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May 4, 2007

Board of Supervisors
County of Orange
10 Civic Center Plaza
333 W. Santa Ana Blvd.
Santa Ana, CA 92701

Re: *Ordinance creating Citizens Law Enforcement Review Board*

Dear Colleagues:

I am recommending the creation of a Citizens Law Enforcement Review Board. Recent events at the Theo Lacy facility, as well as numerous published reports of inmate on inmate violence and a culture of tolerating "taxing" (punishment of one inmate by others for perceived offenses) has caused concern, and a dip in public confidence in County law enforcement, and has subjected the County to threats of civil liability. The goals of creating a Citizens Law Enforcement Review Board include both assisting the Sheriff and other Law Enforcement leaders in re-establishing public confidence and instituting methods whereby we can continually improve procedures and conditions of custodial practices so as to reduce the incidence of threats of liability.

I want to first discuss the background for consideration of this possible Ordinance, beginning with a reminder of the concerns raised by the death of Mr. Chamberlain.

Concerns Raised by the Theo Lacy Jail Incident

The death of inmate John Chamberlain raises a number of concerns. While it will be up to the criminal and civil courts to ultimately resolve issues of liability, certain questions have been raised by the public and the press on a number of fronts:

1. How did inmates learn of the charges against Chamberlain?
2. Do jail personnel recognize and tolerate a "moral code" among inmates, whereby rapists, child molesters and sexual predators get "taxed" or "regulated" (meaning physically punished by other inmates)?
3. Did jail personnel fail, until only recently, to segregate those accused of sexual crimes out of the general jail population?

4. What is the jail policy on responding to requests by inmates or their counsel to be moved for security reasons?
5. What is the jail policy on whether deputies or other custodial officers are permitted to watch television or play computer games while on duty?
6. Was the security equipment in some of the barracks insufficient for adequate and continual monitoring of inmates wherever they may be within the barracks?
7. Are inter-departmental protocols on investigating custodial deaths strictly adhered to in order to avoid public perception that there has been an appearance of impropriety or bias in the investigation?

Reduction of Civil Liability

Los Angeles County Special Counsel Merrick Bob stated, "It is running an awful risk not to have an efficient and effective mechanism for managing sources of liability and the risk of police misconduct." He is correct—this is an issue of risk management. When there are liability problems, it is the County that pays, and thus our taxpayers. Indeed, our own experience demonstrates the need for risk management, in the form of civilian oversight, in this area: according to a recent memorandum from Risk Management, since 2000, we have paid almost \$1.5 million in settlements arising from claims from the County jail system, and there are 31 current lawsuits, exclusive of the Chamberlain claim, pending. This fact alone substantiates the need for a citizen oversight board.

Benefits of Citizen Oversight to Police and Sheriff's Departments

Law enforcement managers and officers report that there are numerous benefits to them from citizen oversight, including:

1. Improving the department's image and relationship with the community;
2. Increasing the public's understanding of the department's work;
3. Improve the quality of the department's internal investigations of alleged misconduct;
4. Reassure the public of the fairness of the process;
5. Vindicate officers who should be vindicated;
6. Help discourage misconduct; and
7. Improve department policies and procedures.¹

Indeed, we recognize that the Sheriff has indicated a willingness to support some form of oversight, although we may not quite agree on the form.

¹ Peter Finn, "Citizen Review of Police—Approaches and Implementation," (National Institute of Justice, Office of Justice Programs, U.S. Department of Justice: March 2001) (hereinafter, "Citizen Review").

Types of Citizen Oversight

According to "Citizen Review," there are four main types of citizen oversight:

Type 1: Citizens investigate allegations of misconduct and recommend findings;

Type 2: Police investigate allegations and develop findings; citizens review and recommend that the chief or sheriff approve or reject the findings;

Type 3: Complainants may appeal findings established by the police or sheriff's department to citizens, who review them and make their own recommendations;

Type 4: An auditor investigates the process by which the sheriff's or police department accepts and investigates complaints in terms of the thoroughness and fairness of the process to the department and the public.

While each type has its advantages and drawbacks, we believe that Type 1 is the best model for Orange County. Oversight systems, such as the one we are proposing, that involve citizen boards investigating citizen complaints and custodial deaths and serious injuries help reassure the public that investigations are thorough and fair, and that serious recommendations of solutions will be made. In other words, such a model develops greater public confidence in the Sheriff and law enforcement generally. It also can focus on more than just an incident; it can also focus on long-term solutions that will take on the characteristics of risk management. While Type 1 can be the most costly, depending upon how the review board is staffed, a somewhat greater cost seems preferable to the extent it increases public confidence in law enforcement and operates as more effective risk management.

Types 2 and 3 both involve significant department investigation of itself, and even subsequent review or appeal of departmental findings cannot entirely erase public concern of a biased investigation. Moreover, departmental investigations are less likely to result in a serious self-examination of policies and procedures that can result in better risk management.

Type 4 invests too much power in a single person, and does not inspire as much public confidence in the institution. Unlike our version of Type 1, which creates diverse community representation, Type 4 would centralize all authority in a single person, and would create a political free-for-all surrounding the appointment of such a person.

In addition, some have suggested that the Grand Jury is a sufficient oversight tool. However, the Grand Jury is limited in a number of ways. Its term is limited to one year, so there is no ongoing institutional knowledge or expertise regarding the issues that may arise in civilian oversight of law enforcement. More importantly, there is no guarantee that the Grand Jury will have the opportunity or time to investigate every incident since they are charged with investigating many

aspects of County operations. Thus, a Grand Jury simply cannot function as a continuing, expert, fully involved and invested oversight body that a specially dedicated citizen review board can be.

Our Proposal

As indicated above, our proposal is essentially a "Type 1" organizational model, largely based upon the San Diego County Citizens Law Enforcement Review Board, created in 1991. The purposes of the Citizens Law Enforcement Review Board ("CLERB") are crucial, but limited: to "(a) receive and investigate specified citizen complaints; (b) investigate all deaths and serious injuries arising out of or in connection with activities of peace officers and custodial officers employed by the County in the Sheriff's Department, the District Attorney's office, or the Probation Department; and (c) investigate all deaths and serious injuries suffered by any person while in the custody of the Sheriff's Department, the District Attorney's office, or the Probation Department." To perform the risk management function, the CLERB is also authorized to "make appropriate recommendations relating to matters within its jurisdiction, report its activities, and provide data in respect to the disposition of citizen complaints received."

In order to avoid the perceived politicization that has occurred, for example, with the Los Angeles Police Commission, the Orange County CLERB "will be advisory only and shall not have any authority to manage or operate the Sheriff's Department, the District Attorney's office, or the Probation Department or direct the activities of any County officers or employees in the Sheriff's Department, the District Attorney's office, or the Probation Department." The CLERB cannot impose discipline.

In order to maximize public confidence and representation, we propose a Board of seven (7) members appointed by our Board: two members nominated by the CEO, and one member nominated by each Supervisor. We propose that we shall endeavor to "reflect in Review Board membership comprehensive representation of age, gender, socioeconomic status, racial and ethnic background and geographical distribution, including representation of both the unincorporated areas and the cities that contract with the County for law enforcement by the Sheriff's Department." However, to ensure public confidence in a lack of bias, we propose to exclude "County employees and persons currently, or previously, employed as peace officers or custodial officers" as potential CLERB members.

Members may serve up to three three-year terms, although initially three members will serve an initial two-year term. This insures that institutional expertise and memory is preserved by guaranteeing that at no time will the entire CLERB be up for replacement.

Expertise must be developed, so training is crucial. "All members shall attend and satisfactorily complete a training course within three months of the beginning of the member's term or of the member's appointment to fill a vacancy. The training requirements shall be established by the County Executive Officer." We would expect, therefore, that the CEO can correspond with his

counterparts in other counties that have similar programs to determine the best training program to utilize.

Any recommendations that involve personnel matters may be appealed "to a panel of neutral arbitrators as set forth in the County's personnel rules." Personnel issues are, pursuant to the Peace Officers' Bill of Rights, held confidential.

The California Supreme Court and Courts of Appeal have held that CLERB matters, to the extent they involve personnel, are in fact subject to the Peace Officers' Bill of Rights, and our proposal recognizes that fact. In addition, the proposal recognizes the need to send this matter to a "meet and confer" with affected public employee unions, before we consider the Ordinance at a First Reading.

County Counsel input

We have had this proposed Ordinance reviewed for legal adequacy by the County Counsel's office, and it currently reflects their input. County Counsel also met with his counterpart from San Diego County to determine what drawbacks, if any, they have faced in implementing a system which is similar to the one we are now proposing. Nothing was significantly daunting. There is always some issue as to whether CLERB recommendations or findings provide a defense in civil tort actions. There has been some issue in the San Diego CLERB as to whether to consider jail medical treatment issues. Finally, as noted above, a Type 1 CLERB can be more costly, since it typically requires an Executive Director and perhaps two investigators.

However, none of these issues seem to be a serious problem. Whether conduct constitutes either negligence or a defense to negligence is within the purview of a jury, so that a finding by a CLERB would not be competent evidence on that issue. That is, the CLERB determination cannot be substituted for the jury's right to make a determination on liability or a defense. We have added a specific exclusion for complaints regarding medical treatment, since that is a Health Care Agency issue. The issue of cost can be determined later, by determining whether this Board wants to create new positions for the Executive Director and investigator, or assign current County personnel to those positions.

We believe that this is a considered and measured, but much needed, response to issues that suggest a public concern with law enforcement and our jail system. Accordingly, I am recommending that we move forward to establish a Citizens Law Enforcement Review Board for the County of Orange.

Board of Supervisors
County of Orange
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RECOMMENDED ACTION:

Authorize and direct staff to meet and confer with the affected employee organizations prior to setting the Ordinance for a First Reading.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Moorlach", written in a cursive style.

John M. W. Moorlach

1 County of Orange, hereinafter referred to as "Review Board."

2 Section 3: Section 1-2-227: NUMBER OF MEMBERS.

3 The Review Board shall consist of seven (7) members.

4 Section 4: Section 1-2-228. NOMINATION AND APPOINTMENT.

5 (a) The Board of Supervisors shall appoint all seven members to the Review Board, all of
6 whom shall be residents and qualified electors of the County. Two members shall be nominated by the
7 County Executive Officer. One member shall be nominated by each member of the Board of
8 Supervisors. In making appointments, the Board of Supervisors shall endeavor to reflect in Review
9 Board membership comprehensive representation of age, gender, socioeconomic status, racial and ethnic
10 background and geographical distribution, including representation of both the unincorporated areas and
11 the cities that contract with the County for law enforcement by the Sheriff's Department. The list of
12 nominees submitted to the Board of Supervisors shall include a statement of the qualifications of each
13 person nominated.

14 (b) Public notice and publicity shall be given of intention to appoint members to the Review
15 Board. An application form shall be provided to members of the public.

16 (c) County employees and persons currently, or previously, employed as peace officers or
17 custodial officers shall not be eligible to be members of the Review Board.

18 Section 5: Section 1-2-229. TERM OF OFFICE.

19 (a) Each member shall serve a term of three years; provided, however, that the terms of the
20 initial members of the Review Board shall be determined as follows:

21 At the first meeting of the Review Board, the seven members shall draw lots to determine which four
22 members will serve a three year term, and which three members will serve a two year term.

23 (b) A member shall serve on the Review Board until a successor has been appointed. A
24 member shall be appointed for no more than three consecutive full terms. Appointment to fill a vacancy
25 shall constitute appointment for one term. The term for all members shall begin on July 1 and end on
26 June 30. The term of all persons who are the initial appointees to the Review Board shall be deemed to
27 commence on July 1, 2007.

28 Section 6: Section 1-2-230. REMOVAL.

1 Members of the Review Board serve at the pleasure of the Board of Supervisors and may be
2 removed from the Review Board at any time by a majority vote of the Board of Supervisors.

3 Section 7: Section 1-2-231. VACANCIES.

4 A vacancy shall occur on the happening of any of the following events before the expiration of
5 the term:

- 6 (1) The death of the incumbent.
- 7 (2) The resignation of the incumbent.
- 8 (3) The ceasing of the incumbent to be a resident of the County of Orange.
- 9 (4) Removal of the incumbent by the Board of Supervisors as set forth in section 1-2-230.
- 10 (5) Absence of the member from three consecutive regular meetings of the Review Board, or
- 11 (6) Failure to attend and satisfactorily complete the required training course required by
12 section 1-2-238 herein within three months of the beginning of a member's term or of the member's
13 appointment to fill a vacancy.

14 When a vacancy occurs, the Board of Supervisors and, where appropriate, the member, shall be
15 notified of the vacancy by the Chairperson. Vacancies shall be filled in the same manner as the position
16 was originally filled. Vacancies shall be filled within forty-five days and, subject to the provisions of
17 this Ordinance, shall be filled for the balance of the unexpired term.

18 Section 8: Section 1-2-232. ORGANIZATION.

19 (a) *Officers.* The Review Board shall select annually from its membership a Chairperson, a
20 Vice-Chairperson and a Secretary.

21 (b) *Rules.* The Review Board shall prepare and adopt necessary rules and regulations for the
22 conduct of its business, subject to approval of the Board of Supervisors. A current copy of the rules and
23 regulations shall be filed with the Clerk of the Board of Supervisors.

24 (c) *Quorum.* A majority of members currently appointed to the Review Board shall
25 constitute a quorum. A majority of members currently appointed to the Review Board shall be required
26 to carry any motion or proposal.

27 (d) *Minutes.* The Review Board shall keep written minutes of its meetings, a copy of which
28 shall be filed with the Clerk of the Board of Supervisors.

1 (e) *Meetings.* The Review Board shall establish a regular meeting schedule and shall give
2 public notice of the time and place of meetings. All meetings shall be held in accordance with the
3 requirements of the Ralph M. Brown Act (Government Code section 54950 et seq.).

4 Section 9: Section 1-2-233. COMPENSATION.

5 Members of the Review Board shall serve without compensation, except they shall be
6 reimbursed for expenses incurred in performing their duties on the same terms specified for County
7 employees.

8 Section 10: Section 1-2-234. DUTIES AND RESPONSIBILITIES.

9 The Review Board shall have the authority to:

10 (a) Receive, review and investigate citizen complaints filed against peace officers or
11 custodial officers employed by the County in the Sheriff's Department, the District Attorney's office, or
12 the Probation Department which allege: (A) use of excessive force; (B) discrimination or sexual
13 harassment in respect to members of the public; (C) the improper discharge of firearms; (D) illegal
14 search or seizure; (E) false arrest; (F) false reporting; (G) criminal conduct; or (H) misconduct. The
15 Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents
16 occurring on or after the effective date of this ordinance; provided, however, that the Review Board shall
17 not have jurisdiction to take any action in respect to complaints received more than one year after the
18 date of the incident giving rise to the complaint, except that if the person filing the complaint was
19 incarcerated or physically or mentally incapacitated from filing a complaint following the incident
20 giving rise to the complaint, the time duration of such incarceration or physical or mental incapacity
21 shall not be counted in determining whether the one year period for filing the complaint has expired. All
22 action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury.
23 "Citizen complaints" shall include complaints received from any person whatsoever without regard to
24 age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant,
25 but shall not include any complaints involving the level or standard or quality of medical treatment or
26 care administered while in custody. "Misconduct" is defined to mean and include any alleged improper
27 or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen by
28 reason of:

1 1. An alleged violation of any general, standing or special orders or guidelines of the
2 Sheriff's Department, the District Attorney's office, or the Probation Department; or

3 2. An alleged violation of any state or federal law; or

4 3. Any act otherwise evidencing improper or unbecoming conduct by a peace officer
5 or custodial officer employed by the Sheriff's Department, the District Attorney's office, or the
6 Probation Department.

7 The Review Board shall have no authority pursuant to this subdivision to take action in regard to
8 incidents for which no citizen complaint has been filed with the Review Board.

9 (b) Review and investigate the death of any individual arising out of or in connection with
10 actions of peace officers or custodial officers employed by the County in the Sheriff's Department, the
11 District Attorney's office, or the Probation Department, and all deaths and serious injuries suffered by
12 any person while in the custody of the Sheriff's Department, the District Attorney's office, or the
13 Probation Department, regardless of whether a citizen complaint regarding such death or serious injury
14 has been filed with the Review Board. The Review Board shall have jurisdiction in respect to all deaths
15 or serious injuries of individuals coming within the provisions of this subdivision occurring on or after
16 the effective date of this ordinance. The Review Board may not commence review or investigation of
17 any death of an individual coming within the provisions of this subdivision more than one year after the
18 date of the death, unless the review and investigation is commenced in response to a complaint filed
19 within the time limits set forth in subdivision (a) of this section.

20 (c) Prepare reports, including at least the Sheriff, District Attorney, or the Probation Officer
21 as recipients, on the results of any investigations conducted by the Review Board in respect to the
22 activities of peace officers or custodial officers, including recommendations on whether discipline
23 should be imposed, including the facts relied on in making such recommendations, and
24 recommendations relating to any trends in regard to employees involved in citizen complaints. The
25 Review Board is not established to determine criminal guilt or innocence, or to recommend the
26 imposition of any particular level or type of discipline.

27 (d) Prepare an annual report to the Board of Supervisors, the County Executive Officer, the
28 Sheriff, the District Attorney, and the Chief Probation Officer summarizing the activities and

1 recommendations of the Review Board including the tracking and identification of trends in respect to
2 all complaints received and investigated during the reporting period.

3 (e) Notify in writing any citizen having filed a complaint with the Review Board of the
4 disposition of his or her complaint. The County Executive Officer shall also receive appropriate
5 notification of the disposition of citizen complaints. Such notifications shall be in writing and shall
6 contain the following statement: "In accordance with Penal Code Section 832.7, this notification shall
7 not be conclusive or binding or admissible as evidence in any separate or subsequent action or
8 proceeding brought before an arbitrator, court, or judge of California or the United States."

9 (f) Establish necessary rules and regulations for the conduct of its business, subject to
10 approval of the Board of Supervisors.

11 (g) Review and make recommendations on policies and procedures of the Sheriff's
12 Department, the District Attorney's office, or the Probation Department to the Board of Supervisors, the
13 Sheriff, the District Attorney, and the Chief Probation Officer, as the result of the findings determined as
14 contemplated in subdivisions (a) and (b) of this section.

15 Section 11: Section 1-2-235. REVIEW BOARD INVESTIGATIONS.

16 Citizen complaints received by the Review Board shall be transmitted forthwith to the Sheriff,
17 District Attorney, or the Probation Officer.

18 Section 12: Section 1-2-236. SUBPOENAS.

19 The Board of Supervisors may, pursuant to California Government Code Sections 25170-25176,
20 subpoena and require attendance of witnesses and the production of books and papers pertinent to the
21 investigations of the Review Board and to administer oaths.

22 Section 13: Section 1-2-237. STAFF ASSISTANCE.

23 The Review Board shall appoint such personnel or staff as may be authorized by the Board of
24 Supervisors.

25 Section 14: Section 1-2-238. TRAINING REQUIREMENTS.

26 All members shall attend and satisfactorily complete a training course within three months of the
27 beginning of the member's term or of the member's appointment to fill a vacancy. The training
28 requirements shall be established by the County Executive Officer. Failure to attend and satisfactorily

1 complete the training course within the prescribed time shall result in the member's removal from the
2 Review Board and shall automatically create a vacancy on the Review Board.

3 Section 15: Section 1-2-239. RECORDS.

4 Any personnel records, citizen complaints against County personnel in the Sheriff's Department,
5 the District Attorney's office, or the Probation Department, and information obtained from these
6 records, which are in the possession of the Review Board or its staff, shall be confidential and shall not
7 be disclosed to any member of the public, except in accordance with applicable law. Copies of records
8 and complaints of the Review Board shall be made available to the Sheriff, District Attorney, or the
9 Probation Officer upon completion of the investigation of the Review Board unless prohibited by
10 applicable law.

11 Section 16: Section 1-2-240. COOPERATION AND COORDINATION.

12 In the discharge of its duties, the Review Board shall receive complete and prompt cooperation
13 from all officers and employees of the County. The Review Board and other public officers, including
14 the Sheriff, the District Attorney, and the Grand Jury, shall coordinate their activities so that the other
15 public officers and the Review Board can fully and properly perform their respective duties.
16 Nothing in this subdivision shall be interpreted to override or otherwise affect any protocols,
17 agreements, procedures, or other directives intended to avoid a conflict of interest, appearance of a
18 conflict of interest, or appearance of impropriety in connection with the investigation of a complaint,
19 death or injury as outlined in sections 1-2-225 and 1-2-234 herein. Any investigation carried on by the
20 Review Board shall be parallel to, and not in lieu of, any appropriate investigation by any law
21 enforcement agency.

22 Section 17: Section 1-2-241. ADMINISTRATIVE APPEALS.

23 To the extent that any reports made pursuant to section 1-2-234 make findings in respect to the
24 activities of peace officers, including recommendations relating to the imposition of discipline, the peace
25 officer(s) about whom findings or recommendations are made in the report or reports shall have the right
26 to appeal such findings to a panel of neutral arbitrators as set forth in the County's personnel rules.

27
28