

Santa Clara County

Office of Correction and Law Enforcement Monitoring:

**UPDATED RESPONSE TO BOARD OF  
SUPERVISORS JUNE 23, 2020 REFERRAL:  
STATUS OF 15 ORIGINAL  
RECOMMENDATIONS**

May 2021



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# Background

On June 23, 2020, pursuant to a referral by Supervisor Simitian, the Sheriff's Office was asked to review its use of force policies and adapt them to be consistent with the 8 Can't Wait reforms outlined by Campaign Zero:

1. Requiring officers to intervene to stop another officer from using excessive force.
2. Restricting or prohibiting the use of chokeholds, strangleholds, carotid restraints, and other approaches that cut off a suspect's air supply or blood flow.
3. Requiring officers to de-escalate situations to the greatest extent possible before using force, and to train officers specifically in de-escalation and violence reduction strategies.
4. Updating use of force policies to more clearly represent the maximum level of force allowable in response to specific types of conduct.
5. Requiring officers to give a clear verbal warning before using deadly force.
6. Prohibiting officers from shooting at moving vehicles unless an individual in the vehicle poses a direct deadly threat by means other than the vehicle.
7. Requiring officers to exhaust all other reasonable alternatives before resorting to deadly force.
8. Requiring comprehensive reporting of all uses of force and all threats of force.

(Recommendations 1-8).

In addition, the referral directed OCLEM to assess the extent to which County policies are compliant with California law, including SB230 and AB392.

(Recommendations 9-10).

The referral also requested OCLEM to report to the Board of Supervisors regarding five additional policy reforms:

- Prohibiting the hiring of enforcement and correctional officers with a history of excessive force or misconduct complaints (including lateral transfers).
- Making public a list of all lethal and less-lethal armaments currently owned by County departments.
- Limiting the acquisition of "military-style" weaponry and equipment.
- Banning or limiting the use of tear gas and rubber bullets as a crowd control technique.
- Restructuring County emergency response to ensure that the County employees best trained and suited to handle a given situation are able to do so.

(Recommendations 11-15)

At the Board of Supervisors meeting on February 23, 2021, and at the request of Supervisor Simitian, the Board directed the Office of Correction and Law Enforcement Monitoring to report to the Board in May 2021 relating to which of the 15 recommended actions from the June 23, 2020 referral have been implemented, are in progress or will not occur. This report is intended to be responsive to that request.<sup>1</sup>

## DISCUSSION

### 8 Can't Wait Reforms (Recs. 1-8)

As we first reported to this Board in August 2020, the Sheriff's Office was in substantial compliance with only half of the 8 Can't Wait model policies. However, as we reported to this Board in February 2021, the Sheriff's Office has taken additional steps to further align its policies with the specific goals and

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<sup>1</sup> In our August 2020 report to this Board, OCLEM evaluated the 15 elements of the original policy/reform proposals as they related to the Sheriff's Office, and devised ten recommendations that were intended to promote further action toward fulfilling the reform objectives. As of this writing, the Sheriff's Office has accepted and implemented nine out of ten OCLEM recommendations, with the remaining recommendation in process. The Board's February 23, 2021 referral requested OCLEM to go back to the original 15 Recommendations and report on their progress.

guidance promoted by the 8 Can't Wait initiative. As a result, Sheriff's Office policies are now consistent with the 8 Can't Wait framework.

## Policies Aligned with New State Law Provisions (Recs. 9-10)

As we have previously reported to this Board, the Sheriff's Office has worked to reform its policies to comply with new requirements as a result of state law requirements set out in SB230 and AB392. As a result, the Sheriff's Office's current policies are now compliant with those state law provisions.

## Additional Recommendations (Recs 11-15)

As noted above, the Board referral included five additional recommendations and requested OCLEM to report on the status of them.

### **Rec 11: Prohibiting the hiring of enforcement and correctional officers with a history of excessive force or misconduct complaints (including lateral transfers).**

In our February 2021 report, we indicated that this recommendation was still "in process". However, since that time, the Sheriff's Office has devised a policy responsive to this recommendation:

#### **Policy 1000: Recruitment and Selection**

[...]

#### **Policy 1000.6: Disqualification Guidelines**

[...]

(f) If prior employment history as a peace officer, any of the following acts during the course of such employment shall be cause for dismissal for the selection process:

- a. Lying or falsification of any official report or document
- b. Sustained finding of excessive force causing injury
- c. Multiple sustained findings of excessive force or misconduct
- d. Sustained finding or conviction of any act that constitutes assault under the color of authority, or other violation of federal or state civil rights
- e. Sustained finding of sexual harassment, discriminatory conduct, or disparate treatment of a member of the public based on ethnicity, race, gender, gender expression, sexual orientation, national origin, age, disability, or religion.

As a result of the adoption of this policy, OCLEM can now say that the Sheriff's Office has implemented this recommendation.

**Rec. 12: Making public a list of all lethal and less-lethal armaments currently owned by County departments.**

As we have reported earlier, the Sheriff's Office has made public a list of all lethal and less-lethal armaments currently authorized. While this recommendation is "implemented," more is currently being done through a County working group to provide the public with additional relevant information about these subjects. OCLEM is a member of this working group, which will provide this Board with future updates.

**Rec. 13: Limiting the acquisition of "military-style" weaponry and equipment.**

As we have reported earlier, the Sheriff's Office has made extremely limited use of the United States military's acquisition program: scopes, netting, and a utility truck are the only items it currently has in possession. However, County inquiry and review has subsequently been broadened to consider the potential impact of Senate Bill AB481. That bill, if enacted, would require an approval process before "military equipment" is obtained or possessed. It would also establish new definitional parameters for such equipment that could necessitate further consideration as applied to County law enforcement entities.

As a result of this inquiry, a County working group is working through these issues and reporting regularly on its progress to this Board. Because of this wider scope of inquiry, OCLEM would term this recommendation as “in progress.”

**Rec. 14: Banning or limiting the use of tear gas and rubber bullets as a crowd control technique.**

With regard to less lethal munitions (i.e., “rubber bullets” and other less lethal projectiles), current Sheriff’s Office policy (G.O. #12.04) authorizes its use:

*when use of that level of force is necessary for restoration or maintenance of order during jail disturbances, cell extractions, or civil insurrections, and where the use of deadly force is not justified.*

- a. Under no circumstances shall the use of less lethal munitions be permitted against peaceful protestors, or against individuals peacefully exercising their First Amendment right to free speech and to peaceably assemble.*
- b. Individuals participating in an Unlawful Assembly, Riot, or Rout per California Penal Code sections 404 - 409 are not considered peaceful protestors, nor considered to be peacefully assembling or exercising their First Amendment rights.*

Currently, the only guidance provided in Sheriff’s Office policy relating to the use of tear gas in the context of crowd control is found in its Use of Force Policy (G.O. #12.00) as stated:

*The use of chemical agents on non-violent protesters, or non-resisting prisoners, to assist in separating them or making an arrest is not authorized.*

The restriction on use of tear gas or less-lethal munitions on “peaceful protestors” is minimal; all could agree that such individuals should not be subject to such weaponry. Moreover, any potential restrictions are undercut by the explication in Sheriff’s Office policy that non-violent individuals who may be participating in an unlawful assembly or curfew violations are “not considered peaceful protestors”.

Since the George Floyd murder, a number of jurisdictions and courts have banned or more explicitly restricted the use of tear gas or less lethal munitions in a First Amendment context. Bills have been introduced in the California legislature to restrict or ban the use of these munitions. The Sheriff’s Office

instruction not to use tear gas or less-lethal weapons on “peaceful protestors” provides insufficient guidance on deployment in a First Amendment context.<sup>2</sup>

In its representations on this issue, the Sheriff’s Office has indicated no current intent to provide further restrictions or prevention of the use of these weapons in the context of protest activity and its disagreement with calls to eliminate these force options altogether in dealing with protesters. For that reason, OCLEM reports that, for the time being, there is no current consideration by the Sheriff’s Office to further restrict or eliminate the use of these munitions in the conjunction with protest activity.

**Rec 15: Restructuring County emergency response to ensure that the County employees best trained and suited to handle a given situation are able to do so.**

As this Board has followed closely, the County has already done much to move this recommendation forward. The Behavioral Health Services Department funds a Mobile Crisis Response Team (MCRT) that operates 24 hours a day, seven days a week and works closely with law enforcement,<sup>3</sup> responding to calls to assist with subjects in acute mental health crises. Since August 2018, the MCRT has had a dedicated law enforcement phone line, and in 2019, handled nearly 400 referrals from law enforcement.

In addition, the Sheriff’s Office reports that it has successfully deployed a Psychiatric Emergency Response Team (PERT) that pairs a mental health clinician with a deputy sheriff who, together, have responded to mental health-

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<sup>2</sup> The Sheriff’s Office further notes that it does not authorize less-lethal tools, such as “rubber bullets” or tear gas in patrol. The Sheriff’s Office indicates that such weapons are reserved for specialized teams, which only deploy with command staff approval and direction. The Sheriff’s Office maintains that this provides additional layers of oversight and training to their use. While correct, there are no additional written policies that provide guidance to the specialized team on when deployment in a First Amendment context is appropriate.

<sup>3</sup> The majority of the MCRT’s calls come from San Jose Police Department and relatively few from the Sheriff’s Office; this discrepancy is largely a function of demographical differences in the areas patrolled.

related calls for service and related follow up. The Sheriff's Office reports that it has catalogued a number of "success stories" as a result of the deployment of the PERT team.<sup>4</sup>

These are all encouraging first steps toward the sort of re-imagining of County emergency response systems that have become part of the national dialogue in recent months, and we have every expectation that the process will continue. Accordingly, while significant strides have been made in this area, OCLEM considers this recommendation as a work in progress.

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<sup>4</sup> The Sheriff's Office further reports that virtually all enforcement deputies have received Crisis Intervention Training and have obtained funding to complete similar training for Custody during the next fiscal year.

The Sheriff's Office also cites to last year's community listening sessions as evidence of its "stellar reputation" for handling mental health calls, effectively using de-escalation principles.