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To: Board of Supervisors

Cc: Sheriff Robert Jonsen

From: Julie Ruhlin, OCLEM Project Manager  
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Subject: OCLEM Review of the Sheriff's Office 2023 Use of Force Report

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During its May 2, 2023, Board of Supervisors meeting (Item 14), the Board directed that OCLEM validate the Sheriff's Office Use of Force Report for 2023, and that the report be presented jointly by OCLEM and the Office of the Sheriff to ensure that the reported force is subject to independent verification.

We address the referral in this memo as two separate questions: (1) "Is the data presented in the Sheriff's Office Use of Force Report accurate and valid?" and (2) "How can concerns about the self-reporting of force be alleviated?"

In addition to the following observations and conclusions relating to the Use of Force Report, OCLEM is conducting an in-depth review of a number of individual use of force incidents. Some of these are detailed in the most recent Sheriff's Office Annual Report on its use of military Equipment and will be assessed in an OCLEM report to accompany the Sheriff's Military Equipment Report. Others are uses of force selected at random from recent force incidents involving both the Enforcement and Custody Bureaus and will be assessed in a future OCLEM report. The OCLEM review will include a holistic assessment of these incidents and the subsequent internal review processes, and our reports to the Board will provide any appropriate recommendations relating to training, equipment, policy,

supervision, investigative efforts, review processes, and accountability mechanisms.

## Sheriff's Office Use of Force Report: Verifying Data

The use of force by law enforcement implicates basic Constitutional principles and is a necessary but awesome authority that the public provides peace officers. Accordingly, it is critical that when officers use force, it is accurately and reliably reported and documented so that the use can be evaluated in the context of what is permitted by the Constitution, law, and policy.

In an effort to validate the data reported, we met with Sheriff's Office personnel responsible for creation of its 2023 Annual Use of Force report to discuss their data compilation methodology and reporting procedures. We also requested, received, and evaluated the raw data sources from both the Enforcement and Custody Bureaus.

From the Enforcement side, we received a workbook that detailed each use of force reported from January 1 through December 31, 2023. The data set was compiled by personnel in Internal Affairs, the unit tasked with internal accountability.

We learned that the force numbers were derived from the Sheriff's Office Records Management System, which serves as the repository for all Incident Reports; Sheriff's Office personnel counted every Incident Report where the check box "Use of Force" was marked.

These reports were then cross-checked against the forms logged in BlueTeam (the database system the Sheriff's Office uses to track use of force) to ensure that all incidents where a use of force occurred had a corresponding BlueTeam form; they did, which confirms that deputies are following their internal reporting procedures. Notably, 13 cases that were documented in BlueTeam forms did not have a related Incident Report: these cases occurred in the County Courts, where force was not accompanied by any criminal behavior that would trigger an Incident Report (for example, one incident involved physical force used in handcuffing and moving an inmate who was unhappy with a court outcome). This indicates that deputies are appropriately following their internal reporting procedures even when they do not complete an Incident Report.

The raw data in this workbook matched the statistics presented by the Sheriff’s Office in its 2023 Use of Force Report. However, we noted an anomaly between the data in the workbook and the force reported in the Sheriff’s Office Annual Report on its use of military equipment; we observed that several of the uses of “military equipment” force had not been captured in the workbook. We addressed this issue with Sheriff’s Office personnel. It quickly became clear that the errors were not the result of any intent to under-report uses of force, but rather were due to the antiquated Records Management System (RMS) the department currently employs along with inefficiencies in the way its BlueTeam system was set up. In some deployments of the Sheriff’s Emergency Response Team (SERT), while the use of military equipment was documented in the related Incident Report, it was not consistently captured in BlueTeam because the specialized team completes its own “After Action Review.” In other cases, deputies had overlooked the need to check the box in RMS indicating that force had been used, even though they *had* reported the force, both in BlueTeam and in their Incident Reports.<sup>1</sup>

To correct this, Sheriff’s Office personnel performed a manual, incident-by-incident hand-count review of each case in RMS to identify if any force had been used, which resulted in adding 17 uses of force to the total count. To reiterate: The initial under-count was not an attempt to conceal uses of force or the result of a failure to report force, but rather was the product of clerical errors in data input into an outdated system.

The Sheriff’s Office is currently working toward upgrading both its RMS and its force reporting and tracking systems. While we look forward to the efficiencies those upgrades will bring, we are also now satisfied with the Sheriff’s Office’s diligent, good faith efforts to provide the most valid, reliable data possible in its 2023 Use of Force Report.

## “Self-Reporting” Uses of Force

The Board’s referral suggested a potential concern about the Sheriff’s Office reporting on its own uses of force without independent validation. We understand this concern: perceived conflicts of interest, potential perception biases about

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<sup>1</sup> A better record management system, and any future system utilized by the Sheriff’s Office, will have a mandatory yes/no response to the field, “was force used?” so deputies cannot inadvertently forget to include that information when completing their forms.

what constitutes a reportable “use of force,” and the apparent subjectivity involved can lead to distrust of an agency’s internal force reporting. In fact, OCLEM was created, in part, as a response to a beating of an individual in custody by deputies which lead to his death and which, unsurprisingly, was not reported as a use of force.

Yet the industry standard among law enforcement agencies nationwide is to rely on officers’ self-reports of the force they use. We support this practice as the only truly effective and feasible way to document these incidents.

Nonetheless, the practice of self-reporting force is most trustworthy in a law enforcement agency with a culture that *supports* and *expects* deputies’ complete and comprehensive reporting. An agency’s ability to foster this culture depends on its leadership, policy requirements, training initiatives, review mechanisms, and accountability systems.

The Sheriff’s Office has established mechanisms to promote this culture of full and accurate force reporting, both in Enforcement and Custody, including the following:

- **Comprehensive Reporting Policies:** The Sheriff’s Office has established clear and comprehensive reporting policies that require deputies to report any reportable use of force.<sup>2</sup>

On the Enforcement side, General Order 12.R.2. establishes deputies’ responsibilities for reporting force promptly, accurately, and completely using an Incident Report<sup>3</sup> and a BlueTeam form (which requires deputies to input more detailed information about the use of force), requires that witness deputies complete a supplemental Incident Report, and details a supervisor’s review responsibilities, both on scene and post incident.

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<sup>2</sup> A “reportable” use of force, per policy, is “physical control when the person is injured or claims to be injured, use of chemical agent, use of baton or flashlight when a person is struck or jabbed, use of deadly force, when the deputy finds it necessary to strike a subject with any object, or when resistance is such that force is necessary to control the subject.”

The requirement to report force is defined somewhat differently in the Custody Manual, to include any force that results in injury or complaint of pain.

<sup>3</sup> A deputy will generate an Incident Report to document events that prompt law enforcement activity, including suspected criminal conduct.

On the Custody side, Policy 514 governs Use of Force Reporting, Investigation, and Review, and states:

*The Office of the Sheriff recognizes the magnitude of the responsibility that comes with the constitutional authority to use force. This responsibility includes maintaining vigorous and transparent oversight systems to ensure accountability to the community and maintain their trust. In order to ensure transparency and accountability, staff must clearly and reliably report and thoroughly document each time they use force and supervisors must clearly and reliably document the steps they have taken to investigate and review the actions of staff and any additional steps taken or recommendations for further review and action.*

- **Duty to Report & Intercede:** General Order 12.P requires deputies to report and intercede if they observe fellow officers engaging in excessive force, without fear of retaliation. Custody Policy 511.5(e) similarly contains provisions establishing affirmative duties to intervene and report any inappropriate force they witness. Failure to intercede or report force may result in the same disciplinary outcome as that issued to the deputy who used excessive force. Establishing this policy encourages deputies to report incidents, helping to uncover instances of misconduct.
- **Training (and Re-Training):** the Sheriff's Office reported that it builds its culture of accountability for force use and reporting from the very start of a recruit's career in Academy classes, both for Enforcement and Custody.

Recruits are required to learn and test on the Sheriff's Office use of force policy, write sample use of force reports after any scenario-based training sessions, and include use of force narratives in report-writing, among other class work on uses of force. Report writing is a critical component of the Enforcement Academy generally, taking anywhere between 40 to 50 hours of required class time. Reporting requirements are re-emphasized in the Field Training Officer program with repeated testing on both the force policy itself and the requirements around reporting force and duties to intercede.

Annual in-service training also emphasizes the appropriate use of force, de-escalation techniques, and conflict resolution. These topics are covered as part of the Sheriff's Office on-going, California Peace Officers Standards and Training (POST) required courses.

- **Supervision:** Beyond the deputy’s self-report, supervisors in both Enforcement and Custody are required to report all force incidents up their chain-of-command, with specific policy provisions regarding activation of and coordination with various investigating units, depending on the circumstances and type of force used.
- **Data Collection, Analysis, and Transparency:** As evidenced by these annual reports, the Sheriff’s Office collects and publicly reports force data, related complaints, and disciplinary actions.
- **Accountability Systems:** If any use of force requires corrective action, the Sheriff’s Office’s accountability systems are triggered. More importantly, if a deputy fails to report his/her use of force, Sheriff’s Office policy requires that deputies be held accountable.

We requested from Internal Affairs any investigation from the past three years involving this policy and learned that there has been at least one case in that time frame in which a deputy was alleged to have failed to fully report a use of force.<sup>4</sup> A willingness to enforce its reporting policies through appropriate discipline is a sign of a healthy departmental culture around use of force issues, so we see it as positive that the Sheriff’s Office has at least one such case in the recent past. We will continue to monitor this issue through our involvement in the review of both use of force incidents and Internal Affairs cases.

- **Use of Body-Worn Cameras:** Equipping deputies with body-worn and in-car cameras and requiring their use per Sheriff’s Office policy and the County’s Surveillance Use Policy provide an objective record of interactions and use of force incidents and add an additional layer of accountability. In Custody force incidents we have reviewed, we have seen that deputies reliably activate their body-worn cameras at the appropriate times and, on the occasions when they have not, the failure has been recognized and addressed through counseling or other remedial action.

On the Enforcement side, the Sheriff’s Office reported that, anecdotally, activation rates are high, though they do not yet have an established

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<sup>4</sup> We were informed that the allegation regarding force reporting was sustained, but at the time of submitting this report, have not yet had the opportunity to review the IA case.

mechanism to track activation.<sup>5</sup> We advise that the Sheriff's Office use all tools at its disposal to track appropriate use of body-worn and in-car cameras.

The Sheriff's Office's tagging and retention policies require that deputies upload, tag, and preserve body-worn camera footage for incidents that involve use of force for review, and supervisors are required to review all available footage as part of the internal review process. In the use of force cases we have reviewed, the body-worn camera footage has been properly identified and included in the materials provided.

In our May 16, 2023, Report regarding the In-Custody Incident Involving J.N. (Recommendation 14), we recommended that Custody sergeants should be required to conduct random audits of available video footage – both from the fixed camera system and deputies' body-worn cameras – as a check on deputy performance. This sort of audit system would provide opportunities for more consistent and early identification and remediation of any identified issues concerning interactions with individuals in custody, including any unreported uses of force. At the same time, audits which find deputies performing consistently with expectations should be positively recognized and their good performance reinforced.

The Sheriff's Office has not yet implemented this recommendation from our May 2023 report. We continue to urge the department to do so. We also recommend that the Sheriff's Office impose the same requirement on Enforcement sergeants. Existing policy does this, to some extent. Supervisors are required, pursuant to the body-worn camera policy, to randomly review body-worn camera recordings on a monthly basis. It is not yet clear to us how supervisors comply with this obligation, and we recommend the Sheriff's Office create well-defined expectations for how many recordings supervisors should review, how the review is documented, and what steps are to be taken if a supervisor's review discovers troubling conduct.

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<sup>5</sup> The body-worn camera manufacturer, Axon, offers a body and in-car camera review software called "Performance" to track activation rates (that is, how many calls for service have an associated video when policy requires activation), allow for regular supervisor audits of video footage, and easily tag and categorize footage to identify trends and flag potentially problematic behavior (such as repeated failure to activate). The Sheriff's Office purchased licensing for this software as part of its "bundled" body-worn camera contract with Axon, but has not yet implemented it; implementation will incur a cost to the Sheriff's Office.

**Recommendation 1:** The Sheriff’s Office should develop clear expectations for how supervisors – in both the Custody and Enforcement Bureaus – will comply with the policy requiring them to randomly review body-worn camera recordings each month, including how many recordings to review, how the review is to be documented, and what steps should be taken if a review identifies any concerns about deputy conduct, including unreported uses of force.

## The Role of External Oversight

Finally, the Board’s creation of OCLEM and our ongoing work provides additional checks and balances on the Sheriff’s Office’s use of force review mechanisms.<sup>6</sup> Our work includes in-depth reviews of certain use of force incidents, such as our recent comprehensive reports on the use of chemical agents for cell extractions in Custody. We will be providing a similar report to the Board in the coming weeks, in conjunction with the Sheriff’s Office Report on the use of military equipment. We also regularly attend Custody’s Use of Force Review Committee meetings and Internal Affairs Reviews, with an opportunity to weigh in with observations and suggestions for improvements to these processes.

The Sheriff’s Office’s willingness to work collaboratively with us in all these contexts signals an openness to transparency and outside scrutiny that did not exist at the time OCLEM was initially conceived. We will continue to work with Sheriff’s Office personnel on issues relating to force reporting and review so that appropriate checks are in place to ensure that when force is used, it is duly reported and documented.

## Moving Forward

We understand the Sheriff’s Office is taking several steps to improve its systems for report writing as well as gathering and tracking data relating to use of force. These improvements would be welcome. The current Records Management System (RMS) used by Enforcement is, the Sheriff’s Office acknowledged,

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<sup>6</sup> For Custody, the federal Court and monitors in the *Chavez* consent decree also play a significant role in the external oversight of the Sheriff’s Office relating to the use of force.



extremely outdated and cumbersome for the end-user. It can lead to data entry errors, which, in turn may affect the quality of data pulled from the system. And in Custody, implementation of the long-overdue Jail Management System is still at least a year away. The BlueTeam system used by both Enforcement and Custody is also limited in significant ways, to the point that Custody tracks its force incidents on spreadsheets, with manual data entry by a team tasked with addressing consent decree issues, rather than relying on the data stored in BlueTeam.

Updating these systems is, in our view, an important step toward greater transparency and reliability of the data generated. We encourage the Sheriff's Office to continue to support these advancements, and urge the County to support these efforts, if deemed appropriate.