

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 3, 2010**

**RE: Report Titled: *Going to Pot in Mendocino County***

**Dated: June 3, 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: *Going to Pot in Mendocino County***

**Report Dated: June 3, 2010**

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***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: 7/12/2010***

***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.  
12, 20, 21, 31

***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:  
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- 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)

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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:

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

Number of Pages attached: 4

*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](http://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](mailto:grandjury@co.mendocino.ca.us)
- The Presiding Judge: [grandjury@mendocino.courts.ca.gov](mailto:grandjury@mendocino.courts.ca.gov)
- The County's Executive Office: [ceo@co.mendocino.ca.us](mailto: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: Meredith J. Lintott Date: 7/29/10

**Grand Jury Report: Marijuana: Going to Pot in Mendocino County  
District Attorney Response**

Finding No. 12:

12. Illegal marijuana gardens consume County resources, e.g.:

- Law enforcement agencies contribute 25% of their resources and time in the summer for eradication of marijuana.
- In the winter, 10% of resources and time are spent on enforcement of illegal drug activity, including court time,
- MCDAO estimates 40% of their workload is dedicated to investigation and prosecution of illegal grows,
- Child Protective Service is called when children are found at a drug bust,
- Those arrested may be receiving public aid and other social services,
- Dirt road erosion and deterioration caused by excessive traffic and speeding vehicles,
- Costly clean-up from fuel spills, fertilizers, and poisons.

**Response:**

The District Attorney agrees with the findings contained in paragraph 12, except as set forth below:

- The District Attorney has no information upon which to agree or disagree with the percentage of resources other law enforcement agencies devote to the eradication of marijuana (25% in summer and 10% in winter)
- The District disagrees with the finding that that the MCDAO estimates 40% of their workload to the investigation and prosecution of illegal grows. The estimate should be stated at 25%, more or less depending upon the season and other circumstances. It is unknown to the District Attorney the source of the alleged 40% estimate and the factual basis for making the estimate. The filing of marijuana related cases increased by 50% following the election of District Attorney Lintott.

**Finding No. 20**

20. There is such an abundance of illegal marijuana grow cases that the MCDAO has declined to prosecute certain cases, citing lack of staff.

**Response:**

The District Attorney disagrees with the above finding; however, states for the three month period of May 12, 2009 to August 19, 2009, due to an abundance of marijuana cases and a staffing shortage, some marijuana cases were rejected citing lack of staff.

## **Finding No. 21**

21. The County District Attorney issued an internal office memo which stated the office would not prosecute marijuana cases below 200 plants seized. This memo was leaked to the press and later rescinded.

### **Response:**

The Grand Jury did not request a response from the District Attorney regarding this finding; however, since it directly relates to the District Attorney Office, a response is included. On May 12, 2009 a memo titled “**INTERNAL MEMORANDUM – NOT FOR PUBLIC USE MARIJUANA CHARGING GUIDELINES**”. The guidelines were issued due to adverse court rulings regarding marijuana cultivation, possession, and transportation, the budget crisis and a shortage of experienced attorneys. The memo directed that cases where the total plant count was under 200 plants be rejected citing “insufficient staff.” The memo further directed that:

The above guidelines are not to be mechanically implemented, but should be considered in light of our mission statement to promote public safety and provide the highest level of public services possible. These guidelines are being established to ensure the highest level of competence and professionalism is used to protect the public against large-scale commercial marijuana operations and to prevent the diversion of our limited resources to cases which take away from that mission.

The memo also included aggravating factors to consider in making charging decisions. Said factors include, but are not limited to:

- The presence of minors at the cultivation/processing site.
- The presence of weapons.
- Evidence of commercial sales.
- The prior history of the suspect.

Yes, the memo was leaked to the press. The memo was rescinded on August 19, 2009. New attorneys had been hired and the August 19, 2009, memo directed that “No cases shall be returned to an agency citing “insufficient staff” as a basis for rejection.

During the three month period the guidelines were in effect, the District Attorney informed the Sheriff, Police Chiefs, and CHP Commander, to contact her if a case was returned due to “insufficient staff” and the agency wished to have the case filed.

## **Finding No. 22.**

21. It was reported to the GJ that there is inconsistency in prosecuting or dismissing similar cases.

**Response:**

The Grand Jury did not request a response from the District Attorney regarding this finding; however, since it directly relates to the District Attorney Office, a response is included. The District Attorney has no knowledge of whether an individual(s) made a statement that there is inconsistency in prosecuting or dismissing similar cases. This finding is an opinion and not a statement of fact (i.e. not a “finding”). This finding is easily made, but difficult to evaluate since a single fact or circumstance can completely change the decision to file or dismiss a case. In the area of marijuana prosecutions, the law has been inconsistent resulting in different case outcomes depending upon the date the offense was committed.

**Finding No. 31**

Law enforcement and the legal community cannot agree on the definition of a mature plant.

**Response:**

The District Attorney disagrees in part with this finding. Prosecutors and law enforcement officers designate a “mature” plant as a budded female marijuana plant. Defense attorneys will sometimes disagree with this definition of what constitutes a mature plant when it benefits their client’s case. The significance of this difference of opinion has lessened following the decision in *Kelly*, which invalidated the plant limits outlined in Health & Safety Code §11362.77. Section (d) states: “Only the dried mature processed flowers of female cannabis plant . . . shall be considered when determining allowable quantities of marijuana . . . .”

**Recommendation 5:**

5. The Mendocino County District Attorney prosecutes or dismisses all similar cases equally. (Findings 12, 20-24).

**Response:**

The District Attorney and prosecutors understand the importance of consistent prosecutions and outcomes. The prosecutors who handle the marijuana cases work together closely and meet regularly to discuss the potential dispositions of cases. The marijuana laws and their interpretation by the courts have been in a constant state of flux. Thus, a crime committed and prosecuted under one set of guidelines and laws may have a different result when the crime and prosecution takes place after the laws have received a new interpretation from the courts.

**Recommendation No. 6:**

Law enforcement and the legal community establish a uniform definition of a mature marijuana plant.

**Response:**

Health & Safety Code § 11018 provides the legal definition of “marijuana.” This code section does not define a “mature” marijuana plant, but refers to the plant, “whether growing or not . . . .” If the maturity of the plant is relevant to the defense, the attorney may cross examine the officer’s expert opinion (the court qualifies the expertise of the officer) regarding the matter and/or bring in their own expert witness. After testimony the court or jury will make the determination of whether the plant is “mature.”