



# San Diego County Sheriff's Department

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*Anthony C. Ray, Sheriff*

*Kelly A. Martinez  
Undersheriff*



August 1, 2022

Honorable Michael T. Smyth  
Presiding Judge of the Superior Court  
San Diego Central Courthouse  
1100 Union Street, Tenth Floor  
San Diego, CA 92101

Dear Presiding Judge Smyth:

**Response to San Diego County Grand Jury Report: "COVID-19 Testing in San Diego County Jails-Individual Rights v. Public Health & Safety."**

Pursuant to California Penal Code section 933(c), the following is my response to the Grand Jury's Findings and Recommendations 22-42 through 22-43.

**SAN DIEGO COUNTY SHERIFF'S DEPARTMENT**

I reviewed the Grand Jury's recent report outlining their findings and recommendations related to COVID-19 testing within San Diego County detention facilities. I appreciate the thoughtful review and assessment made by Foreperson Jim Mendelson and members of the Grand Jury. This report indicated the members of the Grand Jury inspected and made inquiries about COVID-19 testing at Sheriff intake facilities, defined as jails which "accept new arrestees." The author of this report listed the intake facilities as San Diego Central Jail (SDCJ), Las Colinas Detention and Reentry Facility (LCDRF), Vista Detention Facility (VDF), and George F. Bailey Detention Facility. As a point of clarification, George F. Bailey Detention Facility is not an intake facility and new arrestees are generally not accepted or booked on-site.

The Grand Jury identified two findings as a result of their inspections, inquiries, and interviews of Sheriff employees from August to December of 2021. Please refer below for the Sheriff's Department's comments to these findings.

**Grand Jury Finding 01:**

The COVID-19 virus presents a serious risk to the staff and inmates at San Diego County's detention facilities and to the public health and safety generally.

***Response:***

The San Diego County Sheriff's Department agrees with this finding to the extent that COVID-19 is recognized as a public health risk not only in detention facilities but in the broader San Diego community. Our detention facilities are a microcosm of society, who are dealing with the same risks and issues. The Centers for Disease Control and Prevention (CDC) recognizes this correlation and adopted recommendations for detention facilities to assess their own pandemic risk based on a combination of community COVID-19 levels and unique facility level factors. This is referenced in the May 3, 2022, release of CDC's COVID-19 Guidance for Correctional and Detention Facilities.

**Grand Jury Finding 02:**

At the time of the Grand Jury inspections, SDSD arrestees may have been unnecessarily exposed to COVID-19 because of delayed test results.

***Response:***

The San Diego County Sheriff's Department disagrees that "SDSD arrestees may have been unnecessarily exposed to COVID-19 because of delayed test results." The Grand Jury report seems to imply that using the more accurate PCR test caused a delay in test results. There is no indication in the grand jury report that any test results were delayed. The PCR test results take longer than the quicker, antigen test. However, because of processes in place, the Department doesn't agree that inmates may have been unnecessarily exposed to COVID-19. All arrestees who were booked into county jail, during that time period, were held in an intake quarantine process until they received a negative PCR test result or for a minimum period of 10 days. All positive tests also required contact tracing to identify exposed incarcerated persons and staff. The Polymerase Chain Reaction COVID-19 test, commonly known as the PCR test, has been the primary test mandated at intake. On average, PCR results are returned within 48 hours. Sheriff's health staff inform all incarcerated individuals of their positive findings and test results are uploaded to their respective electronic health record.

Consistent with public health and community standards, the Department is in the process of transitioning to rapid antigen testing at intake coupled with mandatory quarantine for those who refuse testing. Those who test positive are placed in isolation.

**RECOMMENDATION 22-42:**

The 2021/2022 San Diego County Grand Jury recommends the San Diego Sheriff's Department:

*Amend its COVID-19 prevention protocol to required mandatory COVID-19 testing of all arrestees at jail intake.*

***Response:***

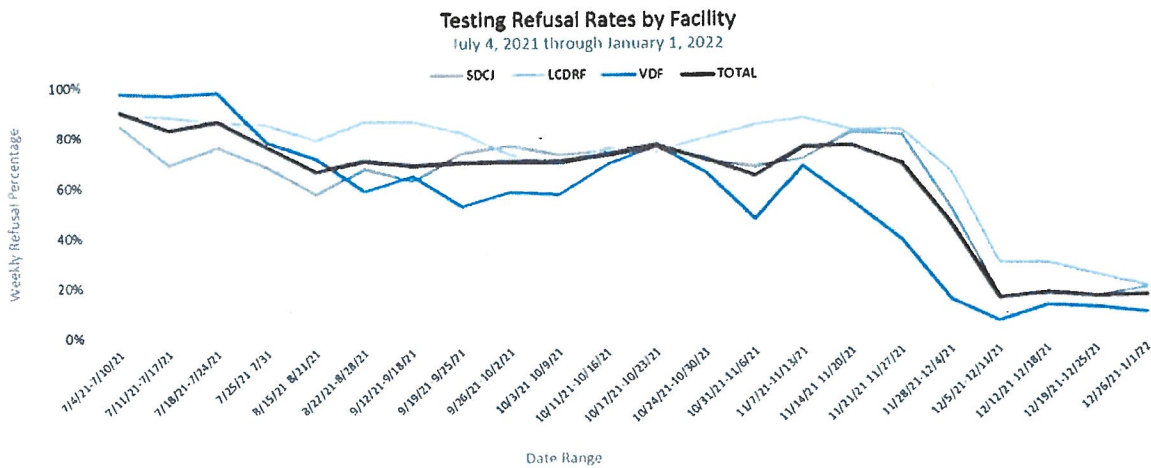
This recommendation will not be implemented because it is not warranted or reasonable. The CDC does not require mandatory testing during the custodial/detentions intake process. The most recent CDC guidance (May 3, 2022) describes a flexible, long-term approach to COVID-19 prevention, allowing for the variations in facilities infrastructure, layout, security level, staffing, population health needs and shifting epidemiologic trends.

We clearly recognize the need to provide safeguards for the health and welfare of all those residing in our care and custody. In accordance with California Code of Regulations Title 15 provisions, we screen all incoming residents for health concerns and potential infectious conditions, both for the safety of the individual as well for the protection of others.

With that being said, the Sheriff's Department will not use force on an individual to administer a COVID-19 test. This strategy could result in injury to the incarcerated person, injury to deputies involved, and will likely incur liability to the County. The accuracy and effectiveness of the resultant test would also be questionable. There is little benefit conveyed to any party by utilizing force to obtain a test, especially when there are other processes in place to minimize exposure to other individuals, staff, and the public, including quarantine and isolation housing.

Our current approach with testing incarcerated individuals at intake is not introducing them to the option of taking a COVID-19 test. Instead, they are expected to participate in testing unless they proactively refuse. In other words, we do not give the choice up front; rather, we tell them it is part of the intake process. As with any medical procedure or test, taking the test is not mandatory and incarcerated individuals ultimately have the right to refuse a COVID-19 test. The test will be offered to the individual several times, and educational material on testing and vaccinations is provided to them. Health staff collect signed refusal forms for anyone refusing a COVID-19 test. The refusal forms are uploaded into our electronic health record system. The refusing individual will remain in quarantine housing or, if they are symptomatic, in isolation. Additionally, individuals can also change their minds and request a test at any time.

From the onset of the pandemic through late 2021, our COVID-19 testing procedure involved Sheriff's health staff swabbing the nasal cavity of the incarcerated person. That process resulted in the majority of the incarcerated persons refusing to test. In late 2021, the Sheriff's Department took measures to increase testing compliance. We modified our testing procedures to allow incarcerated individuals to administer the nasal swabbing themselves at the initial intake screening area and increased the amount of counseling for refusals. This change dramatically increased our testing compliance to approximately 80%. The chart below breaks the numbers down by facility:



At the time of this report, all newly arrested individuals were quarantined for the first five (5) days in designated housing units at SDCJ, LCDRF, and VDF. With the addition of rapid testing, the Department is making modifications to the intake quarantine process.

Intake quarantine prevents unnecessary exposure between incarcerated persons. Individuals who are booked within a certain window of time are identified as cohorts and a quarantine housing unit is formed. At the height of the pandemic, when positive cases were in the 200-400 range, intake quarantine periods were initially seven (7) days. As the virus mutated and the number of COVID-19 cases decreased nationwide, the quarantine period was changed to five (5) days. Incarcerated persons placed in intake quarantine are monitored daily by health staff for signs and symptoms of COVID-19 and are offered the vaccine twice. Incarcerated persons in intake quarantine are permitted to attend court (in person and/or virtual) provided they wear a face covering and are asymptomatic.

**RECOMMENDATION 22-43:**

The 2021/2022 San Diego County Grand Jury recommends that the San Diego Sheriff's Department:

*Test all arrestees at intake with rapid antigen tests approved under the FDA's Emergency Use Authorization.*

**Response:**

This recommendation is currently being implemented. As noted above, the Sheriff's Department used the PCR test at intake, however we are currently transitioning to rapid antigen testing for all new arrests. Previously, we only used antigen tests when rapid results were needed, such as when incarcerated persons must be present for court proceedings, patients need to attend off-site clinic appointments, when transferring incarcerated persons to the California Department of Corrections and Rehabilitation, and when someone was symptomatic. These same rapid tests are also readily available to all staff working in the facilities for use as needed.

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The Sheriff's Department will continue to monitor the use of rapid antigen tests at intake through the ensuing Summer and Fall of 2022 to ensure that a regular antigen is the most appropriate test to meet the health and safety needs of our incarcerated population.

In closing, I would like to thank the Grand Jury for their efforts in working with the Sheriff's Department through this investigation.

Sincerely,

A handwritten signature in blue ink that reads "Anthony C. Ray". The signature is written in a cursive style with a large initial "A".

Anthony C. Ray, Sheriff

ACR:kb

cc: Members, Board of Supervisors  
Helen Robbins-Meyer, CAO  
David Hall, Director, Clerk of the Board  
Jim Mendelson, Foreman, San Diego County Grand Jury

