



San Diego County Sheriff's Department

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Kelly A. Martinez, Sheriff



July 25, 2023

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

Dear Presiding Judge Smyth,

San Diego Sheriff's Department's response to Grand Jury Report: Sheriff's Department Incarcerated Persons' Welfare Fund

Pursuant to California Penal Code section 933(c), the following is my response to the Grand Jury's Findings and Recommendations 23-10 through 23-17.

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

I have reviewed the Grand Jury's report outlining their findings and recommendations related to the Sheriff's Department Incarcerated Persons' Welfare Fund (IPWF). I appreciate the thoughtful review and assessment made by Foreperson Ed Lopatin and members of the Grand Jury. This report indicated the members of the Grand Jury conducted interviews of San Diego Sheriff's Department (SDSD) and County of San Diego staff, toured all the County jails and reviewed official documents related to the IPWF.

The Grand Jury identified eight findings as a result of their above-mentioned methodology. Please refer below for the Sheriff's Department's responses to these findings.

Grand Jury Finding 01:

No specific guidelines are given in the IPWC By-Laws and Operating Procedures that specifically define what constitutes an allowable expense appropriate for the IPWF.

Response: The Sheriff's Department disagrees wholly with the finding.

The Incarcerated Persons' Welfare Fund (IPWF) By-Laws and Operating Procedures are in alignment with the California Penal Code (CPC) 4025. California Penal Code 4025(a) grants the Sheriff of each county the authority to "establish, maintain and operate a store in connection with the county jail and for this purpose may purchase confectionery, tobacco and tobacco users' supplies, postage and writing materials, and toilet articles and supplies and sell these goods, articles, and supplies for cash to inmates in the jail."

Section (e) of PC 4025 further states, "the money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates. An itemized report of these expenditures shall be submitted annually to the board of supervisors."

The Sheriff's IPWF By-Laws and Operating Procedures are developed around 4025 PC, and as such they do define what constitutes an allowable expense appropriate for the IPWF.

In the report, the Grand Jury included a fact specific to Finding 01 that stated: *CPC Section 5006 identifies specific criteria and rules governing the use of Inmate Welfare Funds restricting use of these resources "solely for the benefit and welfare of inmates of the prisons and institutions under the jurisdiction of the (State) Department of Corrections and Rehabilitation."*

California Penal Code 5006 relates to state prisons and not county jails and is therefore not applicable to how San Diego County IPWF is managed.

Grand Jury Finding 02:

Mandating periodic time studies would identify the use of IPWF funding for non-IPWF' activities, especially important for those personnel having dual responsibilities for Title 15 activities and IPWF supported programs.

Response: The Sheriff's Department disagrees wholly with the finding.

The duties and responsibilities of IPWF funded positions are within PC 4025 guidelines and are integral in providing for the benefit and welfare of the individuals in custody. Several positions within Reentry Services are funded wholly or partially through IPWF. For example, The Program Coordinator for Reentry Services is funded by IPWF (50%) and general fund revenue (50%). The Program Coordinator is tasked with the administrative oversight of all IPWF contracts (which falls under auspices of 4025 PC) and oversight of Reentry operations such as clothing contracts (which falls under Title 15 regulation). The Program Manager does supervise line-level employees within Reentry Services, who perform duties in line with 4025 PC. These employees are funded by a combination of IPWF and other revenue funds. Based on the job duties listed above, it stands to reason that the Program Manager spends more than 50% of their time performing duties, including supervision of IPWF contracts, programs and staff, in accordance with 4025 PC.

It would be labor intensive and difficult to conduct a time study for this dual funded position. In a field such as corrections, emergency situations, critical incidents, unexpected contractual deadlines, human resource concerns and other issues emerge every day. The Program Coordinator must continually reprioritize their focus and schedule to deal with these emerging issues. They may work on nothing but IPWF projects for an entire week and then spend one day on Title 15 related projects. They may switch between IPWF and Title 15 projects throughout the day as they balance the needs and priorities of the incarcerated population and staff. While the workloads may fluctuate day to day or week to week, the Department firmly believes the balance of IPWF and Title 15 work responsibilities is congruent to the appropriation of IPWF allotted to each position. A periodic time study for three pay periods or three months, would not present a clear-cut assessment of how funds are being allocated for certain duties for an entire fiscal year. As noted, the Department is confident full and partially funded IPWF staff provide the appropriate level of management, support, direct service delivery and security of reentry programs. In addition, other non IPWF funded positions support activities that fit the criteria of IPWF. The Sheriff does not use these funds for this staff and believes that the monies are being appropriately spent and balanced among all staff who support these programs in varying capacities.

Grand Jury Finding 03:

Limiting the membership on the committee to only one long standing civilian member does not allow San Diego County's diverse citizenship to be adequately represented or differing viewpoints to be heard.

Response: The Sheriff's Department agrees with this finding.

For many years, the Sheriff's Department has only included one volunteer civilian member on the IPWF Committee. The Sheriff's Department is in agreement that the inclusion of more than one civilian board member brings diversity, transparency and increases overall objectivity when making decisions. The By-Laws and Operating Procedures have been updated to include more than one civilian member. The Department is currently in the process of interviewing prospective committee members for the additional positions.

Grand Jury Finding 04:

The substitute funding authorized to replace phone charge revenue provided an annual revenue guarantee in future fiscal years by the County of San Diego Board of Supervisors to maintain funding sources for these important and impactful correctional education programs for the benefit, education and welfare of incarcerated persons.

Response: The Sheriff's Department partially disagrees with this finding.

The Sheriff's Department agrees with the finding that the County of San Diego Board of Supervisors (BOS) identified funding to replace revenue previously realized through phone service contracts for our incarcerated population. Although the BOS provided funding to offset the lost phone revenue, the BOS didn't account for fluctuating and unpredictable service costs that are out of the Department's control. The Department's phone systems and service contracts are tied to other services such as video visitation and Video Relay Services (VRS) related to

those with hearing and communication disabilities. VRS is a type of telecommunications service that allows deaf and hard of hearing persons to communicate in American Sign Language with voice telephone users, utilizing an interpreter by way of a video phone, tablet, smartphone, or computer with a webcam and internet connection. The phone contract also incorporates technology that gives Incarcerated Persons (IPs) the ability to purchase commissary items through a digital platform, allows family members to place funds on their account and provides IPs a debit card with their fund balance upon release. As technology changes, the Department must adapt accordingly. This could lead to a potential impact to future IPWF services that may not be covered since there is no planned budget increase for upcoming fiscal years.

Grand Jury Finding 05:

Initial funds authorized by the San Diego County's Board of Supervisors and a large current fund balance may continue to support IPWF programs for some time, but existing reserves in the fund may fall unless this supplemental county funding continues.

Response: The Sheriff's Department agrees with this finding.

The San Diego Sheriff's Department is proactive in our attempt to project future fund balances and provide fiscal stability. The department maintains more than adequate reserves and follows the County General Management System which includes a multi-year Operational Plan and Five-Year Financial Forecast. Obviously, there are many things out of our control, such as the rate of inflation or changes in law which may dictate the types of programs or services required for incarcerated populations. These changes could impact our overall fund balance and our reserves. Likewise, if the Board of Supervisors terminates the amount they have budgeted to supplement the phone contract, the Sheriff's Department would be forced to deplete fund balance to compensate for the deficit. IPWF programs and services would be adversely impacted.

Grand Jury Finding 06:

Performing economic analyses that compare the cost of correctional education programs to the social and financial benefits of reduced recidivism or reincarceration could demonstrate that discontinuing such programs could ultimately be more costly than continuing them.

Response: The Sheriff's Department disagrees partially with this finding.

The Sheriff's Department agrees there can be a benefit to conducting a cost analysis for certain programs or services. The Department believes programming is a valuable part of the rehabilitative process and agrees termination of any services would be detrimental to our overall Reentry Services program and our incarcerated population. Where the Department disagrees with the Grand Jury regarding this finding is whether it is feasible to conduct a cost analysis on an issue as intangible as how reentry programs impact recidivism.

The definition of recidivism, as it pertains to justice involved persons in a correctional environment, has been debated for several years. The California Board of State and Community Corrections (BSCC) defines recidivism as *the conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction*. Per BSCC, this definition does not preclude other measures of offender outcomes. Such measures may include new arrest, return to

custody, criminal filing, violation of supervision, and level of offense (felony or misdemeanor). While the definition above adopts a three-year standard measurement period, rates may also be measured over other time intervals such as one, two, or five years.¹

The Sheriff's Department does not actively track recidivism rates, as defined above, for our incarcerated population. We do track a return to custody rate, which is maintained in a Return to Custody dashboard and updated every day. The Sheriff's return to custody rate tracks any individual who is booked into custody more than once, for any reason, within a three-year period. It does not have to be for a new criminal charge as defined by BSCC. For instance, an individual who returns to custody for a probation violation for the same criminal offense within three years, would be included in the Return to Custody dashboard.

Reentry programs are voluntary for our incarcerated persons. Additionally, for those who do choose to participate in these programs, they do so at their own pace. Some IPs may terminate programs and choose to continue at a later date. Some IPs may attend the same program during different periods of incarceration for different criminal charges. Correctional Counselors track the programs an IP attends while incarcerated in a system called Offender 360. Offender 360 does not directly link to our current Jail Information Management System (JIMS) which tracks a person's booking information, time in custody, housing and criminal charges. Information tracked in Offender 360 is not included in the Return to Custody dashboard.

It would be difficult to rate the success of each specific reentry program, as every IP follows an individualized path to recovery and rehabilitation. One IP may experience success after attending one program while another must attend several with several periods of incarceration within a three-year time period. Success for one person may be evidenced by the fact that they never returned to custody, while success for another may be returning to custody only twice in one year rather than five. While it may be effortless to list the social benefits of "reduced recidivism," it is challenging to place a monetary value on those realized benefits compared to the cost of IPWF reentry and education programs. Nonetheless, the success of even a small percentage of justice involved persons is worth the effort and the continuation of programs and education. Conducting a cost analysis comparing the two would not be feasible for the Sheriff's Department. The Sheriff's Department will continue to support classes and programs in the areas of academic and career technical education, psychosocial, and wellness to the best of our ability.

Grand Jury Finding 07:

The County Sheriff has no evidence or published evaluation of the effectiveness of the reentry programs funded by the IWPF.

Response: The Sheriff's Department wholly disagrees with this finding.

The Reentry Services Division incorporates reentry principals into in-custody programming along with using an evidence-based approach to creating and implementing programs. One example of this is the SANDAG report published March 2019 on the Veterans Moving Forward

¹ https://www.bscc.ca.gov/s_recidivism/

program at the Vista Detention Facility. The link to this Reentry program evaluation can be found below:

<https://www.sdsheriff.gov/home/showpublisheddocument/4699/637793104686170000>

Grand Jury Finding 08:

The County is not meeting the requirement to perform an audit of the Incarcerated Persons Welfare Fund and Jail Stores Enterprise Fund every three years.

Response: The Sheriff's Department agrees with this finding.

The current IPWF By-Laws state an audit "will be conducted every three years internally by the Sheriff's Department, or by the San Diego Office of Audits and Advisory Services (OAAS)." The Sheriff's Department agrees the OASS should be the main auditor and the By-Laws are being amended accordingly. The County's Auditor and Controller has added IPWF to its audit schedule for every 3 years.

Below are the San Diego Sheriff's Department's responses to the Grand Jury recommendations.

Recommendation 23-72

Update the By-Laws and Operating Procedures of the Incarcerated Persons' Welfare Committee to establish specific rules and criteria that define permissible and non-permissible uses of IPWF funds to those directly supporting the benefit, education and welfare of incarcerated persons.

Response: The recommendation will not be implemented because it is not warranted.

The Sheriff's Department Incarcerated Persons' Welfare Fund By-Laws and Operating Procedures expend funds in accordance with PC 4025. The criteria of PC 4025 indicate what is an allowable expense. Please refer to Finding 01 response for further details.

Recommendation 23-73

Create and maintain ongoing detailed multi-year spending plans to better identify potential funding shortfalls and future expected costs of correctional education programs.

Response: The recommendation will not be implemented because it is not warranted.

The Sheriff's Department already includes the Incarcerated Persons' Welfare Funds in the County's multi-year Operational Planning and the Five-Year Financial Forecast. The Sheriff's Department follows the County General Management System with respect to future planning for IPWF.

Recommendation 23-74

To prevent over-allocation of salary and benefit expense to the IPWF, mandate that persons in all positions funded in whole or in part by the Incarcerated Persons Welfare Fund complete time studies quarterly to determine the appropriate proportion of salary and benefit expense to be funded by the IPWF.

Response: The recommendation will not be implemented because it is not warranted.

The positions funded in whole or part by IPWF are within the scope of PC 4025. The positions are for the benefit of the individuals in custody and were funded to carry out duties related to the management of the IPWF and the support, delivery, and security of reentry programs. A time study is not warranted at this time.

Recommendation 23-75

Expand membership of the Incarcerated Persons' Welfare Committee (IPWC) to at least 3 qualified civilian members, especially those with academic or specific interests involving the reentry of incarcerated individuals into society. Include formerly incarcerated individuals or those with incarcerated family members for consideration.

Response: The recommendation has been implemented.

The Sheriff's Department has expanded the language in the By-Laws and Operating Procedures to allow additional civilian appointees and is actively identifying additional members.

Recommendation 23-76

For new civilian IPWC members, specify terms and term limits, and establish qualification, experience guidelines and training for these members.

Response: The recommendation will not be implemented.

The civilian members are appointed by the Sheriff and will serve at the Sheriff's discretion. Appointed members are subject to Department processes and requirements, such as a background process. Civilian volunteers are voting members and are not responsible for the administration or management of the IPWF. Voting members will learn about IPWF programs and services through their attendance at IPWF meetings.

Recommendation 23-77

Develop alternative source of funding to augment and leverage IPWF resources for correctional education classes.

Response: The recommendation will require further analysis.

The Sheriff's Department has increased classes and increased partnerships by developing Memorandum of Agreements with higher education and community organizations. The Sheriff's Department actively aligns higher education pathways and continually builds on new partnerships.

Recommendation 23-78

If further analysis demonstrates correctional programs reduce recidivism, reincarceration and minimize costs overall, consider phasing out or minimizing use of IPWF funding in lieu of budgeted general funds of the County of San Diego or San Diego County Sheriff's Department.

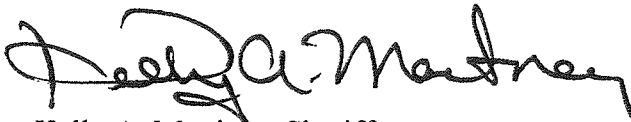
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Response: The recommendation will not be implemented.

IPWF funds will continue to be used for the welfare and benefit of incarcerated persons as authorized by PC 4025. Please refer to Finding 06 regarding the feasibility of a cost analysis comparing recidivism or return to custody with the cost of social and educational programs.

In closing, I would like to thank the Grand Jury for their efforts in working with the Sheriff's Department in their review and recommendations to provide quality care and service to our incarcerated population.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly A. Martinez". The signature is fluid and cursive, with the first name "Kelly" being the most prominent.

Kelly A. Martinez, Sheriff

KAM:TMAH:aeb

cc: Members, Board of Supervisors
Helen Robbins-Meyer, CAO
Andrew Potter, Executive Officer, Clerk of the Board
Ed Lopatin, Foreman, San Diego Grand Jury