

RESPONSE PROCEDURE TO GRAND JURY REPORTS

The governance of responses to Grand Jury Final Report is contained in Penal Code § 933 and § 933.05. Responses must be submitted within 60 or 90 days. Appointed officials and governing bodies (e.g., school boards or the Board of Supervisors) must respond within ninety (90) days; elected officials must respond within 60 days.

Please submit responses as e-mail attachments to:

- **The Grand Jury Foreperson at:** grandjury@co.mendocino.ca.us
- **The Presiding Judge:** grandjury@mendocino.courts.ca.gov
- **The Chief Executive Officer:** milledkm@co.mendocino.ca.us

Mail one signed hard copy to the Grand Jury at P.O. Box 629, Ukiah, CA 95482.

Report Title:

"I'LL BE ABLE TO HEAR YOU PRETTY SOON"

Report Date: June 24, 2008

Response by: Meredith Lintott, District Attorney

Date Due: August 24, 2008

Findings

X I (we) agree with the Finding numbered:

21

X I (we) disagree wholly or partially with the Findings numbered:

20

(attach a statement specifying any portions of the Findings that are disputed; include an explanation of the reasons therefore.)

Recommendations

Recommendations numbered: _____
have been implemented.

(attach a summary describing the implemented actions.)

Recommendation numbered: _____
have not yet been implemented, but will be implemented in the future.

(attach a time frame for implementation)

X Recommendations numbered: 3

require further analysis. *(attach 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)*

Recommendations numbered: _____

will not be implemented because they are not warranted and/or are not deemed reasonable. (*attach an explanation.*)

Date: August 8, 2008

Signed: *Meredith J. Lintott*

Meredith J. Lintott,

DISTRICT ATTORNEY OF MENDOCINO COUNTY

District Attorney's Response to: "I'LL BE ABLE TO HEAR YOU PRETTY SOON"

Finding No. 20 states: "evidence must be held until a case is final."

It is agreed that evidence must be held until a case is final. The concern lies in the meaning of "final" for purposes of evidence retention/destruction. This decision can be made for cases that are prosecuted, by following the case through the court system. Determining when a case is final may take a period of years. Typically, the determination is straightforward when the defendant enters a plea of guilty or no contest. However, defendants can file a motion to withdraw plea, and depending on the court's ruling, the case can start anew. In matters that are appealed following a conviction by a jury, the case may remain "open" for a period of years.

The larger, more difficult determination of when a case is "final" for the evidence clerks occurs in a number of different patterns. For example, different timelines exist for cases that are rejected for filing by the District Attorney's Office, or in situations when a suspect has not been identified.

Some evidence requires a court order to be destroyed (weapons, drugs, evidence seized pursuant to an search warrant). To help the Grand Jury understand the complexity of the issue, I am including the evidence retention considerations listed in the Butte County Policy:

1. Post conviction
2. Post dismissal
3. Case not filed
4. DNA/Biological evidence
5. Sexually Violent Predators (SVP cases)
6. Domestic Violence/Elder Abuse/Child Abuse
7. Juvenile cases
8. Drug diversion cases
9. Bench warrant vs. arrest warrant
10. Search warrant
11. General purge considerations
 - A) Statute of limitations considerations
 - B) Agency may initiate

C) Currency
12. Photograph and release option

The Department of Justice publishes an Arrest and Disposition Reporting Manual to assist in determining when a case is "final."

District Attorney's Response to: "I'LL BE ABLE TO HEAR YOU PRETTY SOON"

Recommendation number 3 states that: "Mendocino County District Attorney notify the main evidence depository in Ukiah when a case reaches final disposition."

This recommendation requires further analysis.

The District Attorney's Office already has a policy and form to be given to the Mendocino County Sheriff's Office, as well as other law enforcement agencies to advise when the appeal time for a case has run (Section VII Evidence D). The proper disposition of evidence is extremely complicated, and the District Attorney's Office, along with the Sheriff's Office, lack sufficient personnel and an adequate case management system to handle the task.

In practice, the Sheriff's Office has presented a list of cases for which they would like to destroy the evidence. Our staff, in turn, must manually pull each case and request an attorney to review the case to determine whether the evidence can legally be released. Ultimately, it is the Sheriff's Office's responsibility to dispose of the property in the manner prescribed by law.

The "Comments" section of the report places the burden on the District Attorney's Office to notify the Sheriff's Office of case disposition, with the desired result of reducing the time required for investigation by the evidence clerks. The availability of computers to both departments does not solve the time consuming process of evidence disposition. At this time, the Sheriff's Office evidence clerks can access the District Attorney's computers to determine a case's status. Consequently, the recommendation serves to transfer part of the time consuming task from a larger organization to a smaller organization.

Until such time that the county purchases a new case management system for both departments as well as budgets for additional personnel in both departments, any policy regarding destruction of evidence will fail.

This important issue has been a topic of discussion at the Mendocino Major Crimes Task Force Executive Board meetings. On June 12, 2008, Ben Stough, Court Executive Officer, joined us to explore the issue, as the courts are an essential party to the proper retention of evidence. Again, the Sheriff's Office can technically access the court's

computers to determine a case's status. Because of the antiquated JALAN system currently in use, this is a time consuming, technically challenging process for many of the clerks. We will continue to work together to create a policy, which will streamline the process for all involved.

In our efforts to find a better, more efficient method, we obtained a copy of the Butte County Law Enforcement Property Retention Policy, which is signed by the District Attorney, Sheriff, and other law enforcement agencies. We will continue to work to create a policy of our own. We should be able to complete this part of the project within six months, as requested by the Grand Jury. Full implementation of the policy will not be effective until such time as a new case management system is in place for the District Attorney, Sheriff's Office, Probation Department, and the courts. (Note, Butte County has the Damien case management system, one which the Mendocino County District Attorney's Office has reviewed, but has no budget to purchase.) Additional personnel will need to be hired as well. During these difficult fiscal times of budget reductions, I have no way of predicting when this area of concern will improve.

The District Attorney's office is involved in only a portion of the cases that need answers regarding evidence retention and destruction. For example, many investigations have no suspect; thus no case is filed with the court and no file with the District Attorney exists. Some cases are rejected for prosecution. Again, no case is opened in the District Attorney's Office and no case is filed with the court, but the evidence must still be retained for the appropriate time.

Some evidence requires a court order to be destroyed (weapons, drugs, evidence seized pursuant to a search warrant). To help the Grand Jury understand the complexity of the issue, I am including the evidence retention considerations listed in the Butte County Policy:

13. Post conviction
14. Post dismissal
15. Case not filed
16. DNA/Biological evidence
17. Sexually Violent Predators (SVP cases)
18. Domestic Violence/Elder Abuse/Child Abuse
19. Juvenile case
20. Drug diversion cases
21. Bench warrant vs. arrest warrant
22. Search warrant
23. General purge considerations
 - A) Statute of limitations considerations
 - B) Agency may initiate
 - C) Currency
24. Photograph and release option

The attachment for the statute of limitations consideration is 31 pages long.

In conclusion, the District Attorney will work diligently with the Sheriff to streamline the process of evidence retention/destruction: said efforts to include notification of cases that have legally concluded. Efforts for both departments will continue to be problematic until a new case management system is put in place and additional personnel hired.