

# **Orange County Sheriff's Department Evidence Booking Issue - Has it Been Resolved?**



GRAND JURY 2020-2021

## Contents

<b>SUMMARY .....</b>	<b>1</b>
<b>BACKGROUND .....</b>	<b>1</b>
<b>REASON FOR STUDY .....</b>	<b>3</b>
<b>METHOD OF STUDY .....</b>	<b>3</b>
<b>INVESTIGATION AND ANALYSIS .....</b>	<b>4</b>
<b>Orange County Sheriff's Department .....</b>	<b>4</b>
<i>Evidence Booking Training .....</i>	<i>4</i>
<i>Obtaining a Report Number .....</i>	<i>5</i>
<i>Booking Evidence .....</i>	<i>5</i>
<i>Completing the Report .....</i>	<i>7</i>
<i>Approving the Report .....</i>	<i>8</i>
<i>Delinquent Reports .....</i>	<i>9</i>
<i>Sergeant's Logs .....</i>	<i>10</i>
<i>Lieutenant Spot Checks .....</i>	<i>11</i>
<i>Commander Oversight .....</i>	<i>11</i>
<i>Cultural Shift .....</i>	<i>12</i>
<b>Orange County District Attorney's Office .....</b>	<b>13</b>
<i>Case Review .....</i>	<i>13</i>
<i>OCDA's Concerns .....</i>	<i>13</i>
<b>Orange County Public Defender's Office .....</b>	<b>14</b>
<i>Getting Assigned to a Case .....</i>	<i>14</i>
<i>Reviewing the Evidence List and Crime Report .....</i>	<i>14</i>
<i>OCPD's Confidence .....</i>	<i>15</i>
<b>COMMENDATIONS .....</b>	<b>15</b>
<b>FINDINGS .....</b>	<b>16</b>
<b>RECOMMENDATIONS .....</b>	<b>16</b>
<b>RESPONSES .....</b>	<b>17</b>
<b>RESPONSES REQUIRED .....</b>	<b>18</b>
<b>RESPONSES REQUESTED .....</b>	<b>19</b>
<b>APPENDIX A: Secondary Audit Summary .....</b>	<b>20</b>

<b>APPENDIX B: Process Flow.....</b>	<b>21</b>
<b>GLOSSARY.....</b>	<b>22</b>
<b>BIBLIOGRAPHY.....</b>	<b>24</b>

## Tables

Table 1 - Sergeant Log Metrics.....	10
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## Figures

Figure 1 - Foundation of Trust.....	2
Figure 2 - Evidence Booking Station.....	5
Figure 3 - Evidence Lockers .....	5
Figure 4 - Process Flow - Book Evidence .....	6
Figure 5 - Evidence Tag & Case Items Report.....	6
Figure 6 - Process Flow - Complete and Approve the Report.....	9

## SUMMARY

If one were to ask for a definition of evidence, a simplified response might be that it is the “smoking gun” that connects the accused to a crime. A comprehensive definition is more complex than physical items collected at the scene. Evidence includes written crime reports, oral testimony of witnesses, documents, public records, photographs, depositions, audio and video recordings, items processed by the Crime Lab or Coroner, and dispatch communications. Evidence is proof presented to a judge and/or jury of alleged facts material to the case and may be added throughout the duration of the case.

Our system of justice relies upon the proper collection and preservation of physical evidence, as well as the honesty and integrity of those who are sworn to “tell the truth.” Therefore, it is imperative that those responsible for collecting and booking evidence do so in a way that does not compromise the justice system.

In January 2018, the Orange County Sheriff became aware of several incidents involving deputies failing to book evidence and falsifying associated reports. The Sheriff's Department took immediate action by conducting two audits going back two years to determine the extent of the problem. New policies and procedures were rolled out beginning March 2018, holding supervisors accountable for reviewing and approving reports and verifying that evidence was booked by the end of each shift. Deputies were disciplined, and in some cases terminated and referred to the District Attorney for criminal prosecution. There was a joint review by the Orange County District Attorney and Orange County Sheriff's Department to examine active and closed criminal cases which may have been compromised by evidence booked late or not booked at all. The joint review resulted in some cases being dismissed by the District Attorney.

The Orange County Grand Jury acknowledges the positive steps taken by the Orange County Sheriff's Department and its willingness to address the problem. After a six-month review of current policies and procedures related to evidence booking and reporting, the Grand Jury believes there are still some areas that need improvement.

## BACKGROUND

In the criminal justice system, there are three key stakeholders: law enforcement investigates criminal activity, district attorneys prosecute the accused, and defense counsel represent the interests of the accused and hold the prosecution to its burden of proving guilt beyond a reasonable doubt.

## Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?



Figure 1 - Foundation of Trust

Justice is a moral principle and legal concept that promotes fairness and balance.

The Orange County Sheriff's Department (OCSD), Orange County District Attorney (OCDA), and Orange County Public Defender (OCPD) rely on each other to perform their duties with honesty and integrity. In January 2018, events began to unfold that would fracture the foundation of trust and have serious consequences throughout the Orange County justice system.

In January 2018, the Orange County Sheriff's Department became aware that some deputies, in two different patrol areas, were not booking evidence according to department policy. Items collected by those deputies during investigations were either not booked or booked days after the initial arrest or citation. During a two-year investigation period, the Sheriff's department sent 17 cases regarding these failures to the DA's Special Prosecutions Unit for further processing.

On January 24, 2018, to determine the extent of the booking issue, the OCSD began an initial internal audit, covering a two-year period from February 2016 through February 2018. The audit included 98,676 department records. Of those records, 71,585 reports were determined to not involve evidence. The remaining 27,091 reports were reviewed specifically looking for lapses in evidence booking. The conclusion of the initial audit was that in 30% of the reports, evidence was not booked according to policy.

The OCSD launched a secondary internal audit August 8, 2018 to further review the 71,585 reports from the first audit. A random sample of 450 reports revealed 121 cases where the deputy had in fact collected at least one item of evidence. In 57 of the 121 cases (13% of the total reviewed), deputies documented evidence in the report but failed to book it into the Property/Evidence system. Evidence was located and accounted for in 47 of the 57 cases. The remaining 329 reports were confirmed to not contain any physical evidence. See Appendix A: Secondary Audit Summary.

In November 2019, the District Attorney (DA) became aware of the extent of evidence booking issues within the OCSD, and the existence of two department-wide audits. The District Attorney worked with the Sheriff's Department to identify cases where a defendant's due process may have been compromised. A joint team of OCSD and DA investigators reviewed a total of 22,289 cases covering the three-year period from March 2015 through March 2018. This process (sometimes referred to as "third audit") involved a case-by-case review of all reports, and physical inspection of evidence, when appropriate. The outcome of this audit resulted in 67 cases having some or all charges dismissed by the DA in the interest of justice.

When evidence booking issues in the OCSD were brought to the attention of the Public Defender in January 2020, there was a deeper concern. The OCPD began reviewing past cases where questions about the validity of Deputies' reports and any evidence collected as part of the investigation could taint the result of a jury's ruling of guilt or innocence. The 17 cases that the OCSD had sent to the DA's Special Prosecutions Unit resurfaced in the Public Defender's office. The DA had forwarded these cases to individual Public Defender attorneys rather than the Office of the Public Defender. There had been no response to these cases due to defense lawyers moving to other assignments or leaving. As a result, these suspect cases fell through cracks in the system.

## REASON FOR STUDY

Based upon numerous reports and articles in the media, the 2020-2021 Orange County Grand Jury determined an investigation was warranted to validate that current procedures and administrative safeguards are in place to ensure evidence is booked and department reports are written in compliance with California law and OCSD policy.

News media reported that the issue of booking physical evidence late, or not at all, as well as deputies making false statements in reports was a "*systemic problem*" within the OCSD. Although the Sheriff responded to these issues, the Grand Jury decided an independent study was required to assure residents of Orange County that current policy and procedures are delivering the expected result.

## METHOD OF STUDY

The Grand Jury began its investigation by reviewing various news sources and documents. A review of OCSD documents included department policies, audit reports, sergeant logs, administrative orders, and training directives. Documents and reports from OCDA were also reviewed.

Interviews included OCSD commanders, lieutenants, sergeants, and deputies from three patrol areas across three different operational divisions, as well as support personnel from the Records and Technology Divisions. In addition, attorneys from the OCDA and OCPD were interviewed.

The Grand Jury toured the Property Evidence Booking Holding Center, which is the main facility for all OCSD property and physical evidence, and the OCSD Training Academy. The Grand Jury also received training on the Automated Evidence and Property System and the Field Based Reporting System.

## INVESTIGATION AND ANALYSIS

### Orange County Sheriff's Department

#### Evidence Booking Training

Training specific to OCSD evidence booking and report writing begins after the six-month Basic Training Academy. Prior to starting their assignments in the custody system (jails) or court duty, trainees attend a three-week Custodial Training Academy. Specific courses covering evidence booking and report writing include:

- Six-hour course on general procedures for booking evidence and maintaining chain of custody,
- Eight-hour hands-on training course on report writing in the Field Based Reporting System, and
- Thirty-minute hands-on training course on booking evidence in the Automated Property System.

The six-hour course outline includes:

- Drug identification, handling and packaging of evidence obtained and how to write a drug related report,
- Rules of evidence, chain of custody, types of evidence,
- Handling firearms seized, securing firearms, packaging, and report writing.

A tour of the Property Evidence Central Booking Facility was previously part of the academy training curriculum, but it has since been discontinued. The Grand Jury toured this facility and is of the opinion that the knowledge gained from such a tour would be beneficial to new trainees in emphasizing the importance of proper collection and processing of physical evidence.

After a deputy has completed custodial training and rotated out of the jails or courts to begin patrol duties, they are assigned to their first Field Training Officer (FTO). For one month, the deputy accompanies the FTO during patrol to decide if they want to continue with patrol duty or return to custodial or courts assignment. During this time, the trainee takes reports, conducts interviews, and books evidence under the supervision of the FTO. If the trainee decides to remain in patrol operations, they enter a four-phase training process that covers the OCSD Field Based Training and OCSD Policy Manuals. Policies and procedures on evidence booking and reporting are covered in depth during this training period.

On-going training on evidence booking and report writing is provided through Training Bulletins, Memos, and Briefings. Trainees receive an additional eight-hour refresher course on



report writing. Instructional videos on proper packaging for distinct types of evidence are provided in kiosks located at each evidence booking station.

### Obtaining a Report Number

When a deputy responds to a radio dispatched call, or in the event of an officer-initiated call, the Computer Assisted Dispatch (CAD) system assigns an incident number, and records other pertinent information such as time, location of the call, and details about the incident. In all cases where a crime is committed or evidence is collected, a Department Report Number (DR#) is generated, and a Department Report (DR) must be submitted.

Every call gets an incident number, but only those that require a written report get a DR#. For example, a routine traffic stop might generate a citation and only requires a DR# if there are criminal charges or collection of property. All booked evidence is associated with a DR#.

### Booking Evidence

Evidence is typically booked at the substation nearest the incident. Each substation has lockers for storing evidence and one or more computers for booking evidence using the Property Evidence Automated Booking System (also known as Remedy). In some patrol areas, the officer may drive ten or more miles to book evidence, which can take them out of service for an hour. If a call involves a custodial arrest, where a suspect is transported to the Intake Release Center (IRC), evidence can be booked at the Property Evidence Central Booking facility located in Santa Ana, near the IRC.

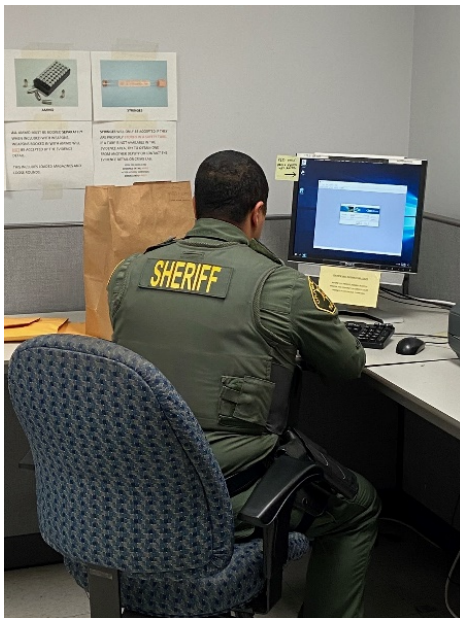


Figure 2 - Evidence Booking Station



Figure 3 - Evidence Lockers



## Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

Some types of evidence, such as Fentanyl or DNA, must be booked at the Central Booking Facility. The location where evidence is booked becomes part of the report. Evidence booked at any of the fourteen substations is regularly collected. The pick-up schedule for these items varies to avoid broadcasting a set time for transfer to the Property Evidence Central location. Items are scanned during these transfers to maintain chain of custody.

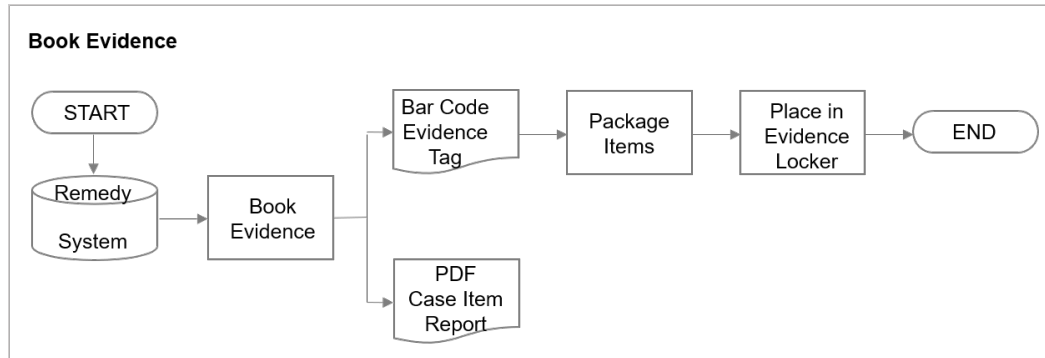


Figure 4 - Process Flow - Book Evidence

The OCSD Policy Manual, Policy 802.2.1 states “*all evidence must be booked before going off duty, unless otherwise approved by a supervisor.*” All items are booked separately into the Remedy system. Each item is packaged with a securely attached evidence tag and bar code label identifying the item. The Evidence Case Items Report (Evidence List) is generated as a PDF file, and later attached to the department report. Items are packaged and placed in evidence lockers.

OS21-099999.7		ORANGE COUNTY SHERIFF'S DEPARTMENT	
EVIDENCE		Property Tracking System - Case Item Report	
Description: 2 PLASTIC BAGS FILLED WITH FENTANYL, FOUND ON LIVING ROOM COFFEE TABLE		CASE NUMBER: 21-9999 FILE IN DR	
Narcotics		CASE AGENT: DETAIL:	
DR#:	21-099999	SW Consolidated DR # Location Descriptions Status Type Crime # Special Handling Dt Collected/Booked Booked By	
Code:	CPC	OS21-099999.5	LAB022021 2 PLASTIC BAGS OF METHAMPHETAMINE, APPROXIMATELY 24.8 GRAMS WITH PACKAGING Released Evidence 11351(a) Narcotics 1/21/2021 10:00:00PM 9057, MCAULIFF, E. JOSHUA M
Crime:	11351(a)		Suspect Name/DOB: 10/02/1986 Victim Name/DOB: STATE OF CALIFORNIA
ORANGE COUNTY SHERIFF'S DEPARTMENT		OS21-099999.6	AG42C0 ORANGE CONTAINER WITH METHAMPHETAMINE RESIDUE, FOUND IN GERMAN'S BEDROOM ON FLOOR NEXT TO NIGHT STAND Filed Evidence 11351(a) Narcotics 1/21/2021 10:00:00PM 9057, MCAULIFF, E. JOSHUA M
Where Obtained From:			Suspect Name/DOB: 10/02/1986 Victim Name/DOB: STATE OF CALIFORNIA
Owner Information:		OS21-099999.7	SVLT FENTA 2 PLASTIC BAGS FILLED WITH FENTANYL, FOUND ON LIVING ROOM COFFEE TABLE Filed Evidence 11351(a) Narcotics 1/21/2021 10:00:00PM 9057, MCAULIFF, E. JOSHUA M
Victim Information:			Suspect Name/DOB: 10/02/1986 Victim Name/DOB: STATE OF CALIFORNIA
STATE OF CALIFORNIA		OS21-099999.8	AG42C0 10 PLASTIC BAGS WITH WHITE RESIDUE Filed Evidence 11351(a) Narcotics 1/21/2021 10:00:00PM 9057, MCAULIFF, E. JOSHUA M
Suspect Information:			Suspect Name/DOB: 10/02/1986 Victim Name/DOB: STATE OF CALIFORNIA
Multiple Suspects? No			
Make:	Model:	Serial #:	Caliber:
Assigned:	Laguna Niguel		
Collector:	9057, MCAULIFF, JOSHUA M		
Time/Date Collected:	1/21/21 10:00 pm		
Date Booked:	1/22/2021 2:43:21 AM		
Booked By:	mcauliffejm		
Terminal Booked:	9999999		
Initials:			
PIN:	FR		Item

Figure 5 - Evidence Tag &amp; Case Items Report

In the rare case where evidence must be booked late, the supervisor gives verbal approval and directs the deputy to document this approval in the report. Submission of the report is deferred until the evidence is booked. The supervisor makes a notation in the Sergeant's Log, indicating the deputy and DR# associated with the deferral. It is the supervisor's responsibility to follow up on all deferred reports and verify that the evidence has been booked. For example, verbal approval would be given for an incident where there was video surveillance footage that was not available at the time of the incident but would be made available in a day or two. Evidence that is collected later and not part of the initial crime report is included in a supplemental report.

The Remedy system was implemented in 1999. The platform was originally designed as an asset management application, which has been modified over time to enable evidence booking. The OCSD is on Version 7, which is no longer supported by the developer, BMC Software. Full support for the Remedy Asset Management system ended November 30, 2012. The system does not integrate with the CAD system, or the Field Based Reporting (FBR) System. Because of this limitation, manual duplicate data entry is required, which may introduce data integrity issues. For example, the DR# must be re-entered into Remedy and numbers may be transposed, resulting in evidence not being associated with the correct incident or report. A review process is in place to identify and correct a DR# which may have been entered incorrectly, but a DR# can only be corrected by the Property Evidence Bureau.

The deputy must manually enter evidence into the Remedy system, and again into the FBR system. In this case, the item descriptions and/or number of items being entered into the two separate systems may not agree. Review processes are in place but require additional time and effort on the part of the deputy and the supervisor to identify and correct any errors.

Since the booking issue came to light, several enhancements have been made to the Remedy system to increase data integrity. The system now locks out users after a period of inactivity to reduce the chances that a different user enters evidence under the wrong username. The Remedy User Guide and OCSD directives instruct the user to log out once they have completed booking evidence. Some open text fields have been converted to drop down selections, to increase consistency and data integrity.

### **Completing the Report**

All criminal offenses and other reportable activities must be documented using the FBR system. OCSD Policy 338.1.1 states that a report must be documented for all DR#s entered in the Remedy system by end of shift.

The FBR system was implemented in December 2018. The new process consists of three electronic templates, replacing 135 forms. The old paper-based method was a lengthy process requiring days from the creation of the initial report until all reviews and final approvals were completed. It also involved shuffling reports back and forth between the deputy, supervisor, and

Records Division. Now a quick electronic search is used to locate the DR#. Although the CAD system and FBR are not fully integrated, certain information relating to the incident can be copied from the CAD system into the FBR system, reducing the need for duplicate data entry.

There are three primary tabs in FBR containing report templates for 1-Criminal, 2-Non-Criminal, and 3-Supplemental. Drop-down field selections and mandatory fields have simplified report preparation and increased data integrity.

OCSD Training Bulletin 20-18, issued May 11, 2020, streamlines the department's internal process for all cases involving evidence. The Remedy Case Items Report is now electronically attached to the department report to increase efficiency of supervisory review of reports, electronic filing of cases, and the discovery process.

### **Approving the Report**

Once the deputy completes the report, it is submitted to an electronic report queue, where a supervisor reviews it. OCSD Policy 338.2.1 states that the supervisor is responsible for ensuring all reports are submitted by end of shift or obtain the necessary approval to defer. It is the responsibility of the supervisor to follow-up on all deferred reports and ensure their completion. Prior to approval, the supervisor reviews all submitted reports for completeness and accuracy, requesting additional information or correction when necessary.

OCSD Policy 802 was adopted in 2018 to address the evidence booking issue. Section 802.2.1.6 states: *"Supervisors shall check that all property or evidence has been booked prior to approving any related reports."* The supervisor logs into Remedy to verify the DR# and check that all evidence noted in the report narrative is also accounted for in Remedy. Reports not approved are sent back to the deputy for correction. Once the report is approved by the supervisor it is submitted to the Records Division (Stats) for final approval. Stats may reject the report, in which case it is sent back to the deputy for correction and routed through the approval process again.

The role of Stats is to review the report for errors in the Universal Crime Reporting section. The records division compiles reports that are submitted to the State of California at the end of each month and ensures that the report is filed in the correct (criminal or non-criminal) template.

The Grand Jury believes that an independent audit of Department Reports submitted after March 2018 is necessary to determine if OCSD personnel are following current policies and procedures related to evidence booking and reporting. Although procedures are in place to review and correct any data discrepancies between computer systems (CAD, Remedy, and FBR), manual processes tend to break down over time. The Grand Jury is of the opinion that the current process may not hold up over the long term. The current reporting process (Figure 6) shows the additional steps (highlighted in blue) that are required due to the lack of system integration. Body

worn cameras generate a huge amount of video evidence that must be indexed by deputy, location, and time. When implemented, they will create a greater challenge in reconciling the evidence maintained in the separate systems.

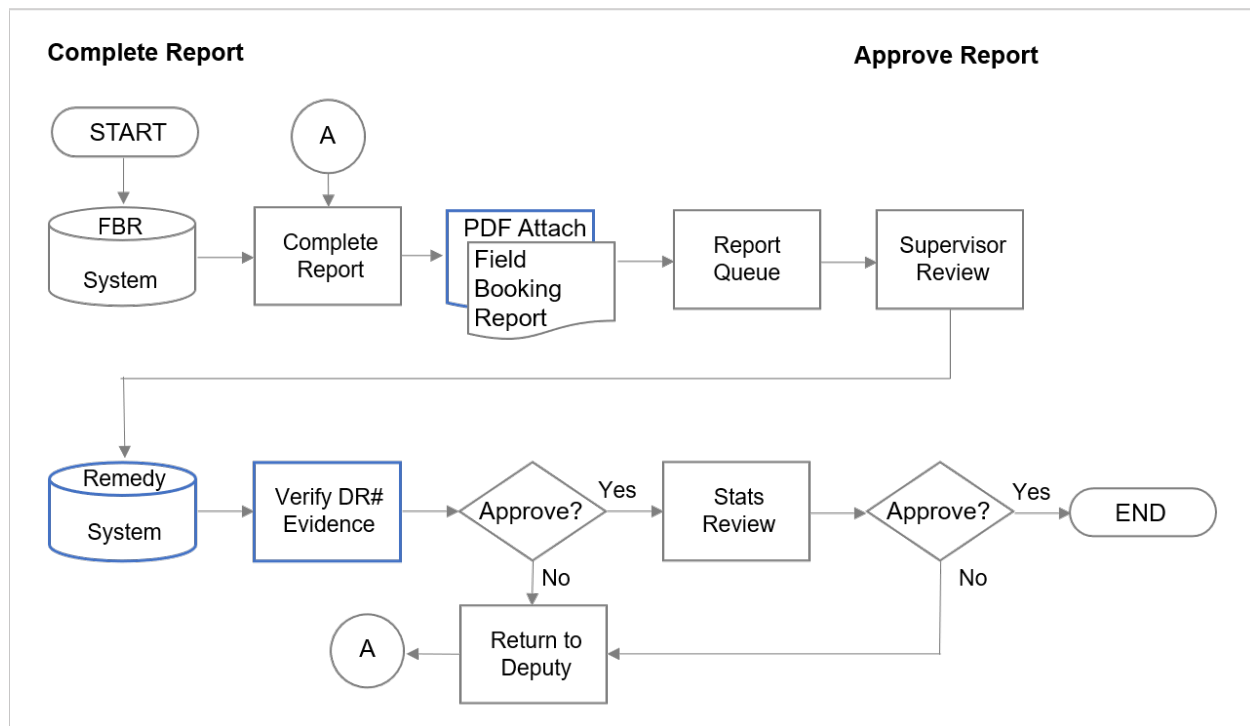


Figure 6 - Process Flow - Complete and Approve the Report

The OCSD is in the process of exploring options to move from three disparate systems (CAD, Remedy, and FBR) to a fully integrated solution. To date, the department has not found a solution designed for law enforcement that can accommodate OCSD requirements and scale to the size of Orange County. The OCSD requires a solution that is scalable and customizable. As a result, a Software as a Service (SaaS) solution is being evaluated, which would provide a platform for system integration and result in significant savings compared to on-premises (on-prem) software for one-off solutions. The software contractor being evaluated has developed a CAD solution that has been tailored to OCSD specifications. A SaaS solution would provide additional benefits including real time software updates, unlimited data storage, enhanced security, and increased flexibility.

## Delinquent Reports

Stats maintains a delinquent report list which is updated from the FBR system daily. The clock starts as soon as a DR# is created, and after 30 days the supervisor is notified if a report is not completed. All DR#s must be accounted for. If a DR# is missing a report, the supervisor can refer to the CAD system to determine the disposition of the call. If a DR# was issued in error, it is written off. The delinquent report list is intranet accessible via an interactive dashboard. The

dashboard also includes calls for service, response times, citations, and other summary data that can be used by middle and upper management.

## Sergeant's Logs

Sergeants maintain log entries during their shift. The "Sergeant's Log" notes all arrests/citations, notable incidents, briefings, and any training conducted by the sergeant during the shift. At the completion of their shift, the midnight sergeant compiles the log from the last 24 hours. A PDF version is e-mailed to the Administrative Sergeant, City Lieutenant, and Operations Commander.

Departmental directives are used to make immediate changes to policy and procedure (Policy 204.1), and may be communicated to all personnel via memo, e-mail, fax, briefing item, and/or training bulletin. A department directive issued February 2, 2019 informed all sergeants to make the following entry in their daily logs:

*"Deputy patrol logs for shifts XXX and XXX were reviewed. All assigned reports were accounted for. Reports indicating 'evidence as booked' were confirmed in the Remedy Evidence System."*

When verbal approval is given to allow evidence to be booked late and defer the report, the deputies and DR#s are appended to the entry:

*"The following reports were deferred: Deputy A DR# \_\_, Deputy B DR# \_\_/\_\_/\_\_."*

Periodically, directives are issued to Re-Brief Evidence Booking Procedures, and noted in the Sergeant's Log.

The Grand Jury selected one patrol area from each of three operational areas: North, Southeast, and Southwest. The review included logs from all three shifts within each of the patrol areas covering the three-month period from July 1 through September 30, 2020. The results are shown in Table 1.

Sergeant Logs (Jul – Sept 2020)			
Metric Reviewed	SW Operations	SE Operations	N Operations
# Sergeant Logs Reviewed	6	5	4
# Log Entries	1,193	1,315	841
# Evidence Booking Briefings Noted	8	8	5
# Deferred Reports	1	17	0
"Evidence Booked & Verified" Noted	All Shifts	All Shifts	All Shifts

Table 1 - Sergeant Log Metrics

## Lieutenant Spot Checks

Orange County Sheriff's Department Secondary Evidence Audit Follow-Up Report, dated December 2019, included a recommendation that Field Operations Lieutenants “conduct additional monthly random spot checks on cases with recovered evidence and review the inventory records for accuracy.” Through the interview process, the Grand Jury noted that:

- A lieutenant from Southwest Operations was not aware of a department directive, nor did the lieutenant perform monthly spot checks.
- A lieutenant from Southeast Operations considered an e-mail dated October 23, 2020, sent by the commander, to be a department directive. The lieutenant conducts spot checks several times each month and after hearing a radio call where evidence was collected. The lieutenant verifies that the evidence was booked by going into Remedy. However, there is no documentation of the spot checks.
- A lieutenant from North Operations received a verbal directive from the commander. When performing spot checks, the lieutenant reviews the department report in the FBR System to see if evidence was collected and then verifies that it was in fact collected and booked. Again, there is no documentation of the spot checks.

It appears the OCSD lacks a formal process or department-wide directive for performing lieutenant spot checks. In the instances where spot checks are being done, there is no documentation.

In compliance with California Commission on Peace Officer Standards and Training (POST) recommended guidelines, quarterly audits are conducted by the OCSD Property Evidence Bureau. OCSD recently completed the first quarter audit for 2021. The audit revealed two procedural issues where sergeants had signed off on the report, but the Remedy Case Items PDF attachment was not included in the report. This did not impact the evidence, as the evidence was in fact booked.

## Commander Oversight

The Grand Jury interviewed field operation commanders to determine what oversight they provide to ensure compliance with evidence booking and reporting policies and procedures. Equally important, the Grand Jury's purpose was to determine if the management level of accountability for evidence booking and reporting extends above the sergeant's level.

Commanders receive a daily PDF version of Sergeant Logs for the previous 24 hours. The commanders interviewed indicated they review the compiled Sergeant Logs daily. The review process includes briefing topics, narratives regarding incidents, deferred reports and why they were deferred, crimes committed in patrol areas, etc. If the narrative refers to evidence, the commander will check to see if collected evidence was booked.



The Grand Jury's findings from interviews with commanders were consistent with information learned from lieutenants regarding monthly random spot checks. There is no department-wide directive or policy regarding lieutenant spot checks. There was a verbal directive in two of the operational divisions, which were operational directives, and no directive was given in the third. There is no standardized process for conducting spot checks, as it varies from one lieutenant to the next. Commanders believe spot checks are being conducted, but because there is no documentation, it cannot be verified.

Sergeants are held accountable and oversight is established at every level to ensure evidence is booked; however, there does not appear to be a policy holding management above the sergeant level accountable for evidence booking and reporting.

### **Cultural Shift**

Findings from the OCSD initial evidence audit report dated June 28, 2018 stated, "*there appeared to be a culture of idleness vs. criminal intent*" and there were "*inadequate internal controls and system of accountability.*" In patrol areas where the incidences of booking evidence late or not at all were more prevalent, it appeared to be a matter of priority or failure of leadership. Deputies were busy making arrests and placed a higher value on arrests than booking evidence. A lower priority placed on booking evidence led to false statements being made in reports, stating that evidence had been booked, when in fact it had not. There was a clear cultural shift that was in direct conflict with department policy to book all evidence before going off duty. There was no policy in place to provide management oversight, therefore supervisors were not held accountable. In some cases, there was a lax atmosphere which allowed for sloppy work habits and bad attitudes, which was reflected through some FTOs.

Lieutenants and commanders who have been with the Orange County Sheriff's Department for several decades were shocked that this could happen. The practice during their tenure as deputies was that you booked evidence right away; this type of behavior would never have been acceptable.

In our society, there is a general belief that law enforcement culture is strong and universal, and all deputies have the same work-related attitudes and beliefs. However, views vary individually, and there may be an overall organizational culture and sub-cultures across groups that can sometimes be in conflict. Shared attitudes, values, beliefs, and assumptions that shape behaviors may differ from lower-level command structure to upper-level command.

The OCSD has taken steps to change the culture and restore trust and confidence in the system. Based on current trends, the time a deputy works in custody has been reduced from six-to-nine years to two-to-three years, resulting in new deputies contributing to behavioral change at a faster pace. There has been a major cultural shift at the sergeant level as well. Policy and



procedures have been put in place holding sergeants accountable for ensuring all evidence is booked and reports submitted by end of shift. The supervisor (sergeant) reviews all reports for completeness and accuracy, verifying that all evidence has been booked before approving the report.

To promote behaviors that support its mission, the Grand Jury believes OCSD must recruit, select, and retain people who share its core values. Equally important, OCSD must re-educate those officers that hold to values that led to evidence booking issues. Policy changes, disciplinary actions, terminations, and attrition have helped to align attitudes and behaviors with the department's stated core values: *"Integrity without compromise, Service above self, Professionalism in the performance of duty, Vigilance in safeguarding our community."*

## Orange County District Attorney's Office

### Case Review

The District Attorney is notified of cases via the Electronic Direction for Complaint (EDC) system. OCDA created the system and provides on-going support to law enforcement officers. OCSD uploads completed investigations directly into the EDC system. Uploaded items include evidence PDFs, interviews, and reports. If the case involves an arrest referred to as "in custody," the case must be submitted to the DA's office prior to the suspect's arraignment (typically within 72 hours). If there is no arrest, the case is "out of custody" and submitted when the OCSD case agent completes the investigation.

There are a few exceptions where cases must be hand delivered: any document too large to upload, DVDs/CDs, homicide cases, and prior to the pandemic, all Sexual Assault Unit (SAU) cases.

The case packet is the starting point for the prosecution. Prosecutors rely on the honesty and integrity of law enforcement officers when reviewing the case packet. The assumption is that all physical evidence has been booked, and reports are accurate and truthful. The DA must determine if enough evidence exists to show probable cause that a crime may have been committed, in which case a formal complaint is filed.

### OCDA's Concerns

The case packet OCDA receives from OCSD now includes the Remedy Case Items Report, and a policy is in place holding supervisors accountable for ensuring evidence is booked and reports are accurate. In the OCDA Report on Sheriff's Department Evidence Booking Issues dated January 13, 2021, the DA expressed confidence that due to the *"remedial action OCSD has taken to address evidence booking deficiencies, there should be few, if any, negatively impacted cases in the future."*

But in its interviews with various OCDA staff, the Grand Jury found that there remain some concerns, including whether random audits are taking place. Ultimately, the only way to know if the evidence booking issue has been resolved is through an impartial third-party verification. An independent audit of department reports submitted after March 2018 would confirm that the new policies and procedures are being followed.

## Orange County Public Defender's Office

### Getting Assigned to a Case

Typically, the Public Defender (PD) may not go directly to the arresting law enforcement agency for evidence, but requests discovery through the prosecuting attorney. See Cal. Penal Code § 1054.5. Reports from law enforcement are sent to the DA who makes the determination whether to file a complaint or release the suspect. If the DA files a misdemeanor or felony complaint, the accused is given a court date for arraignment. The judge reads the charges and advises the accused of their rights to a trial. If the accused is unable to afford legal counsel, the court may appoint the PD to provide defense counsel.

The earliest the accused can make a plea is at the arraignment. In the case of misdemeanors, the majority of those accused make their pleas at that time, often without the advice of counsel. In most other cases, including felony cases, a PD is appointed as defense counsel if the accused cannot afford a private attorney.

When the PD is appointed as counsel, there is an opportunity at the arraignment to review the case and determine if there is any conflict of interest necessitating the appointment of an alternate defender. If there is none, the PD reviews the crime report and determines if there is a need to plea bargain or conduct further investigation. The PD supervisor may then assign the case to an attorney from their office.

### Reviewing the Evidence List and Crime Report

In the case of an arrest made by OCSD, the case packet is submitted to the DA who subsequently provides a copy to the PD. This includes the OCSD department report and evidence list. The PD might not have the initial crime report and list of evidence in hand at the time of the arraignment.

The review of evidence is driven by the nature of the crime. For serious crimes such as homicide, the PD may want to directly view the physical evidence. The period from when evidence (e.g., a DNA sample) is collected, packaged, and booked becomes critical to defending a case.

The PD reviews police and other discovery in every case assigned to them, relying on the honesty of the officer writing the report and the officer's thoroughness in properly collecting and

processing evidence. The Grand Jury did not find an OCPD policy regarding the review of the evidence list and crime report.

The District Attorney's office is currently piloting an electronic portal to expedite forwarding the report package from the DA's office into the Public Defender's own case management system (eDefender). It is currently in use at the West Justice Center. Other locations must pick up the folder at arraignment.

### **OCPD's Confidence**

How confident is the Orange County Public Defender's Office that evidence booking issues have been resolved?

Orange County Superior Court Administrative Order No. 20/24, dated October 15, 2020, provides procedures for disclosure of evidence audit records. It streamlines the process for the District Attorney and Public Defender to obtain evidence audit records from the Sheriff's Department. The Order is an agreement between the Sheriff's Department, the District Attorney, the Public Defender, and others serving as defense counsel. The Order expedites access to Evidence Audit Records, Remedy system printouts, and Department Reports, through the DA. Defense counsel can address credibility issues with law enforcement officers who may become potential witnesses in a pending trial, but who in the past were cited for failure to follow department policy as it applies to the booking of evidence.

OCPD is aware of the oversight requiring sergeant's review and approval of the evidence list and department report, but some OCPD attorneys are not confident this is occurring. Along with more accountability, they would like to see a change in culture.

Through interviews with prosecutors and defense attorneys, the Grand Jury was left with the impression that some continue to have concerns regarding deputy credibility and compliance with Sheriff's Department policy.

## **COMMENDATIONS**

The Grand Jury recognizes the Orange County Sheriff's Department for the actions taken to:

- Respond to the evidence booking issue as soon as it surfaced, take immediate action to discover the extent of the problem, and initiate policy changes to correct it.
- Discipline and terminate deputies based on an internal investigation.
- Refer deputies to the Orange County District Attorney for criminal prosecution.

## FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2020-2021 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation described here, the 2020-2021 Orange County Grand Jury has arrived at the following principal findings:

- F1.** The OCDA and OCPD question whether current OCSD policies and procedures related to evidence booking and reporting are being followed.
- F2.** An audit of OCSD department reports submitted from March 2018 forward has not been conducted to confirm that current OCSD policies and procedures regarding evidence booking and reporting are being followed.
- F3.** There is no documentation confirming that OCSD lieutenants perform evidence booking spot audits consistently across all divisions, resulting in limited management accountability and weak internal controls.
- F4.** Lack of system integration between Remedy and FBR necessitates duplicate data entry and reliance on manual oversight to reconcile the DR# and evidence list between the two systems.
- F5.** A tour of the Property/Evidence Central Booking Facility is no longer included during deputy training. This limits their understanding of the overall chain of custody process.

## RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2020-2021 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation described herein, the 2020-2021 Orange County Grand Jury recommends that OCSD implement the following in cooperation with the Orange County Board of Supervisors as necessary:

- R1.** Conduct an independent third-party audit of OCSD department reports submitted from March 2018 forward, to be performed by either the Orange County Office on Independent Review or the Orange County Internal Auditor within 180 days from the date of publication of this report. (F1, F2)

- R2.** Issue a department-wide directive within 90 days from the date of publication of this report, outlining a formal process for OCSD lieutenants to conduct and document evidence booking spot checks. (F3)
- R3.** Move to a platform that will support the integration of data maintained in the CAD, Remedy, and FBR system within two years from the date of publication of this report. (F4)
- R4.** Reintroduce a tour of the OCSD Property/Evidence Central Booking facility within 90 days from the date of publication of this report. (F5)

## RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

### §933

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

### §933.05

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding in which case, the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

## RESPONSES REQUIRED

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

## Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

Responses are required from the following governing body within 90 days of the date of publication of this report:

90 Day Required Responses:	F1	F2	F3	F4	F5	R1	R2	R3	R4
Orange County Board of Supervisors		x		x		x		x	

Responses are required from the following elected agency or department head within 60 days of the date of publication of this report:

60 Day Required Responses:	F1	F2	F3	F4	F5	R1	R2	R3	R4
Orange County Sheriff/Coroner		x	x	x	x	x	x	x	x
Orange County District Attorney's Office	x								

## RESPONSES REQUESTED

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are requested from:

Responses are requested from the following elected agency or department heads within 60 days of the date of publication of this report:

60 Day Requested Responses:	F1	F2	F3	F4	F5	R1	R2	R3	R4
Orange County Public Defender's Office	x								



## APPENDIX A: Secondary Audit Summary

Two-Year Period Feb 2016 – Feb 2018				
Department Records	Evidence Collected	Confirmed No Evidence Involved	Total Cases	% Total
Random Sample <sup>1</sup>	121	329	450	
Deputies collected evidence and documented in report but failed to book in Remedy.	57			13%

Analysis 57 Cases - Evidence Collected but Not Booked in Remedy	
Case Analysis	Total Cases
Evidence securely held in the possession of the OC Crime Lab <sup>2</sup>	38
Photo evidence embedded within the report	4
Determined to be properly booked	2
Booked under the wrong DR#	2
Criminal case impacted by failure to book evidence	1
Unable to locate evidence (2% of total)	10

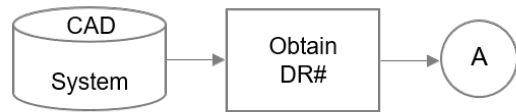
Secondary Audit Recommendations & Subsequent Investigations		
	Recommendation	Status
#1	Review the current booking process for photos taken by patrol deputies. Confirm and streamline the process for more straightforward booking of these items, while taking into consideration the Office of the District Attorney's filing decision needs.	Has been met
#2	Assign the appropriate division to conduct spot checks on the sergeant's review process currently in place, to ensure compliance.	Has been met and exceeded
#3	Although briefing items have been distributed explaining the booking process and the sergeant's review process, additional briefings are recommended.	Has been met
#4	Complete pending investigations through internal affairs or internal criminal investigations of any previously identified policy violations related to the booking of evidence. Over 15 personnel were criminally investigated, and related internal affairs investigations are complete.	Has been met
#5	Investigate the additional cases located with delayed bookings over thirty days, using the initial audit protocol including potential Internal Affairs or Internal Criminal Investigations.	Has been met
#6	Consider further investigations of 57 identified cases with recovered evidence and no Remedy inventory record.	Has been met and exceeded

<sup>1</sup> A sample size of n=382 would provide a 95% confidence level with a confidence interval of  $\pm 5\%$ . This audit included n=450, resulting in a review of 450 department reports and a confidence level of 95% with a confidence interval of  $\pm 4.6\%$ .

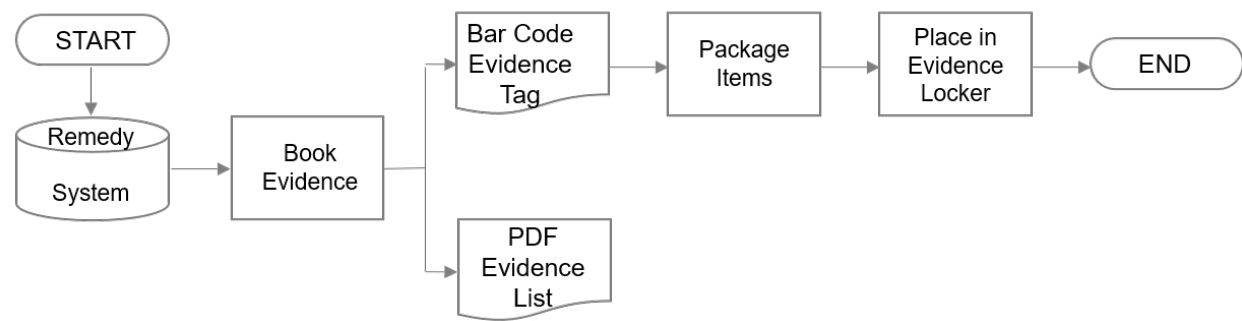
<sup>2</sup> Long standing protocols were utilized to expedite the processing of photographs to the OC Crime Laboratory. OCSD has multiple systems to inventory evidence such as Remedy (Property Evidence Bureau), LIMS (Crime Lab), and Lynx (Coroner Division). The systems are not integrated or compatible. Under Policy 802, all items of evidence, including photographs, videos or any digital media are now inventoried with the Property/Evidence Bureau.

## APPENDIX B: Process Flow

### Obtain DR#

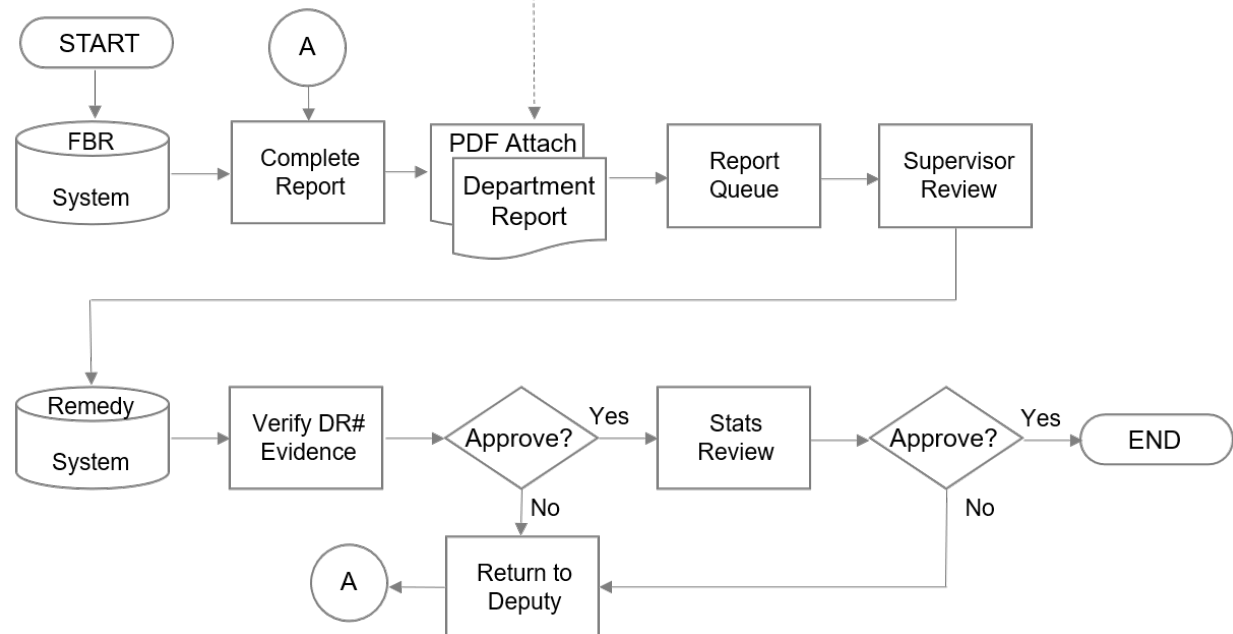


### Book Evidence



### Complete Report

### Approve Report



## GLOSSARY

CAD	<b>Computer Aided Dispatch</b> - highly specialized application that allows for the coordinated communication, assignment and tracking of law enforcement resources in response to calls-for-service.
Case Packet	Orange County Sheriff's Department case documents, including the initial crime report created in the Field Based Reporting System and the PDF Evidence List created in the Remedy system.
DA	<b>District Attorney</b> - work with law enforcement officers to investigate potentially criminal behavior, review police reports, and determine whether to file a formal complaint.
DNA	<b>Deoxyribonucleic Acid</b> is used for the various purposes in forensics. For example, if the suspect's DNA does not match with the evidence found at the crime scene, the suspect is released.
DR	<b>Department Report</b> - documents a criminal offense or incident and is associated with a DR#. Department reports are created in the Field Based Reporting System.
DR#	<b>Department Report Number</b> – sequential number assigned to a department report. The first two digits in the DR# designate the year followed by a six-digit sequential number that identifies the call.
EDC	<b>Electronic Directions for Complaint</b> - web-based system that allows law enforcement partners to upload PDFs, interviews, reports, etc. directly to the Orange County District Attorney's Office.
Evidence List	A list of items booked in the Remedy system under a DR# (a.k.a. Case Items Report).
FBR	<b>Field Based Reporting</b> System - incident-based reporting system used by Orange County Sheriff's Department.
FTO	<b>Field Training Officer</b> - duties include being a role model, teaching the trainee the policies of the department, evaluating the trainee on his or her progress in the program. Ultimately, an FTO is responsible for making sure shift duties are performed properly and completely.
IRC	<b>Intake Release Center</b> - responsible for all processes that involve arrestees being booked and released.
MDC	<b>Mobile Data Computer</b> - computerized device used in emergency vehicles, such as police cars, to communicate with a central dispatch office.
OCDA	<b>Orange County District Attorney</b>

## Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

OCPD	<b>Orange County Public Defender</b>
OCSD	<b>Orange County Sheriff's Department</b>
On-Prem	<b>On-Premises Software</b> is installed and runs on computers on the premises of the organization using the software, rather than at a remote facility such as a server farm or cloud.
PD	<b>Public Defender</b> - attorney employed at public expense in a criminal trial to represent a defendant who is unable to afford legal assistance.
Plea Bargain	An arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges.
POST	California Commission on <b>Peace Officer Standards &amp; Training</b> . The purpose of the POST Law Enforcement Evidence & Property Management Guide is to provide standardized recommended guidelines for the management of the evidence and property function.
Remedy	Property/Evidence Automated Booking Information Tracking System (a.k.a. P.E.A.B.I.T.S.) is a software program that allows staff to enter physical evidence, and easily scan, track, and locate items as they are moved from different storage locations.
SaaS	<b>Software as a Service</b> is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. SaaS has become a common delivery model for many business applications, including CAD software, field service management and development software.
SAU	<b>Sexual Assault Unit</b>
Stats	Statistical Unit within the Records Division. Ensures the Department submits mandatory Uniform Crime Reporting (UCR) statistics to the state Department of Justice, as noted in Penal Code section 13020(b). Staff review every crime report written to capture and report crimes (homicides, robbery, rape, aggravated assault, etc.) occurring within the Orange County Sheriff's jurisdiction.

## BIBLIOGRAPHY

- BMC Software, Inc. 2014. "Remedy Asset Management Application (Version 7.0.03)." *BMC Support Central A-Z Supported Product List*. Apr. Accessed 2021.  
<https://webapps.bmc.com/support/faces/az/prodversion.jsp?prodverseqid=153711>.
- California Commission on Peace Officer Standards and Training. 2013. *Law Enforcement Evidence & Property Management Guide Third Edition*. Prod. POST Management Counseling Services Bureau.
- Find Law Staff. 2019. "California Code, Penal Code - PEN 1054.2." *Find Law For Legal Professionals*. Jan 1. Accessed Nov 2020. <https://codes.findlaw.com/ca/penal-code/pen-sect-1054-2.html>.
- Gerda, Nick. 2020. "OC Sheriff Evidence Booking Scandal Expands with 15 More Investigations of Deputies Disclosed." *Voice of OC*.
- . 2021. "Charges Dropped in 67 Criminal Cases Due to Sheriff Evidence Mishandling, DA Reveals." *Voice of OC*, Jan 14.
- Izadi, Mary. 2019. *Secondary Evidence Audit*. Constitutional Policing Advisor, Santa Ana: Orange County Sheriff's Department.
- Izadi, Mary. 2019. *Secondary Evidence Audit Follow-Up Report*. Constitutional Policing Advisor, Santa Ana: Orange County Sheriff's Department.
- Orange County District Attorney. 2020. "Policy 328 Report Preparation." *Bureau of Investigation Policy Manual*. Santa Ana: Lexipol, LLC, Nov 24.
- . 2020. "Policy 801 Property and Evidence." *Bureau of Investigation Policy Manual*. Santa Ana: Lexipol, LLC, Nov 24.
- Orange County District Attorney's Office. 2021. *Report on Sheriff's Department Evidence Booking Issues*. Santa Ana: OCDA.
- Orange County Sheriff-Coroner Department. 2019. "Policy 200 Organizational Structure and Responsibility." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2019. "Policy 204 Departmental Directive." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2019. "Policy 208 Training Policy." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2019. "Policy 338 Report Preparation." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2020. "Policy 802 Property and Evidence." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Sept 1.

## Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

- Orange County Sheriff's Department. 2020. "Computer Forensics Detail - Evidentiary Mobile Device Booking Procedures." *Training Bulletin 20-32*. Santa Ana: Orange County Sheriff's Department, Oct 29.
- . 2020. "Evidentiary Digital Media and Investigative Copy of Digital Media." *Training Bulletin No. 20-21*. Santa Ana: Orange County Sheriff's Department, June 22.
- . 2020. "Field Based Reporting Outage Action Plan." *Training Bulletin No. 20-17*. Santa Ana: Orange County Sheriff's Department, May 8.
- . 2019. "Photographic or Digital Media Evidence Booking Procedures." *Training Bulletin No. 19-20*. Santa Ana: Orange County Sheriff's Department, Nov 27.
- . 2019. "Re-Brief Evidence Booking Procedures." *Training Bulletin No. 19-08*. Santa Ana: Orange County Sheriff's Department, July 3.
- . 2020. "Remedy Case Items Report Attachment for Field Based Reporting." *Training Bulletin No. 20-18*. Santa Ana: Orange County Sheriff's Department, May 11.
- Saavedra, Tony. 2020. "15 More Orange County Sheriff Deputies Considered for Criminal Charges in Evidence Scandal." *Orange County Register*, Aug 7.
- . 2019. "4 Orange County Deputies Fired After Audit Finds Systemic Abuses in Booking Evidence." *Orange County Register*, Nov 18.
- Santana, Nerberto, Jr. 2019. "Can DA Todd Spitzer and Sheriff Don Barnes Survive the Evidence Booking Scandal." *Voice of OC*, Dec 2.
- Smith, Darrell. 2020. "Orange County public defenders take aim at Sheriff's Department and DA's office in filing." *Sacramento BEE*, Jan 10.
- Superior Court of California County of Orange. 2020. "Procedure for Disclosure of Evidence Audit Records." *Administrative Order No 20/24*. Santa Ana: Chambers of Kirk H. Nakamura Presiding Judge, Oct 15.