



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY 2009-2010

Final Report on

**NAPA SPECIAL INVESTIGATIONS BUREAU
24-HOUR DRUG HOTLINE:
(707) 224-DRUG**

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GRAND JURY
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NAPA COUNTY GRAND JURY
P.O. BOX 5397
NAPA, CALIFORNIA 94581

June 8, 2010

The Honorable Stephen T. Kroyer
Presiding Judge
Superior Court of the State Of California
County of Napa
825 Brown Street
Napa, CA 94559

Dear Judge Kroyer:

Pursuant to Section 933(a) of the California Penal Code, the 2009-2010 Napa County Grand Jury submits to you its Final Report on the **Napa Special Investigations Bureau, 24-Hour Drug Hotline: (707) 224-Drug**. Our investigation was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury - to protect the interests of the citizens of Napa County.

This is the eighth and last in the series of final reports we will be issuing before our term ends. I would like to acknowledge the hard work and dedication of the Grand Jury which our reports reflect. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink that reads "John K. Morris".

John K. Morris
Foreperson
2009-2010 Napa County Grand Jury



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NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

To the Citizens of Napa County:

In order to fulfill the Napa County Grand Jury's mandate to investigate all branches of county government, to be assured they are being administered honestly, effectively, and in the best interest of Napa County citizens, the 2009-2010 Grand Jury investigated members of the Napa County Criminal Justice System pertaining to the operations, effectiveness, and efficiencies of the Napa Special Investigations Bureau (NSIB).

The NSIB was formally established in 1976, through a state grant funded by the California Office of Criminal Justice Planning. Since its beginning operation in 1997, NSIB has established and/or implemented numerous programs to aid in the battle against drug traffickers, cultivators and manufacturers, and repeat high risk drug offenders. Four years ago, NSIB implemented the Drug Endangered Children Protocol (DEC). The collaborative effort focuses on facilitating a coordinated inter-agency response to families involved in drug manufacturing, sales, possession, and use when children are present in the home. Also, NSIB, in conjunction with the Napa County DA, Napa County Adult Probation Department, and The California Department of Corrections Parole Unit, is involved in a cooperative effort to coordinate and pursue intensive supervision of adult probationers and parolees (Parolee, Probation Offender Program)

In the course of this investigation, the Grand Jury discovered that Napa County had a proliferation of the use, sales, and trafficking of dangerous drugs. In FY 2008-2009, marijuana and methamphetamine were the most significant and predominant illegal drugs in Napa County. Both these substances were/are found in communities throughout the County. Methamphetamine is considered the single most dangerous health and safety threat to Napa County. While NSIB directs its efforts and assets towards all levels of illegal drug trafficking in the County, an emphasis is placed on methamphetamine since the drug is so prolific and dangerous.

The Napa County Counsel's Office reviewed this final report on NSIB issues and the Presiding Judge of the Napa County Superior Court certified that the report complies with Title 4 of the California Penal Code. The report was accepted and filed as a public document by the County Clerk.

Copies of the report are available for your review in the Napa City/County Library and on-line by following the link to the Grand Jury at <http://www.napacourt.com/>. We trust you will find this report informative.

Very truly yours,

2009-2010 Napa County Grand Jurors

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INVESTIGATIONS BUREAU
24-HOUR DRUG HOTLINE:
(707) 224-DRUG**

SUMMARY

The 2009-2010 Napa County Grand Jury, as a function of its charge to investigate and report to the citizens of Napa County on their local governmental agencies, conducted an investigation of the Napa Special Investigations Bureau (NSIB). NSIB was last investigated by the 1999-2000 Napa County Grand Jury.

NSIB was established in March 1976 through State grant funding. When grant funding expired three years later, Napa County and the cities of Calistoga, Napa, and St. Helena chose to continue funding for NSIB operations and investigations.

In 1988 the NSIB Governing Board entered into a Memorandum of Understanding (MOU) with the California Department of Justice (CDOJ), Bureau of Narcotic Enforcement (BNE). The BNE, as part of this agreement, assigned a Special Agent Supervisor to assume direct management of NSIB, under administrative control of the NSIB Governing Board. As a result of this inter-agency agreement, NSIB became one of twenty-five other county narcotic task forces participating in the BNE Statewide Regional Task Force Program. There are currently thirty-three regional task forces statewide.

NSIB and BNE, under the task force program, have combined their respective efforts and resources to conduct criminal investigations and enforcement activities aimed at combating illegal manufacturing, trafficking, and use of controlled substances throughout Napa County.

In the course of this investigation, the Grand Jury discovered that the use, sales, and trafficking of dangerous drugs has proliferated in Napa County. In fiscal year (FY) 2008-2009, marijuana and methamphetamine were the most predominant

illegal drugs in Napa County; both substances have been found throughout the County. Methamphetamine is considered the single most dangerous health and safety threat to Napa County. While NSIB directs its efforts and assets towards all levels of illegal drug trafficking in the County, an emphasis has been placed on methamphetamine since the drug is so prolific and dangerous.

In FY 2008-2009, NSIB seized approximately 90,000 marijuana plants with a street value in excess of \$260 million. During the same period NSIB also seized over 3,161 grams of methamphetamine, worth over \$230,000. NSIB personnel informed the Grand Jury that all the FY 2008-2009 methamphetamine seizures have been of “crystal” or “ice” form.

Since its inception, NSIB has established and/or implemented numerous programs to aid in the never-ending battle against drug traffickers, cultivators, manufacturers, and repeat high-risk drug offenders. Four years ago, NSIB implemented the Drug Endangered Children Protocol (DEC). The collaborative effort focuses on facilitating a coordinated inter-agency response to families involved in drug manufacturing, sales, possession, and use when children are present in the home.

The Grand Jury applauds and commends the efforts of this small group of men and women for their dedicated and professional service resulting in safer communities for the residents of the Napa Valley.

BACKGROUND

NSIB was formally established on March 1, 1976, through a state grant funded by the California Office of Criminal Justice Planning. When grant funding expired in 1979, Napa County, along with the cities of Calistoga, Napa, and St. Helena chose to maintain the funding for NSIB to continue narcotic investigations and enforcement efforts. NSIB operated under the direction of the NSIB Governing Board comprised of the chief administrators of the participating law enforcement agencies. These agencies were the:

- California Highway Patrol (CHP)
- Calistoga Police Department (CPD)
- Napa County District Attorney’s Office (DA)

- Napa County Probation Department
- Napa County Sheriff's Office (NCSO)
- Napa Police Department (NPD)
- St. Helena Police Department (SHPD)

In 1988, the NSIB Governing Board entered into a MOU with the BNE. This inter-agency agreement stipulated that the BNE would assign a Special Agent Supervisor to assume direct management of NSIB, under general administrative control of the NSIB Governing Board. NSIB, as a result of this agreement, became one of twenty-five county narcotic task forces participating in the BNE Statewide Regional Task Force program. Currently, there are thirty-three regional task forces statewide.

NSIB and BNE, under the task force program, combine their respective resources to conduct investigation and enforcement activities combating illegal manufacturing, trafficking, and use of controlled substances throughout Napa County. The MOU also provides NSIB with statewide linkage to:

- BNE regional offices
- Regional task forces
- CDOJ investigative, intelligence, and analytical services
- CDOJ training programs
- Aerial support resources

NSIB personnel are assigned by their participating parent agencies with input from the NSIB commander. In addition to personnel, these agencies contribute investigative equipment and funding for NSIB operations. Currently, the staffing of NSIB includes:

- CDOJ/BNE – one Special Agent Supervisor
- CHP – advisory non-voting member
- CPD – provides funding
- Napa County DA – one California Emergency Management Agency (CalEMA) prosecutor for drug cases
- Napa County Probation Department – one half-time CalEMA Probation Officer
- NCSO – one Sergeant, two Deputy Sheriffs, and one Secretary

- NPD – one part-time CalEMA prosecutor, Grant Police Officers, and two full-time Police Officers
- SHPD – provides funding

The NSIB Mission Statement is as follows:

MISSION

The primary mission of the Napa Special Investigations Bureau is to provide professional narcotics investigation and enforcement efforts dedicated to identifying, apprehending and prosecuting illegal narcotic and drug traffickers in Napa County. NSIB is committed to directing maximum efforts to make Napa County safe and free from the debilitating effects of drug abuse on our community.

GOALS & OBJECTIVES

To develop and train officers to conduct drug investigations effectively, thus enhancing the development and performance of conducting investigations, making arrests, and prosecuting drug traffickers.

To initiate successful investigations aimed at all levels of illegal drug traffickers, with special emphasis and focus being placed on mid-level and upper levels of illegal trafficking, i.e., retailers, distributors, wholesalers, manufacturers and smugglers of controlled substances in Napa County.

To initiate and conduct successful investigations and conduct special enforcement efforts focusing on “street level” traffickers and users of illegal controlled substances which will have a county-wide impact.

To use a narcotic/drug criminal intelligence network, in cooperation with other local, state and federal allied law enforcement agencies, on illegal activities of groups and individuals who are criminally active in the trafficking of illegal controlled substances within the confines of standard practices.

To develop, maintain and ensure harmonious and professional working relationships with all Napa County and allied law enforcement agencies to ensure a unified and cooperative effort promoting the effectiveness of the NSIB mission, goals and objectives.

To develop, utilize and maintain an aggressive and efficient use of all local, state and federal criminal as well as civil statutes to ensure the maximum effectiveness of the NSIB mission.

To initiate and conduct asset forfeiture, money laundering and financial investigations aimed at narcotic/drug traffickers in an effort to disrupt illegal financial profits derived from illegal drug trafficking

METHODOLOGY

The Grand Jury met with various individuals within the Napa County law enforcement community, including interviews with NSIB personnel. Additionally, the Grand Jury reviewed numerous documents pertaining to NSIB operations and conducted extensive internet research.

Interviews Conducted

The Grand Jury conducted numerous interviews with personnel from the following agencies, offices, and departments:

- Napa County DA
- Napa County Probation Department
- NCSO
- NPD
- NSIB field agents
- NSIB Governing Board members
- NSIB supervisory staff

Documents Reviewed

- “Local Medical Marijuana Cultivation & Possession Guidelines Under State Law SB 420,” www.CANORML.org, March 24, 2010
- “Medical Marijuana: 14 Legal Marijuana States,” www.ProCon.org, January 26, 2010
- “The NORML Stash Blog,” <http://stash.norml.org>
- Asset Forfeiture Information Spreadsheet, NSIB
- Current Budget (FY 2009/2010), NCSO
- Financial records pertaining to NSIB Special Investigations Revolving Fund (drug buy funds)
- *GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE*, California Department of Justice, August 2008
- *Medical Marijuana Program (MMP): Facts and Figures*, California Department of Public Health, March 29, 2010
- MOUs between NSIB and BNE
- NSIB Annual Reports (2007, 2008, and 2009)
- NSIB Governing Board Monthly Meeting Minutes
- NSIB Organization Chart
- NSIB personnel roster
- NSIB time records
- NSIB/BNE Policy, Procedure, and Training Manuals
- Various e-mails from staff of Napa County agencies, departments, and offices

Websites:

- <http://blog.nj.com>
- http://blogs.findlaw.com/california_case_law/2010/01/people-v-kelly-no-s164830.html
- <http://en.wikipedia.org>
- www.canorml.org
- www.cdph.ca.gov
- www.chrisconrad.com
- www.countyofnapa.org

- www.foxnews.com/politics
- www.justice.gov/dea/ongoing/calimarijuana.html
- www.latimes.com
- www.medicalmarijuana.procon.org
- www.methtaskforce.org/DEC.htm
- www.napavalleyregister.com
- www.nbcbayarea.com/news
- www.safeaccessnow.net
- www.sfgate.com
- www.whitehousedrugpolicy.gov/enforce/dr_endangered_child.html

DISCUSSION

The Grand Jury discovered that use, sales, and trafficking of dangerous drugs has proliferated in Napa County. In FY 2008-2009, marijuana and methamphetamine were the predominant illegal drugs throughout the County.

Of illegal drugs, methamphetamine is considered the most dangerous health and safety threat to the County. While NSIB directs its efforts and assets towards all levels of drug trafficking in the County, an emphasis has been placed on methamphetamine since it is so prolific and dangerous.

Fortunately, Napa County is mostly free from the traditional “street dealers,” i.e., sales of drugs from sidewalks, street corners, parks, etc. However, the most common illegal trafficker in the County is still the “retail dealer,” who concentrates on providing a consistent source of supply of controlled substances. Retailers have been found in every municipality within the County. Distributor level traffickers are the primary focus of many NSIB investigations. The distributor commonly supplies several retailers and, in most instances, obtains drugs from sources outside Napa County. Sources of supply include Alameda, Contra Costa, Solano, and Sonoma Counties, as well as the Central Valley and the Los Angeles areas. Some distributors are geographically close to the manufacturer or grower and are involved in ongoing criminal enterprises to control large-scale drug operations.

Marijuana (a.k.a. pot, weed, or bud)

Marijuana remains the most commonly abused illegal drug in Napa County. Although marijuana is not as dangerous as other illegal intoxicants, it can be argued that it is a “gateway” drug. The Grand Jury was informed that during questioning most chronic drug users say their illegal drug use began with smoking pot, usually with a family member. NSIB reports that marijuana cultivation, trafficking, and use have increased throughout the County. Drug seizures range from personal possession to single indoor or outdoor cultivation to sophisticated multi-plant growing operations, commonly known as “grows.”

During FY 2008-2009, NSIB once again joined forces with the CDOJ Campaign Against Marijuana Planting (CAMP) in its marijuana eradication efforts. In an attempt to detect outdoor marijuana grows, aerial flights over parts of rural Napa County were conducted. It is not unusual for a marijuana grow to have thousands of plants. Much of the expense for these investigations is funded by grants from the United States Drug Enforcement Agency (DEA). Due in part to these efforts, NSIB seized approximately 90,000 marijuana plants with a street value of over \$266 million (down from 130,000 plants in FY 2007-2008 with a street value of \$339 million).

Due to the remoteness of the area, the County’s northern and northeastern areas are particularly attractive to marijuana growers. Many of the large-scale outdoor marijuana grows were eradicated from California State Parks and other public lands. This is of particular concern because hunters and hikers could, and have, encountered armed cultivators. Though much of the remote land in Napa County is privately owned, marijuana growers find these areas particularly attractive since there are vineyard operations nearby. These legitimate farming operations provide an easy source of water, drip lines, and fertilizer to be exploited by the illegal growers. This can have a negative impact on the vineyard operations. The Grand Jury was informed that one vineyard owner reported losing 30,000 gallons of water from a holding tank in one night.

NSIB officials told the Grand Jury that approximately 90 percent of these large-scale, outdoor growing operations, where arrests have been made, are operated by Mexican nationals suspected of being members of Mexican drug trafficking organizations (MDTO). These operations are well organized with illegal immigrants often tending to the day-to-day needs of the grow. A mid-level

member of the MDTO provides the grower with farming instructions, food, supplies, and often firearms, including handguns, shotguns, and AK-47s. Typically, the “farmer” receives \$8,000 to \$15,000 for his summer’s worth of work. The “middle man” receives a larger cut and the top “money man” can expect to see a profit of six figures or more.

The cultivation of marijuana is a very profitable criminal enterprise with a typical six-foot plant yielding up to one pound of “finished product.” NSIB personnel have likened this “Green Rush” to the California Gold Rush due to the large sums of money generated by these current yields. The Grand Jury learned much of the “product” cultivated by the MDTO in Napa County is exported to other states, including Illinois, New York, Ohio, and Texas. This is due to the opportunity for a greater profit margin available in these states. While a pound of high-grade “bud” has a street value of around \$3,000 in California, that same pound is worth significantly more elsewhere in the United States.

Methamphetamine (a.k.a. speed, crank, crystal, ice, meth)

Methamphetamine continues to be one of the most abused drugs in Napa County and has been found in every city and incorporated section of the County. Methamphetamine is considered the single most dangerous health and safety threat to Napa County and continues to dominate NSIB resources and investigative time. NSIB personnel report arresting meth dealers as young as sixteen and as old as “the mid-sixties.”

In FY 2008-2009, NSIB methamphetamine undercover purchases totaled 701.8 grams (approximately 25 ounces). NSIB total methamphetamine seizures for that period were 3,161.5 grams (approximately 112 ounces) with a street value of \$236,467. Some of NSIB major methamphetamine seizures appear to be connected to sophisticated criminal drug trafficking organizations (DTO) operating in Napa County and throughout Northern California. In FY 2008-2009, all NSIB seizures have been of “crystal” or “ice” methamphetamine.

Most of Napa County’s methamphetamine is imported from surrounding counties and the Central Valley. The dangers from methamphetamine production activities include fire and explosions from crude and careless handling of chemicals and their reactions, respiratory complications, and toxic waste produced by these illegal operations.

Methamphetamine prices have increased dramatically over the past two years. It was reported to the Grand Jury that this is due to several factors including increased scrutiny at ports of entry, restrictions on importation of pseudoephedrine from Mexico, and simple economics of supply and demand. Methamphetamine costs spiked to approximately \$1,800 per ounce. When this report was written, the price was estimated to be \$1,200 to \$1,400 per ounce. The Grand Jury was informed that an increase in auto thefts and residential burglaries coincided with the increased cost of methamphetamine.

Prescription Drugs and Teenagers

NSIB personnel expressed concern over the rising instance of teenagers using and abusing prescription drugs. This is a growing problem throughout the State and across the nation. The Grand Jury was told that teenagers typically steal these drugs from their parents' and/or grandparents' medicine cabinets, dressers, and kitchen counters. There have been cases where teenagers have stolen prescription pads from doctors' offices and attempted to fill these forged prescriptions at local pharmacies. Oxycodone (OxyContin[®]), which is chemically related to heroin, is a favorite among teens and other drug users.

Also of major concern to NSIB is the growing "Pharm Party" (or pharmaceutical party) trend among teens today. NSIB told the Grand Jury that teens often raid their parent's prescription drug bottles for their supply. Once at the party, participants throw their pills into a big bowl and then swallow a handful and wait to see what happens, probably unaware or uncaring of the possible peril involved.

Bilingual NSIB Agents

The Grand Jury was surprised to find there is only one member of NSIB who is bilingual

Parolee, Probation Offender Program

NSIB, in conjunction with the Napa County DA, Napa County Adult Probation Department, and the California Department of Corrections and Rehabilitation, is involved in a cooperative effort to coordinate and pursue intensive supervision of adult probationers and parolees. NSIB conducts searches of individuals who are

on felony probation or parole, some of whom are career criminals or repeat offenders and are habitually involved in illegal drug activities. NSIB is committed to ensuring these offenders comply with the terms and conditions of their probation or parole. Repeat offenders, found in violation of their probation or parole or who are found to be in violation of the law, are brought to the attention of the Probation Department and the DA for prosecution. NSIB reports an outstanding cooperative effort among all agencies involved.

Drug Endangered Children Protocol

In the late 1990's the State of California Drug Enforcement Agency initiated a pilot Drug Endangered Children program to protect and advocate for children who are endangered by the use, trafficking, and manufacturing of illegal drugs. Funding was initially provided to only a few counties to develop DEC programs. Over time, other California counties followed suit by finding their own funding. Napa County implemented its DEC protocol approximately four years ago. In October 2008, President Bush signed the *Drug Endangered Children Act of 2007* into law to provide additional funding for state DEC programs.

The County's DEC protocol is a collaborative effort among NSIB, Child Welfare Services (CWS), Napa County DA, and Queen of the Valley Medical Center (QVMC). The focus of this program is to facilitate a coordinated response to families involved in drug manufacturing, sales, possession, and use of illegal controlled substances, primarily methamphetamine, when children are present in the home, potentially exposing them to a hazardous drug environment. It is hoped this will aid in breaking the cycle of parent/child addiction as well as breaking the criminal cycle. It is CWS policy to utilize this interagency approach to ensure the protection of children and provide services to the families of Napa County. The protocol was established to formalize cooperation between NSIB and CWS in a joint response to drug endangered children. The program allows for the immediate removal of children from a hazardous drug environment, all necessary medical care for the child, and family services to either effect family reunification or adoption. NSIB personnel report this is a "great program."

Asset Forfeiture/Financial Investigations

Another area of NSIB concern is the laundering of currency from illegal drug trafficking through financial institutions or businesses. The Grand Jury learned

that Napa County is attractive to the “illegitimate” investor. Through financial investigations, County law enforcement dissuades illicit drug financiers, wholesalers, and distributors from investing in Napa County.

NSIB financial investigation and asset forfeiture program is committed to full use of the federal and state money laundering and asset forfeiture statutes. These laws are aimed at the seizure of currency and property acquired through drug trafficking and manufacture. NSIB works closely with the Napa County DA to aggressively pursue the asset forfeiture seizures and/or financial criminal investigations in court.

Asset seizure is strictly regulated and the accused party has the right to appeal any forfeitures. If asset forfeiture is upheld by the Court, proceeds from the seized asset are allocated as follows:

- 50 percent to NSIB (This money is split among participating agencies)
- 24 percent to the State’s General Fund
- 15 percent to a County Fund for preventative programs
- 10 percent to the DA
- 1 percent to the California District Attorneys’ Association

NSIB Investigations Revolving Fund

NSIB maintains a “Revolving Fund” to finance undercover drug purchases, for use as “flash money,” and payments for information and services. The need for increased investigative funds was expressed by NSIB personnel. Additionally, continuing State and County budget cuts have reduced the number of agents on the task force compared to ten years ago. As with asset seizures, the NSIB Revolving Fund is subject to strict controls and audits. NSIB supervisory staff members use best practices to maintain transparency and accountability in all operational areas.

NSIB Probation Officer

The NSIB unit includes one part-time probation officer (PO). In addition to working with NSIB, this individual has a small caseload of high-risk drug offenders to supervise.

Napa County POs are not police officers and do not have the authority to conduct investigations nor can they carry firearms. They do carry pepper spray. Pursuant to an NSIB/Probation Department agreement, the PO attached to NSIB cannot be left alone or placed in potentially hazardous situations when conducting NSIB business. It is the NSIB supervisor's job to protect the PO. The PO is very useful to NSIB because he knows the probationers and shares appropriate information with the task force.

NSIB supervisory staff expressed the desire for Napa County to arm the PO attached to their unit. The Grand Jury was provided information that Napa County was one of only three counties, with BNE task forces, that does not arm its drug and gang task force POs. Contra Costa and Santa Cruz Counties were reported to be the other two. The Grand Jury found conflicting information when trying to confirm this statement. The latest available data (2008) from the Chief Probation Officers of California (CPOC) states that in addition to Napa County, the counties of Alameda, Contra Costa, Marin, Santa Clara, Santa Cruz, and Solano do not arm their drug and gang POs. The Grand Jury learned this information is out of date. An article was discovered confirming that Santa Clara County has now armed its gang and other dangerous unit POs. This discrepancy is possibly due to the fact the CPOC does its survey every other year. A current survey is underway but results were not available at the time of this report.

The Napa County Probation Department Safety Committee has studied the possibility of arming this PO but currently has not made a recommendation to do so.

Proposition 215/Senate Bill 420

Proposition 215, also known as the Compassionate Use Act (CUA) of 1996, was passed by the voters of California in November 1996. This statewide voter initiative was passed with 55.6 percent of the votes. The CUA allows patients and their designated primary caregivers, to possess and cultivate marijuana for personal medical use. It has since been expanded to protect a growing system of collective and cooperative cultivation and distribution operations.

The CUA added section 11362.5 to the California Health and Safety Code (H&S). This H&S section states, in part, that the CUA is to ensure that:

- Seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana
- Patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction

Section 11362.5 additionally states, in part, that:

- Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes
- Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient

This law conflicts with federal law and has generated extensive and heated debate in California and nationwide. A large part of the concern is not what H&S section 11362.5 says, but rather what it does not say. It does not specify any possession and/or cultivation limits for either the patient or the patient's caregiver. NSIB, as well as other local law enforcement agencies and offices, told the Grand Jury that this omission has caused a huge "gray area" that is easily exploited by drug dealers hiding behind "medicinal marijuana." The Grand Jury discovered that, since the passage of Proposition 215 in 1996, thirteen other states have enacted similar laws legalizing medical marijuana. The primary difference is that the laws enacted in each of those thirteen states include limits on possession and cultivation.

On September 20, 2003, the California Legislature passed Senate Bill (SB) 420, also known as the Medical Marijuana Program Act (MMP). Governor Davis signed it into law on October 13, 2003, and it went into effect on January 1, 2004. The MMP was intended to clarify certain implementation issues surrounding Proposition 215. Among other things, it required the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary care-givers through a statewide identification card program. Medical marijuana identification

cards are intended to help law enforcement identify and verify that cardholders are entitled to cultivate, possess, and transport marijuana without being subject to arrest.

In addition to establishing the identification card program, the MMP also defined certain terms, set possession guidelines, and recognized qualified rights to collective and cooperative cultivation of medical marijuana. Under these guidelines, qualified patients and their primary caregivers may possess no more than eight ounces of dried marijuana and/or six mature (or twelve immature) marijuana plants (larger amounts are allowed when such quantities are recommended by a physician). The legislation also empowered local governments to approve and/or maintain ordinances permitting patients to possess larger quantities than allowed under State guidelines.

On January 21, 2010, the California Supreme Court in *People v. Kelly* (2010) 47 Cal.4th 1008, declared the state limits on medical marijuana possession and cultivation, as established by SB 420, were unconstitutional. The Court ruled that because the CUA was a voter-approved initiative, it could only be amended with the voters' approval.

Local law enforcement officials stated the Court's ruling has made the already murky situation surrounding medical marijuana worse and has created even more difficulties in the investigation, arrest, and prosecution of illegal marijuana cultivation and possession. NSIB personnel described the current situation as "a mess." When asked his honest opinion of the current state of medical marijuana laws, one senior law enforcement official provided the Grand Jury with a response that cannot be printed.

The State does not provide any regulation or standard for the cultivation and/or distribution of medical marijuana. As such, throughout California, state and local law enforcement cannot distinguish between illegal marijuana grows and those that qualify as medical exceptions. Many self-designated medical marijuana growers are, in fact, growing marijuana for illegal use.

Napa law enforcement personnel provided the Grand Jury with their own stories to illustrate their frustrations concerning this issue. These stories ranged from an unemployed "cooperative grower" who, in addition to his backyard marijuana plants, was in possession of drug scales, packaging material, and a significant

amount of cash, described to the Grand Jury as “in the low-to mid-five figures.” Officers stated that there was no doubt in their minds this person was a drug dealer. However, this was not, in their opinion, “a slam dunk” case due to the cloudy definition of a cooperative grow versus an illegal cultivation operation. Officials also voiced concern regarding the possibility of seizing plants from what they judge is an illegal growing operation, only to have the suspect later acquitted or not prosecuted after which the County may be liable for the monetary loss of the now dead plants.

The majority of law enforcement personnel with whom the Grand Jury spoke supported the people’s decision to provide marijuana for patients with medical needs. However, they do not support illegal possession and consumption by a “not so needy patient hiding behind a medical marijuana card because of a broken eyebrow.”

The DEA and its state and local counterparts are routinely reporting that large-scale drug traffickers hide behind and invoke Proposition 215, even when there is no evidence of any medical claim. In fact, many large-scale marijuana cultivators and traffickers escape state prosecution because of bogus medical marijuana claims. Some prosecutors are reluctant to charge these individuals due to the state of confusion that presently exists in California.

The Grand Jury was informed that many people believe legalization of marijuana will solve all problems presently associated with marijuana. Legalization will not only generate local and state tax dollars but will put an end to the violence, damage, and destruction caused by illegitimate large-scale growing operations. The law enforcement personnel the Grand Jury interviewed did not share this view and expressed concern that the current situation will get even worse if the voters approve the November 2010 ballot measure legalizing marijuana.

The Grand Jury was told with legalization, the Napa Valley will continue to attract out-of-town MDTO’s and their illicit growing operations. There will still be armed criminals growing marijuana on public and private lands. Vineyard operations will continue to be damaged and supplies looted. Water supplies will still be compromised, stolen, and contaminated.

From environmental damage to public safety, law enforcement warned the Grand Jury that problems will continue, even if voters opt to legalize it in California,

marijuana will still be illegal in most parts of the country. As long as there are huge profits to be made, there will be criminals standing in line to exploit the opportunity.

COMMENDATIONS

The Grand Jury appreciates and commends the members of NSIB for their dedicated efforts in their ongoing battle against drug traffickers in Napa County. This small group of law enforcement professionals do an outstanding job with the limited resources provided them.

FINDINGS

The 2009-2010 Grand Jury finds:

1. The Napa Special Investigations Bureau (NSIB) was formally established on March 1, 1976, through a state grant funded by the California Office of Criminal Justice Planning.
2. In 1988, the NSIB Governing Board entered into a MOU with the CDOJ, BNE.
3. NSIB is one of thirty-three other county narcotic task forces participating in the BNE Statewide Regional Task Force program.
4. NSIB's primary focus is to conduct criminal investigations and enforcement activities aimed at combating illegal manufacturing, trafficking, and use of illegal controlled substances throughout Napa County.
5. NSIB personnel are assigned by their participating parent agencies with input from the NSIB commander.
6. CPD and SHPD contribute funding in lieu of personnel.
7. In 2009 methamphetamine and marijuana were the most significant and predominant illegal drugs in Napa County.
8. While NSIB directs its efforts and assets towards all levels of illegal drug trafficking in the County, an emphasis has been placed on methamphetamine because the drug is so prolific and dangerous.
9. In most instances Napa County methamphetamine dealers obtain their drugs from sources in surrounding counties and the Central Valley.
10. In FY 2008-2009 NSIB seized approximately 90,000 marijuana plants with a street value in excess of \$266 million.

11. Ninety percent of the large-scale growing operations in Napa County involving arrests are operated by Mexican nationals suspected of being members of MDTO.
12. Much of the marijuana grown in Napa County is exported to other states including Illinois, New York, Ohio, and Texas.
13. Methamphetamine is considered the single most dangerous health and safety threat to Napa County and continues to dominate NSIB resources and investigative time.
14. Methamphetamine has been found in every municipality and unincorporated section of the County.
15. In FY 2008-2009 all NSIB methamphetamine seizures have been of “crystal” or “ice” form.
16. “Pharm Parties” among teens in the community are a growing concern to NSIB and should be to the community in general.
17. NSIB currently has only one bilingual agent.
18. NSIB, in conjunction with the DA, Adult Probation Department, and the California Department of Corrections Parole Unit, is involved in a cooperative effort to coordinate and pursue intensive supervision of adult probationers and parolees (Parolee, Probation Offender Program).
19. The DEC Protocol was implemented four years ago and is a collaborative effort by NSIB, CWS, Napa County DA, and QVMC.
20. State and County budget cuts have reduced the number of NSIB agents as compared to past years.
21. The PO attached to NSIB, like all Napa County POs, does not carry a firearm.
22. NSIB has expressed the desire to have the County arm the PO attached to NSIB.
23. The Probation Department Safety Committee currently has not recommended arming the PO attached to NSIB.
24. Local law enforcement officials stated the California Supreme Court’s ruling in *People v. Kelly (supra)* has made the already murky situation surrounding medical marijuana worse and has created even more difficulties in the investigation, arrest, and prosecution of illegal marijuana cultivation and possession.
25. Other than a list of “guidelines” provided by the California Attorney General in 2008, the State does not provide the County or NSIB with any clear regulation for the cultivation and/or distribution of medical marijuana.
26. The law enforcement personnel the Grand Jury interviewed expressed concern that the legalization of marijuana in California will not make marijuana related problems, issues, and violence disappear.

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RECOMMENDATIONS

The 2009-2010 Grand Jury recommends:

1. NSIB selection process emphasize bilingual competency.
2. The Napa County Probation Department Safety Committee, the County Executive Office (CEO), and the BOS, explore the option to arm the PO attached to NSIB, as well as other PO's dealing with high risk probationers and parolees.
3. NSIB Governing Board, CEO, and the BOS identify and implement additional NSIB investigative funding.
4. NSIB Governing Board, the CEO, and the BOS bring NSIB staffing back to that in FY 2000 level.

REQUEST FOR RESPONSES

The 2009-2010 Grand Jury requests responses to recommendations from:

- BOS: All recommendations
- CEO: Recommendations 2, 3, and 4
- Chief Probation Officer: Recommendation 2
- NSIB Governing Board: All recommendations
- NSIB Special Agent Supervisor: Recommendation 1

GLOSSARY

BNE---California Department of Justice, Bureau of Narcotic Enforcement

CalEMA---California Emergency Management Agency

CAMP---Campaign Against Marijuana Planting

CEO--- Napa County Executive Office

CHP---California Highway Patrol

CPD---Calistoga Police Department

CPOC--- Chief Probation Officers of California

CUA--- Compassionate Use Act of 1996 CWS--- Child Welfare Services

DA---Napa County District Attorney's Office

DEA--- United States Drug Enforcement Agency

DEC---Drug Endangered Children Protocol
CDOJ---California Department of Justice
DPH---California Department of Public Health
DTO---Drug trafficking organizations
FY---Fiscal Year
HS---California Health and Safety Code
MDTO---Mexican drug trafficking organizations
MMP---Medical Marijuana Program Act
MOU---Memorandum of understanding
NCSO---Napa County Sheriff's Office
NPD---Napa Police Department
NSIB---Napa Special Investigations Bureau
PO---Probation Officer
QVMC---Queen of the Valley Medical Center
SB 420---California Senate Bill 420
SHPD---St. Helena Police Department

APPENDIX

Appendix I---Napa Special Investigation Bureau Governing Board
Appendix II--- Napa Special Investigation Bureau Training Programs
Appendix III---2009 Napa Special Investigation Bureau: Warrants and Arrests by
Month
Appendix IV--- Napa Special Investigation Bureau: Arrests by Location in 2009
Appendix V--- Napa Special Investigation Bureau: Arrests by Criminal Offense
in 2009
Appendix VI--- Napa Special Investigation Bureau: Weapons Seized in 2009
Appendix VII--- Napa Special Investigation Bureau: Drugs Purchased in 2009
Appendix VIII--- Napa Special Investigation Bureau: Drugs Seized in 2009

APPENDIX I

**NAPA SPECIAL INVESTIGATIONS BUREAU
GOVERNING BOARD**

Chief Richard Melton
Napa Police Department
Chairman, NSIB Governing Board

Sheriff Doug Koford
Napa County Sheriff's Department

Ms. Mary Butler
Chief Probation Officer
Napa County Probation Department

Chief Jonathan Mills
Chief of Police
City of Calistoga

Mr. Gary Lieberstein
District Attorney
Napa County District Attorney

Chief Monty Castillo
Chief of Police
City of St. Helena

Mr. John George
Senior Special Agent in Charge
California Department of Justice
Bureau of Narcotic Enforcement

Captain Mark Rasmussen
Commander, Napa Area
California Highway Patrol

NSIB Commander

Gary Pitkin, Special Agent Supervisor
California Department of Justice
Bureau of Narcotic Enforcement
Napa Special Investigations Bureau

APPENDIX II

NAPA SPECIAL INVESTIGATIONS BUREAU TRAINING PROGRAMS

Because drug investigations have become very specialized, complex, and technical, in 2009 NSIB continued to place a priority upon its training program to ensure that each agent received training in all areas of drug investigation and enforcement. NSIB is committed to the development of its personnel through training. New agents are required to attend and complete several courses of instruction to provide the agent with basic, intermediate, and advanced levels of instruction related to drug investigation and enforcement.

Each new NSIB agent is required to complete the following courses:

California DOJ Basic Narcotic Investigators Course	80 hrs.
California DOJ Informant Development Course	36 hrs.
Search Warrant Preparation	8 hrs.

During their assignment at NSIB, agents also receive the opportunity to attend various elective courses of training which include:

California DOJ Clandestine Laboratory Course	36 hrs.
California DOJ Specialized Surveillance Course	24 hrs.
California DOJ Financial Investigation Course	40 hrs.
California DOJ Advanced Asset Forfeiture Course	40 hrs.
California DOJ C.A.M.P. Survival Course	36 hrs.
California DOJ Under the Influence Drug Course	24 hrs.
Money Laundering Investigation Course	16 hrs.
Search Warrant Tactical Entry Course	24 hrs.
Under the Influence for Trainers	60 hrs.
Advanced Narcotic Investigations Course	40 hrs.
Short Term Airborne Operations	16 hrs.

Each year agents also attend the California Narcotics Officers Association Annual Training Conference (24 hrs.)

APPENDIX III

**2009 NAPA SPECIAL INVESTIGATION BUREAU:
WARRANTS AND ARRESTS BY MONTH**

Month	Felony	Misdemeanor	Total
January	5	0	5
February	16	4	20
March	8	1	9
April	12	3	15
May	5	1	6
June	9	2	11
July	9	1	10
August	12	3	15
September	15	0	15
October	16	1	17
November	6	1	7
December	10	1	11
Total	123	18	141

APPENDIX IV

**NAPA SPECIAL INVESTIGATIONS BUREAU:
ARRESTS BY LOCATION IN 2009**

Location	Arrests	Searches	Investigation Hours
City of Napa	88	92	1,613.5
Calistoga	2	1	57.0
St. Helena	2	2	27.0
Napa County	25	31	354.5
American Canyon	8	4	94.5
Out of County	18	10	187.5
Total	143	140	2,334

APPENDIX V

**NAPA SPECIAL INVESTIGATIONS BUREAU:
ARRESTS BY DRUG AND CRIMINAL OFFENSE IN
2009**

Charges	Methamphetamine	Marijuana	Other	Heroin	Cocaine
Sales	4	6	0	0	0
Possession for Sale	34	10	1	0	1
Possession	16	4	3	1	1
Cultivation	N/A*	21	N/A	N/A	N/A
Paraphernalia	4	N/A	0	0	N/A
Total	58	41	4	1	2

*: N/A = Not applicable

Other Crimes	Number of arrests
Weapons Violations	6
Probation/Parole Violation	10
Child Endangerment	3
Under the Influence	4
Contributing	1
Warrant	11
Total	35

APPENDIX VI

**NAPA SPECIAL INVESTIGATIONS BUREAU:
WEAPONS SEIZED IN 2009**

Month	Rifles	Shotguns	Handguns	Other
January	0	0	0	0
February	3	1	2	0
March	0	1	0	0
April	0	0	5	7
May	0	0	0	0
June	1	0	2	0
July	13	0	9	7
August	1	0	4	1
September	10	13	2	1
October	0	0	0	0
November	0	0	0	0
December	2	0	4	0
Total	30	15	28	16

APPENDIX VII

**NAPA SPECIAL INVESTIGATIONS BUREAU:
DRUGS PURCHASED IN 2009**

Drug	Number of "Buys"	Amounts, grams	Cost, \$
Methamphetamine	26	701.8	5,341
Cocaine	1	3.6	240
Marijuana	2	19.5	200
MDMA ("Ecstasy")	3	1.4	145
Total	32	726.3	\$5,926

APPENDIX VIII

**NAPA SPECIAL INVESTIGATIONS BUREAU:
DRUGS SEIZED IN 2009**

Drug	Number of Seizures	Amount	Estimated Value, \$
Methamphetamine	49	3,161.5 grams	236,476
Marijuana plants	32	88,860 plants	266,580,000
Marijuana	28	30,572 grams	195,000
Cocaine	3	58.2 grams	3,492
Prescription Medications	4	48 tablets	340
Ecstasy (MDMA)	3	52 tablets	2,810
Paraphernalia	16	16 glass pipes	80
Psycilobin	4	1,043.4 grams	4,715
Heroin	1	0.8 gram	30
Hashish	1	21.6 grams	864
Total	141	Not Applicable	\$267,023,807