

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)**

Date: May 24, 2011

RE: Report Titled: Walk the Talk

Report Dated: March 22, 2011

Your response to the attached report by the 2010/2011 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

Katharine Wylie
Foreperson
Mendocino County Grand Jury

For Your Information

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: *Walk the Talk*

Report Dated: March 22, 2011

Response Form Submitted By:

Combined Response From:

**Mendocino County Sheriff's Office, Fort Bragg Police Department, Ukiah Police Department,
Willits Police Department, and the Mendocino Major Crimes Task Force**

**Submitted on the behalf of these agencies by the Chair of the
Mendocino County Major Crimes Task Force Executive Committee**

Response MUST be submitted, per Penal Code §933.05, no later than: July 24, 2011

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:
_____ 1-6, 8-20, 22-32, 35, 37 _____
- 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, 21, 33, 34, 36 _____

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

- The following Recommendation(s) have been implemented and **attached, as required**, is a summary describing the implemented actions:
_____ 2,3 _____
- 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)

4

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:

1

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

Number of Pages attached: 5

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 responses (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge c/o: sally.nevarez@mendocino.courts.ca.gov
- The County's Executive Office: angeloc@co.mendocino.ca.us

Second Step: Mail all originals to:

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

Printed Name: CHRIS DEWEY

Title: CHAIR - MENDOCINO MAJOR CRIMES TASK FORCE

Signed: C. Dewey

Date: 7/14/2011

**Mendocino County Sheriff's Office, Fort Bragg Police Department, Ukiah Police Department,
Willits Police Department, and the Mendocino Major Crimes Task Force**

Combined response to Mendocino Grand Jury titled: "Walk the Talk"

The Mendocino Grand Jury issued a report "Walk the Talk" whereas they asked for a response to their Findings and Recommendations.

Findings:

#1- Search warrants served and executed by Federal, State and local law enforcement agencies are necessary to search private property.

- The respondents partially disagree with this finding, but would agree with a finding that includes the following: "Absent consent, exigent circumstances, or a prior waiver of 4th Amendment protections (i.e, probation and/or parole "search clause.")"

#2-State agencies and local law enforcement include the following (refer to Walk the Talk report).

- The respondents agree with this finding.

#3-There is three main bodies of the search warrant process: Affidavit in support of the search warrant, the search warrant and the return of the search warrant.

- The respondents agree with this finding.

#4-The search warrant procedure involves investigation, documentation, affidavit preparation, execution and return to the court including a list of any property taken and the status of that property.

- The respondents agree with this finding.

#5-All search warrants require probable cause: search for persons(s), search for evidence, or combined search for person(s) and evidence.

- The respondents agree with this finding.

#6-For safety, it is advisable that an officer does not serve a search warrant alone.

- The respondents agree with this finding.

#7- An officer may not physically enter any area where an individual has a reasonable expectation of privacy to conduct a search and seizure without one or more of the following: a valid search warrant, exigent circumstances or a valid consent

- The respondents disagree partially with this finding, but would agree with finding that includes the following: A search may also take place whereupon the person having control or standing may be on probation and/or parole with a "search clause."

#8- Exigent circumstances may include any of the following: medical emergency, officer safety, as a suspect may be armed, imminent escape of a suspect, imminent danger of injury or death, serious damage to property and the prevention of destruction to evidence.

- The respondents agree with the findings.

#9- A search by consent is only valid if all of the following criteria are met: voluntary, does not exceed the scope of consent, given by a person with authority and valid consent can be withdrawn at any time.

- The respondents agree with this finding.

#10- When valid consent has been obtained, entry into a location is permitted for the purpose of conducting a search for any item reasonably believed relevant to any investigation.

- The respondents agree with this finding.

#11- A condition of County probation may or may not include a search and seizure consent clause; however, a condition for State parole is that the person, his/her property or residence can be searched at any time without a warrant.

- The respondents agree with this finding.

#12- Depending on the circumstances, expectation of privacy requiring search warrants is: highest (dwelling), medium (area of business closed to the public), and lowest (a vehicle, with the exclusion of any locked area).

- The respondents agree with this finding.

#13- A search warrant is obtained by an officer after completing an application/sworn affidavit with a description of the property or person to be searched, probable cause and evidence expected to be found. The sworn affidavit must be reviewed and signed by a judge before the warrant is issued.

- The respondents agree with this finding. The term used for a judge reviewing the sufficiency of a search warrant application/affidavit is magistrate.

#14- It is not required that an officer have a hard-copy of the search warrant in hand. There is no immediate remedy for a citizen to dispute the execution of a search warrant while the search is in progress.

- The respondents agree with this finding.

#15- When officers arrive at a residence to serve a search warrant, they knock on the door and announce themselves, unless exigent circumstances prevent announcing their presence. If there is no response to the knock within a reasonable time, forced entry may take place. The officer's concern is the delay may allow the destruction of evidence.

- The respondents agree with this finding. See Penal Code section 1531.

#16- Depending on the circumstances, it is not required that the warrant be shown or a copy left with the person whose property is searched; however, Penal Code section 1535 states that a receipt is required for any items taken.

- The respondents agree with this finding.

#17- Court decisions dictate the process and authority for sealing a search warrant affidavit, which is generally done to protect information sources from harm or to avoid compromising further investigations.

- The respondents agree with this finding.

#18- Law Enforcement has conducted searches at incorrect property addresses.

- The respondents agree with this finding.

#19- The Task Force, created in 1984, operates under the direction of the County Law Enforcement Executive Board, and is supervised by the DOJ, which funds the Commander's salary and office rent.

- The respondents agree with this finding.

#20- The Primary goal of the Task Force is to investigate major crimes, which may include homicide, rape, eradication, cultivation, production, distribution and sales of illegal marijuana, methamphetamine, and other illegal drugs.

- The respondents agree with this finding.

#21- The Task Force team includes the Commander and the following: 2 Deputies and 1 Canine from MCSO, 1 Officer from UPD, 1 Officer from FBPD, 1 Officer from CHP, 1 Secretary, 1 Evidence Technician.

- The respondents partially disagree with this finding. The team has changed: The MCSO Canine Team has been reassigned.

#22- WPD and Mendocino County Probation Department do not contribute an officer to the Task Force at this time, but do serve on the Task Force Executive Committee.

- The respondents agree with this finding.

#23- Each law enforcement parent agency that assigns an officer to the Task Force is responsible for the behavior and actions of their assignee.

- The respondents agree with this finding.

#24- The Task Force Commander is responsible for the immediate supervision of the officers assigned to the Task Force, without authority to discipline or terminate any team officer for misconduct. The Commander can make recommendations to the parent agency.

- The respondents agree with this finding.

#25- The Task Force accepts and investigates all verbal complaints, but refers formal complaints to the parent agency of the officer involved.

- The respondents agree with this finding.

#26- The Task Force served 143 search warrants in 2009. Investigation and documentation for each search warrant required an average of 15 hours of officer time to complete the procedure.

- The respondents agree with this finding.

FINDINGS – Training, Conduct and Supervision

#27- Officers receive training at the police academy and mandated training continues throughout their service. A rigorous background check and psychological tests are required for all new recruits.

- The respondents agree with this finding.

#28- Experienced officers applying for a position with another law enforcement agency are subject to an extensive background search, which will include a review of their administrative files (performance/evaluations).

- The respondents agree with this finding.

#29- California Penal Code 13012 (e) requires the DOJ to collect, compile, and publish in its annual report, the number of citizen formal complaints received by law enforcement agencies.

- The respondents agree with this finding.

#30- Officers are held to a higher standard of behavior than the general public. Each local law enforcement agency has similar policies for conduct, ethics and behavior. Officer misconduct includes: lying, theft or embezzlement, use of profanity, speeding without emergency lights, use of excessive force, intoxication while on duty, absenteeism, tardiness, sleeping on duty, violating safe working practices.

- The respondents agree with this finding.

#31- Officers who engage in misconduct are subject to progressive discipline: oral/written reprimand, time off/additional training, administrative leave, demotion, suspension without pay, termination.

- The respondents agree with this finding.

#32- An officer can be terminated for lying or committing serious crimes. An officer subject to severe disciplinary action is entitled to an administrative Skelly Hearing, after internal affairs completes an investigation.

- The respondents agree with this finding.

#33- An excerpt from Ukiah Police Department, Search Protocol, Policy 322, states members of the department: will conduct person searches with dignity and courtesy, will conduct property searches in a manner that will return the condition of the property to its pre-search status when possible, when the person to be searched is of the opposite sex of the officer, an officer of the same gender should be summoned to the scene to conduct the search, if available, if no same gender officer is available, then the supervisor or another officer will witness the search; the searching officer will use the back side of their hand to search the person, the officer will explain to the person being searched the reason for the search and how the officer will conduct the search.

- Each Respondent currently has a Search Policy, which may differ slightly, but each respondent agrees and abides by similar guidelines.

#34- Each officer of a higher rank supervises subordinate officers.

- The respondents disagree partially with this finding. Deputy 2's do not supervise Deputy 1's and Officers of varying ranks may be assigned to work in a team under the command of a designated leader of different rank, following ICS guidelines, or a different pre-determined chain of command.

#35- A supervising officer will exercise responsibly the discretion vested in his position regarding the conduct of the subordinate officer.

- The respondents agree with this finding.

#36- The manner and style of supervision varies among supervisory officers; this discretion may lead to confusion among officers.

- The respondents disagree partially with the findings. The respondents offer that a peace officer must adapt to the varying types of supervision as long as the policies, objectives and goals are the same.

#37- Recently, the County paid a \$35,000 settlement to a person who suffered an injury when a search was conducted at an incorrect address.

- The respondents agree with this finding.

Recommendations:

1 - Law enforcement review their Code of Conduct and Ethics on a quarterly basis and annually participates in sensitivity training and random psychological testing. (Findings 27, 31-33)

- The respondents disagree partially with the recommendations, as was previously discussed new recruits are required to conduct a psychiatric exam upon hiring; these test costs approximately \$600.00 a person.

Psychological testing is a medical examination, and is a required test prior to employment as a Peace Officer.

Once an employee, further psychological testing falls under fitness for duty guidelines, and is governed by both civil case law and the Government Code. Random testing by an employer is not allowed, without cause.

During major events (officer involved shootings/mass casualty calls for service) respondents require those acting officers who were directly associated with the incident to receive psychiatric clearance prior to returning to duty. Respondents also supply peer counseling during these events.

2 - The Task Force Commander immediately reports any complaints of misconduct to the parent agency. (Findings 33, 37)

- The respondents agree with this recommendations.

3 - Law enforcement officers treat all persons with dignity, respect and courtesy at all times when conditions permit such. (Findings 33, 37)

- The respondents agree with this recommendation.

4 - The Task Force Team explore the use of video recorders to be worn and activated at all times, except while conducting sensitive investigations. (Finding 26)

- The respondents partially agree with the findings, and this recommendation will take further research as to cost and feasibility. Current research is being conducted on the use of video and audio recording systems. A policy of how and when these systems will be used has not yet been developed.