



# King County

---

## Office of Law Enforcement Oversight (OLEO)

February 20, 2020

To: King County Council Law & Justice Committee Members

Fr: Deborah Jacobs, Director, OLEO

Re: King County Sheriff's Office Policy on Review of Critical Incidents

---

### **Introduction and Background**

OLEO has been in dialogue with the King County Sheriff's Office since June 2018 concerning revisions to its General Orders Manual<sup>1</sup> (GOM) policies with respect to uses of force and the review of critical incidents such as officer-involved shootings.

The GOM serves as a set of professional standards for behavior, performance, and service provision that reflect the Sheriff's Office's culture and its commitment to the public it serves.

All Sheriff's Office employees are required to know and abide by adopted GOM policies and procedures, and its members are assessed by how they implement the practices defined it.

The integrity and trustworthiness of the Sheriff's Office within community relies on transparent process that leads to the adoption of just practices that reflect the character the agency defines in its guiding principles<sup>2</sup>.

We greatly appreciate the Sheriff's Office's engagement with OLEO in this process, and the time it has taken to consider OLEO's recommendations. OLEO's feedback seeks to reflect its responsibility to advocate for the interests of the public and promote trust and accountability.

In its December 2019 update of GOM 6.0, the Sheriff's Office adopted a number of OLEO's edits. However, it did not adopt the most impactful recommendations, including some that overlap with the recommendations in the systemic review of the shooting of Mi'Chance Dunlap-Gittens.

This memo highlights some of the key issues remaining within GOM 6.0. More detailed discussion can be found within OLEO's letter to the Sheriff's Office of February 4, 2020, as well as other prior communications attached.

---

<sup>1</sup> <https://www.kingcounty.gov/depts/sheriff/about-us/manual.aspx>

<sup>2</sup> <https://www.kingcounty.gov/depts/sheriff/about-us/mission.aspx>

## **Key Issue Highlights**

### ***GOM 6.00.045, Deadly Force, Use of Standard for Uses of Force***

The policy current reads, “When necessary, a member may use deadly force only when the member has probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the member or others.”

OLEO has recommended that the standard for using force be “an imminent or immediate threat of serious physical harm.” Similarly, within its systemic review of the shooting of Mi’Chance Dunlap-Gittens, the OIR Group recommended a standard of “an identifiable imminent threat.” In fact, in **GOM 6.00.050(4)**, the Sheriff’s Office utilizes this same standard for shooting at fleeing vehicles, but not at fleeing suspects.

### ***GOM 6.01.020, Member’s Responsibilities subsections 4b, 4c, and 4d Interviewing Involved Personnel After shootings and Other Critical Incidents***

OLEO maintains that the best practice after an officer-involved shooting or other critical incident is to interview personnel involved by end of shift. The Sheriff’s Office has based its prevailing approach on the premise that the deputies’ recollection of relevant events will be improved after they have had two sleep cycles. However, contemporary memory research does not support such a view (see *Journal of Applied Research in Memory and Cognition* article, attached).

Under the GOM, King County deputies involved in a critical incident are required to provide a contemporaneous report, but they are not interviewed until at least two sleep cycles later. The rationale stated in the Sheriff’s letter of January 6, 2020 is that the report can serve as a beginning document that can be supplemented with follow-up interviews as additional evidence is obtained. Another asserted rationale for this practice is that it is much easier to review a relatively brief statement than the transcript from a full interview, which suggests concerning priorities in the face of loss of life resulting from interactions between police and public.

This policy and practice contradict those of most law enforcement agencies, the rationale provided lacks scientific support, and the resulting protocols are inconsistent with best investigative practices.

### ***GOM 6.00.010, Objective Standard***

### ***GOM 6.02.055(6), Questions Answered by Critical Incident Review Board (CIRB)***

In **GOM 6.00.010** the Sheriff’s Office affirms that, “The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weigh the actions of the officer against the rights of the subject.”

However, the questions addressed and answered by the Critical Incident Review Board in **GOM 6.02.055(6)** are inconsistent with this statement in that they assess justification for the use of force without considering the totality of circumstances, including the choices and tactics made by personnel leading up to the incident. OLEO maintains that the structure of the questions answered by the CIRB do not result in a thorough assessment of the incident to inform the future safety of Sheriff's Office's operations.

OLEO has previously suggested language used by other departments, such as asking whether the force was "reasonable, necessary and proportional." OLEO also recommended the addition of a question to assess whether the involved deputies' actions were consistent with training. OLEO also recommended a question that aligns the review with the expectations of the **GOM 6.00.025** on de-escalation such as, "Did the involved member take reasonable efforts to de-escalate prior to using each application of force?"

Finally, we refer back to our June 2018 memo to the Sheriff's Office in which we make recommendations for additional questions that, if answered by the review board, would provide the Sheriff's Office with significant information on which to base its assessment of the incident and any needed changes to training, policy, tactics, or other areas.

#### ***GOM 6.00.020, Use of Force and Medical Evaluation by Aid***

Although we appreciate the Sheriff's Office adopting OLEO's recommendation that **GOM 6.00.020** make mandatory that subjects of a use of force be evaluated when there is an obvious, suspected, or alleged injury following a use of force incident, OLEO urges the Sheriff's Office to make clear that this "evaluation" be by "aid." Aid was specified in the prior policy and removing it is a step backward. Omitting "aid" here allows deputies to conduct the evaluation when they are not qualified medical experts, increasing liability for the department. For example, a trained medical professional may be able to identify a head injury even though there may be no apparent or suspected symptoms immediately after the incident.

#### ***GOM 6.01.050, Critical Incidents, Administrative Review Team (ART) Responsibilities GOM 6.01.055, Precinct/Section Commander's or Contract City Chief's Responsibilities Thoroughness of review and follow-through to ensure identified issues are addressed through policy, training, and supervision***

There are numerous places within the GOM 6.0 policies that speak to many of the recommendations made by the OIR Group in its systemic review of the Mi'Chance Dunlap-Gittens shooting. With respect to thoroughness of investigation:

**GOM 6.01.050(2)** states that, "The ART will review all critical incidents, responding to the scene if possible, and completing a review focused on training, tactics, equipment, and policy or procedural issues/violations."

This should also include "investigatory" and "supervisory" issues.

This also applies in **GOM 6.02.020**.

In addition, the policy lacks language to ensure that the department follows through on its findings. Consistent with the OIR Group report, the CIRB should consider and approve any ART recommendations or disapprove them and provide analysis/rationale for why they were disapproved. This applies to:

- **GOM 6.01.055(4)**
- **GOM 6.02.040(8)**
- **GOM 6.02.055(7)**

Finally, there are several places within the policy in which there is a lack of process for following through with any “lessons learned” from the incident review. In particular, the Sheriff’s Office should establish processes for de-briefing involved personnel. For example:

**GOM 6.01.055 (1)(c)** states that the commander shall, “Upon notification of a justified shooting from the Critical Incident Review Board, ensure that the involved member receives appropriate acknowledgement.”

Consistent with the discussion in the OIR Group report, this should be more than acknowledgement. The involved deputy should receive a complete debriefing of any issues identified in the ART or CIRB review and provide opportunity to provide his/her insights. This also applies in **GOM 6.02.045(6)**.

In addition, the policy should contemplate how involved personnel should be notified if an incident is determined to be *not* justified.

Finally, **GOM 6.02.060** provides no mechanism to advance findings and recommendations concerning equipment, supervision, investigation, communications, scene management or evidence processing.

### ***Ensuring the Policy Is Consistent with OLEO Authorities***

There are several places where the policy is not fully consistent with, or affirming of, OLEO’s authorities including:

**GOM 6.02.015** excludes OLEO from attending the Sheriff’s 72-hour briefing, despite the inclusion of the ART team. The Sheriff’s Office’s letter of January 6, 2020 indicates that the rationale for this exclusion is that the King County Police Officer’s Guild is also excluded, and that the Collective Bargaining Agreement aligns OLEO’s attendance with Guild attendance in the case of review board hearings.

However, as an independently elected official, the Sheriff has authority to decide who attends these briefings, and the matter is not addressed in the collective bargaining agreement. The role of OLEO in serving the interest of the public does not directly relate to the role of the Police Officer’s Guild in its work to promote the interests of its members. It’s the elected Sheriff’s prerogative to determine whether to include OLEO as a representative of the public’s interests whose goal is to promote continuous improvement benefits public and officer safety.

**GOM 6.02.020** states that the ART shall “when possible” notify OLEO in advance of interviews as to provide them a reasonable opportunity to attend such interviews. To be consistent with the duties of the Sheriff’s Office (see KCC 2.16.060), OLEO’s authorities under KCC 2.75, and the collective bargaining agreement, OLEO must be timely notified of these interviews and the words “when possible” must be removed.

Finally, **GOM 6.02.025** contradicts KCC 2.75, OLEO’s ordinance, as well as the collective bargaining agreement(s), current and pending, because it delays OLEO’s access to the ART investigatory files uploaded to IAPro. Pending (new) CBA language states that, “OLEO may be actively involved in all Sheriff’s Office internal administrative investigations by having: a) Real-time access to administrative investigative information, through the use of IAPro, or successor system.”

## **Conclusion**

OLEO appreciates the efforts of the Sheriff’s Office to update its policies on uses of force and critical incident review. While the policy has improved, there is more work to be done. This work should be approached with understanding of established best practices as well as the lens of the public and its commitment to quality review of critical incidents.

### Enclosures

1. February 4, 2020 (OLEO to Sheriff’s Office letter with policy comments)
2. January 6, 2020 (Sheriff’s Office to OLEO)
3. November 18, 2019 (OLEO to Sheriff’s Office)
4. October 16, 2019 (OLEO to Sheriff’s Office)
5. September 13, 2019 (OLEO to Sheriff’s Office)
6. June 1, 2018 (OLEO to Sheriff’s Office)
7. *Journal of Applied Research in Memory and Cognition*: “What Should Happen After An Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures” by Rebecca Hofstein Grady, Brendon J. Butler, and Elizabeth F. Loftus



**King County**

---

Office of Law Enforcement Oversight (OLEO)

**February 4, 2020**  
**(OLEO to Sheriff's Office**  
**letter with policy comments)**

*Enclosure no. 1*



---

Office of Law Enforcement Oversight (OLEO)

February 4, 2020

Sheriff Mitzi Johanknecht  
King County Sheriff's Office  
516 3<sup>rd</sup> Avenue  
Seattle, WA 98104

Dear Sheriff Johanknecht,

Many thanks to you and the members of your team who have collaborated with OLEO in shaping the new General Orders Manual (GOM) Chapter 6.0 policies on uses of force and critical incident reviews. We were notified of the new policies adopted on December 19, 2019, and appreciate your letter of January 6, 2020, which provides an explanation of some of the decisions made in the new policy.

Among the changes you accepted from OLEO's recommendations, we especially appreciate KCSO adding examples of de-escalation goals to the policy and making clear that a supervisor's investigative responsibility during a critical incident is different than during a non-critical incident due to independent investigation requirements.

However, it appears the most critical and substantive of OLEO's recommendations were rejected. We have further addressed those issues in this memo. Please also find included a draft of the current policy with additional comments and recommendations. Please note that I have not marked the policy with previously submitted OLEO recommendations found in our communications of:

- June 1, 2018
- October 16, 2019
- November 18, 2019

**Interviewing Involved Personnel After shootings and Other Critical Incidents.**

OLEO maintains that the best practice after an officer-involved shooting or other critical incident is to interview personnel involved by end of shift.

Under GOM Chapter 6.0, King County deputies involved in a critical incident are required to provide a contemporaneous report, but they are not interviewed until at least two sleep cycles later. The rationale stated in your letter of January 6, 2020, is that the report can serve as a beginning document that can be supplemented with follow-up interviews as additional evidence is obtained. Another asserted rationale for this practice is that it is much easier to review a relatively brief statement than the transcript from a full interview.

This policy and practice are contrary to those of most law enforcement agencies, the rationale provided lacks scientific support, and the resulting protocols are inconsistent with best investigative practices.

King County has based its prevailing approach on the premise that the deputies' recollection of relevant events will be improved after they have had two sleep cycles. However, contemporary memory research does not support such a view. In the seminal article, "What Should Happen After an Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures" (*Journal of Applied Research in Memory and Cognition*, 5 (2016) 246–251, Rebecca Hofstein Grady, Brendon J. Butler, and Elizabeth F. Loftus), the authors surveyed the status of current research and concluded that the weight of the cumulative studies supports "interviewing the officer sooner rather than later, before any other new information, evidence, [body-worn camera] footage, or time has contaminated or decayed an officer's memory and perception of an event." *Id.* at 250.

The authors' conclusions were based not only on the lack of any pertinent study that showed that recall was better after two sleep cycles but also on research that affirmatively showed the opposite. In particular, the authors identified two leading studies that showed that police officers were most accurate when recalling an event immediately, as opposed to when there was a delay before reporting. The authors also directly addressed proponents of a waiting period for officer interviews:

Those who argue that having an officer wait two or three days will *improve* their recall accuracy are not taking into account the extensive eyewitness memory literature that shows that delayed retrieval of events generally leads to poorer accuracy and fewer details remembered. Research in several eyewitness studies has also shown that immediate testing improves retention of the studied information over time. The robustness of these findings challenges the claim that an officer's report will be more accurate two or three days post-OIS. Taken together, these studies suggest that the delayed-reporting policy may actually be detrimental to the accuracy of an officer's reports.

*Id.* at 248 (citations omitted) (emphasis in original).

The authors also chronicled another significant problem with waiting before interviewing an officer. In an officer-involved shooting context, in addition to the natural degradation of memory over time, there is the strong likelihood of memory contamination.

We know that more time between encoding and retrieval increases the likelihood of being exposed to misinformation. It is unlikely that officers would remain completely isolated from any outside, biasing information in the days between an OIS and their report, making the report less valuable, reliable, and informative than it would have been initially.

[A]ny discussion about the events from lawyers, colleagues, [or] the media that the officer is exposed to will distort the original memory.

Id. at 249 (citations omitted).

Though King County would likely assert that its practice of initially obtaining a contemporaneous written statement mitigates these concerns, this claim does not withstand careful scrutiny. No matter how detailed, a written statement is never an adequate substitute for an interview. In a written report, the decision about what to include, and what details to emphasize or omit, rests entirely with the writer. Written reports, unlike interviews, also preclude the ability to ask follow-up questions. Conversely, it is the investigator in a formal interview context who determines which issues to address and at what length. This obviously limits the involved officer's control over the information that emerges and appropriately transfers that control to the investigator, ensuring that every relevant area is covered when memories are fresh.

Moreover, the supposed "efficiency" benefits to reviewers of a shorter statement are not compelling in this critical context. For investigations of events as significant as an officer-involved shooting, the convenience of reviewing a shorter written statement should never take precedence over a timely and comprehensive recitation of the deputies' observations, actions, and decision-making.

These basic principles of investigation have been long-accepted practices by the American criminal justice system. It is telling that, in virtually every other investigative context, detectives do not ask the victims, subjects or witnesses to first write out a statement of what happened. Nor do they suggest that the involved individuals prepare a report and then experience at least two sleep cycles before coming back for an actual interview. Instead, standard practice is to obtain interviews as soon as possible.

There is no scientific or investigative support for the deviation from best practices that marks the current approach of the King County Sheriff's Office in these matters. On the contrary, recent research belies the fundamental premise cited by the Sheriff's Office: that detailed recollection is improved by delay. It is also true that the distinctive treatment of officers in this context has the additional potential to undermine public confidence in the rigor and legitimacy of a shooting review. For these reasons, we urge KCSO to modify its officer-involved shooting protocols so that the most accurate, thorough, timely, and pure account of events can be obtained from involved deputies.

## Questions Answered by Critical Incident Review Board

In GOM 6.00.010 the Sheriff's Office affirms that, "The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weigh the actions of the officer against the rights of the subject."

However, the questions answered by the Critical Incident Review Board do not reflect this statement. OLEO maintains that the structure of the questions answered do not result in a thorough assessment of the incident. Specifically, we previously shared our objection to qualifying the question about whether a critical incident was justified or unjustified "regardless of the tactics or choices leading up to the use of force." Although this was not addressed in your letter of January 6, I did briefly speak to Diane Taylor about this question. We previously suggested language used by other departments, such as asking whether the force was "reasonable, necessary and proportional." Another alternative to consider is to have the CIRB answer both of the following questions:

- a. Was the use of force justified or unjustified regardless of the tactics or choices leading up to the use of force?
- b. Was the use of force justified or unjustified taking into consideration the tactics or choices leading up to the use of force?

In addition, OLEO would like to reiterate the need for a question that specifically asks whether the involved deputies' actions were consistent with training. The one question included related to training, "Was either inadequate or improper training a contribution factor to the event?" does not address whether the personnel was properly trained but did not follow training in the incident under review. As previously suggested, we recommend adding a question that speaks to this issue, such as, "Were the member's actions consistent with departmental training?"

We also recommend adding a question that will align the review with the expectations of the GOM 6.00.025 on de-escalation such as, "Did the involved member take reasonable efforts to de-escalate prior to using each application of force?" Because de-escalation is a policy requirement and a crucial part of KCSO training, this is already an area that IIU scrutinizes when

reviewing non-critical incident use of force reports. Adding de-escalation to the list of questions the CIRB answers would bring it in line with the department's own best practice.

Finally, we refer you back to our June 2018 memo in which we make additional recommendations for questions that, if answered by the review board, would provide KCSO with significant information on which to base its assessment of the incident and any needed changes to training, policy, tactics, or other areas.

## **Use of Force and Medical Evaluation by Aid**

Although we appreciate KCSO adopting OLEO's recommendation that GOM 6.00.015 make mandatory that subjects of a use of force be evaluated when there is an obvious, suspected, or alleged injury following a use of force incident, OLEO urges KCSO to make clear that this "evaluation" be by "aid." Aid was specified in the prior policy and removing it is a step backward. Omitting "aid" here allows KCSO's deputies to conduct the evaluation when they are not medical experts, increasing liability for KCSO. For example, a trained medical professional may be able to identify a head injury even though there may be no apparent or suspected symptoms immediately after the incident.

## **Ensuring the Policy Is Consistent with OLEO Authorities**

There are several places where the policy is not fully consistent with, or affirming of, OLEO's authorities.

First, we would ask that you transpose the language in **Section 6.01.050(1)(a)** to say:  
"The Administrative Review Team shall...."

- a. Ensure that OLEO is notified promptly so they may respond to the scene.
- b. Establish ART team members and respond to the scene."

The purpose of this change is to highlight the priority of timely notifying OLEO.

**Section 6.02.015** concerning the Sheriff's Briefing excludes OLEO from attending the Sheriff's 72-hour briefing, despite the inclusion of the ART team. Your letter of January 6, 2020, indicates that the rationale for this exclusion is that the King County Police Officer's Guild is also excluded, and that the Collective Bargaining Agreement aligns OLEO's attendance with Guild attendance in the case of review board hearings.

We urge you to reconsider this position. As an independently elected official, the Sheriff has authority to decide who attends these briefings, and the matter is not addressed in the collective bargaining agreement. The role of OLEO in serving the interest of the public does not directly relate to the role of the Police Officer's Guild in its work to promote the interests of its

members. It's the Sheriff's prerogative to determine whether to include OLEO as a representative of the public's interests.

In **Section 6.02.020** the policy states that the ART shall "when possible" notify OLEO in advance of interviews as to provide them a reasonable opportunity to attend such interviews. To be consistent with the duties of the KCSO (see KCC 2.16.060), OLEO's authorities under KCC 2.75, and the collective bargaining agreement, OLEO must be timely notified of these interviews and the words "when possible" must be removed.

Finally, **Section 6.02.025** contradicts KCC 2.75, OLEO's ordinance, as well as the collective bargaining agreement(s), current and pending, because it delays OLEO's access to the ART investigatory files uploaded to IAPro. Pending (new) CBA language states that, "OLEO may be actively involved in all KCSO internal administrative investigations by having: a) Real-time access to administrative investigative information, through the use of IAPro, or successor system."

Within the attached draft you will find a variety of other recommendations for changes that do not rise to the same level of urgency as the matters outlined in this communication. We appreciate your ongoing willingness to improve this policy.

Thank you again for your ongoing dialogue on this policy and consideration of OLEO's recommendations. OLEO anticipates sharing some of its observations about the policy with the King County Council's Law and Justice Committee on the morning of Tuesday, February 25. We will gladly highlight all progress made on the policy; please feel free to keep us apprised of any additional changes or updates for that purpose.

Sincerely,



Deborah Jacobs  
Director

King County Sheriff General Orders Manual Chapter 6  
**6.00.000 USE OF FORCE**

6.00.005

**POLICY STATEMENT:** 12/19

The purpose of this policy is to describe the procedures, requirements, and expectations surrounding the use of force by commissioned personnel. The KCSO is committed to transparency and thorough review when members use force to ensure the public's trust and safety.

Sheriff's Office members shall not use either physical or **deadly force** on any person except that which is reasonably necessary to effect an arrest, to defend themselves or others from violence, or to otherwise accomplish police duties according to law.

**Commented [JD1]:** Not defined until later sections; see below comments re definitions.

Clear direction and verbal commands shall be given when feasible.

Whenever use of force is required, criminal charges should be filed against the suspect, when appropriate.

To the extent that Sheriff's Office Policy may contain provisions more restrictive than the state law, such provisions are not intended, nor may they be construed or applied, to create a higher standard of care or duty toward any person or to provide a basis for criminal or civil liability against the County, the Sheriff's Office, or any of its officials or individual deputies.

6.00.010

**OBJECTIVE STANDARD:** 12/19

Any use of force by Sheriff Office members must be objectively reasonable: **The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject.**

**Commented [JD2]:** Based on this, the CIRB should take the totality of circumstances into consideration when assessing whether a use of force was justified (see OLEO recommendations on CIRB questions below).

The question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Objectiveness is judged from the perspective of the reasonable officer on the scene, rather than 20/20 hindsight, and allows consideration for circumstances that are tense, rapidly evolving, and often require split-second decision-making. Factors considered as part of this analysis include the severity of the crime at issue, whether the suspect poses an immediate threat, and whether the suspect is actively resisting or attempting to evade arrest.

6.00.015

**DEFINITIONS:** 12/19

For purposes of this policy:

**"Deadly force"** means the intentional application of force through the use of firearms (other than less lethal) or any other means reasonably likely to cause death or serious physical injury (RCW 9A.16.010 (2)).

**Commented [JD3]:** Clarity is needed regarding definitions and terms used in this policy. We recommend putting all definitions up-front here and using them throughout the Chapter 6 policies. Needed additions include: Serious Force/Serious Force Incidents; CEW; and Critical Incidents. For example, because the terms critical incident, a deadly force encounter, and a serious force incident include situations that overlap, clear definitions will help clarify why these various terms are utilized (i.e., describe the differences).

**"De-escalation"** means techniques designed to minimize or avoid the use of force to resolve a law enforcement contact.

**Commented [JD4]:** Suggest making consistent with description on subsequent page: "De-escalation is a deliberate attempt to minimize or avoid the use of force to resolve a law enforcement incident using communication, tactics, and actions."

**King County Sheriff General Orders Manual Chapter 6**

"Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended (RCW 9A.16.010 (1)).

"Physical force" means the intentional application of force through the use of physical contact that does not rise to the level of deadly force.

1. This includes hitting with or without an object, kicking, use of any chemical agent.
2. Any other use of force that results in injury or complaint of injury.
3. This does not include routine handcuffing and control holds not amounting to the conditions above.

**Commented [JD5]:** Does this include less lethal and/or taser deployments that do not make actual contact/miss the subject? If so, that should be specified here.

6.00.020

**USE OF FORCE AND MEDICAL TREATMENT: 12/19**

1. Members shall provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons at a scene controlled by law enforcement.
  - Subjects of a use of force shall be evaluated by aid, as soon as possible, when there is an obvious, suspected or alleged injury.
2. Information covering medical aid, involving persons injured during a use of force incident, shall be documented in the incident report.

6.00.025

**DE-ESCALATION: 12/19**

1. When safe and feasible members shall use de-escalation tactics in order to reduce the need for force.
2. De-escalation is a deliberate attempt to minimize or avoid the use of force to resolve a law enforcement incident using communication, tactics and actions. Examples of De-escalation goals include calming agitated subjects, providing additional time for responses, and positioning to reduce risk. De-escalation techniques include but are not limited to:
  - a. Presence - physical presence and placement.
  - b. Communication – verbal and non-verbal.
  - c. Time – slowing or pausing the pace of an interaction.
  - d. Space – decreasing exposure by using or creating distance.
  - e. Shielding – using cover, concealment and barriers.
3. During de-escalation, members shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
  - a. Medical conditions.
  - b. Mental impairment.
  - c. Developmental disability.
  - d. Language barrier.
  - e. Behavioral crisis.
  - f. Physical limitation.
  - g. Drug or alcohol impairment.
  - h. Age

**Commented [JD6]:** This definition is preferred to the definition utilized on the previous page.

**King County Sheriff General Orders Manual Chapter 6**

- 4.
5. Members should consider the need for back-up resources.
6. Members may consider requesting outside assistance such as a Crisis Negotiation Team or Mobile Crisis Team

6.00.030

**SHOW OF FORCE: 12/19**

1. A show of force means the intentional drawing or displaying of a pistol, rifle, shotgun or less lethal shotgun, for the purpose of establishing constructive authority. For firearms and less lethal shotguns, display is a show of force when not pointed or aimed at a person. For a **CEW**, this action constitutes a show of force even if aimed at a person.

**Commented [JD7]:** This has not previously been defined/written out. Add to definitions section.

- A show of force as described above does not constitute a use of force.
- CAD will be used to document the display~~ing~~ of a weapon.

6.00.035

**POINTING OR AIMING A FIREARM: 12/19**

1. Pointing or aiming means to intentionally direct the muzzle of a firearm at a person. A member need not wait until a threat becomes imminent before pointing or aiming at a person.

- Firearms shall not be drawn or pointed unless a member has reason to believe their use may be required.
- Pointing or aiming a firearm at a person constitutes a use of force and must be reported.

6.00.0040

**PHYSICAL FORCE, USE OF: 03/09**

**Commented [JD8]:** Seems like this should be connected/made consistent with the de-escalation policy.

1. When necessary, members may use physical force when the member(s) reasonably believes that other force options would be ineffective or impractical.
2. Members may use physical force to overcome a subject's combative or active resistance.

6.00.045

**DEADLY FORCE, USE OF: 12/19**

RCW 9A.16 establishes a higher standard for the police officer than the private citizen in the application of deadly force. Members shall read and fully understand RCW 9A.16.010 – 045.

1. Members shall exhaust every reasonable means of apprehension before resorting to the use of deadly force.
2. Firearms shall not be drawn or pointed unless a member has reason to believe that their use may be required.

**King County Sheriff General Orders Manual Chapter 6**

3. When necessary, a member may use deadly force only when the member has probable cause to believe that the suspect, if not apprehended, poses a threat of **serious physical harm** to the member or others.
4. RCW 9A.16.040 (5) establishes a good faith standard for law enforcement officers' use of deadly force. The good faith standard is met only if both the objective good faith test and subjective good faith test are met.
  - a. The objective good faith test is met if a reasonable officer, in light of all the facts and circumstances known to the officer at the time, would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual; and
  - b. The subjective good faith test is met if the officer intended to use deadly force for a lawful purpose and sincerely and in good faith believed that the use of deadly force was warranted in the circumstance.
5. Members shall not be censured or disciplined if a suspect is not apprehended, where the member deemed the use of deadly force to be unwise.

**Commented [JD9]:** Recommend "an imminent or immediate threat of serious physical harm" before authorizing deadly force.

6.00.050

**RESTRICTIONS: 03/09**

1. Discharging a firearm as a warning is prohibited.
2. Members shall not shoot from a moving vehicle, except as a last resort.
3. Members shall not shoot at a moving vehicle, unless:
  - a. Deadly physical force is being used against the member or another person by means other than a moving vehicle; or
  - b. The moving vehicle poses an imminent and identifiable threat of serious physical harm to the member or others from which there is no reasonable means of escape. For the purposes of this section, members:
    - Shall attempt to move out of the path of an oncoming vehicle, if possible, rather than discharge their firearm; and
    - Shall not intentionally place themselves in the path of an oncoming vehicle and attempt to disable the vehicle by discharging their firearms.
4. Members shall not discharge their firearms at a fleeing vehicle unless a member reasonable believes, and can articulate reasons therefore, why the necessity for immediate apprehension outweighs the danger to the public that is created by discharging a firearm.
5. Members shall not make any physical application or maneuver to the neck region that restricts blood or air flow (i.e., choke holds, sleeper holds, carotid submission holds, lateral vascular neck restraint, etc.), except as a last resort to protect the member(s) or others from an immediate threat of death or serious bodily injury.
  - Any and all variations of these maneuvers may be considered **deadly force** when applied to the neck region.

**6.01.000 INVESTIGATION/REPORTING USE OF FORCE AND SERIOUS INCIDENTS**

**King County Sheriff General Orders Manual Chapter 6**

6.01.005

**POLICY STATEMENT: 12/19**

This section outlines reporting requirements for department members involved in, substantially involved in, or reviewing use of force or critical incidents.

It is the policy of the Sheriff's Office to promptly report and to thoroughly investigate any use of force or critical incident. Whenever a member uses deadly force, physical force, a CEW, chemical agent or Pepper Spray, **REPORTING IS MANDATORY BY THE MEMBER USING FORCE AND ANY MEMBER WITNESSING THE USE OF FORCE**. Failure to timely report the use of force, when required, is a violation of this policy. Supervisory notification and supervisor response to the scene is required for all incidents outlined in this policy unless expressly exempted.

6.01.010

**DEFINITIONS: 12/19**

For the purposes of this policy:

**"Primary member"** means any member who applied force.

**"Substantially involved member"** means any member who had a significant tactical or decision-making role in the incident.

6.01.015

**LEVELS OF REPORTING AND DOCUMENTATION: 12/19**

The reporting requirements, as outlined in this section, shall apply to members whether on-duty or off-duty.

1. **Level I: Use of Force Report Not Required – Supervisor Notification Not Required.**
  - a. A use of force report is not required for routine handcuffing and control holds absent conditions set forth under Level II or III.
  - b. A "Show of Force" requires documentation via CAD, by each member who draws or displays a weapon, using the following terms and format:
    - The specific statement: "Display of (type of weapon), no intentional pointing or aiming at a person." Terms to use for type of weapon:
      - Pistol
      - Rifle
      - Shotgun
      - Less Lethal Shotgun
      - CEW
        - May also include the specific statement: "Display of CEW intentional pointing or aiming at a person," as intentional pointing or aiming a CEW is a "Show of Force."
    - A short explanation of why a weapon was intentionally displayed.
    - If an incident report is generated, it shall also contain the above information, in addition to the CAD notes.

**King County Sheriff General Orders Manual Chapter 6**

- When clearing the detail on CAD and for all associated reports the # symbol will follow the FCR Hazard Factor. For example: 112-G-9#, 254-K-0#, 377-X-0#.
  - Members needing to document a "Show of Force", after an incident has been closed in CAD, shall open a 588 event with the associated CAD or case number. Clear the event with the appropriate FCR, Disposition, Hazard Factor and #, once the CAD notes described above are complete.
2. **Level II: Use of Force Report Required – Supervisor Notification and Response Required.**
- a. A use of force report is required, when a member is involved or substantially involved in the following:
- Hitting or striking a subject with hands or feet.
  - Hitting or striking a subject with an object (e.g. baton, flashlight, etc.).
  - Using Pepper Spray or any chemical agent.
  - Using a CEW (taser) or any less lethal weapon, or
  - Using any other force that results in injury or complaint of injury.
  - Using a K-9 where a bite occurs.
  - Intentionally shoots a dangerous animal in defense of self or others.
  - Pointing or aiming a firearm at a person.
    - Supervisors shall review the totality of the circumstances and exercise discretion as to whether to respond to the scene. If responding to the scene, the supervisor shall obtain witness statements and other relevant evidence when possible.
3. **Level III: Deadly Force – Use of Force Report Required – Supervisor Notification and Response Required - Commander Notification Required.**
- a. For the purposes of this section, Deadly Force includes but is not limited to the following:
- Discharge of a firearm (other than less lethal) toward a person.
  - A strike to the neck, head or throat with a hard object that is likely to cause serious physical injury or death.
  - Any physical application or maneuver to the neck region that restricts blood or air flow (i.e., choke holds, sleeper holds, carotid submission holds, lateral vascular neck restraint, etc.)
  - Any other actions or means reasonably likely to cause death or serious physical injury.
    - Includes intentionally using a vehicle, as a weapon, to strike or hit a subject(s).

6.01.020

**MEMBER'S RESPONSIBILITIES: 12/19**

**Members who used force or were substantially involved in a using force shall:**

1. Immediately notify an on duty supervisor.
  2. Document the incident in detail in the appropriate Incident Report, Officer's Report or Use of Force Report as directed.
- The report should describe details of observations and actions rather than conclusions and should avoid using "police jargon" or "boilerplate language".

**King County Sheriff General Orders Manual Chapter 6**

3. Statements of members using force:
  - a. Members shall provide public safety information.
  - b. The member may consult an attorney or Labor representative before making a statement.
  - c. Members may provide voluntary statement(s).
  
4. **Serious Force Incidents.**
  - a. Members shall remain on scene when safe and feasible.
  - b. Members may be compelled to provide a statement by a Commander for a Serious Force Incident.
    - i. When members are involved in a serious force incident that results in the discharge of their firearm (other than less lethal), or the death or hospital admittance of another, such member shall provide a written statement within forty-eight (48) hours of being compelled by the department to provide such statement. In cases where the member's representative and Internal Investigations Captain discuss extenuating circumstances, the statement can be provided up to seventy-two (72) hours of being compelled by the department. Upon completion of the statement, the ART Team Commander shall be notified.
    - ii. In all other uses of force, members must provide a statement within seventy-two (72) hours of being compelled by the department.

**Commented [JD10]:** No definition has been provided prior to this section (appears in 6.02).

**Commented [JD11]:** OLEO reiterates its concerns about this section; please refer to attached memo.

**Members who witnessed the use of force shall:**

1. Confirm that a supervisor has been notified of the use of force.
2. Notify the on duty supervisor if they have not been notified.
3. Document the incident in detail in an Officer's Report.

6.01.025

**SUPERVISOR'S RESPONSIBILITIES: 12/19**

1. Supervisors shall:
  - a. Immediately respond to the scene to secure the scene, investigate, and review the incident.
  - b. Determine need for medical resources.
  - c. Obtain witness statements, after separating witnesses, when possible (avoid group interviews).
    - Obtain taped interviews of civilian witnesses when possible.
    - Ask questions designed to obtain the facts; avoid leading questions or questions designed to suggest legal justification for members' conduct.
    - Include witness contact information (phone/address/email) in reports.
  - d. Document efforts to locate and obtain witness statements, include explanation for lack of statements from witnesses who were present.
  - e. When possible, obtain a recorded administrative interview with the subject upon whom force was applied. If the subject has not voluntarily waived *Miranda* rights, the content of this interview shall not be included in any related criminal charges, and the fact that an

**King County Sheriff General Orders Manual Chapter 6**

interview was conducted shall be documented in the Supervisor's Use of Force Investigation and Review.

- If the subject alleges excessive use of force, a separate "Preliminary" is required.
  - Ask the subject to describe the actions taken and why they believe the force was excessive.
- f. Ensure that the person(s) involved is not released from custody or booked into Jail without person approval.
- Exceptions may be made by a Precinct/Section Commander, Command Duty Officer, or higher authority with such exceptions documented.
- g. Ensure photographs are taken to document injuries or lack of injuries, and canvass the scene for potential audio or video surveillance evidence.
- h. Prepare a Supervisor's Use of Force Investigation and Review and identify potential policy violations for review.
- i. Forward the **original** incident report and associated documents to the appropriate detective unit if necessary.
- **Do not include the Supervisor's Use of Force Investigation and Review with the original incident report.**
- j. Forward the Supervisor's Review with copies of the **entire** case packet to the appropriate Precinct/Section Commander or contract city Chief.
- k. Forward a "Preliminary" (in addition to the Use of Force) up the chain of command to IIU via Blue Team if possible violations of policy are observed and/or reported.

6.01.030

**KCSO CRITICAL INCIDENTS, SUPERVISOR RESPONSIBILITY: 12/19**

1. Supervisors shall:
- a. Not be a Primary or Substantially Involved participant in the event being reviewed.
  - b. Assume incident command until the CDO, Precinct Commander or another commander assumes incident command.
  - c. Determine need for additional resources.
  - d. Contact the CDO and the Communications Center to call out Major Crimes or other independent investigators (and MARR if appropriate) and the Administrative Review Team.
  - e. Determine and obtain what information is necessary to ensure public safety and preserve evidence.
  - f. Monitor the security and sufficiency of the scene and perimeter.
- Ensure that no one enters the scene except those on-duty members directly involved in the incident.
  - The press, attorneys, bargaining unit representatives, OLEO, etc., shall not be allowed to enter the scene area unless given explicit permission by either the on-scene supervisor or detective responsible for the investigation.

**King County Sheriff General Orders Manual Chapter 6**

- g. Coordinate the scene with Major Crimes or other independent investigators and the Administrative Review Team.
- h. Determine and obtain the information necessary to ensure public safety and preserve evidence.
- i. Obtain answers to Public Safety Questions.
  - If possible, it is best to obtain from a member who is not the involved member.
  - Must be asked as reasonably close in time as possible to arrival at scene.
  - Ask involved member only the questions on the Deputy Involved Shooting Checklist (KCSO Form #A-127), being careful to accurately document the member's responses to the questions.
  - 6.01.035

**KCSO CRITICAL INCIDENTS, INCIDENT COMMANDER RESPONSIBILITIES 12/19**

- 1. The Incident Commander shall:
  - a. Assume or establish Incident Command. Wear the incident commander vest.
  - b. Utilizing ICS principles, select, establish, maintain or move a command post.
  - c. Consider a staging area and a media staging area as necessary.
  - d. Request and coordinate resources as necessary to control the scene and render the situation safe.
  - e. Provide overall oversight of the scene, and assign section commanders as needed for alternate location(s).
  - f. Coordinate at the scene with the responding units, investigators and/or other agencies.
  - g. Take the following steps regarding firearms:
    - Ensure firearm is preserved in its post-shooting condition, preferably untouched until crime scene investigators take possession of the firearm.
    - If possible, before the involved deputy leaves the scene, obtain a picture of the involved member with holstered firearm (if the member is still in possession of the firearm).
    - The incident commander shall ensure the involved member's firearm is replaced before the member is released from duty. Every effort should be made to coordinate replacement at the time of collection.
  - h. If the ART Commander is not available, a Captain or above will compel the involved member(s) statements if the member(s) decline to give a voluntary statement to the independent investigators.
  - i. Arrange for the involved member/s to relocate to a secure location. The member must be accompanied by another member or PAT member.
    - A member, in addition to a PAT member, may be required to ensure the chain of custody regarding the involved member's firearm.

6.01.040

**KCSO CRITICAL INCIDENTS, MAJOR CRIMES RESPONSIBILITIES: 12/19**

- 1. Independent Investigation is required for officer involved deadly force encounters or serious force incidents. Independent Investigators will be notified, respond and conduct the investigation into the KCSO serious/deadly Use of Force.

**Commented [JD12]:** Related to recommendation above that these terms be defined at the outset of the policy.

**King County Sheriff General Orders Manual Chapter 6**

2. Two KCSO Major Crimes Unit (MCU) sergeants will respond on all officer involved deadly force encounters or serious force incidents and act as liaisons for the independent investigators to:

- a. Provide KCSO policy and protocol information as needed.
- b. Provide, arrange and coordinate access to all necessary KCSO information, resources, specialty equipment or support requested by the independent investigators.

3. KCSO MCU detectives will also be called out, as necessary, per the MCU sergeant's assessment.

4. Firearms of involved deputy(s): Collection of the involved member's firearm or other weapons used will be completed in a non-threatening environment, out of public view by crime scene investigators.

5. KCSO MCU will be responsible for initial case investigation and filing criminal charges, if applicable, against suspect(s) alive or at large when they have adequate access to the crime scene.

a. A deputy contact team consisting of Independent Investigators and one KCSO sergeant will process the involved deputy(s), typically at the nearest workstation, precinct or alternate location.

b. The deputy contact team will be responsible for photographing, round counting, collecting evidence (including the deputy(s) duty weapons).

■ The MCU sergeant will ask the involved deputy(s) if they are willing to provide a voluntary statement and may ask the deputy if they are willing to provide clarification regarding public safety information.

■ These contacts will be in the presence of a Guild representative and/or a Guild attorney.

c. The deputy contact team will also interview deputy witnesses and civilian witnesses who are at the KCSO worksite, or alternative location.

d. In situations where the offender is alive or at large, KCSO Major Crimes Unit detective(s) will also respond to interview involved deputies to ensure enough information is gained to establish probable cause to charge/hold the suspect.

6. In situations where the offender(s) is in the hospital, Independent Investigators and a KCSO MCU detective will respond to the hospital to interview the offender.

a. The best scenario would be to have both detectives present to conduct the interview.

b. Due to time constraints related to medical care, it might be impractical to wait for the second detective in which case the on-scene detective should conduct the interview.

c. The Independent Investigator is responsible for gathering evidence, clothing etc., from the offender at the hospital.

7. Independent investigators will conduct scene processing at the location of the deadly force encounter or serious force incident.

■ Depending on the size of the scene, one or more KCSO MCU detective(s) will observe the crime scene processing with independent investigators to ensure the scene is processed in a manner that is consistent with KCSO protocol.

**Commented [JD13]:** The use of "offender" throughout this section assumes that the person injured by LE is, in fact, an offender. That might not be the case. Recommend using terminology that doesn't suggest bias.

**King County Sheriff General Orders Manual Chapter 6**

8. Independent Investigators will respond to the scene to assist with identifying and interviewing witnesses, writing warrants, and completing any other investigative steps as determined by the circumstances of the investigation.

9. KCSO deadly force encounters or serious force incident scenes will be 3D imaged.

- If Independent Investigators are unable, KCSO MARR will respond to scan/diagram the scene after Independent Investigators CSI have marked, photographed, and video recorded scene evidence.

10. KCSO MCU will coordinate with Independent Investigators to determine the number of crime scenes and which unit will be responsible for processing them.

**Commented [JD14]:** This seems to dictate procedure to independent investigators and may contradict I-940.

6.01.045

**KCSO CRITICAL INCIDENT, DISPATCHER RESPONSIBILITIES: 12/19**

1. The dispatcher shall:

- a. Request aid as directed by the member(s) or on-scene supervisor.
- b. Ensure that the closest on-duty supervisor is immediately notified and dispatched to the scene.
- c. Notify the Communications Center supervisor so that he/she can then notify the involved member's Precinct/Section Commander, Division Commander, or CDO, and the member's bargaining unit representative.
- d. If requested by the member involved, notify the Personal Assistance Team (PAT), department member, or friend.
- e. Make other notifications as requested by the on-scene supervisor.

**Commented [JD15]:** This seems vague and informal. Is it talking about friends within the department? What is the procedure for notifying employees' family members?

6.01.050

**KCSO CRITICAL INCIDENTS, ADMINISTRATIVE REVIEW TEAM RESPONSIBILITIES:**

12/19

1. The Administrative Review Team shall:

- a. Notify ART members and OLEO.
- ~~a-b.~~ Respond to the scene and notify OLEO so they may respond to the scene.
- ~~b-c.~~ Coordinate with independent investigators and Major Crimes and receive preliminary information about the event.
- ~~c-d.~~ Consult with investigators, to determine if investigators have asked the involved member to provide a voluntary statement, and if the request was declined.
- ~~d-e.~~ Consult with the designated Commander ensure the order to compel the member to provide a statement has been issued.
- ~~e-f.~~ Ensure that the involved member has been given an order, before the member secures from duty, compelling the member to provide a statement for the ART team review within 48 hours or as otherwise provided in GOM 6.01.020.

**Commented [JD16]:** Suggesting these edits to make order of prioritize notification.

**King County Sheriff General Orders Manual Chapter 6**

- The ART Commander shall issue the order compelling the involved member to provide the statement under GOM 6.01.020. If the ART Commander is not at the scene, the Incident Commander shall designate another Captain or above to compel the statement.
- (Note: Any statement compelled for the ART review shall not be provided to Major Crimes/MARR/independent investigators except as provided in the ART/Major Crime/MARR SOPs)

f.g. Serve as liaison with the OLEO designee at the scene.

2. The ART will review all critical incidents, responding to the scene if possible, and completing a review focused on training, tactics, equipment, and policy or procedural issues/violations. The ART will:

- a. Attend the Sheriff's seventy-two (72) hour briefing.
- b. Present their findings and recommendations at the Critical Incident Review Board.
- c. Will prepare a memo of their findings and recommendations to be submitted to the Sheriff with the Critical Incident Review Board's recommendations.

6.01.055

**PRECINCT/SECTION COMMANDER'S OR CONTRACT CITY CHIEF'S RESPONSIBILITIES: 12/19**

1. The Precinct/Section Commander or city Chief shall:

a. Meet with the member(s) and direct the member(s) to see a department Mental Health Professional within three (3) business days of the incident.

- The Commander shall ensure the appointment is made and provide for transportation, moral support, etc., if requested.
- In cases involving death or serious injury a minimum of one (1) session with a department psychologist is mandatory before returning to regular duties. In all other cases, the session is optional.

b. Consult with the mental health professional and then decide if, when, and where the member(s) return to duty.

c. Upon notification of a justified shooting from the Critical Incident Review Board, ensure that the involved member receives appropriate acknowledgement.

- The member shall be notified in writing within three (3) working days of the decision.

2. Review the case packet to ensure a complete investigation has been conducted and potential policy violations, if any, have been identified.

3. Make any necessary comments and or recommendations by completing and attaching a Use of Force Commander Review.

4. If potential policy violations are identified, forward them to the appropriate Division Commander via the chain of command.

5. If no potential policy violations are identified, forward the case packet to the IIU Commander without delay and "cc" the appropriate Major and Division Commander.

**Commented [JD17]:** What is procedure if found not justified? Has that possibility been contemplated?

**Commented [JD18]:** The review should be broader to identify training, tactical decision-making, equipment, and communication issues. See also OLEO memo of June 1, 2018.

6.01.060

**King County Sheriff General Orders Manual Chapter 6**

**DIVISION COMMANDER'S RESPONSIBILITIES: 04/15**

If potential policy violations are identified, the Division Commander shall:

1. Review the case packet for thoroughness and prepare findings regarding identified policy violations.
2. Make any necessary comments and or recommendations.
3. Forward the case packet to the Internal Investigations Unit without delay.

6.01.065

**IIU'S RESPONSIBILITIES: 12/16**

IIU shall:

1. Review the case packet for completeness.
2. If IIU discovers any additional or un-alleged policy violations, the IIU Commander shall initiate an investigation with approval of the Sheriff.
3. Retain the **entire** case packet in compliance with the Records Retention Schedule.
4. Create an annual analysis of Use of Force Reports for the Sheriff's review.

■ This analysis may reveal patterns or trends that could indicate training needs and/or policy modifications.

6.01.070

**UNINTENTIONAL DISCHARGE OF FIREARMS, NO INJURY INVOLVED: 04/14**

Whenever a member unintentionally discharges a firearm and no injury is involved:

1. The member shall:
  - a. Immediately notify a supervisor.
  - b. Submit a detailed Officer's Report before securing from duty.
2. All members present shall submit a detailed Officer's Report before securing from duty.
3. The involved member's supervisor shall:
  - a. Investigate the incident and notify the appropriate Precinct/Section Commander, Division Commander, or Command Duty Officer (CDO) as soon as possible.
  - b. Submit a Supervisor's Incident Review via the chain of command to the Precinct/Section Commander or Division Commander before securing from duty.
    - Include a copy of the member's statement.
  - c. Ensure the weapon is inspected by the Department Armorer if the reason for the discharge is unknown.
  - d. Enter the incident in Blue Team as a preliminary.

**King County Sheriff General Orders Manual Chapter 6**

4. The Precinct/Section Commander, Division Commander, or the CDO shall notify the Sheriff as soon as possible.

## **6.02.000 ADMINISTRATIVE REVIEW OF CRITICAL INCIDENTS**

6.02.005

### **POLICY STATEMENT:** 12/19

The Sheriff's Office is committed to thorough, transparent review of critical incidents to ensure that members continue to learn from and improve responses to situations that may result in the most serious uses of force and risks of injury, and to satisfy the public that the Sheriff's Office is appropriate in its review and response to force situations. The Department's investigation and review is in addition to any independent or multi-agency review required under state law. KCSO strives to hold its members accountable to applicable standards and learn from these incidents in order to improve safety for the community and our members.

6.02.010

### **DEFINITIONS:** 12/19

#### **For the purposes of this policy:**

**"Administrative Review Team (ART)"** means: A team of trained supervisors who will be responsible for conducting administrative investigations and reviews of all critical incidents.

**"Critical Incidents"** means: Serious Force Incidents and Other Serious Incidents.

**"Critical Incident Review Board (CIRB)"** means: a board that convenes to conduct enhanced administrative review of Critical Incidents.

**"Critical Incident Review Board Coordinator"** means: A person designated by the CIRB Chair to create and ensure preservation of the record of Critical Incident Review Board proceedings and follow up recommendations.

**"Office of Law Enforcement Oversight (OLEO)"** means: An independent agency under the King County Council that monitors and reviews KCSO administrative investigations. OLEO ~~also~~ attends scenes of Critical Incidents, the Critical Incident Review Board, and Department level Driving Review Boards.

**"Other Serious Incidents"** means: Incidents that are not uses of force, and include:

1. Any death of an arrestee or detainee while they are in the custodial care of the department.
2. Any other contact that results in hospital admission or death, such as vehicle accidents.
3. Death, attempted homicide, or serious injury of a member [hospitalization] as the result of an attack or assault.

**"Serious Force Incident"** means:

1. Intentional or unintentional firearm discharges (other than less lethal) by a member while engaged in pointing, aiming or displaying of a firearm, regardless of the extent of injury (Excludes training and shooting animals as euthanasia).
2. Any other unintentional discharges where there are injuries that require hospital admission.

**King County Sheriff General Orders Manual Chapter 6**

- Unintentional discharges that do not occur while pointing/aiming, and result in no injury shall be handled under GOM 6.01.070.
- 3. A use of force that results in death (even if the type of force used is not defined as deadly force (e.g. CEW application, Less Lethal Shotgun).
- 4. A use of force resulting in an injury requiring hospital admission.
- 5. Use of any intervention by a vehicle that results in injuries that require hospital admission.

6.02.015

**SHERIFF'S BRIEFING: 12/19**

1. As soon as feasible following a Critical Incident, the Incident Commander or designated Commander will coordinate a briefing. Major Crimes/MARR and/or Independent Investigators will hold a briefing. Any information the Administrative Review Team wants to provide at the briefing, shall occur after the Independent Criminal Investigators, or applicable Department investigative units have left the briefing.

- a. Invitees shall include: The Sheriff, Undersheriff, Division Chiefs, IIU Captain, ATU Captain, Legal Advisor, Chief of Staff, the affected Precinct Command Staff, and the ART response team. Others may be invited in the discretion of the Major Crimes Captain.
- b. OLEO will be briefed by the ART Commander or designee within a reasonable time.

- OLEO may also request updates from the ART Commander as the investigation progresses.

2. The primary purpose of the briefing is to:

- a. Provide a summary of the incident, the status of the investigation, and outstanding investigation steps.
- b. Identify any officer safety, scene management or other issues that need to be addressed immediately.
- c. Identify any significant investigative issues.
- d. Identify any major media issues.

**Commented [JD19]:** OLEO maintains that it should be included in the Sheriff's Briefing to the extent the ART Team members are included as part of OLEO's monitoring responsibilities. See attached memo.

6.02.020

**ADMINISTRATIVE REVIEW TEAM'S RESPONSIBILITIES: 12/19**

The ART will review all Critical Incidents, responding to the scene ~~if possible~~ and completing a review focused on training, tactics, equipment, and policy or procedural issues/violations. The review should also assess the sufficiency of existing policy and training, safety issues, and include recommendations for improvement where applicable.

The ART will:

- 1. Promptly refer potential policy violations to the Internal Investigations Unit (IIU).
- 2. Interview relevant witnesses to ensure their testimony is documented for the CIRB's review. The ART shall ~~when possible~~ notify OLEO in advance of interviews as to provide them a reasonable opportunity to attend such interviews.

**Commented [JD20]:** OLEO maintains its position that this should not be optional.

**Commented [JD21]:** Notification is required and should not be presented as optional.

**King County Sheriff General Orders Manual Chapter 6**

3. Prepare a findings memo summarizing their findings, observations and recommendations to be submitted to the Critical Incident Review Board and forwarded with the Critical Incident Review Board's final memo to the Sheriff.
4. Lead the presentation of evidence at the Critical Incident review board that includes its recommendations and observations regarding:
  - Training.
  - Tactics.
  - Equipment.
  - Policy or Procedural issues/violations, including but not limited to; supervision, communication, de-escalation, post incident scene management, first aid, etc.
5. The ART may implement solutions, if approved by the ART Commander or designee, without waiting for completion of the Review Board, but will include those items and status in its findings memo.
6. The ART Findings memo will be filed in IAPro with the Critical Incident Review Board memo and the Use of Force review.
7. Any changes made as a result of assigned Action Items will be documented and filed in IAPro with the Critical Incident Review Board memo.
8. The Critical Incident Review Board Coordinator or ~~other~~ designee assigned by the Critical Incident Review Board Chair will ensure that assigned Action Items are completed by the appropriate KCSO personnel, and that documentation of such is included in the IAPro file.

6.02.025

**OFFICE OF LAW ENFORCEMENT OVERSIGHT (OLEO): 12/19**

The OLEO monitors and may attend scenes of critical incidents. In addition, OLEO attends Critical Incident Review Boards as a non-voting member. OLEO may attend ART investigator's interviews consistent with the process for other administrative investigations. OLEO shall not have access to the IAPro files until the criminal investigation is completed, as materials from the criminal investigation may be provided to ART and added to the IAPro file when obtained.

**Commented [JD22]:** OLEO has a duty and authority to monitor investigations and all administrative files should be uploaded promptly.

6.02.030

**CRITICAL INCIDENT REVIEW BOARD: 12/19**

1. The Review Board should convene within forty-five (45) calendar days after the completion of any inquest, or if an inquest is not held after:
  - The completed criminal file is provided to the prosecuting attorney, or
  - The applicable independent investigation team communicates to KCSO that they are not submitting the investigation to a prosecuting authority, or
  - The ART has completed its review.
2. The Undersheriff will work with the Patrol Operations Chief or designee to set the date, arrange for necessary witnesses and provide documents in advance to the Review Board members.
3. The Review Board may call any witnesses deemed necessary.

**Commented [JD23]:** How will witness testimony be memorialized? Why wouldn't these interviews be conducted in advance?

If KCSO decides to leave this option for the Board, OLEO recommends that the witness testimony be recorded just as it would be during the investigation.

**King County Sheriff General Orders Manual Chapter 6**

6.02.035

**CRITICAL INCIDENT REVIEW BOARD MEMBERS: 12/19**

1. The Critical Incident Review Board shall be composed of members who were not involved in the incident under review.
2. Five (5) members shall be present to constitute a quorum.
3. The Review Board shall be composed of the following:
  - a. The Undersheriff (Chair).
  - b. The Chief of Patrol Operations or designee chosen by the Chair of equal rank.
  - c. A Patrol Operations Captain chosen by the Chair.
  - d. Sergeant from the Advanced Training Unit.
  - e. A Union representative appointed by the Bargaining unit of the member under review.
  - f. The Department Legal Advisor or designee selected by the Chair.
  - g. OLEO Director or designee (non-voting)
  - h. Other non-voting members who may be designated by the Chair.

6.02.040

**CHAIR'S RESPONSIBILITIES: 12/19**

The Review Board Chair shall:

1. Ensure that ART conducts interviews of relevant witnesses and subject matter experts to ensure their testimony is included in the record in preparation for the CIRB.
2. Determine order of presentation and identify needed witnesses and attendees.
3. Ensure that all affected personnel who are required to attend are notified within fourteen (14) calendar days of the review.
4. Ensure that applicable documents (i.e., reports, photographs, transcripts, tapes, etc.) are provided to the Board members in advance.
5. Designate a Review Board Coordinator for the review.
6. Advise all members under review at least forty-eight (48) hours before any interviews that:
  - a. They are required to cooperate with the department investigation and that failure to cooperate may result in employment termination and that the information obtained from the interview cannot be used in a criminal case (*Garrity v. N.J.*, 385 U.S.,493, 1967).
  - b. They may have representation during the review.
    - The member's representative may review all statements and other evidence relevant to the incident under review before the Review Board hearing.
7. Notify the involved member(s) of the Board's vote on each question at the conclusion of the Review Board.
8. Prepare a written report of the Board's findings and recommendations and ensure that it is sent to the Sheriff within thirty (30) days. The written report shall include all information that accurately reflects the discussion that ensued during the review.

**Commented [JD24]:** Suggest including process to address any potential conflicts of interest of CIRB Chair (e.g., close relationship with involved deputies, supervisory or advisory role in incident, etc.)

**Commented [JD25]:** If ART interviews witnesses, why would the Review Board also need to do so?

**Commented [JD26]:** Why would there be witnesses needed? Shouldn't interactions with witnesses take place during ART review?

**Commented [JD27]:** Who are affected personnel? I thought that the idea was that involved deputies would be spared attendance.

**Commented [JD28]:** Why isn't this an ART responsibility?

**Commented [JD29]:** Recommend this be revised to "members who used force or substantially involved members" to be consistent with the definitions/terms in 6.01.010 and 6.01.020

6.02.045

**King County Sheriff General Orders Manual Chapter 6**

**REVIEW BOARD COORDINATOR RESPONSIBILITIES: 12/19**

The Review Board Coordinator will be responsible for:

1. Taking comprehensive notes of the Board hearing.
2. Documenting the votes per voting member, and reasons for dissenting votes.
3. Assisting the Chair with drafting the final Findings and Recommendations memo to the Sheriff.
4. Ensuring the records relied upon in the Board hearing are preserved in IAPro.
5. Monitoring and documenting completion of recommended actions, and ensuring such documentation is preserved in IAPro.
6. Coordinating the messaging of results and recommendations to the Department.

6.02.050

**MEMBERS UNDER REVIEW: 12/19**

1. Statements and interviews will normally serve as sufficient evidence so that members under review will not be called to testify at the Review Board, however if it is determined that a members presence is required, those members who are ordered to appear before a Critical Incident Review Board shall do so.
  - Prior to giving testimony, members are required to cooperate with the department investigation and that failure to cooperate may result in employment termination and that the information obtained from the interview cannot be used in a criminal case (Garrity v. N.J., 385 U.S.,493, 1967).
2. Members may have bargaining unit representation present during the review.
3. Members may review any relevant documents (i.e., reports, photographs, tapes, etc.) upon request.
4. **Members may call any witnesses on their behalf.**

**Commented [JD30]:** Under what circumstances? This seems to contradict reviewing the matter for lessons learned without the presence of impacted personnel.

6.02.055

**CRITICAL INCIDENT REVIEW BOARD HEARING: 12/19**

1. The Chair shall manage the order of evidence presentation.
2. Both the criminal investigation team and ART will present at the hearing.
  - ART shall present after the Criminal investigators have completed their presentation and have departed the hearing room.
3. ART will present its observations and findings to the Board.
  - ART will also submit a memo summarizing its review and recommendations to the Board that will be maintained as part of the record, and forwarded to the Sheriff with the Board's Final memo.
4. Any background information, including criminal information, of the suspect that was known by the deputy before or during the application of force can be shared with of Critical Incident Review

**King County Sheriff General Orders Manual Chapter 6**

Board before it is commenced. Any information that was later learned by the deputy/department after the use of force cannot be shared with the board before it convenes for during its review.

5. All non-voting members, except the Secretary and OLEO Director or designee, shall be excluded from the Review Board meeting before the voting.

6. The Review Board shall answer the following questions for each member:

- a. If a firearm was used was it intentional or unintentional?
- b. Was the use of force justified or unjustified, regardless of the tactics or choices leading up to the use of force?
- c. Were the member's choices leading up to the event sound?
- d. Were there reasonable alternatives to the use of force?
- e. Did the use of force involve a policy violation?
- f. Was either inadequate or improper training a contributing factor to the event?
- g. Were policies and procedures followed after the event? Including but not limited to:

- Were issues identified with communications?
- Were issues identified with supervision?
- Was first aid provided at the earliest safe opportunity?

h. Were relevant policies in place for this incident?

7. The Review Board shall also review the recommendations made by the ART. The Board shall determine which recommendations to forward as recommendations to the Sheriff.

8. The findings and recommendations shall be by simple majority and the Review Board Coordinator shall record the names of dissenting members and their reasons for dissent.

6.02.060

**FINDINGS AND RECOMMENDATIONS: 12/19**

1. A Findings and Recommendations memo shall be submitted to the Sheriff for final approval within thirty (30) days of the Board hearing.

2. Results of findings and recommendations shall include:

- a. All potential policy violations shall be referred to IIU.
- b. Recommendations for modifications to policy will be referred to the Manual Revision Unit.
- c. All training related matters shall be referred to the Advanced Training Unit. If individual training is recommended, the member(s) shall be referred to the appropriate trainer for specific training.
- d. Findings related to decisions leading up to the use of force, and whether there were reasonable alternatives to the use of force, shall be reviewed by the Chair for appropriate referral.
- e. All records shall be referred to IIU for retention in IAPro.

3. The Board may make other findings and recommendations it deems appropriate.

6.02.065

**Commented [JD31]:** OLEO reiterates its concerns about this section; please refer to attached memo.

**Commented [JD32]:** By whom?

**Commented [JD33]:** OLEO maintains that potential policy violations should be referred to IIU as soon as identified, not to wait for findings and recommendations memo.

**King County Sheriff General Orders Manual Chapter 6**

**SHERIFF'S RESPONSIBILITY: 12/19**

The Sheriff shall review the findings and recommendations of the Critical Incident Review Board within thirty (30) days. If IIU investigated related and/or referred allegations, the Sheriff shall consider information gathered in those investigations to ensure consistency in the final determination when possible.

1. If the Sheriff concurs with the Board's recommendations, he/she shall forward the findings to IIU for records retention in IAPro.
2. If the Sheriff does not concur with the Board, he/she may direct the appropriate person(s) to investigate specific issues or concerns, or note specific concerns in writing.
  - The Sheriff shall set a reasonable deadline for any additional review(s).
3. The Sheriff shall notify the involved member(s), in writing, of the findings and recommendations as soon as practical after completing his/her review.

**Commented [JD34]:** OLEO recommends an individual debrief with involved members.

6.02.070

**INQUEST PRE PLANNING MEETING: 12/19**

The King County Executive changed the procedures for Inquest hearings in 2019, and the processes are still being finalized. Under the new procedures, involved members are not required to testify, but may attend. It is expected that nearly all deaths in King County involving action by a police officer ~~are will be~~ sent to an Inquest Hearing as directed by the County Executive. If requested, ~~T~~he Sheriff will determine the appropriate subject matter expert witnesses to appear for an inquest hearing. Often, there is also a need to plan for the appearance and security concerns of the persons involved and/or attending an inquest hearing.

1. To address that need, the Court Security Section Captain, upon being notified of the date of the Inquest, will convene a security/appearance planning meeting at least two weeks prior to the start of the hearing. Attendance will be required of the following:
  - a. Involved members, including KCSO witnesses.
  - b. Personal Assistance Team representative or coordinator representing the involved members.
  - c. Major Crimes representative.
  - d. Criminal Intelligence Unit representative.
  - e. Special Operations dignitary protection coordinator.
  - f. Court Security Captain and Sergeant.
  - g. Section Commander of the involved member(s).
  - h. Undersheriff's executive assistant.
  - i. MRO.
  - j. ATU representative.
2. The purpose of the meeting will be to determine the level of security required at the hearing based on current threat information, and to coordinate the resource needs of attendees.
  - The intelligence unit will be responsible for emergent threat information to be processed and acted upon if necessary prior to the start of the hearing.
3. The Court Security Captain will make the determination of the level of security to be provided based on the information presented at that meeting.

**King County Sheriff General Orders Manual Chapter 6**

4. The Section Commander of the involved members will determine the need to adjust work schedules to minimize the use of overtime and coordinate any special security needs at the member(s) residence or travel to and from the proceedings, when the involved member chooses to attend the hearing.

## **6.03.000 LESS LETHAL WEAPONS**

6.03.005

### **POLICY STATEMENT: 12/19**

Less lethal weapons are tools designed to assist deputies to gain control of a physically resistant, or aggressive or violent subject(s) who poses a threat of physical harm to themselves, to the deputy(s) or to other persons or property. Less lethal weapons have been adopted for use by the Sheriff's Office but are not intended to be a substitute when lethal force is necessary. Sworn personnel shall successfully complete training on less lethal weapons prior to using them. All applications of less lethal weapons shall conform to the principles outlined in the training and certification program, consistent with the RCW definition of necessary force (RCW 9A.16.010) and the Use of Force Policy (GOM 6.00.000).

6.03.010

### **TRAINING: 12/19**

Prior to being authorized to carry or use any less lethal weapon, members shall successfully complete training and/or certification on that specific less lethal weapon. The training and/or certification shall include training on the policy pertaining to the type of weapon to be carried by the member. The member shall be issued a copy of the policy pertaining to the type of weapon to be carried and will be documented in the member's training record.

6.03.015

### **CEW (Conducted Electrical Weapon) - TASER: 12/19**

1. The "TASER" is the CEW issued by Sheriff's Office.
  - a. When used with a cartridge it temporarily immobilizes subjects.
  - b. When used in the "contact stun mode" it is primarily a pain compliance tool.
  - c. The Taser CEW is deployed as an additional force option and is not intended to replace firearms, chemical agents, pepper spray or self-defense techniques.
2. The Taser CEW and cartridges shall only be carried by authorized sworn personnel.

6.03.020

### **REQUIREMENT TO CARRY TASER CEW: 12/19**

1. Commissioned deputies, sergeants and court marshals shall carry the department issued Taser CEW while working in a uniform assignment.
2. The Taser CEW shall be carried in a department issued holster.
3. Plainclothes personnel may carry the Taser CEW as authorized, consistent with the needs of their assignment or with the approval of their supervisor.

**King County Sheriff General Orders Manual Chapter 6**

4. Department members shall carry the Taser CEW on their support side, opposite the handgun or strong side, for a support side draw only. A crossdraw holster and carry is not permitted.

- This includes attaching the holster to belts, duty belts and being worn on any exterior vests including TAC 30 plate carriers, heavy vests and detective raid vest. \

5. Members are exempt from carrying the Taser CEW while in class A Dress uniform at functions such as ceremonies or funerals.

6. 03.025

**TASER CEW CERTIFICATION: 12/19**

1. Sworn personnel must successfully complete a specific department authorized Taser CEW training and certification course before they may carry and use a Taser CEW.
2. Sworn personnel shall only carry a department issued Taser CEW.
3. Each Taser CEW user shall recertify annually.
4. Failure to maintain annual certification shall require the user to retake the 8 hour Taser CEW Basic Course.

6.03.030

**USING THE TASER CEW: 12/19**

The Taser CEW may be used to control a physically resistive, or aggressive, or violent subject who poses a threat of physical harm to his/herself, to the deputy(s) or to other persons or property. Fired probes should be used rather than contact-stuns unless using probes is not possible. Before application, of the Taser CEW, deputies:

1. Shall give warning of "Taser, Taser, Taser" to other members present when safe and feasible.
2. Shall give warning such as "Stop, or you will be tased" or "put down the knife or you will be tased." to the involved suspect when safe and feasible.
- 1-3. May use prior to impact weapons such as hands, feet, baton, or flashlight.
- 2-4. May use prior to deadly force.
- 3-5. When feasible, should deploy the Taser CEW on the larger muscle groups of subjects body (front of body torso, legs and arms, back of body below the neck), this will reduce the risk of hitting sensitive body areas and increase NMI.
- 4-6. Should not use the Taser CEW as a pain-compliance tool (i.e. contact stuns) during passive or static resistance situations unless the person presents a threat of injury to themselves or the deputy.
- 5-7. Are discouraged using the Taser CEW on handcuffed persons, obviously pregnant females, elderly persons, young children, or visibly frail persons, but the use of the Taser CEW may be considered when these persons pose an immediate threat to the safety of themselves, deputies or others and/or are actively resisting arrest.

- Deputies must consider the seriousness of the offense when evaluating the Taser CEW as a force option.

**Commented [JD35]:** Suggest defining because this is the first use of the term in this policy.

**King County Sheriff General Orders Manual Chapter 6**

~~6-8.~~ Shall not use on persons solely to prevent the ingestion of controlled substances.

~~7-9.~~ Should not use the Taser CEW around areas or substances that are highly flammable such as ether or gasoline.

~~8-10.~~ Should consider other force options besides the Taser CEW on subjects in elevated positions (on a roof, in a tree etc).

~~9-11.~~ Should consider other force options besides the Taser CEW on subjects in water.

~~10-12.~~ Shall only apply the number of Taser CEW applications reasonably necessary to capture, control or restrain the subject.

- Subject must be evaluated after each application of the Taser CEW.
- Every application of the Taser CEW must be justified.

~~11-13.~~ Shall not use on persons solely because they are fleeing.

~~12-14.~~ May use the Taser CEW to disable a vicious animal that poses a threat to the deputy or others.

6.03.035

**TASER CEW POST APPLICATION PROCEDURES: 12/19**

1. Whenever a Taser CEW is applied to an individual and the darts have penetrated sensitive areas and/or there are other injuries, a Fire Department Aid or Medic Unit shall be called to the scene.

- Treatment at a medical facility will only be necessary on the advice of aid personnel.

2. Taser CEW darts which penetrate an individual's skin in non-sensitive areas will be removed by the Taser CEW operator at the earliest practical opportunity.

3. Expended Taser CEW darts and cartridges shall be handled as a biohazard and shall be disposed of in properly marked biohazard containers, unless required to be retained as evidence or to document malfunction.

4. Photographs of penetration points and any injuries will be taken.

- a. A set of photographs will be forwarded with the Use of Force Review file.
- b. The serial number of the Taser CEW and the cartridge number must be recorded.

5. All applications of a Taser CEW will require a data-download prior to the submission of the review.

- The data-download shall be for the date of the incident only.

6. Data downloads shall be completed, by sergeants and current Taser instructors trained on Evidence Sync, as soon as practical and the data shall be attached electronically to the Blue Team use force review file.

6.03.040

**MAINTAINING, REPLACEMENT OF CARTRIDGES AND BATTERIES: 12/19**

**King County Sheriff General Orders Manual Chapter 6**

1. Each precinct worksite shall maintain, control and record the inventory of replacement Tasers, cartridges and batteries.
  - a. Each precinct worksite shall have two (2) spare X2 Tasers, twenty-five (25) duty cartridges and up to twenty (20) spare batteries (exceptions for training sites).
  - b. Damaged, malfunctioning Tasers shall be reported to the Department Taser CEW Coordinator and left at worksites for pickup.
  - c. Taser CEW batteries should ordinarily only be removed from a Taser CEW for administrative download or maintenance purposes.
2. Supervisors are responsible for obtaining replacement Tasers and duty cartridges.
  - a. Duty cartridges will be issued by a supervisor or Taser CEW Instructor.
  - b. Supervisors or Taser CEW Instructors will replace damaged, malfunctioning Tasers from their worksite spares.
3. Worksite Taser CEW Instructors are responsible for obtaining Taser CEW equipment and supplies through the Department Taser CEW Coordinator.
4. Members shall spark test their Taser CEW for 5 seconds, every 24 hours or at the start of each shift with a sustained press of the ARC button, to check that it is functioning properly.
  - a. Battery life below 40% shall be reported to supervisor and replaced.
  - b. Damaged or malfunctioning Taser CEW's shall be reported to supervisor immediately and replaced.

6.03.045

**UNINTENTIONAL TASER CEW DISCHARGE: 10/18**

1. Whenever a member unintentionally discharges a Taser CEW cartridge, the member shall:
  - a. Immediately notify a supervisor.
  - b. Submit a detailed Officer's Report of the event and include the spent cartridge serial number.
2. The involved member's supervisor shall:
  - a. Issue a new Taser CEW cartridge to the member.
  - b. If the unintentional discharge is a suspected malfunction, or the reason for the discharge cannot be determined, the Taser CEW will be returned to the Department Taser CEW Coordinator for inspection.
  - c. Enter the incident in Blue Team as a preliminary.
3. If the unintentional discharge occurs when confronting a suspect(s), follow the steps listed in section 6.03.035.
4. If the unintentional or accidental discharge strikes the member using the device or another person, the member shall:
  - a. Immediately notify a supervisor.

**King County Sheriff General Orders Manual Chapter 6**

- b. Render any first aid as appropriate.
- c. Fill out the workplace injury/accident form as appropriate.

6.03.050

**LESS LETHAL SHOTGUN: 12/19**

The Less Lethal Shotgun program is designed to give deputies an additional force option. This tool provides a less lethal option beyond Taser CEW range, which gives deputies more distance and shielding options, which can de-escalate situations.

6.03.055

**LESS LETHAL SHOTGUN CERTIFICATION: 12/19**

1. Deputies must successfully complete the department authorized Less Lethal Shotgun training and certification course prior to using a less lethal shotgun.
2. Each authorized user of less lethal shotgun shall recertify annually.
3. Failure to maintain annual certification shall require deputies to turn in their assigned Less Lethal Shotgun.

6.03.060

**LESS LETHAL SHOTGUN EQUIPMENT: 12/19**

1. Members shall only use department authorized Less Lethal Shotguns.
2. The shotgun authorized for less lethal munitions shall be clearly marked with an orange stock and fore grip.
  - a. The words "Less Lethal" must be clearly marked on the stock of the weapon.
  - b. Only issued 23DS Drag Stabilized Bean Bag rounds will be used by Less Lethal Shotgun personnel assigned to patrol.

■ Other less lethal rounds may be used by members of Tac-30 or when specifically authorized by an incident commander.

3. Members assigned to carry a Less Lethal Shotgun, either KCSO or Contract City owned/issued, shall not carry any other shotgun to avoid mixing of rounds.

■ No lethal shotgun rounds will be allowed in any vehicle equipped with a Less Lethal Shotgun.

06.03.065

**USING THE LESS LETHAL SHOTGUN: 12/19**

1. The Less Lethal Shotgun may be used to control actively resistive, or aggressive or violent subjects who pose a threat of physical harm to themselves, deputies or to other persons or property; where other verbal, de-escalation, and physical alternatives would be or have been ineffective or inappropriate.

**King County Sheriff General Orders Manual Chapter 6**

2. When feasible a verbal warning shall be given to a suspect before deployment of beanbag rounds (Deorle v. Rutherford, 242 F.3d 119, 9<sup>th</sup> Circuit 2001). Saying the word "beanbag" is not sufficient. A more appropriate warning would be: "Sheriff's Office. Drop the bat or you will be shot with a beanbag round."

- When feasible, prior to the deployment of the Less Lethal Shotgun, department members will announce, "**STANDBY, BEAN BAG**" to alert other department members the Less Lethal Shotgun is being deployed.
- Members must consider the seriousness of the offense when evaluating the Less Lethal Shotgun as a force option.
- Members are strongly discouraged from using the Less Lethal Shotgun on handcuffed persons, obviously pregnant females, elderly persons, young children, or visibly frail persons, but the use of this tool may be considered when these persons pose an immediate threat to the safety of themselves, deputies or others and/or are actively resisting arrest.
- Members should not use the Less Lethal Shotgun on animals.

3. The Less Lethal Shotgun is an additional tool and is not intended to replace firearms, Taser CEW, pepper spray, baton, or defensive tactics.

- Members should consider having a lethal cover officer when deploying a Less Lethal Shotgun.

4. The Less Lethal Shotgun may be used prior to deadly force.

5. The number of beanbag rounds delivered must be justified and should be based on whether or not they are effectively achieving the intended outcome.

- Subject must be evaluated after each Less Lethal Shotgun deployment

6. Members should consider other force options besides the Less Lethal Shotgun on subjects in elevated positions (on a roof, in a tree etc.).

7. The Less Lethal Shotgun will not be deployed for large fights, public disturbance, or riots, unless being deployed as part of a demonstration management team with supervisor approval.

06.03.070

**LESS LETHAL SHOTGUN POST APPLICATION PROCEDURES: 12/19**

1. Whenever a beanbag round strikes an individual, a Fire Department Aid or Medic Unit shall be called to the scene.

- Treatment at a medical facility will only be necessary on the advice of aid personnel.

2. Photographs shall be taken of any injuries or impact areas on the subject and forwarded with the Use of Force Review file.

06.03.075

**UNINTENTIONAL DISCHARGE - LESS LETHAL SHOTGUN: 12/19**

1. Whenever a member unintentionally discharges a Less Lethal Shotgun, the member shall:

**King County Sheriff General Orders Manual Chapter 6**

- a. Immediately notify a supervisor
  - b. Submit a detailed Officer's Report of the event.
2. The member's supervisor shall:
- a. Respond to the scene.
  - b. If the unintentional discharge is a suspected malfunction, or the reason for the discharge cannot be determined, the less lethal shotgun will be returned to the Range Unit for inspection.
  - c. Enter the Incident in Blue Team as a preliminary.
3. If the unintentional or accidental discharge strikes another, follow post application procedures.

06.03.080

**REPORTING PROCEDURES – LESS LETHAL SHOTGUN: 12/19**

1. Whenever the Less Lethal Shotgun is "displayed only" and that display is a mitigating factor in de-escalating a situation, that display will be documented on the Less Lethal Shotgun Use form (KCSO Form #A-165) and sent directly to the range master for statistical purposes.

- The reporting procedures in GOM 6.01.015 for "Show of Force" and "Pointing and Aiming" will also be followed.

2. In addition, to the normal use of force reporting procedures, uses of force involving less lethal shotguns, including misses, will be documented on the Less Lethal Shotgun Use form (KCSO Form #A-165).

- Upon completion and review by a supervisor this form will be attached electronically to the Blue Team use of force review file.
- A copy of this form will be forwarded to the range master to retain for evaluation and statistical purposes.

6.03.085

**PEPPER SPRAY: 12/19**

Pepper Spray/Oleoresin Capsicum (OC) has been adopted for use by the Sheriff's Office as a less lethal, force option. Frequently, members encounter situations involving physical resistance to arrest, or direct physical attacks upon them while conducting police duties. Appropriate use of Pepper Spray may enable deputies to effectively obtain compliance from resisting/combatative persons.

6.03.090

**EFFECTS/LIMITATIONS – PEPPER SPRAY: 12/19**

### **King County Sheriff General Orders Manual Chapter 6**

The department issued Pepper Spray dispenser uses a non-flammable propellant and allows for Pepper Spray deployment at any angle. The dispenser is designed to project a liquid, foam or gel formula of Oleoresin Capsicum (OC) into the eyes of a non-complying, resisting offender or an unarmed attacker and does not require shaking of the dispenser prior to use.

1. Members shall only carry department issued Pepper Spray.
2. Oleoresin Capsicum (OC) is an inflammatory agent, not an irritant such as Chemical Mace.
3. Upon contact with the skin, Pepper Spray may cause:
  - a. An extreme burning sensation in the eyes, nose, mouth, and skin.
  - b. Pronounced mucus secretion.
  - c. Interference with vision and involuntary closure of the eyes
  - d. Interference with deep lung breathing and burning sensation of the lungs.
4. The temporary impairment usually lasts thirty (30) minutes.
5. The effects of Pepper Spray may be limited on:
  - a. Violent mentally ill persons; and
  - b. Persons under the influence of narcotics.
6. Members should be aware of residue (e.g., suspect's clothing, patrol car) that can cause secondary exposure to members and the person who was sprayed.
  - Members, who have been exposed, should be decontaminated and obtain first aid or medical treatment (See section 6.03.100).

6.03.095

#### **WHEN TO USE PEPPER SPRAY: 12/19**

Pepper Spray is not designed to replace the service handgun or police baton. Pepper Spray is intended for use when attempting to control an unarmed physically resisting person who demonstrates the risk of injuring self and/or others during the arrest process.

1. Members shall give warnings ~~when safe and feasible~~ before application when safe and feasible.
2. Pepper Spray may be used:
  - a. Prior to use of hands to apply come-a-long and control holds.
  - b. Prior to the use of baton, flashlight or other similar instrument to apply come-a-long and control holds.
  - c. Prior to the use of deadly force.
3. Members shall clearly articulate the reasons for each application of pepper spray.

6.03.100

#### **PEPPER SPRAY - POST APPLICATION PROCEDURES: 12/19**

After spraying a person with Pepper Spray, members, if possible, shall:

**King County Sheriff General Orders Manual Chapter 6**

1. Flush the affected areas with water.
2. Expose the area to fresh air.
  - Facing the wind with open eyes.
3. ~~Obtain first aid or medical treatment for uses within 3 feet, extreme reactions, and complaint of injury. Members shall offer to call medical aid whenever a subject is pepper sprayed.~~

6.03.105

**CARRYING/OPERATING PEPPER SPRAY DISPENSER: 12/19**

1. Pepper Spray is required to be carried in a specifically designed holster when in uniform.
  - Members wearing the uniform dress jacket shall be exempt.
2. Members in plain clothes assignments should have Pepper Spray readily accessible at all times.
3. To operate the Pepper Spray members shall:
  - a. Aim nozzle at the subject's eyes.
  - b. Spray a one (1) second burst, in a sweeping motion, at the subject's eyes.
  - c. Assess the person's compliance.
  - Loud and concise verbal commands should be used.
4. Ideal deployment of Pepper Spray is 6-8 feet with a minimum distance of 3 feet.
  - a. Deputies should be aware of possible blowback of the Pepper Spray when spraying into the wind which may cause the same symptoms experienced by the subject being sprayed.
  - b. The Pepper Spray may cause eye damage, if sprayed within 3 feet, due to the hypodermic effect of the stream. If used within 3 feet of a subjects face, members will document the reasons for such use in their use of force report.
  - c. Members shall clearly articulate why applying pepper spray within 3 feet was necessary.
5. The use of MK9 or similarly sized Pepper Spray containers shall only be used by TAC-30, the Demonstration Management Team or when authorized by an incident commander.

6.03.110

**REPORTING PROCEDURES – PEPPER SPRAY: 09/12**

1. Supervisor notification is required in all incidents where pepper spray is used.
2. A use of force review is required for all applications of pepper spray.

**King County Sheriff General Orders Manual Chapter 6**

6.03.115

**OTHER LESS LETHAL WEAPONS: 07/09**

1. Other less lethal weapons include:
  - a. Baton.
  - b. Asp.
  - c. Pepper Spray.
  - d. Chemical agents.
  
2. Sworn members shall be provided biennial training for these less lethal weapons.



**King County**

---

Office of Law Enforcement Oversight (OLEO)

**January 6, 2020**  
**(Sheriff's Office to OLEO)**

*Enclosure no. 2*



KING COUNTY SHERIFF'S OFFICE  
516 Third Avenue, W-116  
Seattle, WA 98104

Mitzi G. Johanknecht  
Sheriff

January 6, 2020

Deborah Jacobs, Director  
Office of Law Enforcement Oversight  
810 3<sup>rd</sup> Avenue  
Seattle, WA 98104

Re: KCSO Responses to OLEO Recommendations on Use of Force and Related Policies

Dear Director Jacobs,

We appreciate the opportunity to obtain valuable input from you on improvements to our Use of Force policies, which also include the investigations and reviews of uses of force. Below we outline our responses to your input on the various sections on which you have provided input. As you will see from the comments below, many of your recommendations were incorporated in whole or in part. Training on the changes will begin very soon. Please advise us if you would like to attend some of the training related to these topics.

### **June 2018 OLEO Recommendations**

In June 2018, OLEO provided KCSO with extensive recommendations related to the Use of Force, Reporting, Investigation, and Review.

The Sheriff's Office substantially agrees with these recommendations and has incorporated four of the five key recommendations, which are summarized below:

1. Clarify use of force reporting requirements, including a requirement that aiming and pointing a firearm at a person is considered a reportable use of force
2. Separate the Use of Force Review team (ART) from the Internal investigations Unit
3. Combine the ART lessons learned with the review board presentation, to avoid conflicting recommendations
4. Increase the scope of the review board to include all aspects of force including pre-force decisions, tactics, de-escalation, supervisors' role, reporting and investigation. [Most of these items were included in the existing review, but KCSO has added questions regarding

Supervision, First Aid and Communication to round out the board's review. In addition, the ART presentation at the board is designed to touch on these issues as well. The KCSO did not expand the ART to review every departmental use of force, as recommended by OLEO. Review of lower level and more common uses of force at the supervisor and precinct level creates opportunity to have all levels of supervision maintain a more comprehensive understanding of the use of force policy and the review process. It is KCSO's experience that the desired quality control is obtained by having IIU serve as the central review body to ensure consistency in these reviews.

Not adopted is the recommendation that KCSO be required to obtain a live interview from an involved officer before obtaining their written statement. We explain our position on that recommendation in the relevant section below.

### **2019 Draft Policy Reviews**

This year, the OLEO has been provided drafts of Use of Force Policy changes for comment. Below we have included the narrative of the recommendations, with the KCSO responses to those recommendations in red after the applicable sections.

### **OLEO Recommendations in Response to Draft GOM 6.01, 6.02, and Supervisor Checklist (Investigation/Reporting Use of Force and Serious Incidents)**

#### **OLEO:**

- **For serious force/critical incidents, the first statement obtained from substantially involved members must be through an in-person recorded interview, not a written statement.**

Conducting an interview using cognitive interviewing techniques is a leading practice that helps to ensure that the investigators obtain an accurate and detailed account of the incident from the officer's point of view.

**KCSO:** KCSO agrees that cognitive interviews are the best tool to obtain accurate recollection when conducted at least 48 hours (two sleep cycles) after the incident. Our current policy permits the officer to prepare a written statement first, which serves as an organized, efficient document outlining the officer's statements concerning the events. Having this organized statement is useful to those who subsequently review the event. The written statement serves as a foundation for follow up interviews. A follow up interview can secure the necessary details to fill in gaps that are discovered as available evidence is analyzed. Subsequent multiple reviews by the KCSO review board, inquest juries, and other independent processes are facilitated by one organized statement that is followed up with interview(s), making the review much easier than reviewing only interview transcripts.

#### **OLEO:**

- **Clarify policy on discharge of a firearm (other than less lethal) toward a person.**
  - It is unclear from the policy whether the "discharge of a firearm...toward a person" includes off-duty employment as well as when the employee is not working.

- The policy should specify that “Discharge of a firearm...toward a person” includes off-duty incidents, whether on formal off-duty assignment or not.

**KCSO:** The draft policy included the statement that required reportable uses of force apply to both on and off duty events, but this language appeared only under the Level 2 section. To clarify and correct the requirement, we placed this language at the outset of the reporting policy, 6.01.015. This makes clear *all* reporting requirements apply to off-duty events.

**OLEO:**

- **Clarify policy on collection of firearms involved in the force incident.**

- It is unclear from the policy whether an independent or a KCSO Major Crimes Unit investigator collects and processes the officer’s firearm or weapon involved in the force incident. See, for example, GOM 6.01.035 item number four.
- “Substantially involved members” in officer-involved shootings must be required to stay at the scene until an independent investigator photographs the member and, if re-holstered, takes possession and conducts a round count of the involved weapon. This recommendation relates to revisions under GOM 6.01 and the Supervisor Checklist form. OLEO acknowledges this is a stricter requirement than what was included in our 2018 recommendations. However, to best protect the integrity of an investigation, chain of custody, and reduce criticism that evidence was not handled properly, OLEO believes this is the policy and practice KCSO adopt.

**KCSO:**

- The policy calls for a joint team created by a KCSO major crimes liaison (usually a sergeant) and independent investigators. That is the procedure that has been agreed upon with Seattle PD, who is currently conducting independent investigations of such incidents for KCSO while the Criminal Justice Training Commission finalized requirements and procedures for independent investigations. In an effort to maintain a chain of custody for an uncollected firearm, KCSO has also adopted the practice of keeping another uninvolved member with the involved deputy until an independent investigator collects the firearm. KCSO prefers not to consider this change to the current procedure until the replacement Independent Investigation Team is identified and procedures discussed among team members.

**OLEO:** Require involved member to stay at scene until photographed by independent investigators

**KCSO:**

- Our policy requires the responding supervisor to photograph the involved officer, and also requires that the officer stay on scene if “safe and feasible.” The policy permits an exception that allows the officer to be removed if it is not “safe and feasible” for the officer to remain on scene, which provides for necessary flexibility. Our experience has shown that there can be significant delay before the independent investigators arrive. The benefits of the recommendation are outweighed by practicalities when there is nothing further to be accomplished by the involved officer’s presence (photographs and public safety questions have been completed).

**OLEO:**

- **Either eliminate the use of Level I, II, and III terms if not using throughout the policy, or use those terms throughout the policy instead of switching to, for example, “serious force incident.”**

OLEO used similar terms in our 2018 recommendations to categorize types of force and, based on those categories, to describe the reporting, investigation and review requirements throughout the procedure. However, in KCSO’s proposed revisions, those levels (I, II, or III) are only used to categorize types of reportable and non-reportable force. The level of investigating and reviewing force is then determined by whether it is a “serious force incidents” or “critical incidents.” This makes the policy confusing.

The most essential part of OLEO’s recommendation related to these terms was ensuring that KCSO categorized some uses of force for an appropriate level of response. For example, ensuring the policy stated that any head strike with an impact weapon be considered deadly force, such that a higher level of investigation and review would commence.

**OLEO:**

- **Consider organizing the policy by different categories of force.**

The proposed policy revisions are mainly organized by personnel responsibilities. Although the primary responsibilities under each type of personnel (whether supervisors, commanders, dispatcher, etc.) mostly pertain to serious force/critical incidents, those responsibilities sometimes make reference to less serious use of force responsibilities despite being under a larger heading of serious force. This makes it challenging to quickly identify what a member’s role is during a serious force incident versus a less serious force incident. For example, under “Member responsibilities,” item number 4 is described as “Serious Force Incidents,” which includes the time frame involved members must provide a compelled statement, yet it also includes a different time frame for “all other uses of force...”

The current organization by personnel responsibilities also makes it difficult to determine under what level of force those responsibilities apply. For example, under “Supervisor’s Responsibilities,” requirements for less serious force are listed first, then “additional responsibilities for serious force and critical incidents” are listed. This appears to convey that for serious force incidents, supervisors are required to conduct investigative steps (such as interviewing witnesses, taking photos, etc.) in addition to the responsibilities for serious force. Based on OLEO’s understanding of the process, we do not believe this is what KCSO intended to change in this policy revision. And this would conflict with the independent investigation requirements for uses of deadly force.

**KCSO: We attempted to divide different items into “force” levels, but the lowest level inherently included items that were not considered uses of force, making the labels confusing. In addition, the**

primary reason for creating the levels appears to be differentiating the different reporting requirements, so we chose to use the labels in connection with reporting requirements. In addition, KCSO has omitted the phrase “additional duties” from the section on Supervisor’s duties, and has also created distinct and separate sections for general uses of force, and Critical Incidents, making this section more accurate and helpful to supervisors.

Another example where it is unclear when the responsibilities apply are the Precinct/Section Commander’s (6.01.025), Division Commander’s (6.01.030), and the Internal Investigation Unit’s (IIU) Responsibilities (6.01.035). It is unclear whether these types of personnel are required to review the case packet, etc. for all force incidents or for only less serious force incidents.

**Instead, KCSO could organize the policy in a similar manner to:<sup>1</sup>**

**Levels of Force – Reporting Requirements:**

1. Level I: Use of Force Report Not Required – Supervisor Notification Not Required.
2. Level II: Use of Force Report Required – Supervisor Notification and Response Required.
3. Level III: Use of Force Report Required – Supervisor Notification and Response Required.

**Level I – Documentation Requirements**

[Include personnel responsibilities for documentation]

**Level II – Documentation, Investigation, Review Requirements**

- Substantially involved and witness members
- Supervisors
- Precinct/Section Commanders or Contract City Chiefs
- Division Commander
- IIU

**Level III – Documentation, Investigation, Review Requirements**

- Substantially involved and witness members
- Supervisors
- Dispatcher
- Incident Commander
- Major Crimes Unit and Independent Investigators
- Administrative Review Team
- 72-hour Briefing
- Critical Incident Review Board

**KCSO:** These are good suggestions, but given the historical layout of the policy and preparations for training underway, at this time KCSO is choosing not to change the organizational structure further.

---

<sup>1</sup> OLEO’s use of Level I, II, and III here are demonstrative of how, if choosing to, KCSO could utilize those terms throughout the policy. OLEO is not advocating for the use of the term unless it is used consistently in the policy.

**OLEO:**

- **Although unintentional discharges not resulting in injury are not considered force, KCSO should still, at minimum, have the same reporting, investigation, and review requirements as Level II (or less serious) force.**

If treated in this manner, unintentional discharges can be moved up to 6.01 under Level II (or less serious) force requirements, while making clear it is not considered a use of force but is still processed in the same way. Having a separate policy for unintentional discharges under GOM 6.02 “Investigation of Use of Firearms” creates a convoluted policy because the investigative steps involving deadly force (which usually involves firearms) are in GOM 6.01.

**KCSO:** The requirements for Unintentional Discharge with no injury have remained the same, but the section was moved to 6.01.070, and requires immediate supervisor notification, detailed officer’s report, supervisory investigation, and blue team entry. Inspection by the armorer is also required in some cases. Since this is not a use of force, KCSO does not want to mischaracterize it as a use of force, and has found the substantial review required has been sufficient. KCSO agrees that 6.02 was a convoluted section, and KCSO has reconfigured these sections to move some firearm sections to 6.01.070 (as noted above), and 17.21, and 7.05. GOM 6.02 has become the section on Review of Critical Incidents.

**OLEO:** There is an error in the section on Supervisor responsibilities at Critical Incidents—current language implies that responding supervisors investigate critical incidents

**KCSO:** Agreed; we corrected this error by creating a new separate section outlining the requirements with the role independent investigators included.

**OLEO Recommendations in Response to Draft GOM 6.00**

Proposed revision to GOM 6.00.005, Policy Statement

**OLEO:** Add the following after the sentence “clear direction and verbal commands should be given when feasible” or elsewhere in GOM 6.00.000 that:

- Members shall provide a description of the warning given in their use of force reports. If no warning was given, members shall provide a justification for the lack of warning.

It is already KCSO’s practice in force incidents to require reports that encompass a review of de-escalation techniques used, which includes documenting verbal directives and warnings. Members are currently trained to document de-escalation steps including warnings, so we believe the addition of this language is unnecessary. The KCSO Guidelines for Use of Force Documentation used in training directs officers to specify how they made their presence and authority clear, verbal identification, commands or instructions, and . . . “warnings/commands” to suspects.

The last sentence (“State law prevents a law enforcement agency from adopting standards pertaining to . . . deadly force that are more restrictive . . .”) is incorrect. RCW 9A.16.040(7)(b) states, “[t]his section **shall not** be construed as . . . preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.” (Emphasis added.)

**KCSO: Agreed. This typographical error was removed from previous draft but was not updated in the draft sent to OLEO.**

#### Proposed revision to GOM 6.00.015, Definitions

**OLEO:** Adopt a de-escalation definition that is more descriptive and includes the purpose for using de-escalation techniques. For example, “taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The purpose is to gain voluntary compliance of the subjects when feasible and thereby eliminate the necessity for physical force.”

**KCSO: KCSO has added further description to the definition section, consistent with the recommendation, but a shorter version.**

#### Proposed revision to GOM 6.00.015, Use of Force and Medical Treatment

**OLEO:** Add/revise the following language (in bold below) to the bullet point under number one:

- Subjects of a use of force **shall be evaluated by aid**, as soon as possible, when there is an obvious, suspected, or alleged injury.

Note: it appears that this GOM subsection number will need to be revised. Currently it is identified by the same number (6.00.015) as Definitions.

**KCSO: KCSO agrees that “shall” is the appropriate standard, and has made this change. We recognize that the word “aid” was in the prior policy and omitted here. It is KCSO’s position that the section taken as a whole provides sufficient protection to those injured in force situations and also provides discretion regarding superficial injuries, such as scratches. KCSO finds no history or record of deputies failing to obtain adequate medical care when appropriate.**

#### Proposed revision to GOM 6.00.020, De-escalation

**OLEO:** Revise the techniques under item number two to include the purpose for using those techniques. This will provide deputies with concrete goals of utilizing those de-escalation techniques, which aids in problem-solving, and more specific direction on what to include in their use of force reports or statements. Specifically, instead of the proposed A through E revisions, OLEO recommends the policy state the following under “De-escalation techniques include but are not limited to:”

- a. Using verbal and nonverbal techniques to calm an agitated person and promote rational decision-making.
- b. Allowing the subject adequate time to respond to direction.
- c. Communicating with the person from a safe position using verbal persuasion, advisements, clear warnings and directions.
  - Members shall establish and maintain one-to-one communication with the person and refrain from giving simultaneous directions or having multiple members verbally engage the subject to avoid confusion.
- d. Decreasing exposure to a potential threat by leveraging space (using distance, moving to a safer position) and shielding (using cover, concealment, and barriers).
- e. Ensuring there are an appropriate number of members on scene, when feasible.

**KCSO:** This was already included in our draft policy, at GOM 6.00.025(4), “Members should consider the need for back-up resources.”

- f. Containing a threat.

**KCSO:** KCSO’s de-escalation training includes the option of “disengagement,” where there may be a subject that is a threat to themselves, but not others. This recommendation conflicts with this de-escalation option. The overarching purpose of de-escalation is to minimize the threat of physical altercation, which in some cases may require disengagement rather than containment.

- g. Avoiding a physical confrontation, unless immediately necessary.

**KCSO:** The overall goal of de-escalation is to minimize the threat of physical confrontation, so this language provides unnecessary duplication.

Summary response: the recommendations above that do not include a specific response, are consistent with KCSO’s training, but we find adding more description to the policy is unnecessary. The goal is creating a clear policy that can be easily read and understood by members.

**OLEO:** For item number three:

- Revise leading policy statement for item number 3 to “During de-escalation, members shall consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to. . .”

The reason for this recommendation is twofold: (1) the proposed revision of “safe and feasible” inadvertently implies that members should make a “safe and feasible” assessment separate from item number one of the policy subsection, and (2) maintaining the old policy language regarding the subject’s lack of compliance provides context for why and whose traits are being considered.

**KCSO:** Agreed, KCSO will re-incorporate the existing language on this point.

- Add “age” under the list of factors. A person’s age (younger or older) may be a factor in considering what capacity they have for understanding and complying with directions in a timeframe an officer might expect of an average adult. A person’s capacity due to age is not covered in the current or proposed factors listed because it is not a mental impairment, development disability, or physical limitation.

**KCSO:** Agreed, KCSO has added this factor to the list.

**OLEO:** Add a new item number stating a requirement such as “when not utilized, members shall clearly articulate facts explaining why de-escalation was not safe or feasible under the circumstances.” This reminds members of the expectation that they must document the justification in their use of force reports.

**KCSO:** In cases where force results, the required reports and review process would encompass evaluation of de-escalation techniques used, which includes documenting circumstances where de-escalation was not used and whether that was in compliance with our policy. In addition, this requirements might be interpreted to require an additional report where otherwise no report would be required.

Proposed revision to GOM 6.00.025, Show of Force

**OLEO:** Add/revise the following clarifying language (in bold below) to the second bullet point under item number one:

- CAD will be used to document the displaying of a weapon.

**KCSO:** This language is not consistent with language used in training, and appears to be a style preference rather than substantive, so we decline to make this change.

**OLEO:** Regarding the first bullet point under item number one, OLEO recommends KCSO review “show of force” case law to determine whether to add the following (in bold) or exclude TAC30 (or similar units) from this policy:

- Intentionally drawing or displaying, without pointing or aiming at a person, is not a **reportable** use of force.

Although not a Ninth Circuit Court of Appeals case, a Tenth Circuit case has left open the possibility that a show of force, based in part on the number of officers carrying weapons, could constitute excessive use of force under some circumstances. See, *Estate of Redd v. Love*, 848 F.3d 899 (10<sup>th</sup> Cir. 2017) (although deemed not excessive in this case, the court does “leave open the possibility that sending a large number of agents to execute a search warrant and arrest warrant for a nonviolent crime can amount to excessive force”).

**KCSO:** At this point, KCSO will not create exceptions for TAC30, but if case law develops that clearly encompasses broader circumstances than the narrow case here, policy will adapt.

## OLEO Recommendations In Response To Draft GOM 6.04 (Less Lethal Weapons)

### Proposed revision to GOM 6.04.030, Using the TASER CEW

**OLEO:** Revise the sentence for item number one to state, “When safe and feasible, members shall provide the subject with a warning” followed by examples of recommended warnings. This helps to make clear that a warning is required only when safe and feasible.

Additionally, OLEO recommends that the the policy provide examples of clear directions or commands such as “Police [or Sheriff’s Office], stop or you will be Tased” or “Police [or Sheriff’s Office], put down the knife or you will be Tased.” These types of warnings let people know what is expected of them and is consistent with the suggested warnings under GOM 6.04.065, Using the Less Lethal Shotgun. The current policy language “Taser, Taser, Taser” is not sufficient because it does not provide the person with direction on how they need to act in order to avoid being Tased.

**KCSO:** The warning “Taser Taser Taser,” is not the warning given to a subject, but rather it is designed to alert fellow *law enforcement officers* in the vicinity that an officer is about to use a taser. Warnings for subjects are distinct from this warning, and consistent with warnings used before other uses of force. KCSO did add the suggested “safe and feasible” language recommended above.

**OLEO:** Add a bullet under item number one to state:

Members shall clearly articulate why providing a warning was not safe or feasible.

**KCSO:** It is already KCSO’s practice in force incidents to require reports that encompass a review of de-escalation techniques used, which includes documenting verbal directives and warnings. Members are currently trained to document de-escalation steps including warnings, so we believe the addition of this language is unnecessary. The KCSO Guidelines for Use of Force Documentation used in training directs officers to specify how they made their presence and authority clear, verbal identification, commands or instructions, and . . . “warnings/commands” to suspects.

### Proposed revision to GOM 6.04.070, Less Lethal Shotgun Post Application Procedures

**OLEO:** Instead of the proposed revision to item number two, the policy should reference reporting/investigation procedures under GOM 6.01, which already requires that photographs be taken, among other investigative steps.

If choosing to keep the KCSO proposed revision regarding photographs, OLEO recommends referencing GOM 6.01 and adding to the following to the sentence (in bold): “Photographs shall be taken of any injuries or impact areas **on the subject . . .**”

**KCSO:** Agreed; we have added the suggested language, “on the subject.”

### Proposed revision to GOM 6.04.090, When to Use Pepper Spray

**OLEO:** Revise item number one to state, “When safe and feasible, members shall give warnings before application.”

**KCSO:** Agreed; we have added the suggested language.

**OLEO:** Add to this policy that “Members shall clearly articulate the reasons for each separate application of pepper spray.”

**KCSO:** This specificity would be required under the reporting section of the policy and included in the Use of Force review.

Proposed revision to GOM 6.04.100, Pepper Spray – Post Application Procedures

**OLEO:** Revise item number three to state “Members shall offer to call medical aid whenever a subject is pepper sprayed.” KCSO’s proposed revision based on calling medical aid for “extreme reactions” potentially leaves room for wide interpretation, and that interpretation might be contrary to GOM 6.00.015, Use of Force and Medical Treatment.

**KCSO:** KCSO modified the policy to clarify that aid should be obtained when pepper spray is used within three feet of a subject, in addition to cases where there are extreme reactions and complaints of injury.

Proposed revision to GOM 6.04.105, Carrying/Operating Pepper Spray Dispenser

**OLEO:** Add under item number 4(b) that “member shall clearly articulate why applying pepper spray within three feet was necessary.”

**KCSO:** Agreed; the recommended language has been added to the policy.

**OLEO Recommendations in Response to Draft 6.02 Administrative Review of Critical Incidents (Critical Incident Review Board (CIRB), Administrative Review Team (ART))**

**OLEO:** OLEO approved of changes to the policy statement after verbal input.

**OLEO:** Are pursuits that result in death or hospitalization included in the definition of “Other Serious Incidents,” or “Serious Force incidents?”

**KCSO:** GOM 6.02.010 includes definitions of Other Serious Incidents and Serious Force Incidents. Other Serious Incidents, No. 2, includes vehicle accidents, or any other contact, that results in the death or hospitalization of a person. A death resulting from a pursuit would normally fall in this category. This is distinguished from the intentional use of a vehicle to control or take custody of a subject. For example, a Serious Force Incident, (No. 5) occurs when a vehicle is used in an

intentional legal intervention. A legal intervention means a pit maneuver or other intentional use of a vehicle to make contact with a subject vehicle.

**OLEO:** 6.02.015 Sheriff's Briefing. OLEO should be included in the briefing provided by the ART, which occurs after the criminal/independent investigators complete their briefing and leave the meeting. It is part of our "monitoring" duties. OLEO also requests ongoing briefings.

**KCSO:** The current CBA language provides that OLEO may attend Review Boards, scenes of critical incidents, and ART lessons learned briefings *if the Guild is also permitted to attend*. The Guild will not be invited to attend the Sheriff's briefing, and this is the closest example found in the CBA to the request above. KCSO does not object to ART providing updates to the OLEO, and suggests that the OLEO stay in contact with the ART, rather than include a specific requirement as to timing or number of updates. In addition, the OLEO will be involved in the ART interviews, as OLEO will be notified and provided the opportunity to be included in such interviews when possible.

**OLEO:** Include in ART responsibilities Supervision, Communication, post incident scene management, medical aid. ART should provide input on these issues since they are related to questions posed to the CIRB. Add "promptly" to referrals to IIU of policy violations.

**KCSO:** The current language includes Training, Tactics, Equipment, and Policy violations. KCSO will include in the general policy violation category additional examples from the suggested list: (including but not limited to supervision, communication, scene management and medical aid).

**OLEO:** How are action items assigned? Who is responsible for monitoring and ensuring action items are completed?

**KCSO:** The new policy provides for a Critical Incident Review Board Coordinator whose role will include monitoring the action items, which will be assigned by the Board Chair. KCSO added language to make this assignment clear (6.02.045(5)).

**OLEO:** Other agencies complete interviews prior to the board review, making live testimony unnecessary. If KCSO's chair decides to provide for a live witness, how will the testimony be memorialized? OLEO recommends that ART conduct all interviews in advance, so they can be provided to the board members for their review prior to the board convening.

**KCSO:** KCSO has added language in 6.02.020(1) that provides for obtaining interviews in advance of the hearing. This does not foreclose the rare possibility of live testimony at the Board Chair's discretion.

**OLEO:** Who provides the Board's report to the Sheriff?

**KCSO:** The Board's chair. KCSO has added language to make this clear. 6.02.040(8).

**OLEO:** how address potential conflict of IIU investigation of ART referred policy violations and the Boards decisions determined by vote on some questions, which may overlap?

**KCSO:** KCSO has added language to clarify that the Sheriff has ultimate determination over all investigative forums. The new language reminds the Sheriff of the potential for different investigations covering the same or overlapping issues, and to be mindful to make an effort to resolve any inconsistencies that might arise.

**OLEO:** in the Inquest pre-planning meeting, the language should reflect that the sheriff shall provide subject matter experts if requested by the person putting on the inquest.

**KCSO:** The Executive's inquest policy includes language requiring that the Sheriff provide witnesses from the Department to testify about both policy and training. KCSO believes this policy direction is sufficient, particularly given that this policy is still in flux. The Inquest administrator is making interpretive rulings in the pending Inquest, the first under the new policy, and the Executive continues to make modifications. Earlier this month, December 2019, the Executive modified the policy which gave rise to a stay and appeal in the current Inquest.

Thank you again for the opportunity to discuss improvements to these policy changes.

Very truly yours,



Mitzi G. Johanknecht  
SHERIFF



**King County**

---

Office of Law Enforcement Oversight (OLEO)

**November 18, 2019  
(OLEO to Sheriff's Office)**

*Enclosure no. 3*

**6.02.000 ADMINISTRATIVE REVIEW OF CRITICAL INCIDENTS**

6.02.005

**POLICY STATEMENT:** 11/19

The Sheriff's Office is committed to thorough, transparent review of critical incidents to ensure that members continue to learn from and improve responses to situations that may result in the most serious uses of force and risks of injury, and to satisfy the public that the Sheriff's Office is appropriate in its review and response to force situations. The Department's investigation and review is in addition to any independent or multi-agency review required under state law. KCSO strives to hold its members accountable to applicable standards and learn from these incidents in order to improve safety for the community and our members.

**Commented [DJ1]:** This language is significantly improved from prior.

6.02.010

**DEFINITIONS:** 11/19**For the purposes of this policy:**

**"Administrative Review Team (ART)"** means: A team of trained supervisors who will be responsible for conducting administrative investigations and reviews of all critical incidents.

**"Critical Incidents"** means: Serious Force Incidents and Other Serious Incidents.

**"Critical Incident Review Board (CIRB)"** means: a board that convenes to conduct enhanced administrative review of Critical Incidents.

**"Critical Incident Review Board Coordinator"** means: A person designated by the CIRB chair to create and ensure preservation of the record of Critical Incident Review Board proceedings and follow up recommendations.

**"Office of Law Enforcement Oversight (OLEO)"** (OLEO) means: An independent agency under the King County Council that monitors and reviews KCSO administrative investigations. OLEO also attends scenes of Critical Incidents, the Critical Incident Review Board, and Department level Driving Review Boards.

**"Other Serious Incidents"** means: Incidents that are not uses of force, and include:

1. Any death of an arrestee or detainee while they are in the custodial care of the department.
2. Any other contact that results in hospital admission or death, such as vehicle accidents.
3. Death, attempted homicide, or serious injury of a member [hospitalization] as the result of an attack or assault.

**Commented [DJ2]:** FYI, other jurisdictions include department-involved vehicle pursuits that result in serious injury or death of the occupants pursued, a department member, or an uninvolved third party. Would it make sense to add this and not have something like that go to DRB? Or are pursuits included in #5 below?

**"Serious Force Incident"** means:

1. Intentional or unintentional firearm discharges (other than less lethal) by a member while engaged in pointing, aiming or displaying of a firearm, regardless of the extent of injury (Excludes training and shooting animals as euthanasia).
2. Any other unintentional discharges where there are injuries that require hospital admission.
  - Unintentional discharges that do not occur while pointing/aiming, and result in no injury shall be handled under GOM 6.01.070.
3. A use of force that results in death (even if the type of force used is not defined as deadly force (e.g. CEW application, Less Lethal Shotgun).
4. A use of force resulting in an injury requiring hospital admission.

5. Use of any intervention by a vehicle that results in injuries that require hospital admission.

Commented [DJ3]: Does this include pursuits? See above.

6.02.015

SHERIFF'S SEVENTY TWO (72) HOUR BRIEFING: 11/19

1. Within three (3) days (72 hours) following a Critical Incident, the Incident Commander or designated Commander will coordinate a briefing. Major Crimes/MARR and/or Independent Investigators will hold a briefing. Any information the Administrative Review Team wants to provide at the briefing, shall occur after the criminal investigators have left the briefing.
  - a. Invitees shall include: The Sheriff, Undersheriff, Division Chiefs, IIU Captain, ATU Captain, Legal Advisor, Chief of Staff, the affected Precinct Command Staff, and the ART response team. Others may be invited in the discretion of the Major Crimes Captain.
  - b. OLEO will be briefed by the ART Commander or designee within a reasonable time.
2. The primary purpose of the briefing is to:
  - a. Provide a summary of the incident, the status of the investigation, and outstanding investigation steps.
  - b. Identify any officer safety, scene management or other issues that need to be addressed immediately.
  - c. Identify any significant investigative issues.
  - d. Identify any major media issues.

Commented [DJ4]: If the basis for excluding OLEO from this meeting is the inclusion of info from the criminal investigators, then OLEO should be invited into the room after the criminal investigators have left. This falls under OLEO's monitoring duties.

Commented [DJ5]: If you include OLEO above then this could be changed to something like, "OLEO will receive regular ongoing briefings from the ART Commander during the period of ART review."

6.02.020

ADMINISTRATIVE REVIEW TEAM'S RESPONSIBILITIES: 11/19

The ART will review all Critical Incidents, responding to the scene if possible, and completing a review focused on training, tactics, equipment, and policy or procedural issues/violations. The review should also assess the sufficiency of existing policy and training, safety issues, and include recommendations for improvement where applicable.

The ART will:

1. Promptly Refer potential policy violations to the Internal Investigations Unit (IIU).
2. Prepare a findings memo summarizing their findings, observations and recommendations to be submitted to the Critical Incident Review Board and forwarded with the Critical Incident Review Board's final memo to the Sheriff.
3. Present their findings and recommendations at the Critical Incident review board that includes its recommendations and observations regarding:
  - Training.
  - Tactics.
  - Equipment.
  - Policy or Procedural issues/violations.
4. The ART may implement solutions without waiting for completion of the Review Board, but will include those items and status in its findings memo.
5. The ART Findings memo will be filed in IAPro with the Critical Incident Review Board memo and the Use of Force review.
6. Any changes made as a result of assigned Action Items will be documented and filed in IAPro with the Critical Incident Review Board memo.
7. The Critical Incident Review Board Coordinator or other designee assigned by the Critical Incident Review Board Chair will ensure that assigned Action Items are completed by the appropriate KCSO personnel, and that documentation of such is included in the IAPro file.

Commented [DJ6]: Will some kind of lead/command be assigned to ART? Then that person can be held accountable for deliverables.

Commented [DJ7]: Why "if possible?" What circumstances would justify not having ART attend?

Commented [DJ8]: Recommend adding: Supervision, Communication, Post-Incident Scene Management, including medical aid (especially since the CIRB is instructed to answer these questions).

Commented [DJ9]: Recommend adding the items listed above.

Commented [DJ10]: Who assigns action items/how are they assigned?

6.02.025

**OFFICE OF LAW ENFORCEMENT OVERSIGHT (OLEO):** 11/19

The OLEO monitors and may attend scenes of critical incidents. In addition, OLEO attends Critical Incident Review Boards as a non-voting member.

For OLEO's monitoring purposes, ART team members shall:

- Ensure that OLEO is timely invited to attend all interviews related to ART's review and any IIU investigations related to the incident.
- Upload documents related to incident review to IA Pro in real time.

6.02.030

**CRITICAL INCIDENT REVIEW BOARD:** 11/19

1. The Review Board shall convene within forty-five (45) calendar days after:
  - The completed criminal file is provided to the prosecuting attorney, or
  - The applicable independent investigation team communicates to KCSO that they are not submitting the investigation to a prosecuting authority, or
  - The ART has completed its review.
2. The Undersheriff will work with the Patrol Operations Chief or designee to set the date, arrange for necessary witnesses and provide documents in advance to the Review Board members.
3. The Review Board may call any witnesses deemed necessary.

**Commented [DJ11]:** Most review boards do not call fact witnesses. If witnesses are called, how will their statements be memorialized?

6.02.035

**CRITICAL INCIDENT REVIEW BOARD MEMBERS:** 11/19

1. The Critical Incident Review Board shall be composed of members who were not involved in the incident under review.
2. Five (5) members shall be present to constitute a quorum.
3. The Review Board shall be composed of the following:
  - a. The Undersheriff (Chair).
  - b. The Chief of Patrol Operations or designee chosen by the Chair of equal rank.
  - c. A Patrol Operations Captain chosen by the Chair.
  - d. Sergeant from the Advanced Training Unit.
  - e. A Union representative appointed by the Bargaining unit of the member under review.
  - f. The Department Legal Advisor or designee selected by the Chair.
  - g. OLEO Director or designee (non-voting)
  - h. Other non-voting members who may be designated by the Chair.

6.02.040

**CHAIR'S RESPONSIBILITIES:** 11/19

The Review Board Chair shall:

1. Determine order of presentation and identify needed witnesses and attendees.
2. Ensure that all affected personnel who are required to attend are notified within fourteen (14) calendar days of the review.
3. Ensure that applicable documents (i.e., reports, photographs, tapes, etc.) are provided to the

**Commented [DJ12]:** Same question as previous regarding witnesses.

- Board members in advance.
4. Designate a Review Board Coordinator for the review.
  4. Advise all members under review at least forty-eight (48) hours before any interviews that:
    - a. They are required to cooperate with the department investigation and that failure to cooperate may result in employment termination and that the information obtained from the interview cannot be used in a criminal case (Garrity v. N.J., 385 U.S.,493, 1967).
    - b. They may have representation during the review.
      - The member's representative may review all statements and other evidence relevant to the incident under review before the Review Board hearing.
  5. Notify the involved member(s) of the Board's vote on each question at the conclusion of the Review Board.
  6. Ensure that a written report of the Board's findings and recommendations is sent to the Sheriff within thirty (30) days. The written report shall include all information that accurately reflects the discussion that ensued during the review.

**Commented [DJ13]:** Recommend having any additional necessary witness interviews conducted prior to and outside of review board, transcribed, and provided to CIRB with other materials prior to meeting.

Also, if additional interviews are to take place, should that not be within the ART team responsibilities rather than CIRB?

6.02.045

**REVIEW BOARD COORDINATOR RESPONSIBILITIES:** 11/19

The Review Board Coordinator will be responsible for:

1. Taking comprehensive notes of the Board hearing.
2. Documenting the votes per voting member, and reasons for dissenting votes.
3. Assisting in drafting the final Findings and Recommendations memo to the Sheriff.
4. Ensuring the records relied upon in the Board hearing are preserved in IAPro.
5. Monitoring and documenting completion of recommended actions, and ensuring such documentation is preserved in IAPro.
6. Coordinating the messaging of results and recommendations to the Department.

**Commented [DJ14]:** Who is directly responsible for drafting and presenting it to the Sheriff?

6.02.045

**MEMBERS UNDER REVIEW:** 11/19

1. Statements and interviews will normally serve as sufficient evidence so that members under review will not be called to testify at the Review Board, however if it is determined that a members presence is required, those members who are ordered to appear before a Use of Force Review Board shall do so.
  - Prior to giving testimony, members are required to cooperate with the department investigation and that failure to cooperate may result in employment termination and that the information obtained from the interview cannot be used in a criminal case (Garrity v. N.J., 385 U.S.,493, 1967).
2. Members may have bargaining unit representation present during the review.
3. Members may review any relevant documents (i.e., reports, photographs, tapes, etc.) upon request.
4. Members may call any witnesses on their behalf.

6.02.050

**CRITICAL INCIDENT REVIEW BOARD HEARING:** 11/19

1. The Chair shall manage the order of evidence presentation.

2. Both the criminal investigation team and ART will present at the hearing.
  - ART shall present after the Criminal investigators have completed their presentation and have departed the hearing room.
3. ART will present its observations and findings to the Board.
  - ART will also submit a memo summarizing its review and recommendations to the Board that will be maintained as part of the record, and forwarded to the Sheriff with the Board's Final memo.
4. Any background information, including criminal information, of the suspect that was known by the deputy before or during the application of force can be shared with of Use of Force Review Board before it is commenced. Any information that was later learned by the deputy/departement after use of force cannot be shared with the board before it convenes, or during its review.
5. All non-voting members, except the Secretary and OLEO Director or designee, shall be excluded from the Review Board meeting before the voting.
6. The Review Board shall answer the following questions:
  - a. If a firearm was used was it intentional or unintentional?
  - b. Was the use of force justified or unjustified, regardless of the tactics or choices leading up to the use of force?
  - c. Were the member's choices leading up to the event sound and consistent with department training?
  - d. Were there reasonable alternatives to the use of force, including lesser force options?
  - e.g. What efforts did the member make to de-escalate the situation prior to using force?
  - e-f. Was either inadequate or improper training a contributing factor to the event?
  - f-g. Were policies and procedures followed after the event?
  - g. Did the use of force involve a policy violation?
  - h. Were relevant policies in place for this incident?
  - i. Were issues identified with supervision or command?
  - j. Were issues identified with communications?
7. The Review Board shall also review the recommendations made by the ART. The Board shall determine which recommendations to forward as recommendations to the Sheriff.
8. The findings and recommendations shall be by simple majority and the Review Board Coordinator shall record the names of dissenting members and their reasons for dissent.

Commented [DJ15]: Assume this is accurate?

Commented [DJ16]: Why would you separate the tactics or choices leading up to the use of force in the consideration of whether it was justified? Those tactics often contribute to the outcomes. It would be false to say that the use of force was justified if tactics that led to it were not?

Urge you to reconsider this, especially in the context of the statewide dialogue on I-940...people expect an honest look at what causes these incidents.

Commented [DJ17]: SPD asks whether the force was "reasonable, necessary, and proportional" which might be a better way to think about it at CIRB. Also, if you ask that question instead of justified vs not, then you can leave the policy-violation questions to the IIU investigation (see question in comment below re CIRB vs IIU determinations).

6.02.055

**FINDINGS AND RECOMMENDATIONS: 11/19**

1. A Findings and Recommendations memo shall be submitted to the Sheriff for final approval within thirty (30) days of after the Board hearing.
2. Results of findings and recommendations:
  - a. All potential policy violations shall be referred to IIU.
  - b. Recommendations for modifications to policy will be referred to the Manual Revision Unit.
  - c. All training related matters shall be referred to the Advanced Training Unit. If individual training is recommended, the member(s) shall be referred to the appropriate trainer for specific training.
  - d. Findings related to decisions leading up to the use of force, and whether there were reasonable alternatives to the use of force, shall be reviewed by the Chair for appropriate referral.
  - e. All records shall be referred to IIU for retention in IAPro.
3. The Board may make other findings and recommendations it deems appropriate.

Commented [DJ18]: By whom?

Commented [DJ19]: As we discussed, trying to understand the role of CIRB vs. IIU here... Is it correct that: IIU handles all allegations of misconduct and/or potential GOM violations and CIRB determines whether force was reasonable? If the CIRB determines that it was not reasonable, necessary, and proportional, would those actions necessarily constitute a GOM violation?

Commented [DJ20]: Shouldn't this happen immediately, and not delayed by the processing of CIRB's memo? Maybe it belongs elsewhere in the policy as well.

6.02.060

**SHERIFF'S RESPONSIBILITY: 11/19**

The Sheriff shall review the findings and recommendations of the Use of Force Review Board within thirty (30) days

1. If the Sheriff concurs with the Board's recommendations, he/she shall forward the findings to IIU for records retention in IAPro.
2. If the Sheriff does not concur with the Board, he/she may direct the appropriate person(s) to investigate specific issues or concerns, or note specific concerns in writing.
  - The Sheriff shall set a reasonable deadline for any additional review(s).
3. The Sheriff shall notify the involved member(s), in writing, of the findings and recommendations as soon as practical after completing his/her review.

**Commented [DJ21]:** Recommend supplementing this with an individual debrief of all involved members regarding the issues raised during the ART and CIRB process.

6.02.065

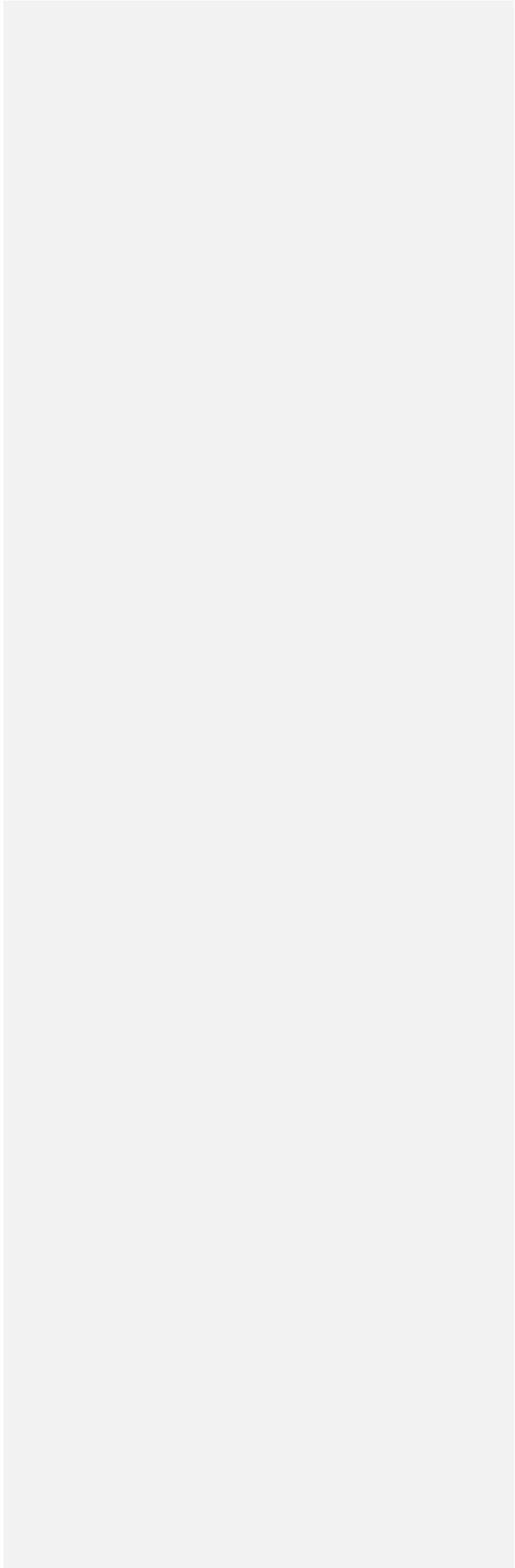
**INQUEST PRE PLANNING MEETING: 11/19**

The King County Executive changed the procedures for Inquest hearings in 2019, and the processes are still being finalized. Under the new procedures, involved members are not required to testify, but may attend. It is expected that nearly all deaths in King County involving action by a police officer are will be sent to an Inquest Hearing as directed by the County Executive. The Sheriff will determine the need for subject matter expert witnesses to appear for an inquest hearing. Often, there is also a need to plan for the appearance and security concerns of the persons involved and/or attending an inquest hearing.

**Commented [DJ22]:** Wouldn't this actually be a decision/request from the PAO or whoever is running the Inquest? Could be, "If requested, the Sheriff will determine whether any members shall appear as subject matter experts."

1. To address that need, the Court Security Section Captain, upon being notified of the date the Inquest will convene a security/appearance planning meeting at least two weeks prior to the start of the hearing. Attendance will be required of the following:
  - a. Involved members, including KCSO witnesses.
  - b. Personal Assistance Team representative or coordinator representing the involved members.
  - c. Major Crimes representative.
  - d. Criminal Intelligence Unit representative.
  - e. Special Operations dignitary protection coordinator.
  - f. Court Security Captain and Sergeant.
  - g. Section Commander of the involved member(s).
  - h. Undersheriff's executive assistant.
  - i. MRO.
  - j. ATU representative.
2. The purpose of the meeting will be to determine the level of security required at the hearing based on current threat information, and to coordinate the resource needs of attendees.
  - The intelligence unit will be responsible for emergent threat information to be processed and acted upon if necessary prior to the start of the hearing.
3. The Court Security Captain will make the determination of the level of security to be provided based on the information presented at that meeting.
4. The Section Commander of the involved members will determine the need to adjust work schedules to minimize the use of overtime and coordinate any special security needs at the member(s) residence or travel to and from the proceedings, when the involved member chooses to attend the hearing.

DRAFT





---

Office of Law Enforcement Oversight (OLEO)

**October 16, 2019**  
**(OLEO to Sheriff's Office)**

*Enclosure no. 4*



**King County**

**Office of Law Enforcement Oversight**

October 16, 2019

TO: Sheriff Mitzi Johanknecht, King County Sheriff's Office (KCSO)

FR: Deborah Jacobs, Director, Office of Law Enforcement Oversight (OLEO)

RE: Use of Force Investigation and Reporting, General Orders Manual (GOM) 6.01.000, GOM 6.02.000, and Supervisor Checklist

---

OLEO has reviewed KCSO's proposed revisions to GOM 6.01.000 and 6.02.000 and the related Supervisor Checklist.

These revisions were based, in part, on OLEO's June 2018 recommendations regarding KCSO's use of force reporting, investigating, and review procedures. Our 2018 recommendations were provided before the state law change regarding criminal investigations for officer-involved uses of deadly force. We appreciate KCSO's consideration of OLEO's recommendations that are still applicable. It appears KCSO intends to adopt OLEO's recommendations on expanding how some specific uses of forces are reported and the level of investigation required when used.

Some recommendations included in this memo, mainly around organization and obtaining a recorded interview rather than a written statement from officers who used force, were verbally discussed between our offices. OLEO's further recommendations are below, and we will appreciate an opportunity to review KCSO's next draft.

- **For serious force/critical incidents, the first statement obtained from substantially involved members must be through an in-person recorded interview, not a written statement.**

Conducting an interview using cognitive interviewing techniques is a leading practice that helps to ensure that the investigators obtain an accurate and detailed account of the incident from the officer's point of view.<sup>1</sup>

---

<sup>1</sup> In 2017, OLEO sponsored a cognitive interview training by Dr. Geiselman, one of the researchers who developed the method based on his extensive research on memory retrieval. Additionally, other law enforcement centered trainings strongly support the cognitive interview as the most accurate method way of obtaining an officer's statement.

- **Clarify policy on discharge of a firearm (other than less lethal) toward a person.**
  - It is unclear from the policy whether the “discharge of a firearm...toward a person” includes off-duty employment as well as when the employee is not working.
  - The policy should specify that “Discharge of a firearm...toward a person” includes off-duty incidents, whether on formal off-duty assignment or not.
  
- **Clarify policy on collection of firearms involved in the force incident.**
  - It is unclear from the policy whether an independent or a KCSO Major Crimes Unit investigator collects and processes the officer’s firearm or weapon involved in the force incident. See, for example, GOM 6.01.035 item number four.
  - “Substantially involved members” in officer-involved shootings must be required to stay at the scene until an independent investigator photographs the member and, if re-holstered, takes possession and conducts a round count of the involved weapon. This recommendation relates to revisions under GOM 6.01 and the Supervisor Checklist form. OLEO acknowledges this is a stricter requirement than what was included in our 2018 recommendations. However, to best protect the integrity of an investigation, chain of custody, and reduce criticism that evidence was not handled properly, OLEO believes this is the policy and practice KCSO adopt.
  
- **Either eliminate the use of Level I, II, and III terms if not using throughout the policy, or use those terms throughout the policy instead of switching to, for example, “serious force incident.”**

OLEO used similar terms in our 2018 recommendations to categorize types of force and, based on those categories, to describe the reporting, investigation and review requirements throughout the procedure. However, in KCSO’s proposed revisions, those levels (I, II, or III) are only used to categorize types of reportable and non-reportable force. The level of investigating and reviewing force is then determined by whether it is a “serious force incidents” or “critical incidents.” This makes the policy confusing.

The most essential part of OLEO’s recommendation related to these terms was ensuring that KCSO categorized some uses of force for an appropriate level of response. For example, ensuring the policy stated that any head strike with an impact weapon be considered deadly force, such that a higher level of investigation and review would commence.

- **Consider organizing the policy by different categories of force.**

The proposed policy revisions are mainly organized by personnel responsibilities. Although the primary responsibilities under each type of personnel (whether supervisors, commanders, dispatcher, etc.) mostly pertain to serious force/critical incidents, those

responsibilities sometimes make reference to less serious use of force responsibilities despite being under a larger heading of serious force. This makes it challenging to quickly identify what a member's role is during a serious force incident versus a less serious force incident. For example, under "Member responsibilities," item number 4 is described as "Serious Force Incidents," which includes the time frame involved members must provide a compelled statement, yet it also includes a different time frame for "all other uses of force..."

The current organization by personnel responsibilities also makes it difficult to determine under what level of force those responsibilities apply. For example, under "Supervisor's Responsibilities," requirements for less serious force are listed first, then "additional responsibilities for serious force and critical incidents" are listed. This appears to convey that for serious force incidents, supervisors are required to conduct investigative steps (such as interviewing witnesses, taking photos, etc.) in addition to the responsibilities for serious force. Based on OLEO's understanding of the process, we do not believe this is what KCSO intended to change in this policy revision. And this would conflict with the independent investigation requirements for uses of deadly force.

Another example where it is unclear when the responsibilities apply are the Precinct/Section Commander's (6.01.025), Division Commander's (6.01.030), and the Internal Investigation Unit's (IIU) Responsibilities (6.01.035). It is unclear whether these types of personnel are required to review the case packet, etc. for all force incidents or for only less serious force incidents.

**Instead, KCSO could organize the policy in a similar manner to:<sup>2</sup>**

Levels of Force – Reporting Requirements:

1. Level I: Use of Force Report Not Required – Supervisor Notification Not Required.
2. Level II: Use of Force Report Required – Supervisor Notification and Response Required.
3. Level III: Use of Force Report Required – Supervisor Notification and Response Required.

**Level I – Documentation Requirements**

[Include personnel responsibilities for documentation]

**Level II – Documentation, Investigation, Review Requirements**

- Substantially involved and witness members
- Supervisors
- Precinct/Section Commanders or Contract City Chiefs
- Division Commander
- IIU

---

<sup>2</sup> OLEO's use of Level I, II, and III here are demonstrative of how, if choosing to, KCSO could utilize those terms throughout the policy. OLEO is not advocating for the use of the term unless it is used consistently in the policy.

### **Level III – Documentation, Investigation, Review Requirements**

- Substantially involved and witness members
  - Supervisors
  - Dispatcher
  - Incident Commander
  - Major Crimes Unit and Independent Investigators
  - Administrative Review Team
  - 72-hour Briefing
  - Critical Incident Review Board
- **Although unintentional discharges not resulting in injury are not considered force, KCSO should still, at minimum, have the same reporting, investigation, and review requirements as Level II (or less serious) force.**

If treated in this manner, unintentional discharges can be moved up to 6.01 under Level II (or less serious) force requirements, while making clear it is not considered a use of force but is still processed in the same way. Having a separate policy for unintentional discharges under GOM 6.02 “Investigation of Use of Firearms” creates a convoluted policy because the investigative steps involving deadly force (which usually involves firearms) are in GOM 6.01.



**King County**

---

Office of Law Enforcement Oversight (OLEO)

**September 13, 2019**  
**(OLEO to Sheriff's Office)**

*Enclosure no. 5*



## King County

### Office of Law Enforcement Oversight

September 13, 2019

TO: Sheriff Mitzi Johanknecht, King County Sheriff's Office (KCSO)

FR: Deborah Jacobs, Director, Office of Law Enforcement Oversight (OLEO)

RE: Use of Force, General Orders Manual (GOM) 6.00.000

---

OLEO has reviewed KCSO's proposed revisions to GOM 6.00.000 (included in this memo starting on page 4), which includes the several subsections such as a policy statement, medical treatment, de-escalation, pointing or aiming a firearm, physical and deadly force, and restrictions. Our recommendations are organized by the relevant subsection and are as follows:

#### **Proposed revision to GOM 6.00.005, Policy Statement**

Add the following after the sentence "clear direction and verbal commands should be given when feasible" or elsewhere in GOM 6.00.000 that:

- Members shall provide a description of the warning given in their use of force reports. If no warning was given, members shall provide a justification for the lack of warning.

The last sentence ("State law prevents a law enforcement agency from adopting standards pertaining to . . . deadly force that are more restrictive . . .") is incorrect. RCW 9A.16.040(7)(b) states, "[t]his section **shall not** be construed as . . . preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section." (Emphasis added.)

#### **Proposed revision to GOM 6.00.015, Definitions**

Adopt a de-escalation definition that is more descriptive and includes the purpose for using de-escalation techniques. For example, "taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The purpose is to gain voluntary compliance of the subjects when feasible and thereby eliminate the necessity for physical force."

#### **Proposed revision to GOM 6.00.015, Use of Force and Medical Treatment**

Add/revise the following language (in bold below) to the bullet point under number one:

- Subjects of a use of force **shall** be evaluated **by aid**, as soon as possible, when there is an obvious, suspected, or alleged injury.

Note: it appears that this GOM subsection number will need to be revised. Currently it is identified by the same number (6.00.015) as Definitions.

### **Proposed revision to GOM 6.00.020, De-escalation**

Revise the techniques under item number two to include the purpose for using those techniques. This will provide deputies with concrete goals of utilizing those de-escalation techniques, which aids in problem-solving, and more specific direction on what to include in their use of force reports or statements. Specifically, instead of the proposed A through E revisions, OLEO recommends the policy state the following under “De-escalation techniques include but are not limited to:”

- a. Using verbal and nonverbal techniques to calm an agitated person and promote rational decision-making.
- b. Allowing the subject adequate time to respond to direction.
- c. Communicating with the person from a safe position using verbal persuasion, advisements, clear warnings and directions.
  - Members shall establish and maintain one-to-one communication with the person and refrain from giving simultaneous directions or having multiple members verbally engage the subject to avoid confusion.
- d. Decreasing exposure to a potential threat by leveraging space (using distance, moving to a safer position) and shielding (using cover, concealment, and barriers).
- e. Ensuring there are an appropriate number of members on scene, when feasible.
- f. Containing a threat.
- g. Avoiding a physical confrontation, unless immediately necessary.

For item number three:

- Revise leading policy statement for item number 3 to “During de-escalation, members shall consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to. . .”

The reason for this recommendation is twofold: (1) the proposed revision of “safe and feasible” inadvertently implies that members should make a “safe and feasible” assessment separate from item number one of the policy subsection, and (2) maintaining the old policy language regarding the subject’s lack of compliance provides context for why and whose traits are being considered.

- Add “age” under the list of factors. A person’s age (younger or older) may be a factor in considering what capacity they have for understanding and complying with directions in a timeframe an officer might expect of an average adult. A person’s capacity due to age is not covered in the current or proposed factors listed because it is not a mental impairment, development disability, or physical limitation.

Add a new item number stating a requirement such as “when not utilized, members shall clearly articulate facts explaining why de-escalation was not safe or feasible under the circumstances.” This reminds members of the expectation that they must document the justification in their use of force reports.

### **Proposed revision to GOM 6.00.025, Show of Force**

Add/revise the following clarifying language (in bold below) to the second bullet point under item number one:

- CAD will be used to document the displaying**ing** of a weapon.

Regarding the first bullet point under item number one, OLEO recommends KCSO review “show of force” case law to determine whether to add the following (in bold) or exclude TAC30 (or similar units) from this policy:

- Intentionally drawing or displaying, without pointing or aiming at a person, is not a **reportable** use of force.

Although not a Ninth Circuit Court of Appeals case, a Tenth Circuit case has left open the possibility that a show of force, based in part on the number of officers carrying weapons, could constitute excessive use of force under some circumstances. See, *Estate of Redd v. Love*, 848 F.3d 899 (10<sup>th</sup> Cir. 2017) (although deemed not excessive in this case, the court does “leave open the possibility that sending a large number of agents to execute a search warrant and arrest warrant for a nonviolent crime can amount to excessive force”).

### **Additional Comments**

Thank you for engaging OLEO in the review of these proposed revisions. We look forward to receiving the remaining sections of the policy, as well, and have a particular interest in the revised procedures for review of critical incidents.

We will also appreciate the opportunity to review the next draft of these policies prior to adoption.



---

Office of Law Enforcement Oversight (OLEO)

**June 1, 2018**  
**(OLEO to Sheriff's Office)**

*Enclosure no. 6*



**King County**

**Office of Law Enforcement Oversight**

June 1, 2018

TO: King County Sheriff Mitzi Johanknecht  
King County Undersheriff Scott Somers

FR: Deborah Jacobs, Office of Law Enforcement Oversight

RE: Revisions/Recommendations on Use of Force Reporting, Investigating and Review procedures

---

Thank you for the opportunity to collaborate with you in rethinking how use of force incidents, especially serious or deadly uses of force, are reported, investigated and reviewed internally by the Sheriff's Office. As discussed, the attached proposed policy revision seeks to combine and streamline policies within the current General Orders Manual.<sup>1</sup>

Key revisions and recommendations we propose seek to:

- Clarify use of force reporting requirements and criteria, including requiring reporting for aiming a firearm at a person.
- Create an Administrative Review Team separate from the Internal Investigations Unit to investigate serious or deadly uses of force and review all uses of force, regardless of seriousness, for quality control.
- Combine any pre-force investigative presentation/findings with the Force Review Board (currently this is separate from the Force Review Board, which can lead to inconsistent findings and results).
- Increase the scope of the Force Review Board to include review of all aspects of a force incident including: pre-force decision-making such as tactics and de-escalation, the force itself, the supervisor's role, reporting, and the investigation.
- Require that the first statement provided by members involved in a force incident is a timely recorded interview rather than a written statement.

We look forward to receiving your comments on this proposal and to continue our collaboration on this important system of accountability.

---

<sup>1</sup> Specific policies include:

- 6.00.100 (Serious Use of Force and Officer Involved Incidents);
- 6.01.000 (Reporting Use of Force and Serious Incidents);
- 6.02.000 (Investigation of Use of Firearms) – However, OLEO did not incorporate 6.02.010 as that needs further discussion on whether and how to include.
- 6.03.000 (Use of Force Review Board)

## **6.00.100 USE OF FORCE REPORTING AND INVESTIGATION**

### **6.00.105**

#### **INTRODUCTION: XX/18**

The purpose of the Sheriff's Office's investigation and review of Use of Force is to transparently and thoroughly review force incidents to (1) ensure that the office and members continue to learn from and improve responses to situations that may involve use of force, and (2) provide the public with confidence that the investigation, review of members' actions, and Office's response to such force situations are timely, objective, and appropriate.

### **6.00.110**

#### **DEFINITIONS: XX/18**

1. "Substantially involved members" includes the member applying force or who had a significant tactical or decision-making role in the incident.
2. "Administrative Approval" means a finding supported by a preponderance of the evidence that the actions of the substantially involved member were within the Sheriff's Office policies.
3. "Administrative Disapproval" means a finding supported by a preponderance of the evidence that the actions of the substantially involved member were not within Sheriff's Office policies.
4. "Tactical Debrief" means the collective review of an incident to identify those areas where actions and decisions were effective and/or could have been improved. The intent of the debrief is to enhance member performance and is conducted by the Advanced Training Unit for substantially involved members and their supervisor(s).
5. "OLEO" means the King County Office of Law Enforcement Oversight.
6. Levels of force:

<b>Force</b>	<b>Threshold</b>	<b>Examples</b>	<b>Investigation &amp; Review</b>
a. De Minimis	Physical interaction meant to separate, guide, and/or control that does not cause pain or injury	Using hands or equipment to stop, push back, separate or escort, the use of compliance holds without the use of sufficient force to	No separate investigation or reporting required, but members required to

		cause pain, and un-resisted handcuffing	include details in incident report
b. Level I	<p>Any use of force that causes injury or complaint of pain/injury but does not result in hospital admission or death</p> <p>Aiming a firearm or less lethal shotgun at a subject<sup>1</sup></p> <p>Unintentional firearm discharge<sup>2</sup></p> <p>Note: any use of deadly force, regardless of whether it results in injury or pain, is considered Level II</p>	<p>Hitting with open or closed hands</p> <p>Hitting with an object, such as a baton or flashlight, but not striking the head</p> <p>Kicking a subject</p> <p>Using any chemical agent or Pepper Spray</p> <p>Using a CEW or any less lethal weapon</p> <p>Using any application of force to the neck</p> <p>Intentionally shoots a dangerous animal in defense of self or others</p> <p>Unintentional firearm discharge</p>	<p>On-duty Supervisor investigation</p> <p>Use of Force Report</p> <p>Commander Review of Use of Force Report</p> <p>Blue Team Entry</p> <p>ART review</p>
c. Level II	<p>An incident involving the use of deadly force by a member, excluding force against animals</p> <p>Regardless of whether the type of force used is considered deadly force, a use of force incident resulting in death or requiring hospital admission</p>		<p>On-duty Supervisor screening at the scene</p> <p>Major Crimes/MARR/ART response and investigation, if applicable</p> <p>72-hour Briefing, if applicable</p>

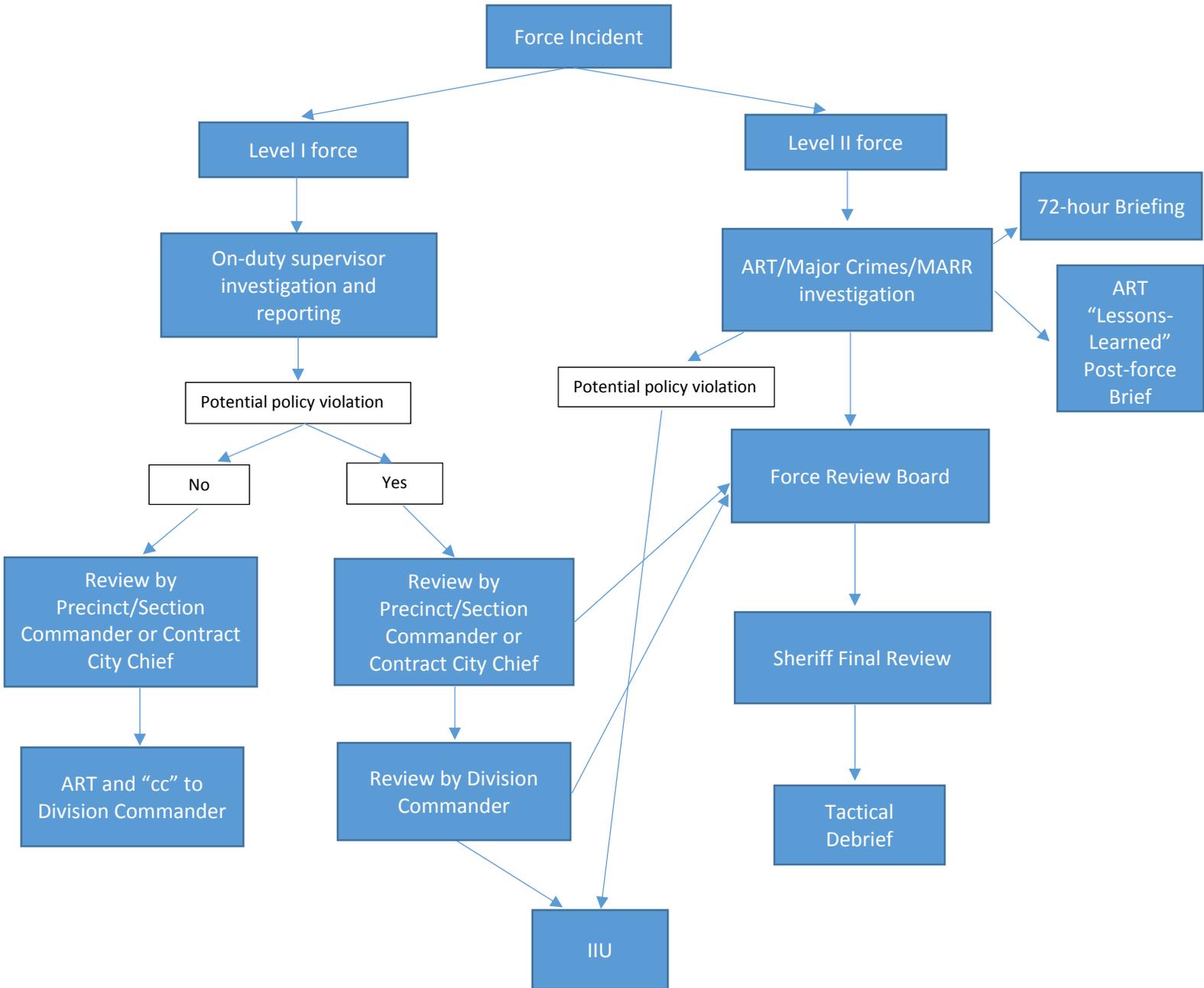
<sup>1</sup> Under some specific circumstances, courts have held that the act of aiming a firearm at a subject constitutes excessive force. See *Thompson v. Rahr*, 885 F.3d 582 (9<sup>th</sup> Cir. 2018) (Burien deputy alleged use of force by pointing gun at arrestee and threatening to kill him if he did not surrender was excessive, but deputy entitled to qualified immunity because arrestee's right not to have gun pointed at him under the circumstances not clearly established at the time); *Robinson v. Solano County*, 278 F.3d 1007 (9<sup>th</sup> Cir. 2002) (officers' use of a drawn gun at close range, pointed at the head of apparently unarmed misdemeanor suspect, was actionable as excessive); *McDonald by McDonald v. Haskins*, 966 F.2d 292 (7<sup>th</sup> Cir. 1992).

As a result of this case law, OLEO is recommending that the Sheriff's Office require a Use of Force report when a member aims a firearm at a subject. Keeping track of this type of force is important for the Sheriff's Office to be aware of issues and patterns so it can take corrective action sooner rather than later.

<sup>2</sup> Current GOM 6.02.010 specifically addresses Unintentional Discharge of Firearms with no injury involved. That specific policy was not included in these revisions. OLEO recommends the Sheriff's Office review whether the policy should remain a stand-alone policy calling for separate procedures or whether it should be integrated into this proposed policy.

	<p>Any death of an arrestee or detainee that is in the custodial care of the Sheriff's Office</p> <p>Any non-tactical unintentional firearm discharge resulting in hospital admission or death</p> <p>Any head strike with an impact weapon or device (e.g. baton, flashlight, etc.)</p> <p>Any unintentional head strike resulting in hospital admission or death.</p>		<p>ART "Lessons-Learned" Briefing (post-force investigative findings and recommendations)</p> <p>FRB review of force incident, including pre-force issues</p>
--	---	--	---

## Overview of Force Investigation and Review Process



#### 6.00.115

#### **ADMINISTRATIVE REVIEW TEAM XX/18**

1. The Administrative Review Team (ART) administratively investigates and reviews all Level II force incidents and any Level I force that is referred, focusing on de-escalation, supervision, training, tactics, equipment, communications, and policy with a goal of continual improvement of the Sheriff's Office.
2. ART is comprised of one Captain and # detective sergeants and shall:
  - a. Have at minimum X year(s) investigative experience;
  - b. Not be currently assigned to IIU;
  - c. Have attended the 40-hr Crisis Intervention Team training;
  - d. Attend at minimum 40-hours training in force investigations; and
  - e. Serve a minimum term of 18 months.

#### 6.00.120

#### **MEMBER RESPONSIBILITIES – REPORTING XX/18**

1. Use of force reporting is required for both on-duty and off-duty incidents.
2. Members who are substantially involved or a witness to the force incident, shall not discuss the circumstances of an incident among themselves or with uninvolved persons, or view or listen to any recordings, news, or social media prior to providing their Use of Force statement or recorded interview.<sup>3</sup>
3. Substantially involved members shall:
  - a. Report all uses of force except De Minimis force.
    - i. Uses of De Minimis force shall be documented in the incident report.
  - b. Immediately notify an on-duty supervisor and dispatch for all reportable uses of force and location.
  - c. Request aid if incident involved Level I force with injury or complaint of pain/injury or Level II force.
  - d. Thoroughly document all reportable uses of force, including a description of each force application.
    - i. The member may consult an attorney or Labor representative before making a statement;

---

<sup>3</sup> The addition of this policy is made to help ensure the highest level of integrity of the investigation thereby increasing public confidence. OLEO understands that the recommendation that members not "view or listen to any recordings, news, or social media prior" to providing their Use of Force statement or interview will likely need to be bargained with the King County Police Officer's Guild.

- ii. Members may provide voluntary statement(s).
- iii. When members are involved in Level II incident, such members shall provide a compelled recorded interview to an ART member before securing from their shift.<sup>4</sup> In cases where the member's representative and ART Commander identify extenuating circumstances,<sup>5</sup> the interview can be conducted up to 48 hours after of the incident.
- iv. When members are involved in Level I incident, they must provide an Officer's Report within 48 hours of the incident.
- e. Provide a public safety statement to supervisor. See GOM XX.XX.XXX (**LEVEL II – INVESTIGATIONS**)

4. Members who witnessed any reportable use of force shall:
  - a. Confirm that a supervisor has been notified of the use of force.
  - b. Notify the on-duty supervisor if they have not been notified.
  - c. Thoroughly document the incident in an Officer's Report.

#### 6.00.125

#### **SUPERVISOR'S RESPONSIBILITIES – REPORTING XX/18**

1. For all uses of force, except de minimis, the supervisor shall:
  - a. Respond to the scene;
  - b. Review the incident and determine whether it is Level I or Level II.
    - i. When multiple members are involved in a use of force incident, the entire incident will be reported and reviewed at the highest level of force reached by any single member during the incident.
  - c. For Level II incidents:
    - i. Immediately respond to the scene to secure, investigate, and review the incident;
    - ii. Contact the CDO and Communications Center for Major Crimes (and MARR if appropriate) and ART call out.
    - iii. Reference GOM 6.00.135 for additional responsibilities.

#### 6.00.130

#### **LEVEL I – INVESTIGATION AND REPORT XX/18**

1. For all Level I force, **the supervisor shall:**

---

<sup>4</sup> OLEO understands the Sheriff's Office will likely need to bargain this change with the King County Police Officer's Guild.

<sup>5</sup> Extenuating circumstances may include that the member is injured or under medication that is prescribed as a result of the incident.

- a. Immediately respond to the scene to investigate and review the incident.
- b. Identify and obtain a recorded interview of the subject of the force and all non-member witnesses.
  - i. If the subject is free to leave, the detention cannot be extended for the interview; however, the subject may choose to remain at the scene to speak with the supervisor.
- c. Obtain written statements or recorded interviews from substantially involved or witness members.
- d. Obtain a medical release from the subject of the force.
- e. If the subject of the force is in-custody, ensure that the subject is not released from custody or booked into the King County Jail without in-person approval by the supervisor.
  - i. In coordination with the ART Commander, exceptions may be made by a Precinct/Section Commander, CDO, or higher authority with such exceptions documented.
- f. Ensure that photographs of injuries or lack thereof are taken of the subject of the force and substantially involved members.
- g. Canvas the scene for potential video surveillance evidence and document specific areas that were canvassed.
- h. Prepare a Supervisor's Use of Force Investigation and Report and include:
  - i. Whether the force used was necessary and objectively reasonable;
  - ii. Whether the force used was consistent with Sheriff's Office's policy; and
  - iii. Whether review by the Force Review Board is recommended due to a concerning pattern or single use of force incident that may not have been necessary or objectively reasonable based on pre-force decision-making, including de-escalation, or actual force used in light of training, policy or law.
- i. Forward the **original** incident report and associated documents to the appropriate detective unit if necessary.
  - i. **When forwarding to detective unit, do not include the Supervisor's Use of Force Investigation and Review with the original incident report.**
- j. Enter the Supervisor's Report with copies of the entire case packet into BlueTeam and notify the appropriate Precinct/Section Commander or Contract City Chief.
- k. If any possible policy violations are observed or reported, forward a "preliminary" (in addition to the Use of Force) up the chain of command to IIU via BlueTeam.

#### 6.00.135

### LEVEL II – INVESTIGATIONS XX/18

1. After a member notifies dispatch of the incident and location, the **dispatcher** shall:

- a. Request aid as directed by the member(s) or on-scene supervisor.
- b. Ensure that the closest on-duty supervisor is immediately notified and dispatched to the scene.
- c. Notify the Communications Center supervisor so that s/he can then notify the involved member's Precinct/Section Commander, Division Commander, or CDO, and the member's bargaining unit representative.
- d. If requested by a member involved, notify the closest available Personal Assistance Team (PAT) member, department member, or friend.
- e. Make other notifications as requested by the on-scene supervisor.

2. **On-scene supervisor** shall:

- a. Assume incident command until the CDO, Precinct Commander or another commander assumes incident command.
- b. Coordinate at the scene with ART, and if called out, Major Crimes/MARR.
- c. Separate all substantially involved members from each other and other possible witnesses at the scene or at a secondary site. Keep them separated until the investigation is complete and each substantially involved member has provided a voluntary or compelled recorded interview.
  - i. If video or recording of the incident exists, substantially involved members cannot listen/watch the recording prior to providing their recorded interview.
- d. Immediately take the necessary steps to calm and reassure the members involved.
- e. If applicable, ask all substantially involved members only the questions on the Public Safety – Deputy-Involved Shooting Checklist (KCSO Form A-127) necessary to:
  - i. Determine the nature of the incident and the circumstances surrounding the incident.
  - ii. Apprehend or locate other suspects, victims, or witnesses.
  - iii. Protect and preserve the crime scene taking into consideration whether to expand the crime scene due to the likelihood of the presence of numerous responding personnel, media, neighbors, and crowds.
- f. If firearms were involved in the incident:
  - i. Take a picture of the involved member with the firearm (if the member is still in possession of the firearm and is still on scene).
  - ii. Collect the involved member's weapon in a non-threatening environment that is out of public view and before the involved member(s) leave the scene.
  - iii. Ensure the firearm is not altered in any way prior to providing it to Major Crimes.

- iv. Ensure the involved member's firearm is replaced before the member is released from duty if the member is still at the scene when a replacement firearm is available. Otherwise the incident commander at the alternate location where the member is shall ensure the member is given a replacement firearm.<sup>6</sup>
  - v. A sergeant or designee will examine firearms belonging to all non-shooting members involved in the situation to ensure that they have not been discharged.
  - g. After the public safety statement and walk-through, if applicable, is conducted, direct all substantially involved members to leave the scene, accompanied by a deputy, PAT member, or other person requested by the involved member(s).
    - i. The member shall not return to the scene at any time unless approved by the on-scene supervisor or, if already on-scene, the Incident Commander.
  - h. Assign a member to accompany the injured to the hospital and remind the member to take extreme care to retrieve and preserve the clothing of the injured party, especially the portion that may have been cut away from the gunshot wound.
    - i. In the case of death, the decedent's hands shall be bagged by the Medical Examiner.
  - i. Ensure that no one enters the crime scene except those on-duty members directly involved in investigating the incident.
    - i. Press, attorneys, bargaining unit representatives, etc., shall not be allowed to enter the crime scene area unless given explicit permission by either the Incident Commander or on-scene supervisor responsible for the investigation.
  - j. Turn the scene over to the Major Crimes or representative upon request.
3. The **Incident Commander** shall:
- a. Wear the incident command vest.
  - b. Provide overall oversight of the scene, including over both ART and Major Crimes/MARR.
  - c. Ensure that another incident commander is at any alternate location(s).
  - d. If the Level II force involved firearms, ensure that the involved members are given a replacement firearm (at the scene or at the alternate location).<sup>7</sup>
  - e. Ensure that the ART Commander compels all substantially involved members to provide a recorded interview before securing from their shift if providing a voluntary one has been declined.

---

<sup>6</sup> OLEO recommends KCSO review whether this procedure is still relevant given that members involved in shootings are typically put on administrative leave.

<sup>7</sup> See previous footnote.

- i. In cases where the member's representative and ART Commander identify extenuating circumstances, the interview can be provided up to 48 hours after of the incident. Extenuating circumstances shall be documented in the ART file.
      - f. Upon completion of the necessary evidence processing and preservation, and after consulting with Major Crimes/MARR and ART member, decide when the substantially involved member(s) may leave.
      - g. Arrange transportation and assistance to the member.
      - h. If the member's vehicle is not held for evidence, ensure that the vehicle is driven to the member's home.
      - i. If at any point potential policy violations are identified, the specific matter shall be referred to IIU and ART will cease its investigation into that specific matter.
4. **Major Crimes and/or MARR** shall respond to the scene and:
  - a. Take control of the scene from the initial on-scene supervisor.
  - b. Process the scene for evidence collection.
  - c. Identify and obtain statements from non-KCSO witnesses in coordination with an ART investigator.
  - d. Collect the member's weapon from the patrol supervisor.
  - e. Brief ART.
  - f. Complete an incident report and conduct the follow-up criminal investigation.
5. **ART** shall:
  - a. Respond to the scene to conduct an administrative investigation regarding the incident, including pre- and post-force issues, such as but not limited to de-escalation, supervision, training, tactics, equipment, communications, and policy.
  - b. Notify OLEO of the incident and serve as a liaison with the OLEO designee at the scene.
  - c. Coordinate with Major Crimes/MARR and receive preliminary information about the event.
  - d. Consult with Major Crimes investigators to determine if Major Crimes has asked the substantially involved member(s) to provide a voluntary recorded interview and if the request was declined.
  - e. If the request was declined, ART Commander shall ensure the order to compel the substantially involved member(s) to provide a recorded interview before they secure from their shift is issued.
  - f. Conduct recorded interviews of all substantially involved members before they secure from their shift.
    - i. Major Crimes shall not be present during these interviews.

- ii. The presence of the Bargaining Unit attorney or representative is at the member's discretion.
- iii. If video or recording of the incident exists, substantially involved members will provide a recorded interview prior to viewing or listening to the recording. Substantially involved members will be allowed to view/listen to the recording after their interview and can supplement their initial interview, if needed.
- g. If at any point potential policy violations are identified, the specific matter shall be referred to IIU and ART will cease its investigation into that matter.

6. **Precinct/Section Commander** or designee shall:

- a. Meet with the substantially involved member(s) to explain the administrative investigation and review processes to them.
  - i. If a PAT member is already paired with the involved member, coordinate with PAT member to determine who will explain the process to the involved member.
- b. Ensure such member(s) see a department Mental Health Professional:
  - i. Within three business days of the incident;
    - 1. The Commander shall ensure the appointment is made and offer<sup>8</sup> to coordinate transportation, moral support, etc.
  - ii. Upon the member's return to work;
  - iii. To check-in for well-being purposes at three and six week mark of returning to work.<sup>9</sup>
- c. Consult with the Mental Health Professional and then decide if, when, and where the member(s) return to duty.
- d. Upon notification of a justified shooting from the Force Review Board, ensure that the involved member received appropriate acknowledgement and is provided a Tactical Debrief.
  - i. The member shall be notified in writing within three working days of the decision.

- 7. PAT members and Chaplains shall comply with applicable policies in GOM 2.08.000 and 2.09.000.

**CURRENT GOM 6.02.020 - KEEP (will likely need to be renumbered)**

---

<sup>8</sup> Changed from "if requested" to "offer" because the member may not know this is something they can request.

<sup>9</sup> OLEO is recommending this to provide more support for members after they return to work. If the Sheriff's Office accepts this recommendation, it may need to update other relevant policies, such as GOM 2.08.000 (Personal Assistance Team) and 2.09.000 (Chaplains).

**CURRENT GOM 6.02.025 Inquest Pre-Planning Meeting** (given the uncertain status of Inquests, the Sheriff's Office will need to assess whether this section is still relevant or can be omitted.)

#### 6.00.140

### LEVEL II – BRIEFINGS XX/18

#### 1. **Seventy-two (72) hour Briefing**

- a. Within 72 hours following a Level II incident, Major Crimes/MARR will hold a briefing for Command staff, including the Sheriff, Undersheriff, IIU Captain, Chiefs, Legal Advisor, Chief of Staff, affected Precinct Command staff, and ART response team.
  - i. Others may be invited in the discretion of the Major Crimes Captain; however, significantly involved members cannot attend.
  - ii. The Sheriff or designee may determine the 72-hour briefing does not need to be held based on particular circumstances.
- b. Major Crimes will present first and leave the room prior to any ART presentation.
- c. The primary purpose of the briefing is to:
  - i. Provide a factual summary of the incident, the status of the evidence collection, investigation, and outstanding investigative steps.
  - ii. Identify any major media issues.
  - iii. Identify any officer safety, scene management or other issues that need to be addressed immediately.
    1. Other issues may include tactics, training, communication, and policy for ART to review and investigate or potential policy violations to refer to IIU.
- d. Attendees and presenters should not opine on the adjudication of any part of the incident.

#### 2. **ART “Lessons-Learned” Briefing**

- a. Within sixty (60) days or sooner following a Level II incident, ART will hold a briefing covering all post-force investigation findings.
  - i. The Sheriff/designee may determine the issues do not warrant holding a briefing, in which case the ART Commander will proceed to GOM 6.00.140(2)(f).
- b. The primary purpose of this briefing is to review post-force actions, events, scene processing and investigation to improve future responses.
  - i. The force incident and any pre-force issues will be covered during the Force Review Board.
- c. The ART Commander, in consultation with other command members and investigators, will determine who is needed to be at the briefing and will ensure

required notices are sent within fourteen (14) calendar days ahead of the briefing.

- i. OLEO is invited to attend the briefing.
- d. The ART Commander will facilitate the briefing.
- e. The primary ART member conducting the investigation will lead the presentation and discussion and take additional observations into consideration for any follow up action items, unless it is otherwise assigned.
  - i. Any potential policy violations identified during the briefing will immediately be referred to IIU for investigation.
- f. Within five (5) business days of the briefing or decision not to hold the briefing, the ART Commander will ensure that any action items and implementation deadline are assigned to the appropriate KCSO personnel for follow up.
- g. The ART Commander, with assistance from the primary ART member conducting the investigation, will submit a memorandum within ten (10) business days to the Sheriff summarizing the ART review, findings, action items (and assignment), and implementation deadlines, which will be:
  - i. Separate from the Force Review Board memorandum;
  - ii. Filed in IIU<sup>10</sup> with the Force Review Board memo and the Use of Force review;
  - iii. A copy of this memo will be provided to OLEO; and
  - iv. Any Sheriff's Office changes made as a result of the assigned action items will be documented and filed in IIU<sup>11</sup> with the ART and Force Review Board memorandums.
- h. The ART Commander will ensure that assigned action items are completed by the appropriate KCSO personnel by the implementation deadline.
  - i. Any request for a deadline extension must include the basis for the request and be submitted in writing to the ART Commander. Any approval of the extension will be in writing. This communication will be documented with the ART memo.
- i. Following the FRB, the ART Commander will ensure that any action items identified during the FRB will be assigned and implemented consistent with this section.

#### 6.00.145

### OFFICE OF LAW ENFORCEMENT OVERSIGHT (OLEO) XX/XX

---

<sup>10</sup> One big picture change in these recommendations is separating ART from IIU. Given that, the Sheriff's Office may want to consider whether relevant ART and Force Review Board memorandums should still be filed in IIU.

<sup>11</sup> See previous footnote.

OLEO monitors and may attend scenes of Level II Force incidents. OLEO also attends the Use of Force Review Boards, Driving Review Boards and ART Investigation Briefing as set forth in GOM sections 6.00.000 and 9.02.000.

## 6.01.000 REVIEWING USE OF FORCE

### 6.01.100

#### TIMELINESS OF REVIEWS XX/18

1. All Level I investigations and reviews by the sergeant and chain of command must be completed and submitted to the ART Commander within 14 days from the incident.
  - a. Furloughs, vacations, extended sick leave or any other absence from work are not considered valid reasons for delaying the review process.
  - b. In the case of absences from work, the reviewer will assign another supervisor to complete the review of the Use of Force Investigation and Report.
2. The ART Commander shall complete review of a Level I incident within 7 days from receiving the Use of Force Investigation and Reports.

### 6.01.105

#### LEVEL I FORCE REVIEW - REFERRAL TO FORCE REVIEW BOARD XX/18

1. At any point during review by the chain of command or ART, the Level I force incident may be referred to the Force Review Board. Considerations for referral may include, but is not limited to a concerning pattern or single use of force incident that may not have been necessary or objectively reasonable based on pre-force decision-making, including de-escalation, or actual force used in light of training, policy or law.

### 6.01.115

#### LEVEL I FORCE REVIEWS XX/18

1. For all Level I force, **the Precinct/Section Commander or Contract City Chief shall:**
  - a. Review the case packet to ensure a thorough and complete investigation has been conducted, that it contains all necessary documentation and evidence, including explanations for why any investigative steps could not be conducted.
  - b. Document in BlueTeam:
    - i. Whether the Use of Force Investigation and Report is thorough and complete;
    - ii. Whether the tactics and decision-making, including de-escalation, was consistent with training and policy;
    - iii. Whether the force used necessary and objectively reasonable;
    - iv. Whether the force used was consistent with Department Policy; and

- v. Whether the on-scene supervisor provided appropriate guidance and support during the incident; and
  - vi. Make any additional necessary comments and recommendations, including if review by the Force Review Board is recommended under GOM 6.01.105, by completed and attaching a Use of Force Commander Review.
- c. If potential policy violations are identified, forward them to the appropriate Division Commander and IIU, and “cc” the ART Commander, via the chain of command within the required timeline.
  - d. If no potential policy violations are identified, forward the case packet to the ART Commander within the required timeline and “cc” the appropriate Major and Division Commander.
2. For all Level I force **where potential policy violations were identified, the Division Commander shall:**
- a. Review the case packet for thoroughness and completeness.
  - b. Review the case packet to ensure all potential policy violations have been identified.
  - c. Document in BlueTeam:
    - i. Whether the findings of the Precinct/Section Commander or Contract City Chief are supported by a preponderance of evidence; and
    - ii. Make any necessary comments and recommendations, including if review by the Force Review Board is recommended under GOM 6.01.105.
  - d. Forward the case packet to IIU without delay.
3. For all Level I force, the **ART shall** review the case packet and document in BlueTeam:<sup>12</sup>
- a. Whether the case packet, including the investigation and reviews, are thorough and complete.
  - b. Whether all reporting requirements are met.
  - c. Whether tactics and decision-making, including de-escalation, is consistent with training and policy.
  - d. Whether the use of force was in compliance with Sheriff’s Office Use of Force policy.
  - e. Whether the on-scene supervision during and after the incident were appropriate.

---

<sup>12</sup> Currently IIU reviews all uses of force in addition to investigating a complaint of excessive or unnecessary use of force. During OLEO’s certification review, we have noticed this creates a conflict. At times, when IIU determined that the use of force was within policy prior to the complaint investigation, IIU would decline OLEO’s request that additional investigation for the complaint be conducted. Additionally, because ART will be specifically trained in force investigations, see above proposed GOM 6.00.115(2), OLEO is recommending that the two procedures be separated with ART conducting review of Level I use of force reports and IIU investigating complaints of excessive or unnecessary use of force.

- f. Whether the findings of the Precinct/Section Commander or Contract City Chief are supported by a preponderance of evidence; and
- g. Any other comments and recommendations, including referral for training, policy review, to IIIU, or if review by the Force Review Board is recommended under GOM 6.01.105.

#### 6.01.120

### **LEVEL II FORCE REVIEWS – FORCE REVIEW BOARD XX/18**

The Force Review Board (FRB) reviews all Level II force incidents and any referred Level I force incidents.

The purpose of the FRB to have a robust discussion on whether a specific force incident was objectively reasonable and necessary and whether supervision, reporting, and investigation requirements were met with the goal of continual learning and improvement of the Sheriff's Office. The scope of the FRB is broader than reviewing the exact moment force was used, but includes reviewing pre-force decision-making. The FRB does not impose discipline.

#### 6.01.125

### **FORCE REVIEW BOARD – RESPONSIBILITIES XX/18**

1. For Level I referrals, the FRB shall meet within 30 calendar days of referral.
2. For Level II incident, the FRB shall meet within 60 calendar days after the criminal investigation is completed.<sup>13</sup>
3. The Undersheriff will work with the Patrol Operations Chief or designee to set the date of the convening of FRB, arrange for necessary presenters, and provide documents in advance to the FRB members.
4. The FRB is comprised of four parts: (1) presentation of the evidence/case, (2) force investigation by ART, if applicable, (3) deliberation of the case, and (4) determinations through majority vote.
  - a. Substantially involved members may be present only for part one of FRB and will not provide any testimony.

---

<sup>13</sup> The timeline (currently 90 days) used to start either at the end of the inquest, or if no inquest is held, upon the prosecuting attorney's decision on whether or not charges will be filed or determination by Major Crimes that no probable cause exists to refer charges to the prosecuting attorney. However, with the status of inquests uncertain, commencement of the timeline should not be based on that process. Additionally, because the involved officers will no longer be testifying at the FRB, and thus no additional factual evidence will be presented at the FRB, starting the timeline based on the completion of the criminal investigation seems most timely and appropriate.

5. During the presentation of the evidence, Major Crimes and ART will present the facts of the incident gathered through its investigation.
  - a. FRB members may ask questions regarding the facts of the incident.
6. Following the factual presentation, ART will present its force investigation on the force incident and any pre-force areas, including on de-escalation, supervision, equipment, tactics, training, communication, and policy.
  - a. FRB members may ask questions, including on the investigation, any issues identified by ART, or an additional issues or concerns that arise.
7. Following the ART presentation, the FRB will deliberate the following questions:
  - a. Was the investigation conducted and reported in a timely manner?
  - b. Were there other problems or issues with the investigation?
  - c. Is the investigation complete?
  - d. Are there areas of additional inquiry needed?
  - e. Did the involved member employ tactics and decision-making consistent with policy and training?
  - f. Did the involved member take reasonable efforts to de-escalate prior to using each application of force?
  - g. What additional de-escalation tactics might have been used in the circumstances?
  - h. Did the involved member's actions contribute to the need to use force?
  - i. Would any different tactical decisions be recommended for future encounters of this nature?
  - j. Did the supervisors provide appropriate guidance and support to the field during the incident?
  - k. If the incident was part of a pre-planned operation, did the supervisors provide appropriate guidance and support during that planning?
  - l. Was the involved member's use of force within Sheriff's Office policy?
  - m. Did the involved member violate any other Sheriff's Office policy?
  - n. Did the involved member's violation of a non-use of force Sheriff's Office policy contribute to the need for force?
  - o. Did the chain of command properly address or refer to those issues identified?
  - p. Were there any equipment issues present in this incident?
  - q. Were there any other issues raised by this incident that should be addressed?
  - r. Are there any other issues or lessons learned from this incident that should be communicated? If so, to whom?
8. The FRB will vote on the following and classify each determination as "Administrative Approval" or "Administrative Disapproval":
  - a. Whether the investigation is thorough and complete;
  - b. Whether the force was consistent or inconsistent with Sheriff's Office policy and training;

- c. Whether, with the goal of continual improvement, any of the following need to be addressed:
  - i. De-escalation;
  - ii. Supervision;
  - iii. Tactics;
  - iv. Training;
  - v. Policy;
  - vi. Equipment;
  - vii. Sheriff's Office best-practices.
9. When an "Administrative Disapproval" determination is made, the FRB will specifically recommend remedial actions and state why they expect the remedial actions will reduce the risk of the member repeating the disapproved behavior. Such remedial actions may include one or more of the following:
  - a. Completion of retraining;
  - b. Notice to Correct Deficiencies;
  - c. Complaint referral to IIU.
10. All FRB determinations under 6.01.125(7) will be made by majority vote.
  - a. All non-voting members, except the Secretary and OLEO representative(s), shall be excluded from the FRB during the voting.

#### **6.01.130**

#### **FORCE REVIEW BOARD MEMBERS XX/18**

1. The FRB shall be comprised of members who were not involved in the incident under review.
2. The Undersheriff shall select the Standing Members of the FRB and the FRB will be comprised of the following:
  - a. Undersheriff (Chairperson).
  - b. Chief of Patrol Operations or designee of equal rank that is chosen by the Chairperson.
  - c. Two Patrol Operations Majors and/or Captains chosen by the Chairperson.<sup>14</sup>
  - d. Sergeant from the Advanced Training Unit.
  - e. A Union representative appointed by the Bargaining unit of the member under review.
  - f. The Department Legal Advisor or designee selected by the Chairperson.
  - g. OLEO director and/or designee (non-voting).
  - h. CIT coordinator (non-voting).<sup>15</sup>

---

<sup>14</sup> OLEO recommends this to increase perspectives.

<sup>15</sup> This position has not yet been created pending the Sheriff's Office providing a cost/benefit analysis report to the King County Council. See King County Council Motion 14948. In the meantime or as an

- i. Other non-voting members who may be designated by the Chairperson.
3. Each Standing Member shall serve a minimum term of 18 months.<sup>16</sup>
  - a. Attendance at FRB is mandatory. Any member who is unable to attend a FRB shall notify the Chairperson and find a suitable replacement. Replacements must meet all the requirements of permanent FRB members and be approved by the Chairperson.
4. Each Standing Member is required to:
  - a. Be current on all required Sheriff's Office training;
  - b. Have taken at minimum the 40-hour Crisis Intervention Team training; and
  - c. Attend a minimum of 8 hours of annual FRB training, which focuses on:
    - i. Legal updates regarding use of force;
    - ii. Use of force investigation; and
    - iii. Refresher training on Crisis Intervention Team and tactical de-escalation.
5. Observers and consultants are not permitted to vote.

#### 6.01.135

#### **FORCE REVIEW BOARD – CHAIRPERSON'S RESPONSIBILITIES XX/XX**

The FRB Chairperson shall:

1. Ensure that all affected personnel who are required to attend are notified within fourteen (14) calendar days of the FRB.
2. Ensure that all applicable documents (i.e., reports, photographs, tapes, etc.) are provided to the Board members in advance.
3. Confirm with each Standing Member who is attending and voting that they are current on the required training.
4. Inform all substantially involved members under review:
  - a. The FRB date of the FRB;
  - b. That they may attend the FRB and have a bargaining unit representative present;
  - c. The estimated timeline (about thirty (30) days) for written final findings and recommendations; and
  - d. That after findings are issued, a Tactical de-brief by the Advance Training Unit and all substantially involved members will occur regardless of the specific findings.<sup>17</sup>

---

additional option, the Sheriff's Office's MIDD Sergeant (CIT) is recommended to attend the FRB an expert on de-escalation and force.

<sup>16</sup> OLEO recommends this to help ensure that there is consistency with the FRB and creates safeguards against cherry-picking as it suits individual cases.

<sup>17</sup> Under current GOM 6.03.020(5), there is a requirement that the Chairperson orally advise involved members of the Board's vote at the conclusion of the board meeting. OLEO omitted this requirement

5. Refer any potential misconduct to IIU.
  - a. The determination of whether the act at issue warrants referral to IIU shall be determined by majority vote at the FRB or at the discretion of the Chair.
6. Ensure that a written report of the FRB's findings and recommendations is sent to the Sheriff within ten (10) working days.
7. Following the Sheriff's final decision on the FRB's determinations, ensure that all approved recommendations/lessons-learned are addressed and that the ART Commander processes any new action items consistent with 6.00.140 (Level II – Briefings – ART "Lessons-Learned").
8. Ensure that the Advance Training Unit conducts a Tactical De-brief with substantially involved members and, if applicable, those who were supervising the involved members at the time of the incident.
  - a. The Tactical Debrief is not recorded, but the date held and attendees will be documented as part of the FRB file.

#### 6.01.140

#### **SHERIFF'S RESPONSIBILITIES XX/XX**

1. The Sheriff shall review the findings and recommendations of the FRB within ten (10) working days.
2. If the Sheriff concurs with the FRB, the findings shall be forwarded to the ART Commander for records retention.
3. If the Sheriff does not concur with the FRB, the Sheriff may ask the appropriate person(s) to investigate specific issues or concerns or note specific concerns<sup>18</sup> in writing.
  - a. The Sheriff shall set a reasonable deadline for any additional review(s).
4. The Sheriff shall notify the involved member(s), in writing, of the findings and recommendations within five (5) working days following final review.<sup>19</sup>

---

because it seemed contrary to inform involved members of a preliminary result when the Sheriff makes the final determination to concur or not concur with the Board.

<sup>18</sup> OLEO recommends the Sheriff's Office consider adding to this section what action is taken if concerns are noted. For example, does it get assigned to someone for follow-up? If so, would the ART Commander be the appropriate point person?

<sup>19</sup> Under current GOM 6.03.035, notification is within 10 days of final review. OLEO recommended five days to reduce the amount of time involved members would need to wait.



**King County**

Office of Law Enforcement Oversight (OLEO)

***Journal of Applied Research in  
Memory and Cognition:***

**“What Should Happen After An  
Officer-Involved Shooting? Memory  
Concerns in Police Reporting  
Procedures” by Rebecca Hofstein  
Grady, Brendon J. Butler, and  
Elizabeth F. Loftus**

*Enclosure no. 7*



## What Should Happen After An Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures<sup>☆</sup>



Rebecca Hofstein Grady<sup>\*</sup>, Brendon J. Butler, and Elizabeth F. Loftus

University of California, Irvine, United States

Procedures around interviewing a police officer after a shooting have recently come under increased scrutiny. Some argue the officers should be allowed to view available video footage from body cameras and wait two to three days to de-stress before being interviewed. While viewing the video first may increase accuracy for details present in the footage, it may also cause forgetting or distortion for other parts of the situation not captured on camera, including the officer's perception and construal of the situation. Additionally, memory is likely to decay over any delay from a waiting period, with little support for the claim that a long de-stressing period will improve accuracy compared to an immediate report. Though this is a complex policy matter with many considerations, these procedures may do more harm than good when it comes to preserving the most accurate and helpful memory from the police officer.

*Keywords:* Memory, Stress, Police, Reporting, Body cameras

In recent years, tensions between civilians and police officers have seemingly escalated. The ubiquitous presence of smart-phones has led to increased documentation of fatal encounters between civilians and police officers, leading to calls for transparency and justice. As a consequence, procedures surrounding reporting practices in police departments – how, when, and under what circumstances officers give their statement on what happened in an officer-involved shooting (OIS)—are under scrutiny. Two key issues have arisen. The first is whether, before making their report, officers should be allowed to view body-worn camera (BWC) footage of the incident. The second is whether officers should wait to give their report until two to three days after the encounter to allow them time to consolidate their memory. Proponents of the “pre-view of body camera footage” and proponents of the “wait two to three days” method argue that the officers' memories will be better. We argue, based on the psychological literature, that the most complete and accurate reports will be obtained soon after an incident, before video footage is reviewed and without a long delay. However, policy considerations from outside the realm of human memory may complicate the real-world decision.

### Pre-Viewing of Body Camera Footage

As calls from the public for police use of BWCs increase, more and more police departments will need to decide if they will adopt BWCs and how they will be used. Given the many open questions, such as if officers should be able to turn the cameras off and how long the videos will be stored, police departments need guidelines regarding access to the video. In particular, after a citizen complaint or use of deadly force, some departments allow or require officers to view the video footage before making their written report of the event, while others require officers to make their report first. It may initially make intuitive sense to allow police officers to view the BWC footage if we want them to make the most accurate report. However, decades of research into human memory and cognition make it clear that there can be costs to this approach.

One relevant body of research concerns a topic called retrieval-induced forgetting (RIF; Anderson, Bjork, & Bjork, 1994), which shows that retrieving parts of a memory can reduce access to other parts of related memory which were not retrieved. In a typical RIF study, participants are given some sort of

#### Authors Note

<sup>☆</sup> Please note that this paper was handled by the current editorial team of JARMAC.

<sup>\*</sup> Correspondence concerning this article should be addressed to Rebecca Hofstein Grady, Department of Psychology and Social Behavior, University of California, Irvine, Irvine, CA 92697, United States. Contact: [gradyr@uci.edu](mailto:gradyr@uci.edu)

material they need to learn, such as pairs of words or faces. Later, they are tested on some elements of the material again. Finally, they are asked to remember as much or the original material that they can. While people are better at remembering the material they got extra retrieval practice on, they are *worse* at remembering related, unpracticed material, as compared to a separate group who never got any extra practice. RIF has been demonstrated not only with word lists, but in many contexts across hundreds of studies, including eyewitness situations (Camp, Wesstein, & Bruin, 2012). A meta-analysis of 512 studies showed this is a robust effect across many different contexts and paradigms, and does not appear to go away over time (Murayama, Miyatsu, Buchli, & Storm, 2014).

RIF is particularly relevant to the situation of allowing officers to view BWC footage before making their report because the camera can never capture the entire situation. It will be missing the victim's perspective, anything outside of the officer's field of vision, anything obstructed by the camera, and, crucially, the internal perception of the officer. When an OIS or other serious incident has occurred, all of these are important, not just the objective visual field directly in front of the officer. However, if officers view the footage before making the report and use it as "practice" in thinking of what they will report, they may be less likely to recall those other aspects that did not get the extra retrieval that happened by watching what the BWC caught. For example, they may be more accurate in recalling the facial features of the civilian, if they saw the face again on the footage, but may be less likely to recall the details of the car nearby outside the field of view. If they had made their report first, they would likely have better accuracy for the relevant peripheral details of a scene. And if their reporting of the central details was not as complete as it could be, the BWC footage could be used later to supplement with accurate information.

Another relevant body of literature comes from decades of research on how post-event information can alter a person's original memory for an event (Loftus, 2005). Although the post-event information—the BWC footage—is true information, it still may contain new or different information from what the officer actually noticed or would have otherwise remembered. Watching the BWC may inadvertently bias their memory against what their original perception of the situation was. If, in a tense situation, a police officer believed that a civilian was holding a gun, that would be an important thing to note in their report. However, if they were allowed to view the footage before making their report and saw it was a crowbar, their report would likely end up confirming the video, as opposed to being their unbiased assessment of what they *thought* had occurred. It would not necessarily be a malicious change in reporting; once the footage is seen, it will contaminate their memory to where they now, looking back on it, sincerely view it as a crowbar, whereas previously they had perceived it as a gun. Even though their report may seem more accurate since it confirms to the objective reality of the situation, it is actually less accurate about the officer's perception of the event, which may be far more relevant when it comes to figuring out what led to the use of force.

Some districts attempt to avoid this problem by asking officers, when they make their report, to specify what parts of their

report came from their own memory and what came from the BWC footage that they viewed prior to making their report. While this method recognizes the importance of distinguishing memory of the event from memory of the video, it is not likely to be effective. Psychologists have documented for years the difficulty people have in remembering the source of information in their memory; mixing up the source of a memory has been called one of the "seven sins of memory" (Schacter & Dodson, 2001). It is one of the processes underlying the misinformation paradigm (Loftus, 2005), where subjects witness some event and then later are given incorrect information about it. Many people are misled into not only believing the new information, but incorporating it into their original memory; when directly asked about the source of the memory, many people specifically claim that they saw it in the original event (e.g., Zhu et al., 2012; Stark, Okado, & Loftus, 2010). While in this case the later new information—the BWC footage—is not inaccurate, it may be misleading or incomplete (e.g., if the camera is shaky or misses important context) or not what they originally perceived, and the same difficulty in accurately remembering the source of new information is likely to apply.

While there is support from psychology literature for not allowing officers to view camera footage before making a report, there are other considerations that complicate the real-world situation, rendering it too nuanced for a simple, universal recommendation. For example, consider the consequences that may arise when an officer's report does not perfectly match video footage, which is inevitable given the fallibility of human memory. Much like eyewitnesses who make honest mistakes in recounting events (and who generally would not have access to video footage), police officers may have sincere errors in their memory that do not necessarily indicate deliberate false reporting. The same factors that can lead eyewitnesses to have poorer memory (such as post-event suggestion, extremely high stress, weapon focus; Fawcett, Peace, & Greve, 2016; Wells & Olson, 2003) can similarly affect police officers. An officer might honestly believe the victim was rushing at him from the side, even if the video later shows that the person was walking. A discrepancy like this may lead to a perception that the officer is lying to protect him or herself, undermining trust from civilians and decreasing the desire to use BWCs at all (see Simon & Bueermann, 2015 for a longer opinion on this). This could happen despite the positive effect that BWCs provide in terms of decreasing negative interactions between police and civilians (Ariel, Farrar, & Sutherland, 2015). But the mistaken officers, like mistaken victims and eyewitnesses, deserve consideration of processes other than deliberate lying that may lead to a report that is contradicted by a video. Of course deliberately lying sometimes occurs, but it is only one possibility, and is not necessarily the mostly likely. Discrepancies should certainly be investigated, and when the officer gives later testimony (either in a trial or follow-up report, etc.), he or she can explain why their report differed from the video footage.

We have described some of the potentially detrimental effects that viewing BWC might have on memory. However, this type of long-term outcome is not something that the psychological literature yet has data to address (Letourneau, 2015). Any

policy that requires officers to give a report before seeing the BWC footage, which might be recommended based on memory research, needs to consider how to address these and other downstream consequences that may arise.

### The Waiting Period

Another challenging issue for law enforcement concerns when officers should be interviewed about a traumatic police-civilian encounter. In cases of an OIS, many agencies give officers a two- or three-day “cooling off” period before they are subjected to a detailed interview process. Many agencies have adopted these delayed-reporting policies as a result of recommendations put forth by various law enforcement advocacy organizations and research groups. Some organizations, such as the International Association of Chiefs of Police, recommend officers be provided with brief recovery period before being interviewed, ranging from a few hours to overnight (IACP, 2005). Other organizations, such as the Force Science Institute, advocate for a much longer delay, suggesting that officers should be given no less than 48 h of recovery time following an OIS (Force Science Institute, 2014). From a careful examination of the literature, however, it is clear that there is insufficient evidence to support the claim that having an officer wait two or three days post-OIS will lead to more accurate reports.

The most salient factor behind the delayed-reporting policy is the claim that officers need time to de-stress in order to accurately recall what happened during the incident; agencies believe that if an officer gives a report while under high levels of stress, the report will be less accurate and complete than if the report was given later under lower levels of stress. This phenomenon is sometimes referred to as *critical incident amnesia* (Grossman & Siddle, 2001), with the idea being that the high stress they experience will impair their memory for a period of time after the event, and that one or more night’s sleep will help with emotional decompression and memory consolidation (Lewinski, Dysterheft, Priem, & Pettitt, 2016). This idea has been gaining acceptance in police departments and court cases involving OIS, but the literature does not support its claims.

Research has shown that memory accuracy can be impaired by intense stress. For example, military personnel exposed to an extremely stressful situation were less accurate at identifying their interrogators than those in a less stressful interrogation (Morgan et al., 2004) and can be quite susceptible to misinformation (Morgan, Southwick, Steffian, Hazlett, & Loftus, 2013). Further, research has shown that stress and fatigue can have detrimental effects on an officer’s memory and performance during critical incidents (for more, see Hope, 2016). Despite research showing impaired memory accuracy after intense stress, research has not demonstrated that a waiting a period after the stress will lead to an increase in memory accuracy. We also know that the relationship between stress and memory is nuanced, and a single broad claim does not accurately reflect this complexity. In some situations, stress can lead to an improvement in memory accuracy, while in others it can cause memory impairment. Many factors moderate the relationship between stress and memory, such as the type and intensity

of the stressor, type of retrieval, type of items to be retrieved, and the time interval between encoding and retrieval (Christianson, 1992).

Those who argue that having an officer wait two or three days will *improve* their recall accuracy are not taking into account the extensive eyewitness memory literature that shows that delayed retrieval of events generally leads to poorer accuracy and fewer details remembered (Dunning & Stern, 1992; Loftus, Miller, & Burns, 1978). Research in several eyewitness studies has also shown that immediate testing improves retention of the studied information over time (Dunning & Stern, 1992; Mackay & Paterson, 2014; Odnot, Memon, La Rooy, & Millen, 2013; Paterson, Eijkemans, & Kemp, 2014; for a review, see Eisenkraemer, Jaeger, & Stein, 2013). The robustness of these findings challenges the claim that an officer’s report will be more accurate two or three days post-OIS. Taken together, these studies suggest that the delayed-reporting policy may actually be detrimental to the accuracy of an officer’s reports.

Oftentimes law enforcement advocacy groups point to studies such as Morgan et al. (2004) and Hope et al. (2016) as evidence supporting their policy suggestions. This is problematic because although the studies show that stressful events can impair memory accuracy, they are not designed in a way that can be directly compared to cases of OIS reporting timeframes because they only manipulate the stress level *at the time of encoding*, not at the time of recall, and then give everyone a test at the same retention interval. In an OIS, the stressful event has already happened, so any reduction in memory due to the stress during the event is too late to address. In other words, knowing the stress at time of encoding impairs memory does not tell us anything about the effects of stress at time of retrieval or the amount of time that gives the optimal report.

Other arguments in support of the delay also rely on studies that do not apply to the question at hand. For example, one two-part claim is that is possible for people to retrieve information they did not attend to at the time of encoding, and that sleep facilitates this process (Grossman & Siddle, 2001). However, the studies cited in support of this claim were not designed to test this question. Support for the first part about retrieving previously forgotten information involve demonstrations of implicit learning (e.g. Corteen & Wood, 1972) and memory retrieval aids (e.g., Anderson & Pichert, 1978), while support for the second part comes from unrelated studies on sleep and memory, such as those comparing REM sleep to sleep deprivation (as opposed to comparing sleep to an immediate test; e.g. Schoen & Badia, 1984; Tilly & Empson, 1978). None of these actually test the claim that a delay and/or a night’s sleep will allow people to remember previously forgotten information, and the role of REM sleep in memory consolidation is not universally accepted (e.g., see Vertes & Eastman, 2000). One study (Cartwright et al., 1975) cited in support of the waiting period was used in a claim about REM sleep supports long-term consolidation of information, but the study was comparing change in recall from an immediate to a delayed test in a variety of levels of REM sleep or sleep deprivation. Though they found some differences based on sleep condition, ALL conditions had a net decrease in correct items recalled at the delayed recall (7 h) compared to initial recall.

To be applicable to the policy question at hand, a study would need to take people who have undergone a stressful event and randomly assign them to a memory test immediately or after a delay. Although much research has been conducted on the issue of stress and memory, few studies meet the criteria to generalize to the practice of delayed reporting following an officer-involved shooting. Two relevant studies—[Beehr, Ivanitskaya, Glaser, Erofeev, and Canali \(2004\)](#) and [Alpert, Rivera, and Lott \(2012\)](#)—provide some insight into how a delayed-reporting policy might affect the accuracy of police reports following a stressful situation.

[Beehr et al. \(2004\)](#) studied experienced police officers who went through in-service training at the police academy. During the training, officers experienced a simulated, stressful on-duty shooting incident. In this simulation, officers were required to enter a house that was the location of a suspected breaking and entering. Inside the house, life-sized posters of persons holding handguns moved from behind cover to aim at the officer. When necessary, officers shot at the moving targets. After completing the simulation, half of the officers were tested on their memory for the event while the other half were not, and all of them were tested twelve weeks later. Beehr and colleagues found that officers who were tested immediately had better long-term memory for the event 12 weeks later than those who did not take the initial test. Specifically, those that took the immediate test were more accurate when recalling the number of armed and unarmed persons in the house, were more accurate at identifying objects that were in the house, and were better at correctly rejecting items that were not in the house.

In a study with a closer timeframe to the policy in question, [Alpert et al. \(2012\)](#) studied a group of officers participating in a live-fire training simulation. During the simulation, officers responded to either a school shooting or a terrorist attack. In each scenario, officers were required to help victims, apprehend suspects, and clear the building. Half of the officers wrote a report about what happened during the training immediately after it ended, and then again three days later (the *immediate reporters*). The other half of officers did not write an immediate report, only writing a report three days later (the *delayed reporters*). The reports were scored for accuracy in recalling various details of the events. Alpert and colleagues found that the first reports made by the immediate reporters were more accurate than those by the delayed reporters, which is consistent with research showing immediate retrieval improves memory accuracy. The second reports of the immediate reporters, taken three days later, were also more accurate than the initial reports (made at the same three day delay) of the delayed reporters.

The [Beehr et al. \(2004\)](#) and [Alpert et al. \(2012\)](#) studies show that officers were most accurate when recalling an event immediately as opposed to when there was a delay before reporting. Further, the studies demonstrated that initial testing leads to remembering more about an event when tested again in the future. These findings are consistent with research that shows that our memories are most accurate when tested shortly after encoding, as well as research that shows that repeated testing can enhance memory for the items specifically tested (as opposed to related but untested material, as discussed previously in the RIF

literature, which is why having the most complete early report is necessary).

There are important limitations to mention in regards to these studies we have described. First, [Alpert et al. \(2012\)](#) was a pilot study which did not utilize tests of statistical significance “because the purpose of this exercise was to examine the issues, rather than test for significant differences.” In [Beehr et al. \(2004\)](#), the final recall task took place 12 weeks after the initial event. Following an OIS, officers typically give their reports after a few days have passed, not a few months. In both Beehr et al. and Alpert et al., the officers were exposed to a *simulated* officer-involved shooting, not an actual one. The levels of stress induced in a designed experiment are not likely comparable to those of a live shooting. Still, the findings do not provide any support for the claim that a cooling-off period between the stressful event and subsequent recall would improve memory. A study providing support for the delayed-reporting policy would have to demonstrate that, relative to an immediate report, a report taken at a later time after a cooling off period was more accurate or complete.

We know that over time memory accuracy decreases, and we know that more time between encoding and retrieval increases the likelihood of being exposed to misinformation. It is unlikely that officers would remain completely isolated from any outside, biasing information in the days between an OIS and their report, making the report less valuable, reliable, and informative than it would have been initially. Even proponents of the waiting period recognize the possible memory reconstruction that may happen during a long delay ([Grossman & Siddle, 2001](#)); any discussion about the event from lawyers, colleagues, the media that the officer is exposed to will distort the original memory. Thus, researchers would have to show that potential benefits of the delayed reporting outweigh any memory costs that do occur. Other policy-relevant variables not currently found in the memory and cognition literature could be addressed, such as whether having a cooling-off period has other side effects, positive or negative, such as differences in the well-being of officers, or perceptions of fairness from civilian witnesses or suspects who are not given this delay before reporting. A comprehensive study would compare multiple possible reporting timeframes (e.g., as soon as possible, after a few hours, after a night’s sleep, three days later), after a stressful event to figure out the optimal reporting time on a variety of outcomes. Until such research is presented, there is insufficient support to suggest that a delay would offer any improvement in memory, given what we know about the degradation of memory over time.

### Final Remarks

In both of these questions surrounding police reporting practices, some policy-related considerations cannot be strictly answered by (primarily laboratory) research in cognitive psychology that usually focuses on single dependent variables ([Wells, 2005](#)). Longitudinal, prospective, quasi-experimental research into the outcomes of various policy options would constitute an important step towards really knowing the likely non-cognitive consequences of both potential policy

implementations. Until that time, the relevant literature can give us insight into the best way to preserve an accurate, complete, and informative memory from an officer's report, and the conclusion seems to support interviewing the officer sooner rather than later, before any other new information, evidence, BWC footage, or time has contaminated or decayed an officer's memory and perception of an event.

### Author Contributions

All authors contributed in reviewing the literature and writing the paper.

### References

- Alpert, G. P., Rivera, J., & Lott, L. (2012). Working toward the truth in officer-involved shootings. *FBI Law Enforcement Bulletin*, *81*(5), 1–7.
- Anderson, R. C., & Pichert, J. W. (1978). Recall of previously unrecallable information following a shift in perspective. *Journal of Verbal Learning and Verbal Behavior*, *17*, 1–12.
- Anderson, M. C., Bjork, R. A., & Bjork, E. L. (1994). Remembering can cause forgetting: Retrieval dynamics in long-term memory. *Journal of Experimental Psychology: Learning, Memory, and Cognition*, *20*, 1063–1087. <http://dx.doi.org/10.1037/0278-7393.20.5.1063>
- Ariel, B., Farrar, W. A., & Sutherland, A. (2015). The effect of police body-worn cameras on use of force and citizens' complaints against the police: A randomized controlled trial. *Journal of Quantitative Criminology*, *31*, 509–535. <http://dx.doi.org/10.1007/s10940-014-9236-3>
- Beehr, T. A., Ivanitskaya, L., Glaser, K., Erofeev, D., & Canali, K. (2004). Working in a violent environment: The accuracy of police officers' reports about shooting incidents. *Journal of Occupational and Organizational Psychology*, *77*, 217–235. <http://dx.doi.org/10.1348/096317904774202153>
- Camp, G., Wesstein, H., & Bruin, A. B. (2012). Can questioning induce forgetting? Retrieval-induced forgetting of eyewitness information. *Applied Cognitive Psychology*, *26*, 431–435. <http://dx.doi.org/10.1002/acp.2815>
- Cartwright, R. D., Lloyd, S., Butters, E., Weiner, L., McCarthy, L., & Hancock, J. (1975). Effects of REM time on what is recalled. *Psychophysiology*, *12*, 561–568.
- Christianson, S. Å. (1992). Emotional-stress and eyewitness memory: A critical review. *Psychological Bulletin*, *112*, 284–309.
- Corteen, R. S., & Wood, B. (1972). Autonomic responses to shock associated words in an unattended channel. *Journal of Experimental Psychology*, *94*, 308–313.
- Dunning, D., & Stern, L. B. (1992). Examining the generality of eyewitness hypermnnesia: A close look at time delay and question type. *Applied Cognitive Psychology*, *6*, 643–657. <http://dx.doi.org/10.1002/acp.2350060707>
- Eisenkraemer, R. E., Jaeger, A., & Stein, L. M. (2013). A systematic review of the testing effect in learning. *Paidéia (Ribeirão Preto)*, *23*, 397–406.
- Fawcett, J. M., Peace, K. A., & Greve, A. (2016). Looking down the barrel of a gun: What do we know about the weapon focus effect. *Journal of Applied Research in Memory and Cognition*, *5*, 257–263.
- Force Science Institute. (2014). *Force Science News #254*. Retrieved from <http://www.forcescience.org/fsnews/254.html>
- Grossman, D., & Siddle, B. K. (2001). Critical incident amnesia: The physiological basis and the implications of memory loss during extreme survival stress situations. *The Firearms Instructor*.
- Hope, L. (2016). Evaluating the effects of stress and fatigue on police officer performance during and after use of force incidents: A challenge for research, training, practice and policy. *Journal of Applied Research in Memory and Cognition*, *5*, 239–245.
- Hope, L., Blocksidge, D., Gabbert, F., Sauer, J. D., Lewinski, W., Mirashi, A., & Atuk, E. (2016). Memory and the operational witness: Police officer recall of firearms encounters as a function of active response role. *Law and Human Behavior*, *40*, 23–35. <http://dx.doi.org/10.1037/lhb0000159>
- IACP Police Psychological Services Section. (2005). Guidelines for police psychological service. *The Police Chief*, *72*(9). Retrieved from [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=699&issue\\_id=92005](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=699&issue_id=92005)
- Letourneau, D. S. (2015). Police body cameras: Implementation with caution, forethought, and policy. *University of Richmond Law Review*, *50*, 439.
- Lewinski, W. J., Dysterheft, J. L., Priem, M. M., & Pettitt, R. W. (2016). Police officers' actual vs. recalled path of travel in response to a threatening traffic stop scenario. *Police Practice and Research*, *17*, 51–67. <http://dx.doi.org/10.1080/15614263.2014.959950>
- Loftus, E. F. (2005). Planting misinformation in the human mind: A 30-year investigation of the malleability of memory. *Learning & Memory*, *12*, 361–366. <http://dx.doi.org/10.1101/lm.94705>
- Loftus, E. F., Miller, D. G., & Burns, H. J. (1978). Semantic integration of verbal information into a visual memory. *Journal of Experimental Psychology: Human Learning and Memory*, *4*, 19–31.
- Mackay, T. L., & Paterson, H. M. (2014). How does timing of recall affect eyewitness memory and psychological distress? *Journal of Police and Criminal Psychology*, *30*, 242–253. <http://dx.doi.org/10.1007/s11896-014-9156-z>
- Morgan, C. A., Hazlett, G., Doran, A., Garrett, S., Hoyt, G., Thomas, P., . . . & Southwick, S. M. (2004). Accuracy of eyewitness memory for persons encountered during exposure to highly intense stress. *International Journal of Law and Psychiatry*, *27*, 265–279. <http://dx.doi.org/10.1016/j.ijlp.2004.03.004>
- Morgan, C. A., Southwick, S., Steffian, G., Hazlett, G. A., & Loftus, E. F. (2013). Misinformation can influence memory for recently experienced, highly stressful events. *International Journal of Law and Psychiatry*, *36*, 11–17.
- Murayama, K., Miyatsu, T., Buchli, D., & Storm, B. C. (2014). Forgetting as a consequence of retrieval: A meta-analytic review of retrieval-induced forgetting. *Psychological Bulletin*, *140*, 1383–1409.
- Odinot, G., Memon, A., La Rooy, D., & Millen, A. (2013). Are two interviews better than one? Eyewitness memory across repeated cognitive interviews. *PLOS ONE*, *8*(10), e76305–e76307. <http://dx.doi.org/10.1371/journal.pone.0076305>
- Paterson, H. M., Eijkemans, H., & Kemp, R. I. (2014). Investigating the impact of delayed administration on the efficacy of the self-administered interview. *Psychiatry, Psychology and Law*, *22*, 307–317. <http://dx.doi.org/10.1080/13218719.2014.947670>
- Schacter, D. L., & Dodson, C. S. (2001). Misattribution, false recognition and the sins of memory. *Philosophical Transactions of the Royal Society of London B: Biological Sciences*, *356*, 1385–1393.
- Schoen, L. S., & Badia, P. (1984). Facilitated recall following REM and NREM naps. *Psychophysiology*, *21*, 299–306.
- Simon, D., & Bueermann, J. (2015, August 24). What's the right body camera policy? *Los Angeles Times*. Retrieved from <http://www.latimes.com/opinion/op-ed/la-oe-simonandbueerman-police-body-cam-20150824-story.html>

- Stark, C. E., Okado, Y., & Loftus, E. F. (2010). Imaging the reconstruction of true and false memories using sensory reactivation and the misinformation paradigms. *Learning & Memory, 17*, 485–488.
- Tilly, A. J., & Empson, J. A. C. (1978). REM sleep and memory consolidation. *Biological Psychology, 6*, 293–300.
- Vertes, R. P., & Eastman, K. E. (2000). The case against memory consolidation in REM sleep. *Behavioral and Brain Sciences, 23*, 867–876. <http://dx.doi.org/10.1017/S0140525X00004003>
- Wells, G. L. (2005). Helping experimental psychology affect legal policy. In N. Brewer, & K. D. Williams (Eds.), *Psychology and law: An empirical perspective* (pp. 483–500). New York, NY: Guilford Press.
- Wells, G. L., & Olson, E. A. (2003). Eyewitness testimony. *Annual Review of Psychology, 54*, 277–295.
- Zhu, B., Chen, C., Loftus, E. F., He, Q., Chen, C., Lei, X., . . . & Dong, Q. (2012). Brief exposure to misinformation can lead to long-term false memories. *Applied Cognitive Psychology, 26*, 301–307. <http://dx.doi.org/10.1002/acp.1825>

Received 2 May 2016;  
received in revised form 1 July 2016;  
accepted 2 July 2016