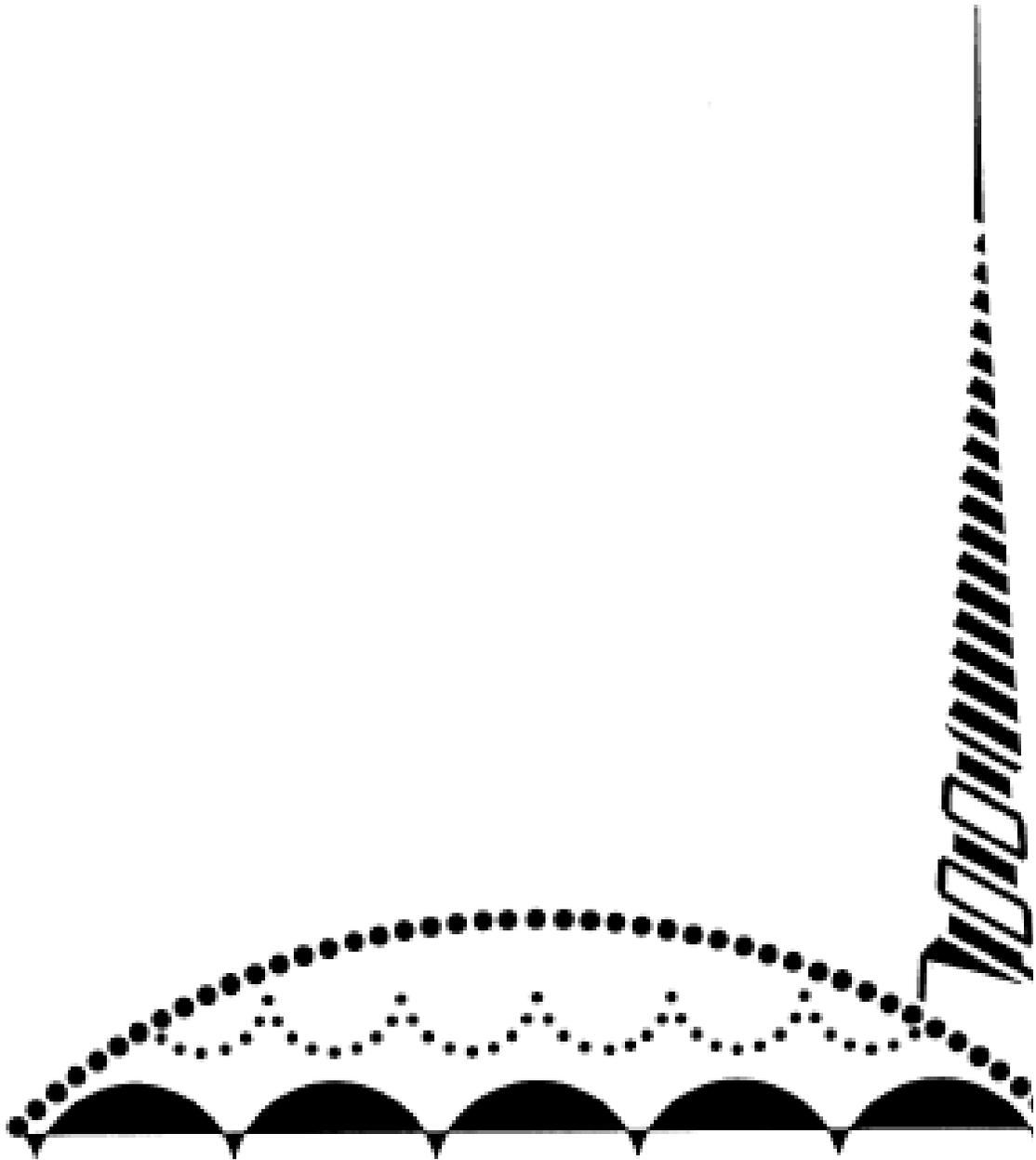


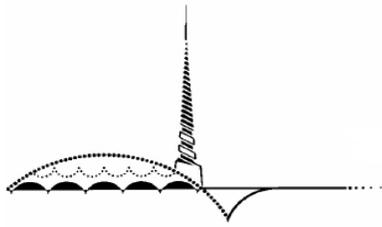
2007-2008 MARIN COUNTY CIVIL GRAND JURY

Probation Officers:

Arming for Safety

June 9, 2008





SUMMARY

The Marin County Probation Department (the “Department”) prohibits the possession of firearms by probation officers on duty. Marin is one of the few counties in California with this policy.

Officials of the Department believe officers are safe unarmed, despite the nature of their caseload, how often they work in the field, and the increasing number of violent offenders they supervise. Forty percent of those convicted of crimes in Marin live outside the county, in more urban places such as Richmond, Oakland, and San Francisco. They are still the responsibility of Marin County, but the Department is wary about sending officers to those destinations, so supervision is likely to be sacrificed.

Many Marin probation officers with high-risk caseloads would like to be armed. They believe, however, that arming should be confined to officers with such higher-risk caseloads and that arming of any officer should be optional. Those uncomfortable with firearms should be able to opt out.

No risk assessment has been conducted by the Department to gauge the potential harm to unarmed officers doing field work with high-risk offenders, and affected probation officers have not been asked for their views. The Grand Jury finds a lack of these procedures puzzling, particularly after learning of the Department’s new program to increase officer field presence. Instead, the reason given for not arming is concern that carrying a firearm will tilt the behavior of an officer away from a helping role toward a punitive one. The Department has emphasized rehabilitating clients and reintegrating them into society and does not want to undermine that capability.

The Grand Jury conducted a statewide firearms survey of all probation departments. In California, 48 of the 58 such departments are armed or in the process of doing so. The majority have performed a risk assessment and obtained the views of field officers before adopting this policy.

The Department’s policy of banning firearms affects the police as well as probation officers. For safety, the Department calls upon the police when arrests are necessary, and also for transportation of offenders, search and seizure visits, and even some routine visits. The police sometimes find this a nuisance or a distraction from their primary responsibilities.

If probation officers were trained and equipped with firearms, the burden on local police departments would be lessened, freeing them to fully focus on their primary duty of protection of local constituents.

California law gives the employing agency sole authority to decide whether probation officers are to carry firearms. The decision can be a matter of life and death.

The Grand Jury finds that:

- The Marin County Probation Department is increasing its field presence. Probation officers are expected to make more field visits, including supervision of high-risk offenders.
- Because of Department policy, probation officers lack the authority to carry a firearm while on duty.
- Most probation departments in California have either a limited or blanket arming policy for their officers.

The Grand Jury recommends that the Board of Supervisors, the Marin County Probation Department and the union representing Marin's probation officers immediately develop and implement a limited arming policy for field probation officers.

BACKGROUND

Although crime statistics have remained stable over the last decade, increasing numbers of felons are placed on probation due to prison overcrowding. Ten years ago, probation officers were likely to supervise low-risk probationers, while dangerous violent offenders received jail or prison time. Today, probation officers must monitor dangerous criminals such as gang members, drug dealers, and in some instances violent offender parolees.

Probation officers play a vital role in the criminal justice process. They are charged with investigating and supervising offenders on probation or supervised release. Essentially, these officers play two roles, social worker and law enforcement officer. In the first of these roles they help to rehabilitate and reintegrate the probationer into society. In the second, their focus is on protecting the public and enforcing court orders. Striking the balance is difficult at best. To carry out the helper role, officers must be viewed as trustworthy and supportive. However, to get too friendly would compromise their ability to carry out the law enforcement role.

A probation department supervises both juvenile and adult offenders. Probationers are placed in an officer's caseload depending on the nature of the offense. Probation officers perform field visits to check on probationers' conduct. In most instances, they are required to visit them at home or at work. They may also call them into the office from time to time. Under appropriate circumstances, officers can search a probationer's person

or residence. In addition, officers have arrest powers and may take probationers into custody if they violate the terms and conditions of their probation.

Given these developments, the Grand Jury decided to look into officer safety in the Marin County Probation Department. An assessment was sought to evaluate the Department's policies and procedures relating to field work and whether officers were safe while discharging their duties.

METHODOLOGY

The Grand Jury interviewed Marin probation officers and administrators, law enforcement officials, officials of the probation officers' union, and a chief probation officer of another county comparable to Marin. Articles and papers by experts in the fields of probation and law enforcement were examined. The Grand Jury obtained extensive documentation from a variety of sources and conducted a firearms survey of all county probation departments in California.

The Marin County Probation Department's new mission of increased field presence was assessed for officer safety. The Grand Jury obtained an overview of the risks in the field from officers and senior administrative officials.

The Grand Jury also participated in police ride-alongs in San Rafael, Novato and Marin City. All were conducted in the late afternoon, the peak time of day for probation home visits.

DISCUSSION

Probation officers are peace officers

In California, probation officers are classified as peace officers under Penal Code (P.C.) Section 830.5. The authority of a probation officer extends to:

- The conditions of probation of any person within the State of California on probation.
- The escape of any inmate or ward from a state or local institution.
- The transportation of persons on probation.
- Violations of any penal provision of law which are discovered in the course of and arising in connection with his/her employment.
- The rendering of mutual aid to any other law enforcement agency.

California law requires all peace officers to satisfactorily complete training in the laws of arrest and weaponless defense. Training in the carrying and use of firearms is not required of any peace officer whose employing agency prohibits their use, as is true in Marin County. A probation department may set limitations on certain duties, such as arrest, booking, or transporting a probationer to jail.

In Marin County, probation officers are trained and certified to make arrests and searches. The Department has adopted the following policies and procedures for arrests and searches:

- Probation officers may, while on duty, arrest probationers solely for violations of probation.
- Probation officers must always obtain prior approval from a superior before an arrest can take place.
- Unless a probationer surrenders, law enforcement shall be present for safety reasons. Without exception, when conducting an arrest in the field, probation officers should involve local law enforcement.
- All planned searches shall have prior supervisor approval and be conducted with the assistance of law enforcement. If law enforcement is not available, the search will not take place.

The Marin County Probation Department's position on arming

The Department manual states the following:

Pursuant to the authority in Section 830.5 of the Penal Code, it is the policy of the Marin County Probation Department's Chief Probation Officer that Probation Officers and Group Counselors do not have the authorization to carry firearms in the performance of their duties.

The County of Marin and the Marin County Probation Department are not responsible for any employee who carries a firearm while off duty, nor will the County defend any action resulting from an off-duty employee who chooses to arm him/herself.

The Department's position is that probation officers are safe while unarmed regardless of caseload, and that officer safety is not compromised. Department leadership asserts that the risks field officers face in Marin County have not risen to a level warranting firearms. The Grand Jury wanted to know why the Department reached those conclusions and sought answers to a few fundamental questions.

- What is the rationale in denying probation officers the option of carrying a firearm?
- Was a field risk assessment conducted?
- Did the Department consider input from field officers?

The Department believes Marin County to be relatively safe for probation officers when compared to the East Bay and other surrounding areas. However, the Department concedes that sometimes it can be dangerous. Forty percent of criminals convicted of crimes in Marin live outside the county in more urban locations such as Richmond, Oakland, and San Francisco. The Department disallows field supervision of such probationers because officer safety might be compromised. Some jurisdictions have cooperative agreements with Marin County for courtesy supervision. Sometimes an agreement is reached for transfer of the case. Where these conditions do not exist, because the Marin probation officer is unarmed, the out-of-county probationer gets no field supervision.

To combat potential harm, a field officer must be vigilant, cautious, and practice good judgment. Although the Department has recently updated its procedures manual to increase officer field presence, including the close supervision of serious offenders, the policy prohibiting firearms remains the same. As one senior official put it, “If an officer is conducting a field visit and the situation goes sideways, the officer should try and run away, assuming it’s feasible. If unattainable, the officer should utilize physical force in an attempt to restrain the probationer. Obviously, the officer’s actions are situational and should reflect the conditions at hand.”

Department officials concede that some operations may necessitate carrying a firearm for safety. On occasion, probation officers are requested to assist law enforcement in search and seizure operations and identification of probationers during field operations. The Department states it evaluates every operation thoroughly before permitting officer’s involvement. Currently, the Department prohibits participating in any operation warranting firearms. In the Department’s view, the consequences of carrying firearms outweigh the benefits, in that officers will become more authoritarian and law-enforcement oriented and the perceived change in behavior will interfere with the mission and goals of the Department.

Although the Grand Jury found no evidence to support this assertion, the Department maintains that probation officers will morph into police officers. This seems to be a major contributing factor in the Department’s decision to ban firearms.

The Grand Jury learned that no field risk assessment has been conducted to gauge potential harm posed to Marin probation officers. Although the Department consulted other probation departments when overhauling its procedures manual, firearms were not discussed. Input from field officers was ignored.

On-duty versus off-duty arming of a probation officer

California probation officers may carry a firearm on duty only if authorized and under those terms and conditions specified by their employing agency. This usually means the chief of each probation department has the delegated authority to allow or disallow the use of firearms. Many departments in California are armed in a limited capacity. Some departments are fully armed. Few departments choose not to arm. A department's view of the profession weighs heavily on the decision to arm officers. The political climate in a given county has some bearing as well. Some probation officers express frustration because the decision involves possible life-altering consequences about which they have had no say. As foot soldiers, field officers tend to have their own perspective on the issue.

Probation officers undertake a degree of risk off duty as well. Officers who live and work in the same county can run into a probationer at any time. The California Attorney General has concluded that the employing agency's authority (usually delegated to the chief probation officer) to regulate the carrying of firearms by probation officers is limited to employment-related situations, given that they are legally peace officers. As such, probation officers are exempt from the requirement to have a permit to carry a concealed weapon. Probation officers in California are therefore free to carry firearms while off duty.

Probation officers are caught in the middle when dealing with the issue of on-duty and off-duty arming. Departments that allow arming on duty may prohibit the off-duty use of a county-issued weapon. If a department prohibits the use of firearms altogether, the officer must deal with the issue of storing an off-duty firearm when arriving at work.

Unless it is specifically authorized, a probation officer in a department that bans firearms cannot store one at work. An officer in possession of a firearm on duty, against department policy, would be subject to discipline. Officers are hesitant to store firearms in their cars because someone could steal the vehicle and obtain the loaded handgun. Some view this situation as hopeless. Probation officers are less likely to carry firearms off duty if the department bans them on the job. The issue of storage and the consequences of discipline make carrying a firearm too risky.

The following is an example of how the Department's policy places a probation officer at risk. One Marin officer had written a pre-sentence report recommending jail time for a probationer. While off-duty, this officer, with small children in tow, encountered the probationer in a shopping center. The probationer expressed grave dissatisfaction with the officer's recommendation and became extremely hostile. The officer felt vulnerable and worried about the children. Fortunately, a police vehicle pulled into the parking lot, diffusing the confrontation. If not for the Department's policies, we were told the officer would have been armed.

The changing role of a probation officer

Since the inception of probation in the nineteenth century, the traditional role of the probation officer was equivalent to a social worker or advocate. The officer was charged with assisting the probationer to integrate into society.

Over the last two decades, probation departments across the nation, including California, have increased their law enforcement role. They have focused on community safety and offender accountability, such as victim reimbursement. Probation officers are taking a more active role in the enforcement of probation conditions by conducting field visits, administering drug tests, employing searches and seizures, accompanying police in the field on gang task forces and probation/parole sweeps, and other activities. This is the result of increased numbers of serious felons being granted probation. Significant numbers of probationers, juvenile and adult, are members of street gangs. Such offenders pose particular risks. The Grand Jury recently released an investigative report, "Gangs of Marin" in May 2008. It reported that street gangs are increasing their numbers in Marin County. A Marin law enforcement official with extensive experience in dealing with gangs reported that there were no circumstances in which he would visit a gang member's home without being armed.

One chief's change of heart

To get a broader view of arming, the Grand Jury interviewed a veteran probation chief from a county similar to Marin. The chief expressed enthusiasm for our Grand Jury looking into officer safety. He does not care for firearms, but the chief recognizes the need these days to be armed. He recalled a recent occasion when probation officers arrested juvenile gang members in his county after a residence search that turned up loaded handguns. This led the chief to reconsider authorizing officers to carry firearms.

In doing so, the chief assembled a committee of law enforcement experts and sought the opinions of county officials, field officers, counselors, administration, the district attorney's office, county counsel, board of supervisors, and union officials. Although the chief has delegated authority to implement an arming policy on his own, he made it a collaborative effort. The administrative and political complexity of the issue led him to do this. The chief now arms his field officers who supervise high-risk offenders and gang members.

The chief talked about another consequence of banning firearms. If field conditions justify arming, and firearms are not authorized, departments are more likely to restrict field work and resort to probationers visiting the office. The chief told the Grand Jury: "In my opinion, departments that resort to conducting business from the office fail to grasp the idea of probation. Without field work, surprise visits and proper supervision, probationers are free to do as they please. The element of surprise is absent. Moreover, in order to assist the probationer, the officer must get a feel for his/her living conditions and

lifestyle. That is simply unattainable from the office. The officer will learn more by making weekend visits and working irregular hours, usually at night. The nine-to-five shift will not yield many results.”

The trend to arming: A statewide survey

To evaluate arming in an even broader context, the Grand Jury conducted a survey of all probation departments in California. A similar survey done by the Chief Probation Officers of California (CPOC) in 2003 was also evaluated. The results are startling. All but 2 of 58 counties responded to one or both surveys, as follows: 82 percent (46 of 56) are armed to some extent, and two are unarmed but believe field work necessitates arming and are currently considering the issue. Thus, eighty-six percent (48 of 56) of the responding county probation departments either authorize carrying firearms or support the policy and are currently considering it.

Also startling is the time period over which arming has newly been authorized. Forty respondents to the Grand Jury survey reported the dates that their county authorized arming. Eighty-three percent (33 of 40) have armed in the last 20 years, 63 percent (25 of 40) in the last 15 years, and 33 percent (13 of 40) have done so in the last eight years. These statistics and trends illuminate two very significant facts. First, the nature of a probation officer’s field work has become more dangerous in the last two decades. Second, given its current philosophy and practices, the Marin County Probation Department is now out of the mainstream in providing for the personal safety of probation officers regularly exposed to dangers in the field. **The Appendix** graphically illustrates the dramatic growth of arming policies adopted in recent years by the majority of California county probation departments.

The Grand Jury survey also affirms the beliefs of many in corrections and law enforcement that more felons are on probation and officers are dealing with a more dangerous clientele. With the landscape of probation changing so significantly, departments across the state have revised their policies and procedures to further ensure officer safety by adopting limited or blanket arming.

The San Diego experience

The probation department of San Diego County made headlines recently when it doubled the number of officers authorized to carry firearms. The department’s stated reasons were to improve officer safety and reduce the need for police assistance. Approximately 160 of the 1,000 probation officers in San Diego are authorized to carry a firearm. Most armed officers deal with high-risk offenders and perform unannounced searches. A San Diego probation official was quoted saying, “When they’re unarmed, to do so [unannounced searches] is a dangerous proposition.” San Diego’s concerns reflect those of many probation and police officers in Marin County.

Field realities

The Grand Jury interviewed numerous probation officers in Marin to gain a ground-level view of the profession and its risks. Most of the officers have served in the county for many years. Many have advanced degrees in disciplines such as sociology and psychology. A majority confirmed that the profession has changed dramatically over the last 10 to 15 years. More felons are being supervised so officers are dealing with a more dangerous crowd. This evolution has increased the danger for field officers. Probation officers report threats of bodily harm.

One Marin officer was confronted with a machete during a field visit. Fortunately, a bystander recognized the officer and warned the perpetrator, who threw away the weapon and fled without incident. Another officer said he felt vulnerable wearing a badge while unarmed. Yet another told of telephoned death threats stemming from a disagreement on probation-related issues.

When a probationer fails to comply with instructions, a probation officer may take action subject to Department guidelines. The first option is to employ a command presence. This can be accomplished by one or two officers standing face to face with the probationer. If this is unsuccessful, officers give vocal commands. If the situation warrants force, they must assess the level necessary. Officers may grab the probationer's shoulder or use take-down methods. They may strike a probationer with hands, feet, elbows or knees when threatened with bodily harm.

Those in favor of arming deny the notion that a firearm would change their behavior or perception of the profession. They view a firearm as a self-defense tool. Faced with a deadly circumstance, a probation officer in Marin is required to abort and call in the police. But by then it may be too late.

The union view

Marin probation officers have expressed safety concerns to their union representatives. These concerns center on the Department's decision to increase field presence. Officers lack pepper spray, bulletproof vests, batons, emergency vehicles, flashlights, radios, and—of course—firearms. The union sent a letter to the Department in 2006 and made a follow-up phone call asking for a meeting on officer safety. The Department did not respond. The union favors a limited arming policy.

The police perspective

Marin police officers have expressed compassion for probation officers working in the field and dissatisfaction with the Department's firearms policy. The police are called routinely to assist Marin probation officers with field visits. Probation officers are required to be accompanied by the police when searching a probationer's home or when

affecting an arrest. Police officers have expressed dissatisfaction in “babysitting” unarmed probation officers, because they are pulled off their regular beats to stand guard.

Although Marin probation officers appreciate the assistance of law enforcement for extra security, sometimes it interferes with the mission. Having a police officer present on a routine visit may compromise a probation officer’s ability to establish trust with the probationer. The police presence elicits defensive behavior. If probation officers were equipped with firearms, the police presence could in most instances be eliminated. This would lighten the burden of police departments across the county.

As one police officer succinctly noted, “Calls from the probation department fall by the wayside on occasion. Their calls are usually placed on standby, unless danger is imminent. Unfortunately, we have a responsibility to work our assigned beats and must respond to higher priority calls first. The police role is to protect unarmed officers in a deadly situation.”

The duties of today’s Marin probation officers can take them into the field to supervise high-risk offenders. They face real, actual risks to their personal safety. All reasonable efforts must be undertaken to ensure that such risks are mitigated.

FINDINGS

The Grand Jury finds that:

F1. In Marin County, probation officers are peace officers, trained and certified to make arrests and searches, but prohibited by the Marin County Probation Department (the Department) from carrying firearms on duty. Field arrests must be done in consultation with a Department superior even when immediate response is necessary. On all such occasions, police must be present.

F2. The position of the Department is that probation officers are safe while unarmed regardless of caseload.

F3. Outside of Marin County, probation departments that prohibit arming tend to restrict field work for reasons of safety.

F4. The Department has recently updated its procedures manual to increase officer field presence, but its firearms policy remains the same. A field risk assessment has not been conducted to gauge potential harm to probation officers, nor has input from field officers been sought.

F5. Probation officers are requested to assist law enforcement in search and seizure operations and identification of probationers during field operations. However, the Department will not allow probation officer participation where carrying a firearm would be necessary for safety.

F6. Conducting field visits of high-risk offenders presents a risk of harm to the probation officer.

F7. Marin County's policy of prohibiting arming of probation officers is out of the mainstream in California. Safety is becoming a more significant issue because increasing numbers of felons are being placed on supervised probation due to prison overcrowding. Eighty-six percent of all probation departments in California have adopted arming or are in the process of arming their officers, and the vast majority, 63 percent of those reporting data, has done so in the last 10 to 15 years.

RECOMMENDATION

The Grand Jury recommends that the Board of Supervisors, Chief Probation Officer, and the probation officers' union work in concert to immediately develop and implement a limited arming policy for Marin County probation officers.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing body:

- Marin County Board of Supervisors: **All Findings and Recommendation.**

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933 (c) and subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

California Penal Code Section 933 (c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

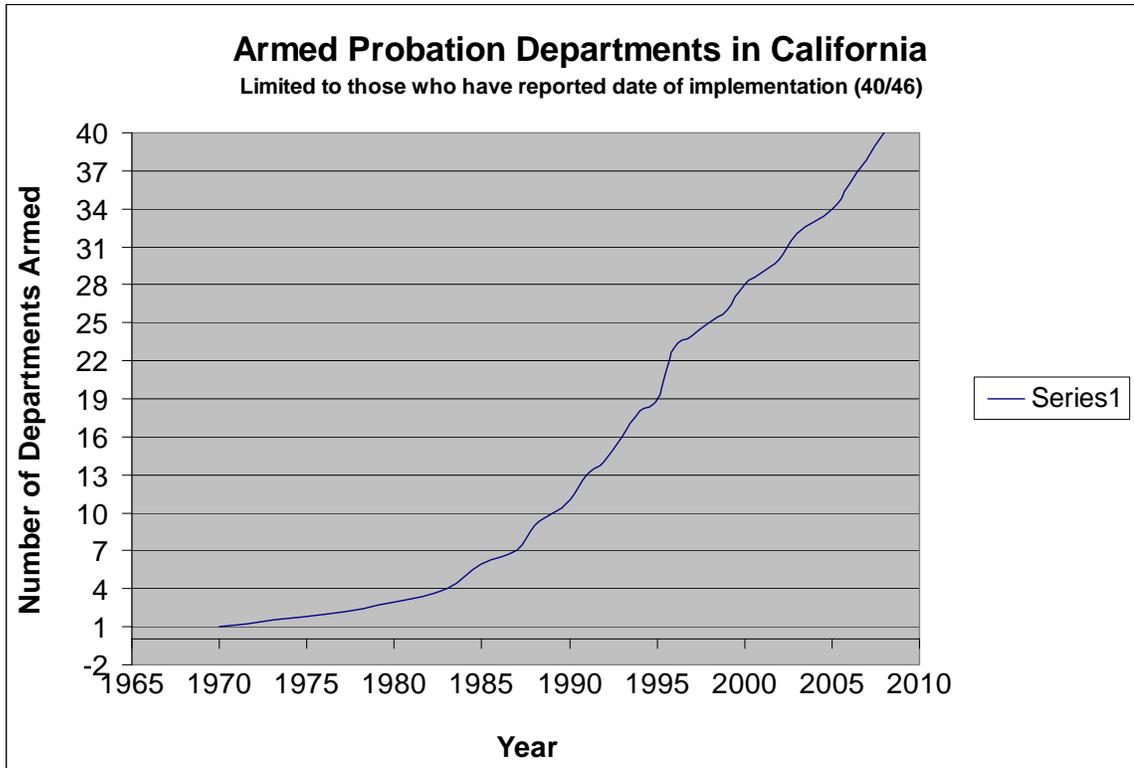
The Grand Jury invites responses from:

The Marin County District Attorney's Office: **All Findings and Recommendation.**

The Marin County Sheriff's Office: **All Findings and Recommendation.**

The Marin County Probation Department: **All Findings and Recommendation.**

APPENDIX



Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.