

Santa Clara County

Office of Correction and Law Enforcement Monitoring:

**SECOND FOLLOW UP REPORT TO BOARD
OF SUPERVISORS JUNE 23, 2020 REFERRAL:
STATUS OF OCLEM RECOMMENDATIONS**

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Introduction

In August 2020, the Santa Clara County Office of Correction and Law Enforcement Monitoring (“OCLEM”) issued its report in response to the County Board of Supervisors Referral after conducting a detailed survey of Sheriff’s Office policies as they compare to the standards publicized in the “8 Can’t Wait” initiative by Campaign Zero.¹ In addition, OCLEM also conducted an assessment of Sheriff’s Office compliance efforts in relation to new state law standards for the use of deadly force and a review of five additional policy Recommendations expressly set out in the Board referral.

As a result of those evaluations, and consistent with contemporary best practices in policing, OCLEM presented ten Recommendations for refining current approaches to Sheriff’s Office operations. This Board then asked OCLEM to report back in ninety days on any implementation of the Recommendations by the Sheriff’s Office. In November 2020, we provided an update and reported that two of the ten recommendations had been implemented. This report is the second update on the status of the recommendations. As detailed below, since our last report, the Sheriff’s Office has, to its credit, implemented six additional recommendations, leaving two outstanding.

What follows is a listing of each of the ten recommendations along with a status update. The Sheriff’s Office advises that the two outstanding recommendations continue to be evaluated.

Recommendations and Responses

Since our November 2020 report, the Sheriff’s Office provided us with revised General Orders responsive to our recommendations that are also intended to address new state law requirements set out by SB230. We were also provided copies of proposed revisions in custody policies designed to address our recommendations as well as meet the requirements of SB230 and the jail use of force Consent Decree. We were afforded the opportunity to provide specific input into

¹ Campaign Zero is an activist organization, committed to legal system reform and reductions in police violence, that formed in the aftermath of Michael Brown’s 2014 death in Ferguson, Missouri. The 8 Can’t Wait initiative is one component of its broader efforts.

those proposed revisions that the Sheriff's Office was responsive to and a number of our suggestions were incorporated into the final custody policies.

This report is based on our review of those revised policies as well as discussion with the Sheriff's Office liaison assigned to us for purposes of this project.

RECOMMENDATION 1: The Sheriff's Office should consider removing from its policy manuals the authorized use of any neck holds or any other tactics that restrict oxygen or blood flow to the head or neck.

Since we made this Recommendation, AB1196 was enacted by the state legislature. That statute, chaptered in Government Code Section 7286.5, instructs that a "law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency." Carotid restraint is defined by the statute to mean "a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person." Choke hold is defined as "any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe."

Since our November report, Santa Clara Custody Policy 9.01G. was revised to remove carotid or choke holds as an authorized force option:

Staff Shall Not Use a Carotid Restraint or Apply Pressure to a Person's Neck

The Sheriff's Office does not train staff in the use of the carotid restraint/chokehold. The carotid restraint/chokehold is prohibited.

This revised policy is consistent with state law and our recommendation.

RECOMMENDATION 2: The Sheriff's Office should consider making minor modifications to its duty to intervene policy to clarify the duty to report.

In our initial report, we noted that the General Order could be read to require reporting another deputy's excessive force only when a deputy has intervened to stop it. The Sheriff's Office recognized that potential unintended ambiguity and has recently modified General Order 12.00 as follows:

O. DUTY TO INTERCEDE AND REPORT EXCESSIVE FORCE

1. Any deputy who witnesses any potential unnecessary or excessive use of force shall immediately intervene and prevent such force from being applied, taking into consideration the possibility that the involved deputies may have additional information

regarding the threat posed by the subject. *When potential unnecessary or excessive use of force is witnessed, the witnessing deputy is required to notify the supervisor as soon as safely practical, regardless of whether the witnessing employee intervened.* (emphasis added)

The revised language in the General Order satisfactorily addresses OIR Group's recommendation.

RECOMMENDATION 3: Current Sheriff's Office policy on shooting at vehicles should be revised to provide further guidance to its members, particularly with regard to moving into or remaining in the path of a moving vehicle.

General Order 12.02C, Use of Firearms, was recently revised as follows:

FIREARMS SHALL NOT BE DISCHARGED:

4. At or from a moving vehicle, except when a life-threatening situation requires immediate action in the form of deadly force.
 - a. Deputies shall, when feasible, move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. A deputy should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force is directed at the officer or others.

The revised language in the General Order satisfactorily addresses OIR Group's recommendation.

RECOMMENDATION 4: The Sheriff's Office should amend its General Order and Custody Bureau manual to require Deputies and Correctional Officers to include in their incident reports full accounts of their efforts to de-escalate a situation, or an explanation of why no such efforts were made.

General Order 12.00 Q2(c), Use of Force was recently revised as follows:

The deputy should articulate in the report the factors perceived and why he/she believed the use of force was reasonable under the circumstances, including but not limited to, the factors listed in "reasonableness of force" section of this Order, verbal commands and statements, a physical description of the scene, de-escalation techniques utilized and/or attempted (or an explanation of why de-escalation was not feasible), and first aid rendered.

Custody Bureau Policy and Procedure Manual Number 9.04 IV F. was recently revised as follows:

Reporting and Review: Any use of force reports submitted will contain descriptions of Deescalation efforts before and during the force event, and, if De-escalation was not used, a description of why De-escalation was not used

The revised language in the Manuals satisfactorily addresses the recommendation.

RECOMMENDATION 5: The Sheriff's Office should add to its force reporting policies a requirement that personnel write their supplemental reports independent of any assistance or collaboration with others.

General Order 12.00 Q 2(f) was recently revised as follows:

All use of force reports must be an accurate account of what the deputy knew, observed, or believed at the time of the incident and be written based on their own perspective and knowledge of the incident. Any additional information, including facts learned after the incident, should be clearly designated as such in any reports.

The revised policy satisfies the spirit of the recommendation.

RECOMMENDATION 6: The Sheriff's Office should consider adding to its force reporting policies a requirement that Deputies report as a use of force any time they point a firearm at an individual.

General Order 12.00 Q (2) o. was recently revised as follows:

Whenever a deputy points a firearm at an individual, the deputy shall notify his or her supervisor stating the details of the incident as soon as practical.

The revised policy addresses the recommendation.

RECOMMENDATION 7: The Sheriff's Office should move on its stated commitment to make public a list of lethal and less-lethal weapons it currently owns and deploys.

RECOMMENDATION 8: The Sheriff's Office should make public and accessible on its website any acquisition of excess military equipment.

As we indicated in our November 2020 report, the Sheriff's Office has implemented the above recommendations and placed the information on its publicly accessible website.

RECOMMENDATION 9: The Sheriff's Office should develop a policy that expressly lists conduct that disqualifies a potential applicant for employment as a Deputy or Correctional Officer.

As we indicated in our November 2020 report, the Sheriff's Office advised that while it has no current policy that speaks to the recommendation, it follows the principles of the recommendation in practice. The Sheriff's Office further noted that it has a comprehensive hiring process that mandates a pre-employment background investigation for all peace officers, as required by California Government Code section 1029 & 1031 and the California Commission on POST. The Sheriff's Office reiterates that its current practice prohibits the hiring (including lateral hires) of deputies or correctional officers with a history of excessive force or misconduct, violence, racism, or other forms of bigotry, as well as any other variance from the Sheriff's Office core values.

The Sheriff's Office further reported to us that it has developed a draft personnel procedure for recruitment and selection intended to codify its current practice to ensure that all hires, including lateral peace officer candidates, meet peace officer employment standards as defined by the California legislature, as well as Santa Clara County Sheriff's Office requirement for personal integrity and high ethical standards. The policy codifies that the Sheriff's Office provides equal opportunities for applicants and employees regardless of actual or perceived race, ethnicity, national origins, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

We have reviewed the draft policy and find that it provides helpful guidance on the recruitment and selection of personnel. The policy, however, does not yet explicitly indicate that the Sheriff's Office will not hire individuals with a history of excessive force or misconduct complaints as set out by the recommendation. We are hopeful that such language can be incorporated into the draft policy to make explicit that the Sheriff's Office will not hire a peace officer with a significant complaint history.

RECOMMENDATION 10: The Sheriff's Office should gather data on the types of calls and enforcement activity its enforcement personnel respond to and perform, broken down by time and shift, and should share this information with County stakeholders and communities.

In our initial report, we discussed some of the challenges surrounding any potential reassignment of the public safety response to unarmed personnel. We noted that an important first step would be to provide a stakeholders a better understanding of the various demands on the enforcement side of the Sheriff's Office, the types of calls received and responded to, and what other tasks occupy a deputy throughout his or her shift. Accordingly, we advanced the above Recommendation in support of creating a helpful and robust knowledge set from which to move forward toward any future reform efforts.

With regard to the specific recommendation, we reported in November that the Sheriff's Office had advised that it was not opposed to the recommendation; however, it acknowledged limited

resources and indicated that a countywide analysis of this data had not been performed. The Sheriff's Office further indicated that the new Report Management System and CAD systems will drastically improve how quickly it will be able to generate public-facing reports and dashboards, and looked forward to the day when it would be able to make such information publicly available.

Despite the challenges asserted above, the Sheriff's Office expressed optimism that it would be able to produce a summarized dashboard or report to be made available on its website with the requested information before the next report back to the Board. We have been recently advised that the Sheriff's Office hopes to be able to demonstrate tangible progress on this initiative in the near future; but to date no data has yet been published in accord with the recommendation.

Conclusion

We appreciate the updates and opportunities for input provided by the Sheriff's Office referenced in this progress report. As this report and the following table reflects, eight of our ten recommendations have been implemented with two still being evaluated and considered. We are hopeful that when we again report on this matter, we will be able to indicate that the Sheriff's Office has adopted the two outstanding recommendations.

And as we indicated in our November report, it is important to remember that the specific recommendations that emerged from our review are not simply ends in themselves. Instead, they are meant to be components of a law enforcement agency's movement toward practices that better meet evolving public expectations. We look forward to monitoring that progress as it continues in Santa Clara County.

OCLEM Recommendations in Response to June 23, 2020 Board Referral

RECOMMENDATION		STATUS
1	The Sheriff's Office should consider removing from its policy manuals the authorized use of any neck holds or any other tactics that restrict oxygen or blood flow to the head or neck.	Implemented
2	The Sheriff's Office should consider making minor modifications to its duty to intervene policy to clarify the duty to report.	Implemented
3	Current Sheriff's Office policy on shooting at vehicles should be revised to provide further guidance to its members, particularly with regard to moving into or remaining in the path of a moving vehicle.	Implemented
4	The Sheriff's Office should amend its General Order and Custody Bureau manual to require Deputies and Correctional Officers to include in their incident reports full accounts of their efforts to de-escalate a situation, or an explanation of why no such efforts were made.	Implemented
5	The Sheriff's Office should add to its force reporting policies a requirement that personnel write their supplemental reports independent of any assistance or collaboration with others.	Implemented
6	The Sheriff's Office should consider adding to its force reporting policies a requirement that Deputies report as a use of force any time they point a firearm at an individual.	Implemented
7	The Sheriff's Office should move on its stated commitment to make public a list of lethal and less-lethal weapons it currently owns and deploys.	Implemented
8	The Sheriff's Office should make public and accessible on its website any acquisition of excess military equipment.	Implemented
9	The Sheriff's Office should develop a policy that expressly lists conduct that disqualifies a potential applicant for employment as a Deputy or Correctional Officer.	Under consideration
10	The Sheriff's Office should gather data on the types of calls and enforcement activity its enforcement personnel respond to and perform, broken down by time and shift, and should share this information with County stakeholders and communities.	Under consideration

