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To: Board of Supervisors

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Subject: OCLEM Report on Recommendations and Progress of Policing, Use of Force, Emergency Response, and Related Policies

At the Board of Supervisors Meeting on February 15, 2022, at the request of Supervisor Simitian, this Board requested that OCLEM report regularly regarding new policies relating to policing, use of force, and emergency response. For example, OCLEM has previously reported on Sheriff's Office policies relating to adherence to best practices set out in "Eight Can't Wait" protocols (and related issues) and its Military Equipment Funding, Acquisition and Use Policy, drafted in response to Assembly Bill 481.

This report is intended to provide updates on policy development related to two areas on which OCLEM made recommendations for modifications to or development of policy – the report on the incident involving Andrew Hogan in August 2018 and the development of policy related to authorized uses of Electronic Control Devices ("ECDs", most commonly referred to by the brand name "Taser"), which would be put in use if ECDs were approved by this Board.

We also report here on a policy recently implemented by the Sheriff's Office requiring employees to write reports prior to viewing body-worn camera footage of a use of force incident. This is a policy we frequently recommend, but that many agencies are unwilling or unable to adopt. We discuss it further below and commend the Sheriff's Office for its position.

As we look ahead to our work in 2023, we are eager to engage more directly with Sheriff's Office personnel on issues relating to use of force. We have appreciated the level of engagement over the past several months on policy issues, but look forward to an increased level of access, with the ability to evaluate use of force incidents and the Sheriff's Office mechanisms for internal review, to see how policy and training play out in actual real-world scenarios.

Policy Changes: Incident Involving Andrew Hogan

In October 2022, OCLEM presented to this Board a report on the incident involving Andrew Hogan while in custody on August 25, 2018. We made five recommendations in that report. Two pertained to the manner in which those in custody may be transported between facilities:

RECOMMENDATION ONE: The Sheriff's Office should convert its memoranda regarding transport of detainees from Elmwood to the acute psychiatric unit at Main Jail into policy.

RECOMMENDATION TWO: The Sheriff's Office should track transports to the acute psychiatric unit so that compliance with the transport policies should be verified.

RECOMMENDATION THREE: The Sheriff's Office should ensure that the transport policy include an express direction that if detainees are transported via sedan, that they should be seat-belted into the back seat of the vehicle.

In response, the Sheriff's Office recently updated its policy on Inmate Movement and Transport (Custody Bureau Policy Manual 9.31). Modifications made are consistent with our recommendations, including:

- Changes to the way deputies transport inmates from Elmwood to the Main Jail Acute Psychiatric Unit, requiring use of either a police sedan (with the

inmate properly secured in a seatbelt), ambulance, or wheelchair van (when the inmate is in a restraint chair or wheelchair).

- Additional language about safety helmets when an inmate being transported is in a mental health crisis, including a mandate that a helmet be used when an inmate has shown any intent to self-harm.
- While no policy was created, the Sheriff's Office committed to logging transport entries so that they could be tracked. OCLEM intends to review those logs at intervals to ensure compliance.

A third recommendation from our Hogan report related to emergency medical care:

RECOMMENDATION FOUR: The Sheriff's Office should develop policy requiring all jail staff to *immediately* provide first aid to detainees whenever there are indicia of serious injury.

The Sheriff's Office implemented this recommendation in a policy on Medical Emergencies (Custody Bureau Policy Manual 12.21) updated October 31, 2022:

*Sworn staff are trained in administering CPR, First Aid, and the AED. Sworn staff must respond to medical emergencies involving inmates, staff or civilians and **immediately** administer applicable and necessary medical assistance (e.g., CPR, First Aid, AED) until relieved by a higher medical authority (e.g., Sheriff's Office contracted medical staff, paramedics).*

The final recommendation from our Hogan report addressed the premature termination of the Internal Affairs investigation:

RECOMMENDATION FIVE: The Sheriff's Office should write policy articulating the rare conditions under which an Internal Affairs investigation can be terminated prior to its conclusion, requiring a written memorandum setting out the reasons, and approval from the Sheriff.

The Sheriff's Office has complied with this recommendation, modifying its policies governing the Internal Affairs Unit to require the primary investigator to complete a report with justification for an investigation closure and obtain written approval of the Sheriff or Undersheriff.

Policy Development: Electronic Control Devices

In an October 17, 2022 report, considered by the Board at its November 1, 2022 meeting, OCLEM advised this Board on its collaboration with the Sheriff's Office in developing a draft policy that would govern the use of ECDs in the event this Board authorizes the Sheriff's Office to purchase this equipment.

We have been engaged with the Sheriff's Office regarding the potential of acquiring Tasers for enforcement deputies for over a year. Beginning in October 2021 and at the Sheriff's Office request, we met and talked with Sheriff's Office representatives about those plans and our experience with Tasers in the various jurisdictions where we have worked. At the Sheriff's Office request, we provided exemplars of "model" Taser policies, and it is our understanding that the Sheriff's Office used the sample policies and best practices we provided in developing its approach, policy, training, and proposal. The Sheriff's Office provided us an early draft policy, and we offered suggestions during the course of various conversations and meetings. We were pleased that our feedback was incorporated into the most recent iteration of the draft policy.

As a result, the Sheriff's current draft policy incorporates best practices regarding ECD/Taser use, including the following provisions:

- Before authorized use, requiring a threat level of violent or assaultive behavior (or the threat thereof), in self defense or defense of another person, or to prevent self-injury. Mere flight is expressly specified as insufficient to justify Taser deployment;
- Automatic activation of body-worn cameras when a Taser is deployed;
- Prohibition of "cross draw" technique;
- Prohibition on holding a firearm and Taser simultaneously except in a deadly force situation;
- Requirement of a verbal warning before deployment unless not feasible;
- Use of the arc and laser to further provide additional warnings of impending Taser use;

- Restrictions on use for vulnerable populations, including persons known to be pregnant, elderly, children, persons who are handcuffed or otherwise restrained, and those in an elevated space or operating vehicles or bicycles;
- Limitations on use in drive-stun mode;
- Direction on avoiding targeting vulnerable areas such as head, neck, chest and groin;
- Direction on length of cycle (5 seconds) and limitations on multiple and simultaneous applications of the Taser; and
- Detailed training regimen prior to issuance of an ECD.

If this Board authorizes the purchase of ECDs, the Sheriff's Office is well-positioned to adopt policy that is consistent with best practices on their use.

Policy Review: Viewing Video of Use of Force Incidents

The Custody Bureau's new policy on Use of Force Reporting, Investigation, and Review – effective August 23, 2022 – includes a new protocol for reviewing video footage which is consistent with investigative best practices, but nonetheless has not been universally implemented by law enforcement agencies.

The new language states:

Staff shall not review BWC or overhead video before submitting their initial written report. Staff are authorized to review BWC or overhead video after preparing their initial report. Staff who review video after submitting their original report, and subsequently discover discrepancies between the original report and the video, shall submit a second report for the same incident. Whether an adverse inference should be drawn from an amendment or supplement will depend upon the facts and circumstances in each case. The Office of the Sheriff will not assume an adverse inference when staff amend or supplement their reports if a video review prompts further recollection of incident details.

We understand the recent revisions to the Use of Force Policy are part of a collaborative effort with counsel for plaintiffs to meet the requirements of the County's consent decree. We applaud the Sheriff's Office for its approach.

We have frequently advocated for this type of "write first" policy. It is consistent with scientific research that demonstrates an individual's memory of an event will be suggestively influenced by viewing video footage, often in ways that the person is not even aware. Because a deputy or officer's perception of an incident goes to the fundamental "state of mind" question, it is essential that their initial memory be preserved in a statement untainted by exposure to video footage.

We appreciate the further detail included in the Sheriff's Office policy regarding the possibility a staff member would need to supplement or amend a report, and the policy's caution against adverse inferences. Deviations from an individual's perception of an event (particularly a fast-moving one typical of a use of force scenario) and what is depicted on video are normal, and even expected, given the impact of stress, distractions, vantage point, and the natural flaws in human memory. Obtaining a statement from deputies or officers before allowing them to watch video is not about playing "gotcha" and trying to catch them in a "lie." Rather it is about trying to ensure a thorough, neutral investigation. An individual's memory provides one perspective on the event; the video may show another. There are many possible explanations for inconsistencies between the two, and – as the Sheriff's Office policy provides – the deputy or other staff member should be given the opportunity to explore those explanations in a supplemental report or follow-up interview watching the video.