



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.¹

¹ 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:²

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

² 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.