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City Attorney Response to the 2014/2015 San Diego County Grand Jury Report: San Diego Police Department Property and Evidence Room – Review of Operations, Dated June 1, 2015

The Criminal Division of the San Diego City Attorney files this response pursuant to Penal Code section 933.05 (a) (2), noting that the City Attorney agrees with some findings and recommendations, disagrees with some, and takes no position regarding others, as set forth below:

City Attorney Response to Grand Jury Findings:

Finding 01: Use of a temporary private facility is an inefficient use of taxpayer money.

Response: The City Attorney takes no position on this finding, because the City Attorney does not use a privately owned facility for storage of evidence.

Finding 02: The SDPD Headquarters facility property room does not appear to be in compliance with building codes.

Response: The Criminal Division of the City Attorney takes no position on this finding that is directed at San Diego Police Department.

Finding 03: The offices of the City Attorney and District Attorney usually do not take a proactive role in deciding when to dispose of evidence.

Response: The City Attorney disagrees with this finding to the extent it uses broad terms such as "usually" and "proactive". The City Attorney has historically been involved in communications regarding destruction or release of evidence on many cases and has taken steps to include language related to the disposal of property on all San Diego County Superior Court plea forms. As set forth below, the City Attorney does plan more effective communications with law enforcement regarding evidence to be released in the future.

Finding 04: The offices of the City Attorney and District Attorney are best qualified to determine if evidence will be needed in the future.

Response: The City Attorney disagrees with this finding to the extent it is overbroad and inapplicable to a number of open cases and investigations. While the District Attorney and City Attorney can provide valuable prosecutor input and recommendations on many cases, there are open investigations by law enforcement that have not been reviewed by prosecutors. Many open investigations may be in the investigative phase for many years, in the sole control of the investigating agency. That agency is best suited to make decisions regarding retention of evidence they possess pending further investigation. In addition, some investigations may be focused on offenses which are anticipated to be sent to the District Attorney for review, but then may be referred by the District Attorney to the City Attorney for prosecution.

Finding 05: Establishing procedures and protocol for reviewing files of property for disposal will make the process more effective and potentially save money used to lease additional storage facilities.

Response: The City Attorney agrees with this finding to the extent effective use of resources will potentially save money in a number of areas, including cost of storage facilities. As set forth below, the City Attorney does plan more effective communications with law enforcement regarding evidence to be released in the future. Earlier effective communications identifying evidence no longer needed for prosecution could result in the reduction of resources needed to maintain such evidence.

Finding 06: A management review of security and evidence-handling procedures could insure the integrity of the evidence.

Response: The City Attorney agrees with this finding to the extent a management review of security and evidence handling procedures may result in effective procedures that insure the integrity of the evidence. Earlier effective communications identifying evidence no longer needed for prosecution could result in the reduction of resources needed to maintain such evidence.

District Attorney Response to Grand Jury Recommendations:

Recommendation 15 – 57: Implement a Memorandum of Understanding with SDPD to include a standard procedure for proper and timely disposal of evidence.

Response: The recommendation requires further analysis (Penal Code section 933.05(b)(3)). The City Attorney agrees with the recommendation to the extent the agreement is a joint understanding for the prosecution time frames for evidence release or disposal. The City Attorney disagrees with the recommendation to the extent the recommendation references the actual physical procedures for release and disposal when the evidence is no longer needed by the prosecution. The City Attorney will work with the District Attorney, and law enforcement agencies, regarding best practices for communications regarding evidence retention for prosecutions. The City Attorney will work with the District Attorney and law enforcement agencies regarding best practices for communications regarding evidence retention for prosecutions and possible memorialization in some form of memorandum of understanding.

Plan for Implementation of changes (Penal Code section 933.05 (b)):

The City Attorney working with the District Attorney and law enforcement agencies has already identified an effective means of communication regarding evidence no longer needed for prosecution. As part of this process, the City Attorney has identified a combination of court documents and electronic case management system fields that can log and track cases that have dispositions indicating evidence is no longer needed. Over the next 6 months, the City Attorney will work with the court to supplement plea and sentencing documentation to confirm defendant agreement to release of evidence. The City Attorney will then input the data into our computerized Case Management System (CMS) that is also shared by the District Attorney. Once entered into CMS, queries can be run by the City Attorney and the District Attorney on an agreed timeframe or regular schedule to quickly identify cases where evidence is no longer needed and can be released. That information can be cached and then sent by the prosecutor's office as a spreadsheet to the law enforcement agency possessing the evidence. Since most cases are resolved by way of plea, by

capturing those cases at time of sentencing, the City Attorney and law enforcement agencies with evidence rooms will be able to quickly and effectively identify a large number of cases wherein evidence is no longer needed for pending prosecutions and may be released. There will still be some cases where evidence must be maintained based on the case being on appeal, or some of the defendants outstanding on fugitive status. Even with some cases on appeal or in fugitive status, this teamwork approach impacting the vast majority of cases that resolve will result in a more effective means of identifying potential cases for evidence release when evidence is no longer needed for prosecution.