



King County

Office of Law Enforcement Oversight

December 4, 2020

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

FR: Adrienne Wat, Interim Director, Office of Law Enforcement Oversight (OLEO)

RE: General Operations, General Orders Manual 6.02.000

OLEO has reviewed KCSO's proposed revisions to General Orders Manual (GOM) 6.02.000 on Administrative Review of Critical Incidents, attached starting at page 5. It appears these revisions were made, in part, in response to recommendations made by OLEO in its Dunlap-Gittens Systemic Review. As part of this memo, OLEO also reviewed KCSO's October 23, 2020 response to the systemic review and noted where additional language was necessary for explicit implementation of recommendations made in the systemic review.

OLEO has identified several previous recommendations from other systemic and policy reviews, including its June 2018 memo on force investigations procedures¹ and the Le Systemic Review, that were not implemented or should be considered when revising this chapter and have included them below.

Additionally, OLEO made new recommendations, including that a community member and KCSO expert in crisis intervention and de-escalation be added as Critical Incident Review Board voting members.

6.02.020

- Revise 6.02.000 (2) Strike *Interview relevant* and insert in its place, *Conduct formal administrative interviews of all involved personnel and*. The section would then read: "*Conduct formal administrative interviews of all involved personnel and witnesses to ensure their testimony is documented for the CIRB's review.*" This would further implement OLEO's previous recommendations to ensure administrative interviews are a part of the fact gathering process in order to better understand decision making of involved personnel.

¹ OLEO Policy Review, Revisions/Recommendations on Use of Force Reporting, Investigating and Review Procedures, June 2018.

6.02.035

- OLEO reiterates the previous recommendations that KCSO revise the Critical Incident Review Board policy to make the Union Representative and Department Legal Advisor non-voting member of the CIRB, as OLEO and OIR group have previously identified the direct conflict of interest they have in the review of a critical incident.
- Revise 6.02.035 (3)(e) by inserting *(non-voting)* after *review*.
- Revise 6.02.035 (3)(f) by inserting *(non-voting)* after *review*.
- To maintain a quorum of five voting members OLEO suggests the addition of two members to the Critical Incident Review board, which will help provide additional perspectives during KCSO's review of its most serious officer-involved incidents. Specifically, OLEO recommends adding the following types of members:
 - A KCSO expert on crisis intervention and de-escalation; and
 - A community member.
 - OLEO suggests conducting additional community engagement around the selection process for and training necessary for a community member to participate in the CIRB. OLEO has received community feedback about the requirements and stipulations for LETCSA community member participation, that leads OLEO to suggest that specific engagement on requirements for and of members in this role should be co-developed with the community.
- Revise 6.02.035(3) by inserting after (g):
 - *(h) KCSO expert on crisis intervention*
 - *(i) Community Member*

6.02.040

- Revise 6.02.040(1) by striking *of relevant* and inserting *all involved personnel*, prior to witnesses. The section would read: “*1. Ensure the ART conducts interviews of all involved personnel, witnesses and subject matter experts to ensure their testimony is included in the record in preparation for the CIRB.*”
- This is consistent with revisions made in 6.02.020, as well as ensures all involved personnel have administrative interviews conducted and included for review by the Critical Incident Review Board as previously recommended by OLEO.
- Revise 6.02.040 (8) by inserting *the decision making or tactical issues raised during the meeting*, after *board's deliberations* to ensure there is a detailed feedback loop provided on the specific issues related to the incident.
 - Consistent with OLEO's recommendation regarding a Tactical Debrief in its June 2018 memo, OLEO also recommends that the Advanced Training Unit have a role in this debrief with involved members.

6.02.050

- Revise section 6.02.050(1) by striking the section and replacing it with “*Members under review will not testify in front of the Critical Incident Review Board, but their formal ART interviews will instead be considered.*” This recommendation was provided in the Dunlap-Gittens Systemic Review, and the KCSO response to King County Council stated

it was already in policy. However, the current GOM language allows for unspecified exceptions, which OLEO recommends be eliminated with the suggested language above.

6.02.055

- Revise 6.02.055 (5) by inserting *the Union representative appointed by the Bargaining unit of the member under review, and the Department Legal Advisor or designee selected by the Chair after or designee*. This recommended revision would only be relevant if revision to 6.02.035 (3)(e) and (f) are adopted to make these non-voting members of the Critical Incident Review board, so that they shall retain the right to be present throughout the meeting.
- To provide a more thorough and robust review, revise 6.02.055 (6) by implementing the list of revised questions, which was previously recommended by OLEO in the 2018 memo, for the CIRB to answer:
 - Was the investigation conducted and reported in a timely manner?
 - Were there other problems or issues with the investigation?
 - Is the investigation complete?
 - Are there areas of additional inquiry needed?
 - Did the involved member employ tactics and decision-making consistent with policy and training?
 - Did the involved member take reasonable efforts to de-escalate prior to using each application of force?
 - What additional de-escalation tactics might have been used in the circumstances?
 - Did the involved member's actions contribute to the need to use force?
 - Would any different tactical decisions be recommended for future encounters of this nature?
 - Did the supervisors provide appropriate guidance and support to the field during the incident?
 - If the incident was part of a pre-planned operation, did the supervisors provide appropriate guidance and support during that planning?
 - Was the involved member's use of force within Sheriff's Office policy?
 - Did the involved member violate any other Sheriff's Office policy?
 - Did the involved member's violation of a non-use of force Sheriff's Office policy contribute to the need for force?
 - Did the chain of command properly address or refer to those issues identified?
 - Were there any equipment issues present in this incident?
 - Were there any other issues raised by this incident that should be addressed?
 - Are there any other issues or lessons learned from this incident that should be communicated? If so, to whom?
- Revise 6.02.055(7) by striking the current language and replacing it with *"The review board shall review and expressly adopt or reject all the recommendations made by the ART. Any recommendations rejected by the CIRB shall be justified in writing. This shall be documented by the CIRB Coordinator and forwarded to the Sheriff."* This would ensure all recommendations made by ART are fully considered, voted upon, and documented. This recommendation was provided in the Dunlap-Gittens Systemic Review, and the KCSO response to King County Council stated it was already in policy. Although the idea may be implicit in the GOM provisions referenced in KCSO's

response, OLEO's language above makes explicit the requirement that all recommendations made by ART are fully considered, voted upon, and justified during the CIRB process.

6.02.060

- Revise 6.02.060 by inserting at the end of section: "*4. All recommendations will be assigned to a KCSO command staff member for implementation, as well as a KCSO command staff member the responsibility of ensuring effective and timely implementation.*"
- This ensures that there is an assigned command staff member responsible for the timely implementation of any approved CIRB recommendations as OLEO has previously suggested.

6.02.065

- Include some specific processes for the "method" to disseminate information to commissioned members in the policy, and at minimum, include that the Advance Training Unit will be involved for any training-related lessons learned.
- Revise 6.02.065(4) after *communication to and* by inserting *provide opportunities for open.*
- These revisions help ensure KCSO further develops internal mechanisms designed to openly discuss lessons learned in order to enhance the ability of all members to meet future challenges, as previously recommended by OLEO.

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 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.
 - 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.

6.02.020

ADMINISTRATIVE REVIEW TEAM'S RESPONSIBILITIES: ~~12/19~~09/20

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. 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.
3. Obtain any other information relevant to their broad mission, assessing unsolicited information forwarded to them via chain of command for relevance.
34. 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.
45. 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.
56. 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.
67. The ART Findings memo will be filed in IAPro with the Critical Incident Review Board memo and

the Use of Force review.

78. Any changes made as a result of assigned Action Items will be documented and filed in IAPro with the Critical Incident Review Board memo.
89. 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.

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.

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~~09/20

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. Assign a board member to Notify-notify the involved member(s) of the Board's vote on each question at the conclusion of the Review Board.
 8. Assign a board member to meet with the involved members sometime shortly after the Sheriff completes the final CIRB report to provide detailed feedback on the board's deliberations and offer the involved officers a forum to share their experiences with the review process.
 89. 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.

6.02.045

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.

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 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.
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?
 - 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:
 - a. All 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

SHERIFF'S RESPONSIBILITY: ~~12/19~~09/20

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.
4. The Sheriff shall determine a method for disseminating lessons learned from the incident to enhance communication to and discussion with commissioned members; these processes will be case specific to the issues.

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 sent to an Inquest Hearing as directed by the County Executive. The 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.
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.