

MONTEREY COUNTY



OFFICE OF THE COUNTY COUNSEL

168 WEST ALISAL STREET, 3RD FLOOR, SALINAS, CALIFORNIA 93901-2439
(831) 755-5045 FAX: (831) 755-5283

CHARLES J. McKEE
COUNTY COUNSEL

Leslie J. Girard
Chief Assistant County Counsel

CONFIDENTIAL IMMEDIATE ATTENTION REQUIRED

June 6, 2017

Via Hand Delivery
Sheriff Steve Bernal
Monterey County Sheriff's Office
1414 Natividad Road
Salinas, CA 93906

Re: 2016-2017 Monterey County Civil Grand Jury Final Report – "Monterey County Jail, Insufficient Number of Deputies: Car 54 Where Are You?"

Dear Sheriff Bernal:

On behalf of the 2016-2017 Monterey County Civil Grand Jury, and pursuant to Penal Code section 933.05(f), I am enclosing for your review the Grand Jury's Final Report entitled "Monterey County Jail, Insufficient Number of Deputies: Car 54 Where Are You?", which has been approved for publication. The Grand Jury intends to publish the report to the public within 48 hours following delivery of the report to you.

This report constitutes a Final Report for purposes of Penal Code section 933. Pursuant to that section, you must submit comments on the report to the Honorable, Mark E. Hood, Presiding Judge of the Superior Court, 240 Church Street, Salinas, CA 93901, within sixty (60) days following its transmittal. You are responsible for all Findings and all Recommendations. With respect to each finding, you must indicate one of the following:

- 1) That You agree with the finding; or
- 2) That You disagree wholly or partially with the finding, in which case you must specify the portion of the finding that is disputed and shall include in the response an explanation of the reasons for the disagreement.

With respect to each recommendation, you must report one of the following actions:

- 1) That the recommendation has been implemented, with a summary regarding the implemented action;
- 2) That the recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation;
- 3) That the recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be discussed (this timeframe not to exceed six months from the date of publication); or

Sheriff Steve Bernal

June 6, 2017

Re: Monterey County Jail, Insufficient Number
of Deputies: Car 54 Where Are You?


Page 2

- 4) The recommendations will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

Thank you for your attention to these matters; the Civil Grand Jury looks forward to your response.

Sincerely,

By:



Leslie J. Girard
Chief Assistant County Counsel

LJG:so

Enclosure

cc: Grand Jury

Hon. Mark E. Hood, Presiding Judge

Monterey County Jail Insufficient Number Of Deputies: Car 54 Where Are You?¹



Summary:

Section 919 of the California Penal Code requires each Grand Jury to inspect all correctional facilities within the county. In this capacity, the Grand Jury visited the Monterey County Jail, located in Salinas, in partial fulfillment of that requirement. The investigation was undertaken based on concerns expressed by the public.

The Monterey County Civil Grand Jury (MCCGJ) agreed to a preliminary investigation into the proposed County Jail addition and new Juvenile Hall. The jury wanted to determine:

- The necessity of the County Jail and Juvenile Hall additions
- The nature of the cost analysis to build the additions
- Enhancements to be incorporated in the additions
- The feasibility of simply remodeling the existing facilities

The MCCGJ toured the County Jail and both juvenile detention facilities. Once the jury completed its tours, the jury discussed what they had observed. Two topics emerged:

¹ https://en.wikipedia.org/wiki/Car_54,_Where_Are_You%3F

1. The number of inmates and incarcerated youth with mental health issues
2. The staffing situation in both the jail and patrol

To investigate these issues an ad-hoc committee was appointed. The topic of mental health is contained in another report titled: “Monterey County Jail Crisis: Our De Facto Mental Health Facility”. The insufficient number of available Sheriff’s deputies in the jail and patrol is the focus of this report.

Background:

As part of the investigation, the jury examined two class action cases. The first was a federal case, *Coleman v. Wilson*, decided in 1995². In the latest enforcement of the 1995 case, now *Coleman v. Brown*, U.S. District Judge Karlton in 2013 determined:

“Systemic failures persist in the form of inadequate suicide prevention measures, excessive administrative segregation of the mentally ill, lack of timely access to adequate care, insufficient treatment space and access to bed, and unmet staffing needs.”³

The second case, filed in 2013, was *Jesse Hernandez, et al v. Monterey County, Monterey County Sheriff’s Office (MCSO) and California Forensic Medical Group (CFMG)*.⁴ *Hernandez* was brought by inmates and former inmates of the Monterey County Jail.

The plaintiffs claimed:

- The conditions in the Monterey County Jail violated federal and state laws
- The County failed to protect inmates from violence

² *Coleman v. Wilson*, 912 F. Supp. 1292 (E.D.Cal.1995)

³ <http://solitarywatch.com/2013/04/08/systemic-failures-persist-in-california-prison-mental-health-care-judge-rules/>

⁴ Case Number CV 13 2354 PSG. *Hernandez v. Monterey County*. The case alleged failure to provide adequate mental health care to inmates and failure to provide reasonable accommodations to inmates with disabilities.

- The County and CFMG failed to provide the inmates with adequate medical and mental health care
- The County did not provide reasonable accommodations for inmates with disabilities

A settlement agreement was reached on May 7, 2015. The defendants denied every allegation brought against them in the case, but agreed to institute the changes in procedures and staffing, as required in the settlement agreement.

The focus of this study is on how the *Hernandez* Settlement impacted the MCSO's staffing. Upgrades to the facilities are addressed in the Monterey County Jail Crisis: Our De Facto Mental Health Facility”.

Complying with *Hernandez* has placed a burden on the County to provide staffing in the jail and patrol.

There are three major deputized “jobs” within the MCSO:

- 1) patrolling the various sectors of the county
- 2) staffing the County Jail
- 3) staffing the courts as bailiffs

While there is overlap in that both jobs require dealing with the criminal element of the population, these jobs are quite distinct in the knowledge, skills, and abilities needed to successfully perform them.

The policy of the MCSO is that academy graduates are assigned directly to the jail. They must work in the jail for several years before they can request a transfer to the patrol division. Several people interviewed believed this policy allows deputies to become familiar with gang members and, presumably, teaches them how to interact with this element in society.

On the other hand, most candidates entering law enforcement envision their career as being in a patrol car, attending to the various crimes and problems in the county. While in the jail, the patrol skills go unused and the deputy, when finally reassigned to patrol, will need retraining on the job. While there may be administrative advantages in being able to utilize county deputies in both capacities, this policy may not be consistent with the preferences of the individuals, leading to morale and retention issues.

The MCSO created the job positions of Correction Specialist and Correction Specialist Supervisor (CSS) to ease the shortage of deputies in the jail. A person filling this position works in the jail, monitoring cameras focused on open areas inside the jail, opening electronic doors, etc. Persons filling this position cannot perform many of the tasks which are assigned to sworn deputies. Their pay scale is less than deputies and the position serves as a pipeline for individuals who decide to apply for a deputy position. At first, there was resistance to creating this job category from the union and sworn personnel. However, over time, CSS personnel have relieved deputies from more administrative tasks and their addition has resulted in monetary savings to the county.

Investigative Methodology:

The MCCGJ conducted interviews with members of the MCSO, and re-interviewed those when necessary. The jury toured the County Jail, requested and received data from numerous divisions of the MCSO and performed additional research on the internet to clarify the requirements of the *Hernandez* case and other pertinent court cases.

Facts:

1. The Board of Supervisors determines how many “authorized” positions are available for the MCSO. An “authorized” position gives the MCSO the legal ability to hire and assign a person to a job.

2. One of the unintended consequences to meet the needs of the *Hernandez* Settlement has been that the Sheriff had to reduce the number of deputies on patrol and reassign them to the jail. This resulted in a severe shortage of deputies assigned to patrol.
3. The MCSO's mission is "to safeguard the lives and property of the people within our county"⁵.
4. Positions for 262 deputies have been authorized by the Board of Supervisors for MCSO. As of May 1, 2017, one of the authorized positions has not yet been filled.
5. 238 total deputies are currently employed. 23 of them are currently attending the Academy in Sacramento or Monterey Peninsula College Police Academy.
6. 144 deputies have been authorized for the jail. 122 are employed in the jail and 22 of those in the Academies will fill the remaining authorized positions.
7. 118 deputies have been authorized for patrol, of which, only 66 of the 101 are available for patrol duty. 17 have been assigned to other tasks. To comply with the requirements in the *Hernandez* Settlement, 35 deputies have been transferred from patrol to the jail, leaving only 66 deputies available for patrol.
8. Between March 2016 to March 2017, overtime incurred to cover all the deputy responsibilities was \$6,232,982, which averages \$23,790 per deputy. Some deputies have been collecting much more than the average.
9. The starting salary for new officers upon graduation from the academy is \$75,396 per year.
10. The MCSO's concern, that we share, is that their budget will be reduced for FY 2017/2018, resulting in the reduction of authorizations.
11. The Grand Jury's visits to the state correctional facilities within the county demonstrated that

⁵ <https://www.montereysheriff.org/>

a “correctional officer” is a self-contained and valid job classification. These “non-sworn” officers do not carry weapons, and work for less compensation than a deputy. They can, however, handle many duties that Corrections Specialist Supervisors are not allowed by law to do. Corrections Officers do not require the same lengthy academy training necessary for a deputy. The county currently does not employ them. Corrections Officers’ duties inside the jail would include:

- Enforce rules and keep order
- Supervise the activities of inmates
- Search for contraband items
- Inspect facilities to ensure that they meet standards
- Report on inmate conduct
- Aid in rehabilitation and counseling of offenders

Findings:

- F 1. The *Hernandez* Settlement requires an “adequate” number of sworn deputies to supervise the jail. Current staffing of the jail, even with the reassigned deputies from patrol, is barely “adequate” to comply. Both the jail and patrol are understaffed. The number of deputies reassigned from patrol to the jail has left patrol in a state of crisis.
- F 2. The Sheriff’s Department does not have an adequate number of authorizations to meet the demand for the jail and patrol, and for the additional personnel necessary to cover absences for vacations, sickness, disability, family leave or personal matters. Additional staffing required to cover just these absences is estimated to be 25, or roughly 10% of the total current authorizations.

- F 3. A reduction in the MCSO's budget would mean a reduced number of deputies. This would result in:
- The County would be at odds with complying with the *Hernandez* Settlement, which could mean fines and further litigation
 - A continued severe lack of adequate patrol coverage in our county
 - This will continue to cost our county millions of dollars in overtime
- F 4. According to the mission statement of the MCSO, "to safeguard the lives and property of the people within our county", our county's citizens have the right to protection under the law.
- F 5. The proposed budget reductions, which reduce the authorizations for deputy staffing, will have a negative effect on the MCSO's ability to provide protection to our county's citizens.
- F 6. Monterey County spent over \$6 million in overtime between March 24, 2016 and March 23, 2017. This amount could have funded in excess of 40 additional deputy authorizations. With an annual salary plus benefits of roughly \$125,000 per person, the County could hire 40 deputies, and still have another million left over to cover the unavoidable overtime. Some overtime is unavoidable, but a significant reduction could reasonably be expected.
- F 7. The MCCGJ believes that the MCSO should recognize that the tasks performed by deputies in the jail are significantly different from those performed by deputies on patrol. Each is performed in an unique environment and under very different conditions. To consider the patrol and jail duties as interchangeable has some advantages to management in terms of flexibility of assignments, but this policy has costs in terms of hiring and retaining deputies, as well as on their morale.

- F 8. Having these two separate job classifications would have a positive impact on recruiting, retention, advancement and morale.
- F 9. There are duties in the jail that could be performed by CSS and Corrections Officers, which would allow the Sheriff's deputies, to return to patrol.
- F 10. Many local cities and counties are vying for the same candidates upon graduation from the academy. Some of these same cities/counties offer signing bonuses in excess of \$17,000. Monterey County pays for candidates to attend an academy. Upon completion of an Academy, the candidate may opt to work for the County, if an authorization is vacant. If not, the candidate will apply elsewhere, and our County is out the salary paid while in the academy, and the tuition. Compounding the hiring issue is the fact that these graduates, upon signing on with our county, are relegated to the jail for two years or longer, until a transfer to patrol is available. They would go straight to patrol at other locales. Our policy of assigning academy graduates directly to the jail, prior to patrol, is a deterrent to recruitment.
- F 11. MCSO is working diligently to fill all the current authorizations. However, even after those authorizations are filled, there will remain an insufficient number of Sheriff's deputies to meet the needs of both the jail and patrol.
- F 12. Reducing the number of authorizations for deputies is a self-defeating proposition. To do so will continue to waste our tax dollars on unnecessary overtime.

Recommendations:

- R 1. The Board of Supervisors should budget for additional authorizations for Sheriff deputies, alleviating the massive amount of overtime.
- R 2. The Board of Supervisors should fund an outside personnel consulting firm to conduct a

job analysis for the two assignments: jail and patrol. This analysis should include, as in the following, but not limited to:

- The tasks each job requires
- The conditions under which they are done
- The standards which they must achieve

- R 3. The Sheriff's Department should hire directly for patrol or for the jail. There should be distinct promotional paths for both divisions.
- R 4. The Board of Supervisors should investigate the use of corrections officers, where appropriate. These officers, in conjunction with the additional authorizations for deputies, will cover the shortfall of deputies in the jail.
- R 5. A job description, and an approved pay scale, should be adopted for corrections officers, whose training, qualifications and job assignments would differ from those of a deputy.
- R 6. A staffing implementation plan should be adopted that will, over time, eliminate the use of a deputy to fill a job that could be performed by a more modestly compensated and less highly trained correctional officer.

Responses Requested:

Pursuant to Penal Code section 933.05, the Monterey County Civil Grand Jury requests the following respond to the Findings and Recommendations as follows:

Monterey County Board of Supervisors – All Findings and all Recommendations

Monterey County Sheriff's Office – All Findings and all Recommendations