

August 20, 2012

Honorable Stephen E. Benson, Presiding Judge  
Superior Court of California, County of Butte  
One Court Street  
Oroville Ca 95965

FILED Superior Court of California FILED  
County of Butte  
AUG 22 2012  
Kimberly Fiener, Clerk  
By *K. Mortensen* Deputy

**RE: RESPONSE TO 2011-2012 GRAND JURY REPORT**

Dear Judge Benson:

On behalf of the Butte County Sheriff's Office, I would like to thank the members of the Grand Jury for their many hours of dedicated service to the citizens of Butte County. The Grand Jury function is critical to ensuring the efficient operation of local government and I appreciate their efforts in regards to the Sheriff's Office. In accordance with Penal Code Sections 933 and 933.05, please accept this response to the findings and recommendations of the 2011-2012 Grand Jury.

BUTTE COUNTY DEPARTMENT OF BEHAVIORAL HEALTH:

**Grand Jury Findings:**

The Respondent was not asked by the Grand Jury to respond to Findings 1-13 or 16-20 and those findings pertain to matters that are not under the control of the Sheriff's Office. Accordingly, no response to those findings is being provided.

F14: A large percentage of those being released from incarceration, either from the Butte County Jail or from a State prison, have been identified as having behavioral health issues. There is a need to improve the procedure for moving these persons into the existing mental health system and for providing adequate treatment.

**The respondent agrees with the finding.** Current jail statistics show 10% of the in-custody jail population receives prescription psychotropic medications. Upon release, not all of these individuals are in immediate need of acute care. Individuals suffering a mental health crisis are not simply released from the Butte County Jail. Those individuals in crisis are taken for evaluation and assistance. Those not in crisis and currently on medication are medicated prior to release and medical staff calls in a 30 day prescription to a local pharmacy so the released individual can continue on their medications while awaiting further mental health assistance out of custody. The Sheriff's Office employs a release

planning coordinator to assist released inmates in their reintegration back into the community. We expect our release planning coordinator to work closely with Behavioral Health's new Forensic Clinician to ensure a smooth transition of those persons into the existing mental health system

- F15: There are serious issues concerning implementation of policies and procedures pursuant to section 5150. The presently dysfunctional working relationships between DBH and area hospitals, as well as in some cases questionable application of the 5150 provisions by law enforcement, are not serving the best interests of either the community or mental health consumers.

**The respondent disagrees in part with the finding.** The respondent does not agree that there is "questionable application of the 5150 provisions by law enforcement." Deputies make on scene decisions regarding the criteria present to assess an individual in crisis to determine if they are a danger to themselves, a danger to others or gravely disabled. Respondent does not believe that just because an individual displayed ideations of suicide at scene and then does not fit the criteria later when assessed by medical or DBH staff that the detention was questionable. If the noted dysfunctional working relationships between ED staff and DBH staff exists as stated, this could create a delay, allowing time for some consumers to recover from an episode of mental health crisis. If this situation occurred the consumer may no longer meet the criteria for a 72 hour placement, but this situation does not change the validity of the assessment conducted on scene.

#### **Grand Jury Recommendations:**

The Respondent was not asked by the Grand Jury to respond to Recommendations 1-9 or 12-15 and those recommendations pertain to matters that are not under the control Sheriff's Office. Accordingly, no response to those recommendations is being provided.

- R10: That DBH work with corrections officials and any other involved agencies to establish procedures to insure that those being released from incarceration are connected with outpatient mental health services in a timely manner.

**The recommendation will be implemented.** As discussed in the response to F14, Behavioral Health has a new position, called a Forensic Clinician. Our jail release planner will work with Behavioral Health's Forensic Clinician to coordinate placements pursuant to both 4011.6 PC and 5150 W&I. Behavioral Health representatives attend our quarterly medical care "Quality Assurance" meetings to address any concerns or issues. The Butte County Sheriff's Corrections Division has policies regarding transfers to Behavioral Health facilities as outlined by Departmental Orders 5026 - Mentally Disordered inmates and 5035 - Transfer to Mental Health.

R11: That DBH and all area law enforcement agencies work together so that policies and practices concerning the application of Section 5150 are appropriate.

**This recommendation has been implemented.** The Sheriff's Office has in the past, interacted with the DBH regarding the application of 5150 W&I, and will continue to do so in the future.

INVESTIGATION INTO THE UTILIZATION OF INVOLUNTARY DETENTION UNDER CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 5150:

**Grand Jury Findings:**

F1: It is generally agreed among hospital emergency personnel, behavioral health personnel and law enforcement that approximately 50% of those detained under 5150 are released after a mental status evaluation and are never formally admitted to a designated facility for 72-hour treatment and evaluation. The data to verify this general impression should be collected, retained and used to improve policies and procedures of all involved agencies.

**The respondent agrees with this finding.** Although the data is not available to verify the statistic that 50% of the individuals detained are released after evaluation and never admitted to PHF, the respondent agrees that this data should be collected and reviewed. However, it is important to bear in mind that the percentage of individuals released prior to admission does not necessarily reflect a need to improve policies and procedures. Behavioral Health's decision to further detain or release individuals brought in by law enforcement are based upon the individual's mental condition at the time of Behavioral Health's assessment, and not on the earlier assessment conducted by law enforcement. Significant time can pass between the initial law enforcement detention and the subsequent Behavioral Health decision to maintain or release the 5150 W&I hold.

F2: The legal status of person detained under a 5150 hold is often unclear as they move through the system because of the complexity of the various statutes involved.

**The respondent disagrees in part with this finding.** The status of the individual detained pursuant to 5150 W&I by law enforcement is not unclear. The person is detained and their status is explained at the time of the detention. Once the detained person is placed into the custody of ED and/or DBH staff, law enforcement is no longer in a position to ensure continuing clarity as to the status of the detained person.

F3: The mental status evaluation of many of those detained under 5150 by law enforcement does not take place in a timely manner. Frequently those detained during the late evening and early morning hours have to wait in a hospital emergency department for an extended period of time before the mental status evaluation is conducted. Hours after law enforcement personnel deliver a detainee to emergency departments, a large percentage of those detained are found by mental health professionals not to meet the criteria for further involuntary detention.

**The respondent agrees with this finding.**

- F4: There are no procedures in place for law enforcement officers who detain an individual under 5150 to communicate directly with the mental health professional conducting the mental status evaluation. Communication is limited to brief hand-written comments on a poorly designed application-for-detention form (MH-302).

**The respondent disagrees with this finding.** Law enforcement can call the PHF and speak with a mental health professional if there is a question or concern. Additionally, the application for detention document (MH-302) is a state regulated form and although it is handwritten and concise, an accurate communication can occur using this form.

- F5: Law enforcement lacks capability to video record behavior displayed by 5150 detainees at time of detention, and has limited audio recording capability. Law enforcement's ability and responsibility to complete a video record of detainee behavior and share it with mental health professionals would contribute to a more complete and accurate mental health evaluation of 5150 detainees.

**The respondent disagrees with this finding.** While handheld video and audio equipment is available to law enforcement, the suggested use of such equipment causes serious concerns. The presence and use of video cameras at a mental health crisis call would tend to escalate the danger of the encounter, both to the individual and law enforcement. Pointing a camera at an individual experiencing a mental health crisis is an affront to their dignity; tantamount to recording an individual suffering a medical crisis, such as a heart attack, stroke or other trauma. Such provocative behavior by law enforcement could further upset or enrage the very individual we are trying to calm, and make it less likely the individual will voluntarily comply with instructions. Even if done surreptitiously, audio or video recording would have little to no value in final assessment of the individual by mental health professionals since Behavioral Health's independent assessment is conducted on the individual at a point in time after medical clearance. As noted, this delay may take several hours and the individual's crisis may have passed.

- F6: The lack of a centralized 24-7 designated facility or other 24-hour facility necessitates law enforcement officers having to take detainees to a hospital emergency department. Holding detainees in an emergency department creates many problems for the hospital, the detained individual and DBH.

**The respondent agrees with this finding.**

- F7: The lack of coordinated procedures relating to the various statutes involved when a person is detained under 5150 and the other statutes involved creates a continuing state of confusion and results in unnecessarily high costs to county agencies, area hospitals and to the individuals involved.

**The respondent neither agrees nor disagrees with this finding.** These impacts are not seen by law enforcement because they take place after our involvement.

## Grand Jury Recommendations:

- R1: Law enforcement agencies and DBH should work together with area hospitals to develop coordinated policies and procedures, to be utilized and followed by all organizations involved (law enforcement, DBH, and EDs) in detaining, evaluating, and treating those persons in mental health crisis in accordance with California Welfare and Institutions Code section 5150 et seq., California Health and Safety Code section 1799.111, and Federal EMTALA regulations.

**This recommendation will be implemented.** The Sheriff's Office agrees to meet with DBH and will discuss the implementation of a *Forensic Multi-Disciplinary Team (FMDT)*. This meeting is anticipated to occur within three (3) months.

- R2: The status of persons detained under Section 5150 needs to be clarified so that at any point in the process it is clear to the detained person, and to the staff, involved exactly what statutes are in play and what exactly is the status of the person. At times, the 72-hour hold may be applicable, at times EMTALA may allow a 24-hour hold and at times, the person may be free to leave if he or she chooses to do so.

**This recommendation has been implemented.** The Sheriff's Office advises detained individuals of their status at the time of detention. The detention status is clear to both the detainee and law enforcement at time of detention.

- R3: A system should be devised by agencies involved in this process to track the number of 5150 detainees released from an emergency department after a mental status evaluation. Tracking should include, but not be limited to, time and reason for entry, and time and reason for discharge or unauthorized departure. Data should be shared on an ongoing basis with law enforcement, DBH and hospital administrators in order to achieve more effective management of the 5150 process.

**This recommendation requires further analysis.** This will be addressed at the FMDT upon implementation of this group.

- R4: Create one or more 24-hour, 7-day a week, intake facilities where 5150 detainees can receive physical and mental health status evaluations. The existing Psychiatric Health Facility (PHF) could be utilized to accomplish this recommendation.

**This recommendation requires further analysis.** Facilities of this nature would by necessity be operated by DBH. Accordingly, the Sheriff's Office would have to defer to DBH on the feasibility of implementing this recommendation.

- R5: Law enforcement, DBH and area hospitals should retain experts to work with them in developing the procedures and protocols for dealing with 5150 holds.

**This recommendation requires further analysis.** The Sheriff's Office has met in the past with DBH and other stakeholders in relation to procedures and protocols when

dealing with 5150's. If the ability to locate an "expert" is feasible and not cost prohibitive we will take part in this coordinated effort.

- R6: The existing 5150 application for detention form (MH-302) is inadequate. Involved agencies should computerize and supplement the form to facilitate more effective interagency communication.

**This recommendation requires further analysis.** This form is a California State regulated form and further analysis will be required to determine if an enhanced computerized version is acceptable and how a computerized version can be made available to field deputies.

- R7: Audio-visual capability for each law enforcement patrol should be acquired and utilized by law enforcement to record behavior of all Section 5150 detainees at time of detention.

**This recommendation will not be implemented.** Video taping of an individual in crisis during a law enforcement response would create officer safety concerns as well as escalate the situation at hand. Video recording an individual at the time of crisis would have little to no value to mental health professionals during their later assessment. Logistically, even if one were available, it would not be practical to get a video to the mental health professional.

- R8: All audio-visual recording of persons detained by law enforcement under the provisions of Section 5150 should be shared with responding DBH mental health evaluators and with appropriate hospital personnel who care for the 5150 detainees.

**This recommendation will not be implemented.** For the reasons stated above, video recording of individuals in crisis would not be advisable and would have little to no practical value to mental health professionals during assessment.

- R9: CIT training for all law enforcement and emergency response personnel, DBH personnel and hospital personnel who have responsibility for response to and management of 5150 cases should be an ongoing priority.

**This recommendation has been partly implemented.** Crisis Intervention Training (CIT) is an ongoing priority. In conjunction with Butte College and DBH, we have conducted three 40 hour CIT Academies to date, training approximately 75 law enforcement, corrections, dispatch, medical, and Behavioral Health personnel from throughout Butte County. National CIT program guidelines recommend 20% of law enforcement first responders in a given agency be CIT certified. The Butte County Sheriff's Office exceeds this recommended percentage of trained CIT first responders. The Sheriff's Office will continue to send deputies, both patrol and correctional, as well as dispatchers through the CIT Academy.

## BUTTE COUNTY JAIL:

### **Grand Jury Findings:**

- F1: The Day Reporting Center established by the Butte County Sheriff is a cost effective response to the AB 109 realignment directive.

**The Respondent agrees with the finding.**

- F2: The lack of a safety cell reduces staff options in dealing with combative inmates and could lead to dangerous conditions for inmates and staff.

**The respondent does not agree with the finding.** While the presence of a safety cell would present another option, it would not offer any particular advantage over what is currently in place. Specifically, individuals placed in the restraint chair are closely monitored for their health and safety and are simultaneously prevented from engaging in such activities as destruction of county property or self-injury. Placement in a safety cell would neither obviate the need for close supervision nor would it prevent individuals from damaging county property or causing themselves injury.

- F3: The installation of a safety cell would reduce the use of the restraint chair.

**The respondent does not agree with the finding.** For the reasons discussed in F2, we submit a safety cell is not an effective substitute or alternative for a restraint chair. Over the last two years, the restraint chair has been utilized six times. In all six uses, the chair would have been utilized in preference to a safety cell. In all other cases involving inmates displaying destructive or self-injuring behavior, they were well served with placement in one of our two sobering cells.

- F4: The jail utilizes an objective inmate classification system. The frequency of overrides by classification officers may be an indication that the criteria being utilized are not serving the best interests of jail operations.

**The respondent agrees with the finding.** The advent and impacts of AB 109 have caused an expected increase in overrides.

- F5: The privacy wall in sobering cell #2 in the intake area of the jail creates a dangerous condition.

**The respondent does not agree with the finding.** The privacy wall in Sobering Cell #2 fully complies with Title 24 CCR, Section 1231.2.4. The wall is not the cause of a dangerous condition. Persons exhibiting high risk or self-injuring behavior create danger for themselves. The Sobering Cell partition has been in place since 1994. Over the past 18 years, thousands of people have been placed in the cell with just one negative outcome.

- F6: The Butte County Jail has complied with Title 15 and Title 24 of the California Code of Regulations which specify minimum standards for local detention facilities.

**The respondent agrees with this finding.**

- F7: The staff of the Butte County Jail displayed a high degree of knowledge and professionalism in the conduct of their duties.

**The respondent agrees with this finding.**

**Grand Jury Recommendations:**

- R1: To minimize the use of the high-risk restraint chair, seek funding for and complete construction of an inmate safety cell.

**This recommendation will not be implemented.** For reasons outlined in responses to F2 and F3, we submit the restraint chair is a more humane option for destructive or self-injurious inmates. The restraint chair is also safer, for both inmate and staff, than a safety cell. The restraint chair in use at the Butte County Jail is of a modern and approved design and will not contribute to positional asphyxia. It is very unusual for placement in the restraint chair to exceed two hours.

- R2: Review the utilization of the current inmate classification system to determine system adequacy.

**This recommendation has already been implemented.** The Sheriff's Office has been tracking overrides since 2009 to verify accuracy and to adjust housing unit assignments as needed. Upon first evaluation, we found we were overriding 24.2% of those classified. After corrective adjustments, and continued tracking, we lowered the average to 15.6% in 2010 and 14.5% in 2011. With the advent and impacts of AB 109, an expected increase in overrides occurred. Based upon an evolving AB 109 population, we expect to modify housing assignments several times in the next 18 months.

- R3: Seek the assistance of the National Institute of Corrections for the purpose of facilitating improvement in the current inmate classification system.

**This recommendation will be implemented.** Additionally, we are currently evaluating the replacement of our current Jail Management System (JMS) with one that fully and seamlessly integrates jail classification.

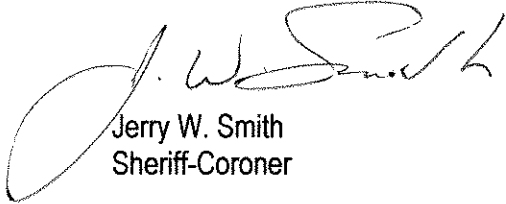
- R4: The fixed privacy wall in sobering cell #2 should be removed, and an alternate means of providing privacy should be made available.

**This recommendation will not be implemented because it is not warranted.** The privacy wall in Sobering Cell #2 fully complies with Title 24 CCR, Section 1231.2.4, requiring, in part, that sobering cells have, "...padded partitions located next to the toilet fixture in such a manner that they provide support to the user." The current wall is padded and capable of supporting the user as specified by statute. Furthermore, as stated in the response to F5 above, the wall does not constitute a dangerous condition.



This concludes my response to the 2011-2012 Grand Jury report. Once again, I appreciate all the recommendations made by the Grand Jury, and remain convinced that this type of citizen participation in the operations of government is crucial to our successful operation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry W. Smith". The signature is fluid and cursive, with a large initial "J" and "S".

Jerry W. Smith  
Sheriff-Coroner

cc: Board of Supervisors  
Steve Lambert  
Bill Connelly  
Larry Wahl  
Maureen Kirk  
Kim Yamaguchi  
Paul Hahn, CAO