to provide additional land, water or other natural resources, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level provided for under the Yolo HCP / NCCP Plan.
- 12 YHC Founding Documents <https://www.yolohabitatconservancy.org/about> (Accessed: June 12, 2020)
- 13 The YHC paid for plan development out of its General Fund. Annual audits of the YHC are available at its website <https://www.yolohabitatconservancy.org/copy-of-documents-1> (Accessed: June 12, 2020). In the annual audits, reference “Expenditures” in the “Statement of Revenues, Expenditures, and Changes in Fund Balance” within each year’s audit. Using these data sources, the following table displays the year by year expenditures for plan development:

Year	General Fund Expenditures for Plan Development
a. 2012-13	\$862,407
b. 2013-14	\$693,634
c. 2014-15	\$949,043
d. 2015-16	\$923,271
e. 2016-17	\$705,028
f. 2017-18	\$807,691
g. TOTAL	\$4,941,074

- 14 An HCP is a supporting document for both Federal Endangered Species Act § 10(a)(1)(B) and California Fish and Game Code § 2081 permit applications. Section 10(a)(1)(B) of the federal Endangered Species Act allows incidental take of endangered or threatened species subject to its permit requirements.
- 15 Section 2081 of the California Fish and Game Code allows the California Department of Fish and Wildlife to enter into management agreements that allow activities which may otherwise result in habitat loss or take of individuals of a state listed species.
- 16 California Department of Fish and Wildlife website, <https://wildlife.ca.gov/Conservation/SSC/Birds> Collaborative website on CA Bird Species of Special Concern. (Accessed: June 12, 2020)
- 17 Estep, J. A. (March 20, 2015). A Proposed Conservation Strategy for the Swainson's Hawk in Yolo County. Prepared for the Yolo Natural Heritage Program, Woodland, CA. A copy of this report is available on the YHC website: https://627e9b84-c712-4ba2-b935-ad28eb619bc6.filesusr.com/ugd/8f41bd_2d607d3d589c4855af8aefada3677216.pdf (Accessed: June 12, 2020)
- 18 Extensive destruction of California's Central Valley riparian forests has occurred during the last 150 years due to agricultural and urban development. Riparian forests in the Central Valley have declined by as much as 89% during that time. The primary threats to the survival of the beetle include loss and alteration of habitat by agricultural conversion; inappropriate grazing; levee construction, stream and river channelization, removal of riparian vegetation and rip-rapping of shoreline; and recreational, industrial, and urban development.
https://www.fws.gov/sacramento/es_species/Accounts/Invertebrates/valley_elderberry_longhorn_beetle/ (Accessed: June 12, 2020)
- 19 Funds identified for the establishment of the land reserve system are used to purchase conservation easements and land acquisition in fee simple, with land title held by the YHC.
- 20 Funds identified for plan preparation are to reimburse member agencies and the Swainson's Hawk Mitigation Trust Act (MTA) for plan preparation costs. From 2012 through final approval of the Plan in 2018, the YHC estimated that the member agencies spent \$1.5 million on preparation of the Plan. The YHC also spent \$3.58 million from the MTA on plan preparation. These amounts exclude all grants and other outside funding applied to plan preparation costs. The YHC estimated that total reimbursable plan preparation costs are \$5.1 million.
- 21 Funds identified for management, enhancement, monitoring, and research anticipate that contractors will complete most of the fieldwork, data collection, analysis, and reporting. YHC staff members will manage the contractors and provide oversight for the fieldwork and targeted studies. These funds are not used for the cost of monitoring restoration projects in the "Restore Natural Communities" cost category. Identifying these costs separately ensures that all restoration costs are reflected in one cost category and aids in the calculation of fees for wetland effects.
- 22 Funds for administration cover expenses for YHC staff, office space, supplies, and professional services. Plan administration costs to carry out the Plan's requirements are estimated to average \$683,000 annually during the permit term (Table 8-1, Yolo HCP / NCCP Implementation Cost Summary by Cost Category, 50-year Permit Term). Some Plan administration costs will be necessary beyond the permit term.
- 23 Contingency funds are to be used on a short-term basis to offset any program costs that are higher than predicted. Contingency funds could be used for acquiring materials and/or data that were not forecast in the budgets; adding temporary staff members or consulting services to address new issues; acquiring land that is more expensive than planned or property that generates extraordinary transaction costs;

- applying more expensive management techniques in response to adaptive management needs and conducting additional monitoring; and addressing unforeseen administrative or management costs.
- 24 Contributions to a permanent endowment fund recognize that some of the responsibilities and costs of the Plan will continue in perpetuity. For example, management must continue beyond the permit term to ensure that the reserve system retains the biological values established during the permit term. Similarly, limited species biological monitoring must continue beyond the permit term to ensure that management actions are effective. Overall, annual costs beyond the permit term are estimated to be about 21% of average annual costs in the final years of the permit term. An endowment fund of approximately \$13.7 million in 2017 dollars will be needed at the end of the permit term to generate average real returns adequate for funding \$444,000 in post-permit term reserve system management and monitoring, including accounting for inflation after the permit term.
 - 25 Total administrative expenses for fiscal year 2019-2020 (through February 29, 2020) were \$233,573. The net amount of \$149,573 was after the expenditure of \$84,000 as required matching funds for three current grants, as well as work to permit projects that have not yet paid fees. The grants, if awarded, will bring in over \$500,000 in funding to the YHC to assist with the extra work associated with setting up a permanent entity to manage the permits and the land reserve system.
 - 26 YHCP / NCCP, chapter 8, page 8-30 https://627e9b84-c712-4ba2-b935-d28eb619bc6.filesusr.com/ugd/8f41bd_f91d5475af24489f9e8c343869e8968f.pdf (Accessed: June 12, 2020)
 - 27 Yolo HCP / NCCP, Chapter 8: Costs and Funding, Section 8.3.5: Plan Administration, page 8-23 https://627e9b84-c712-4ba2-b935-d28eb619bc6.filesusr.com/ugd/8f41bd_f91d5475af24489f9e8c343869e8968f.pdf (Accessed: June 12, 2020)
 - 28 The YHC has 8 of its 12 species in common with the Natomas Basin Conservancy: the Swainson's Hawk, the Valley Longhorn Elderberry Beetle, the California Tiger Salamander, the Western Burrowing Owl, the Western Pond Turtle, the Giant Garter Snake, the Bank Swallow, and the Tricolored Blackbird.
 - 29 YHC Board of Directors meeting materials for April 20, 2020 https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=0&mt=JPA&get_month=4&get_year=2020&dsp=agm&seq=9803&rev=0&ag=3196&ln=87932&nseq=&nrev=&pseq=9802&prev=0#ReturnTo87932 (Accessed: June 12, 2020)
 - 30 YHC Board of Directors meeting materials for January 27, 2020 https://yoloagenda.yolocounty.org/agenda_publish.cfm?id=0&mt=JPA&get_month=1&get_year=2020&dsp=min&seq=3161 (Accessed: June 12, 2020)
 - 31 News release and notice at <https://www.fws.gov/sacramento/outreach/2020/02-28-PGE/> (Accessed: June 12, 2020) and <https://www.federalregister.gov/documents/2020/03/02/2020-04224/endangered-and-threatened-species-receipt-of-incident-take-permit-application-and-habitat> (Accessed: June 12, 2020)
 - 32 YHCP / NCCP, chapter 8, page 8-30 https://627e9b84-c712-4ba2-b935-d28eb619bc6.filesusr.com/ugd/8f41bd_f91d5475af24489f9e8c343869e8968f.pdf (Accessed: June 12, 2020)
 - 33 Ibid

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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Election Security in Yolo County

SUMMARY

Ensuring the integrity and security of the election process is basic to a functioning democracy. Citizens want to have confidence in the accuracy and fairness of their election system as well as in the officials who manage them. Although federal, state, and county governments all play a role in secure elections, the Yolo County Grand Jury (Grand Jury) focused this investigation on the election security of Yolo County.

The Grand Jury examined four general categories of election security: (1) the physical security of the ballot, which includes the chain of custody from the polling place or post office to the central count location, through tabulation, and then to archive; (2) the software security of the vendor programs used in election machines for voting, scanning ballots, and tabulation; (3) cybersecurity actions to prevent infiltration into the county system and cybersecurity training for employees; and (4) emergency and contingency planning that prepares election staff with specific emergency responses to ensure voting is not disrupted.

The Grand Jury found that the quality, security, and transparency of work performed by the Yolo Elections Office met the requirements of California Elections codes. Furthermore, the Yolo Elections Office ensured that the public had many opportunities to observe the election process in action by advertising those opportunities by way of multiple platforms. The office went beyond minimum requirements to increase voting opportunities for Vote by Mail drop-offs and same day voter registration. The Grand Jury also found that the Yolo Elections staff interfaced and trained with a variety of local, state, and federal election and security entities and organizations to improve County election security and cybersecurity.

Prior to each election, a county must submit an Elections Emergency Response plan to the Secretary of State's Office. The Grand Jury found that the plan submitted by the Yolo Elections Office for the March 2020 Presidential Primary election was a mix of specific actions and generic statements. Also, the plan did not include important emergency procedures that the Yolo Elections Office had already put in place. The Grand Jury could find no disaster contingency planning in either a Yolo County manual or an election emergency plan that accounted for a potential county-wide disruption of the election process.

Based on these findings, the Grand Jury developed three recommendations: (1) the Yolo Elections Response plan should describe what contingency planning the office has in place and what employees *will* do, as opposed to the generic instructions in the current plan; (2) the Yolo Elections Response plan should include county-wide natural disaster contingencies to combat election disruption leading up to, and through to Election Day;

and (3) Yolo County should include disaster contingency planning for a county-wide disruption of the election process in an existing county emergency document that is accessible to the public online.

On March 19, 2020 Governor Gavin Newsom issued Executive Order N-33-20, a statewide “stay home” order, in response to the COVID-19 pandemic. This investigation, the data gathered, and recommendations generated from it occurred prior to the COVID-19 pandemic and ensuing orders.

ACRONYMS / GLOSSARY

Ballot Sorting Machine	In Yolo County, this is the Agilis Ballot Sorting System by Runbeck. The machine sorts Vote by Mail ballots, verifies voter signatures for accuracy and full audit trail, while inside a secure elections facility.
Canvass	Audit or reconciliation of every ballot cast to ensure that every valid vote cast is included in the election totals
Conditional Voter Registration	Also known as Same Day Voter Registration to include Californians who missed the Voter Registration deadline. Conditional ballots are counted after the county elections office has verified the information.
Count Tabulator System	In Yolo County, the Hart Verity count tabulator system is used (Hart InterCivic, Inc.) This system takes the scanned ballot information and counts the votes. That tally is then sent to the Secretary of State’s Office.
DHS	Department of Homeland Security
EAP	Election Administration Plan – Required by the State of California for Voters Choice Act election model counties. Plan includes strategies for voter outreach, voters with accessibility issues, minority languages and emergency preparedness on and around Election Day
HAVA	Help America Vote Act – A 2002 federal act which provides funds for states to meet new election standards
IT	Information Technology
MS-ISAC	Multi-State Information Sharing and Analysis Center

Provisional Ballot	If a voter's name is not found on the polling place list, they may vote provisionally. Provisional ballots are counted after the county elections office has confirmed the voter is registered to vote and has not already voted in that election.
Scanning Machine	In Yolo County, the scanning system is comprised of five Canon DR-G1130 scanning machines divided into groups of two and three. Both groups have their own Hart Verity Central Client and Hart Verity Central Server configurations (by Hart InterCivic, Inc.). This system scans each ballot in preparation for vote count tabulation.
Submission Date	The date by which a county must submit their election emergency plan to the Secretary of State's Office.
USB Drive	Thumb-sized, removable, rewritable device used for data storage that includes a flash memory and an integral Universal Serial Bus (USB) interface.
USB Security Key	USB-type device which works in addition to passwords and/or credentials as a two-factor authentication method
VBM	Vote by Mail ballot
VCA	Voters Choice Act – A 2016 California law that created a new optional election model for counties in the form of vote centers and mail-in ballots, intended to increase voter participation

BACKGROUND

In the United States, there are two state election systems used to select presidential nominees – caucuses and primaries. Caucuses were once the most common method for choosing presidential nominees. By the 2020 nominee season however, only five states and three United States territories used the caucus system to select a presidential nominee. Caucuses are unique in that participants openly show support for candidates. Voting is done in-person and by a show of hands or by breaking into groups. Caucuses are organized and paid for by a specific political party.

Primary elections (primaries) on the other hand, are a state-wide voting process in which voters cast secret ballots for their preferred candidate. Primaries are organized and paid for by state government, not the political party.

California is a primary state and has made three specific changes in the last few years that: (1) affect the impact of the California Presidential Primary election in the national tally; (2) improve voting flexibility and convenience; and (3) decrease the vulnerability of the election process to potential abuse.

First, the 2017 California Senate Bill 568 moved California's Presidential Primary election from June to the first Tuesday in March. Thus, California became part of "Super Tuesday," joining 13 other states and one United States territory. California is the most populous state in the United States. Moving the primary to earlier in the voting calendar allowed for a larger impact on the process.

Second, although all registered voters in California were able to cast their vote on the March 3rd primary date, how that vote is cast was determined by the county in which voters reside. Until 2016, all 58 counties had systems that included a Vote by Mail (VBM) option and in-person voting at local polling places. In September 2016 California passed the Voter's Choice Act (VCA), or California Senate Bill 450.¹ If implemented by a county, this law requires all registered voters to receive a VBM ballot one month prior to the election. That ballot can be returned in one of three ways: by mail, dropped into one of many secured drop boxes, or deposited in-person at a vote center (replacing polling stations). Vote centers would be open either four or 11 days preceding and including Election Day, and citizens could register to vote at a center as well.

Overall, election officials hope that the VCA model will increase voter participation by allowing voters to choose how, when, and where to cast their ballot. The law is optional and allows the 58 California counties to decide if or when they will transition to this new election model. In 2018, five counties pioneered the VCA model (Madera, Napa, Nevada, Sacramento, and San Mateo) and in the March 2020 Presidential Primary election, a total of 15 California counties used the new model. Yolo County does not currently participate in the VCA.

Third, in 2019 California's Secretary of State ordered all 58 voting districts (counties) to upgrade their outdated voting machines and systems by the March 2020 Presidential Primary. The new, upgraded machines decrease the vulnerability of the election system and increase the security of voting. All new voting systems must generate a paper record of every vote. In addition, California does not permit any voting machine or vote tabulator to be connected to the internet.

California passed two laws in 2018 that targeted election security. First, Assembly Bill 3075 established the Office of Election Cybersecurity to coordinate efforts between the Secretary of State and local election officials for the purpose of reducing the possibility and severity of election cyber-attacks. This bill also served to monitor and counteract false or misleading information regarding the electoral process that is published online or on other platforms. False information may suppress voter participation or cause confusion

and disruption of the orderly and secure administration of elections. Second, Assembly Bill 1678 required the Secretary of State to adopt regulations for best practices on the storage and security of voter registration materials.

The Federal Government also has responsibilities in election security. In 2002, the Help America Vote Act (HAVA) was passed by Congress to make reforms to the nation's voting process. This law provides needed funds for states to meet new standards, replace aging voting systems, and improve election administrations. HAVA established the United States Election Assistance Commission to assist states regarding HAVA compliance and distribute HAVA funds.

In January 2017, the Department of Homeland Security (DHS) designated election infrastructure as part of the nation's "critical infrastructure."² This designation provided local governments greater access to DHS information and security resources on the topics of cybersecurity and election security.

APPROACH

During this investigation, the Grand Jury interviewed multiple witnesses in order to understand election security and election procedure in Yolo County. Documents regarding election systems (California counties, state, and federal), election security (local, state, and federal), and election policies (Yolo County and other California counties) were reviewed.

The Grand Jury toured the Yolo Elections Office prior to the March 2020 Presidential Primary election. This tour included the count room, scanners, tabulation machine, and secure ballot and machinery storage. In addition, Grand Jury members were present on Election night in the Yolo Elections Office to observe procedures and operations in progress from polling place to the actual vote tally.

DISCUSSION

Ensuring the integrity and security of the election process is basic to a functioning democracy. Citizens want to have confidence in the accuracy and fairness of their election system as well as in the officials who manage them. Although federal, state, and county governments all play a role in secure elections, this report focuses on the election security of Yolo County.

In California, all federal, state, and countywide elections are conducted at the county level under the coordination and supervision of the Secretary of State.³ Each county has a local election administrator. In Yolo County, this official is the Assessor / Clerk-Recorder / Registrar of Voters. The Registrar of Voters heads the Yolo Elections Office which is

responsible for conducting local and statewide elections, registering citizens to vote, and voter outreach. Each state has a chief elections official. In California, this is the Secretary of State who is responsible for maintaining and safeguarding state voter databases.

Election security can be broken into four general categories:

- Physical security of the ballot includes the chain of custody from the polling place or post office to the central count location, through tabulation, and then to archive
- Software security of the vendor programs – used in election machines for voting, scanning ballots, and tabulation
- Cybersecurity actions to prevent infiltration into the county system and cybersecurity training for employees (The California Statewide Voters Registration database and its security was not examined in this report.)
- Emergency and contingency planning – prepares election staff with specific emergency responses to ensure voting is not disrupted

The April 8, 2020 report of the Yolo County canvass period (election audit) and certification of the March 2020 Presidential Primary election stated that there are 117,181 registered voters in the County. Therefore, out of a county population of approximately 220,000, 53.2% of the residents are registered to vote. The report also stated that 64,858 ballots were counted in the March 2020 Presidential Primary election, which translates to 55.3% of the registered voters having participated.⁴

Physical Security of the Ballot - Scanning

Yolo County uses a “central count” voting system where ballots from multiple election precincts are transferred and tallied at a central location. It is important to understand the many steps a ballot takes from the post office or polling place, to scanning the ballot, to counting and tabulation, and finally to storage, to appreciate the security measures required at each step.

When the first ballot arrives at the Yolo Elections Office, the election is considered “live” and full security measures take effect. Doors to rooms that hold ballots or election machinery are secured by lock and door security seals overnight. Once the room or cage is opened, the seals are cut, initialed, and logged. Non-election staff (such as janitors or other county employees) are not allowed in those areas without election staff present. In addition, public members must sign in and sign out, be given a badge, and be accompanied by staff if they have business beyond the front counter.

The room that holds the five scanning machines, tabulator (in its locked cage), and voting machines for persons with disabilities (in a second locked cage) is monitored by a security camera in the ceiling in real time and is recorded for review. This recorded security footage is kept for a minimum of 400 days.

Full office security continues beyond the election date, through election result canvassing (the reconciliation of all parts of the election process) and election certification within 30 days of Election Day. Full security ends only when all election materials are sent to secured storage for a 22-month records retention hold.

Most ballots come into the Yolo Elections Office in three ways:

1. Vote by Mail (VBM) ballots (including Absentee Ballots for uniformed service members) that arrive at the Elections Office by way of the United States Postal Service or collected from drop off locations, and are held in bins in the room with the ballot sorting machine.

Although VBMs are counted the same way as ballots from polling places, they are handled differently. VBM ballots are passed through the ballot sorting machine in two passes with two trained elections staff present. First is the scan pass, which digitally weighs and verifies ballot packets so that if other mail envelopes are mistakenly run through the machine, those envelopes will be sorted out. It then takes a digital image of the ballot signature (connected to that envelope's ID code) on each verified envelope. Using the on-screen verification process, staff compares the imaged signature with the signature on file for that voter in the California Voter Database.

Those who perform signature verification are certified through training by a graphologist from the California Association of Clerks and Election Officials. If the signature comparison finds the signature varies enough from the signature on file, that person is sent a letter to confirm the signature. A response is required before that ballot can be counted.

The second pass is the audit pass which separates ballots into districts and any envelopes with irregularities (e.g. ripped envelopes, bar code smudges) are sorted to a separate bin for review. The ballot sorting machine then slices the bottom of each envelope open to allow ballot access for the following step of scanning the ballot for vote tally. There is a full audit trail during these scans that is examined by Election staff to ensure the machine is accurate.

To increase the available options to submit a VBM, Yolo Elections Office partnered with the county library system to create five VBM drop off locations at local libraries beginning three weeks prior to the March 2020 primary.⁵

Furthermore, Yolo Elections Office piloted two satellite voting centers to increase the opportunity for conditional voter registration as well as to test what a VCA vote center would require. Both centers were staffed by county

employees from the Assessor / Clerk-Recorder / Elections Department. The satellite center in the County of Yolo Administration Center was open for 14 days prior to and through Election Day and saw approximately 150 voters. The second was at the University of California at Davis Memorial Union, on Election Day only, and saw a higher than expected 1,355 voters.

2. Early Ballot Pickup Program on Election Day allows for the midday collection of voted ballots from high-volume polling precincts. During the March 2020 primary, nine locations in West Sacramento and seven locations in Davis were designated. Yolo County has participated in this program since the 2016 Presidential General Election.⁶

Collection is done in a county-labeled vehicle by a two-person team. Sheriff Deputies follow to provide security at each pickup and until the ballots reach the Yolo Elections Office. These collected ballots are scanned earlier on Election Day, allowing for a robust election result available shortly after the polls close.

3. After the polls close, ballots from all 96 polling places are transported by two-person teams to the Yolo Elections Office loading dock. The area is staffed by Sheriff Deputies and building security. As the equipment from each polling place is moved inside and checked by staff, the ballots in labeled plastic bags are moved inside the count room.

After ballots are collected at the central count Yolo Elections Office, the next step in the process is scanning the ballots. Staff members work in pairs to transfer ballots to any of the five ballot scanning machines for processing. The ballots are removed from the labeled plastic bags, recorded in a log, placed in the scanner by a second person, and scanned.

The front and back page of each ballot is scanned simultaneously to capture all voter marks. Trained Elections staff with the proper login credentials review or adjudicate any flagged ballot images detected (such as write-ins) and ballots flagged as having voter intent issues (e.g. overvotes, undervotes, and write-in candidates that are not sanctioned). Once flagged issues are approved or denied, all scanned paper ballots are placed into new plastic bags labeled with the number of the batch they were run in, logged, and then boxed. Those labeled boxes are stacked in the locked cage within the count room when not actively being used.

Scanning machines cannot tabulate (count or tally the votes). They are encrypted and “air-gapped” for security, meaning they have no network interface.⁷ The scanners have an audit trail capability that tracks every button clicked as well as tamper-proof seals on the machines themselves.

The scanned ballot vote information is taken to the count tabulator system by way of a USB drive. However, no data transfer can happen unless a second USB security key is also inserted. Election USB drives are used only once during Election night. Both the collection of the USB drives and the USB security key are stored in a secured case, in a locked office. Each time they are accessed for use, the breach of the security seal is initialed and logged.

Physical Security of the Ballot - Tabulation

The transferred vote data from the scanners are stored only on the count tabulator system. Like the scanners, the tabulation machine cannot be connected to any network or server by state elections code. In order to create data tables, the Secretary of State sends county-specific text files through a secure portal with individual login credentials. Yolo Elections Office staff use those text files, along with a guide created by the vendor technical team, to create a custom extract report from the tabulator system.

After the votes are tabulated, three types of data exports are done onto three USB drives. Two of the three USB drives are used for specific data file exports to update the Yolo County Elections website results for the bar graphs and for the GIS (Geographic Information System) mapping and results (see Figure 1). The third USB drive is used for the tabulated data from the custom extract that is taken to a designated Elections staff computer, printed, then manually entered into the state system by a two-person team by way of the secure portal.

Tallies are sent to the Secretary of State's Office in approximately two-hour increments. Before the election night can be called "over," the designated Elections Office staff (with a second person present for oversight) must verbally confirm the vote for each ballot item with the Secretary of State's Office. This ensures that the vote tally was not tampered with.

The connection from county to state via the singular computer port requires several security steps. A specific computer port must be opened by county IT to allow that computer to interact with the state system. Several tests and a customized set of instructions are generated by the state to ensure that correct data is being transferred. Individual login credentials are required for Yolo Elections staff to access the state system.

In January 2020, Yolo County was one of six election jurisdictions nationally recognized by the United States Election Assistance Commission for Outstanding Innovation in Election Administration.⁸ "Clearie" Awards recognize the innovative efforts of election officials across America. Yolo County was recognized for "Harnessing Technology to Improve Polling Place Resources and Response Time, Strengthen Voter Communications, and Increase Future Turnout." The Elections Office partnered with the

Yolo County General Services Department IT staff in 2018 to use GIS, to develop a new poll worker app and to streamline election night reporting for the Yolo County website while also improving voter participation.

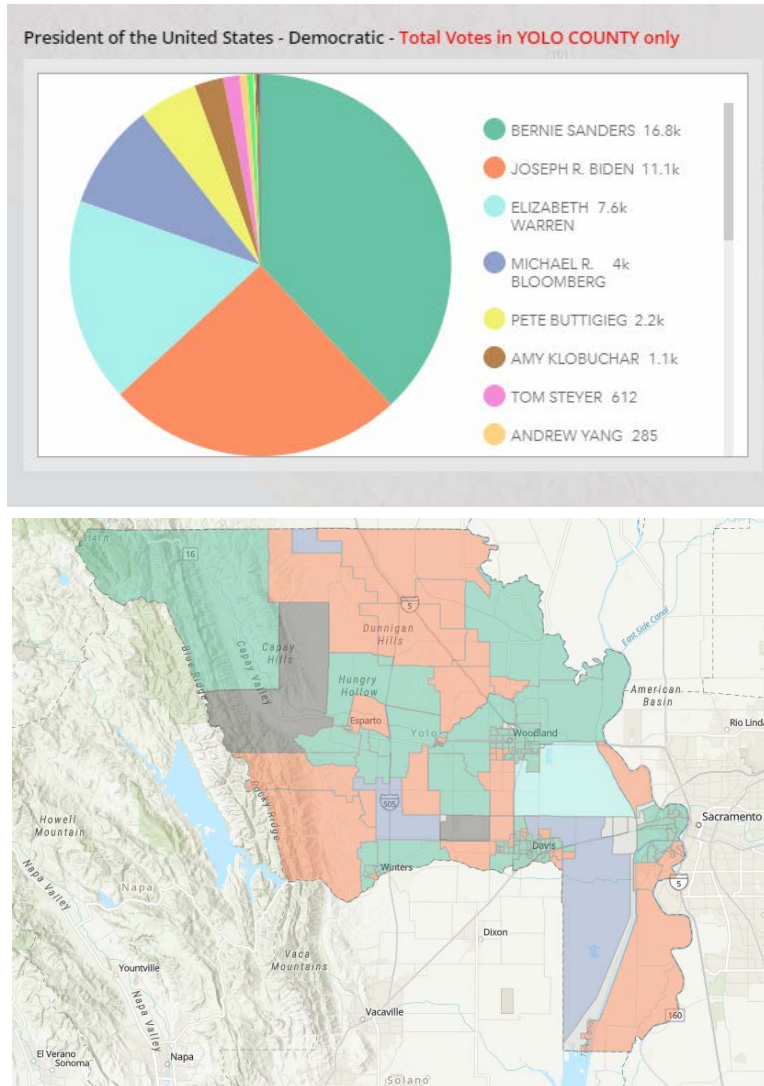


Figure 1. Example of GIS information used to enhance election night reporting on the Yolo Elections Office website for the March 2020 Presidential Primary. The map shows voting precincts color-coded to match the candidate who has the most votes at that time. Colors assigned to each candidate are as shown in the pie chart above.

The poll worker phone app, called the Election Assistant App, is used on Election Day to enhance communication between the poll workers and the Yolo Elections Office. Each polling place and election rover (roaming support staff) are issued a smart phone with the Election Assistant App installed. The app allows for a variety of functions, such as reporting when the polling place doors open or close, reporting wait times, locating the proper polling place for a voter, notifying the Yolo Elections Office when a voting machine for people with disabilities is used, and accessing a decision tree for conditional

versus provisional ballot use. In addition, the app allows poll workers to notify the Yolo Elections Office when assistance is required by selecting the level of need (e.g. low, critical) and adding text or a relevant photo of the issue. Elections staff can see on a projected map the locations of all the phones in real time. This enables Elections staff to send the nearest rover to respond.

The last step in the election process is the canvassing or certification of the election. This begins the Thursday following Election Day. The purpose of the canvass is to account for every ballot cast and to ensure that each valid ballot is included in the official results – VBM, conditional, provisional, uniformed and overseas citizen, and challenged ballots. California Elections Code section (§)15301⁹ sets the start date of the canvassing as well as ensuring the canvassing process is open to the public.

One integral part of canvassing is the 1% manual tally. This public process of manually tallying the paper votes in one percent of the precincts, selected at random, verifies by hand the accuracy of the automated count.¹⁰ Basically, this serves as a post-election audit. Yolo County uses dice to randomly draw the precincts to account for every contest and every district. The process of pulling those ballots and tracking the movements of those ballots during the audit is done in a painstaking manner. Each movement the ballot makes during the audit is logged. Throughout the process, at least two people pull the ballots and four people count them.

Election Vendor Software Security

Election software is another potential concern in the security of the ballot. Unauthorized access to the software used by scanning machines, tabulators, and voting machines for persons with disabilities is a vulnerability that requires vendors be vigilant. Counties that purchase election systems are not privy to the results of vulnerability tests and other security measures conducted on the election software. The responsibility for the security of the election systems rests with the state and the hardware and software vendors.

California Elections Code §19201¹¹ requires the Secretary of State to review and approve all voting systems before they can be bought or used in a California election. In addition, California Elections Code §19211¹² states that before approving a voting system, the Secretary of State's Office will hold a public review hearing. In the March 2020 California Presidential Primary five different vendors were used.¹³

There are four phases for vendor certification in California – application phase, pre-testing activities phase (including test schedule, trusted build, and test plan), testing phase (including hardware, software, usability, security, and quality assurance testing), and finally, report issuance and post-test activities phase (final report and public comment).

Although counties are not directly involved in the process of certifying vendor software or hardware security, California counties are required by the state to perform Logic and Accuracy Testing (LAT) on voting machines and vendor-supplied software systems prior to each election.¹⁴ This testing verifies that the ballot counting program is properly reading and tabulating votes. Yolo Elections Office held LAT testing in public view on February 20, 2020 and it revealed no irregularities.

Election Cybersecurity

Cybersecurity is the protection of internet-connected systems (networks, devices, programs, and data) from attack, damage, or unauthorized access. The Yolo County IT Office maintains the network equipment, server, connection to the state, firewalls, and runs vulnerability tests for the Yolo Elections Office. This includes cybersecurity threats, response, and the training of county employees on topics such as phishing and security awareness training.

Last year, Yolo Elections Office hired a Deputy of Technology to focus on the county and state election systems, assist with IT functions within the Assessor / Clerk-Recorder / Elections Department, and work with the various vendors for all three offices. This position works very closely with Yolo County IT.

At the federal level, once the Department of Homeland Security (DHS) designated election infrastructure as part of the nation's "critical infrastructure" in 2017, DHS began offering information and security resources to local governments.¹⁵ One such resource is the non-profit organization, Center for Internet Security, which is home to both the Multi-state Information Sharing and Analysis Center (MS-ISAC) and the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC).

MS-ISAC focuses on cyber threat prevention, protection, response, and recovery for federal, state, and local governmental agency members. Yolo County has used MS-ISAC to run penetration tests on county systems. Another function of MS-ISAC is to send out email security notification alerts.

EI-ISAC supports cybersecurity needs of federal, state, and local elections offices through weekly news alerts, election-specific advisories, best practices information, and email messaging. County IT, and Elections IT and Yolo Elections Office managers receive notifications and alerts from both organizations. This redundancy helps to ensure that no threat is overlooked.

The California Secretary of State's Office of Election Cybersecurity and Enterprise Risk Management also assists local elections offices with cybersecurity prevention capabilities and improving cyber incident response. Yolo Elections Office staff participated in the

2019 regional mock cybersecurity tabletop exercises and security drills hosted by this state office.

California enacted elections codes for cybersecurity, such as California Elections Code §19205¹⁶ that ensures that no part of the voting system shall be connected to the internet at any time. Voting systems cannot receive or transmit election data by way of hardwired or wireless means.

Besides the training that County employees receive from County IT on phishing and security awareness and the cybersecurity tabletop training as mentioned above, the Yolo Elections Office staff attend election-specific training. Review of 2019 training documents showed various Elections staff attending vendor training, the Defending Digital Democracy Project Battlestaff Bootcamp, GIS training, Community Engagement training, California State Association of Counties workshops, Secretary of State Help America Vote Act (HAVA) training, and some participated in elections coursework.

Emergency and Contingency Plans for Election Day

Every California county, regardless of the election model they use, must submit an election and emergency plan to the Secretary of State's Office for review prior to each election.^{17,18} The intent of these plans is to ensure that the state knows how counties plan to respond to issues on and around Election Day and give their own county election staff direction should emergencies arise.

To augment county plans already in place and to provide guidance for future plans, the Secretary of State's Office released the "Procedure and Guidelines for Voting in a State of Emergency or Natural Disaster" in 2020.¹⁹ This document provides general guidance to elections officials in developing county-specific disaster and emergency plans should a natural disaster or state of emergency occur during critical election times. These critical times include the canvass period, Election Day, and the deadline for the transmittal of military or overseas voters' ballots.

When a county adopts the Voter's Choice Act (VCA) election model, they must submit an Election Administration Plan (EAP) to the state. EAPs must include action steps to expand voter education and outreach as well as plans for voters with accessibility issues and minority language outreach. An EAP must also include prevention measures, plans for potential election disruption, security and contingency as covered under California Elections Code §4005(a)(10)(l)(vi)(VII)(ia and ib).²⁰

A major difference between a VCA county's EAP and a non-VCA county election emergency plan is that the EAP is drafted in consultation with the public as stated by law.²¹ The Grand Jury reviewed all 15 VCA county EAP plans submitted for the March 2020 Presidential primary. Although all the EAPs included the sections required by law,

how expansive or detailed those sections were varied dramatically between counties. Some counties included public comment questions and answers within their EAP and/or detailed and well-planned emergency and contingency procedures for a natural disaster. All plans were available online, either through the specific county election website or on the California Secretary of State's website.

In comparison, the Grand Jury was unable to find any of the 43 non-VCA county election emergency administration or action plans accessible online to the public. Yolo County Elections Office provided their Emergency Response plan to the Grand Jury for review.

Being unable to compare the Yolo County Plan with any other non-VCA county, the Grand Jury reviewed the Yolo County Elections Emergency Response plan on its own merit and with the information gleaned from witnesses and observation. Elections management staff collectively create and update this plan. Specific points are as follows:

1. The plan states, "if possible, a generator should be present at the main office of the elections official to ensure power will be available. If a generator is available, the elections officials must be aware of the process to set up the generator and perform tests to ensure that it is in proper working order prior to the election."
 - Yolo Elections Office has a backup generator onsite at the central count office and it is checked monthly by county services. This however is not mentioned in the plan. This generator powers three of the five scanners, the tabulation machine, the computer that interfaces with the Secretary of State's Office, and some lighting.
2. The plan states, "consider entering into a Memorandum of Understanding [MOU] with neighboring counties with the same voting equipment in case backup equipment is needed."
 - Yolo County entered into an MOU with Solano County October 30, 2019 under these conditions. Solano County is adjacent to and south of Yolo County and uses the same vendor-supplied machines. The current MOU is not included in the plan.
3. The plan also states that "our office will identify backup locations before an emergency."
 - The need for a backup central count location and a backup polling place are very different, but neither location is described in the plan.
4. Although the plan gives guidance for evacuating a polling place, a heightened security issue, or an event that affects one or more polling places, the plan does not lay out a more county-wide, election-centered emergency disaster response.

In November and especially in March, many areas of Yolo County are prone to flooding. Precipitation and water storage issues can lead to dam failure; slough, causeway and creek flooding; or levee failure. According to the “2018 Yolo County Unincorporated Area Community Profile,” flooding is a significant and potentially catastrophic event for unincorporated areas of the county.²² For Yolo County, approximately 88% of the county’s residents live within the four incorporated cities (Davis, West Sacramento, Winters, and Woodland).²³ However, these cities comprise only 5% (50.51 out of 1,021 square miles) of the county land.²⁴ Therefore 12% of the county’s population live in the 95% unincorporated portions.

The Grand Jury reviewed Yolo County mitigation and emergency plans for a variety of disasters which can be found on the Yolo County website. Reviewed were: “County of Yolo Emergency Operation Plan” (Basic, Dec 2013), “Yolo County Multi-Jurisdictional Hazard Mitigation Plan,” eight Community Profile Mitigation Plans, and 12 Emergency Support Function Annex Policies (updated 2013 to 2018).

- County-wide election disruption and action are not included in any Yolo County plan nor in the Yolo County Elections Emergency Response plan.
5. The Election Day dissemination of smart phones with the award-winning Elections Assistant App is not mentioned in the Yolo County Elections Emergency and Response plan.
 6. Although a plan for a viral pandemic could not have been anticipated, it is now a topic that requires future planning. On March 3, 2020, the Yolo Elections Office experienced a higher than average number of poll worker cancellations. Some of the absences were associated with the fear of COVID-19. The number of cancellations heightened concern among officials over the ability to open all the polling places.

Yolo County Elections

California Elections codes mandate opportunities for the public to observe the election process. Each opportunity was duly advertised on the Yolo Elections Office website and Yolo County website by way of a press release. In addition, the information was sent to local newspapers and released on both the Yolo Elections Office and Yolo County social media accounts. Observation opportunities included:

- The randomized alphabet drawing on December 12, 2019, to determine the name order on the March 2020 Presidential Primary Election ballot (California Elections Code §13113)²⁵
- Logic and Accuracy Testing on February 20, 2020 (California Elections Code §15004 (b))²⁶

- VBM ballot processing on February 20, 2020 (California Elections Code §15104)²⁷
- Election Day at the central count location until the count is complete (California Elections Code §15204)²⁸
- Canvassing – 1% manual tally on March 5, 2020 (California Elections Code §15301)²⁹

The mission statement of the Yolo Elections Office is to “conduct accurate, efficient elections and to vigorously encourage and protect the voting opportunity for every citizen in Yolo County.”³⁰ Throughout this investigation, Yolo County Elections staff were very helpful, open, responsive, and proud of their accomplishments and future planning.

An election system that is transparent with public notification and access, thoughtfully planned, and secure, gives citizens confidence. Although both the federal government and the state have election security responsibilities, elections are executed at the county level. Counting a ballot is a multi-step process, requiring different types of security as threats evolve and continued vigilance and improvement as technology and procedures change.

FINDINGS

- F1. The quality, security, and transparency of work performed by the Yolo Elections Office met requirements by California Elections codes.
- F2. Yolo Elections Office ensures that the public can observe the election process in action by advertising each opportunity on multiple platforms.
- F3. Yolo Elections Office went beyond minimum standards to increase voting opportunities for Yolo County citizens.
- F4. Yolo County Elections staff interact and train with a variety of local, state, and federal election and security entities and organizations in order to improve county election security and cybersecurity actions.
- F5. The Yolo County Elections Emergency Response plan for the March 2020 Presidential Primary election did not fully prepare staff for emergencies because it lacked specific actions and details.
- F6. The Yolo County Elections Emergency Response plan for the March 2020 Presidential Primary election did not fully prepare staff for emergencies because it failed to include important emergency procedures already in place.

- F7. The Yolo County Elections Emergency Response plan for the March 2020 Presidential Primary election did not include disaster contingency planning for the county-wide disruption of the election process even though the primary was conducted during a potential flood season.
- F8. Although there are numerous Yolo County manuals and documents online concerning contingency planning and mitigation, no plan includes disaster planning for a potential county-wide disruption of the election process.

RECOMMENDATIONS

- R1. By October 1, 2020 (or by the submission date for the November 2020 General Election), the Yolo County Elections Emergency Response plan should describe specific actions the Yolo Elections Office has in place and what their employees will do, as opposed to the generic instructions in the current plan.
- R2. By October 1, 2020 (or by the submission date for the November 2020 General Election), the Yolo County Elections Emergency Response plan should describe natural disaster contingencies to combat election disruption leading up to, and during Election Day.
- R3. By July 1, 2021, Yolo County should include disaster contingency planning for the county-wide disruption of the election process in an existing county emergency document that is accessible to the public online.

REQUIRED RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following individual:

- Yolo County Assessor / Clerk-Recorder / Registrar of Voters – F1, F2, F3, F4, F5, F6, F7; R1, R2

From the following governing body:

- Yolo County Board of Supervisors – F8; R3

Note: The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

ENDNOTES

- 1 California Secretary of State's Office. California Voter's Choice Act. Online at <https://www.sos.ca.gov/elections/voters-choice-act/> (Accessed: November 2019)
- 2 U.S. Election Assistance Commission. Election Management Resources. Elections – Critical Infrastructure. Online at <https://www.eac.gov/election-officials/elections-critical-infrastructure> (Accessed: March 2020)
- 3 National Association of Counties. All Elections are Local, the County Role in the Elections Process. Online at <https://www.naco.org/resources/featured/all-elections-are-local-county-role-elections-process> (Accessed: November 2019)
- 4 Yolo Elections Office. News and Publications. Conclusion of the Canvass Period and Certification of the 2020 Presidential Primary Election. Online at <https://www.yoloelections.org/news-and-publications/press-releases/conclusion-of-the-canvass-period-and-certification-of-the-2020-presidential-primary-election> (Accessed: April 2020)
- 5 Yolo Elections Office. News and Publications. Vote by Mail Ballot Drop Off at Libraries Available for March 3, 2020 Primary Election Beginning Monday February 10th. Online at <https://www.yoloelections.org/news-and-publications/press-releases/vote-by-mail-ballot-drop-off-at-libraries-available-for-march-3-2020-primary-election-beginning-monday-february-10th> (Accessed: April 2020)
- 6 Yolo Elections Office. News and Publications. Early Ballot Pick Up on Election Day March 3rd. Online at <https://www.yoloelections.org/news-and-publications/press-releases/early-ballot-pick-up-on-election-day-march-3rd> (Accessed: April 2020)
- 7 California Secretary of State's Office. Elections and Voter Information. OVSTA. Security. Online at <https://www.sos.ca.gov/elections/ovsta/security/> (Accessed: March 2020)
- 8 U.S. Election Assistance Commission. Six Winners Announced for EAC's National Award for Outstanding Innovations in Election Administration. Released January 23, 2020. Online at <https://www.eac.gov/news/2020/01/23/six-winners-announced-eacs-national-award-outstanding-innovations-election> (Accessed: February 2020)
- 9 [California Elections Code §15301](#)
- 10 Yolo Elections Office. Elections Office Begins the Official Canvass Process Thursday March 5th. Online at <https://www.yoloelections.org/news-and-publications/elections-office-begins-the-official-canvass-process-thursday-march-5th> (Accessed: April 2020)
- 11 [California Elections Code §19201](#)
- 12 [California Elections Code §19211](#)
- 13 California Secretary of State's Office. Elections and Voter Information. OVSTA. Voting Technology Vendors. Online at <https://www.sos.ca.gov/elections/ovsta/voting-technology-vendors/> (Accessed: April 2020)
- 14 California Secretary of State's Office. Elections and Voter Information. OVSTA. Security. Online at <https://www.sos.ca.gov/elections/ovsta/security/> (accessed: January 2020)
- 15 U.S. Election Assistance Commission. Election Management Resources. Elections – Critical Infrastructure. Online at <https://www.eac.gov/election-officials/elections-critical-infrastructure> (Accessed: March 2020)
- 16 [California Elections Code §19205](#)

- 17 California Secretary of State Office. 2018 VCA Election Administration Plan. Online at <https://www.sos.ca.gov/elections/voters-choice-act/2018-archives/2018-eap/> (Accessed: January 2020)
- 18 National Conference of State Legislatures. Election Emergencies. April 7, 2020. Online at <https://www.ncsl.org/research/elections-and-campaigns/election-emergencies.aspx> (Accessed: April 2020)
- 19 California Secretary of State's Office. *Procedure and Guidelines for Voting in a State of Emergency or Natural Disaster*. Effective as of January 1, 2020. Online at <https://elections.cdn.sos.ca.gov/pdfs/natural-disaster-guidelines.pdf> (Accessed: May 2020)
- 20 [California Elections Code 4005\(a\)\(10\)\(l\)\(vi\)\(VII\)\(ia and ib\)](#)
- 21 Astrid M. Ochoa, "Voter's Choice Act Implementation: Building a VCA Coalition." Published online, Voter's Choice Act.org, September 2019. Online at <https://voterschoice.org/wp-content/uploads/VCA-Nonprofit-Guide-091719-final.pdf> (Accessed: December 2019), pg. 5
- 22 Yolo County website. *Yolo County Unincorporated Area Community Profile (a support annex to the Yolo County Multijurisdictional Hazard Mitigation Plan)*, December 2018. Online at <https://www.yolocounty.org/home/showdocument?id=55819> (Accessed: May 2020), pg. 20
- 23 Yolo County website. *Statistical and Demographic Profile*. Online at <https://www.yolocounty.org/home/showdocument?id=30345> (Accessed: May 2020), pg. 2
- 24 Yolo County website. *Comprehensive Economic Development Strategy (CEDS) 2009-2014*. Online at <https://www.yolocounty.org/home/showdocument?id=14351> (Accessed: May 2020), pg. 3
- 25 [California Elections Code §13113](#)
- 26 [California Elections Code §15004 \(b\)](#)
- 27 [California Elections Code §15104](#)
- 28 [California Elections Code §15204](#)
- 29 [California Elections Code §15301](#)
- 30 Yolo County website. Welcome to Elections. Elections mission statement. Online at <https://www.yolocounty.org/general-government/general-government-departments/elections> (Accessed: November 2019)

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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The Davis Police Accountability Commission, SB 1421, and Residual Questions from the Picnic Day 2017 Incident

SUMMARY

The Davis Police Accountability Commission (PAC) was created by the Davis City Council in the wake of what has come to be known as the Picnic Day 2017 Incident. The 2019 – 2020 Yolo County Grand Jury (Grand Jury) examined the actions of the PAC from its inception to the present, with a view to determining if the PAC is fulfilling the mandate given to it by the City Council.

The first recommendation made by the PAC to the Davis City Council addressed the refusal of the Davis Police Department (DPD) to release an internal affairs investigation of the Picnic Day 2017 Incident following a citizen request made pursuant to California Senate Bill 1421 (2017-2018) (SB 1421). On July 30, 2019 the Davis City Council declined to put the PAC's recommendation to a vote.

When California police officers are investigated for actions taken in the line of duty, they are afforded heightened confidentiality protections by state statute. Consistent with those protections, public access to police internal affairs investigations and personnel files is very limited.¹ Notwithstanding this heightened confidentiality and limited access, a grand jury has the authority pursuant to statute, case law, and attorney general opinion to request and review police personnel files, internal affairs investigations, and findings.² Using its legal authority, this Grand Jury obtained the report and related materials of the internal affairs investigation that was the subject of the SB 1421 request and the PAC's recommendation to the City Council.

The Picnic Day 2017 Incident involved three plainclothes Davis police officers and a group of civilians. It occurred on April 22, 2017. An initial press release put out by the DPD two days after the incident contained numerous inaccuracies that deflected responsibility for the altercation away from the officers involved. The description of the incident in the press release was contradicted by witness accounts and a dashcam video that came forward in the days following the incident.

Because the incident involved a potentially improper use of force by the DPD, an internal affairs investigation was commenced. The Davis City Attorney authorized an outside law firm to investigate DPD's handling of the incident and its aftermath. This investigation produced a report that found that two of the officers and the Department itself had violated a number of written DPD policies. The findings in the report were adopted by the DPD.

After initial statements by the Davis City Manager that some form of this report would be released to the public, the Davis City Attorney advised that the report could not be

released on the grounds it involved personnel issues. A public outcry ensued. In response to this outcry, the City Manager engaged an Interim Independent Police Auditor (IPA) to review the internal affairs report and produce a public summary of its findings.

The Grand Jury examined the circumstances under which a police internal affairs investigation may be released pursuant to SB 1421. A group of citizens attempted to use this statute to obtain access to the police internal affairs investigation and report relating to the Picnic Day 2017 Incident. The Davis City Attorney and the DPD refused access to that investigation on the grounds that SB 1421 did not apply.

The Grand Jury found that the PAC's sensitivity to a limited number of individuals has outweighed the claims of the larger community to benefit from hearing the insights and perspectives of the DPD. The PAC's adopted practice of excluding DPD leadership and police officers from its meetings restricts candid dialogue between the PAC and the DPD. This practice also limits the PAC's ability to obtain the specialized knowledge it needs to make recommendations to the Davis City Council. The Grand Jury recommends that the Davis City Council amend the PAC's authorizing resolution to require one or more DPD liaisons to attend all meetings of the PAC. The PAC should also adopt a policy whereby the Davis Police Chief or a designee with the necessary expertise be in attendance at any meeting where a DPD policy, procedure, or practice requires input from a person with specialized knowledge.

The Grand Jury found that the PAC is not meeting its responsibility to provide annual written input to the Davis City Manager and City Council on the effectiveness of the IPA. The Grand Jury recommends that the PAC provide such input on a timely basis.

The Grand Jury found that the PAC is not limited by the non-action of the Davis City Council at its July 30, 2019 meeting. The PAC is authorized to inquire into departures from DPD policy, procedure, and planning during and following the Picnic Day 2017 Incident. The Grand Jury further found that during calendar year 2019 and the first quarter of 2020, the PAC did not meet its responsibility to coordinate with the IPA in identifying and prioritizing DPD policies, procedures, and training programs for auditing. The Grand Jury recommends that the PAC identify topics for IPA auditing by leading a candid public discussion into the how and why of the DPD's release of inaccurate and misleading statements to the media and the public regarding the Picnic Day 2017 Incident, including the release of an edited dashcam video.

The Grand Jury also found that during the internal affairs investigation of the Picnic Day 2017 Incident, there was a failure to follow proper procedures under the Public Safety Officers Procedural Bill of Rights. The Grand Jury recommends that the PAC identify the consequences of the failure to follow proper procedures during the investigation of the inaccurate and misleading press release of April 24, 2017.

The Grand Jury found that the PAC commissioners lack an understanding of how internal affairs investigations are conducted, how departmental findings are made, how SB 1421 requests should be presented, and how the DPD responds to SB 1421 requests. The Grand Jury further found that the DPD misrepresented its decision-making process to the public when it refused a request by a group of citizens related to the investigation of the Picnic Day 2017 Incident. The Grand Jury recommends that the PAC be given an explanation as to the mechanics of an internal affairs investigation, the circumstances under which a release of records may be made pursuant to SB 1421, and the decision-making process used by the DPD when releasing or refusing to release records, including the identity of the person who has the final authority to release or deny access to police records under SB 1421.

The Grand Jury found that PAC commissioners need additional training in best practices for policing, together with specific training as to DPD practices, policies, and procedures. The Grand Jury recommends that the PAC adopt an annual workplan that includes a monthly schedule for training on best practices in policing and specific DPD policies, procedures, and practices. Training should also provide one-on-one opportunities for commissioners to observe Davis police officers at work in the community.

On March 19, 2020 Governor Gavin Newsom issued Executive Order N-33-20, a statewide “stay home” order, in response to the COVID-19 pandemic. This investigation, the data gathered, and recommendations generated from it occurred prior to the COVID-19 pandemic and ensuing orders.

ACRONYMS / GLOSSARY

DPD	Davis Police Department
Gennaco Report	A 22-page document entitled “The ‘Picnic Day’ Incident – Independent Review of the Interim IPA: Findings and Recommendations,” presented by Michael Gennaco of the OIR Group to the Davis City Council, dated April 2018 ³
IPA	Independent Police Auditor
McGregor Scott Report	A 74-page internal document entitled “City of Davis – Independent Review of Davis Police Officers’ Conduct on Picnic Day 2017,” presented by McGregor Scott of the law firm of Orrick, Herrington & Sutcliffe LLP, (OHS) to the DPD, dated November 9, 2017; this report is also referred to elsewhere as the Orrick or OHS report
OHS	Orrick, Herrington & Sutcliffe LLP, a law firm with offices in Sacramento

PAC	Davis Police Accountability Commission
SB 1421	Senate Bill No. 1421 (2017-2018); an act to amend Sections 832.7 and 832.8 of the California Penal Code, relating to peace officer records; approved by the Governor on September 30, 2018; with an effective date of January 1, 2019
Sustained Finding	A finding made by the DPD Police Chief after an internal affairs investigation discloses sufficient evidence to prove, by a preponderance of the evidence, a violation of DPD policy or procedure. If the investigation results in a sustained finding, the Davis Police Chief then determines whether the employee will be disciplined or receive additional training. Discipline may include reprimand, suspension, demotion, or termination. ⁴

BACKGROUND

Picnic Day is an annual event held on the campus of the University of California, Davis and at locations throughout the City of Davis. On Picnic Day 2017, Saturday, April 22, an incident occurred involving three plainclothes officers from the Davis Police Department (DPD) and several civilians. (A chronology of significant dates referenced in this Grand Jury report is included in Appendix A.) The incident resulted in the prosecution of five civilians and an internal affairs investigation by the DPD. That investigation led to the McGregor Scott Report, which the Davis City Attorney transmitted to the DPD in November 2017. The McGregor Scott Report is not available to the public.

In response to the Picnic Day 2017 Incident, the Davis City Council established a Police Accountability Commission. This Grand Jury investigation and report examines the effectiveness of the Davis Police Accountability Commission (PAC) from its first meeting in January 2019 through the first quarter of 2020. Effectiveness is assessed, in part, by considering how the PAC has responded to the residual questions from Picnic Day 2017.

On January 1, 2019, 21 citizens, including one member of the Davis PAC, made a Senate Bill 1421 (SB 1421) request to the DPD for release of the McGregor Scott Report and the confidential internal investigation of the Picnic Day Incident. The Davis City Attorney and the DPD denied that SB 1421 request. One of the reasons given by the Davis City Attorney and the DPD for refusing to release the McGregor Scott Report was the lack of a sustained finding of “dishonesty” against an individual police officer, as required by SB 1421. Neither the City Council nor the City Manager had input into the decision to deny that SB 1421 request.

After the refusal to release the Picnic Day records, the PAC presented a recommendation to the Davis City Council for an additional investigation to clarify the findings that led to the refusal. The PAC requested that the City Council direct the City Manager to assign the Independent Police Auditor (IPA) to determine if facts existed to support a finding that would require release of the McGregor Scott Report under SB 1421. That investigation would address the question of whether there was “dishonesty” in the dissemination of an inaccurate DPD press release two days after the Picnic Day 2017 Incident.

On July 30, 2019, the Davis City Council declined to act on the PAC’s recommendation. The City Council’s decision led to this Grand Jury investigation.

In its investigation, the Grand Jury requested and obtained the McGregor Scott Report and the corresponding internal affairs investigation by the law firm of Orrick, Herrington & Sutcliff LLP (OHS). The Grand Jury also reviewed the DPD’s criminal investigation of the Picnic Day Incident.

To understand the impact of the City Council’s inaction on the PAC’s recommendation, this Grand Jury report traces events beginning with Picnic Day 2017 through the dissemination of the inaccurate press release two days later. The Grand Jury did not attempt to reinvestigate the Picnic Day Incident. Rather, this Grand Jury report uses the Picnic Day Incident and its aftermath to assess the PAC’s effectiveness in fulfilling its mandate to address ongoing questions of police accountability that flow from the incident.

APPROACH

The Grand Jury reviewed the following documents:

Gennaco Report.

McGregor Scott Report and corresponding investigatory materials relied upon by the OHS attorneys in the preparation of the McGregor Scott Report. The investigatory materials included recorded interviews with multiple sworn police officers, civilian witnesses to the Picnic Day Incident, and some of the individuals charged with criminal offenses arising from the Picnic Day Incident.

Agreement for Investigative Services between the Davis City Attorney and OHS, dated June 26, 2017.

Confirmation of Engagement and Standard Terms of Agreement between OHS and the Davis City Attorney, dated July 6, 2017.

Billing statements from OHS to the City of Davis for professional services rendered in connection with the OHS investigation and the preparation of the McGregor Scott Report.

Davis City Council Agendas (including attachments) and Minutes and Meeting Summaries relating to the Picnic Day Incident or the Davis PAC.⁵

Davis PAC Agendas (including attachments) and Minutes.⁶

Financial records from the City of Davis relating to the investigation and preparation of the McGregor Scott Report and the preparation of the Gennaco Report.

Police personnel records, including Department Analysis and Findings of the Picnic Day Incident, drafted by the Davis Police Chief, dated December 8, 2017.

Yolo County Superior Court records in the case of The People of the State of California vs. Antwoine Rashadek Perry, et al., Case File CRM-17-2520.

Local newspapers, internet blogs, and television reports, including Davis Enterprise, Sacramento Bee, Davis Vanguard, davisite.org, KCRA News, Fox40 News, abc10 News, and CBS Sacramento News.

Olson, K. and Attard B. (April 10, 2018). *Stakeholder Engagement on Police Oversight for the City of Davis, California.*⁷

President's Task Force on 21st Century Policing. (2015). *Final Report of the President's Task Force on 21st Century Policing.* Washington D.C., Office of Community Oriented Policing Services.⁸

The Grand Jury conducted the following interviews:

City of Davis officials, including individuals from the Davis City Council, City Staff, the Davis PAC, and consultants to the Davis City Council and Davis PAC.

Sworn officers and non-sworn employees of the Davis Police Department.

City of Davis community members.

Representatives from the Grand Jury attended:

Davis PAC Meetings from September 2019 through July 2020 and a Joint Meeting between the Davis City Council and Davis PAC in February 2020.

DISCUSSION

The Davis PAC – Its Composition and Mandate

The Davis City Council created the Davis Police Accountability Commission (PAC) and gave it a mandate through a resolution adopted on July 31, 2018.⁹ It created the PAC in large measure as a response to the Picnic Day 2017 Incident and the public backlash against denied public access to the McGregor Scott Report following the report's presentation to the Davis Police Department (DPD) in December 2017.

The City Council appointed commissioners to the PAC following applications by interested citizens and interviews by a council subcommittee. The PAC was designed to consist of nine commissioners and one alternate, but rarely had a full complement. One member of the PAC is a UC Davis student, appointed by ASUCD (Associated Students, University of California, Davis).

In appointing commissioners to the PAC, the City Council sought to reflect a diverse cross-section of the community by including members of various ethnicities, racial backgrounds, sexual orientations, and economic status. A minimum of two members appointed by the council are to have demonstrated previous adverse interactions with the DPD.

No member of the PAC may have a law enforcement background. Two City Council members are appointed as regular liaisons to the commission. The Assistant City Manager serves as city staff liaison.

Terms of PAC commissioners are four years. Because the PAC was recently established, some initial terms are less than four years to establish a staggered schedule for incoming commissioners. No commissioner can serve more than two consecutive terms.

When the PAC received its mandate from the Davis City Council, the authorizing resolution identified the “purpose” of the PAC:

“The key role of the Police Accountability Commission (PAC) is to provide community-based accountability via a variety of interactions with members of the public, the Independent Police Auditor, the Davis Police Department, and others. The PAC, along with the Independent Police Auditor, is a critical means to create more accountability and transparency in policing.”¹⁰

The mandate given to the PAC set forth seven functions:¹¹

1. Develop a community outreach plan;
2. Provide input to audit DPD policies, procedures, and training;
3. Recommend changes / improvements to policy, procedure, or training;

4. Review Independent Police Auditor (IPA) reports on misconduct complaints;
5. Provide input into IPA reports: misconduct complaint investigations; improvements to DPD policies, procedures, or training; results of audits; community outreach;
6. Assess the work of the IPA; and
7. Respond to DPD requests for input (as time permits).

With respect to each of these seven functions, the PAC is to work with the IPA.

The PAC held its inaugural meeting on January 30, 2019. The PAC meets monthly and is subject to the notice, open meeting, and public comment requirements of the Brown Act.¹²

The Davis PAC's Request to the City Council

At the PAC's April and May 2019 meetings, discussions took place concerning unanswered questions remaining from the Picnic Day 2017 investigation. Although some commissioners advocated for a forward-looking process (to the exclusion of a review of Picnic Day), a majority on the PAC supported further investigation of the Picnic Day Incident.

Under the City Council's authorizing resolution, two of the responsibilities given to the PAC are:

- “recommend, for the Independent Police Auditor's consideration, further analysis of complaints or the complaint process,” and
- “request further investigation by the Independent Police Auditor.”

Consistent with the PAC's responsibilities to address complaints and request further investigations, it adopted a recommendation that the City Council took up at its meeting on July 30, 2019. The PAC's recommendation asked the City Council to “direct the City Manager to assign the IPA to investigate the 2017 Picnic Day Incident to determine if the facts support a finding that would require the release of records.”

Specifically, the PAC asked that the IPA “review the events surrounding the April 24, 2017, press release and statements to the press, the decision not to correct inaccurate public information in a timely manner, and any other official statements related to the criminal investigation.”¹³ The Davis City Council declined to take action on the PAC's recommendation.

To understand why the PAC described the April 24, 2017 press release and statements to the media as “inaccurate public information,” the Grand Jury reviewed all the evidence available to it concerning the Picnic Day Incident. The Grand Jury's description of the

incident is not based on sources that either the PAC or the DPD has labeled as “inaccurate public information.” Rather, the following description utilizes the sources that the PAC was attempting to access when it made its recommendation to the Davis City Council on July 30, 2019.

Departures from DPD Policy, Procedure, and Planning during the Picnic Day 2017 Incident

One of the PAC’s responsibilities is to recommend changes and improvements to DPD policies, procedures, or training. Before it can make any recommendations, the PAC has the responsibility to ask the question: Was the Picnic Day 2017 Incident a failure of policy, planning, and training, or was it a failure to follow policies and procedures already in place?

With respect to policy violations, the internal affairs investigation of the incident resulted in sustained findings against two officers for violation of the policy relating to officer identification when in plainclothes and sustained findings against two officers for violation of the policy prohibiting rude language.¹⁴ The following facts were found from public and non-public sources and led to those sustained findings:

- On Picnic Day, April 22, 2017, three plainclothes DPD officers were assigned to patrol areas in Davis where groups of people may congregate and to report any problems. The three officers were patrolling in a new, unmarked police van, with no license plates or police lights.
- While on patrol, the plainclothes officers decided to return to the police station to change into uniforms and exchange the van for an older unmarked vehicle. They made that decision because they had observed large crowds and realized that if they were going to take enforcement action and participate in crowd control, they should be in uniform. The officers also did not want to “burn” the new, unmarked police van, meaning the public would learn and know it was a police vehicle.
- As the officers travelled eastbound on Russell Boulevard, they observed a large group of people standing on the sidewalk and spilling into the street mid-block between Oak Avenue and College Park. While the van was still eastbound on Russell, one of the plainclothes officers called police dispatch and requested marked units to respond to the scene. Two marked units were dispatched.
- As the plainclothes officers continued eastbound on Russell, they observed a second, smaller group of people congregated on the northwest corner of Russell Boulevard and College Park.¹⁵ The officer driving the van moved into the left-turn lane on eastbound Russell (see Appendix B, Diagram 1). The van stopped in the left-turn lane for a full 35 seconds. Although the windows in the van were open, the plainclothes officers did not attempt to engage the crowd on the corner while the van was stopped in the turn lane.

- While stopped in the turn lane, the two plainclothes officers in the front seats of the van took no action to display their police identification, which they concealed under their shirts. Further, during the 35 seconds that they were stopped, the two officers in the front seat made no effort to don their tactical vests marked with the “POLICE” identifier.
- The unmarked police van made a U-turn from eastbound Russell to the lane closest to the curb of westbound Russell (see Appendix B, Diagram 2). The driver of the van drove within several feet of the crowd and began honking the horn. The DPD described this action as “drive, honk, and yell.”¹⁶ Further, the DPD described the U-turn and the honking of the horn as a reasonable way to clear the roadway of obstructions.¹⁷ DPD claims this is “a basic driving maneuver that any member of the driving public could legally make.”¹⁸
- As the van made its U-turn, the officers in the front seat had no intention of identifying themselves as police officers and made a conscious decision not to display their police identification. They intended to appear to be civilians, attempting to clear the road by honking the horn and driving close to the crowd.
- The officer in the front passenger seat did not believe the decision to honk at the crowd amounted to enforcement action. As they were honking, the officers did not intend to blow their cover and “burn” the van. Even as the officer in the front passenger seat began speaking to the crowd through his open window, he did not initially intend to reveal that he was a police officer.
- During the exchange of words between the two front seat officers and the crowd, both officers and some of the people in the crowd used the word “f**k” repeatedly.¹⁹ (In addition to the words exchanged at the scene, one of the plainclothes officers confronted one of the arrested individuals at the police station and stated “Dude, you f**ked up.”)
- Videos show that after the unmarked police van came to a stop with its front end facing the crowd on the corner, the plainclothes officer in the front passenger seat quickly opened his door and exited the police van. A fracas ensued. The driver ran around the back of the van and engaged people on the street.
- Neither the front seat passenger nor the driver wore police tactical gear. Neither of them had their police identification initially visible. Neither of them had police weapons visible, but they were carrying service weapons under their shirts.
- The third officer was wearing a police tactical vest that included police identification. The third officer did not exit the van until after the fracas had started.

All three of the plainclothes officers told OHS attorney investigators that they were unaware that the DPD had written policies regarding undercover and plainclothes operations in place at the time of the incident.²⁰ One of the three officers, who had spent

most of his career with the DPD in plainclothes, told OHS attorneys that there was no plainclothes policy in effect at the time of the incident. The other two officers stated that they had never received any training in the plainclothes policies.

Prior to Picnic Day 2017, the DPD prepared a detailed 24-page Operations Order for that event. The Operations Order identified the shifts and assignments of each officer and unit within the DPD. The three plainclothes officers were assigned to drive around in an unmarked vehicle, look for large groups and parties, and call patrol officers to tend to those crowds. If the plainclothes officers observed crowds requiring enforcement action, they were to report their observations and allow enforcement by uniformed officers in marked police vehicles.

The Picnic Day 2017 Operations Order contained a specific admonition to be given to crowds as a warning to disperse:²¹

“1. I am [name of officer] of the Davis Police Department. I am declaring this an unlawful assembly. You are in violation of [identify criminal offense] and are subject to arrest.

“2. You have [insert number] minutes to leave this location. You may leave by [insert 2 routes].

“3. You are ordered to leave. If you fail to leave, you may be subject to police batons, chemical agents, and impact munitions, or any force deemed necessary.”

The plainclothes officers made no attempt to utilize this admonition or a similar warning appropriate to the circumstances.

The April 24, 2017 DPD Press Release

On April 24, 2017, two days after the Picnic Day Incident, the DPD issued its initial press release (see Appendix C). The first post-incident press release contained inaccuracies involving important details that related to the crowd and the ability of the people in the crowd to identify the individuals as police officers and to identify the unmarked police van as a police vehicle.

The credibility of the initial press release was challenged within a day of its dissemination.²² The DPD and the public had further reason to question the credibility of the initial press release when a dashcam video recorded by a member of the public was submitted to the DPD three days after the altercation. The Grand Jury reviewed that video, which revealed the following inaccuracies in the initial press release.

- Russell Boulevard was not gridlocked at the time of the incident. The video showed that one of the two westbound lanes on Russell was partially blocked by people standing in the street. Cars traveling westbound on Russell were required

to merge into the one open lane. The blockage at the corner was not the only one, however. Another, larger group of people was partially blocking traffic further west on Russell.

- The video showed that the unmarked police van was never surrounded by the crowd on the corner.
- The video did not show a large hostile group of people. The hostility was limited to the officers and a few people on the street, some of whom were subsequently arrested and charged. There were no hostilities among the people on the street until the unmarked van approached at close range.
- On the video, the two front seat occupants of the van were not wearing any police tactical gear. Neither front seat occupant had a police badge or identification visible at the time they exited the unmarked van.

DPD Policy 1.30-A (as written at the time of the Picnic Day Incident) provided in part:

“Public information shall be released to the media as promptly as circumstances allow without partiality and in as objective manner as possible.”

That policy also stated:

“Written press statements shall be released only following review by the supervisor of the specific incident or involved officer(s) in an effort to ensure accuracy.”²³

The author of the press release also received an internal directive to have the press release reviewed before dissemination.

Neither the involved officers nor their immediate supervisor reviewed the initial press release to ensure accuracy. The DPD now acknowledges that the initial press release was written to include “facts”²⁴ to justify the actions of the officers. The DPD also acknowledges that the initial press release was written more as an explanation of the actions of the plainclothes officers than as an objective explanation of events.

The DPD concluded that the “inaccurate” statements in the press release did not violate Policy 1.30-A. The DPD drew no conclusion as to whether the lack of objectivity in the press release was a violation of Policy 1.30-A. The DPD concluded that the only violation of Policy 1.30-A was the failure of the author to obtain review of the press release by the involved officers and their immediate supervisor.

The May 10, 2017 DPD Press Release and the Release of the Dashcam Video

On May 10, 2017, approximately two and a half weeks after the initial press release, a second, more nuanced update of the Picnic Day Incident was released to the media (see

Appendix D). At the same time, the DPD released a slowed-down and shortened version of that dashcam video.²⁵

The video released to the public was edited to delete the sequence of events immediately prior to the unmarked van's U-turn. The original dashcam video received by the DPD and available to the OHS attorney investigators shows a marked UC Davis Police vehicle passing through the intersection of Russell and College Park, eastbound, approximately 45 seconds before the van stopped at the intersection.

Prior to the U-turn, the unmarked van was stopped waiting for a turn arrow for a full 35 seconds. The edited version shows only 11 seconds of the stop. During the 35 seconds that the van was stopped, 16 pedestrians and bicyclists crossed Russell Blvd in front of the van. Eleven people crossed from south to north and five people crossed from north to south. The crossing pedestrians caused the crowd on the corner to contract and expand in size. The edited version shows no pedestrians crossing in front of the van.

The video released to the public was also slowed down, making the time of the U-turn and the initial contact with the crowd appear to take longer than the actual time shown on the original dashcam video received by the DPD. The edited version of the video shows 30 seconds from the point where the van started moving to the point where the front passenger's door comes open. The original dashcam video shows 15 seconds for the same sequence.

Criminal Charges against the Five Picnic Day Defendants

On June 1, 2017, approximately six weeks after the Picnic Day Incident, the Yolo County District Attorney's Office charged five individuals with multiple felony and misdemeanor offenses.²⁶

Each of the offenses charged had "essential elements" that the prosecution must prove beyond a reasonable doubt to obtain a conviction. The five defendants were charged with offenses that required the prosecutor to prove that the defendants knew, or should have known, that the men with whom they were fighting were police officers.

The inaccuracies in the press release created a public impression that the undercover officers could be identified as police officers when they first confronted the defendants. This impression was articulated explicitly in the charging decision made by the Yolo County District Attorney's Office.²⁷

After three days of preliminary hearings in the Yolo County Superior Court, the criminal charges against the five defendants were resolved. All charges requiring proof of the essential element of officer identification were dismissed as to all defendants. All felony charges were dismissed for four of the five defendants after they successfully completed a one-year probationary period. Those four defendants entered no-contest pleas to a less

serious misdemeanor charge. The fifth defendant entered a no-contest plea to one felony charge (not requiring proof of officer identification) and all other felony charges were dismissed.²⁸

The OHS investigation and the McGregor Scott Report

On June 26, 2017, the Davis City Attorney engaged the services of the Sacramento law firm of Orrick, Herrington & Sutcliff LLP (OHS)²⁹ to “perform an internal affairs investigation into an incident that occurred in Davis at approximately 3:30 p.m. on ‘Picnic Day,’ which was April 22, 2017.” The investigation was to be “performed with customary industry standards of professional investigative practice, as well as the Davis Police Department’s Internal Affairs Policy.”³⁰

The Davis City Attorney directed the OHS attorneys to coordinate with the City Attorney’s Office as to the appropriate notices required under the Public Safety Officers Procedural Bill of Rights.³¹ The Davis Police Chief had responsibility for coordinating interviews and providing access to evidentiary materials and DPD policies.

The McGregor Scott Report and the investigatory materials assembled by the OHS attorneys addressed the following DPD rules and policies and reviewed the actions of DPD officers for potential violations:

- Officer Knowledge of Department Policies
- Officer Dress
- Officer Identification
- General Conduct, Rude Conduct, and Language
- Use of Force
- Department Policy on Press Releases
- Discrimination and Racial or Bias Based Profiling
- Obedience to Laws and Department Policy/Procedure
- Inexcusable Neglect of Duty

Upon its completion, the McGregor Scott Report was transmitted to the Davis City Attorney, who in turn transmitted it to the DPD on November 13, 2017. Following the receipt of the McGregor Scott Report, the Davis Police Chief drafted specific Department findings. The Chief determined whether a specific finding was sustained or unfounded. In drafting the Department’s findings, the Chief reviewed the McGregor Scott Report, the corresponding exhibits, and reports related to the investigation.

The DPD adopted the entirety of the McGregor Scott Report, including its conclusions and findings. The Police Chief determined that the OHS investigation was complete, comprehensive, and appropriately conducted.

Although the Davis Police Chief made a sustained finding of a violation of DPD Policy relating to the initial press release, that sustained finding was made against the Department and not against any specific officer. Although the identity of the press release's author was known to the OHS attorneys and the DPD, the Police Chief could not make a sustained finding against the author because that officer had not been properly identified as a "subject officer," nor afforded rights under the Public Safety Officers Procedural Bill of Rights.³²

In October 2017, the Davis City Council elevated Assistant City Manager Mike Webb to the position of City Manager. Shortly thereafter, the new City Manager went on record as saying that he "felt it was beneficial to have the report come out with a city council meeting in the near future, where citizens would have a vehicle and platform to engage."³³ Subsequently, neither the City Council nor the public was permitted to see the McGregor Scott Report. The City Attorney and the DPD determined that the release of that report was not possible because the investigation and report were a police personnel matter.³⁴

Following the public backlash to the announcement that the McGregor Scott Report would not be released, the recently appointed City Manager hired Michael Gennaco as the Interim IPA.³⁵ Mr. Gennaco was immediately tasked by the City Manager with conducting a review of the McGregor Scott Report and the investigation conducted by the OHS Team. That review culminated in the release of the Gennaco Report in April 2018.

The Gennaco Report: Independent Review by the Interim IPA

The Gennaco Report identified 21 specific deficiencies in the DPD's handling of the Picnic Day investigation, the OHS investigation, and the McGregor Scott Report.³⁶ In addition to the deficiencies identified in the Gennaco Report, the following questions left open by the McGregor Scott Report and the OHS investigation were either not identified or not thoroughly analyzed in the Gennaco report:

- Whether the OHS investigation and the DPD acted diligently to follow-up with a potential witness who may have provided the police at the scene with physical evidence of the bottle referenced in the first press release. The Gennaco Report acknowledges that a fingerprint was lifted from the bottle. The Gennaco Report stops short of reporting that the fingerprint could not be matched to any of the defendants. The fingerprint was matched, however, to another individual who was identified in the DPD incident reports as present at the scene.

- Whether the officers' use of the "drive, honk, and yell" procedure is contrary to the California Vehicle Code and whether it is a maneuver that any member of the driving public could utilize when a group of pedestrians is partially blocking the roadway.³⁷
- Whether the McGregor Scott Report failed to address the actions of the plainclothes officers in relation to DPD Policy 3.18-CC³⁸ and the Picnic Day Operations Order regarding crowd management.
- Who was responsible for failing to identify the author of the press release as a "subject" witness in the investigation, thereby not affording that officer the notice due under the Public Safety Officers Procedural Bill of Rights.
- Who was responsible for failing to identify the supervisor of the three plainclothes officers involved in the Picnic Day Incident as a "subject" witness, thereby not affording that officer the notice due under the Public Safety Officers Procedural Bill of Rights.
- Whether the Davis City Attorney failed to coordinate with the OHS attorneys as to "subject" witnesses as required by the Agreement for Investigative Services dated June 26, 2017.
- Whether the failure to provide the proper Public Safety Officers Procedural Bill of Rights notices led to the finding against the "Department" as to the violation of the DPD press release policy and whether a finding could have been made against an individual officer if the proper Public Safety Officers Procedural Bill of Rights notice had been given.

SB 1421 Requests for Police Records

SB 1421 amended California Penal Code section (§) 832.7, relating to police officer personnel records. The change in the statute now allows for the release of otherwise confidential police personnel records for the following reasons: incidents involving an officer who discharges a firearm at another person, uses force resulting in death or great bodily injury, engages in sexual assault involving a member of the public, or "... an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer ...directly relating to the reporting of, or investigation of misconduct by, another peace officer ..., including, but not limited to, any sustained finding of perjury, false statement, filing false reports, destruction, falsifying, or concealing of evidence."

The legislative intent incorporated into SB 1421, reads as follows:

"The Legislature finds and declares all of the following:

- (a) "Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission,

the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers’ faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.

- (b) “The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians’ rights, or inquiries into deadly use of force incidents, undercuts the public’s faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.”³⁹

The public’s “right to know” versus law enforcement’s confidentiality privilege was tested by a group of citizens when a request was made for release of the McGregor Scott Report and the corresponding OHS investigation into the Picnic Day 2017 Incident.

The SB 1421 Request for Release of the McGregor Scott Report

On January 1, 2019, the day on which SB 1421 went into effect, the DPD received a letter requesting records relating to the Picnic Day Incident. Twenty-one people who identified themselves as “community members” signed the request. The request specifically identified the McGregor Scott Report, all supporting evidence used in preparing that report, and all materials forwarded by the DPD to the Yolo District Attorney’s Office.

The request was based on the claim that the Gennaco Report had identified a sustained finding against the DPD for violation of the policy on press releases. The request defined the Department’s dishonesty as “releasing inaccurate and misleading information to the public, withholding critical information from the public, and repeatedly failing to correct inaccurate and misleading statements”

The response to the January 1 request was made by letter dated January 10, 2019 on the letterhead of the DPD. The response countered the claim of dishonesty by stating: “The finding concerning the press release was that the initial press release issued by DPD following the Picnic Day Incident was inaccurate but that there was no finding of dishonesty.”

The response also noted that there was no sustained finding against a “specific officer.” SB 1421 requires a finding of “dishonesty by a peace officer.” According to the DPD’s response letter, the refusal to release the McGregor Scott Report was justified because there was no finding against a specific officer.

The letter refusing release of the McGregor Scott Report and the OHS investigation included the following language: “The person responsible for the decision not to release the investigation records you requested ... is the undersigned with the advice of the City Attorney.”⁴⁰ The undersigned was identified as the Records and Communications Manager for the DPD. This statement relating to the decision-maker was false according to Grand Jury witnesses.

The Records and Communication Manager did not make the decision to withhold the McGregor Scott Report. Although the response letter was on DPD letterhead, the decision not to release the records was made outside of the DPD by the Davis City Attorney. The Davis Police Chief approved the decision not to release the records. Neither the City Manager nor the City Council reviewed or approved the decision.

By letter dated February 15, 2019, 33 individuals, many of whom had signed the January 1 request, sought clarification of the refusal to release the McGregor Scott Report and the OHS investigation. The February 15th letter challenged the City Attorney’s assertion that an inaccurate and misleading press release does not qualify as a dishonest press release. As per the challenge: “It strains credulity that the degree and nature of the misinformation in such a consequential police department press release would be described as anything other than dishonest.”

The response to the February 15th letter was dated February 25, 2019 and came directly from the Davis City Attorney on the attorney’s law firm letterhead. The February 25th letter focused on the City Attorney’s definition of dishonesty. The letter stated: “the types of dishonesty to which SB 1421 applies is not broad but limited to dishonesty-related actions involving some sort of intention or knowing lie or misstatement.” Although the City Attorney’s limitation on the definition of dishonesty is stated as a settled legal principle, the quoted language does not appear in SB 1421. The quoted language is the City Attorney’s legal interpretation, not the expression of the legislature or the courts.

The Definition of “Sustained Finding of Dishonesty” for Purposes of SB 1421

The DPD’s response to the January 1, 2019, SB 1421 request was accurate in stating that there was “no finding of dishonesty” in either the McGregor Scott or Gennaco reports. The response was incorrect, however, when it stated that the DPD violation of its press release policy “does not meet the definition of a sustained dishonesty finding under Penal Code section 832.7(b)(1)(c).” It is incorrect because there is no definition of dishonesty in the California Penal Code.

SB 1421, as codified in California Penal Code §832.7(b)(1)(C), provides the following, non-exclusive, examples of dishonesty: perjury, filing false reports, destruction, falsifying, or concealing of evidence.

When considering whether the press release was honest, one factor to consider is the acknowledgment by the DPD that it was not written as an objective explanation of events, but as an attempt to explain the actions of the plainclothes officers. The DPD policy on press releases and communication with the media required objectivity. The DPD policy also included a requirement that the involved officers and their supervisor review the press release for accuracy. The DPD failed to follow their own policy with respect to both requirements.

If the author of the press release had reviewed it for accuracy with the involved officers, one of two results would have followed. First, the involved officers may have confirmed the press release as accurate. In that case, those officers would have been dishonest. After the issuance of the press release, the plainclothes officers have admitted that they intended to appear to be civilians in their unmarked van, thereby not “burning” the van for undercover purposes. Driving toward the group on the corner, the officers initially had no intention of identifying themselves as police officers. The officers only attempted to identify themselves as police after the fighting broke out.

Second, the officers or their supervisor may have refuted the statements in the press release. In that case, if the DPD had released the press statement as written, that action alone would have established dishonesty. By failing to follow the policy on communication with the media, the DPD effectively allowed itself to release a non-objective, inaccurate, and misleading press release where no individuals put themselves in a position to be “dishonest.”

When the PAC asked the Davis City Council in July 2019 to assign the IPA to review the events surrounding the press release, it was seeking to resolve the question of what constitutes police officer dishonesty. The PAC framed the question as one of fact, believing that additional information could lead to a “sustained finding of dishonesty,” which in turn could lead to a release of the McGregor Scott Report under SB 1421. The IPA advised the City Council that further investigation would be unlikely to yield new facts.

Whether or not new information could be developed, dishonesty, or the lack thereof, remains a legal determination made by the Davis City Attorney. The City Attorney’s interpretation and opinion of what constitutes dishonesty as that term is used in SB 1421 was the basis for refusing to release the McGregor Scott Report and investigation. Absent a reconsideration of that opinion, the City Attorney’s interpretation of dishonesty will stand until SB 1421’s use of the term is clarified by additional legislation or by a court ruling to the contrary.⁴¹

SB 1421 and Incidents Resulting in Great Bodily Injury

Following the altercation on Picnic Day 2017, two of the plainclothes officers were taken to the emergency room at Sutter Davis Hospital for treatment of injuries sustained in the altercation. The criminal complaint against the five Picnic Day defendants included an allegation that the force used by the defendants was “likely to produce great bodily injury.”

SB 1421 allows for release of police internal affairs investigations where there has been “[a]n incident in which the use of force by a peace officer . . . against a person resulted in death, or in great bodily injury.”⁴² SB 1421 makes no distinction, however, between injury to a police officer or injury caused by a police officer.

On July 31, 2019, the City of Davis and the DPD received a SB 1421 request from a citizen of Davis, which sought release of the Picnic Day 2017 investigation based on this “great bodily injury” provision. The DPD’s response came from the Records and Communication Manger in a letter dated August 20, 2019, and simply stated: “The Department has no releasable records responsive to your request.”⁴³

The Davis PAC – Its Responsibilities

During calendar year 2019, the IPA focused his efforts on investigating complaints made by the public. The PAC spent considerable time at multiple meetings discussing how complaints should be received, whether the PAC should be receiving the complaints, and whether the IPA’s investigation and summary of the complaints should be received “as completed” or in batches on a quarterly, semi-annual, or annual basis. In 2019, one batch of completed investigations was received at the December meeting.⁴⁴

While complaints were being pursued by the IPA and the PAC, other responsibilities in the PAC’s mandate were not being addressed. One of the PAC’s responsibilities, as set out in the authorizing resolution, is to coordinate with the IPA to identify and prioritize DPD policies, procedures, or training practices for IPA auditing.⁴⁵ In calendar year 2019, no such audits were identified, prioritized, or conducted.

The Gennaco Report, which was released prior to the creation of the PAC, concluded with a list of 10 specific recommendations.⁴⁶ Audit topics suggested by the recommendations in the Gennaco Report include:

- Audit 2018 and 2019 DPD media communications for compliance with updated DPD Policy 1.30-A – Police Media Relations and Information,⁴⁷ including:
 - Promptness
 - Objectivity
 - Initial releases notated as preliminary and subject to change

- Review by supervisor or involved officer(s)
- Review by two DPD administrators; names included on written statements
- Written statements attached to original police report
- Audit 2018 and 2019 DPD video releases for compliance with DPD Policy 4.13-A – Release of Video Evidence,⁴⁸ including:
 - Identification of all video evidence in critical incidents
 - Timeliness of release
 - Privacy protections of juveniles, victims of certain crimes, and non-involved persons visible in video
 - Adequate justification in situations of delayed release
 - Proper notifications to persons entitled to notice of proposed releases
- Audit 2018 and 2019 DPD use of body-worn cameras for compliance with DPD Policy 4.12A – Body Worn Cameras,⁴⁹ including:
 - Adherence to DPD guidelines for activation of body-worn cameras
 - Knowledge of California Penal Code §§632-633 relating to surreptitious recordings
 - Compliance with requirements for wearing, testing, and transferring recordings from body-worn cameras
 - Officers have not used body-worn cameras for prohibited or restricted purpose
 - Officers involved in any critical incident have provided a statement or written report before reviewing recordings
 - Compliance with California Government Code §34090.6(a) relating to media retention

When the Grand Jury began its investigation, the PAC had not undertaken a review or audit of the 10 recommendations in the Gennaco Report.

The PAC is also responsible for providing annual written input to the City Manager and the City Council on the effectiveness of the IPA. As of the date of this report, no written input has been provided by the PAC.⁵⁰

The Grand Jury agrees that the IPA is acknowledged within law enforcement and police accountability communities as having a high degree of knowledge and experience in “best practices” for policing. He also has a solid understanding of the laws applicable to police internal affairs investigations. Although the PAC is charged with assessing effectiveness, it has not developed a protocol for evaluating the IPA’s work. The PAC

gives great deference to the IPA, and commissioners seldom challenge him with difficult questions.

Another aspect of the PAC's mandate is the systematic review of DPD policies and procedures. The study of "critical incidents"⁵¹ is one method of understanding how DPD policies and procedures work in practice. The Picnic Day 2017 Incident, the subsequent OHS investigation, and the refusal of the City of Davis to release the McGregor Scott Report under SB 1421 focus on one critical incident and the DPD's response to it.

The following residual questions from the Picnic Day Incident are within the PAC's purview to review DPD policies and procedures:

- The DPD's release of inaccurate and misleading statements to the media and the public regarding the Picnic Day 2017 Incident. Addressing that question leads directly to one element of the damaged trust among members of the public, the PAC, and the DPD.
- The distinction between an "inaccurate" public statement and a "dishonest" public statement. Addressing that question leads to an understanding of the basis for the City Attorney's and DPD's decision to refuse release of the McGregor Scott Report following an SB 1421 request.
- The mechanics of an internal police investigation and the circumstances under which the findings of such an investigation may or may not be released pursuant to SB 1421.
- The DPD's decision-making process for release of police materials pursuant to SB 1421.

Responding to these residual questions requires explanation and input from the IPA, the Davis City Attorney, the Davis City Manager, the Davis Police Chief, and others from within the DPD.

The Davis PAC's Challenges

From the PAC's initial meeting in January 2019 until the City Council declined to act on PAC's recommendation in July 2019, a tension existed among commissioners between resolving issues of the past and looking forward. Some commissioners wanted to address issues of prior police incidents, including the Picnic Day 2017 Incident. Some commissioners wanted to focus on building relationships between the community and the DPD and providing input into DPD policies and procedures. Some commissioners sought to pursue a restorative justice process to address tensions between the DPD and people affected by DPD actions.

From the outset, the PAC adopted a policy that has limited its ability to build relationships with the DPD. The PAC does not want to regularize a police presence at

PAC meetings because of a concern that a police presence would intimidate some members of the public.

At present, monthly PAC meetings are not attended by the Davis Police Chief or his designee. The claim is made by a small number of attendees (fewer than a total of 10 individuals observed during the eight months of meetings attended by Grand Jurors) that the presence of any police officer at the meetings would so traumatize them and others they claim to represent that they would be prohibited from attending the meetings. Consequently, the PAC created a “safe space” policy whereby representatives from the DPD would not attend PAC meetings unless they were specifically invited. Few invitations were extended during 2019.

The Davis Police Chief was invited to the February 2019 PAC meeting. That meeting began at 6:30 p.m., but the Chief’s invitation was for 8:00 p.m. to avoid having a police presence during the first hour and a half of the meeting. After the Chief provided an overview of the DPD, the commissioners asked questions about personnel turnover, officers not residing in Davis, a homeless coordinator, homeless camps, and ride-along programs. The commissioners did not ask questions about critical incidents, internal affairs investigations, or release of DPD records pursuant to SB 1421. The Davis Police Chief was not invited to appear before the PAC between February 2019 and June 2020.⁵²

At the September 2019 PAC meeting, the IPA led a tabletop exercise⁵³ on providing public information in emergency situations. The IPA assigned roles to the commissioners and led them through a participatory exercise on providing public information during a critical incident. The IPA emphasized the importance of planning ahead for a critical incident and having policies and procedures in place to deal with such incidents.

The PAC invited a DPD Lieutenant to the October 2019 meeting to provide an overview of the types of training that police officers receive at the Police Academy, through the Davis Police Department, and through POST (Peace Officers Standards and Training). The commissioners asked questions about mental health issues, homelessness, de-escalation training, use of electronic devices, racial profiling, and implicit bias. The Lieutenant’s presentation was well received. Nevertheless, no other DPD presentations were requested by the PAC through May 2020.

Other than the tabletop exercise in September 2019 and the presentation by a DPD lieutenant in October 2019, PAC commissioners have not received training on many of the DPD’s policies and procedures. Although the presentations by the lieutenant and the IPA were well received, the PAC, as of July 2020, has not followed up by making requests for training by the DPD on other topics.

The lack of a DPD presence at PAC meetings has caused critical questions to go unanswered because neither the City Staff Liaison nor the IPA have the specific technical

expertise to respond to specific DPD proposals scheduled to be heard by the City Council. At the March 2020 meeting, the PAC attempted to formulate input to the City Council on several technical issues: the Accurint Virtual Crime Center (inter-department data sharing), fixed surveillance cameras, portable surveillance cameras, and license plate readers. Also, the PAC attempted to respond to a new DPD policy relating to the Armored Rescue Vehicle. Without a DPD representative present at the PAC meeting, many technical questions relating to the items under consideration went unanswered.

The problematic relationship among the PAC, the DPD, and the City Manager was evident in a community outreach event held on Sunday, November 17, 2019. The PAC had reviewed preparations for that event at its November 7 meeting. A subcommittee reported that it had met with the Davis Police Chief who planned to speak at the start of the outreach event, leave the event, and then possibly return at the end of the event.

The day before the event took place, some commissioners learned that the Police Chief would not be in attendance. No explanation was given for the Chief's non-attendance. At the time of the event, commissioners were confused as to why the Police Chief did not attend.

The City Manager had made the decision that the Police Chief would not attend the community outreach event and communicated that decision to the Chief two days before the event. At the December 2019 PAC meeting, commissioners expressed concern that the subcommittee had been "out of the loop" in the City Manager's decision-making process. Commissioners also expressed concern that absence of the Chief was a missed opportunity for discussion between the DPD and the community.

The PAC's authorizing resolution specifically excludes people with law enforcement backgrounds from being appointed as commissioners. The commissioners are charged, however, with informing the community about police oversight, recommending changes/improvements to policy, procedure, or training, and providing input to IPA reports about complaint investigations and trends. Commissioners need to be knowledgeable in both best practices and the specific practices, policies, and procedures utilized by the DPD.

In the City Staff Report leading to the creation of the PAC, the City Manager, Assistant City Manager, and the Police Chief encouraged the City Council and community members to review the "Guidebook for the Implementation of New or Revitalized Police Oversight", published by the National Association for Civilian Oversight of Law Enforcement in 2016.⁵⁴ That guidebook stresses that commissioners must acquire the knowledge and skills necessary to execute their responsibilities for them to be credible and legitimate in the eyes of the constituencies with which they interface.

The guidebook recommends that newly appointed commissioners receive an initial orientation to include an historical account of the establishment of the PAC, the authorizing resolution, and the relationship of the PAC to the City Council, City Staff, and the IPA. That initial orientation has not been incorporated into a PAC training schedule.

The guidebook also recommends that commissioners have training that addresses laws governing public records and public meetings; confidentiality requirements; state and local laws that affect an officer's rights and privacy; case law on stops and detentions, search and seizure, the rights of an arrestee, and the definition of excessive force; and steps in the criminal justice process including arrest, booking, arraignment, bail, hearings, and trial.

As of July 2020 no training program has been established for new or existing commissioners to receive information on the history, organization, and evolution of the DPD. No specific training has been scheduled on DPD police practices and procedures, including: patrol; rules of conduct; procedures for detention, arrest, booking, transport, and provision of medical care for arrestees; use of force guidelines including defensive tactics, takedown, pain compliance maneuvers, handcuffing techniques, use of batons, less-lethal weapons or restraint devices, and use of firearms.

In addition, commissioners have not scheduled training that addresses the DPD's procedures for investigating and reviewing allegations of misconduct and use of force, including officer involved shootings and in-custody deaths; and addressing activities such as large-scale protests.

The DPD has offered the commissioners the opportunity to tour the DPD facilities and participate in ride-alongs with the DPD, activities that are consistent with improving communications between commissioners and the DPD.

FINDINGS

- F1. The practice of excluding DPD leadership and officers from meetings of the Davis PAC limits candid dialogue between the PAC and the DPD.
- F2. The practice of excluding DPD leadership and officers from meetings of the PAC limits the PAC's ability to obtain the specialized knowledge it needs to make recommendations to the City Council.
- F3. Sensitivity to a limited number of individuals has outweighed the claims of the larger community to benefit from hearing the insights and perspectives of the DPD as the PAC attempts to fulfill its responsibility to provide meaningful

- guidance to the Davis City Council with respect to police policies, procedures, and practices.
- F4. The PAC has not fulfilled its responsibility to provide annual written input to the City Manager and the City Council on the effectiveness of the IPA.
- F5. During calendar year 2019 and the first quarter of 2020, the PAC did not coordinate with the IPA to identify and prioritize topics to be audited by the IPA.
- F6. As stated in its authorizing resolution, the PAC is to provide community-based police accountability by way of interactions with the public, the IPA, the DPD, and others. The PAC's responsibility to provide police accountability is not limited by the non-action of the Davis City Council at its July 30, 2019 meeting.
- F7. With IPA input, the PAC is charged with systematically reviewing DPD policies, procedures, and training for topics to be audited by the IPA. To meet this obligation, the PAC is authorized to inquire into departures from DPD policy, procedure, and planning during and following the Picnic Day 2017 Incident, including the DPD Press Release of April 24, 2017, and the release of the edited dashcam video on May 10, 2017.
- F8. The PAC, with input from the IPA, is authorized to provide community-based police accountability by inquiring as to why the OHS attorney investigators, working under the direction of the Davis City Attorney, failed in following the procedures set out in the Public Safety Officers Procedural Bill of Rights, which led to no DPD officer being held individually accountable for the inaccuracies in the April 24, 2017 press release.
- F9. PAC commissioners lack understanding of how internal affairs investigations are conducted, how findings based on such investigations are made, how SB 1421 requests should be presented, and how the DPD responds to SB 1421 requests.
- F10. The PAC, with input from the IPA, is authorized to provide community-based police accountability by inquiring into the DPD's public misrepresentation of the decision-making process for the release of records under SB 1421. The DPD misrepresented in January 2019 that the Custodian of Public Records made the decision to refuse release of the Picnic Day 2017 investigation.
- F11. Because appointment to the PAC is limited to people who do not have law enforcement backgrounds, training is critical for existing and incoming commissioners. For PAC commissioners to be justifiably perceived as knowledgeable on topics of police accountability, both by the public and by the DPD, commissioners require training in a wide variety of best practices for policing, including specific training in DPD police practices, policies, and procedures.

RECOMMENDATIONS

- R1. No later than December 31, 2020, the Davis City Council should amend the PAC's authorizing resolution to provide that one or more members of the DPD be designated by the Police Chief as liaison(s) to the PAC to attend all meetings.
- R2. No later than December 31, 2020, the Davis PAC should adopt a policy whereby the Davis Police Chief or a designee with the necessary expertise be in attendance at PAC meeting(s) when the consideration of a DPD policy, procedure, or practice requires input from a person(s) with specialized knowledge.
- R3. No later than December 31 of each year, the Davis PAC should meet its responsibility to provide annual written input to the Davis City Manager and City Council on the effectiveness of the IPA.
- R4. No later than December 31, 2020, the Davis PAC should identify audit topics for the IPA by leading a candid public discussion into the residual questions from the Picnic Day 2017 Incident and its aftermath. Those discussions should include the how and why of the DPD's release of inaccurate and misleading statements to the media and the public in the April 24, 2017 press release and the release of the edited dashcam video on May 10, 2017. The PAC should hear directly from and ask questions of the Davis City Manager, the Davis Police Chief, the author of the initial Picnic Day press release, and the Davis IPA at a public meeting of the PAC.
- R5. No later than December 31, 2020, the Davis PAC should identify the consequences of the failure of the OHS attorneys to follow procedures set out in the Public Safety Officers Procedural Bill of Rights in the investigation of the inaccurate and misleading press release of April 24, 2017. The PAC should hear directly from and ask questions of the Davis City Attorney, the Davis City Manager, the Davis Police Chief, and the Davis IPA at a public meeting of the PAC.
- R6. No later than December 31, 2020, the PAC should obtain an explanation of the mechanics of an internal police investigation and the circumstances under which the findings of an investigation may or may not be released pursuant to SB 1421. The PAC should hear directly from and ask questions of the Davis City Attorney, the Davis City Manager, the Davis Police Chief, and the Davis IPA at a public meeting of the PAC.
- R7. No later than December 31, 2020, the PAC should obtain an explanation of the DPD decision-making process for release of police records pursuant to SB 1421 and the identity of the person who has the final authority to release or deny access to police records under SB 1421. The PAC should hear directly from and ask questions of the Davis City Attorney, the Davis City Manager, the Davis Police Chief, and the Custodian of Records for the DPD at a public meeting of the PAC.

- R8. No later than January 15 of each year, the PAC should adopt an annual workplan that includes a monthly schedule of training for incoming and existing commissioners. That training should be heavily focused on best practices and on specific DPD policies, procedures, and practices. Training should provide one-on-one opportunities for commissioners to observe Davis police officers at work in the community.

REQUEST FOR RESPONSES

Pursuant to Penal Code §933.05, the Grand Jury requests responses as follows:

REQUIRED RESPONSES

From the following governing bodies:

- Davis City Council – F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11; R1, R2, R3, R4, R5, R6, R7, R8

INVITED RESPONSES

From the following individuals:

- Chief of Police – Davis Police Department – F1, F2, F3, F7, F8, F9, F10, F11; R1, R2, R4, R5, R6, R7, R8
- City Attorney – City of Davis – R5, R6, R7
- City Manager – City of Davis – F4; R3, R4, R5, R6, R7

From the following body:

- Davis Police Accountability Commission – F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11; R1, R2, R3, R4, R5, R6, R7, R8

Note: The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

APPENDIX A
CHRONOLOGY OF SIGNIFICANT DATES REFERENCED IN REPORT:

Date	Event
April 22, 2017	Picnic Day 2017
April 24, 2017	Initial Picnic Day Press Release from DPD
April 25, 2017	DPD receives dashcam video from a Davis resident
May 10, 2017	Second Picnic Day Press Release from DPD and release of edited Picnic Day dashcam video
June 1, 2017	Yolo County District Attorney charges five individuals with multiple felonies and misdemeanors arising out of the Picnic Day Incident
June 26, 2017	Davis City Attorney retains McGregor Scott and OHS to perform an internal affairs investigation
August 30, 2017	Four of the five defendants charged in the Picnic Day Incident enter “no contest” pleas. Felony charges to be dismissed after one year of successful probation
September 7, 2017	Fifth defendant enters “no contest” plea
October 17, 2017	Davis City Council appoints Mike Webb as City Manager
November 9, 2017	McGregor Scott Report finalized
November 13, 2017	McGregor Scott Report transmitted from Davis City Attorney to DPD
December 8, 2017	Davis Police Chief issues Department Analysis and Findings of the Picnic Day Incident, adopting the McGregor Scott Report including its conclusions and findings
December 17, 2017	Davis City Manager goes on record as saying that it would be beneficial to have the McGregor Scott Report come out to allow citizens to engage with the City Council
January 19, 2018	Michael Gennaco hired as Interim IPA
April 10, 2018	Release of Gennaco Report to Davis City Council and the public
July 31, 2018	Davis City Council adopts Resolution 18-149 establishing PAC

September 30, 2018	Governor approves SB 1421
January 1, 2019	Effective Date of SB 1421
January 1, 2019	Twenty-one people make SB 1421 request to obtain McGregor Scott Report and OHS investigation
January 10, 2019	DPD response to SB 1421 request of January 1, 2019, written by Davis City Attorney on DPD letterhead, refusing to release McGregor Scott Report and OHS investigation
January 30, 2019	PAC holds its first meeting
February 15, 2019	Thirty-three individuals seek clarification of DPD's refusal to release McGregor Scott Report and OHS investigation
February 25, 2019	Davis City Attorney responds to request for clarification dated February 15, 2019
March 19, 2019	Michael Gennaco transitions from Interim IPA to IPA
May 2, 2019	PAC decides to recommend to the Davis City Council further IPA investigation of SB 1421 declination by DPD
July 30, 2019	Davis City Council meeting - declines to act on May 2 PAC request
July 31, 2019	City of Davis and DPD receive SB 1421 to obtain OHS investigation and McGregor Scott Report based on "great bodily injury" provision of SB 1421
August 20, 2019	DPD responds to SB 1421 request of July 31, 2019, by stating that it has no releasable records responsive to request
November 15, 2019	City Manager directs Davis Police Chief not to attend PAC outreach event on November 17

APPENDIX B

DIAGRAM 1 - Intersection of College Park and Russell Boulevard depicting location of the unmarked police van and the crowd on Picnic Day 2017 prior to the officers' U-turn.

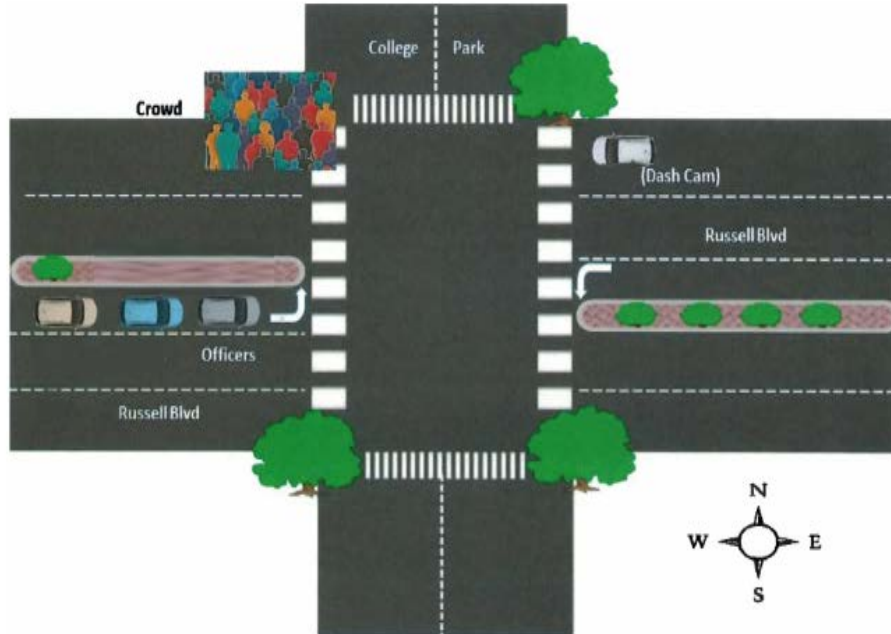
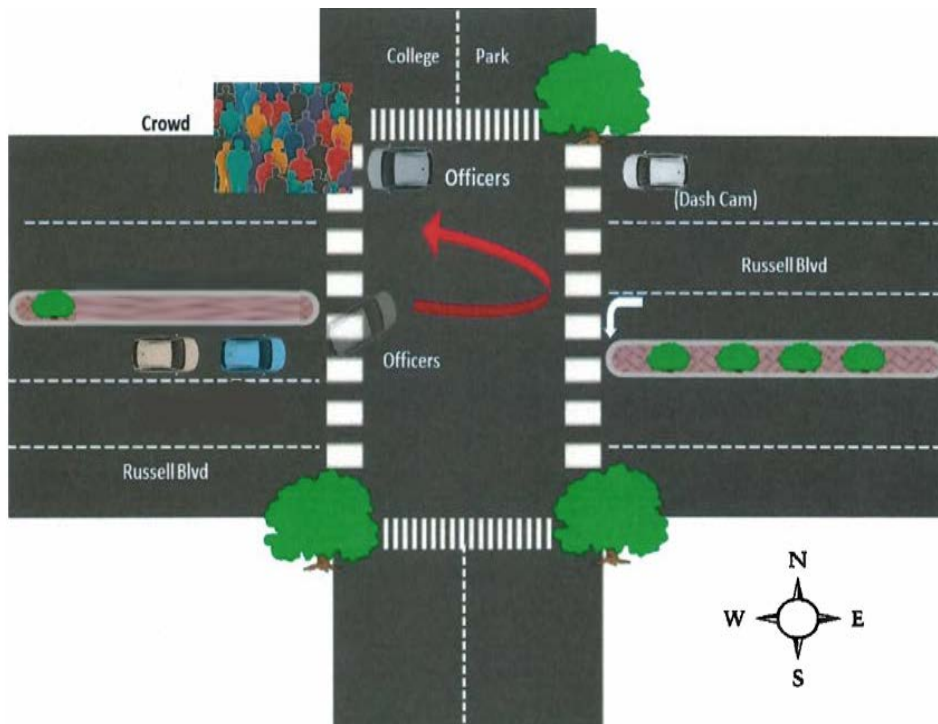


DIAGRAM 2 - Intersection of College Park and Russell Boulevard depicting location of the unmarked police van and the crowd on Picnic Day 2017 following the U-turn.



APPENDIX C

The April 24, 2017 press release was previously posted to the DPD website, but it has subsequently been removed. Insofar as that press release is no longer available in the public domain, it is reproduced here, in its entirety:

City of Davis Police

Advisory: Two Davis Police Officers Assaulted by Picnic Day Crowd

Monday, April 24, 2017, 3:45 p.m.

On April 22, 2017, at approximately 3:30 P.M., three Davis Police Officers working on Picnic Day were traveling on Russell Blvd in an unmarked police vehicle when the officers encountered a large group of people in the roadway who were blocking traffic. One officer was wearing police attire with visible badge and the other two were wearing plainclothes, although they had clearly displayed badges on their chests and visible police weapons. At the time, Russell Blvd was nearly gridlocked due to Picnic Day related traffic and many large parties occurring in the area. Due to the obvious safety hazards the group presented, the officers pulled near the group to take action.

Before the officers could act, the unmarked police vehicle was surrounded by a large hostile group and several subjects began to yell threats at the police officers in the car. One subject quickly moved to simulate he was pulling a gun on the officers. As the officers exited the car and began to identify themselves as the police, two officers were immediately physically attacked by multiple suspects and beaten on the ground. While on the ground, the officers were kicked, punched in the head, and one officer was struck with a bottle on the side of his head. As the officers were being assaulted they could see people in the crowd filming the attack with their cell phones.

The surrounding crowd was hostile and presented a serious threat to the officers, who were easily identifiable by their displayed badges and attire. The officers were able to fight back and call for help. Two injured officers were taken to the Sutter Davis emergency room for treatment. One suffered injuries to his eye and face and the other was treated for a bleeding head wound caused by a bottle.

The following three involved suspects were arrested and booked at the Yolo County Jail:

- Alexander Reide Craver (22 year old male from West Sacramento) - arrested for Aggravated Battery (243b Cal PC), Assaulting a Peace Officer (243c1 Cal PC), Felony Obstruction of Peace Officer (69 Cal PC), Assault with a Deadly Weapon (245 Cal PC).

- Antwoine Rashadek Perry (21 year old male from Elk Grove). - arrested for aggravated battery (Cal PC 243b), Felony Obstruction of Peace Officer (Cal PC 69).
- Elijah James Williams (19 year old male from West Sacramento) - arrested for Assault on a Peace Officer (243c1 Cal PC), Aggravated Battery (243b Cal PC), and Assault with a Deadly Weapon (245c Cal PC), Felony Obstruction of Peace Officer (Cal PC 69).

The Davis Police Department is asking anyone with cell phone video or information regarding this case to contact our investigations unit at 530-747-5400.

Lt. Paul Doroshov
PIO

APPENDIX D

The May 10, 2017 press release was previously posted to the DPD website, but it has subsequently been removed. Insofar as that press release is no longer available in the public domain, it is reproduced here, in its entirety:

City of Davis Police

Davis Police Department Releases Video of Picnic Day Altercation Involving Police Officers

May 10, 2017

As earlier reported by the Davis Police Department, on Saturday, April 22, 2017, at approximately 3:30 P.M., three Davis Police Officers working on Picnic Day were traveling on Russell Blvd in an unmarked police vehicle when the officers encountered a large group of people in the roadway who were blocking traffic. The officers stopped, an altercation ensued and three involved suspects were arrested, booked at the Yolo County Jail and released after posting bail.

The criminal investigation surrounding the arrests of the three individuals is continuing. Once it is completed, the Yolo County District Attorney's Office will review all pertinent reports and evidence and make an independent criminal filing decision. As with any use of force, and pursuant to the Department's existing protocol, an internal review was immediately initiated to evaluate the situation and determine whether there was compliance with the law and departmental policies and procedures. Additionally, summary incident information was released to the public along with the request for anyone who had video of the incident to contact the Davis Police Department.

Following the release of information by the Davis Police Department, the media was contacted by involved parties/witnesses who reported new and differing accounts of the incident. The media reported general claims were that the police instigated the incident, that there was racial bias and that the force used in the arrests was excessive.

On Tuesday, April 25, 2017, a Davis resident turned over dash cam video that captured a broad visual field and depicted important details of the incident. Importantly, the dash cam video shows that other witnesses were present and there is likely other video evidence available that has not yet been provided to the Davis Police Department. Additional video evidence may be helpful, in conjunction with all other available evidence being gathered (e.g. witness statements, officer interviews, forensic analyses, and documentary evidence), to inform appropriate conclusions regarding the pending investigations.

Therefore, to assist the Department's ongoing effort to investigate this incident, the dash cam video is being released. We are asking the public to view the dash cam video and to contact the Davis Police Department at (530) 747-5400 to

provide any information regarding witnesses or to provide contact information for those who may have additional video.

For video viewing, the following three were arrested:

- Male wearing darker red shirt and shorts.
- Male wearing lighter red shirt and dark backpack.
- Male wearing tank top and shorts.

The dash cam video is now available to the public through the links below. The links will also be posted to the Department's website, Facebook page and Twitter account (@cityofdavispd). [hyperlinks are no longer valid]

In addition, the City Attorney's Office has retained former Sacramento County Sheriff John McGinness, who has extensive experience in conducting investigations and also in law enforcement management, to conduct an Internal Affairs Investigation into the conduct of the involved officers to determine whether there was any misconduct and whether any changes to departmental policy and/or training are warranted. McGinness began his investigation last week. He will have access to all evidence relating to this incident, along with full access to any members of the Davis Police Department that are needed to conduct the internal investigation. When the investigation has been completed, the Department will take appropriate action consistent with findings and recommendations resulting from the independent review.

Office of the Police Chief

(530) 747-5405

ENDNOTES

- 1 California Penal Code §832.7(a)
- 2 California Penal Code §832.7(a). The McGregor Scott report is not available to the public. The Grand Jury obtained a copy of the report (and all related investigatory materials) pursuant to California Penal Code §832.7(a); see also *City of Woodlake v. Tulare County Grand Jury*, 197 Cal. App. 4th 1293, 1303 (2011); 79 Ops.Cal.Atty.Gen. 185 (1996)
- 3 The Gennaco Report may be found at:
<http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20180410/07A-Interim-Police-Auditor-Report-Picnic-Day-Incident.pdf> (Accessed: June 17, 2020)
- 4 <https://www.cityofdavis.org/city-hall/police-department/how-are-we-doing/complaint-inquiry-submission> (Accessed: June 9, 2020)
- 5 Davis City Council agendas are available at: <https://www.cityofdavis.org/city-hall/city-council/city-council-meetings/agendas> (Accessed June 9, 2020). Minutes and Meeting Summaries for the Davis City Council are available at: <https://www.cityofdavis.org/city-hall/city-council/city-council-meetings/minutes> (Accessed June 9, 2020)

- 6 Davis PAC agendas are available at: <https://www.cityofdavis.org/city-hall/commissions-and-committees/police-accountability-commission/agendas> (Accessed June 11, 2020). Minutes for the Davis PAC are available at: <https://www.cityofdavis.org/city-hall/commissions-and-committees/police-accountability-commission/minutes> (Accessed June 11, 2020)
- 7 The consultant team of Kathryn Olson and Barbara Attard recommended a two-prong approach to the Davis City Council on April 10, 2018: (1) hire an independent police auditor and (2) establish a Davis Police Accountability Board to work with the auditor to provide input to the City Council. <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20180410/08-Police-Oversight-Recommendation.pdf> (Accessed: June 11, 2020)
- 8 https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf (Accessed: June 17, 2020)
- 9 <http://documents.cityofdavis.org/Media/CityCouncil/Documents/PDF/CityCouncil/Police-Accountability-Commission/Reference-Documents/Resolution-18-149-Police-Accountability-Commission.pdf> (Accessed June 11, 2020)
- 10 Ibid.
- 11 Ibid.
- 12 California Government Code §§54950-54963
- 13 The PAC's recommendation to the Davis City Council may be found at: <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20190730/09-PAC-Picnic-Day-Recommendation.pdf> (Accessed June 17, 2020)
- 14 Gennaco Report at page 3
- 15 Based upon a review of a video received from a witness at the scene of the incident, the OHS attorney investigators concluded that the crowd at the corner of Russell Boulevard and College Park numbered approximately 42 people, with approximately 15 African-American pedestrians, 10 Latino pedestrians, 7 Asian, Arab, or South Asian pedestrians, and 10 white pedestrians within the camera's view. That review was a part of the findings from the investigation that the DPD adopted in its entirety.
- 16 In executing the "drive, honk, and yell" procedure on Picnic Day, DPD officers drove an unmarked police van so close to the crowd as to be unable to leave the scene without striking pedestrians; honked the horn of the vehicle in a manner that several witnesses at the scene described as belligerent; and yelled "get the fuck out of the road."
- 17 In support of this statement, the DPD quoted from California Vehicle Code §27001: "Use of horns. (a) The driver of a motor vehicle when reasonably necessary to insure safe operation shall give audible warning with his horn." The DPD did not reference the following provision of California Vehicle Code §27001: "Use of horns. (b) The horn shall not otherwise be used, except as a theft alarm system"
- 18 The Gennaco report described the "plan" devised by the three plainclothes officers to "drive, honk, and yell" as "inherently problematic." The report found that a more thoughtful approach would likely have avoided the resulting clash between the officers and the individuals in the street. Per the Gennaco report, better approaches were easy to envision:

"Either the involved officers could have waited for responding uniformed officers to arrive or they could have donned their tactical gear which would have more identified themselves as police officers, parked the van a near distance, alighted from the van, clearly announced themselves as police officers, and requested the crowd to move up onto the sidewalk."

- 19 Use of the word “fuck” constitutes “rude conduct” under DPD policies 7.04, 7.06, and 7.10 (as written at the time of the incident). Rude conduct is defined as “words or acts directed towards, and in the presence of another, that are discourteous, impolite, uncivil, or violent in nature.”
- 20 The written plainclothes policies (DPD Policy 2.36B (prior to amendments made in response to the Picnic Day Incident)) that the officers should have followed when engaging the crowd included the following:

“The quick and effective recognition of plainclothes or undercover officers is important for the safety of the officer, any responding officers, and to the public. Plainclothes and undercover operations shall be done in accordance to the provisions of this policy.

“As a general rule, plainclothes or undercover officers should always assume they will not be identifiable or recognized by other responding officers or citizens as a police officer

“When taking police action in plainclothes, officers shall wear/display their badge or department-issued identification card so that it is readily visible or so that is worn immediately adjacent to their firearm

“Whenever feasible, plainclothes officers should be wearing marked/identifiable police jackets, raid shirts, or police vests when taking police action or when present at a crime or incident scene

“Stopping suspected violators while operating an unmarked police vehicle:

“Police officers stopping suspected violators shall attempt to choose the safest available location for the police officer and the motorist, consistent with the need for prompt action.

“Police officers shall take into consideration the road and weather conditions, terrain, lighting, traffic and the nature of the violation.

“The police officer shall also attempt to choose a location that will afford both the driver and the police officer a sense of safety.”

- 21 This order to disperse in the Picnic Day 2017 Operations Order is consistent with DPD Procedure 3.18-CC, Crowd Management Guidelines, a procedure mandated by California Penal Code §13514.5.
- 22 In a report dated April 2, 2018, and presented to the City Council on April 10, 2018, <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20180410/07B-Picnic-Day-2017.pdf> (Accessed June 9, 2020) the Davis City Manager and Police Chief stated that “[b]y mid-morning Tuesday April 25, 2017, the press began contacting the Davis Police Department for additional information regarding the incident and for a response to claims by involved parties/witnesses who reported to the media new and differing accounts of the incident.” The claims made by the parties/witnesses included:
- the police officers instigated the incident;
 - the officers were unrecognizable as the police because they did not identify themselves and were in plainclothes driving an unmarked police vehicle;
 - there was racial bias involved;
 - the force used in the arrests was excessive; and
 - the preliminary release of information put out by the DPD on Monday April 24, 2017, at 3:45 p.m. was inaccurate.

- 23 One of the essential functions specified in the Police Chief’s position description is “[p]repare reports and approve press releases.” With reference to the April 24, 2017, press release, the Police Chief did not approve the final version of the press release. The Police Chief read the press release and directed the author to verify its accuracy with the officers involved. The author failed to follow this directive from the Chief.
- 24 The specific “fact” that was included to justify the actions of the officers was “[o]ne subject quickly moved to simulate that he was pulling a gun on the officers.” No gun was seen by any witness at the scene of the incident. No gun was ever recovered from the scene or the surrounding vicinity. The Gennaco Report labeled the press release statement concerning the gun as “imprecise” and concluded that “[n]o witness described the action as a person ‘simulating’ the ‘pulling’ of a gun.”
- 25 Only a portion of the dashcam video was released to the public. The edited video is available through multiple media outlets and on YouTube. For example:
- <https://www.sacbee.com/news/local/crime/article149824174.html> (Accessed June 9, 2020)
- <https://www.davisenterprise.com/local-news/police-receive-video-of-picnic-day-brawl-witnesses-asked-to-come-forward> (Accessed June 9, 2020)
- 26 The Criminal Complaint is from the Yolo County Superior Court File: The People of the State of California vs. Antwoine Rashadek Perry, et al., Case File CRM-17-2520. The criminal charges against the five defendants included:
- Counts 1 and 3: Felony assault by means of force likely to produce great bodily injury on a police officer (CA Penal Code §245(c);
- Counts 2, 4, 5, 6, and 7: Felony resisting a police officer by means of threats, force, or violence (CA Penal Code §69);
- Count 8: Misdemeanor resisting or obstructing a peace officer (fleeing from police) (CA Penal §148(a)(1).
- 27 The California Rules of Professional Conduct for attorneys state: The prosecutor in a criminal case shall: (a) not institute or continue to prosecute a charge that the prosecutor knows is not supported by probable cause. Rule 3.8(a).
- 28 Yolo County Case Number Case File CRM-17-2520;
<https://oneweb.yolo.courts.ca.gov/OneWebCaseInquiry/#/CaseNumberSearch> (Accessed: June 17, 2020)
- 29 The DPD made the decision to have the investigation conducted by investigators outside of the department. As stated by Chief Darren Pytel in a Public Release dated April 5, 2018: “Due to the nature of this incident, and the public/media interest and allegations, the Police Department ordered an outside, independent investigation to determine whether there was any misconduct on the part of the involved police officers.”
- 30 The hourly rate for attorney time billed in the OHS investigation was \$500 per hour. The rate did not vary among the lead partner on the investigation, McGregor Scott, and the two associate attorneys who worked on the investigation. A total of 401.75 attorney hours were billed for the investigation and the drafting of the McGregor Scott Report. Of those total hours, McGregor Scott personally billed 45.25 hours and the two associates combined billed 356.5 hours. The total amount billed to the City of Davis was \$203,914.89, which included attorney time, paralegal time, and disbursements for postage and word processing. The rate billed by the OHS attorneys may be compared to the billing rate for the IPA, which has varied from \$200 to \$225 per hour.

- 31 California Government Code §§3300, et seq.
- 32 The first billing entries by the OHS attorneys are for work performed in researching the Peace Officers Bill of Rights. OHS billed the City of Davis a total of \$3,000 for legal research identified to the Peace Officers Bill of Rights. Review of the OHS billing records do not identify any communication between the OHS attorneys and the City Attorney’s office concerning “the appropriate notices of interrogation under the POBR” as required in the Agreement for Investigative Services.
- 33 <https://www.davisvanguard.org/2017/12/scott-report-set-released-early-january/> (Accessed June 10, 2020)
- 34 California Penal Code §832.7(a)
- 35 Michael Gennaco was hired as Interim IPA on January 19, 2018. In March 2019, the Interim designation was removed from Michael Gennaco’s title and his firm, OIR Group of Playa del Rey, California, was retained to provide independent police auditor services. The rate for those services is \$200 per hour, not to exceed \$80,000 per fiscal year (pro-rated for fiscal year 2019). The contract with OIR Group runs through June 30, 2021.
- 36 Among the deficiencies in the OHS investigation and the McGregor Scott Report, as identified in the Gennaco Report (see Gennaco Report at pages 6 to 13) are the following:
- The OHS investigation did not address the failure of one (or more) of the involved officers to complete timely reports (when use of force has occurred or an arrest has been made for resisting arrest, battery on a police officer, or injury to a police officer, a report must be completed before the end of the officer’s shift).
 - The OHS investigation failed to address why only one of the three plainclothes officers involved in the Picnic Day Incident properly documented the use of force.
 - The OHS investigation did not address the failure of the other two plainclothes officers to document the use of force as required by DPD protocols.
 - The OHS investigation failed to consider whether the plainclothes officers had previously “burned” the unmarked police van on a call minutes prior to the road clearing incident.
 - The OHS investigation failed to inquire of the three plainclothes officers as to whether they requested an estimated time of arrival for the marked patrol units.
 - The OHS investigation failed sufficiently to discuss whether the decision by the plainclothes officers to position the van so close to the crowd left them with no good tactical options.
 - The OHS investigation failed to inquire of the three plainclothes officers as to whether they intended to clear the other crowds standing further down the street using the “drive, honk, and yell” maneuver that they deployed at the intersection.
 - The OHS investigation failed to discuss the lack of medical records in the DPD investigation file. The defendants were charged with felony assault on a peace officer, which required proof that the force used was likely to produce great bodily injury. To make this proof, medical records should have been obtained by DPD and included in the file sent to the District Attorney’s Office.
 - The OHS attorneys failed to record their interviews with the Police Chief and the Deputy Police Chief.
- 37 California Vehicle Code §27001 provides:
- (a) The driver of a motor vehicle when reasonably necessary to insure safe operation shall give audible warning with his horn.
 - (b) The horn shall not otherwise be used, except as a theft alarm system

California Vehicle Code §21950 provides:

- (a) The driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided in this chapter.
 - (b) This section does not relieve a pedestrian from the duty of using due care for his or her safety. No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close as to constitute an immediate hazard. No pedestrian may unnecessarily stop or delay traffic while in a marked or unmarked crosswalk.
 - (c) The driver of a vehicle approaching a pedestrian within any marked or unmarked crosswalk shall exercise all due care and shall reduce the speed of the vehicle or take any other action relating to the operation of the vehicle as necessary to safeguard the safety of the pedestrian.
 - (d) Subdivision (b) does not relieve a driver of a vehicle from the duty of exercising due care for the safety of any pedestrian within any marked crosswalk or within any unmarked crosswalk at an intersection.
- 38 Crowd Management, Intervention, and Control, DPD Policy and Procedure 3.18-CC, a procedure mandated by California Penal Code §13514.5
<https://www.cityofdavis.org/home/showdocument?id=13463> (Accessed June 17, 2020)
- 39 Senate Bill No. 1421, Section 1 (2017-2018),
https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421 (Accessed June 23, 2020)
- 40 If a written public records request is denied because the local agency does not have the record or has decided to withhold it, the agency's response must be in writing and must identify by name and title each person responsible for the decision. California Gov. Code §§6253, subd. (d), 6255, subd. (b). This requirement is also incorporated into DPD Policy 5.05-C, Release of Records/Public Records Act.
- 41 The Davis City Council retained the services of a new City Attorney, effective July 1, 2019.
- 42 California Penal Code §832.7(b)(1)(A)(ii)
- 43 The refusal to release records in response to the July 31, 2019, request is the subject of pending litigation in the Yolo County Superior Court: The People's Vanguard of Davis vs. The City of Davis and The Davis Police Department, Court File CVPT-2019-1832.
- 44 Independent Police Auditor Semi-Annual Report, December 2019
<https://www.cityofdavis.org/home/showdocument?id=14297> (Accessed: June 17, 2020)
- 45 The April 6, 2020, meeting of the PAC included a discussion of its proposed 2020 Workplan. Although the Workplan has been on the PAC's agenda for each meeting in 2020, a final version had not been adopted as of the conclusion of the April 2020 meeting. See <https://www.cityofdavis.org/city-hall/commissions-and-committees/police-accountability-commission/agendas> (Accessed: June 17, 2020)
- 46 Gennaco Report at pages 21-22
- 47 Police Media Relations & Release of Public Information, DPD Policy and Procedure 1.30-A
<https://www.cityofdavis.org/home/showdocument?id=13277> (Accessed: June 17, 2020)
- 48 Release of Video Evidence, DPD Interim Policy and Procedure 4.13-A
<https://www.cityofdavis.org/home/showdocument?id=13545> (Accessed: June 17, 2020)
- 49 Body Worn Video Cameras, DPD Interim Policy and Procedure 4.12-A
<https://www.cityofdavis.org/home/showdocument?id=13489> (Accessed: June 17, 2020)

50 The PAC's proposed 2020 Workplan reflects uncertainty as to the scope of the PAC's assessment of the work of the IPA. Although the Workplan acknowledges that the City Council charged it with providing written input on the effectiveness of the IPA, the Workplan proposes to limit the scope of that input to addressing the question of whether the IPA is effective in his working relationship with the PAC. See <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/Police-Accountability-Commission/Agendas/2020/2020-04-06/06B-PAC-Work-Plan.pdf>. (Accessed June 10, 2020)

51 Critical incidents are generally defined in DPD policy as:

- Officer-involved shootings, regardless of whether a person was hit by gunfire;
- A use of force resulting in death or serious bodily injury to another;
- All deaths while an arrestee/detainee is in the custodial care of the Department unless there is no preliminary evidence of any of the following: misconduct, a use of force, or an act committed by an arrestee/detainee that appears intended to cause injury or death; or
- Any other police encounter where the Police Chief, the IPA and the City Manager determine the release of video is in the public interest.

See Release of Video Evidence, DPD Interim Policy and Procedure 4.13-A

<https://www.cityofdavis.org/home/showdocument?id=13545> (Accessed: June 17, 2020)

52 At the June 1, 2020, PAC meeting Police Chief Darren Pytel discussed the DPD restraint and use of force policies. See PAC meeting minutes at

<http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/Police-Accountability-Commission/Agendas/2020/2020-07-06/05A-Minutes-June-1-2020.pdf> (Accessed: July 7, 2020)

53 A tabletop exercise is an emergency preparedness activity that takes participants through the process of dealing with a simulated emergency scenario. Individuals are assigned emergency management roles and discuss a variety of responses to simulated emergency situations.

54 The suggested training of PAC members was taken, in large part, from the Guidebook for the Implementation of New or Revitalized Police Oversight, published by the National Association for Civilian Oversight of Law Enforcement in 2016. This source was cited in a Staff Report from the City Manager, Assistant City Manager, and Police Chief to the Davis City Council, dated July 11, 2017. https://d3n8a8pro7vhm.cloudfront.net/nacole/pages/175/attachments/original/1534263107/Guidebook_for_the_Implementation_of_New_or_Revitalized_Police_Oversight_2016_FINAL.pdf?1534263107 (Accessed: June 10, 2020)

and

<http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20170711/08-Police-Oversight.pdf> (Accessed: June 10, 2020)

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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Striving to Make a Difference: Responses to the 2018-2019 Yolo County Grand Jury Report

The Yolo County Grand Jury acts as a citizen “watchdog” by investigating and reporting on the affairs of local government including citizen complaints about local government. The Grand Jury reports its findings and recommendations to Yolo County residents. The 2018-2019 Grand Jury conducted and published five investigative reports, with a total of 48 Findings and 27 Recommendations:

1. Flood Management in the Urban Environment – Yolo LAFCo and the Role of Reclamation Districts 537 and 900 within the City of West Sacramento
2. Missed Funding Opportunities: West Sacramento Flood Control Projects
3. Health and Human Services: The Drug Medi-Cal Organized Delivery System – A Watershed Moment
4. Sci-Tech Academy: A Model For The Future?
5. Office of Refugee Resettlement (ORR) Report: ORR Places Youth In Yolo County Detention – What Can Be Improved?

This report briefly describes each investigation, summarizes its findings and recommendations, and provides agency and individual responses to those findings and recommendations.

BACKGROUND

Although the Grand Jury reports to the Superior Court of California, County of Yolo, it is a wholly independent body with authority to investigate any function of city or county government or of tax-supported agencies or districts operating in Yolo County. The California Constitution of 1849-1850 authorized the formation of grand juries. The grand juries are governed by California Penal Code sections (§§) 888 through 939.91 and California Government Code §§3060 through 3075.

Each year, 19 Yolo County residents are selected by the court for one-year terms running from July 1 to June 30. At the end of the term, the Grand Jury publishes a report of its investigations and recommendations. These reports are available on the Grand Jury’s website at <http://www.yolocounty.org/business/community/grand-jury/yolo-county-grand-jury-reports>, and at all Yolo County libraries.

Elected officials or heads of agencies investigated by the Grand Jury are required to comment on the findings and recommendations within 60 days, and governing bodies such as boards and councils are required to comment within 90 days.

California Penal Code §933.05 guides the format of the responses to Grand Jury findings and recommendations. For findings, respondents must indicate whether there is full or partial agreement or disagreement with each finding and specify the disputed portion of the finding, with an explanation of the reasons for the dispute.

For recommendations, respondents must include one of the following:

- The recommendation has been implemented. This response must include a summary of the implemented action.
- The recommendation has not yet been implemented but will be in the future. This response must include a time frame for implementation.
- The recommendation requires further analysis. This response must explain the scope and parameters of an analysis or study and include a time frame for the review, not to exceed six months from the date of publication of the Grand Jury Report.
- The recommendation will not be implemented. The respondent must provide an explanation for the negative response.

There are a number of reasons for an agency not to implement an otherwise valid recommendation: (1) the agency has already implemented a program that addresses the recommendation's goal; (2) the recommendation duplicates a function or activity of another agency; (3) the agency is aware of information not available to or not considered by the Grand Jury, leading the agency to believe that the recommendation will not achieve its intended purpose.

RESPONSES TO THE 2018-2019 GRAND JURY REPORT

Below is a summary of the five investigations undertaken by the 2018-2019 Grand Jury, along with the findings, recommendations, and responses for each report. Agency responses can also be found at: <https://www.yolocounty.org/residents/grand-jury/yolo-county-grand-jury-reports/responses-to-2018-2019-grand-jury-reports>

1. Flood Management in the Urban Environment – Yolo LAFCo and the Role of Reclamation Districts 537 and 900 within the City of West Sacramento

The 2018-2019 Yolo County Grand Jury (Grand Jury) received complaints regarding concerns that the City of West Sacramento (City) was inappropriately moving towards bringing Reclamation Districts (RD) 537 and 900 under City governance. Because the City was the proposed governing body for the Districts, the complainants were also concerned that the City might misallocate funds intended for flood protection. The Grand Jury was unable to find an instance when a landowner district became a subsidiary of a

city or county. The reclamation districts are opposed to coming under the City jurisdiction in any format.

The City submitted proposal applications in August 2018 to the Yolo Local Agency Formation Commission (YLAFCo) to bring the southern section of RD 537 and the entirety of RD 900 under the City as subsidiaries after YLAFCo made that recommendation in the February 2018 Final YLAFCo Maintenance Service Review (MSR) and Sphere of Influence (SOI) Report.

However, the earlier December 2017 YLAFCo Draft MSR/SOI for RD 537 and 900 made two recommendations: the subsidiary option and one allowing the reclamation districts to consolidate (the more common approach). Conflicting information from multiple interviews and documents made it impossible for the Grand Jury to determine why the consolidation option in the 2017 Draft MSR/SOI report was removed from the 2018 Final report.

In response to the City's applications and in spite of YLAFCo's recommendation, RD 537 and RD 900 submitted their own proposal applications in December 2018 to YLAFCo to consolidate. The MSR/SOI recommendations, proposal applications, and procedures became the focus of this investigation.

The Grand Jury found there was a lack of communication and proactive collaboration among all four agencies (RD 537, RD 900, City, and YLAFCo) over the vital topic of West Sacramento flood protection. In addition, YLAFCo failed to do a thorough examination during the MSR/SOI and proposal application processes into public costs, the City's General Fund exposure to liability, and the West Sacramento Area Flood Control Agency (WSAFCA)'s solvency before the Final MSR/SOI was reduced to one unique option. By its own admission, YLAFCo knew this path was risky yet chose it in spite of YLAFCo's own previously stated positions. It had been 13 years since YLAFCo completed a MSR/SOI on the reclamation districts, eight years longer than the five years mandated by LAFCo law (Gov. Code §[56425\(g\)](#)).

RECOMMENDATIONS

R1. By December 31, 2019, each reclamation district website should highlight its purpose, history, and the important work done or planned, in order to improve transparency.

Response from Board of RD 537: Recommendation has been implemented. A website as described for Reclamation District No. 537 was established May 2019 (www.rd537.specialdistrict.org)

Response from Board of RD 900: Recommendation has been implemented. Reclamation District 900 has established a website which it is working to enhance to make it more useful and transparent to the public.

R2. By October 1, 2019, General Managers for RD 537 and RD 900 should have regularly scheduled formal meetings (minimally quarterly) with the City Manager to discuss joint directives and goals.

Response from West Sacramento City Council: Recommendation has been implemented. The City Council will direct the City Manager to implement the Grand Jury Recommendation R2.

Response from Board of RD 537: Recommendation requires further analysis. Based on YLAFCo action on July 25, 2019 and statements made by the City of West Sacramento's attorney, the City Manager will have *zero* involvement in the management of a consolidated RD900. Furthermore, the area of RD537 within the City will detach and be annexed into RD900. RD 537 will coordinate with the management of RD900 on this process.

Response from Board of RD 900: Recommendation has been implemented. Reclamation District No. 900 would be pleased to attempt to schedule quarterly meetings with the city manager of the City of West Sacramento to discuss joint directives and goals.

R3. By February 1, 2022, YLAFCo should revisit and publish the MSR/SOI for RD 537 and 900 earlier than scheduled to ensure whatever final decision in governance is made, the result is not detrimental to the functioning of flood protection.

Response from YLAFCo Commissioners: This recommendation requires further analysis. The earliest possible date the RD 537 and RD 900 boundary changes will take effect is July 1, 2020. Currently, LAFCo has the MSR for the reclamation districts scheduled for fiscal year 2023/24. Therefore, the current schedule would provide for an MSR three years after the boundary changes would occur. LAFCo reviews this schedule every year at a minimum or anytime as needed and can assess if an earlier review is warranted.

Response from Board of RD 537: Recommendation requires further analysis. Agreed. Although RD537 will cease to have territory and operations in the West Sacramento Basin with YLAFCo's 07/25/19 actions; we will continue to have concerns for the wellbeing of the property owners we have served there. Outside oversight will be more important than ever to insure adequate flood protection is being provided.

Response from Board of RD 900: Recommendation requires further analysis. Reclamation District No. 900 is not opposed to Recommendation 3. However, should the alternative reorganization proposal made by Reclamation Districts 900 and 537 (to detach the city portion of RD 537 and annex that territory into RD 900, with RD 900 working with the Department of Water Resources to take over maintenance area 4) be adopted by Yolo LAFCo it would appear that revisiting the MSR/SOR for RDs 537 and 900 would be unnecessary.

R4. By January 1, 2020, increase the size of the WSAFCA Board from three to seven members and include a public member.

Response from West Sacramento City Council: Recommendation requires further analysis. YLAFCO acted in July 2019 to reorganize the reclamation districts. Until such time as the reorganization is fully complete, it is premature to entertain changes to the WSAFCA Board given that the subject reclamation districts are members of the current WSAFCA Board.

Response from Board of RD 537: Recommendation requires further analysis. RD537 believes that increasing the size of the WSAFCA Board to include public members is appropriate, but should be an increase from three (3) to five (5) members rather than seven (7). RD537 will continue to participate in the WSAFCA JPA until a potential reorganization of its membership and Board structure is unanimously agreed to and approved by the necessary agencies and the CCVFPB.

Response from Board of RD 900: Recommendation requires further analysis. RD 900 believes that increasing the size of the WSAFCA Board to include public members is appropriate, but should be an increase from three (3) to five (5) members rather than seven (7), with one (1) public member to be appointed by the City of West Sacramento and one (1) public member to be appointed, jointly, by RDs 900 and 537. RD 537 should remain a member of WSAFCA with one Trustee on the Board, both for continuity and to avoid the difficulty of withdrawal given the position of the California Central Valley Flood Protection Board as expressed in the Amendment to the WSAFCA Joint Powers Agreement.

To accomplish this the WSAFCA Joint Powers Agreement must be amended, which will require the unanimous agreement of the three members. This should be addressed following Yolo LAFCO's decision on the competing reorganization proposals currently before Yolo LAFCO: (i) the City of West Sacramento (sic) proposal to make RD 900 and the City portion of RD 537 subsidiary districts of the City of West Sacramento, and (ii) RD 900 and 537's alternative proposal to detach the City portion of RD 537 and annex that territory into RD 900.

- R5. By January 1, 2020, YLAFCo should create an internal procedure/policy to conduct an *independent*, third-party examination when confronted by an extremely impactful or unique issue on topics such as costs and liability, before any final recommendation is made by the YLAFCo Commission. Reliance on opinions paid for by affected parties should only be one basis for consideration. This new procedure/policy ensures due diligence, best practices, and is in the public's best interest.**

Response from YLAFCo Commissioners: Recommendation has been implemented by LAFCo. Notwithstanding the response to Finding F9, at its August 22, 2019 meeting LAFCo adopted a new Yolo LAFCo Project Policy 6.13 as follows:

One of LAFCo's purposes is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities. During the preparation of an MSR and/or SOI, LAFCo may consider obtaining any needed analysis or studies by soliciting or hiring consulting services.

- R6. By January 1, 2020, YLAFCo should ensure a mechanism exists, if legally feasible, for funding independent, third-party examinations when considering impactful or unique proposals (such as billing the affected or impacted parties).**

Response from YLAFCo Commissioners: Recommendation will not be implemented because it already exists. LAFCo's fee schedule already provides a mechanism to pay for such an examination as follows, "Any additional expenses incurred by the Commission, in excess of the deposited amount, will be billed to and paid by the applicant before completion of the LAFCo proceedings, including final recordation and filings." This includes any additional studies or analysis deemed necessary by LAFCo.

- R7. By January 1, 2020, the Board of Supervisors should lead the creation of a multi-agency and stakeholder flood committee or working group to facilitate collaboration among all Yolo County communities on all flood topics, plan for global warming flood changes, and present these discussions to the citizens. Since two Yolo County Supervisors are YLAFCo commissioners, those supervisors should present the formation of this committee to the full board.**

Response from Yolo County Board of Supervisors and YLAFCo Commissioners: The recommendation requires further analysis. This year, Yolo County reinitiated FloodSAFE Yolo 2.0, a coordinated comprehensive flood management planning effort for the west side of the county. One of the goals is to establish a sustainable

governance structure. Once that is established, it may offer an opportunity for greater coordination, but for now, it is the desire of the parties involved to start with a smaller area and demonstrate success before expanding. Should, however, the cities express interest in a countywide approach in the near term, the County stands ready to participate. Meanwhile, many agencies and stakeholders in Yolo County, including the County, participate in the following flood coordination groups:

Westside Sacramento Integrated Regional Water Management (Lake, Solano, Napa and Yolo counties with Yolo County chairing the effort)

Lower-Sacramento/Delta North Regional Flood Management Planning Group (Yolo and Solano counties, Reclamation District 2068/2098, WSAFCA, SAFCA, Solano County Water Agency)

Central Valley Flood Control Association (50+ reclamation districts, 6 counties and 4 flood control agencies; Yolo County holds a seat on the Board)

Central Valley Ag Floodplain Task Force Executive Committee

Water Resources Association of Yolo County (County, all cities within Yolo County and Yocha Dehe Wintun Nation)

2. Missed Funding Opportunities: West Sacramento Flood Control Projects

The Yolo County Grand Jury (Grand Jury) identified that the flood control projects in the West Sacramento area did not receive the requested federal funding for levee improvement projects. The missed funding opportunities were significant and could have totaled in the millions of dollars. The Grand Jury tracked the funding requests in an attempt to determine why this occurred.

The State of California has large-scale flood management plans. However, each community has the responsibility to secure funding for their flood protection. West Sacramento Area Flood Control Agency (WSAFCA), an agency comprised of the City of West Sacramento and Reclamation Districts 537 and 900, attempted to obtain funding for flood protection projects. WSAFCA lacked extensive knowledge of the funding process and had little critical collaboration from regional, state, and federal agencies.

The Grand Jury found that the process local government agencies must take to secure state and federal funding is complicated and subject to change. The Grand Jury also found that specialists in flood control funding are essential at the lobbying and consulting levels.

WSAFCA failed to secure federal funding for its flood protection projects in the last two budget cycles. However, in late 2018, WSAFCA received \$400,000 from the U.S. Army

Corps of Engineers (USACE) for project design. The Sacramento Area Flood Control Agency (SAFCA) received its entire requested amount. When neighboring urban centers, such as Sacramento, strengthen their flood defenses, flood risk could be transferred to neighboring unimproved levees. In this case, the unimproved levees of West Sacramento and Yolo County could be at risk.

RECOMMENDATIONS

- R1. By October 1, 2019, WSAFCA (and by extension, the City of West Sacramento) should reinforce clear, open lines of communication with its local, state, and federal flood control partners.**

Response from City Council of West Sacramento and WSAFCA Board:

Recommendation has been implemented. The City of West Sacramento and WSAFCA have taken steps to establish clear, open lines of communication with its local, state and federal flood control partners. See City Council's response to Finding F2:

The City Council/WSAFCA disagrees with Grand Jury Finding F2. Flood Protection Division staff meet regularly with the USACE, DWR, CVFCB, and SAFCA as part of the Oversight Management Group to coordinate flood control project implementation in the Sacramento Region. This monthly coordinating meeting is unprecedented with regard to Federal flood control projects and has been in place for over two years. Based in part through this coordination, WSAFCA effectively: executed a Credit MOU with USACE for work on the Southport Levee Project (up to \$130 million federal investment value); secured \$400,000 in FY2019 federal appropriations; and secured a recommendation of \$400,000 in the FY2020 president's budget. WSAFCA has also secured approximately \$161 million in state funding for flood projects in advance of federal funding.

Additionally, Flood Protection Division staff meets regularly with our state partner to coordinate implementation of both local-led flood projects as well as the federal flood project. Flood Protection Division staff also lead an active stakeholder flood protection committee in Yolo County, the planning team for the Lower Sacramento River/Delta North Region, funded by DWR. Yolo County is a member of that group, along with Solano County and SAFCA.

- R2. By October 1, 2019, WSAFCA (and by extension, the City of West Sacramento) should build additional relationships with consultants and lobbyists with expertise in current practices who specialize in flood protection funding.**

Response from City Council of West Sacramento: Recommendation has been implemented. Since 2006, WSAFCA utilized the City of West Sacramento lobbyist

for a coordinated lobbying effort on federal priorities, including flood protection. Starting in December 2018, WSAFCA retained Federal Water Consulting as an additional, and separate, lobbyist specializing and focused solely on federal flood control funding and federal project implementation.

Response from WSAFCA Board: Recommendation has been implemented. Since 2006, WSAFCA utilized the City of West Sacramento lobbyist for a coordinated lobbying effort on federal priorities, including flood protection. Starting in Aug 2019, WSAFCA retained Federal Water Consulting as an additional, and separate, lobbyist specializing and focused solely on federal flood control funding and federal project implementation.

R3. By January 1, 2020, the Board of Supervisors should lead the creation or reactivation of a multi-agency and stakeholder flood protection committee or working group to facilitate collaboration among all Yolo County communities on all flood topics, and to present these discussions to the citizens.

Response from Yolo County Board of Supervisors: The recommendation requires further analysis. This year, Yolo County reinitiated FloodSAFE Yolo 2.0, a coordinated comprehensive flood management planning effort for the west side of the county. One of the goals is to establish a sustainable governance structure. Once that is established, it may offer an opportunity for greater coordination, but for now, it is the desire of the parties involved to start with a smaller area and demonstrate success before expanding. Should, however, the cities express interest in a countywide approach in the near term, the County stands ready to participate. Meanwhile, many agencies and stakeholders in Yolo County, including the County, participate in the following flood coordination groups:

Westside Sacramento Integrated Regional Water Management (Lake, Solano, Napa and Yolo counties with Yolo County chairing the effort)

Lower-Sacramento/Delta North Regional Flood Management Planning Group (Yolo and Solano counties, Reclamation District 2068/2098, WSAFCA, SAFCA, Solano County Water Agency)

Central Valley Flood Control Association (50+ reclamation districts, 6 counties and 4 flood control agencies; Yolo County holds a seat on the Board)

Central Valley Ag Floodplain Task Force Executive Committee

Water Resources Association of Yolo County (County, all cities within Yolo County and Yocha Dehe Wintun Nation)

3. Health and Human Services: The Drug Medi-Cal Organized Delivery System – A Watershed Moment

While investigating an unrelated Health and Human Services topic, the Yolo County Grand Jury (Grand Jury) became aware of the newly-implemented Drug Medi-Cal Organized Delivery System (DMC-ODS).

On July 1, 2018, the Yolo County Health and Human Services Agency (HHS) implemented a massive change in the treatment of Substance Use Disorders (SUD). Yolo County is one of 40 California counties taking part in the DMC-ODS pilot program under California's Medicaid Section 1115 waiver launched in 2015. DMC-ODS includes 10 essential benefits mandated by the Affordable Care Act (aka Obama Care) which were limited under the prior Drug Medi-Cal Standard Program.

Not only does DMC-ODS expand SUD treatment, it also fundamentally changes SUD services. Under DMC-ODS, SUD treatment is now considered medically necessary. Candidates must be diagnosed with at least one SUD as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM). New SUD treatment is assessment-driven by means of a standardized tool created by the American Society of Addiction Medicine (ASAM). Once an individual is determined by the DSM diagnosis and ASAM assessment to have a SUD, that individual is placed in a level of treatment based upon their needs. As treatment continues, the individual may move into intensive inpatient care or outpatient services on a continuum of care.

The DMC-ODS significantly improved care by covering a previously ignored population, especially adult men. Additionally, people seeking treatment can enter any door in HHS to receive care, much like that of a managed care system. Those interviewed by the Grand Jury agreed that this program was a transformative step in SUD treatment.

Yolo County and HHS should be commended for participating in a pilot program that improves the care of its citizens. HHS should also be commended for reorganizing from “silos” to multiple access points for clients.

Although the DMC-ODS positively improves and expands SUD services, this change also resulted in negative impacts for some providers including a substantial increase in paperwork and the need to hire more staff. More than one county, including Yolo County, saw a loss of providers due to this change. Start-up errors by providers early in the implementation created a delay in state reimbursement of service costs.

RECOMMENDATIONS

R1. By January 1, 2020, Yolo County Health and Human Services should designate or add a full time staff person to support and assist current and future providers of DMC-ODS.

Response from Yolo County Board of Supervisors and Yolo County Health and Human Services Agency: This recommendation has been implemented. The Health and Human Services Agency requested an additional position in their 2019-20 budget, which was approved by the Board of Supervisors, that will support and assist current and future providers of DMC-ODS services.

R2. By January 1, 2020, Yolo County Health and Human Services should identify more in-county service providers so that residents need not travel out of the county for care.

Response from Yolo County Board of Supervisors and Yolo County Health and Human Services Agency: This recommendation has been implemented. The Health and Human Services Agency recently brought an additional provider to West Sacramento to provide Medication Assisted Treatment for those struggling with opiate addiction. Additionally, the agency is actively pursuing avenues to bring additional residential and/or detoxifications providers to Yolo County.

4. Sci-Tech Academy: A Model For The Future?

Nearing the 10-year anniversary of Science and Technology Academy (Sci-Tech), the Yolo County Grand Jury (Grand Jury) decided to look at this charter school's educational strategy and its future challenges. Sci-Tech opened in 2010 in the former Woodland Joint Unified School District (WJUSD) Grafton Elementary School site in Knights Landing. Sci-Tech uses technology in three ways: (1) to connect teachers, students, and parents to the ongoing educational task, (2) to reach out to the broader community, and (3) to facilitate innovative teaching and learning. Unlike traditional public schools, charter schools have the flexibility to fashion a unique curriculum and to draw students from a wide geographic area.

The Grand Jury found that Sci-Tech creates a strong union between teachers, students, and parents with a creative use of science coupled with a small town family atmosphere. Sci-Tech has a strong governance committee and an involved parent organization. The Grand Jury also found that the school uses effective communication systems to connect with families and integrate an educational plan for its students. Sci-Tech connects older students with younger students in a way that promotes social confidence. Sci-Tech engages the local community so that Knights Landing once again has a center for community activity.

Like Grafton School before it, Sci-Tech faces substantial issues in the small, isolated community. Concerns relate to the desire to maximize enrollment to meet budgetary needs, the insufficient number of classrooms for increased enrollment, and Sci-Tech's location in a floodplain, which makes additional construction cost-prohibitive. However,

Sci-Tech's innovative approach to education and attention to relationships makes it a unique model worthy of replication.

The Grand Jury did not issue any recommendations, but commended Sci-Tech for its focus on science, use of technology to enhance learning, the dedication of its staff, its attention to building relationships, its good communication, hard work, and instilling the joy of learning. These are lessons for a lifetime.

5. Office of Refugee Resettlement (ORR) Report: ORR Places Youth In Yolo County Detention – What Can Be Improved?

The 2018-2019 Yolo County Grand Jury (Grand Jury) received complaints regarding the health and well-being of unaccompanied alien children detained by the Office of Refugee Resettlement (ORR) who were placed at the Juvenile Detention Facility (JDF) within the Yolo County Probation Department.

Unaccompanied alien children are assessed by the ORR (background, medical and mental health needs) and placed in facilities based on legal requirements (constitutional rights of due process, legal settlements such as the Flores Settlement) and child welfare best practices in order to provide a safe and least restrictive setting. Placement could be a shelter facility, foster care, group home, staff-secure or secure care facility, residential treatment facility, or other special needs facility.

The JDF is one of only two secure care facilities in the United States. They house ORR youths whom the ORR assesses for primarily being a danger to themselves or others, or who have been charged with having committed a criminal offense. The JDF has found many of the unaccompanied alien children inaccurately assessed by ORR, and has released youth to family or sponsors, or transferred them to a less severe facility whenever appropriate.

Under the current contract (set to expire in 2020) between JDF and the ORR, JDF can only house 24 unaccompanied alien children at any given time. Although the population constantly changes, the average population since 2018 has been well below the maximum.

The previous 2017-2018 Yolo County Grand Jury found that JDF needed more officers and recommended that the Yolo County Board of Supervisors rethink contracting with ORR. In addition, the Grand Jury found that the contract with the ORR benefitted the county financially, but created the risk of youth becoming wards of the county.

The 2018-2019 Grand Jury found that since the 2017-2018 Grand Jury report, the California Auditors inquiry, and staff changes in December 2018, positive changes in the JDF have occurred. These include hiring more officers, increasing officer training time

from 40 to 120 hours, and adding an in-house training officer. In addition, the unaccompanied alien children have increased phone time, video chat opportunities, more access to mental health workers and counselors, and various social improvements. JDF staff seem to recognize that the unaccompanied alien children entering their facility are traumatized and require individualized help for coping and learning behavioral management skills.

The Grand Jury found that (1) viewpoints differ on the JDF complex issues, (2) the public lacks access to Probation Department policies and procedures through the Yolo County website, (3) the Notice of Placement often lacks necessary details for placement and steps for release, (4) the reasons ORR gives for referring youth for placement at the JDF are sometimes inappropriate, (5) the controversial use of pepper spray is in contrast to a mandated “homelike” environment, (6) many ORR youths often lack criminal or gang affiliation, yet are housed at JDF with those that do, (7) JDF procedures do not mandate a behavioral therapist consistently in the pods nor at use-of-force reviews, (8) because of certain practices, the JDF fails to meet legal mandates for a homelike setting, (9) there has been a pattern of successful lawsuits against ORR concerning Flores Settlement violations for youth at the JDF, (10) ORR youth phone calls are not private and are recorded in potential violation of the Flores Settlement, (11) the recently offered video conferencing for ORR youth is not included in JDF policies, (12) the ORR program is financially important to the county, yet risks potential litigation, (13) outside time could be increased, (14) the uncertainty about length of stay and future placement creates stress for ORR youth, (15) ORR youth are fearful that mental or medical problems brought to the attention of workers will be used against them by the ORR, (16) JDF hiring focuses on officers, not therapists, and (17) traumatized youth are exposed to artwork that might trigger bad memories and anxiety.

RECOMMENDATIONS

R1. By October 1, 2019, Notices of Placement should include explanations of the status of their immigration cases, what must be done to be released from the JDF, and the steps youth must take to be stepped down to another facility or released.

Response from Yolo County Board of Supervisors: This recommendation requires further analysis and coordination with ORR as implementation may entail modification to ORR policy. The Notice of Placement in a Restrictive Setting form is completed in accordance with the ORR Manual of Procedure and notes the reason for initial or continued placement in a restrictive setting, as determined by the ORR Federal Field Specialist. Case managers assigned to work with each youth routinely educate youth on the requirements for placement at less-restrictive settings and youth's attorneys, as well as their case managers, provide updates on the status of their immigration cases as new information becomes available.

- R2. By January 1, 2020, the JDF should convene an independent interdisciplinary task force composed of educational experts to determine how to improve educational opportunities at the JDF including: how to provide culturally competent education, concrete strategies for addressing the wide range of education levels, and providing age appropriate reading material in the youths' primary languages.**

Response from Yolo County Board of Supervisors: This recommendation will not be implemented because it is not warranted. Yolo County Office of Education (YCOE) Alternative Education staff have been involved in on-going culturally-responsive curriculum and classroom professional development designed to provide differentiated instruction for all students. YCOE Alternative Education staff meet weekly and utilize many community agencies and stakeholders to achieve these goals. Additionally, site administration from YCOE utilize a professional development steering committee comprised of several community members and education services professionals.

- R3. By October 1, 2019, the JDF should allow youth who are not charged with criminal offenses to make private and unrecorded phone calls.**

Response from Yolo County Board of Supervisors: This recommendation requires further analysis. While current practices meet standards set forth by the Flores Settlement, the Probation Department is not opposed to evaluating ways to maximize youth privacy while maintaining their safety.

- R4. By January 1, 2020, the JDF should update both its Youth Handbook and policies and procedures manual to state that youth have the right to communicate with family and others through an internet-based videoconferencing system.**

Response from Yolo County Board of Supervisors: The recommendation requires further analysis. The Probation Department is vested in facilitating family reunification and will explore internet-based videoconferencing systems and other means of providing access to technology to augment traditional phone calls and on-site visiting hours.

- R5. By October 1, 2019, the JDF should conduct activities outside whenever possible to allow youth more outdoor time and outside recreational time should be added to existing incentive programs.**

Response from Yolo County Board of Supervisors: This recommendation was initiated in March 2019 and implementation is ongoing. The JDF conducts activities outside of the living unit whenever possible. The Probation Department will

continue to evaluate ways to maximize opportunities for youth to enjoy activities outdoors.

- R6. By January 1, 2020, the Board of Supervisors should study the possibility of limiting or eliminating the use of pepper spray in the JDF as have other states and the County of Los Angeles.**

Response from Yolo County Board of Supervisors: The recommendation requires further analysis. In accordance with the position of the Chief Probation Officers of California (CPOC), the Probation Department will continue to closely monitor the appropriateness of any use of pepper spray and evaluate the necessity of maintaining this tool while a related statewide study is conducted.

- R7. By January 1, 2020, an independent behavioral therapist trained in de-escalating potentially violent outbursts should be stationed in pods during waking hours to help resolve situations before use of force appears necessary and thus reduce stress and injuries to both staff and youth.**

Response from Yolo County Board of Supervisors: This recommendation will not be implemented as its goal is already being adequately addressed. Behavioral health staff trained in de-escalation have a frequent presence in the living units during waking hours. Additionally, all detention staff are trained in the Crisis Prevention Institute's Nonviolent Crisis Intervention model and are equipped to respond to escalating situations. Additional training in de-escalation techniques is provided as it becomes available so that staff are current and competent in the most effective responses to potentially violent outbursts and behaviors. Emotional and physical safety of staff and youth is of paramount importance and is always at the forefront of our training program.

- R8. By January 1, 2020, the JDF should provide youth with therapists independent of ORR to enable youth to speak freely about their problems and obtain counsel without fear that normal teenage emotional problems are criminalized and used as justification for continued confinement.**

Response from Yolo County Board of Supervisors: We are unable to implement this recommendation due to the very nature of the ORR program. ORR is the legal guardian of all undocumented youth and ORR provides consent for and oversight of all services in the same manner as any guardian. Of note, behavioral health services are provided by Yolo County clinical staff; they are not direct employees of ORR. Additionally, youth do not remain in secure placement due to their emotional problems; rather, only youth who continue to present a danger to others, based on clinical assessment, remain in secure placement in order to ensure the safety of all youth.

- R9. By October 1, 2019, the JDF should provide youth with a means for anonymously submitting complaints independent of detention officers, including by computer.**

Response from Yolo County Board of Supervisors: The recommendation requires further analysis. The Probation Department is committed to affording youth various avenues to submit complaints and will further consider ways to facilitate an anonymous process.

- R10. By January 1, 2020, the JDF should enact procedures to mandate attendance of behavioral therapists during post use-of-force incidents to allow feedback at a critical time when they could coach detention officers on potentially better methods to de-escalate such situations.**

Response from Yolo County Board of Supervisors: The recommendation was implemented in March 2019. The Probation Department is currently updating its Policies and Procedures Manual to reflect this mandate.

- R11. By January 1, 2020, the Board of Supervisors should convene an independent interdisciplinary group to ensure youths' privacy and to improve environmental conditions at the JDF.**

Response from Yolo County Board of Supervisors: This recommendation will be implemented utilizing the existing Juvenile Justice Commission, comprised of members of the public with varying interests and areas of expertise who are appointed by the Court with the mission to inquire into the administration of the juvenile court law in Yolo County and to assist in efforts toward prevention and reduction of juvenile delinquency, as required by law.

- R12. By January 1, 2020, the Probation Department should consider posting its policy and procedures manual and the JDF's Youth Handbook on the Yolo County website. The County should thereafter keep updated versions on the website, and provide a means for the public to freely offer suggestions for improvement.**

Response from Yolo County Board of Supervisors: The recommendation requires further analysis. While the Probation Department is committed to transparency, it is also committed to maintaining the security of the institution and will consider additional measures while ensuring this balance.

- R13. By January 1, 2020, Yolo County should provide a procedure that allows non-ORR related health workers access to youth for mental health treatment,**

which allows youth to freely discuss their problems without fear that their medical condition is criminalized.

Response from Yolo County Board of Supervisors: The recommendation will not be implemented. Under no circumstances are youth's medical conditions criminalized, and as such, no outside intervention is called for in this matter.

R14. By January 1, 2020, Yolo County should allow access to ORR youth by its medical advisory committee, the Yolo County Health Council, to ensure youth are being properly treated.

Response from Yolo County Board of Supervisors: This recommendation requires further analysis. While this is not the purview of the Yolo County Health Council, the Yolo County Health & Human Services Agency (HHS) is playing an increasingly active role in oversight (sic) of ORR mental and medical health services. HHS contracts with a third party provider to conduct chart reviews and provide recommendations for improvement. HHS has also increased oversight (sic) via the Quality Assurance Committee Meeting process by instituting a mechanism to respond to concerns from partners regarding quality of care. This recommendation will be further analyzed in collaboration with the Public Health Officer and HHS.

R15. Because few local and ORR youths are being detained in the JDF, and one pod is empty, it should be considered for use as the transitional adult facility proposed by the probation department to enable continued funding of the JDF by the ORR.

Response from Yolo County Board of Supervisors: The recommendation requires further analysis. Utilizing the vacant living unit for a transition age program is being considered by the Probation Department and County stakeholders, however, implementation of a transitional age program in the facility is an issue fully independent of the matter of continuing the ORR program in Yolo County.