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OFFICE OF EDUCATION

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August 22, 2012

The Honorable James Ritchie
Presiding Judge
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

Michael Chernock, Foreperson
Marin County Civil Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

Your Honor and Mr. Foreperson:

Attached are the collaborative responses requested by the 2011-2012 Marin County Civil Grand Jury of the Marin County Superintendent of Schools and the Marin County Board of Education to the report entitled "**Restorative Justice: Its Time Has Come in Marin County.**" Attached is the Agenda of the meeting of the Marin County Board of Education during which the report was made available for public comment and was approved by a vote of the Board in accordance with Penal Code Section 933(c) and the provisions of the Ralph M. Brown Act.

We deeply appreciate the focus that the Marin County Civil Grand Jury has given to Restorative Justice practices, both in terms of what is being done and the efficacy of continuing to expand the efforts. In our responses, we have indicated the intent to seek expanded resources to provide continuing training and workshops, presentations, technical assistance and networking to spread best practices throughout our community. Such an approach will also assist in reducing the incidence of bullying in its many forms among our students.

We will report to the 2012-2013 Marin County Civil Grand Jury on the progress of the various aspects of our responses by March, 2013.

Thank you for this report and for the other work the Grand Jury has done both present and past to support public education in our community. Having the best possible schools requires the involvement of every citizen. The partnership of the Grand Jury over the years has made a difference in the lives of students and their families.

Sincerely,

PATRICIA D. GARBARINO, President
Marin County Board of Education

MARY JANE BURKE
Marin County Superintendent of Schools

**COLLABORATIVE RESPONSES FROM THE
MARIN COUNTY SUPERINTENDENT OF SCHOOLS/
MARIN COUNTY BOARD OF EDUCATION**

**TO THE FINDINGS (F) and RECOMMENDATIONS (R) OF
THE 2011-2012 MARIN COUNTY CIVIL GRAND JURY REPORT**

“Restorative Justice: Its Time Has Come in Marin County”

FINDINGS

- F1) In Marin County, restorative justice has been successfully employed in a limited number of schools in lieu of suspension or expulsion.**

Response: As noted in the Grand Jury report, several Marin County school districts have implemented a variety of restorative practices. In addition to those districts highlighted in the report (San Rafael City Schools Elementary District, Novato Unified School District, and Reed Union School District), the Tamalpais Union High School District utilizes a Peer Counseling model to address student behavior and help students stay in school. Kentfield School District utilizes restorative models at the middle school level. San Rafael City Schools high schools have established an extensive Community Justice Initiative utilizing restorative models which will be fully implemented in the fall of 2012. In addition, the Alternative Education programs of the Marin County Office of Education utilize a variety of restorative practices to keep the most high risk youth of the county in school and engaged.

- F2) In Marin County, schools have reduced the loss of state funding using restorative justice techniques to decrease suspensions.**

Response: Education funding involves a complex set of laws, regulations and procedures. In Marin County, some districts' revenue is based on Average Daily Attendance (ADA) as described in the Grand Jury report and other districts are considered "Basic Aid" districts and do not receive ADA revenue. However, all schools share the goal of making certain that all students are present and engaged in learning at all times. Best practices for ensuring that attendance and engagement include restorative models rather than suspension and expulsion.

- F3) Seth's law requires that schools establish an effective bullying response system.**

Response: AB9 (Seth's Law) is a very important step in ensuring the safety of all children. Marin County School Administrators have already received current training in this new requirement and are working within each district to ensure that all staff, parents and students understand the elements of the law and, most importantly, what to do to keep all of our children, staff and community members safe.

- F4) In Marin County, restorative justice has been used to deal with bullying in the schools.**

Response: Bullying is among the issues that can be and have been addressed in Marin schools using restorative models.

RECOMMENDATIONS

- R1) The Marin County Office of Education and the Board of Education support the introduction of restorative justice practices in all Marin County schools.**

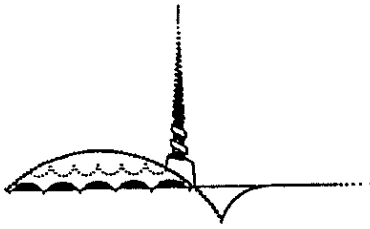
Response: Within the last two school years, workshops addressing the educational community were co-hosted by the Marin County Office of Education and the Northern California Chapter of the ACLU. These workshops, entitled "Culture Shift" and "Culture Shift II", presented best practices from across the region addressing the issues of suspension/expulsion and the implementation of restorative models. These workshops were attended by teachers, parents, board members, law enforcement and probation leaders and members of the Grand Jury.

The Marin County Office of Education will continue to inform and influence the Marin community through such presentations, technical assistance and networking so that these best practices may spread to all Marin Schools.

- R2) Marin County school districts and their boards institute the use of restorative justice practices**

Response: It is the position of the Marin County Office of Education to provide districts those services which they request as well as offer services that are needed countywide. The Marin County Office of Education may offer support, guidance and resources to the local school districts but do not retain the authority to require specific measures or programs of the local district boards. As stated above, the Marin County Office of Education will continue to inform and influence the Marin community through such presentations, technical assistance and networking so that these best practices may spread to all Marin schools.

Marin County Civil Grand Jury



Date: June 4, 2011

Marin County Board of Education
1111 Las Gallinas Ave.
San Rafael, CA 94903

Re: Grand Jury Report: *Corte Madera: RESTORATIVE JUSTICE: Its Time Has Come in Marin County*

Report Date: June 7, 2012

Dear Sir or Madam,

Enclosed please find a copy of the above report.

The Grand Jury requests that you respond in writing to the Findings and Recommendations contained in the report pursuant to Penal Code Section 933.05 (copy enclosed). The Penal Code is specific as to the format of responses. The enclosed *Response to Grand Jury Report Form* should be used.

Governing bodies should be aware that the comment or response from 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. The Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized meeting.

The Penal Code is also specific about the deadline for responses. You are required to submit your response to the Grand Jury within 90 days of the report date:

1 hard copy to: The Honorable Judge James Ritchie
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

1 hard copy to: Michael Chernock, Foreperson
Marin County Civil Grand Jury
3501 Civic Center Drive, Room #275
San Rafael, CA 94903

Responses are public records. The clerk of the public agency affected must maintain a copy of your response. Should you have any questions, please contact me at 415-499-6132 or at the above address.

Sincerely,

Michael Chernock

Michael Chernock, Foreperson
2011/2012 Marin County Civil Grand Jury

Enclosures: Penal Code Sec. 933.05; Response Form

RESPONSE TO GRAND JURY REPORT FORM

Report Title: *RESTORATIVE JUSTICE: Its Time Has Come in Marin County*

Report Date: June 4, 2011

Public Release Date: June 7, 2011

Response by: _____

FINDINGS

- I (we) agree with the findings numbered: _____
- I (we) disagree wholly or partially with the findings numbered: _____
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

RECOMMENDATIONS

- Recommendations numbered _____ have been implemented.
(Attach a summary describing the implemented actions.)
- Recommendations numbered _____ have not yet been implemented, but will be implemented in the future.
(Attach a timeframe for the implementation.)
- Recommendations numbered _____ require further analysis.
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered _____ will not be implemented because they are not warranted or are not reasonable.
(Attach an explanation.)

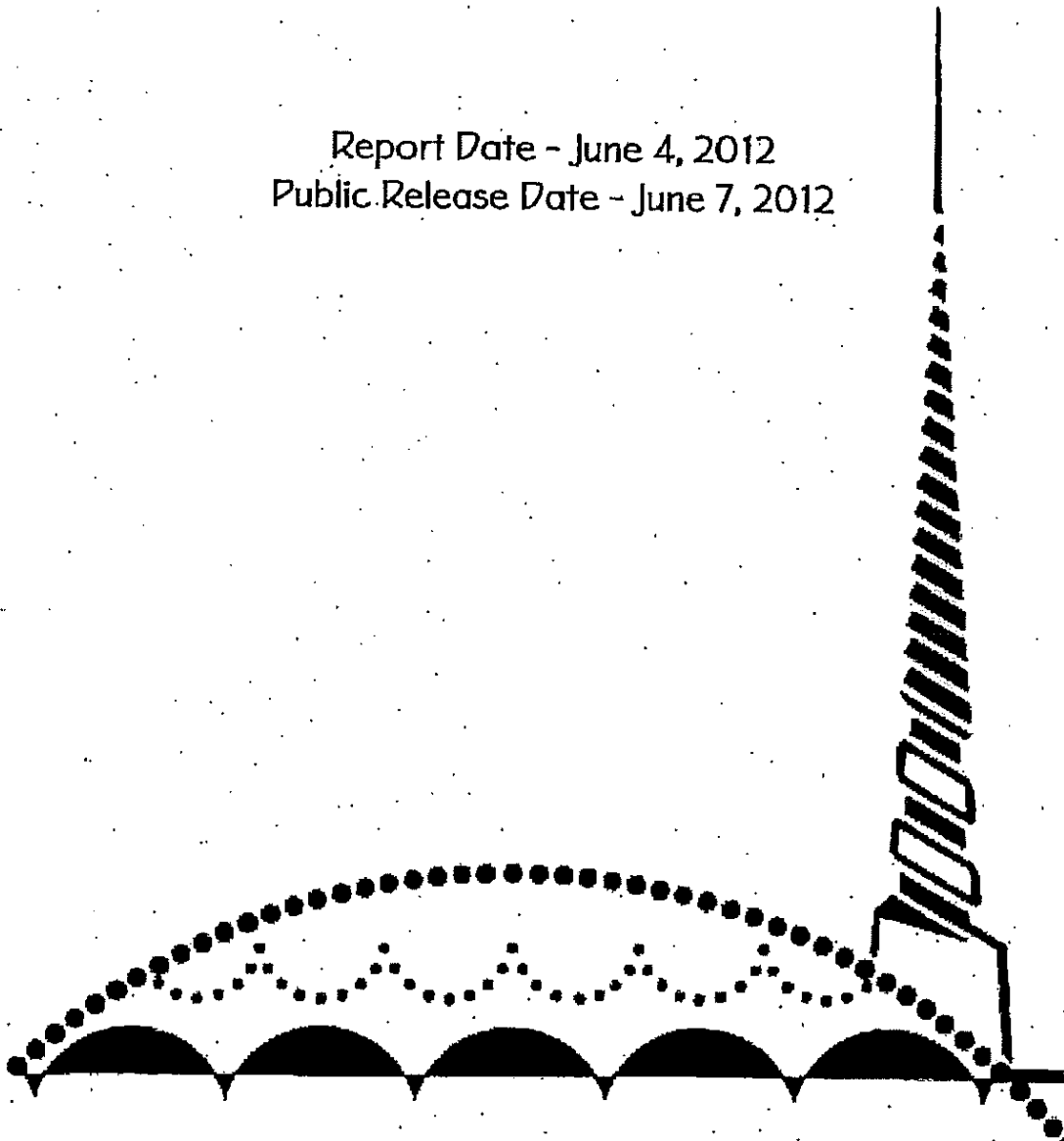
Date: _____ Signed: _____

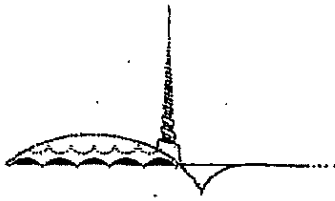
Number of pages attached _____

2011/2012 MARIN COUNTY CIVIL GRAND JURY

RESTORATIVE JUSTICE:
Its Time Has Come in Marin County

Report Date - June 4, 2012
Public Release Date - June 7, 2012





RESTORATIVE JUSTICE: Its Time Has Come in Marin County

SUMMARY

Restorative Justice is a practice whose time has come in Marin County. Restorative justice requires, at a minimum, that we address victims' harms and needs, hold offenders accountable to put right those harms, and involve the victims, offenders, and communities in this process.¹ Broader adoption of its principles by schools, by both youth and adult criminal justice systems, and by interested communities and neighborhoods can result in significant savings in taxpayer dollars, more students in school and learning, and reduced reversion to wrongdoing or criminal conduct.

Restorative justice is a set of practices that seeks to redirect society's retributive response to wrongdoing or criminal acts. Retributive justice focuses on public vengeance, deterrence, and punishment through an adversarial process, whether in a school principal's office or in a courtroom, which by its very nature insulates the offender from the human consequences of his or her acts. Restorative justice, on the other hand, does exactly what the title suggests: it emphasizes repairing the harm caused or revealed by wrongdoing or criminal behavior. It defines wrongdoing as more than a depersonalized breaking of the law or social code and focuses on the needs of victims, offenders and the community, whether that community is a school, a neighborhood or a city. It lets the victims and the community be heard, often through face-to-face encounters, and attempts to provide them with some material, financial and/or emotional restoration. At the same time, while the wrongdoing or criminal act is not without consequences, restorative justice helps the offender learn from his or her mistakes and avoid future offenses and provides the opportunity for the offender to take responsibility for the offense and for the impact it has had on the victim and the community.

There is significant potential for restorative justice to serve as a long-term strategy for confronting wrongdoing. Restorative practices used in schools have resulted in fewer school suspensions and expulsions, fewer bullying events, less truancy and disruptive behavior, as well as fewer instances of drug and alcohol infractions. In the criminal justice system, when restorative justice practices are employed statistics show a noticeable decline in overall recidivism (reversion to criminal conduct) of non-violent adult or youthful offenders and, to some extent even with more serious offenders. Juvenile offenders may also be able to avoid a criminal record and stay out of the juvenile justice system.

In Marin County, restorative justice principles are currently employed at several middle schools as an alternative to suspension and expulsion and are being introduced in a few more

¹ "Little Book of Restorative Justice", Howard Zehr, p.25 (2002).

schools in the county. Restorative justice is also used in the Marin County Youth Court, administered by the YMCA with the support of the Marin County Superior Court, as an alternative to criminal prosecution for juvenile offenders who commit non-violent offenses. Other specialty courts apply some of the principles of restorative justice to specific categories of adult offenders. Efforts are underway to create community-managed restorative justice programs in certain neighborhoods and communities.

Unfortunately, restorative justice currently finds only limited application in the County's Juvenile Hall and the County Jail, although, here too, efforts are underway to expand its use. The County Probation Department and Public Defender's Office enthusiastically support expanded use. Although the District Attorney's Office provides mediation services and citation hearings for various civil and criminal disputes, it and the Sheriff's Department appear to be significantly less supportive of expanded use of restorative justice techniques.

The Marin County Civil Grand Jury's study of the techniques involved and the success of restorative justice practices in both Marin County and in other communities leads the Jury to the conclusion that there are opportunities for meaningful expansion of restorative justice in the county, resulting in substantial financial savings and social benefits. The Jury recommends a broader application of the use of restorative justice in schools, in neighborhood and community settings, and in the adult and juvenile justice systems.

BACKGROUND

The American criminal justice system is overburdened. In the United States, over 6.7 million adults or 3.1 percent of the adult population is behind bars, on probation, or on parole.² Sixty percent of offenders are arrested for non-violent offenses such as drug offenses, many driven by mental illness or drug dependence.³

California has one of the highest rates of recidivism in the United States. Studies show that in 2007-08, forty-seven percent of parolees returned to prison within one year. Sixty-seven percent of those released in 2005-06 returned to prison within three years; seventy percent of the returnees were committed for parole violations rather than new offenses. The highest rate of recidivism, over seventy-five percent within three years, was for those under twenty-four years old.⁴ These figures suggest that using prison as a deterrent doesn't work. Nevertheless, punishment by incarceration is often the only response by our criminal justice system to criminal behavior even though the cost of incarceration is high and taxpayers must underwrite the system.

The criminal justice system, however, is not immune to the budget cuts being imposed across the board in the State of California. In addition to the pressures of local budget and staffing cuts, every county in California faces significant changes to its jail population as a result of state actions. First, Assembly Bill 109, which took effect on October 1, 2011, mandates

² "Restorative Justice: Some Facts and History", Marilyn Armour, *Tikkun*, Winter 2012.

³ "Why we must reform our criminal justice system", Jim Webb, *The Huffington Post*, June 11, 2009.

⁴ "Most California parolees are back in prison in 3 years", *San Francisco Chronicle*, November 4, 2010.

incarceration of certain adult felony offenders in county jails rather than state prisons. Second, cuts to the state's Division of Juvenile Justice will result in significant changes, including return of juvenile parolees to county supervision.

Faced with the high rate of recidivism and the shrinking pool of tax dollars, the courts, law enforcement personnel, administrators of the criminal justice system and legislators who are rethinking the justice model in current use are focusing on alternative strategies, in particular a process called restorative justice which appears to have potential for dealing with the problems, in part, by changing perpetrators' tendencies for criminal behavior.

While the concept of using restorative justice as an alternative to the retributive justice meted out in the courts (for criminal offenders) and schools (for rule breakers subject to suspension or expulsion) is slowly expanding in Marin County, there are a number of areas where it could be more broadly employed, including schools, the juvenile and adult criminal justice systems, and certain neighborhoods and communities.

METHODOLOGY

When the 2011-2012 Marin County Civil Grand Jury (the "Jury") began its service, the term "restorative justice" was an unfamiliar one. However, during an investigation of the functioning of the criminal justice system locally, the concept of restorative justice and its current uses came to the Jury's attention and its potential rapidly became apparent. In coming to this conclusion, the Jury conducted interviews of leading figures in Marin's prosecutorial, criminal defense and probation areas. The Jury also made visits to Marin's Juvenile Hall and the County Jail as well as to San Quentin State Prison, where the Jury met with inmates and observed a program using many of the principles of restorative justice, the *Insight Prison Project*. The Jury also observed sessions of the YMCA Youth Court and continued to monitor its follow-up program and results.

As the investigation proceeded, it also became apparent that the process was being used with great success in some Marin County schools to deal with bad behavior. The Jury interviewed staff members and students involved in implementation of restorative justice practices at local schools, and attended a conference regarding current use and planned expansion of the techniques in Marin schools.

Finally, the Jury conducted interviews with leaders of efforts to organize restorative justice programs within particular neighborhoods and communities in Marin County.

The Jury reviewed newspaper articles, research papers, scholarly studies and journals and interviewed leaders of restorative justice programs in other counties in California to determine the extent and effectiveness of use of restorative justice in those communities and countries.

DISCUSSION

In the classic application of "restorative justice" the offender agrees to engage with members of the community and, in some instances, with the actual victim of his or her action, or a surrogate for the victim. Typically, when the parties agree to participate, a facilitator (often a trained volunteer) first meets separately with the offender, the victim and, where appropriate, with a representative of the community affected by the offense. The facilitator explains how the process works, its goals and its potential benefits to all the participants. Thereafter, the facilitator mediates a joint session of the affected parties and provides an opportunity for the victim and community representative to make the offender aware of the impact of his or her offense. The parties then work together to collaboratively construct an agreed plan of action reflecting their mutual understanding and responsibilities. The offender may, for example, agree to make restitution to the victim or the community, to perform community service, and/or to participate in counseling programs directed at problems such as drug or alcohol use, anger management or other behavioral problems. The final stage of the process involves periodic audits by the facilitator or other authority to insure that the mutually-agreed plan is being implemented.

Restorative justice can also be employed in "victimless" crimes such as drug or alcohol abuse, by leading the offender to recognize that the offender's community (consisting of his or her family, friends, teachers and schoolmates or fellow employees and neighbors) was victimized by his or her conduct. If the offender takes responsibility for his or her actions and performs as agreed, he or she is spared further punishment by the criminal justice system. Proponents assert that this approach provides satisfaction to the victim as well as to the community affected by the crime and prepares the offender for a crime-free future in ways the traditional punitive justice system does not. Programs for those already incarcerated seek to retrain participants to avoid future bad behavior by providing skills for enhancing the opportunity for parole and successful return to the community.

As might be expected, some members of the criminal justice system are not supportive of the use of these processes and for many in the general public the term "restorative justice" provokes reflexive opposition. Those who oppose use of restorative justice principles express concern that early release of offenders endangers public safety or view the use of the process as "soft on crime." The Jury believes that a realistic examination of the features and benefits of restorative justice indicate opportunities for broadening the use of the techniques in Marin County to achieve significant tax dollar savings, reduce the extent of recidivism and deter young offenders from becoming career criminals. Cost savings are an attractive goal but even more attractive is the opportunity to transform an offender into a responsible law-abiding member of his or her community.

Restorative justice is not just a California concept. Restorative justice principles are being used extensively across the United States and throughout the world.

For example, New Zealand has been a model for the rest of the world. New Zealand adopted legislation in 1989, and expanded its reach in 2002 and 2004, providing for a broad-based system of restorative justice throughout the country in both the adult and juvenile criminal

RESTORATIVE JUSTICE: Its Time Has Come in Marin County

justice systems, in schools, workplaces and for resolution of disputes in the natural and physical resource areas.⁵

In Brazil, restorative justice pilot projects were begun in 2004 with the receipt by the Brazilian Ministry of Justice of a United Nations development grant to launch official restorative justice projects for youth. From that beginning, restorative justice programs have been successfully implemented in many cities, including Rio de Janeiro, Sao Paulo and Porto Alegre. The programs have proven successful in dealing with drug gang members in those cities' shantytowns as well as in the more general population.⁶

A good example closer to home is the State of Vermont.⁷ It enacted legislation in 1999 establishing the use of restorative justice throughout the state. Those individuals convicted of misdemeanors and minor felonies (DUI, simple assault, welfare fraud, shoplifting, supplying alcohol to minors) in the Vermont District Court may be sentenced to engage in community-based restorative justice as part of their probation. A judge can also sentence offenders to Reparative Probation for non-violent crimes. This program, supervised by the Vermont Department of Corrections, uses justice panels consisting of trained volunteers who help identify who was harmed, how to repair the harm and how the offender can make better choices in the future.

The Vermont Department of Corrections also applies restorative principles to the offender re-entry program in which offenders re-entering society meet with restorative justice panels consisting of community volunteers.

Finally, Vermont has a Direct Referral Alternative in which police and community organizations can refer an offender directly to the justice program, thus providing a method of avoiding criminal charges or civil court proceedings. It is also used as an alternative for dealing with school infractions.

What follows is an examination of current restorative justice practices in Marin County and elsewhere in California along with some suggestions for expanding its use in the County. The report will look both at the classic form of restorative justice and recent variations.

RESTORATIVE JUSTICE IN MARIN COUNTY

In Marin County restorative justice techniques are currently being used in a few schools, in the Marin County Youth Court administered by the YMCA, in specialty courts administered by Marin County's Superior Court System, and in San Quentin State Prison.

⁵ "Twenty Years of Restorative Justice in New Zealand", Fred W.M. McElrea, 2012, Web-only article associated with *Tikkun*. 27(1)

⁶ "Toward Peace and Justice in Brazil: Dominic Barter and Restorative Circles", Joshua Wachtel, 2009-03-20, *International Institute for Restorative Practices*.

⁷ Vermont Statutes, Title 28 section 2(a); Vermont Department of Corrections, Agency of Human Services; "Study: Novel Sentencing Program Really Works, *Vermont Times Argus* 2/3/07.

Marin Schools

The primary forum for restorative justice in Marin County currently is in the middle schools. Programs have been instituted in schools as diverse as Del Mar Middle School in Tiburon, located in an affluent area, and Davidson Middle School in San Rafael which serves an area that is more ethnically and economically diverse. These programs are showing positive results across the board. Bullying, disruptive behavior and suspensions have decreased dramatically.

Keeping students in school saves taxpayer dollars and benefits the students as well. The State of California uses a school district's average daily attendance ("ADA") to determine the funding it receives. Any time a student is not in attendance, such as for a suspension, the school district loses money. The current ADA in Marin County is \$25 to \$40 per student per day.

In Marin County today restorative justice is used significantly more often as an alternative to traditional retributive justice in the juvenile setting than in the adult area. A large percentage of juvenile crime in Marin involves drug and alcohol use. Bullying, both physical and electronic, has also been identified as a major contributor to problems experienced on many school campuses. In response, some Marin schools have introduced a restorative practices program focused on disruptive behavior, bullying and associated issues.

Del Mar Middle School

Del Mar Middle School, part of the Reed Union School District, is in Tiburon. At this school, the principal and vice principal are moving forces behind a dynamic restorative justice program, known as the restorative triangle program, which has been operating for three years and addresses low-level infractions which otherwise could result in a discretionary suspension. These infractions include acting out, sexual comments, bullying, cyber-bullying and others. Non-discretionary offenses such as brandishing a knife, drugs and/or alcohol and bodily injury result in automatic suspensions and are not eligible for the restorative triangle program. As part of a leadership class, students volunteer and train to become facilitators for this program under the guidance of the assistant principal.

Initially, the vice principal meets with the provoker (offender), offers the provoker the opportunity to participate in a restorative triangle, and obtains consent from the provoker and his or her parents for him or her to participate. The Del Mar community of parents is very supportive of the restorative triangle program and, since the inception of the program only one parent has refused to allow the child to engage in it. If the offender agrees to participate, the student facilitators, in teams of two, meet with the provoker and work out a solution. The types of solutions might include a loss of privileges or a written apology. Changes in behavior are discussed and sought. Because of restorative triangles, there are one-third fewer suspensions and few repeat offenders.

Davidson Middle School

Davidson Middle School in San Rafael currently has 925 students in grades six through eight, representing a mix of cultures and economic and ethnic backgrounds. Until three years ago, there were a great number of suspensions and an uncomfortable school climate. The

incoming principal determined to change this, in part by using restorative justice principles. The Davidson model, as it is currently called, employs three programs and has successfully changed the school culture. These three programs are restorative circles, peer court and No Bully Solution Teams⁸. These programs provide a mechanism to repair harm done, reintegrate a student into the school culture and restore relationships.

The first program uses *restorative circles*. Restorative circles are used for all members of the school community: they are held between students, or between students and teachers or between staff members. For students, there is a form entitled "I want to resolve a conflict" that can be completed by any student. The teacher/advisor holds a "pre-circle" with the requesting student to obtain details of the conflict, and finds out if the other student(s) want to participate. If so, the individuals present at a circle are the person who called the circle and those with whom they need to resolve the conflict, along with a teacher/advisor. When a circle involves two staff members, the principal is also present. Restorative questions are asked; then each person states what they heard and resolution ensues from the understanding that is gained.

Peer court is also an option. The court is comprised of the student provoker, a member of the provoker's family, an assistant principal and a panel of the student provoker's peers. A "code of silence" is not allowed in peer court proceedings. Peers can ask the provoker questions such as: "What happened? What were you thinking? Who's been impacted by your actions? What would you change if you could go back in time? What is your life like? What's going on at home?" The peer court then sets out the terms of the provoker's "sentence", known as the "suspension diversion contract", which includes activities that must be completed by an established date. The contract may include tutoring, community service, and/or a face-to-face apology. If the contract is not completed by the established date, the provoker can still be suspended as a last resort.

The final program is the *No Bully Solution Team*[®]. Bullying is defined as repeated, unwanted and harmful behavior. The Team is composed of a teacher advisor, the bully, a group of bully followers, and positive leaders from the same peer group. The target is not included in the circle. Questions asked of the Team generally include: "What could you do or stop doing to make your target's life better?" The Team leader follows up with the target each week to see if the situation has improved. Generally, by the third week it has. More than sixty percent of the school's sixth grade students have been part of a Team.

As a result of restorative circles, peer court and a program focused on no bullying, students are able to empathize with one another and achieve the goal of participating peacefully in the school community. In addition, Davidson has achieved a significant decline in suspensions, retaining ADA funds and saving money because students are in school. During the 2008-2009 school year, Davidson had 375 student suspensions. Following the implementation of restorative practices, the number of student suspensions dropped approximately 90%: as of

⁸ No Bully[®] is a California based 501(c) 3 non-profit organization. The No Bully Solution Team[®] is a program developed by No Bully[®] for use in schools. No Bully[®] provides training and workshops for a fee. Some schools in Marin have used or continue to use the Team approach, but it is not the only solution for bullying behavior. Restorative circles or triangles and peer courts can also be used.

March 2012, only 37 students had been suspended during the 2011-2012 school year, a dramatic reduction.

Novato Public Schools

The Novato Blue Ribbon Coalition for Youth (NBRCY) received the Healthy Novato Project grant during the 2011-2012 school year. The Healthy Novato programs include providing No. Bully Solution Teams® and developing alternatives to suspension by implementing restorative justice programs (peer court) in the Novato middle and high schools. Under the umbrella of the NBRCY, using grant funds from various sources, the YMCA Youth Court hired a restorative practices coordinator to work closely with Novato school administrators and students to develop and execute the peer court program.

In October 2011, Hamilton Middle School began offering peer court and in January 2012 they made peer court a part of their leadership class. There have been at least twenty cases resolved in the 2011-2012 school year. School officials estimate that another 30 may be heard before the end of the school year.

Marin County Youth Court

One notable success in the use of restorative justice is the Marin County Youth Court (the "Youth Court"), administered by the YMCA and initiated in 2004 with the support of the Marin County Superior Court to provide early intervention for misdemeanor offenders. The Youth Court has been successfully used for offenses such as theft, shoplifting, computer hacking and drug and alcohol offenses. Currently, the Youth Court handles about 150 cases per year.

An offender is generally referred to the Youth Court by the Marin County Probation Department. The Twin Cities Police Department also refers children directly to Youth Court. If an offender agrees to participate, he or she must admit guilt and successfully complete the post-hearing program in order to have the charge dismissed and the offender's record cleared.

Youth Court hearings are held in the courtroom at Juvenile Hall in San Rafael. The bailiff, prosecuting and defending attorneys and members of the jury hearing the case are all juveniles. An actual judge or volunteer attorney presides. Most of the jurors have been subjects of prior Youth Court proceedings, and are serving a certain number of sessions as jurors as part of their post-hearing program.

Prosecutors and defense counsel present brief opening statements outlining what they expect the evidence to show regarding the circumstances and severity of the offense. After the offender (called a respondent) testifies, the young advocates make closing arguments, recommending sentences. An offender's parents are discouraged from attending the hearing itself in order to promote candor by the juvenile offender in describing the offense and his or her attitude about the offense. However, parental participation in the post-hearing process is encouraged. The system utilizes volunteer caseworkers who follow the respondents through the completion of their sentences.

This collaborative peer-to-peer process seeks to make the victim of a crime (where one is involved) whole and to provide a lesson to the young offender who, in addition to Youth

Court jury duty and community service, can be required to complete drug or alcohol workshops or other counseling.⁹

A Youth Court respondent with a drug or alcohol offense is required to attend an all-day Saturday "decisions under the influence" (DUI) class at the YMCA. His or her parent must also participate. The session focuses on why juveniles drink or use drugs, what type of person is at risk and what the consequences can be. A parent who lost a child to an alcohol-related accident and a young adult who became addicted in high school and struggled through recovery may be guest speakers. Separate sessions are held in the afternoon with the juvenile and with the parents. The parents' session focuses on when and why juveniles take risks and the importance of setting boundaries and being actively involved with their child.

The juveniles also attend three evening "decisions under the influence" sessions where they talk about what decisions led to their arrests and what they could have done differently. The focus of the sessions is on smart behavior and on avoiding actions which could cause harm or even death. The sessions focus on the following issues: what the subject did; who was harmed and how that harm can be remedied; what additional bad behavior the subject is tempted to explore, but has not; and, where the subject will draw the line. The YMCA program's goal is to keep kids alive, addiction-free and without a criminal record.

Victim Offender Reconciliation Program

Marin County currently has one juvenile justice program involving restorative justice principles, the Victim Offender Reconciliation Program (the "VORP") located in the Marin County Probation Department. Referrals to the program come through the Probation Department, Police and Sheriff's Departments and Marin County schools. The VORP enables crime victims to express themselves regarding the crime through a formal mediation process directed by a skilled mediator. Offenders are held accountable for their behavior while being given the opportunity to make direct amends to the victim. The VORP has operated in venues as varied as Juvenile Hall and the Marin County Community School which serves youth ages 12 to 17 years in grades 7 through 12 who have been referred by their juvenile probation officer or a School Attendance Review Board and/or have been expelled from their school district of residence.

Specialty Courts and Collaborative Justice Programs

Marin County's Superior Court has created a number of specialty courts: Support and Treatment After Release Court, Adult Drug Court, Community Court, and Family Violence Court.¹⁰ Additional programs are provided through the Marin County District Attorney's Office. These courts and collaborative justice programs deal with particular types of offenses or problems for adult offenders. While these courts do not employ all the elements of classic restorative justice, they do seek to accomplish some of the same objectives, such as decreasing contact with the criminal justice system and returning offenders to a status as responsible members of the community.

⁹ Eighty percent of the cases referred to Youth Court involve drug or alcohol offenses.

¹⁰ See the Marin County Superior Court website, particularly "Collaborative Justice Courts." www.marincourt.org/therapeutic_court.htm

Support and Treatment After Release Court

Support and Treatment After Release ("STAR") Court is a court-supervised program provided for defendants with serious mental illness as an alternative to traditional supervised probation. The goal of STAR Court is to decrease the frequency of clients' contacts with the criminal justice system by improving their social functioning skills and by linking them to employment, housing, regular treatment and support services.

A team composed of a judicial officer, probation officer, district attorney, defense counsel, a STAR case manager and treatment providers develops a program for each participant who must sign an agreement to abide by the program. After a minimum 12-month program, a successful participant may have his or her misdemeanor-related case dismissed or reduced and probation terminated.

Adult Drug Court

Adult Drug Court offers a highly-structured outpatient treatment plan to certain offenders after they have pled guilty. The court is intended to give offenders a chance to take responsibility for their actions and change their lives. As with STAR Court, successful completion of the prescribed program may result in dismissal of the drug related case or a stay of jail sentence and termination of probation.

Proposition 36, enacted by the electorate in 2000, changed the state's Penal Code specifically to allow qualified defendants convicted of a non-violent drug possession offense to receive probation in lieu of incarceration. The operation of the court created in Marin to apply the new law has been suspended due to the expiration of funding. However, the sentencing provisions of the law remain in effect. Eligible non-violent drug offenses are now handled in the Superior Court, but the principles of Prop 36 are still followed: the offender is referred to the county's Recovery Connection Center for evaluation and development of an appropriate treatment program. The court monitors compliance with the program by requiring frequent appearances and, upon successful completion, the offender may have the drug-related case dismissed. The Court also encourages Prop 36 offenders to request enrollment in the Adult Drug Court programs.

Community Court

In 2011, a Community Court was created with the support of Legal Aid of Marin. The Community Court meets once a month at the St. Vincent de Paul Society's free dining room in San Rafael to help mostly homeless offenders charged with low grade crimes such as traffic violations, spitting, or sleeping to clear up citations and violations and get back on their feet, often with the dismissal of the charges upon a showing that the offender is in an appropriate program to deal with his or her problems.

Family Violence Court

Because of the unique relationship between offender and victim, those accused of domestic violence are not subject to diversion from criminal proceedings once charged. In appropriate cases, a senior member of the domestic violence team in the Marin County District Attorney's Office holds a citation hearing with the offender in which the possible

consequences of the violation are explained to the violator, and sometimes the victim, and a decision is made whether to charge the case or to handle it in some other manner. If the offender is charged and convicted or pleads guilty to a qualifying family violence event, the Family Violence Court seeks to improve the relationship within families who desire to remain together by providing program assistance for all the members of the family. The Court requires regular court appearances to insure that offenders are attending batterers' programs or alcohol or drug programs when appropriate and are complying with other requirements of their sentences.

Marin County District Attorney's Office

The Consumer Protection Unit of the Marin County District Attorney's office provides yet another limited use of restorative justice principles to divert cases from the court system. In addition to helping resolve consumer fraud claims, the section provides free mediation services for both non-criminal and potential criminal disputes, including landlord-tenant cases, consumer-business disputes, neighborhood disputes such as animal intrusion and noise, fence disputes, view obstruction, use of common facilities and employer/employee disputes. When all parties agree, a mediator meets with the parties and seeks to help them to clarify the issues and to reach a mutually agreeable solution to their dispute without resort to the courts.¹¹ The District Attorney, in appropriate cases, may also use citation hearings for other non-violent criminal offenses.¹²

Community Justice Initiative

The Community Justice Initiative (the "CJI"), initiated in 2010, was developed to conduct a public education and awareness campaign throughout Marin County about restorative justice models, principles and practices. The CJI's goal is to provide an opportunity for Marin communities to develop an alternate approach to juvenile justice sentencing and school suspension practices by developing community and school-based restorative justice practices. The CJI is sponsored by the Juvenile Justice Delinquency Prevention Commission and supported by the Marin County Probation Department. The CJI is in its initial stages and is working with San Rafael High School to develop a hybrid restorative justice youth court with plans to begin implementing the program in the school in the fall of 2012. Madrone High School in San Rafael is also working with the CJI and discussing the possibility of beginning a restorative justice program in order to reduce school suspensions.

On a community level, the CJI is partnering with interested individuals and service organizations in the Latino community to develop a grass roots restorative justice program

¹¹ See Marin County District Attorney's website, especially:
www.co.marin.ca.us/depts/DA/main/dist/consumerpages/mediation.cfm

¹² A citation hearing is an informal process the District Attorney's Office uses when a decision has been made not to file charges in a particular case in the interest of justice, but complete dismissal of the charge would be inappropriate as well. In a meeting between a member of the District Attorney's staff and the offender, there is a factual review of the incident charged and a discussion of the legal elements of the crime and a solution proposed. The citation hearing does not bar filing formal charges if a new incident occurs. An example of the use of a citation hearing is the alleged battery in the Sausalito City Council members' "hand-slapping" altercation. See "Shush...slap," Sausalito Marin Scope 01/05/12.

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for Canal district juveniles involved in low-level offenses. This program has the support of the Marin County law enforcement community, the district attorney, the probation department, juvenile hall and the San Rafael Police Department. The CJI is consulting with two other Marin communities, Novato and Marin City, who are also interested in developing a restorative justice program as an alternative to the juvenile justice system. Each restorative justice program is intended to be unique to its own community with the support of the local community and volunteers. The CJI envisions that ultimately these programs will have shared powers among the community, the schools, the police, the courts and probation. To date there are no firm plans to extend the programs to adults although that possibility is being evaluated.

San Quentin State Prison

San Quentin State Prison is one of the nation's most notorious prisons and home to some of California's most dangerous criminals, eighty percent of whom eventually return to society. Recidivism is approximately seventy percent for San Quentin parolees. The Insight Prison Project (the "IPP") has reduced that recidivism rate for its graduates. Created in 1997, the IPP is operated by a small staff and many dedicated volunteers from a community-based non-profit organization. The IPP uses restorative justice techniques to encourage the participants to empathize with and understand the effect of their crimes on their victims and the community as well as to teach inmates how to control their anger, to think before they act and to breathe and relax instead of using violence. Approximately three hundred men a week participate in the program, and it is reported that since its inception *only one graduate from the program has returned to prison after release.*

RESTORATIVE JUSTICE IN CALIFORNIA

Legislation

Restorative justice does have one clear instance of legislative approval in California. Welfare and Institutions Code Section 1700, relating to minors, seeks to "protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses."

California State legislators are also currently attempting to specifically codify restorative justice principles for use in the juvenile courts. AB 1849, introduced in February 2012 and under consideration by the California Legislature, would authorize the juvenile court of a county to voluntarily adopt a pilot restorative justice program to address the needs of minors, victims and the community. The county prosecutor, public defender, probation department, service providers, community organizations, restorative justice groups and clinicians would develop a protocol for the program. The bill does not authorize any general funds to support the pilot programs, but requires the juvenile court to obtain the necessary funds if it chooses to participate. As with all proposed bills, the future of this measure is uncertain.

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Similar legislation was introduced in the 2007-08, 2008-09 and 2011-12 legislative sessions¹³ and passed by the California Legislature. In the cases of the 07-08 and the 08-09 bills, the governor vetoed the legislation claiming in each veto message that the bill was unnecessary since the California juvenile justice system is already rehabilitation based and courts may already create a restorative justice program. In 2011, the governor also vetoed the legislation, stating in his veto message that California courts already have the authority to create such programs.

Restorative Justice Programs in the Bay Area

There are a number of restorative justice programs operating in the greater Bay Area. Two examples of these programs follow.

Restorative Justice for Oakland Youth

Initiated in 2005, Restorative Justice for Oakland Youth ("RJOY") operates programs with the goal of interrupting the cycle of violence, incarceration and wasted lives for youth of color. Three Oakland schools currently operate RJOY programs. Funding is provided by the state, corporate sponsors, foundations, private donors, grants, city councils and the Alameda County Board of Supervisors. Implementation of the programs relies heavily on volunteers. Success is measured in many ways including a reduction in recidivism, reduction in court costs, enhanced public safety and well-being, restitution to victims and fewer school suspensions. In one Oakland middle school RJOY reduced the rate of suspensions by seventy-five percent; in another the reduction was eighty-seven percent.

San Francisco Resolve to Stop the Violence Program

The San Francisco Sheriff's Office operates a violence prevention program based upon restorative justice principles within the San Francisco jail. Entitled Resolve to Stop the Violence Program ("RSVP"), it is directed at violent offenders during incarceration and after release. Its goal is to break the cycle of violence and incarceration in succeeding generations of families. RSVP has resulted in a notable reduction of recidivism: those who completed four months of RSVP had an eighty percent lower re-arrest rate and the numbers improved further with greater time in the program. An unexpected but welcome result was a reduction in violence within the jail population and between offenders and jail staff.¹⁴ After an initial moderate start-up cost, long term savings of four dollars for every one dollar invested have been realized.

Restorative Justice Programs in Los Angeles

The Los Angeles City Attorney's Office hearing program is an example of restorative justice principles being used in creative ways. This discretionary program has worked well for decades for those who participated by diverting appropriate cases away from the criminal courtrrooms and into a less formal setting.

¹³ AB 360 (2007-08 legislative session); AB114 (2008-09 legislative session); AB 446 (2011-12 legislative session).

¹⁴ "The Resolve to Stop the Violence Project: transforming an in-house culture through a jail-based programme", James Gilligan and Bandy Lee, *J Public Health (Oxf)* 2005; 27: 149-155.

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Cases referred to the program are generally low level, non-violent offenses that the prosecuting attorney has determined require action and investigation, but may not rise to the level of the need for a formal charge and criminal prosecution. A hearing officer conducts an administrative hearing - there is no judge or jury. The hearing officer, usually an experienced prosecutor, assesses the character, credibility and safety risk of the participants during a hearing in the City Attorney's office. While a person can have an attorney present, the attorney cannot speak. It is a session among the people involved, including the victim. Usually there is an apology provided and a plan to make amends or receive training or treatment is developed by the participants. If the hearing officer determines that the conduct is not likely to recur, he or she can recommend that the City Attorney's office not proceed with a formal charge in the case.

POTENTIAL EXPANSION OF RESTORATIVE JUSTICE IN MARIN

There are a number of areas where restorative justice programs and processes could be fruitfully expanded in Marin County. Some of the most important of these follow.

Bullying in Schools

Bullying, both physical and electronic, has been identified as a major contributor to problems experienced on many of our school campuses. Recognizing the problem, the California legislature passed Seth's Law¹⁵ named for thirteen year old Seth Walsh, who committed suicide in 2010 because of constant anti-gay bullying by classmates. The law will take effect on July 1, 2012 and will require educational agencies to "adopt a policy that prohibits discrimination, harassment, intimidation, and bullying." Schools will be required to establish "a process for receiving and investigating complaints" that includes an effective bullying response system."

Many schools, including a few in Marin, are already taking aggressive action to deal with and control bullying. Seth's Law will now require all schools to do so. Given the success of restorative justice techniques observed in those Marin schools already using them to deal with bullying, the law provides a significant opportunity for all middle and high schools in Marin to establish or expand the use of restorative justice techniques.

Disruptive Behavior in Schools

Disruptive or inappropriate behavior can also cause problems on school campuses and result in suspensions for the students involved. The use of restorative justice techniques such as restorative circles, restorative triangles, and peer courts have proven to work at the very diverse schools that have employed them. As schools adopt processes to deal with bullying, they should also adopt an accompanying restorative justice process to deal with other disruptive behavior.

¹⁵ Seth's Law is also known as the "Safe Place to Learn Act" (Cal. Educ. Code section 234 et seq.).

AB 109

AB 109¹⁶, signed into law in 2011, requires that adult felons convicted of nonviolent or non-serious crimes and state parole violators serve their sentences in the county jail of the county in which they are convicted. These felons now will be housed in county facilities for longer stays than previously were typical in such facilities. Felons subject to post-release community supervision will also now be supervised by the probation department of the convicting county.

The Governor has also proposed changes to the way that violent juvenile offenders now housed by the state are treated. Under one proposal, the state would stop accepting juveniles in January 2013 and close the facilities by June 30, 2015, requiring the county in which the conviction is obtained to incarcerate the offenders.¹⁷ Under the other proposal, the juvenile facilities would remain open for the most violent juvenile offenders, but the state would charge the counties \$24,000 per year to house each juvenile, up from \$2,500 per year currently.

In Marin County, very few inmates are currently housed in the county jail for longer than a few months. With the advent of AB 109, the jail will have inmates incarcerated for as long as three years, and the probation department will be supervising both adult and juvenile parolees also for as long as three years. Under one of the governor's proposals, the Marin County Youth Authority may be housing juvenile felons at Juvenile Hall for a number of years.

The Marin County jail, administered by the Marin County Sheriff's Department, currently does not use restorative practices. However, with more inmates staying for longer periods of time, the jail would provide a fertile ground for expansion of the use of restorative justice, perhaps based on the San Francisco jail model.

The probation department does support use of restorative practices. In fact, the VORP program is a department-managed program and has been used with some success at Juvenile Hall. With the influx of AB 109 inmates and parolees, and with the possibility that juvenile felons may be coming back to Marin, expansion of the probation department's restorative justice programs is critical.

Misdemeanor Prosecutions by the Marin County District Attorney's Office

Given continuing budgetary constraints in Marin County, the District Attorney's (the "DA's") Office has been forced to cut its budget and is finding it difficult to operate as it has in the past. One area where the DA's Office could save attorney, staff and court time and tax dollars would be in the area of prosecution of misdemeanor cases. Seventy percent of Marin criminal jury trials involve misdemeanors, almost twice the level of comparable counties. Pre-trial or even pre-charge diversion techniques for many misdemeanor offenses could ease the strain on the DA's budget as well as on the budgets of the Marin County Superior Court and the Marin County Public Defender's Office. The Public Defender and the Superior Court are also constrained by budget cuts, but the Public Defender is forced to defend at trial many

¹⁶ Chapter 15, Statutes of 2011, titled "2011 Realignment Legislation addressing public safety".

¹⁷ "Juvenile Justice Plan faces fight", *San Francisco Chronicle*, February 21, 2012.

of the misdemeanor defendants charged and prosecuted by the DA's Office, and the Superior Court is required to empanel a jury and hear the cases, a significant budgetary drain.

Implementation of restorative practices, such as the pre-charge hearing program used in the Los Angeles City Attorney's Office or expansion of the number of citation hearings in the DA's office itself, would save significant taxpayer dollars.

CONCLUSION

Restorative justice is a process used in many cities, counties, states, and other countries as an alternative to court-based retributive justice processes. It spares certain types of offenders from incarceration and a criminal record, saves the community the expense of court services as well as housing and supervising the offender and, in some cases, allows the victim of a crime to participate in the determination of the consequences imposed upon the offender. Studies of the results indicate a reduction, often dramatic, in repeat offenses, thus improving public safety by reducing future criminal activity.

Restorative justice is also used in schools as an alternative to expulsion or suspension, sparing the school the loss of funds based upon attendance while also altering the behavior and attitudes of the offenders and providing hope for the future for both victims and offenders. Expansion of restorative justice in Marin County – by schools, the adult and youth criminal justice systems, and neighborhoods and communities – must be undertaken.

FINDINGS

- F1:** In Marin County, restorative justice has been successfully employed in a limited number of schools in lieu of suspension or expulsion.
- F2:** In Marin County, schools have reduced the loss of state funding using restorative justice techniques to decrease suspensions.
- F3:** Seth's law requires that schools establish an effective bullying response system.
- F4:** In Marin County, restorative justice has been used to deal with bullying in schools.
- F5:** In Marin County, YMCA Youth Court has successfully diverted youthful criminal offenders.
- F6:** Restorative justice has been successfully used for both juvenile and adult criminal offenders in other cities, counties, states and countries.
- F7:** Restorative justice programs reduce recidivism among adult criminal offenders who participate.
- F8:** By reducing recidivism, restorative justice programs reduce overall costs of operation of criminal justice systems.
- F9:** Restorative justice has seen limited use in Marin County for pretrial or post-trial diversion of adult criminal offenders.
- F10:** Mediation services can be used to resolve certain civil disputes, thus saving judicial resources.

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- F11:** Mediation services in Marin County could be adapted to use restorative justice in cases of low-level nonviolent adult offenders.
- F12:** Citation hearings by the Marin County District Attorney's Office have been successfully used for pre-charge diversion of low level criminal cases.
- F13:** Violence between prisoners, and between prisoners and guards, is reduced when prisoners participate in restorative justice programs.

RECOMMENDATIONS

The Marin County Civil Grand Jury recommends that:

- R1:** The Marin County Office of Education and Board of Education support the introduction of restorative justice practices in all Marin County schools.
- R2:** Marin County school districts and their boards institute the use of restorative justice practices.
- R3:** The Marin County Public Defender and Marin County District Attorney initiate and expand restorative justice programs to divert greater numbers of nonviolent criminal offenders from the courts and the jails.
- R4:** The Marin County Sheriff and the Marin County Probation Department initiate restorative justice programs at the county jail.
- R5:** The Board of Supervisors provide funding for restorative justice training and operations.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Marin County Civil Grand Jury requests responses as follows.

From the following individuals:

- Marin County Office of Education, Superintendent: Findings **F1, F2, F3** and **F4**; Recommendation **R1**.
- Marin County District Attorney: Findings **F6, F7, F8, F9, F10, F11**, and **F12**; Recommendation **R3**.
- Marin County Public Defender: Findings **F6, F7, F8, F9, F10, F11** and **F12**; Recommendation **R3**.
- Marin County Sheriff: Findings **F6, F7, F8** and **F13**; Recommendation **R4**.

From the following governing bodies:

- Marin County Board of Education: Findings **F1, F2, F3** and **F4**; Recommendations **R1** and **R2**.

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- Bolinas-Stinson Union School District; Dixie School District; Kentfield School District; Laguna Joint School District; Lagunitas School District; Larkspur-Corte Madera School District; Lincoln School District; Mill Valley School District; Nicasio School District; Novato Unified School District; Reed Union School District; Ross School District; Ross Valley School District; San Rafael School District; Sausalito-Marín City School District; Shoreline Unified School District; Tamalpais Union High School District; and Union Joint School District: Findings F1, F2, F3 and F4; Recommendation R2.
- Marin County Board of Supervisors: Finding F5, F6, F7, F8, F9, F10, F11 and F12; Recommendations R3, R4 and R5.

The Marin County Civil Grand Jury invites responses from:

- Marin County Probation Department

The governing body or 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.

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.

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