

MONTEREY COUNTY

OFFICE OF THE DISTRICT ATTORNEY

DEAN D. FLIPPO
DISTRICT ATTORNEY



June 26, 2014

Honorable Marla Anderson
Superior Court of California, County of Monterey
240 Church Street
Salinas, California 93901

Re: Responses to the 2013 Monterey County Civil Grand Jury Report entitled "Public Safety and Cost Reduction Considerations"

Judge Anderson:

On behalf of the District Attorney, and pursuant to Penal Code section 933.05(b), please find attached the applicable responses from the District Attorney's Office.

Sincerely,

DEAN D. FLIPPO
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**THE MONTEREY COUNTY
DISTRICT ATTORNEY'S OFFICE**

**Response to the 2013
Monterey County
Civil Grand Jury Report on
Public Safety and Cost
Reduction Considerations**

REPORT TITLE: Public Safety and Cost Reduction Considerations in the Monterey County Superior Court Criminal Arraignment Process
RESPONSE BY: Monterey County District Attorney
RESPONSE TO: Findings F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-10, F-11, F-12, F-13, and F-14

Finding F-1: Virtually all of the personnel in the Agencies and Departments we interviewed either concurred in principle or fully agreed with our Grand Jury Recommendation that an Arraignment Courtroom Facility should be provided either as part of the expanded Natividad Jail facilities, or immediately adjacent to it, so that all the arraignment hearings for incarcerated prisoners can be conducted on the grounds of the Natividad site of the Jail.

Response F-1: The District Attorney does not have personal knowledge to determine if all personnel interviewed by the Grand Jury concurred in principle or fully agreed with the Grand Jury recommendation that an arraignment court facility should be provided either as part of the extended Natividad jail facilities or immediately adjacent to it. The District Attorney when interviewed stated that the recommendation could be researched to determine if it was viable, but that this was not a new recommendation and in 2006 the same recommendation of an arraignment court at the jail was considered by the Courts, the Sheriff, the District Attorney, other Criminal Justice Partners, and the County. A determination at that time was made that it was not feasible from a cost standpoint and the matter was dropped.

Finding F-2: The recent establishment of Department 11 Arraignment Court by the Monterey County Superior Court has made these Recommendations a near solution for both the County and the Sheriff, as well as for the County taxpayers, and for the State which funds much of this security process. There are also potential financial and operational benefits to the Superior Court, itself, which benefits can be enhanced by careful joint planning of this proposed new facility, and its future operation, by all concerned.

Response F-2: In-custody felony and misdemeanor arraignments have always taken place in an arraignment court in Monterey County. The only recent change to this procedure concerns misdemeanor out of custody arraignments. Currently, there are approximately 100 out of custody defendants arraigned on any given day in Department 11 due to this change. If Finding F-2 is read to mean that these out of custody defendants would now be arraigned in a new, specially built courtroom facility at the jail, the facility must accommodate security screening of the public at entry and parking for these defendants and those who choose to accompany them, and victims and others who wish to observe the proceedings. This change would mandate duplicate security screening and duplicate infrastructure that already exists at the courthouse. Also, requiring defendants to appear at different locations as their case progresses may cause confusion and failures to appear. Even if the jail arraignment court served only in-custody defendants, all courtrooms must be public, also therefore requiring duplicate infrastructure and security. The District Attorney believes this response should be more appropriately addressed by the Sheriff, and the Court.

Finding F-3: The Sheriffs' Department is in a unique position to benefit from incorporating an arraignment courtroom co-located at the Jail. Once the new Jail addition is built and occupied, there may eventually be more prisoners held in the Jail which increase will undoubtedly result in a larger number of required arraignment hearings. Additional prisoners at the Jail will otherwise create an immediate need for more prisoner transports and increased security concerns, if there is no Arraignment Courtroom on site.

Response F-3: The District Attorney believes that this response should be more appropriately addressed by the Sheriff.

Finding F-4: The Superior Court and its Department 11 would also benefit by having a more flexible scheduling agenda for Arraignment hearings, which can even be shared with its Traffic and Misdemeanor Court facilities, as a logical way to avoid transporting incarcerated prisoners for cases involving relatively minor infractions and misdemeanors.

Response F-4: The District Attorney believes that this response should be more appropriately addressed by the Sheriff, and the Court.

Finding F-5: The consolidation of all these outstanding in-custody inmate cases to the one onsite courtroom would reduce the distance and risks of the present process of transporting felons, where appropriate and agreeable to the parties. Alternatively, an interim installation and lease of CCTV facilities at the Jail and the Marina Traffic Court could also save costs and risks. Accordingly, these alternatives for the Traffic Court could be considered, if an arraignment facility at the Jail were planned to be used only by the Superior Court.

Response F-5: The District Attorney would suggest rather than spend public resources to duplicate infrastructure and security screening services that already exist at the courthouse, it may make more financial sense to use video arraignments allowing in-custody defendants to appear at their arraignment by means of two way video without leaving the jail. Video arraignments are used in other jurisdictions and in the past were used in Monterey County for arraignments at the King City courthouse (now closed) in lieu of transporting those inmates to King City. All courtrooms at the courthouse (ironically except Department 11) have TV monitors that could be used for this purpose. However, the District Attorney is unaware of whether video transmission capability between the courthouse and jail currently exists. The District Attorney is not aware of the Sheriff's infrastructure needs to implement this suggestion.

Finding F-6: Reducing the transportation of prisoners to and from the Natividad Jail to the Salinas Courthouse each year for brief Arraignment hearings is of obvious benefit to public safety. Such changes would mean that there is far less chance of an escape, or efforts to escape, and may reduce violence or injuries from altercations between inmates during transport. While such events are not common, reducing even the possibility is very important to the Public and the County.

Response F-6: The District Attorney believes that this response should be more appropriately addressed by the Sheriff.

Finding F-7: Any effort to quantify the specific financial savings to the County and the Courts by adopting the Recommendations is a more difficult process. Nonetheless, there are several aspects of this proposed change that show the likelihood of major financial savings even if not a specific amount. With all the pressures on cutting budgets at all levels of government this could help reduce costs over the next many years without the necessity of laying off badly needed Sheriff's Department law enforcement personnel.

Response F-7: The District Attorney is not in a position to determine whether financial savings can be achieved by the implementation of this recommendation. If the recommendation is approved, the District Attorney would incur significant costs impacting prosecutors who are assigned to filing units, clerical staff charged with the responsibility of preparing complaints and files, and prosecutors who would have to leave the main District Attorney's Office and main courthouses to travel to the arraignment court.

As a specific example, the District Attorney assigns cases to prosecutors in various specialty units who prosecute these cases vertically. This means that an assigned prosecutor files the case and then appears on the case for all purposes thereafter, including at the arraignment. These specialty units include gang, adult and child sexual assault, domestic violence, elder abuse, insurance fraud and other prosecutions. The District Attorney has no means to transport these prosecutors to an arraignment court offsite and each prosecutor must be free to go about other business once the arraignment concludes. Therefore, each prosecutor must travel individually. The District Attorney does not have the vehicle fleet necessary for this endeavor. Even assuming these prosecutors could be required to use their own vehicle (which is unlikely), there would be mileage costs. More importantly, these prosecutors must appear elsewhere in the courthouse for other matters set concurrently with the arraignment calendar. The time spent walking to and from parking lots and driving to and from the jail is an undue waste of their own work time, and would cause undue delay in matters pending in the courthouse. Time spent waiting for attorneys to return from the jail to the courthouse, while the judge and court staff waits, is not time our busy courts have to spare. In the afternoon, there are 3 ½ court hours available before close of business. The delay caused by travel to and from an arraignment court will be a significant portion of this time.

The District Attorney also believes that private counsel and the alternate defender's office would also endure these effects. If this in fact occurs, their absence would similarly prevent the main courts from handling their cases, even if the prosecutors assigned to their cases were available. Importantly, if the recommendation was implemented the District Attorney's Office in order to fulfill all of our responsibilities to the main criminal courts would need additional staff including additional attorneys and support staff.

Finding F-8: However, we do recognize that even if all arraignment proceedings were moved to the proposed Court Arraignment facility at the expanded County Jail, the Sheriff's Office will still have to transport a number of prisoners daily to the Salinas Courthouse for the actual Court criminal trials,

as well as for all the attendant pre-trial and other case related hearings and appearances. There appears to be no other alternative to this.

Response F-8: The District Attorney believes that this response should be more appropriately addressed by the Sheriff.

Finding F-9: If we assume, for example, a reduction of two full-time deputies because of the proposed change in transporting prisoners, this could reduce salary and benefit costs by more than \$200,000 per year, plus eliminating significant vehicular operational costs for fuel and wear and tear and the carbon emissions associated. Each trip avoided saves a 4+ mile roundtrip to and from the Salinas Courthouse. Some of the current contingent of personnel and vehicles will, of course, still need to be used for transport and backup of other Sheriff's Office activities, and deputies are still going to have to escort prisoners from their cells to the Arraignment courtroom. Yet, based on data provided to the Grand Jury by the Executive Offices of the Superior Court, it is clear that the actual number of prisoners would be reduced from the large number presently being transported.

Response F-9: The District Attorney believes that this response should be more appropriately addressed by the Sheriff. However, this issue was last studied by the county in 2006. At that time, the county analyst estimated that the annual savings, assuming the actual elimination of 2 deputy sheriff positions, was \$260,000. Increased annual costs to the District Attorney and the Public Defender were estimated at \$396,635. Therefore, the estimated annual cost of the proposal was \$136,635. In addition, the cost of a modular structure was estimated at \$580,000 for a total start-up cost of \$716,635. The study did not include required security costs.

Finding F-10: The Superior Court Executive Offices have advised the Grand Jury that the actual total number of Arraignment Hearings in Department 11 during the last three calendar months of 2013 was 2,885 cases – with 1,043 such hearings during October, 929 in November and 913 in December. Such statistics for a longer period would also give more conclusive evidence of the reduction involved, but were unavailable to us at this time. It should be understood that these figures include some out-of custody defendants who do not normally have to be transported, and the these numbers reflect only the number of cases, and not the number of defendants appearing for a particular case. Some defendants may have multiple cases against them, each of which is treated as a separate arraignment matter. Misdemeanor cases seldom involve transport of the defendants because most are released after citation, while felony cases almost always involve arrest and incarceration. Nonetheless, on a projected annualized basis, this data projects out to a total of 11,540 required Arraignment hearings per year.

Response F-10: The District Attorney believes that this response should be more appropriately addressed by the Sheriff, and the Superior Court.

Finding F-11: Examination of those Superior Court statistics against further Court data indicates that during the period of October 2013 through the end of December 2013, there were a total of only 18 actual criminal trials at the Salinas Courthouse – 10 of which were felony trials while 8 were

misdemeanor cases. These trials and all the pre-trial hearings before the trials almost always mean daily transports back and forth, day after day, for many days during the actual trial.

Response F-11: The District Attorney believes that this response should be more appropriately addressed by the Sheriff.

Finding F-12: Assuming that these statistics were to be typical year to year, and although they undoubtedly would vary month to month, this means that the number of transports which would be needed, if there were a Sheriff's Natividad Jail Arraignment courtroom, is far smaller than at present by a significant reduction of prisoner transport trips. This is a ratio of 72 annual criminal trials to 11,540 annual Arraignment hearings. Thus, the potential reduction of the number and costs of such Sheriff transports for arraignments is significant when viewed in this light. As noted above, there are still going to be some cases of need for transporting prisoners in case of appearances and hearings occurring after the initial arraignment have taken place.

Response F-12: The District Attorney believes that this response should be more appropriately addressed by the Sheriff.

Finding F-13: County and/or State/Superior Court capital funds would likely be involved in the cost of planning and the actual construction of the proposed Arraignment Courtroom, but it would seem that amortization of any such courtroom construction costs over a twenty five year life, and the location of the new Arraignment courtroom, as an example, would still show a significant savings to the State, the Sheriff's Office, the County and its taxpayers. There are also other long term financial implication to both the County and the Superior Court because of the normal operating costs of Department 11 at the Natividad Jail; however, similar operating costs to the Superior Courts are also offset, by the Court being able to make available the use of the existing Department 11 Courtroom at the Salinas Courthouse for other types of hearings and trials by the Courts. According to the Executive Offices of the Court, there is presently a serious shortage of courtrooms there, which would become even greater were all the present authorized vacancies of judges to be appointed by the Governor.

Response F-13: The District Attorney believes that this response should be more appropriately addressed by the Superior Court and the Sheriff.

Finding F-14: If the Grand Jury correctly understands the existing practices of the State of California (which effectively provides the funding for construction of all Courthouses), the State requires that the State own the land and the building for each of its courthouses. Therefore, the County and the Sheriff will need to verify the feasibility of this aspect and find a mutually acceptable approach to this factor, since the County currently owns the land around and under the proposed Jail courtroom. It is also possible that with special legislation introduced in the Legislature, the State might fully fund the construction of this special courtroom, as it already does for regular courthouses in other counties. This aspect of funding should be explored further with the Monterey County State Legislative delegation.

Response F-14: The District Attorney believes that this response should be more appropriately addressed by the Superior Court, the Sheriff, and the County.

REPORT TITLE: Public Safety and Cost Reduction Considerations in the Monterey County Superior Court Criminal Arraignment Process
RESPONSE BY: Monterey County District Attorney
RESPONSE TO: Recommendations R-1, R-2, R-3, R-4, R-5, R-6, R-7, and R-8

Recommendation R-1: A new Natividad Jail site plan should be developed that incorporates a fully equipped Department 11 Arraignment Courtroom on site and adjacent to the Jail, with appropriate and mutually agreed upon support amenities for staff offices and counsel conference facilities.

Response R-1: The District Attorney believes that the response to this recommendation should be more appropriately addressed by the Sheriff, the County, and the Superior Court. However, if the recommendation is implemented the District Attorney would need office space for prosecutors and support staff at the offsite arraignment court.

Recommendation R-2: The Superior Court, the Board of Supervisors and the County agencies and their department heads (most notably the Sheriff and DA) involved in the arraignment process should promptly have their representatives meet with the Monterey County CAO to determine the desirability, feasibility and means of accomplishing these Recommendations, including identifying possible funding sources to co-locate a courtroom at the Jail. Furthermore the Board of Supervisors and Superior Court should take into consideration the various other factors discussed in this Report, in order to reach a prompt and conclusive decision to move forward.

Response R-2: The District Attorney is prepared to meet with all of the Criminal Justice Partners to discuss the recommendation. However, the District Attorney does not have information on funding sources, nor does it have access to any grants or other resources that would provide the necessary funding.

Recommendation R-3: Once the Board of Supervisors and the Court have preliminarily agreed on sources of funding and the need for the creation of the necessary facilities to operate Superior Court Department 11 at the Natividad Jail, the County Administrator, in conjunction with the Public Defender, District Attorney, the Sheriff and the Superior Court Executive Offices, should commence the detailed planning process, including aggressively pursuing the most likely and successful source of the construction funding.

Response R-3: The District Attorney is prepared to meet with all of the Criminal Justice Partners to discuss the recommendation. However, the District Attorney does not have information on funding sources, nor does it have access to any grants or other resources that would provide the necessary funding.

Recommendation R-4: For the present time, these same parties might consider, as part of this same planning activity, providing for a temporary inexpensive closed circuit television (CCTV) system connecting the Traffic Court and the existing County Jail for the purpose of misdemeanor arraignments and traffic hearings; at least until the new Natividad Jail arraignment courtroom is made available for operation which likely would not be operational for several years. We do not

however, recommend the CCTV approach except as a necessary alternative because it is not consistent with the concept of encouraging early resolution of cases, in that it is difficult with CCTV to have counsel for the prisoners at the same location so they can discuss the possible pleas or settlement proposals to be made, if counsel and the prisoner are not both at the Jail.

Response R-4: The District Attorney believes the recommendation requires further analysis. The issue of whether the CCTV system encourages or discourages early resolution of cases is not clear. All the partners in the criminal justice process would have to meet to analyze whether significant cost savings could be achieved or not by the implementation of the CCTV system.

Recommendation R-5: In the meantime, we recommend that the Court and the DA should encourage the voluntary transfer of all the Marina Traffic Court arraignments involving incarcerated prisoners to the Salinas Misdemeanor Court, with consent of their legal counsel, so a major portion of the transport costs and security issues of those prisoners currently required to be transported to the Marina Traffic Court can be eliminated.

Response R-5: This recommendation requires that the Sheriff, the Court, and the District Attorney to analyze whether it is feasible to implement the recommendation. The District Attorney is prepared to meet whenever necessary to address this recommendation.

Recommendation R-6: The Marina Traffic and Salinas Misdemeanor Courts could eventually use the proposed Arraignment Courthouse at the new Jail for all incarcerated prisoners within their jurisdictions. In the interim, Recommendations R4 and R5 would reduce transport costs and public safety. However, this particular additional use of the Jail facility should be worked out so that it does not interfere with the Department 11 misdemeanor and felony inmate case arraignments, which are the primary and most important purpose of these Recommendations.

Response R-6: The District Attorney is prepared to meet with all of the Criminal Justice Partners to determine if the recommendation is feasible.

Recommendation R-7: If the participants in this planning and implementation process feel that use of the Jail site courtroom by the Traffic Courts is inconsistent with the primary use by the planned Department 11 arraignment operations, prompt action should be taken to encourage use of one of the two other alternatives, discussed above, concerning the Marina Traffic and the Salinas Misdemeanor Courts.

Response R-7: The District Attorney is prepared to meet with all of the Criminal Justice Partners to determine if the recommendation is feasible.

Recommendation R-8: Finally, the CAO, the Superior Court Administrative Office, and the Sheriff's Department should promptly investigate how to apply to the State for a further grant for the costs of planning and constructing the proposed on-site arraignment courtroom facility and adjoining conference and office facilities. If special legislation appears necessary, the parties should then

promptly seek the assistance of Monterey County area State legislators since without funding this proposal, however valid, will go nowhere.

Response R-8: The District Attorney is prepared to meet with all of the Criminal Justice Partners to determine if the recommendation is feasible.