

Santa Clara County Office of Correction and
Law Enforcement Monitoring

Qualitative Audit of Incidents
Reported in Sheriff's Office
Annual Military Equipment Report

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OIR
GROUP

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Introduction

Assembly Bill 481 (California Government Code section 7072(a)) requires that law enforcement agencies report to the jurisdiction's governing body on their use of military equipment in an annual report.¹ The information reported in the Sheriff's Office 2023-2024 Annual Military Equipment Report (presented to the Board of Supervisors concurrently with this report) details a total of 135 uses of approved military equipment between April 1, 2023 and March 31, 2024, up from 99 uses from May 1, 2022 to March 31, 2023 (an 11-month period due to the implementation of AB 481). The Sheriff's Office report provides a "Use Summary" for each of these deployments.

OCLEM selected 22 of these incidents for further review and analysis, to examine whether the incidents complied with relevant policies, and to make recommendations for any improvements to policies or practices. We found that the information reported in the Sheriff's Office Report accurately described the incidents, the circumstances that led to use of military equipment, and related outcomes for the incidents in our sample. This report details OCLEM's review, additional findings, and recommendations.

When the Sheriff's Office presented its 2022-2023 Annual Military Equipment Report, this Board directed OCLEM to evaluate a subset of the uses of force reported there; namely, 17 uses of certain chemical agents by deputies in the Custody Bureau in situations where individuals refused to come out of their cells or follow other directives. We presented that

¹ AB 481 classifies any supplies, equipment, and weapons that are part of the traditional military supply chain as "military equipment." Since the passage of the legislation, there have been concerns raised that the list of qualifying equipment is either under or overinclusive, depending on the perspective of the commentator.

report to the Board on September 19, 2023, and were then directed to prepare a follow-up report on five specific issues. We presented that report to the Board on January 23, 2024.²

For this report, we selected incidents from both the Enforcement and Custody Bureaus, and across a range of equipment categories.

Of the seven incidents we reviewed from the Enforcement Bureau, we agreed with the Sheriff's Office findings in five of those cases that the use of military equipment complied with its policies. Deputies in those cases fully and thoroughly reported their uses of force. The supervisory review of those incidents was sufficient, though we make one recommendation for improving that process by requiring uninvolved sergeants to complete the review when practicable.

The remaining two Enforcement incidents raised some concerns, largely because they were not subject to the usual supervisory review process due to records management deficiencies. We identified potentially significant issues with both of those incidents, and we urge the Sheriff's Office to remedy this administrative breakdown and conduct a full internal review and analysis of these two incidents. We make two recommendations relating to our review of the Enforcement incidents.

For the Custody incidents, OCLEM looked in particular at those cases that involved individuals with mental illness or in mental health crises, to track those concerns raised by the Board in 2023. Our impression of the Custody Bureau incidents we reviewed was largely consistent with the conclusions we reported on in September and January. As with all 17 of the incidents from the 2023 report, 12 of the cases we reviewed here involved the use of chemical agents in planned uses of force incidents, most often on individuals experiencing mental illness. Those scenarios continue to present complexities that have no easy or perfect answers. We found that deputies continued to exercise patience and demonstrate restraint in confronting these situations.

Three other Custody incidents we reviewed involved the use of chemical agents in reactive scenarios, in response to disturbances or assaults. We

² Our reports can be accessed on Santa Clara County's OCLEM website at <https://board.sccgov.org/office-correction-and-law-enforcement-monitoring-oclem>

noted a different set of challenges presented in those cases, but also found the reporting and supervisory review of those incidents to be exemplary.

To complete this report, we reviewed all reports written by Sheriff's Office staff and all the audio and/or video recordings associated with these 22 incidents. We appreciate the continued cooperation of Sheriff's Office personnel in providing us all the materials we needed for our review, for promptly responding to our requests for additional materials, and for candidly and openly engaging with us about concerns that we raised during various points of our review.

We were particularly gratified to observe that in the very recent Custody cases, the recommendations we made in our prior reports on the use of chemical agents in the jails have been implemented.³ The willingness to embrace these changes is a commendable testament to the positive shifts in Sheriff's Office culture and performance.

³ Recommendation 6 from our August 29, 2023 Report was directed toward Custody Health: *Custody Health Services should perform an after-action review following an incident in which Custody Bureau personnel use chemical agents or other force in a planned use of force event that was either initiated by or involved consultation with Mental Health or Medical staff.* We are working with Custody Health personnel to learn more about the ways in which they work with Custody Bureau in reviewing uses of force that involve their patients and will provide more information on this in a future report.

Review of Enforcement Bureau Incidents

The Sheriff's Office reported 57 uses of military equipment by the Enforcement Bureau in this period, up from 37 uses in the preceding 11 months. OCLEM requested and received all available evidence for seven of these incidents, most of which included deployment of more than one type of military equipment; for example, one included use of both Armored Response Vehicles – the BearCat and armored Suburban – the Tactical Command Post, several Noise-Flash Diversionary Devices (NFDD)⁴, and a chemical agent, as well as use of a neighboring agency's Unmanned Aerial System (UAS, or drone). Another involved use of a 40mm less lethal projectile launcher and its accompanying munition, the impact sponge baton (the launcher and baton will be referred to collectively as "40mm"), and the BearCat.⁵ Two of these incidents involved use of the 40mm and the MK-4, the handheld canister of OC spray carried by all deputies, which is not classified as military equipment.⁶

OCLEM reviewed all relevant body-worn camera footage, Incident Reports, and any force reports, including reports from BlueTeam (the

⁴ A NFDD, also referred to as a "flashbang," is a device that creates a loud explosive sound and bright light that is meant to shock, surprise or otherwise distract a subject in the context of a tactical operation. Typically, these devices are used in tactical situations, such as a barricaded suspect, to distract or disorient a suspect.

⁵ Impact munitions, such as the impact foam baton, are target-specific and used for pain compliance. Their use is detailed in General Order #12.04: Use of Less Lethal Munitions.

⁶ We did not review incidents that included use of Category 1: Robots or Category 10: Specialized Firearms because we found that their use was sufficiently justified in the summaries contained in the Annual Military Equipment Use Report.

database system the Sheriff's Office uses to track use of force), and After-Action Reports authored by the Sheriff's Emergency Response Team (SERT) related to their deployments.

Compliance with AB 481 Requirements

AB 481 requires that agencies establish "use policies" for the deployment of military equipment, and then adhere to those use policies when deploying the equipment.⁷ The Sheriff's Office formally reviewed five of the seven incidents in our sample and found that the use of military equipment complied with its policies. We discuss the administrative oversights that led to the failure to fully review the other two incidents later in this report.

- The Sheriff's Office found all deployments of their Armored Response Vehicles (ARVs) and Tactical Command Post to be reasonable and necessary to the incident, and in compliance with its use policy. Our review of the available evidence supported these findings: the ARVs were used for deputy safety during tactical operations and for tactical purposes, such as pinning a subject's vehicle to prevent his escape or for making announcements from a secure location, and the Command Post was used for planning and operational support.
- The Sheriff's Office found the use of NFDDs and military grade chemical agents, which are only deployed by its SERT, to be reasonable and necessary. Again, we found that the evidence supported these findings: these devices were used after careful consideration to gain the compliance of a barricaded subject who was known to be armed.
- The Sheriff's Office completed a formal review of two of four deployments of 40mm and found them to be reasonable and necessary; our review of the evidence suggested that these findings were appropriate. The Sheriff's Office did not review or make formal

⁷ When AB 481 first took effect, OCLEM reviewed the Sheriff's Office use policies and made recommendations, which the Sheriff's Office accepted.

findings in the other two 40mm cases, which we discuss in detail later in this report.

AB 481 requires that military equipment deployed for Mutual Aid purposes (that is, to assist other agencies that do not have this equipment) be operated and managed by the owner agency and that its use complies with the owner agency's use policy. We reviewed one deployment of the ARV for Mutual Aid and found that the Sheriff's Office adhered to this requirement. In that incident, Sheriff's Office deputies actively participated in the partner agency's tactical planning session, directed the use of the ARV, and operated it in alignment with the Sheriff's Office use policy.

We also reviewed two incidents where the Sheriff's Office used a neighboring agency's UAS, or drone. In both cases, the UAS was used to observe subjects from a safe distance to assist in tactical planning; it was operated by personnel from the neighboring agency, who communicated with Sheriff's Office personnel via radio. In its After-Action Review of one incident, SERT noted that the UAS played a critical role in determining that the subject was not armed and not severely injured (the subject appeared to have cut his wrists). The Sheriff's Office has indicated that it would prefer to operate its own equipment in these incidents and is requesting to purchase its own UAS, as detailed in their Annual Report and related Legislative File.⁸

Finally, an intention of AB 481 was to encourage agencies to consider other, non-military intervention and force options before choosing to use or deploy military equipment. In the seven incidents that we reviewed, we found this to be the case. In some cases, other intervention options,

⁸ OCLEM has reviewed the Sheriff's Office request for the UAS and provided feedback on the related General Order (use policy), which the Sheriff's Office incorporated. We find that the Sheriff's Office has carefully considered the impacts of this equipment and provided appropriate guardrails for its use. OCLEM will continue to review uses of military equipment and uses of law enforcement-related surveillance equipment on an annual basis with the County's Privacy Office, which will include uses of the UAS should the Sheriff's Office be approved to acquire this equipment. In short, OCLEM has opportunities to systematically review and report out on uses of the UAS to determine compliance with Sheriff's Office and County policies and with AB 481.

including de-escalation, were attempted and proved ineffective. For example:

- In one incident involving a subject potentially armed with a firearm who was sitting in his vehicle in a convenience store parking lot, deputies first tactically positioned patrol vehicles behind and around the subject's vehicle to prevent the subject from escaping and to provide deputies positions of cover. They replaced those with the ARV, which, due to its size and weight, was more effective in pinning the subject's vehicle to prevent its movement and allowed deputies a higher (and safer) vantage point. This subject surrendered after several hours of negotiation. No force was used.
- In one use of the 40mm, deputies spent nearly 45 minutes attempting de-escalation strategies with an agitated subject who threatened to fight the deputies and refused to comply with commands. This was somewhat effective; at one point, the subject, who was standing, then pacing with clenched fists, even agreed to sit down on a low wall. But when the subject wrapped his t-shirt around his hand, stood up, and pulled his arm back to deliver a punch, a deputy deployed one round from the 40mm and another deployed OC spray. Here, Sheriff's Office supervisors noted, and we concur, that the use of the 40mm alone would have been more effective than the use of both force options because deputies who then went hands-on to detain the subject were contaminated by the chemical agent.

In other cases, Sheriff's Office personnel determined that other force options were not reasonable or would not be as effective as use of military equipment. For example:

- In another use of the 40mm, the subject, who was experiencing a mental health crisis and was naked, had broken all the windows in his home with a baseball bat and ignored attempts at de-escalation. The subject then ran across the roadway and attempted to enter a neighbor's home where deputies had observed at least one person inside at the front window. Deputies who had positioned themselves at a safe distance from the subject quickly determined that the use of other tools or weapons would not have been effective in stopping the subject's attempts to enter the home and possibly harm the neighbor. A deputy fired one round from the 40mm to protect the neighbor, stop

the subject's actions and gain compliance; this was effective (we discuss the deputies' other uses of force in this incident later in this report).

- In a SERT response to a barricaded subject who was previously known to be armed, deputies discussed different options for gaining the subject's compliance: sending in a police canine or deploying a canister of a chemical agent classified as military equipment. The deputies determined that use of chemical agents was most appropriate, both to gain compliance and to minimize the potential for lasting injury to the subject. The chemical agent was effective, and the subject surrendered.

Overall, we found the use of military equipment to comply with both the legal requirements and overall intent of AB 481, while identifying the need for a formal review of one incident involving deployment of a 40mm less lethal (we discuss this in more detail below).

Reporting & Reviewing Force: Supervisor Response and Consistency

Deputies' Force Reporting

Patrol deputies who used military equipment appropriately and consistently reported the force in their Incident Reports.

Deputies also documented all but one incident in BlueTeam, even when the incident did not include any reportable force. For example, the deputies involved in the deployment of the ARV to pin in the subject's vehicle in the convenience store parking lot submitted a BlueTeam entry for deploying the ARV and breaching a door despite not using any force against the subject.

SERT deployments were consistently documented in SERT After-Action Reports, which we found to be thorough and thoughtful. We learned that SERT does not always utilize BlueTeam to document its military equipment deployments, particularly when the deployment did not include a reportable use of force (for example, the Mutual Aid deployment of the ARV).

Despite these reporting challenges, we were appreciative that deputies reported force *somewhere*, indicating that deputies are committed to self-reporting force. This also speaks to the Sheriff's Office culture of reporting force, discussed in detail in the OCLEM Review of the Sheriff's Office 2023 Use of Force Report, dated May 21, 2024.⁹

More importantly, we found deputies' use of force summaries in both their Incident Reports and BlueTeam to be thorough and complete. Deputies did not include any "generic" statements that we sometimes see in force reports; for example, deputies detailed the subject's specific actions and why this necessitated force, rather than using boilerplate language such as, "the subject was resisting." This speaks to the success of the Sheriff's Office robust and continual training on report-writing and use of force policy.

Supervisor Response and Evaluation

The Sheriff's Office requires that supervisors evaluate uses of force, both on scene when possible and after reviewing all available reports and video footage (in BlueTeam).

As to the on-scene response: we observed at least one supervisor present at every scene in our sample. The supervisor took brief statements from deputies and subjects (when the subject was willing) and directed documentation of injuries; these activities were documented in the supervisor's Supplemental Reports. However, we noted that the supervisors who conducted this review were also sometimes involved in the incident, including directing the use of force. This dynamic creates a seeming conflict of interest when a supervisor is passing initial judgment on the legitimacy of an operation and use of force that the supervisor actually directed. While we are cognizant of potential resource constraints, we recommend that the Sheriff's Office require that, when practicable, an *uninvolved* supervisor respond to the scene to conduct the on-scene force review.

⁹<https://board.sccgov.org/sites/g/files/exjcpb936/files/document/OCLEM%20Review%20of%20Sheriff%27s%20Office%202023%20Annual%20Use%20of%20Force%20Report%205-21-24.pdf>

RECOMMENDATION 1

The Sheriff's Office should, when practicable, require that an uninvolved supervisor respond to the scene to conduct the force review.

Once a deputy submits a BlueTeam report, it is routed to his/her immediate supervisor for initial review, and then up the chain of command for further evaluation. As noted above, this occurred in five of the seven cases in our sample. In those cases, we found the supervisors' reviews in BlueTeam to be thorough and complete, and supervisors included thoughtful evaluations of the deputies' actions beyond the use of force itself.

However, two cases were not formally reviewed by supervisors. One was routed to a supervisor but never reviewed, which is a flaw in the BlueTeam system; cases can get "stuck" in a BlueTeam "inbox" if an agency does not establish a mechanism to track workflow timelines. And deputies did not submit a BlueTeam entry in the other; in our May 21, 2024 memo discussing the Sheriff's Office annual report on all uses of force, we recommended that supervisors hold deputies who fail to do so accountable through appropriate action.

RECOMMENDATION 2

The Sheriff's Office should establish workflow tracking in BlueTeam and its future Record Management System to ensure that all uses of force are evaluated by supervisors.

We discuss our review of issues raised by these two cases in the following section. We also urge the Sheriff's Office to determine why these two incidents were not formally evaluated in compliance with General Order #12.00 and take any necessary measures to address the failures to fully report and review in the established manner, and to prevent similar omissions in the future.

OCLEM Incident Reviews

While we concurred with the Sheriff's Office findings in the five cases evaluated, we identified two cases that were not part of any formal review process. Here, we briefly discuss these two cases and recommend that the Sheriff's Office complete formal reviews.

The first case involved the use of the 40mm to address the situation involving the subject experiencing a crisis who had broken windows with a baseball bat, discussed above. After deputies deployed the 40mm to prevent the subject from entering a neighbor's home, they warned that they would use OC spray if the subject did not get on the ground to be detained. The subject, who was naked and, at that point, unarmed, walked slowly toward the deputies, stopped, and stood with his face turned away from deputies and his arms to his side. A deputy deployed one burst from his handheld OC spray. When the subject bent over and covered his face, the deputy forcibly pushed the subject to the ground, where deputies handcuffed him.

While policy allows the use of OC spray "to overcome resistance to a lawful arrest," it also cautions against use of force on those experiencing a mental health crisis as they may "have diminished ability to understand or comply with commands" (General Order #12.00). While we recognize that the deployment of handheld OC spray is not a use of military equipment, we recommend that the Sheriff's Office review this entire incident with specific focus on the reasonableness and necessity of the use of OC spray and physical force.

The second case involved a subject who was possibly under the influence of psychedelic drugs and was armed with a rifle, which he kept pointed at his chin and head as he articulated suicidal ideations. Deputies called PERT and the Mobile Crisis Team; it is unclear if these teams responded.¹⁰ Deputies also called for the Armored Suburban and the Mobile Command Post.

Deputies attempted commendable de-escalation for over an hour, including asking the subject what he was passionate about and attempting to establish rapport as they requested that they lower his gun. As the subject wandered through his property, deputies observed his actions via a UAS (provided by a partner agency) to give the subject time and space.

¹⁰ It would be helpful for the Sheriff's Office to include in its documentation of an incident follow up information about any requests for outside specialized units to respond, including whether such units responded and if not, any explanation for the non-response.

When the Armored Suburban arrived at the scene, it could not reach the location because other police vehicles were blocking the way. It staged outside the immediate scene.

Unfortunately, the subject eventually fired one round into his chin and fell to the ground face down with the rifle between his legs. Deputies observed the subject still moving and believed that he was still an active threat. Deputies discussed an approach plan that would allow them to safely secure the rifle and the subject's hands. As part of the plan, deputies fired two rounds from the 40mm at the subject before approaching, to see if the subject would react and to assess whether he posed a threat.

Seeing minimal reaction, deputies executed their approach plan, turned the subject onto his back, and began life-saving measures. Paramedics declared the subject deceased.

While all deputies provided detailed Incident Reports, none submitted a BlueTeam form. As a result, this incident was not formally reviewed by the chain of command under the Sheriff's Office usual internal review process. In discussing this incident with us, the Sheriff's Office reported that at least one supervisor directed the force on scene, and another reviewed the deputies' Incident Reports per their policy. But we found aspects of this incident to warrant a formal review, including the Armored Suburban's inability to reach the location where it was needed and whether the decision to use the 40mm was consistent with its use policy.

We recommend that the Sheriff's Office direct uninvolved supervisors to conduct after-action holistic evaluations of these two incidents to identify and remedy any issues.

Review of Custody Incidents

Of the 78 uses of military equipment reported by the Custody Bureau for the 2023-24 reporting period, OCLEM requested and received the videos and reports related to 15 of these incidents. We selected incidents from both Elmwood Correctional Facility and Main Jail, and across the various categories of chemical agents, with an emphasis on incidents involving individuals experiencing mental illness.

As we did in our August 29, 2023, report, we assessed these incidents broadly, looking at the totality of the incident and the Sheriff's Office response on multiple levels:

- Reasons for the use of military equipment (here, deployment of chemical agents), and availability of any alternatives
- Timing and quality of supervisory involvement and control
- Decontamination and medical clearance following the use of chemical agents
- Attention given to others in the housing area who may have been impacted by the chemical agents
- Holistic after-action review

Specific to those cases that involved cell extractions, we also assessed:

- Involvement of mental health and medical personnel
- Involvement of deputies with specialized mental health training

As with our 2023 report, we were generally impressed by the Sheriff's Office approach in these incidents. In the planned use of force incidents,¹¹

¹¹ A "Planned Force Event" is a situation where time and circumstances allow staff the opportunity to strategize an approach to an incident that might require force (e.g., to remove a person from a confined space or to otherwise enter that confined space within the jail). A "Reactive Force Event" is a situation that requires the immediate use of force because the individual is engaged in conduct that poses a threat to safety or security that necessitates an immediate response.

deputies showed patience and made conscientious efforts to gain voluntary compliance, including engagement of medical and mental health personnel. The ERT teams, once activated, operated with restraint and used only that force necessary to meet their objective. And after the use of chemical agents, deputies showed consideration for the need to quickly decontaminate individuals and have them medically assessed. The sergeants and lieutenants responsible for reviewing these incidents completed their reports thoroughly, identifying issues of concern and documenting their efforts to address those issues.

Some of the deficiencies we noted in our 2023 report persisted in this set of incidents. This is not surprising. The first of our reports was presented to the Board in September 2023, six months into the current reporting period. Many of the recommendations we made in our 2023 report were implemented by directives issued in January 2024, with only two months remaining in this reporting period.

Twelve of the cases we reviewed involved the use of chemical agents in planned uses of force incidents, most often on individuals with mental illness, to stop them from harming themselves or destroying property,¹² or to assist in the administration of court-ordered medication. In the remaining three cases, deputies used chemical agents in response to disturbances or assaults. We identify issues and discuss elements of each of these cases below.

Types of Chemical Agents Used

In our August 29, 2023 report (presented to the Board on September 19, 2023), we provided a detailed description of the various types of chemical agents used by deputies in the jails that are classified as military equipment.¹³ In brief, the Custody Bureau uses two main chemical agents

¹² In one case, an individual had fashioned weapons from a tablet that the individual had destroyed. In another an individual smeared food over pod windows, obstructing visibility into the pod, and poured hot water from a hot pot onto the floor, creating a hazard. Another individual was threatening to break the television in the dayroom.

¹³ All of Custody Bureau's chemical agents are classified as military equipment pursuant to AB 481 except for the smaller, hand-held canisters of OC spray ("MK-4") that are issued to and carried by every deputy. These are exempt because they are considered to be "standard issue equipment."

– OC¹⁴ spray and ClearOut¹⁵– that can be deployed in various ways, depending on the circumstances. “MK-4”, “MK-9”, and “MK-46” refer to the sizes of the canisters used to deliver OC spray (4, 9, and 46 ounces, respectively).

While the chemical makeup of these agents is different,¹⁶ they share the same basic characteristic: they irritate mucus membranes and skin, most often impairing the eyes and nose, often causing a runny nose, watery eyes, difficulty breathing, a burning sensation, and frequent coughing.

Planned Uses of Force

De-escalation and Attempts to Gain Voluntary Compliance

In many of the cases we reviewed, deputies demonstrated excellence in their ability to stay calm and patiently talk with incarcerated individuals in attempts to get them to comply with orders. For example:

- Over three days, 11 deputies, three Multi-Support Deputies (MSDs)¹⁷, two sergeants, and two mental health clinicians tried to talk an individual into voluntarily moving to a different cell.¹⁸ One

¹⁴ “OC” is short for oleoresin capsicum, the active ingredient in pepper spray and derived from the naturally occurring compound in chili peppers.

¹⁵ ClearOut is a manufactured chemical agent that is a mix of two components: a concentration of OC and CS, a common type of tear gas.

¹⁶ ClearOut is an aerosol that remains suspended in the area where it is deployed. When fresh air is introduced, the aerosol quickly dissipates. Its components do not saturate an area or subject the way OC does, and are less likely than OC to cross-contaminate an unintended area. Studies also suggest that ClearOut is less inflammatory than OC.

¹⁷ Multi-Support Deputies are specially selected to assist other deputies and mental health professionals to address the needs of the seriously mentally ill. They work closely with mental health staff throughout the jail facilities, responding to requests for assistance with inmates who are in crisis or who need care and attention that a module deputy may not be able to provide.

¹⁸ The documents we reviewed do not state the specific reason for the move, though note that all of the other inmates in the entire module had been moved. This situation pre-dates our earlier report, and is similar to one we reported on last year, which prompted two recommendations: 1) to require full

MSD brought the individual lunch and talked to him about his family in an effort to gain his trust and compliance.

- One individual who was refusing to take court-ordered medication repeatedly threatened deputies, stating “I will attack you.” While deputies took well-advised precautions, they also seemed to recognize that the threats were likely the product of the individual’s mental illness. For over four hours, multiple MSDs, nurses, and mental health personnel tried to talk him into voluntary compliance before the Emergency Response Team (ERT)¹⁹ was activated and ultimately used chemical agents in their efforts to get him out of the cell.
- In one set of videos we reviewed, a sergeant spent over 30 minutes at an individual’s cell door, listening to his concerns and demonstrating exceptional de-escalation skills. The individual had smashed his tablet and had a sharp fragment in each hand. Deputies used chemical agents in an attempt to get him to give up the improvised weapons.

In one incident, however, we viewed video in which a deputy’s demeanor was less than ideal; the deputy did not maintain the type of emotional detachment and cool headedness we saw in other incidents. The issue was not flagged by the reviewing supervisor. When we raised it with Custody leadership as part of this review, they agreed with our assessment and shared with us their plan to address the issue, both with the deputy and with the supervisor who had not initially identified the concern.

documentation of the reasons for a given housing move; and 2) to create a directive prohibiting the use of chemical agents in planned uses of force for the purpose of routine facility maintenance, absent clearly articulated exigent circumstances. Both recommendations have subsequently been implemented.

¹⁹ Custody Bureau’s ERT is a team of highly trained and equipped corrections staff that are called upon to quickly deploy and subdue violent, assaultive, or uncooperative inmates that pose a threat to themselves, staff, or facility security.

Decontamination and Medical Care

As in the cases we reviewed for our 2023 report, every case we assessed for this report documents deputies' attention to the incarcerated individual's need for water and fresh air to clear the effects of the chemical agents. A few cases were noteworthy:

- In one where an individual was determined to be mentally decompensating and had staged cups of urine and feces in the cell after ERT deployed an MK-9, the team entered an individual's cell, where the individual threw a cup with urine and feces at them, then spit on them. When ERT gained control, they put a spit mask on the individual. The reviewing sergeant later addressed with team members the need to remove the spit mask more quickly to re-assess the need for it and allow for more effective decontamination.
- In another, an individual with a history of throwing urine and spitting on staff needed to be removed from her cell so that mental health staff could administer involuntary medication. After deploying chemical agents and then entering the cell, one member of an ERT team began to put a spit mask on the individual. The sergeant directing the ERT team told the deputy to stop and give the individual a chance to comply without the mask. She did comply, and we recognize the sergeant's good work in considering how a spit mask hampers the ability to clear the effects of chemical agents, and then calmly talking to the individual about the consequences of spitting.
- The only case we reviewed where the incarcerated individual was not taken to a sundeck for fresh air and water involved an individual who refused to return to his cell and was creating a hazard in the dayroom through his destructive behavior. When he did ultimately return to his cell, after deputies deployed OC spray, deputies then asked him to voluntarily be handcuffed so they could remove him from his cell to be decontaminated. The individual refused, and deputies left him in his cell. The supervisory review noted this challenge and the preference to decontaminate individuals on the sundeck.

Addressing Collateral Contamination

Some of the questions that arose during the presentation of our earlier reports on the use of chemical agents in Custody related to the well-being of individuals in adjacent cells or elsewhere in a housing area who also were impacted by the use of chemical agents during a planned use of force. In this set of cases, especially those that post-date our earlier reports, we saw a more deliberate effort to document steps taken to limit the collateral impact of the chemical agents used. Notably:

- In one case, an individual became aggressive and threatening towards his cellmate. Deputies removed the cellmate from the cell and called for an MSD and mental health clinician to respond. While they made efforts to gain compliance from the individual and move him to a new housing location to receive more intensive mental health care, other individuals housed in that module were given the opportunity to go to the dayroom. For those individuals who chose to remain in their cells, deputies documented the use of absorbent “socks” to block the gaps under their doors. They also staged an industrial fan to aid in clearing the area of the chemical agents eventually used in efforts to get the individual out of his cell.
- In two other incidents, we observed on body-worn camera recordings deputies removing individuals from neighboring cells prior to ERT deployment, though we did not see documentation of those efforts. Both of these incidents pre-dated our recommendation to require deputies and sergeants to include this information in their reports.

Reactive Uses of Force / Response to Assaults and Disturbances

We selected some cases for review that did not involve planned uses of force, but were instead reactive, in that deputies were required to respond quickly to assaults and disturbances.

One of these was a physical fight involving up to 15 incarcerated individuals. Deputies responded quickly and gave orders to stop fighting,

which went unheeded. One deputy deployed MK-9, but the fighting continued. Another deployed MK-46, which was effective in getting the individuals to comply and stop fighting. Once the individuals were separated and restrained, those involved in the fight as well as every individual housed in that pod were given water, clean towels and clothing, soap, and the time and space to decontaminate. Each was examined and cleared by medical personnel, and several also received a mental health assessment.

In another multiple person assault incident, three individuals attacked another inmate in a day room with punches to the face and head. Deputies quickly deployed an MK-9, and the assaultive individuals stopped their attack.

We noted some concerns about these incidents:

- While deputies clearly gave commands to stop fighting and get on the ground, they did not give explicit verbal warnings that OC would be deployed that were audible on the video we reviewed. We acknowledge that these were reactive events that required rapid intervention. Nonetheless, this issue was not identified in the supervisor's review.
- In one, a deputy forgot to activate his body-worn camera and appropriate measures were taken to address this.
- Most deputies did not wear gas masks. Many can be heard and seen coughing as they are impacted by the OC.
- The specific chemical agents used – MK-9 and MK-46 - made the floor slippery, which created a hazard as deputies handcuffed and moved individuals out of the module. In one case, a responding deputy slipped and, as he tried to regain his balance, inadvertently kicked an individual in the shoulder. (While the video showed this to be clearly accidental, the deputy nonetheless documented it as a use of force.)
- Decontamination of the modules was very time-consuming. Deputies had to move everyone – even those not involved in the fight – out of the unit and into holding cells while they brought in industrial fans to clear the air.

The third reactive force incident we reviewed was a mass disturbance involving more than 25 incarcerated individuals. Deputies deployed Pepperball as well as OC in their efforts to regain compliance and control of the unit. The supervisor's review of this incident identified a number of potential policy violations, and the incident was appropriately referred to Internal Affairs for additional investigation. We will continue to monitor the progress and outcome of this investigation.

Supervisors' Reviews

In our 2023 report, we wrote at length about the importance of holistic supervisory review of force incidents. In that report, we noted that the use of force reviews we assessed were generally thorough, in that they identified relevant issues and initiated appropriate remedial measures. That observation continues to hold true in the cases we reviewed for this report. For example:

- One internal review noted a discrepancy between the type of control hold a deputy described in his report and what the sergeant saw on his review of video. He addressed this issue by conducting a training session for the entire ERT team on the differences between various control holds.
- One review noted that ERT deputies had not waited long enough between applications of chemical agents to give the individual time to voluntarily comply. The sergeant identified the need to have a designated timekeeper keeping track of and documenting appropriate time intervals. In subsequent incidents we reviewed, we noted more precise documentation of these timing issues.
- In a couple of cases, the Sheriff's Office also initiated appropriate interventions relating to concerns noted about deputies' visible tattoos²⁰ and a failure to activate a body-worn camera.
- In one case, we noted that a supervisor in the chain of command was on leave, and others caught this fact and routed the review to a

²⁰ Sheriff's Office policy provides that tattoos should not be visible in the workplace.

different supervisor. We appreciated this attentiveness to the need to ensure timely review.

In our 2023 report, we made several recommendations relating to improved documentation and review. We reported in January 2024 that the Sheriff's Office had accepted and implemented these recommendations. We were pleased to see the new forms and documentation requirements being utilized in the cases we reviewed here that post-date implementation of these recommendations.

Finally, we acknowledge that these incidents are demanding and stressful for all those involved. We appreciate Custody's willingness to address situations in which this stress may have impacted deputies' decision making in ways that made their performance less than ideal, and leadership's commitment to effective remediation. This type of openness and candor is commendable, and a key to creating a culture that encourages full and honest reporting along with ongoing growth and improvement.