

Santa Clara County

Office of Correction and Law Enforcement Monitoring:

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

November 2020





323-821-0586
7142 Trask Avenue | Playa del Rey, CA 90293
OIRGroup.com

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. This report is intended to be responsive to this request and is largely based on discussion with a Sheriff’s representative designated to serve as OCLEM’s liaison for this project. What follows is a listing of each Recommendation from August along with a status update.

As detailed below, it is apparent that the Sheriff’s Office has considered the OCLEM Recommendations and has implemented two of them (public posting of information about types of authorized weapons and military equipment obtained). One Recommendation (elimination of neck holds) will necessarily be undertaken by the Sheriff’s Office to comply with new state law.² According to the Sheriff’s Office and as explained below, some of the additional Recommendations are still being evaluated, may likely or possibly be adopted by the beginning of next year, while others will likely take longer to implement – if in fact they ever are.

In its response to our status report, the Sheriff’s Office noted that policy and procedure modifications must be undertaken thoughtfully and include all key stakeholders, including Labor Relations, County Counsel, the Labor Unions, and other entities to be implemented successfully.

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.

² As explained in our initial report, the Sheriff’s Office initially modified its use of the carotid control hold so that it could only be used in circumstances where deadly force would be authorized. The new state law requires the elimination of use of neck holds altogether.

SCSO further indicated that while the Sheriff is committed to meaningful policy revisions that codify many of the agency's existing practices, training, and culture, the implementation and development of them takes time. The Sheriff's Office indicated that it was very hopeful that its transition to the Lexipol service would expedite this process. But it noted the existence of procurement processes that must be completed consistent with County procurement guidelines in order to finalize the contract.³

We appreciated the responsiveness of the Sheriff's Office, both in the quick implementation of two of the Recommendations and continued consideration of most of the remainder of them. We are hopeful that the Sheriff's Office commitment to implementation of several others by year's end will allow us to report favorably on those achievements at that time. And we are also appreciative of the Sheriff's Office detailed advisement to us on its progress, which then afforded us the ability to report to this Board and its public accordingly.

Recommendations and Responses

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."

In our initial report, we noted that the Sheriff's Office had changed its policy to limit use of the carotid restraint for only deadly force situations, but we had recommended banning the use of neck holds altogether. While removal of the carotid restraint hold from current policy has not yet occurred, the Sheriff's Office has advised us of its plan to again modify its policy to comply

³ As we noted in our initial report, Lexipol is a private company that provides model policies for law enforcement organizations; the Santa Clara District Attorney's investigators are currently being guided by Lexipol, and the Probation Department is in the process of updating its policies through a contract with Lexipol. As confirmed here, the Sheriff's Office remains committed to transitioning to Lexipol but there are apparent bureaucratic hurdles remaining before that move occurs.

with the new law.⁴ Such a modification would achieve the goal of the OCLEM 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. To avoid that interpretation, we suggested changing the “and” in the General Order to “and/or” (“when potential unnecessary or excessive use of force is witnessed and/or intervention is made”).

While the General Order has not yet been modified, the Sheriff’s Office indicated concurrence with this Recommendation and that responsive language will be part of the anticipated policy modifications currently being undertaken to achieve compliance with SB 230. It further noted that County Counsel has proposed slightly different language to clarify this portion of the policy, but that the Sheriff’s Office is committed to implementing the Recommendation in the next revision of the Use of Force General Order and with the same time frame set out in Footnote 3 herein.

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.

⁴The Sheriff’s Office reported to us that it is in the process of implementing AB 1196 regarding the elimination of carotid restraints into its Use of Force General Order and Custody Use of Force Policy, consistent with the OCLEM Recommendation. The Sheriff’s Officer further notes that its revision has been part of ongoing efforts to modify policies to meet the requirements of SB 230 which is scheduled to go into effect on January 1, 2021. The Sheriff’s Office indicates that it is working with key stakeholders, including County Counsel and Plaintiffs’ Counsel for the Consent Decrees, to finalize the new use of force policies with the intent of having them completed by the end of November 2020. The Sheriff’s Office expects that such a completion date would provide approximately 30 days to implement and train staff on the new policies.

The Sheriff’s Office further reported that its Training and Compliance Unit started presenting training on SB 230 and the changes to Penal Code 835a made by AB 392 (modifying use of force standards from “reasonable” to “necessary”) early this year, including a training video from the State of California Commission on Peace Officer Standards and Training (“POST”) (<https://post.ca.gov/Use-of-Force-Standards>). The Sheriff’s Office further indicated that it has also developed a Report Writing course that is specific to SB 230 and PC 835a. The Sheriff’s Office also noted that it was also preparing for the new policies and would be presenting extended classroom training for both enforcement and custody on the new policies, standards, and documentation requirements as part of the 2021 training cycle. Finally, the Sheriff’s Office indicated that it planned to use the POST Use of Force Course as a framework for the training, incorporating its new policies and the Force Options Simulator and other scenario-based instruction that will emphasize de-escalation, strategic communications, use of body worn cameras, and use of force documentation.

The Sheriff's Office General Order on shooting at vehicles has not been modified in accord with the Recommendation. The Sheriff's Office indicated that it may adopt the principles in this Recommendation as they convert to a Lexipol-based policy manual, since the Lexipol policy on shooting at moving vehicles approximates the recommended language. As explained above, the Sheriff's Office currently has no time certain for adoption of Lexipol-based policies.

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.

As stated in our initial report, requiring deputies and correctional officers to fully document de-escalation efforts in their reports would give the Sheriff's Office the opportunity to positively reinforce conflict resolution skills and affirm personnel who have the capability and temperament to handle difficult situations without resorting to force. Because most departments do not encourage or require report-writing on force-avoidance efforts, those efforts often go unnoticed, and personnel with the skill and mind-set to defuse situations go unrecognized. Accordingly, we recommended the Sheriff's Office supplement its comprehensive force reporting policies to include a requirement that personnel fully document all efforts to de-escalate a situation, including the warnings given.

The Sheriff's Office reported to us that it has no current plans to amend their policies in accord with the Recommendation. The Sheriff's Office noted that the training currently being developed by Peace Officers Standards and Training ("POST") to provide training consistent with the principles of SB 230 may include report writing training that would incorporate the concept of including any accounts of de-escalation efforts in deputy reports. The Sheriff's Office further indicated that to the degree that Lexipol policies approximate the principles of the Recommendation, it may adopt the Recommendation when it transitions to Lexipol-based policies.⁵

The Sheriff's Office further reports that it is transitioning to a new Report Managing System commencing in the Spring of 2021. That system will provide more flexibility to customize fields in report writing to include concepts such as de-escalation efforts. The Sheriff's Office noted that it is also evaluating including de-escalation fields in its Report Management System as it becomes available.

⁵ More specifically, while the Sheriff's Office believes that this Recommendation is already supported by training and reinforced by supervisors and the existing review process for use of force reporting, SCSO is evaluating how to codify the Recommendation into policy with Lexipol. In addition, the Sheriff's Office maintains that the Use of Force Report Writing class referenced in Footnote 3 addresses many of these Recommendations and reinforces a commitment to detailed use of force documentation.

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.

In our initial report, we noted that the Campaign Zero model policy includes the requirement that "Each law enforcement officer must submit a report without coaching or assistance from other law enforcement officers present during the incident." That restriction is not currently an element of Sheriff's Office policies, and we stated that making independent reporting a formal requirement could be beneficial.

The Sheriff's Office initially advised us that it did not agree with this premise of the Campaign Zero model policy and accordingly did not intend to follow the Recommendation. While noting that it trains personnel that the report should reflect the perspective of the writer, the Sheriff's Office also points to situations in which it wants or even expects outside input to be incorporated. Examples include the way that trainee officers should be able to be assisted by field training officers in their report writing, and how deputies should be able to enhance accuracy through use of information sources such as dispatch records.

As a result of our discussion with the Sheriff's Office, we have come to recognize how a literal reading of the Campaign Zero and OIR Group Recommendation could result in unintended consequences by preventing the benign types of assistance mentioned above. To avoid this disadvantage while preserving the underlying goal of authentic individual descriptions of events, we modify our Recommendation as follows:

RECOMMENDATION 5: The Sheriff's Office should add to its force reporting policies a requirement that personnel write any observations based on their own perspective and refrain from modifying the substance of those observations based on coaching or influence from other personnel.

The Sheriff's Office is aware of this change and has indicated its appreciation of the reasonable modifications to the Recommendation. The Sheriff's Office repeated that this concept is already reinforced by existing policy, training, and culture, but that it would evaluate how to include this revised Recommendation into its report writing policy.

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.

In our initial report, we noted that another key piece of the 8 Can't Wait Recommendation on comprehensive use of force reporting is a requirement that officers report as a use of force any time they point a firearm at an individual. We further noted that the Sheriff's Office General Orders do not include such a provision. We further observed that there is some evidence to

suggest that agencies that have this requirement tend to have significantly lower rates of officer-involved shootings and that tracking this information also allows agencies to more deeply assess any disparities in police activities in relation to different racial and ethnic groups.

We have been advised that the Sheriff's Office is still evaluating this Recommendation and how it could be incorporated into existing use of force reporting procedures, following industry best standards. The Sheriff's Office noted that the Racial Identity and Profiling Act ("RIPA") will require reporting to the Attorney General each time personnel point a firearm at a person.⁶

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.

We indicated in our initial report that the Sheriff's Office had committed to making the above information public and available on its website. Recently, the Sheriff's Office posted the information on its open data portal: <https://www.sccgov.org/sites/sheriff/Pages/Open-Data.aspx>.

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.

The Sheriff's Office reported that it follows the principles of this Recommendation in practice and that it is currently evaluating how to codify this Recommendation into policy or whether to reserve this policy for when it transitions to Lexipol. The Sheriff's Office further reports that it is working with POST and County Counsel to evaluate how AB 846 might impact this Recommendation as well as other current hiring standards and processes.⁷

⁶ The RIPA reporting requirements mandate the Sheriff's Office to begin collecting data for RIPA commencing January 1, 2021 but the reporting requirement to the Attorney General does not become effective until April 1, 2022.

⁷ AB 846 requires that by January 1, 2021, POST shall study, review, and update their regulations and associated screening materials related to the emotional and mental condition evaluation required of peace officers in order to identify any bias towards race or ethnicity, gender, nationality, religion, disability, or sexual orientation. AB 846 further requires any entity that employs peace officers to review the job description that is used in the recruitment and hiring of those peace officers and shall make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, while de-emphasizing the paramilitary aspects of the job.

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 regarding potentially realigning the public safety response to unarmed personnel. We noted as an important first step, that it would be helpful for all stakeholders to have 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 more robust knowledge set from which to move forward toward any future reform efforts.

The Sheriff’s Office reported that it currently contracts with Santa Clara County 9-1-1 Communications for dispatch services. It advised that County Communications recently contracted for a new Computer Aided Dispatch (“CAD”) solution, which the Sheriff’s Office was highly involved in and fully supported due to such enhancements as access to data/reporting, officer safety improvements, mobile features, and mapping. The Sheriff’s Office indicated that the advanced CAD system would make the capture and synthesis of data proposed in the OCLEM Recommendation much more facile than the current system.

The Sheriff’s Office indicated that even with the limitations of the current CAD system, it regularly provides response time, crime data, and other information to its Contract cities, using a crime analyst dedicated to Contract cities issues to perform this task.⁸ The Sheriff’s Office also reported that it also shares most of its call data publicly on the Santa Clara County Open Data Portable: <https://data.sccgov.org/Public-Safety/Crime-Reports/n9u6-aijz>.

With regard to the specific Recommendation, the Sheriff’s Office advised that it is not opposed to the Recommendation; however, acknowledged limited resources and indicated that a countywide analysis of this data has not been performed for this specific request yet. 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. OCLEM looks forward to reviewing and reporting on this information when it is generated.

⁸ Upon request, the Sheriff’s Office provided OCLEM with sample reports of data analyses referenced above.

Conclusion

We appreciated the updates provided by the Sheriff's Office and referenced above. As this progress report reflects, two Recommendations have been implemented, and some relevant commitments have been made; these are positive developments. Still, the efficacy of the Sheriff's Office response depends on the follow-through and implementation phases that it says will be occurring in the next several weeks. These parts of the process merit ongoing attention that we will be providing.

As for a remaining few of these Recommendations, implementation appears to be relegated to the distant future if it occurs at all. While the Sheriff's Office maintains that it has responded to the *intent* of some these Recommendations through existing or anticipated practices, we continue to encourage the concrete steps that, in our view, would facilitate both compliance and accountability.

Beyond this mixed accounting of progress with individual reforms, 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 component mechanisms of law enforcement's movement toward practices that better meet evolving public expectations. We look forward to monitoring that progress as it continues in Santa Clara County.