

County of Mendocino
Grand Jury
www.co.mendocino.ca.us/grandjury

Post Office Box 939
Ukiah, CA 95482
grandjury@co.mendocino.ca.us

**Grand Jury Report Transmittal
(with Instructions and Response Form for Required Respondents)**

Meredith Lintott
District Attorney
100 N. State Street
Ukiah, CA 95482

Date: June 9, 2010

RE: Report Titled: *Bring Back the Dog*

Dated: June 9, 2010

Your response to the attached report by the 2009/2010 Mendocino County Civil Grand Jury is required pursuant to Penal Code §933.05 (enclosed). Penal Code §933.05 also requires that your response to the Findings and Recommendations contained in the report be in writing and be submitted within **60 days for individual responses from elected county officers or agency head** or within **90 days for governing bodies** (including such entities as school boards, city councils and the Board of Supervisors).

Penal Code §933.05(f) specifically prohibits disclosure of the contents of this report by a public agency or its officers or governing body prior to the release to the public. The report will be released to the public and posted on the grand jury website two (2) or more days after the date of this letter.

The Penal Code is specific as to the format of responses. Complete and sign the enclosed Response Form and attach any additional comments as required.

Should you have any questions after reviewing the enclosures, please contact me at **grandjury@co.mendocino.ca.us** or at the address above.

Sincerely,

Katharine Wylie
Foreperson
Mendocino County Grand Jury

SUMMARY OF PENAL CODE 933.05

Penal Code § 933.05 provides for only two (2) acceptable responses with which agencies and/or departments (respondents) may respond with respect to the **findings** of a Grand Jury report :

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the findings, *in which case the respondent shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.*

Penal Code § 933.05 provides for only four (4) acceptable responses with which agencies and/or departments (respondents) may respond with in respect to the **recommendations** of the Grand Jury.

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be 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, with a timeframe for the matter to be prepared for discussion by the officer or head of the agency/department being investigated or reviewed, including the governing body of the public agency when applicable. ***This timeframe shall not exceed six (6) 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 a detailed explanation therefore.

However, If a finding and/or recommendation of the Grand Jury addresses **budgetary** or **personnel** matters of a county agency/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/department.

**Grand Jury Report
RESPONSE FORM**

RE: Report Titled: *Bring Back the Dog*

Report Dated: June 9, 2010

Response Form Submitted By:

Meredith Lintott
District Attorney
100 N. State Street
Ukiah, CA 95482

Response MUST be submitted, per Penal Code §933.05, no later than: August 9, 2010

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- I (we) agree with the Findings numbered:

- I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
7, 8, 9

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- The following Recommendation(s) have _____ have been implemented and **attached, as required**, is a summary describing the implemented actions:

- The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:

The following Recommendation(s) require further analysis, and attached as required, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)

The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, attached, as required is an explanation therefore:

5

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: _____

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov
- The County's Executive Office: ceo@co.mendocino.ca.us

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: Meredith J. Lintott

Title: District Attorney of Mendocino County

Signed:  Date: 8/5/10

**Grand Jury Report: Bring Back the Dog
District Attorney Response**

Finding No. 7:

The Mendocino County District Attorney has not adopted the *Mendocino County District Attorney's Office Disposition-Evidence Release Memo*

Response:

The District Attorney agrees with the finding No. 7. However, it should be clarified that the Memo was not created by the District Attorney or her staff. The Memo, using the name of the District Attorney's Office, was created by a clerk employed by the Mendocino County Sheriff's Office. Please see the District Attorney's response to Recommendation No. 5 below for the explanation of why the District Attorney will not adopt the Evidence Release Memo created by a Sheriff's Office clerk.

The District Attorney's Office facilitated a "query" with the Information Services Department, which allowed the Sheriff's Office evidence clerks to access the Court and District Attorney's Office information directly. This information, including the Information Services Clerk's name and phone number, was given to LEAs at the August 14, 2008, Major Crimes Task Force meeting. The Sheriff attended this meeting. Consequently, the proposed form is not necessary.

Finding No. 8

8. Evidence should be released by the Mendocino County District Attorney's Office, (MCDAO), when a case is dismissed or adjudicated. Certain evidence, such as weapons, drugs, and evidence obtained with a search warrant, requires a court order for release.

Response:

The District Attorney agrees that certain evidence requires a court order for release. The Sheriff's Office, especially in the area of drugs, obtains the court order directly from the court, without the involvement of the District Attorney's Office. In other instances, criminal defense counsel requests an order for the release of evidence.

The District Attorney disagrees that evidence should be "released" by the District Attorney's Office. At all times, evidence collected by the Sheriff's Office is in the care, custody and control of the Sheriff's Office, except when a deputy brings evidence to court and the evidence is admitted by the Court, at which time the evidence is in the care, custody and control of the Court. Consequently, the District Attorney does not "release" evidence.

Grand Jury Report: Bring Back the Dog District Attorney Response

During the past year, the Coast Division of the MCSO has presented no cases to the MCDAO for a determination of evidence destruction. This had been the past practice. If cases are not submitted to the MCDAO and the evidence clerks do not use the "query" system developed to assist them, the District Attorney's Office cannot be held responsible for the MCSO evidence backlog.

As stated in the District Attorney's response to recommendation number 3 to the Grand Jury Report titled "I'll Be able to Hear You Pretty Soon" dated June 24, 2008: "Ultimately, it is the Sheriff's Office's responsibility to dispose of the property in the manner prescribed by law."

In the 2008 response, the District Attorney informed the Grand Jury that the important issue of evidence retention/destruction was being reviewed by the Mendocino Major Crimes Task Force Executive Board. The District Attorney stated she would continue to work together with law enforcement partners to create a workable evidence retention policy. Diligent efforts were made by the District Attorney and partner law enforcement agencies to establish a policy as set forth more fully below in response to recommendation No. 5.

It remains the opinion of the District Attorney as stated in the 2008 response that a resolution of this evidence backlog will not be achieved until a new case management system is implemented and additional Sheriff's Office evidence clerks are hired.

Finding No. 9

9. The MCDAO does not notify the evidence room when a case has reached final disposition. This results in an accumulation of evidence that is no longer needed.

Response:

The District Attorney agrees that the MCDAO does not notify the evidence room when a case has reached final disposition. However, the District Attorney disagrees with the implication that it is the responsibility of the District Attorney to notify the Sheriff's Office regarding final case disposition for evidence destruction or that such lack of notification causes the accumulation of evidence that is no longer needed. The MCDAO facilitated a "query" through information services that allows the evidence clerks to access the information (from the Court and MCDAO) to assist with their work in evidence destruction. Please see response to Recommendation 5 below.

Grand Jury Report: Bring Back the Dog District Attorney Response

Recommendation 5:

The Mendocino County Sheriff encourages [sic] the Mendocino County District Attorney to adopt and use the *Mendocino County District Attorney's Office Disposition-Evidence Release Memo* (Findings 7-9).

Response:

As stated above the memo was not prepared by the MCDAO, but rather by a MCSO clerk. The MCDAO reviewed a copy of the memo during the time that the Major Crimes Task Force was reviewing the adoption of a joint Law Enforcement Property Retention Policy. (Spring 2008 through January 2009). The proposed policy and discussion regarding the evidence destruction issues were discussed by the Task Force from May 8, 2008, to January 8, 2009.

A solution was found by way of the District Attorney's Office contacting the County Information Services. The IS department developed a "query" in the JALAN system for the MCSO and other agencies to use in determining case status for the purpose of making a determination regarding the destruction of evidence. The District Attorney provided the name of the county technician and her phone number, as well as a sample query printout at the August 14, 2008, Major Crimes Task Force Executive Board meeting. The Sheriff was in attendance at this meeting.

The District Attorney has no information as to whether the Sheriff directed the evidence clerks to use the query to assist in researching the case status when seeking to purge evidence. The information requested in the memo can be accessed by the evidence clerk using the query system established for this purpose.

The Major Crimes Task Force Executive Board reviewed the Butte County Law Enforcement Property Retention Policy for a matter of months with the District Attorney facilitating with other LEAs to determine whether a similar policy should be adopted by Mendocino County. Two agencies responded to the District Attorney's Office that, although their systems were not perfect, they could work with their current system. After gathering comments on the Retention Policy, the District Attorney advised the Executive Board that she believed that another agency should take the lead as one agency (not the Sheriff), had commented that "The DA is not telling us how/when to do our jobs" [in reference to evidence destruction] and "The Evidence Release memo doesn't change our responsibility to research before purging/holding and make the decision for our agency. Hence—we are not "clerks" and the DA is not telling us what to do – or not to do."

The District Attorney remains ready and willing to work with the Sheriff and other LEAs to improve policies and procedures related to evidence retention and destruction.

**Grand Jury Report: Bring Back the Dog
District Attorney Response**

District Attorney Comment:

The District Attorney notes that the Grand Jury conducted a site visit to the MCSO/FB substation to gather information contained in the report titled *Bring Back the Dog*. The GJ did not contact the District Attorney's Office. The District Attorney further notes that this report contains findings and a recommendation concerning the District Attorney's Office.

In order to provide unbiased, informed decisions regarding important law enforcement issues, information should be received from the District Attorney's Office before forming any opinions. The failure to contact the District Attorney to gather facts and information pertaining to evidence destruction resulted in an unfounded and biased report.