
2001-2002 MARIN COUNTY GRAND JURY

**TITLE OF REPORT: A Review of Excessive Force in the Sheriff's
Department: Citizen Complaints, Legal Claims, Lawsuits**

Date of Report: May 10, 2002

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A REVIEW OF EXCESSIVE FORCE IN THE SHERIFF'S DEPARTMENT: CITIZEN COMPLAINTS, LEGAL CLAIMS, LAWSUITS

SUMMARY

The Grand Jury finds that the Citizen Complaint procedure for the Marin County Sheriff's Department works well, and is administered fairly and in a timely manner.

The Grand Jury reviewed Citizen Complaints¹ alleging excessive force from 1996 through 2001. During that period of time, 99 citizen complaints were filed and investigated. Twenty-four of these alleged excessive force; only five were sustained.

The Citizen Complaint process does not result in any monetary compensation to the citizens. Rather, if the Citizen Complaint is sustained, the officers involved are subject to discipline. In addition to the Citizen Complaint procedure, there is another method a citizen may choose if he or she wishes to pursue a claim for money damages. This is known as a Legal Claim and has the potential to become a lawsuit.²

Between July 1, 1996, and December 31, 2001, twenty-two Legal Claims alleging excessive force were lodged against the County of Marin and the Sheriff's Department. Only one resulted in any monetary settlement and that amount was \$500. In the same five and a half year period, ten lawsuits alleging excessive force were filed against the County of Marin and the Sheriff's Department. Of these lawsuits four resulted in no monetary settlement; one was settled for \$79,210; the other five were settled for a total of \$57,635.

Citizen Complaints, Legal Claims and lawsuits that allege excessive force against the Marin County Sheriff's Department appear to be on the low side. In the six years the Grand Jury studied, no serious or substantial physical injuries occurred to any citizen who filed a Citizen Complaint, Legal Claim, or lawsuit.

The Grand Jury concluded that the Citizen Complaint procedure for Marin County Sheriff's Department works well. The Grand Jury does recommend, however, that a modern, computerized tracking system be put in place for Citizen Complaints, Legal Claims and lawsuits alleging excessive force.

¹ California Penal Code Sec. 832.5 mandates that all police agencies in California have a Citizen Complaint procedure.

² California Government Code Sections 945.2 *et seq.*

BACKGROUND

Prior Marin County Grand Juries in 1991, 1992, and 1997 issued reports on some aspects of the Citizen Complaint procedures in Marin County for its ten police departments and the Sheriff's Department. A number of years have passed and the 2002 Grand Jury elected to study the Citizen Complaint procedure of the Marin County Sheriff's Department with particular emphasis on allegations of excessive force. In addition, we examined the Legal Claim procedure under the California Government Code and lawsuits involving excessive force against the Sheriff's Department.

METHODOLOGY

The Grand Jury interviewed seven members of the Sheriff's Department and obtained assistance from the Marin County Counsel's Office in compiling information. The Grand Jury also extensively reviewed Citizen Complaint investigation files for a six-year period. In addition, the Grand Jury reviewed lawsuit files lodged with the Marin County Superior Court and a summary of Legal Claims filed against the County of Marin and the Sheriff's Department.

DISCUSSION

California Penal Code Section 832.5 mandates that all police agencies in California have a Citizen Complaint procedure. The Citizen Complaint process does not result in any monetary compensation to the citizens. Rather, if the Citizen Complaint is sustained, the officers involved are subject to discipline. In addition to the Citizen Complaint procedure, there is another method a citizen may choose if he or she wishes to pursue a claim for money damages. This is known as a Legal Claim and has the potential to become a lawsuit.

Citizen Complaint Procedure

Any citizen can make a complaint about alleged misconduct of an employee or deputy in the Marin County Sheriff's Department at any sheriff substation or at headquarters in the Civic Center. A form is provided to the citizen to fill out. A copy of this form is provided as Appendix A. Once the form is completed, it is submitted to the Sheriff's Department and an employee or deputy prepares a worksheet (see Appendix B) to accompany the complaint form. When completed, both the worksheet and the complaint form are sent to the commander of the affected bureau. (There are a number of bureaus within the Sheriff's Department, such as Patrol, Court Services and County Jail.) The commander, generally a Captain, reviews the papers. A copy also is forwarded to the Bureau Lieutenant. The Captain and Lieutenant refer the papers to an investigating officer who generally is a Sergeant within the affected bureau.

It is the duty of the investigating officer to thoroughly investigate the Citizen Complaint. The complainant is interviewed along with any witnesses that the complainant has identified in the complaint. In addition, the investigating officer interviews the deputy(ies) or Sheriff's employee(s) alleged to have engaged in some impropriety, along with any other witnesses from the Sheriff's Department. The investigating officer also gathers together all physical evidence that would relate to the complaint, such as videotapes, photographs or other items. The investigating officer then prepares a final narrative report and recommendations.

There are three tiers to the report review process: (1) The Bureau Captain and Lieutenant initially review the report and make comments, if appropriate. (2) The Under Sheriff of the department reviews the report and makes comments, if appropriate. (3) The Sheriff performs a final review, with additional comments or modifications, and then approves the report.

Number of Citizen's Complaints

Citizen Complaints are classified as follows: excessive force; mishandled personal property; rudeness; false arrest; failure to take a report on a crime or disturbance; trespass to property; improper search procedures; and discrimination under the American's With Disabilities Act.

For purposes of this report the Grand Jury focused on excessive force allegations. We reviewed records involving allegations of excessive force for six years, from 1996 to 2001. The following table contains a breakdown of excessive force Citizen Complaints during that period, along with all Citizen Complaints lodged in general for the same time span.

Year	Total Complaints Received	Excessive Force Complaints
1996	22	5
1997	16	2
1998	12	2
1999	23	9
2000	13	3
2001	13	3

For the six years that were studied, there were a total of 99 Citizen Complaints. Twenty-four of these alleged excessive force, an average of four per year.

The Sheriff's Department has a sworn deputy force of 209 as well as 108 non-sworn employees. The population of Marin County is approximately 240,000, and the

unincorporated areas that the Sheriff's Department serves have approximately 68,000 people. The unincorporated areas of Marin do not just encompass rural and West Marin areas. For instance, large population areas like Tamalpais Valley, Homestead Valley and Strawberry are unincorporated, but have Mill Valley mailing addresses. Other unincorporated areas include Marin City, Kentfield, Santa Venetia, Greenbrae, and Marinwood.

Outcome of Alleged Excessive Force Citizen Complaints

The California Penal Code Sections 832.5 and 832.7 set forth general state guidelines for the Citizen Complaint procedure. Section 660.04 of the Sheriff's Department Regulations describes six categories of "findings" which can be made:

Unfounded	Investigation indicates the act or acts did not involve Sheriff's personnel.
Exonerated	Acts did occur, but were justified, lawful and proper.
Not Sustained	Investigation fails to discover sufficient evidence to prove or disapprove allegations made.
Sustained	Investigation discloses sufficient evidence to prove allegations made in the complaint.
Not Involved	Investigation established the subject of the complaint was not involved in the alleged incident.
Other Misconduct	Investigation discloses misconduct not part of the original complaint.

In addition, complaints are sometimes simply "withdrawn".

The following is the outcome of the investigation of alleged excessive force Citizen Complaints for the six years that the Grand Jury studied:

Year	Unfounded	Exonerated	Not Sustained	Sustained	Withdrawn
1996	1	3	1	0	0
1997	0	1	1	0	0
1998	0	1	1	0	0
1999	4	1	0	2	2
2000	0	0	0	3	0
2001	2	1	0	0	0

No findings of "Not Involved" or "Other Misconduct" were made.

Section 605.00 of the Sheriff's Department Regulations, entitled "Penalties", lists the degrees of discipline that can be imposed on a deputy or employee of the Sheriff's Department in the event of misconduct. Misconduct growing out of a Citizen Complaint is covered under the same Section. There are eight categories of discipline:

1. Oral Reprimand
2. Written Reprimand
3. Voluntary Surrender of Time Off in Lieu of Other Action
4. Voluntary Surrender of Accumulated Overtime in Lieu of Other Action
5. Reduction in Pay
6. Suspension
7. Demotion
8. Dismissal from Service

Of the five sustained Citizen Complaints alleging excessive force, one deputy ultimately resigned under pressure, and four were appropriately disciplined. One of the four subsequently left the Sheriff's Department.

The Grand Jury observed that a number of excessive force allegations arose when a suspect was booked into the county jail facility while under the influence of alcohol or drugs. Frequently the suspect may be uncooperative and unruly and the deputies may have to use force in the booking procedure. Subsequently, the suspect may lodge a Citizen Complaint. However, video cameras record the booking process. When the video is viewed, the Citizen Complaint is often found to be without merit or is simply dropped by the claimant. The video cameras in the booking area are a valuable tool, both to the suspects and the deputies.

Penal Code Section 832.5 requires that a claimant be notified of the outcome or disposition of a Citizen Complaint. Note that the form utilized by the Sheriff's Department (Appendix B) also requires that the claimant be notified. In addition, a Sheriff's Department pamphlet entitled "Citizen Involvement Policy" indicates that a claimant can appeal the disposition of the Citizen Complaint to the Sheriff for an additional review. The Grand Jury was unable to discover if such appeals have been made.

Legal Claims Against Marin County and the Sheriff's Department for Alleged Excessive Force

Under the California Government Code³ there is no requirement that a claimant file a Citizen Complaint with the Sheriff's Department before filing a Legal Claim or lawsuit against the County and the Sheriff's Department. However, a Legal Claim for monetary

³ See Footnote 2

damages has to be filed with the county prior to filing a lawsuit. The Claim must be filed within six months of the date of the incident, injury or loss. Thereafter, the county has up to six months to either accept or reject the Claim. If the county rejects the Claim by written notice to the claimant there is a six-month statute of limitations period for a lawsuit to be filed. If no written notice of rejection of the Claim is sent to the claimant, the claimant has two years from the date of the incident to file a lawsuit. There also is a procedure for filing late Claims under certain conditions.

During the period July 1, 1996 through December 31, 2001, 22 Legal Claims were filed against the County of Marin and the Sheriff's Department alleging excessive force. Of these, eight eventually proceeded to lawsuits, one was settled for \$500, and the remaining 13 went no further.

Lawsuits against the Sheriff's Department

As previously noted, there is no requirement that a citizen file a Citizen Complaint prior to filing a Legal Claim or a lawsuit against the County of Marin and the Sheriff's Department. In fact, if a claimant consults an attorney, the attorney may advise the citizen not to file a Citizen Complaint as the attorney might not want his client to give an extensive interview to the Sheriff's Department or to supply the identity of witnesses.

During the period between July 1, 1996 and December 31, 2001, there were a total of 29 lawsuits filed against the Marin County Sheriff's Department. Of the 29 lawsuits, ten involved allegations of excessive force. Of the ten, four were resolved with no payment, one was settled for \$79,210 and the other five were settled for a total of \$57,635. None went to trial.

Record Keeping

In reviewing Citizen Complaint files, the Grand Jury noted that the Sheriff makes a special effort to warn his deputies that any misconduct in the future will result in severe disciplinary action. Every Citizen Complaint is thoroughly investigated, and no Citizen Complaint is taken lightly. The Sheriff and his senior officers take a serious, no-nonsense position on alleged misconduct of their officers. They claim not to tolerate any patterns of misconduct. Deputies who have a pattern of repeat allegations of misconduct are monitored closely by their superiors. However, the record keeping process currently used makes it very difficult to track these patterns.

The Grand Jury noted that the basic data on Citizen Complaints filed over the last six years is lodged in a single binder. A form for each case (see Appendix C) summarizes the name of the claimant, the date of the incident, the name(s) of the deputy(ies) or employee(s) involved, a brief description of the nature of the Claim, and its disposition. There is no information on whether the Citizen's Complaint proceeded to a Legal Claim or lawsuit, or if there was a monetary settlement. In addition, the individual Citizen Complaint investigation files or packages contain no information on any subsequent Legal Claims, lawsuits or monetary settlements.

Due to the present form of record keeping, the Grand Jury had to enlist the help of the County Counsel's office (the attorneys for the Sheriff's Department) to gather the information on Legal Claims, lawsuits, and monetary settlements where excessive force was alleged.

FINDINGS

1. The Citizen Complaint procedure in Marin County for the Sheriff's Department functions well. Every Citizen Complaint is thoroughly investigated and fairly administrated.
2. No serious injuries occurred to complainants in any of the incidents of excessive force alleged either at the Citizen Complaint level, the Legal Claim against the county level, or the lawsuit level.
3. Record keeping is not computerized. This makes it difficult to track and cross-reference Citizen Complaints, administrative appeals, Legal Claims and lawsuits.

RECOMMENDATIONS

The Grand Jury recommends:

1. That the current Citizen Complaint procedure remain in place and that the Sheriff's Department continue to run the Citizen Complaint system as thoroughly and fairly as they have in the past six years.
2. That the Citizen Complaint logging and data collection system be computerized and include:
 - a. Citizen Complaints noted by category;
 - b. Whether a Citizen Complaint is appealed or subsequently progresses to a Legal Claim and/or a lawsuit, and whether there is any subsequent monetary settlement or payment growing out of the Claim or lawsuit;
 - c. A category for tracking Legal Claims or lawsuits when no Citizen Complaint is filed;
 - d. The identity(ies) of the Sheriff's deputy(ies) or employee(s) involved in a Citizen Complaint, Legal Claim or lawsuit, with particular attention to excessive force allegations, so that a rapid tracking system is readily available for discipline purposes;

- e. A means of cross tracking Citizen Complaints, Claims and/or lawsuits, both in terms of multiple filings by the same citizen as well as multiple complaints against the same deputy or employee.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses from The Marin County Sheriff's Department to all the Findings and Recommendations.

APPENDICES

A.....Marin County Sheriff's Office Citizen Complaint Report

B.....Marin County Sheriff's Office Personnel Investigation Worksheet

C.....Marin County Sheriff's Department Special Investigation/Citizen Complaint Case Record

Appendix A

ADDRESS ALL
 COMMUNICATIONS
 TO THE SHERIFF



SHERIFF'S OFFICE
 COUNTY OF MARIN
 HALL OF JUSTICE, CIVIC CENTER
 SAN RAFAEL, CALIFORNIA 94903

TELEPHONE
 499-7233

CITIZENS COMPLAINT REPORT Report No. _____ Date Filed _____

REPORTING PARTY

NAME _____

HOME ADDRESS _____ PHONE NUMBER _____

BUSINESS ADDRESS _____ PHONE NUMBER _____

VICTIM OF MISCONDUCT (If different than reporting party)

NAME _____

HOME ADDRESS _____ PHONE NUMBER _____

BUSINESS ADDRESS _____

DATE/TIME OF INCIDENT _____ LOCATION _____

WITNESS(ES)

NAME	ADDRESS	PHONE NO.
NAME	ADDRESS	PHONE NO.

NAME OR DESCRIPTION OF SHERIFF'S EMPLOYEE WHO IS THE SUBJECT OF COMPLAINT

PENAL CODE SECTION 148.6

You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints. You have the right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings relating to complaints must be retained by this agency for at least five years. It is against the law to make a complaint you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.

I have read and understand the above statement and I certify that the information contained in tis report is true.

Please complete narrative on back -

Signature _____

WAS ANY PARTY TO THE COMPLAINT, OR WITNESS, DETAINED OR INTERVIEWED BY THE SHERIFF'S DEPARTMENT?
 IF SO, WHOM _____

MAY THE INVESTIGATOR INTERVIEW THE COMPLAINANT AT HIS/HER PLACE OF EMPLOYMENT? YES NO

RECEIVING OFFICER

SIGNATURE _____ BADGE NO. _____ DATE/TIME _____

Appendix B

MARIN COUNTY SHERIFF'S OFFICE PERSONNEL INVESTIGATION WORKSHEET					
1	S.I. or C.C.:	ASSIGNED NUMBER:	2	CITIZEN OR STAFF OFFICER MAKING THE COMPLAINT:	
DATE OF ALLEGED INCIDENT:			ADDRESS OF CITIZEN:		
DATE COMPLAINT WAS INITIATED:			TELEPHONE NUMBERS:	CITIZEN MAKING COMPLAINT IS THE SUBJECT OF A CRIMINAL INVESTIGATION OR HAS CHARGES PENDING AGAINST HIM/HER: YES: <input type="radio"/> NO: <input type="radio"/> UNKNOWN: <input type="radio"/> NA: <input type="radio"/>	
			HOME: ()		
			WORK: ()		
↓					
3	SUMMARY OF ALLEGATION:				
SUBJECT EMPLOYEE #1:		DATE NOTIFIED:	SUBJECT EMPLOYEE #2:		DATE NOTIFIED:
↓					
4	CAPTAIN RECEIVING THE INVESTIGATION PACKAGE:			DATE RECEIVED:	
5	DIVISION LIEUTENANT OR MANAGER RECEIVING PACKAGE:			DATE RECEIVED:	
6	PRIMARY INVESTIGATOR ASSIGNED:			DATE RECEIVED:	
↓					
7	INVESTIGATION DUE:	1ST EXTENSION:	AUTHORIZED BY:	2ND EXTENSION:	AUTHORIZED BY:
↓					
8	DATE DONE:	RECEIVED BY LIEUTENANT:		RECEIVED BY CAPTAIN:	DATE:
↓					
9	RECOMMENDATION/FINDING OF INVESTIGATION:		CONCURRENCE OF SHERIFF:	DATE:	
↓					
10	CAPTAIN SENDS LETTER OF FINDINGS TO COMPLAINANT:		DATE AND INITIALS:	11	CAPTAIN SENDS LETTER OF FINDINGS TO SUBJECT(S) OF INVESTIGATION:
				DATE AND INITIALS:	
12	COMPLETE PACKAGE SENT TO CUSTODIAN OF RECORDS:		DATE AND INITIALS:	13	CUSTODIAN PUTS COPY OF FINDINGS IN SUBJECT'S PERSONNEL FILE:
				DATE AND INITIALS:	

Appendix C

MARIN COUNTY SHERIFF'S DEPARTMENT
 SPECIAL INVESTIGATION/CITIZEN COMPLAINT CASE RECORD

NO. CC- _____ DATE: _____ ORIGINATOR(S): _____	
SI- _____	
COMPLAINT: _____ non-criminal felony misdemeanor	
EMPLOYEE(S): _____	
PRIMARY INVESTIGATOR: _____	DATE OUT: _____
DATE RETURNED: _____	DISPOSITION: _____
FILE OUT TO: _____ FOR _____	DATE: _____
FILE OUT TO: _____ FOR _____	DATE: _____
	OUT IN
NO. CC- _____ DATE: _____ ORIGINATOR(S): _____	
SI- _____	
COMPLAINT: _____ non-criminal felony misdemeanor	
EMPLOYEE(S): _____	
PRIMARY INVESTIGATOR: _____	DATE OUT: _____
DATE RETURNED: _____	DISPOSITION: _____
FILE OUT TO: _____ FOR _____	DATE: _____
FILE OUT TO: _____ FOR _____	DATE: _____
	OUT IN
NO. CC- _____ DATE: _____ ORIGINATOR(S): _____	
SI- _____	
COMPLAINT: _____ non-criminal felony misdemeanor	
EMPLOYEE(S): _____	
PRIMARY INVESTIGATOR: _____	DATE OUT: _____
DATE RETURNED: _____	DISPOSITION: _____
FILE OUT TO: _____ FOR _____	DATE: _____
FILE OUT TO: _____ FOR _____	DATE: _____
	OUT IN