



## 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

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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 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.