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**OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF MENDOCINO**

Response to Grand Jury Report

Report Title: 6.3 County Delivery of Animal Control Services

Grand Jury Document Date: June 9, 2014

Response by: District Attorney David Eyster

Response Date: August 28, 2014

Findings

I (we) agree with the findings numbered: **Not applicable**

I (we) disagree wholly or partially with the findings numbered: F6, F22, F23, F24

Recommendations

Recommendations numbered (**not applicable**) have been implemented.

Recommendations numbered (**not applicable**) have not yet been implemented, but will be implemented in the future.

Recommendations numbered (**not applicable**) require further analysis.

Recommendations numbered **R4, R10, R11** will not be implemented because they are not warranted, are unreasonable, or rely on misinformation.

Signature: *C. David Eyster*

Date: August 28, 2014

Number of pages attached: 8

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August 28, 2014

**DISTRICT ATTORNEY'S RESPONSE TO MENDOCINO COUNTY GRAND JURY
RE: COUNTY OF DELIVERY OF ANIMAL CONTROL SERVICES,
REPORT DATED JUNE 9, 2014**

Mendocino County District Attorney David Eyster respectfully submits the following response to the 2013-2014 Mendocino County Grand Jury report entitled, *County Delivery of Animal Control Services*, a document dated June 9, 2014. The response to that Grand Jury report has been personally prepared by District Attorney David Eyster. It partially relies on and presents information and data maintained in the DA's data management systems.

As the District Attorney, I am disappointed with the aforementioned report, as all citizens of Mendocino County should be. This report – on its face – manifests a wholly inadequate and incomplete investigation, yet still seeks to make recommendations regarding the District Attorney's scope of oversight, duty to review crime reports, and responsibility where appropriate to initiate the prosecution of a certain category of defendant. From the District Attorney's perspective, this is a cursory and incomplete work in progress. How could it be possible that the Grand Jury failed to seek input from the District Attorney or his staff prior to making "findings" and "recommendations" that directly comment on and relate to the business of the District Attorney? Moreover, the Grand Jury did not attempt to investigate whether one or more witnesses it may have heard from had personal agendas and/or may have provided inaccurate or incomplete information, which in the final analysis seems to be the case. The accuracy of information received by the Grand Jury, or lack thereof, could have easily been fact-checked based on available electronic records maintained in the District Attorney's two record management systems, in public records maintained by the courts, or in the Sheriff's data management system. The District Attorney has had a professional and cordial business relationship with the Grand Jury since taking office in January 2011 and hopes that relationship continues. However, that relationship notwithstanding, this report is lacking.

That having been said, I wish to make further specific comments as to follow:

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Grand Jury Findings:

F6. Animal Control does not have adequate policy and procedures to meet the best practices criteria for handling large animal abuse or neglect cases.

District Attorney's Response:

The District Attorney has inadequate information to agree with or deny this finding. Animal Control is not a unit of the District Attorney's Office. Animal Control personnel do not work for and are not under the supervision of the District Attorney or any member of his staff. The District Attorney has never been tasked – by statute or otherwise – with developing policy and procedures for Animal Control personnel. In the case of Animal Control, it is asserted that development of policy and procedures for Animal Control personnel currently lies with the Sheriff or his assignees.

F7. There are no mutually agreed upon written procedures that cover responsibilities, contacts, logistics, and other items for large animal integrated operations involving the community and multiple agencies of the County.

District Attorney's Response:

The District Attorney has inadequate information to agree with or deny this finding. Animal Control is not a unit of the District Attorney's Office. Animal Control's personnel do not work for and are not under the supervision the District Attorney or his staff. The District Attorney has never been tasked – by statute or otherwise – with developing policy and procedures for Animal Control personnel. Law or code enforcement agencies, including Animal Control, may submit completed investigatory and other reports to the District Attorney and, based on the content of such reports and available evidence, the District Attorney is tasked the responsibility of making charging decisions within the confines of applicable law.

F22. Veterinarians and Animal Control Officers are concerned about the District Attorney's lack of prosecution of animal abuse or neglect cases.

District Attorney's Response:

The District Attorney disagrees with this finding because there is no information provided to agree with.

First, that unnamed people may have concerns that are based on a false premise is a poor starting point for any rational discussion. It is also a poor ending point for what purports to be a thorough investigation.

Second, surprisingly, the Grand Jury failed to take follow-up testimony or even make inquiry of the District Attorney and his staff regarding what these unnamed people may have told the Grand Jury. It would have been easy for the Grand Jury to ask for and obtain data that would confirm or blow away claimed concerns regarding the extent of prosecution of animal abuse or neglect cases.

Third, the District Attorney has not been in receipt of any communications – letter, telephone, email, tweets, or personal contact -- expressing concerns by any state-licensed veterinarian who has been involved in the investigation of animal abuse or neglect cases in Mendocino County. I have an “open door” policy and a concerned veterinarian knowledgeable about the facts of a particular case would be welcome to discuss the specifics of a case with me. That has not happened.

Fourth, the District Attorney likewise is not in receipt of any communications -- letter, telephone, email, tweets, or personal contact -- expressing concerns of an Animal Control officer regarding the prosecution of Animal Control cases. Like all law enforcement officers, Animal Control officers have the ability to personally deliver their completed investigatory reports to the District Attorney. They may then explain their investigation to the District Attorney so as to emphasize the strengths of the evidence in a particular case, and the need, if any, for special handling. To the best of my knowledge, this personal presentation option has not been utilized by any Animal Control officer, though it is a commonly used by other law enforcement agencies, including other Sheriff personnel.

Fifth, Animal Control officers work for Sheriff Tom Allman. Sheriff Allman has never expressed any concern regarding the District Attorney's review process and prosecution standards for animal abuse or neglect cases. Animal abuse or neglect cases are evaluated for criminal charging in the same manner as all other criminal submissions. Charging decisions are based on consistently-applied standards, state-wide evidentiary rules, case precedent, and the weight and credibility of available proof, not on the subjective concerns or outcry of unnamed individuals.

Ultimately, the Grand Jury should have taken steps to determine whether the witnesses they heard from accurately knew that of which they spoke. Have local Animal Control officers been submitting reams of reports to the District Attorney's Office only to have those cases rejected after the District Attorney's charging review? Let's take a look

In calendar year 2011, Animal Control submitted only **one (1) report** for charging consideration by the DA. That single report was declined for prosecution by the Deputy District Attorney who reviewed it, noting that the rejection was in the interests of justice. Animal Control personnel did not seek further review of this declination by the District Attorney or his management-level attorneys, as is allowed.

In calendar year 2012, Animal Control submitted **no reports** for charging consideration by the DA.

In calendar year 2013, Animal Control submitted **four (4) reports** for charging consideration by the DA. Two reports were declined for prosecution based on the insufficiency of the evidence developed by Animal Control in the course of its investigation. The third report was combined with a separate Sheriff's Office report and **approved** for combined charging in a single accusatory pleading. The charged defendant was ultimately convicted of misdemeanor animal neglect and is currently on court probation. The fourth report was **approved** for filing and the District Attorney has already obtained a felony conviction against that defendant for his misconduct.

During the first six months of 2014, Animal Control has submitted **one report**. That report was approved for charging.

In summary, Animal Control has submitted only six (6) reports in the last 42 months to the DA. Three reports were *accepted* for prosecution. Three reports were declined for prosecution – two of those three were returned for lack of evidence having been developed during Animal Control's investigation so that any crime could be proven beyond a reasonable doubt to a jury with admissible evidence.

F23. The District Attorney's reluctance to prosecute animal abuse cases, for whatever reason, has led to abusive owners keeping the abused animals longer.

District Attorney's Response:

The Grand Jury's "finding" or cursory conclusion that the District Attorney is reluctant to prosecute animal abuse cases, again, not supported by fact. Worse, beyond mixing apples and oranges, this statement is just plain wrong. It bears repeating that the Grand Jurors responsible for this report did not ask to speak with the District Attorney or his staff prior to making this false finding. The Grand Jury did not review records – or even ask to review records – maintained by the District Attorney's Office relating to animal abuse or neglect submissions and filings, records that factually demonstrate no reluctance on the part of the District Attorney to prosecute such cases.

Had the Grand Jury exercised due diligence and actually reviewed available public and in-house records, it would have discovered that the District Attorney has indeed been diligent in the prosecution of animal abuse or neglect cases, and has been winning convictions on these cases since taking office in January 2011. The Grand Jury would have also learned that Animal Control is not the only law enforcement "game" in town. Other law enforcement agencies – perhaps more experienced in investigations, evidence collection, and report writing – have had their animal abuse or neglect cases reviewed, approved, and prosecuted.

Examples of actual animal cases that the Grand Jury should have reviewed to determine whether the District Attorney's Office has actually been prosecuting animal abuse or neglect cases with no hint of reluctance are the following:

Defendant **Culpepper** (14-76063) was sentenced to two years probation July 28, 2014, having pled no contest to **misdemeanor animal abuse** on June 2, 2014. The defendant was ordered to serve 180 days in the county jail as a condition of a two year term of probation (Submitted to the DA by Animal Control)

Defendant **Gitchel** (13-74286) was prosecuted and he is participating in rehabilitative Drug Court, as authorized by law, having pled no contest to **felony animal abuse** on November 5, 2013. (Submitted to the DA by Fish and Wildlife)

Defendant **Phillips** (13-75117) was convicted of **misdemeanor** maintaining a public nuisance relating to animals. She is now on 36 months probation, as of June 17, 2014, with court-ordered limitations on the number of animals she may possess and other terms and conditions. (Submitted to the DA by the Sheriff's Office and Animal Control)

Defendant **Lane** (13-72623) was prosecuted and sentenced to state prison for **felony animal abuse**, having been convicted of that charge by jury. (Submitted to the DA by the Fort Bragg Police Department)

Defendant **O'Brien** (12-70506) was prosecuted and he is currently on supervised probation for **felony animal abuse**. (Submitted to the DA by the Sheriff's Office)

Defendant **Keiley** (12-23121) was taken before a jury on **misdemeanor animal abuse** charges. He was found not guilty by that jury of his peers. (Submitted to the DA by the Fort Bragg Police Department)

Defendant **Aceves** (12-22933) was prosecuted and he is currently on supervised probation for **misdemeanor animal abuse**. (Submitted to the DA by the Willits Police Department)

Defendant **Clemons** (12-22404) was prosecuted but the magistrate refused to hold him to answer on the **felony animal abuse** charge. The court dismissed the case. (Submitted to the DA by the Fort Bragg Police Department)

Defendant **Shamhart** (12-2144) was prosecuted and convicted of **misdemeanor animal neglect**. (Submitted to the DA by Animal Control)

Defendant **Lawrence** (10-12531) was convicted by the prior administration of **felony animal abuse** and placed on supervised probation. The current District Attorney caused that supervised probation to be permanently revoked in 2011 and successfully argued for Lawrence to be sent to state prison in 2011 for violating probation. (Submitted to the DA by the Sheriff's Office)

F24. Lack of prosecution leads to Animal Control putting more emphasis on working with abusive owners longer in an attempt to alter owner behavior before proceedings with removal of the animals.

District Attorney's Response:

Again, the "lack of prosecution" finding by the Grand Jury necessarily assumes there has been an actual lack of prosecution, an assumption that is not borne out by the facts. It would have been preferable for the Grand Jury to review the prosecution record of the District Attorney prior to publishing such a bald-faced statement.

Further, the District Attorney does not agree with the overall premise that the District Attorney is somehow forcing Animal Control to do things it does not otherwise want to do. Animal Control has never discussed strategy with the District Attorney as to what reactive steps it should take in a particular case. Those day-to-day policies and strategies for addressing animal problems in Mendocino County are left to the officers and supervisors of Animal Control, and do not involve the District Attorney unless and until a crime investigation is completed and the reports relating to that investigation are submitted to the District Attorney for charging consideration. While the District Attorney has his own in-house investigators, Animal Control has never sought assistance from these more experienced investigators.

Accordingly, the District Attorney does not agree with this finding because it has no basis in fact.

Grand Jury Recommendations:

R4. Animal Control develop and regularly update formal policy and procedures for investigation and handling of large animal abuse or neglect cases. Policies and procedures including:

- a. **Addition of the investigating officer's notes to the written case file**
- b. **When to close an animal abuse or neglect case**
- c. **Documentation of animal condition per best practices**
- d. **Decision Tree regarding when to call a Veterinarian**
- e. **Decision Tree when to confiscate an animal**
- f. **Logistical check list for animal removal**
- g. **Procedures for removal and transport of large animals**
- h. **Decision Tree regarding when to perform field euthanasia**
- i. **Filing a case with the District Attorney**
- j. **Complainant confidentiality rules**

District Attorney's Response:

It is not clear why the District Attorney has been asked to respond to this recommendation. As previously stated, Animal Control is not a part of the District Attorney's Office and Animal Control's personnel do not work for and are not under the supervision of the District Attorney or his staff. The District Attorney has never been tasked – by statute or otherwise – with developing policy and procedures for Animal Control personnel. Law or code enforcement agencies, including Animal Control, submit finished investigatory and other reports to the District Attorney and, based on the content of such reports and available evidence, the District Attorney makes a charging decision within the confines of applicable law. Accordingly, **the District Attorney does not agree with this recommendation to the extent that it implies there should be an involvement by the District Attorney in the Sheriff's personnel matters and investigatory process.**

R10. Board of Supervisors pass a County ordinance which forbids individuals found guilty of animal abuse from owning animals for a set period of time. (F24)

District Attorney's Response:

It is not clear why the District Attorney has been asked to respond to this recommendation. The District Attorney is not counsel for the Board of Supervisors. That responsibility lies with the Office of County Counsel. Moreover, the District Attorney does not see the nexus between this recommendation and the finding to which it applies, especially since the District Attorney respectfully asserts the underlying finding is faulty and incomplete. Finally, this recommendation seeks to invade the province of the judiciary, as well as prosecutorial discretion. Once criminal liability has been admitted or found at trial, judges, with input from the prosecutor, defense attorney, and, in some cases, the probation officer, are responsible for crafting an appropriate sentence for the convicted offender. An appropriate sentence in some cases may be no animal ownership for the period of probation; in other cases, this would be an inappropriate sentence given the underlying facts and the law. The person in the best position to make the final decision on this is the judge who has heard all the facts and understands the law. Accordingly, **the District Attorney does not agree with this recommendation.**

R10. The District Attorney and the County Sheriff meet to establish guidelines setting forth the standards necessary to refer a case to the District Attorney's Office for prosecution. (F22, F23, F24)

District Attorney's Response:

The District Attorney does not agree with this recommendation because guidelines and standards already exist and no additional or special guidelines and standards need be established for Animal Control.

The initial decision whether to file criminal charges in any case, and what those charges should be, is said to be the most critical step in the criminal justice process. This decision-making process, or gatekeeper role of the District Attorney, is guided by legal and ethical standards that require a reasonable belief that the charge or charges can be proven to a jury, unanimously, beyond a reasonable doubt, after considering reasonable defenses.

Whether by the District Attorney or one of his designated deputy prosecutors, every case presented by local law enforcement is thoroughly reviewed once submitted by the law enforcement agency to the District Attorney. The interested law enforcement agencies present their completed investigations for a legal review which results in one of several outcomes:

- The case may be accepted for the filing of a criminal charge or charges;
- The case may be declined for filing and returned to the agency; or
- There may be a request for additional investigative work that is needed before a final filing decision is warranted.

Ultimately the filing decision will be made based upon the specific facts of each case, including the physical evidence, witness statements and expert opinions that could be presented to a jury. These facts, including an assessment of witness credibility, are evaluated and weighed against the specific language of the criminal statutes to determine whether the facts support the proof of each element of the crime beyond a reasonable doubt.

If the facts support the necessary proof of each element of the crime beyond a reasonable doubt, a formal criminal charge is filed. If a determination is made that the facts do not support a reasonable belief that the charge can be proven beyond a reasonable doubt, there is a legal and ethical duty to decline to file charges. When a case is rejected for prosecution, it should not be inferred that the District Attorney and his deputy prosecutors believe the conduct described in the rejected report is lawful. Without further comment on the morality of what may be described in a report, the rejection of a crime report simply means there is one or more obvious legal problems at the outset that mandate that the case be declined for formal prosecution.

All law enforcement reports that are submitted by local Mendocino County agencies to be reviewed by the elected District Attorney or his designees are processed and considered within this legal and ethical framework.

C. David Eyster

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Mendocino County District Attorney