SHERIFF
KING COUNTY

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

Mitzi G. Johanknecht
Sheriff

April 1, 2019

The Honorable Rod Dembowski, Chair King County Council
Room 1200
King County Courthouse
516 Third Avenue
Seattle, Washington 98104

Re: Section 21, Proviso P7 & Ordinance 18835

Dear Councilmember Dembowski:

The following report is submitted in accordance with 2019-2020 Biennial Budget, Section 21, Proviso P7, and Ordinance No. 18835. The Sheriff's Office was asked to respond to 66 recommendations, provided in three different reports, from the Law Enforcement Office of Oversight (OLEO) in 2018.

This report will respond to and address the direction from King County Council as adopted by ordinance:

Of this appropriation, $500,000 shall not be expended or encumbered until the sheriff transmits a report responding to the office of law enforcement oversight reports entitled, "Transparency and Media Relations in High-Profile Cases," "Internal Investigations Complaint Classification Review of the King County Sheriff's Office" and "Use of Force Complaint Processing in the King County Sheriff's Office," and a motion that should acknowledge receipt of the report and reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion and a motion acknowledging receipt of the report is passed by the council.

Section 21, Proviso P7 requested that the Sheriff's Office respond to the OLEO reports as follows:

A. A response addressing the methodology, findings and recommendations of each of the three office of law enforcement oversight reports listed in this proviso;
B. A description of all steps taken, or proposed to be taken, by the Sheriff's Office to implement the recommendations offered in each of the three office of law enforcement oversight reports listed in this proviso; and

C. An explanation of the rationale of the Sheriff's Office for any recommendation found in any of the oversight reports listed in this proviso that the Sheriff's Office does not intend to implement.

I. General Response

Each of the recommendations in each report were reviewed and considered. The Complaint Classification Report and the Force Complaint Report were evaluated by workgroups who met and discussed the information in the report. In some cases, the work group agreed that either the policy or practices should be revised, or they found that the existing practice is consistent with the recommendation and could be memorialized in the General Orders Manual (GOM). To the extent there are recommended revisions to existing policy or practices, the Sheriff's Office must seek input from the representatives of the impacted members of its unionized personnel.

The work group that is updating the force policy in the GOM has already drafted recommended changes to policy. The group is meeting once more to make the final round of revisions and will then present its recommendations to the Sheriff. The Complaint Classification workgroup has made a series of recommended changes to the process and policy related to the internal investigation process at the Sheriff's Office and will be presenting its recommendations to the Sheriff for approval this month. This workgroup has not begun to redraft the policies because some of the recommendations are a significant change and they want to seek input from the Sheriff before drafting the policy changes. To assist the Council in better understanding the status of any particular recommendation, at a glance, tables are attached summarizing the response to each of the recommendations presented by OLEO reports.

II. Response to Report "Transparency and Media Relations in High-Profile Cases"

A. Overview

Much of the content in the Brechner report refers to incidents that predate Sheriff Johanknecht's tenure and does not accurately depict the current practices of the Sheriff's Office.

When Sheriff Mitzi G. Johanknecht took office, January 1, 2018, her number one priority was to restore public trust and faith in the Office of King County Sheriff. As she built her administration in the weeks before taking office, Sheriff Johanknecht chose like-minded individuals for her leadership team who understood and accepted that transparent and accurate public communication would be the highest guiding principle in the day to day operation of the Sheriff's Office. One executive staff member has particular expertise in designing effective public communication methods on multiple platforms: television, print and digital (social) media.

Beginning in January of 2018, six months before the Brechner Center report was presented to the Metropolitan King County Council's Law and Justice Committee, the Sheriff's Office had already significantly changed its approach to media relations. In fact, the Sheriff's Office was,

and still is, operating in a manner that far exceeded the majority of the Brechner Center's recommendations.

The cornerstone of our new approach is the proactive release of information, even if the information is not favorable to the Sheriff's Office, and often before it is even requested. For example this office recognized the public's interest, and right to know, about disciplinary matters involving our commissioned staff. On several occasions we did not wait for reporters to "find out" and inquire about a particular incident, outcome of an internal investigation, or Use of Force Review Board. Instead, we released the information on all platforms (press release, Facebook, and Twitter) and supplied all pertinent documents related to the cases without requiring public disclosure requests. We wanted people to be able to read the reports and conclusions for themselves and have an unfettered view of how the process worked.

B. Report methodology, findings and recommendations

The Brechner Center For Freedom Of Information report, commissioned by the Office of Law Enforcement Oversight, detailed its findings regarding shortcomings in the Tommy Le case and how "significant public mistrust and skepticism" developed in the days and weeks after the shooting.

The Sheriff's Office appreciates and understands how past events could adversely impact public trust.

Further, the methodology in analyzing the Sheriff's Office media policy and Washington State law, as it pertains to privacy and public disclosure, is thorough and sound.

Despite this, we have one note of caution: the Brechner Center recommendations are written from the point of view of journalists. A number of their recommendations for releasing the names of suspects, their criminal histories, and their photos may be contrary to law enforcement's goal of protecting an active investigation and, in many cases, a suspect's right to the presumption of innocence before trial. Those issues will be addressed below.

C. Implemented Recommendations

The Brechner Center concludes ***"...the Sheriff's Office's existing (media) policies are detailed and typical of those in effect at law enforcement agencies throughout the country...."***.

However, we understand the way in which people consume news and information has drastically changed since the King County Sheriff's Office last updated its media policy. Viewership of traditional local television news is down. The old model of waiting until the next broadcast to find out what's new no longer works. Our constituents now overwhelmingly use digital platforms on their computers or smart devices – Facebook, Twitter, Local, Network & other news applications – to consume information at any time of day or night.

In addition, our communities are increasingly diverse and we must identify effective ways to communicate to all of the people we serve and protect. That mission is vital to building and maintaining public trust.

Because of this changing landscape, and to reflect how we have already been operating, within the next six months we will draft changes to our media policy to memorialize how we should deliver valuable information to the diverse communities we serve.

We agree with the following recommendations as outlined in the Brechner Report:

Recommendation: If and when it becomes known that previously furnished information was inaccurate or misleading, or has become accurate or misleading as a result of subsequent events, the MRO shall publicly and transparently update the information as rapidly as possible, acknowledging the initial information and, where possible, explaining the reason for the misinformation. The corrections/retractions shall be reported in the same format and through the same channels as the original inaccurate information.

The Sheriff's Office is always diligent and careful to make sure the information we distribute is, to the best of our knowledge at the time, accurate and therefore reliable. In the event of a high-profile incident, such as an Officer Involved Shooting, a Media Relations Officer is on scene to answer media inquiries and distribute information to the public via on-camera or radio interviews, traditional press releases which include ethnic media outlets, and posts on Facebook and Twitter. We disseminate the details quickly, as soon as we have confirmed information to share.

Sometimes, because these situations are dynamic, information may change. Our protocol is to correct previous information that has now become inaccurate as quickly as possible.

For example, after a recent Officer Involved Shooting with suspect injury in the city of White Center on 02/02/2019, our Media Relations Officer was initially told by a patrol deputy on scene that the weapon the suspect used to threaten deputies was a "phillips head screwdriver". After more details became available through the course of the investigation, and a walk through of the scene, we learned the suspect actually armed himself with a long, metal rod. He also had a putty knife. We corrected that information, using the same avenues we had used to disseminate the original information, and provided photos of both the rod and the putty knife. Although we did not receive any media follow up questions, or criticism, we were concerned that we had distributed inaccurate information. As a result, we instituted a new procedure that insures our Media Relations Officer can now do a time-appropriate walk through of the scene with the investigating detectives so he/she can visualize what happened, personally observe any weapons, and therefore convey accurate information to the media and public.

Recommendation: Ensuring efforts be made to convey information to ethnic media serving

non-English-speaking populations.

We have partnered with the Office of Law Enforcement Oversight and other county agencies to compile an accurate contact list for members of ethnic media. Those outlets or individuals are now part of our standard media distribution list used for all press releases.

Recommendation: "At a reasonable time department members will affirmatively release all releasable information about an event to the news media and will promptly honor requests for releasable information, prioritizing inquiries dealing with time-sensitive public-safety matters on which there is an identified need to warn or reassure the public."

Recommendation: The following incidents are likely to receive news media inquiries and shall be labeled "high profile": add (g) Officer-Involved Shootings or other use of force resulting in serious injury or death.

We consider all Officer Involved Shootings, even if the use of force does not result in serious injury or death, to be a high-profile incident, therefore we intend to adopt the recommendation that adds "Officer Involved Shooting" to the list of "high-profile incidents" in our policy manual. As mentioned earlier in our response, the Sheriff's Office has practiced an affirmative release procedure since January 1, 2018, pre-dating the Brechner Center report. Further, in each of the three Officer Involved shootings since January 1, 2018, our release of information has included at least one photo of the scene (for media & therefore the public who cannot come to the scene) and a photo or photos of any weapons the suspect possessed. This routine release of information exceeds the recommendations in the Brechner Report. And, consistent with Brechner recommendations, once appropriate, the Sheriff's Office releases the names of all deputies or personnel involved in the shooting.

D. Recommendations not implemented

Recommendation: Protocol for timely notification of families following critical incidents.

The Brechner Center's recommendation of a protocol for family notification is misplaced and shows a lack of understanding of legal requirements for family notification.

By law, it is the duty of the King County Medical Examiner to properly identify a deceased individual and notify next of kin. In the event of serious injury to an individual after a critical incident, detectives make attempts to find a person's family during the natural course of their post-incident investigation. Therefore, we will not be formulating a protocol within our media policy for the timely notification of families, as it is not an appropriate duty for a Media Relations Officer.

As an aside, it should be noted that many factors can complicate family notification after an incident: lack of identification on the victim, outdated address and contact information in public or law enforcement databases and so on.

Recommendation: Information normally releasable about arrestees, absent unusual extenuating circumstances, should include the following:

- ***a. Arrestee's name, age, sex, marital status and occupation***
- ***b. General details of alleged offense***
- ***c. Circumstances surrounding the arrest include:***
  - ***i. Time and place***
  - ***ii. Resistance***
  - ***iii. Pursuit***
  - ***iv. Possession of Weapons***

As mentioned previously, the Sheriff's Office has proactively released information and pertinent documents without requiring public disclosure requests from media after high profile events or cases.

However, we do not, in the interest of protecting an on-going investigation and the presumption of innocence, release the names of arrestees or provide their photographs unless and until the person is charged. After charges are filed, the names of individuals are readily accessible to media and others in public court documents. There are exceptions: if a wanted fugitive is a danger to the public, and all other efforts to locate him or her have been exhausted, we might release a name and photograph in hopes of generating valuable tips from the public.

The Sheriff's Office does provide information on the general circumstances of the alleged offense and the circumstances surrounding the arrest in keeping with the recommendations of the Brechner Report.

E. Summary

The Sheriff's Office is in the process of revising our Media Relations Policy to reflect what has been our standard practice, as outlined above, in disseminating information to the media and public. We are also proposing to adopt the recommendations of the Brechner Report in regard to methods for clarifying incorrect information, classifying Officer Involved Shootings as High Profile Incidents and making sure all efforts are made to include ethnic media in our communications.

III. Response to Report "Internal Investigations Complaint Classification Review of the King County Sheriff's Office"

A. Report Methodology

This report is based on information and leadership that is now several years old. The underlying data relied on to form conclusions is from the calendar year 2016 and reflects a review of half of those investigations. At the time of the report, the Internal Investigation Unit was managed by different leadership and the content of the report presumes that the same practices continue in

2018 and require attention. The Sheriff's Office respectfully challenges this assumption. Some of the suggestions or recommendations appear to be based on a less than complete reading of the GOM, incorrect assumptions of legal standards and even organizational structure that does not exist at the Sheriff's Office. That said, many of the recommendations are reflective of current practices and therefore the Sheriff's Office agrees that it is sensible to memorialize such practices either in the GOM, or in Standard Operating Procedures.

B. Response to Recommendations and Rationale

There are 24 separate recommendations. For ease of review, the 24 recommendations are listed with summary responses in the attached Appendix 1- Response to OLEO Complaint Classification Recommendations.

Recommendation 1 - Accepting Complaints: The report recommends policy language explicitly providing that complaints may be received in writing or verbally, in person, by mail, telephone, facsimile, electronic mail, or by any other means and that the Sheriff's Office will accept third party complaints. This recommendation is consistent with current practice and will be memorialized in the GOM.

Recommendation 2 - Accepting Complaints: The public must be clear that the Sheriff's Office encourages people to bring forward legitimate complaints regarding possible misconduct. Therefore, the policy should also specifically provide that employees will not discourage any person from making a complaint and will be disciplined for doing so. This recommendation is consistent with current practice and will be memorialized in the GOM.

Recommendation 3 - Intake Process: The report recommends that policy explicitly provide that employees shall assist individuals who express the desire to lodge complaints against any employees, which shall include, but is not limited to: (a) Calling a Supervisor to the scene to conduct a preliminary inquiry and document the complaint (for example, summoning the supervisor of the officer against whom the complaint is made); (b) Explaining the Sheriff's Office's complaint procedures; and (c) Providing complaint form(s) and/or complaint brochures, or give instructions as to where form(s) and/or brochures could be obtained.

This recommendation reflects current practice and that is likely because these steps are implicit in the existing GOM, including GOM 3.03.015 and .025 (members will accept all complaints, refer them to their on duty supervisor "in a timely manner" and the supervisor receiving this information "shall" take the complainants statement and immediately enter the information in Blue Team. These steps necessarily include the entry of a complaint into the system and eliminates additional effort by the complainant; they do not have to fill out a form in order to have their complaint investigated. However, it could be that some complainants would prefer not to provide an oral complaint. Sheriff's Office personnel are already trained to direct complainants to paper forms or the online form available for lodging a complaint. The adoption of this portion of the suggestion is consistent with current practice and the work group recommends memorializing this practice in the GOM.

Recommendation 4 - In-Person complaints: The report recommends that if an individual comes into any precinct of the Sheriff's Office seeking to make a complaint, an on-duty Supervisor should be immediately notified. The Supervisor should then respond to the Sheriff's Office to conduct a preliminary inquiry of the complaint. If a supervisor cannot respond to the location within a reasonable period, communications and desk personnel should provide the complaint form to the person wishing to file a complaint. Again, based on the same provisions identified in response to Recommendation 3, this is already the practice. The adoption of this portion of the suggestion is consistent with current practice and the work group recommends memorializing this practice in the GOM.

Recommendation 5 - Public Information and Access: The report recommends that the Sheriff's Office ensure that informational materials about filing a complaint are made available to the public through the Sheriff's Office personnel, internet, libraries, community groups/community centers, and at designated public facilities. The adoption of this portion of the suggestion is generally consistent with current practice and the work group recommends memorializing this practice in the GOM, with some exceptions. The best way to make sure the complaints are directed to a person who can take some action is to place the information, with complaint forms, in public areas of Sheriff's Office facilities and on its web page. The work group recommends placement of information with forms in public areas of Sheriff's Office facilities and on the Sheriff's web page to avoid lost or misplaced written complaints left with other public agencies.

Recommendation 6 - Concurrent Investigations: The report recommends that policy provide guidance as to the available options and the benefits and issues associated with running concurrent criminal and administrative investigations. There can be good reasons to allow a criminal investigation to play out, before an administrative one. A simple example would be alleged conduct that results in a criminal felony conviction. A felony conviction is a basis for termination without further investigation and the only investigation needed would be to verify the nature of the conviction. It may also make sense not to interfere with an active criminal investigation by another agency. The suggestion for further guidance makes sense and the work group suggests development of such clarification.

Recommendation 7 - Complaint Categories: The report recommends including a section that provides complaint categories that better classify the description of the allegations, examples of the allegations, and what level of supervision will handle the investigation than what exists in current policy. The work group agrees that revising the descriptions and providing examples could be helpful. The work group proposal divides the complaints into "CARE" violations (Major violations), Section investigations (Minor), and supervisor intake, with only the latter being evaluated by an immediate supervisor, rather than IIU.

Recommendation 8 – Complaint Categories: The report recommends providing a separate section for intoxication complaints and use of force complaints. The work group agrees the policy needs restructuring and recommends moving force related guidance to the section on Use

of Force (GOM 6.0). There are revisions of the Use of Force policy under way and this issue was taken into account in the draft revisions. A separate section for intoxication complaints will remain in place.

Recommendation 9 – Uncooperative Witnesses: The report recommends an explicit statement that no investigation shall be closed or otherwise disregarded simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury. It appears the consultant did not consider GOM 3.03.185.5(c), which provides dispositions *after* the conclusion of an investigation. This means the investigation was conducted, but the Sheriff's Office is unable to issue the other four dispositions (sustained, not sustained, unfounded, exonerated) because of issues like an uncooperative complainant or a complainant who cannot be located. As a practical matter, a complaint could be dismissed because of a failure to cooperate, like refusing to give a detailed complaint statement. The workgroup recommends no changes to policy regarding this recommendation.

Recommendation 10 – Standards of Proof: The report opines that standard of proof for any administrative investigation, regardless of the seriousness of the misconduct or the possible discipline, is "preponderance of evidence." This is incorrect and demonstrates a lack of awareness of the standards that are routinely applied by labor arbitrators in disciplinary grievances. The differing standards are consistent with grievance arbitration opinions and the experience of the agency in this forum. No revisions to the policy are recommended on this suggestion.

Recommendation 11 – Credibility Assessments: The report suggests that investigators conduct credibility assessments and make every effort to resolve material inconsistencies or discrepancies between witness statements and other collected evidence. This recommendation disregards the division of fact gathering and fact finding that is threaded throughout the Sheriff's Office policy. In the same way that detectives gather information for prosecutors to evaluate for charging decisions, the Sheriff's Office IIU investigators gather information which is forwarded to management for fact-finding and conclusions. The report offers no explanation of why it is necessary to change the Sheriff's Office model. No revisions to the policy are recommended on this suggestion.

Recommendation 12 – Investigation Due Dates: The report suggests that a 180-day timeframe is excessive and recommends a timeline of 60 days with ability to extend with authority from the Sheriff. The Sheriff's Office agrees that sometimes 180 days is an excessive amount of time. This is another instance in which the recommendation might be more sensible with staffing increases to fast track some investigations. There are still a significant number of investigations that take almost 180 days to complete. It should also be noted that the 180 days also includes time necessary for a commander to review and make findings on the facts and enter conclusions, time to allow OLEO review and in some cases, time for the Undersheriff to complete his review and make disciplinary recommendations. If the case is factually complex, some of the 180 days will include time to prepare for and attend an advisory discussion. However, to improve the speed with which less complex investigations are concluded, the work group is making other

recommendations about how to restructure the post investigation process for making factual findings and recommendations. The revisions respond to the suggestion that some investigations be completed within 60 days, when possible. When they can be handled quickly, they are, and when there are more complex matters to investigate, they will have up to 180 days to complete the investigation.

Recommendation 13 – Investigative Report: The report suggests that the investigator make a number of findings that are more appropriately handled by management in reviewing the investigations and making findings. Sheriff's Office IIU investigators do not make factual findings and conclusions because that analysis is made higher up the chain of command. As a result, the Sheriff's Office does not agree with the suggestion that its investigator should determine whether (a) the police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm; (b) the incident involved misconduct by any member; (c) the use of different tactics should or could have been employed; (d) the incident indicates a need for additional training, counsel, or other non-disciplinary corrective measures; and (e) the incident suggests that the Sheriff's Office should revise its policies, training, and tactics. No revisions to the policy are recommended on this suggestion.

Recommendation 14 – Complainant Notification: The report notes the IIU Commander's obligation to advise complainants at the outcome at the conclusion of an investigation under Sheriff's Office policy, but also recommends additional notifications to the complainant regarding the status of the investigation every 45 days after the initial complaint and at the time of final disposition. The Sheriff's Office does not have the staffing or resources to do this kind of notification. No revisions to the policy are recommended on this suggestion.

Recommendation 15 – Investigation Confidentiality: The report suggests that the closed records are confidential and may not be released without approval of the Sheriff, unless otherwise provided by law. This suggestion has no practical significance under Washington State law, which broadly defines what is considered a disclosable public record. All these investigations are subject to disclosure upon completion. Records related to such investigations may be included in a personnel record, if for example, misconduct is found and there is a recommendation or imposition of discipline. Such documents related to recommendation and final decisions are, and should be, contained in a personnel file, and are also subject to public disclosure, with limited redactions. No revisions to the policy are recommended on this suggestion.

Recommendation 16 – Staffing: The report recommends the Sheriff's Office should consider increasing staffing size in the IIU to include Lieutenants. While the Sheriff's Office agrees that additional staffing would be useful, the rank of Lieutenant does not exist in this agency. Additional staffing would certainly assist with issues like timeliness of complaint investigation and would allow the Captain to focus more of his efforts on consistency and proper classification. The recommendation requires funding which the Council would need to approve.

Recommendation 17 – Administrative Investigation Training: The report recommends additional training on misconduct investigations for IIU and commanders outside the unit. It

further recommends training on Sheriff's Office policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations. All training is generally beneficial, but this recommendation fails to take into account the fact that protocols for IIU are contained in SOPs for the unit. Compelled statements are taken by using a script which is read into the record at interviews and a protocol that has long been established to make sure that represented members are adequately represented, if they choose to be, and have notice of the nature of claims or allegation that will provide them with information needed to respond. The skills necessary to conduct proper investigations are the skills necessary for all good investigations; attention to detail, open ended questions, clarifying follow up questions, and questions designed to verify whether the witness has reliable first-hand knowledge of the subject. The nature of the investigation done in the field by a supervisor or commander, is not as complex or detailed and therefore requires less specialized training. The training provided to the IIU, as opposed to field commanders, should reflect this difference. The Sheriff's Office will review the SOP's to see which portions need further clarification and identify potential substance for training.

Recommendation 18 – Force Investigation: The report recommends that the Sheriff's Office consider adding "Force Investigators" to the IA Unit. This recommendation is impacted by the revisions to state law that require outside investigation of serious uses of force. Such incidents are currently investigated by Seattle Police Department (SPD)'s Force Investigation Team (FIT). The work group recommends that the remaining, less serious, force incidents be reviewed by the Advanced Training Unit (ATU), for the purpose of providing consistency on force review, by the work unit that provides training on appropriate uses of force. This may require additional staffing for ATU, in order for them to keep up the pace of all mandatory and other training.

Recommendation 19 – Classification of Complaints: The report recommends Sheriff's Office should establish a new classification system that limits discretion and increases the range for discipline across all complaints. The work group agrees that new classification policies would be useful and proposes three, rather than two categories, along with examples of conduct falling within each category. Allegations of ***C***riminal conduct, ***A***buse of authority, ***R***epeated, ***E***gregious (C.A.R.E.) violations of policy would result in major investigations. CARE allegations would result in an IIU investigation, with findings and recommendations generated at management/commander level, with the use of the Advisory Group and with IIU and Undersheriff oversight. The second category would be a Section Investigation, for minor misconduct. These are incidents where, if true, the most significant discipline would be a written reprimand. These incidents would be reviewed by the IIU Captain, would generate an IIU number and would then be assigned for section level investigation. The final proposed category for investigation is a Supervisor Intervention. This an allegation if true, would only result in training or counseling. This could be conduct like tardiness, appearance standards, and similar minor policy violations. These would be handled by a first level supervisor, subject to commander oversight.

Recommendation 20 - Consistency of IA-Pro files: The report reiterates that it found inconsistent practices in the 2016 data it reviewed, in part. The report suggests:

- Clarification on how the complaint was filed and who the complainant was, with accurate contact information;
- Consistency with data placed in the IA-Pro system may require additional training to supervisors;
- Consider an independent Internal Investigations Report to ensure all necessary information is contained in the files;
- Ensure completion and proper completion of the Preliminary Complaint Form and Commanders Oversight Forms;
- Consider additional training on how to utilize all available investigative steps and identify expectations regarding thorough and complete investigations;
- Require consistency with regard to communication with the complainant;
- Require better consistency on how the complaints are categorized; and
- Consider using a Conflict of Interest form.

Certainly, the Sheriff's Office agrees that its forms and entry of data should be accurate and handled consistently. These are issues that relate to the oversight by the division Commander, who must provide clear direction on how to characterize complaints, organize investigations and set standards for how to conduct complete and thorough investigations. With respect to the conflict form, the work group concludes revisions to policy are not needed. The justification given to support this appears to be a fear that policies do not specify that a supervisor, who is a witness to alleged misconduct, is prohibited from investigating the allegation of misconduct. However, it is clear that IIU, not supervisors, investigates all complaints of serious or significant misconduct, so there could not be a conflict in serious complaints. In the case of minor policy violations, like tardiness, rudeness, or appearance standards, a supervisor who witnesses such conduct is in the best position to take immediate and appropriate action which would likely be coaching or counseling. This situation does not present a conflict—it presents a teaching opportunity.

With regard to the consistency with data placed in the IAPro system, the workgroup is meeting with IAPro to correct input/output issues that are believed to be at issue in achieving consistent data placement in the IAPro system. Additionally, many of the investigations are reviewed by the OLEO, which provides an independent review of the complaint. The OLEO can identify concerns about the completeness of any investigation it reviews. The Daigle recommendation potentially results in two independent investigation reports, which simply creates additional work with little additional value. The time of the IIU investigators is better spent working to complete investigations well before the 180 day deadline.

Recommendation 21 – The report also suggests removing the Non-Investigative Matter (NIM) Category, based on concerns about misuse of this classification. As proof of the need to remove this category, the report notes that 31% of the cases were identified as NIM, and therefore not investigated. However, there will always be allegations received that actually do meet the definition of "Non-Investigative Matter": a concern expressed by a citizen that, if true, is not an

allegation of misconduct. The report concludes that the Sheriff's Office must determine a complaint classification based on the offense alleged when the complaint is received. The foregoing definition does just that: it focuses on the nature of the alleged misconduct, and not the identity of the complainant or perceptions about the complaint. While it is unfortunate that the classification was misused in the past, that does not mean that the classification is the problem; the problem is proper use of the classification. This is yet another area where strong supervision and oversight by the IIU commander is important.

Recommend 22- The report proposes that Supervisory Action Log (SAL) should better define "minor infraction". Classifications of less serious misconduct is discussed in response to recommendation 19. The conduct currently referred to as a SAL would mostly equate to "Supervisor Intervention" (a new classification recommended by the workgroup). A "Supervisor Intervention" is an incident where the allegation, if true, would only result in training or counseling. This could be conduct like tardiness, appearance standards, and similar minor policy violations. These would be handled by a first level supervisor, most likely based on first hand observation or possibly self-reporting. These are not cases that require significant investigation. The purpose is to document the concern, provide appropriate guidance and hopefully avoid repetition of the concern. The work group will provide some non-exhaustive examples that will provide guidance consistent with this recommendation.

Recommendation 23 – The report suggests use of a template for consistency, referring to a template offered in the appendix. As noted above, the proposed report form includes analysis and information not compiled by IIU investigators at the Sheriff's Office, such as findings and conclusions, regarding the allegations. At the Sheriff's Office, these steps are taken by Commanders up to the level of Undersheriff. In 2018, the reports do have a common format and the workgroup recommends developing a general format to outline an investigation summary. It is probably more appropriate for an SOP, rather than the GOM. It should reflect the details of the information gathered, the identity of all witnesses, when they were contacted and summarize their statements. Internal Investigations template report should be used for consistency:

Recommendation 24 – The report also suggests a conflict form and perhaps this practice is more appropriate for some of the smaller jurisdictions seeking input. The GOM already provides guidance on conflicts, and such situations are the exception rather than the norm. The GOM provides guidance to address conflicts in GOM 3.03.110, which allows for both a named employee and an investigator with concerns about impartiality to contact the IIU Commander so the Commander can take appropriate measures to address any conflict. There is no information in the report examining cases investigated by investigators with conflicts or otherwise explaining the need to complete a conflict form in every investigation and therefore, the workgroup recommends no changes.

C. Steps Taken and to be Taken

The workgroup needs to receive further input from the Sheriff, which will take place in April. After that, there will be some revisions to either policy or SOPs and the same will be forwarded to the impacted unions, to receive their input. Policies will then be finalized and notification will be sent to members. Training may be required, as well.

IV. Response to Report "Use of Force Complaint Processing in the King County Sheriff's Office"

A. Report Methodology

This report is based on information and leadership that is now several years old. The underlying data is from 2015 and 2016. At the time of the report, the Internal Investigation Unit was managed by different leadership and some of the information which the recommendations are based upon is not consistent with current practices. For example, one concern that is raised is consistency in applying the definitions in the General Orders Manual (GOM) at the conclusion of the investigation. The reviewers found that some investigations resulted in improper classification such as "unfounded "rather than "exonerated". The Sheriff's Office shares the concern that classifications be properly applied and contends that dispositions are reviewed critically, sometimes resulting in a change of disposition when reviewed by the Undersheriff. This is just one example of a recommendation that the Sheriff believes was already addressed prior to the receipt of this report.

Other changes are more complex and require not only revisions of the Sheriff's Office policy provisions, but responses to changes in the law, and dialogue with represented personnel potentially impacted. As a result, other recommendations are neither rejected nor fully implemented. An example would be the change in classification of pointing or aiming a firearm, even if not fired. In the past, this was not reported as a use of force. Recent case law makes clear that this must be classified as a use of force, but the discussion of policy change on pointing/aiming led to a more comprehensive look at the Use of Force Policy and a more robust discussion of revisions. There is a temporary order in place which requires the reporting and investigation into pointing/aiming a firearm, but the final implementation of this and other policy revisions are pending a presentation to the Sheriff and input from the membership through their unions.

B. Response to Recommendations and Rationale

There are 28 separate recommendations. For ease of review, the 28 recommendations are listed with summary responses in the attached Appendix 2 - Response to OLEO Use of Force Recommendations.

Many of the recommendations are the subject of pending recommendations from a work group that is in the process of finalizing proposed revisions to the Sheriff's Office's force policy. Recommendations 1 through 13, 19, 20 and 28 are addressed by pending policy revisions proposed by a workgroup convened in 2018 to evaluate and propose force policy revisions.

Recommendations 14 and 15 relate to information to be included in allegations involving use of force. The GOM already requires notice to a member of all forms of misconduct, which would include the use of unnecessary force or excessive force, and any other kind of misconduct. Such notice is formalized in a written form and provided to a member who is alleged to have used unnecessary or excessive force. This is a matter of enforcing the obligations that already exist in the policy and therefore attention to practice consistent with policy would result in a process that is consistent with the recommendation.

Recommendation 16 suggests a system to track whether changes in training or policy result from a complaint and to include the documentation in the IAPro file regarding the complaint. It should be noted that all serious force incidents, regardless of whether there is a complaint, are evaluated by the Advanced Training Unit, for the purpose of evaluating processes and practices related to an incident. Expanding that practice to any use of force does not seem practical, given current staffing levels. It is a suggestion that could be re-visited if there are sufficient staffing changes.

Recommendation 17 suggests explicit qualifications be established to become an internal expert in specific aspects of use of force policy, training, and tactics. It may or may not be necessary to seek expert presentations in a force investigation and the need for such expertise should be determined on a case by case basis. As the report makes evident, the use of some internal expert is unusual (4 reports out of 82 included such a reference) and it is unclear that the Sheriff's Office is even in a position to use such information after the recent changes to state law. As you may be aware, the law now requires the use of an outside investigator in serious force incidents, which are currently being handled by a Force Investigation Team (FIT) provided by Seattle Police Department. SPD's FIT will provide investigations until such time as the Criminal Justice Training Commission (CJTC) finalizes rules and regulations for force investigations. After that, serious force incidents will be evaluated by some independent investigative source. The need to seek such insights will be left to the discretion of the outside investigators. Perhaps this recommendation should be forwarded to the CJTC.

Some recommendations are already part of existing practice and do not require revision to policy. Recommendation 18, to review the purpose behind Administrative Review Team (ART) and the Use of Force Review Board to identify any unintended overlap of duties, seems unnecessary and not consistent with current staffing to the extent the suggestion is to assign an ART for every use of force, regardless of the severity of force. Current policy and practice is for the ART to consider whether there are practices or training that should be revised to address issues that come to light during an administrative review of a serious force incident and then present such recommendations for consideration. The Force Review Board considers whether the use of force is consistent with policy, training and legal standards. The process should continue to overlap in the sense that it is useful to have the ART review available for the Force Review Board and as a

matter of practice and policy the ART review is completed before the Force Review Board convenes. The members assigned to ART conduct the work as a secondary assignment and the Sheriff's Office does not have staffing levels that would be necessary to provide an ART review for each force incident. However, the work group on complaint classifications recommends that less serious force incidents be reviewed by the Advanced Training Unit (ATU), which provides training on force and tactics to Sheriff's Office personnel. This may require additional staffing for ATU, in order for them to keep up the pace of all mandatory and other training.

Recommendations 21 and 22 relate to SOPs and training for investigators on the standard of proof. The Sheriff's Office does not expect its investigators to make findings of policy violations, but does expect its investigators to gather all relevant facts so that a commander or the Undersheriff can reach findings or conclusions necessary for the particular misconduct alleged. The guidance to commanders or the Undersheriff is provided in the course of Advisories that are convened to discuss facts and even discuss the standard of proof that applies and whether it is met. Sheriff's Office personnel and a Deputy Prosecutor with expertise in labor and employment law participate and provide tailored advice for the investigation. The Sheriff's Office contends that this is the best way to address standards of proof. If the advisories are used as they should be, and consistent with current leadership expectations, the unexplained conclusions described in this report would be eliminated.

Recommendation 23 suggests review of the complaint disposition scheme to determine if there is a need for all six possible dispositions and, if so, to clarify the definition and applicability for each finding. Although it does sound like there were inconsistent applications of these dispositions in the past, this seems to be a training and oversight issue for department leadership rather than a need to eliminate any of the dispositions. There are perhaps subtle but important differences between the dispositions, which provide useful feedback to the named employee. For example, if the conduct complained of does not violate policies, it is helpful for the named employee to learn that his/her conduct is not a violation of policy. It is also useful for the employee to know that an investigation has cleared their name, or exonerated them of the allegations. The difference between exonerated and not sustained is that a non-sustained finding means the reviewer is not able to determine (usually by preponderance of the evidence) that the allegations occurred as alleged, which is different than finding facts that clear the name, or exonerate, the member. This is an issue for Sheriff's Office leadership to monitor and to revise dispositions as appropriate to make sure they are accurate.

Recommendation 24 suggests that the Sheriff's Office provide complainants with more information concerning the disposition of their complaints, including details about steps taken in the investigation, whether policy or training changes resulted from the investigation, and the meaning of specific findings. This is another recommendation which may be revisited when staffing levels allow for this scope of work. The current focus is on reducing the amount of time taken to complete an investigation, which benefits both the complainant and named employee. Complainants are provided with the outcome and may also request the documents relating to their complaint investigations. Documents common to all investigations, such as a written follow up, already document all steps taken in the course of the investigation and provide substantive

information on what was discovered. Complainants, or anyone else, may obtain such records with a simple request to the Public Disclosure Unit, which has its own database used to track, respond and maintain records of documents provided. This is a better mechanism for tracking the flow of information to complainants.

Recommendations 25 and 26 relate to credibility determinations, which are an important part of a complaint investigation. However, Sheriff's Office leadership contends that a better means for making these determinations is to have individualized discussions of credibility in advisory sessions. The participants can discuss credibility and evaluate evidence, like statements and other corroborating information useful to make credibility assessments. Use of the existing policy and practice of advisories will address this concern.

Recommendation 27 recommends an audit to provide a meaningful level of detail about Taser usage and evaluate compliance with policy and training, including: when and where Tasers are used, circumstances and conditions resulting in Taser usage, whether Tasers were used in fired probe or contact-stun mode, the number of applications used, the parts of subjects' bodies on which Tasers were deployed, whether medical aid was called or subjects were taken to a medical facility, and whether and how Taser applications resolved incidents. This data is already reviewed annually and summarized the first quarter of the following year. Each use of force is reviewed, considering all the data identified above as well as length of time of each use and whether there was more than one use per incident. Any issues are noted so that appropriate action can be taken, such as additional training. Because this work is already being done, there is no reason for additional action on this recommendation.

C. Steps Taken and to be Taken

The Sheriff's Office convened two working groups that are looking at both the IIU complaint process and the overall Use of Force Policy at the Sheriff's Office. Each group has conducted multiple meetings, beginning in 2018, to discuss proposed revisions, draft and redraft recommendations, based on discussion and feedback provided by the participants. In February 2019, the Sheriff's Office sought and received written input from OLEO regarding policy revision work. The workgroup is planning to present their recommendations to the Sheriff for review and consideration in April 2019. The Sheriff's Office also needs to provide the recommendations to the affected labor unions for their review and input. Once these steps have occurred, the policy revisions will be finalized. Additionally, the Sheriff's Office must incorporate revisions into its training. In some respects this has already happened. For example, further clarity and explanation in all reporting, including uses of force, is a concept that is already being addressed by the Sheriff's Office Advanced Training Unit. However, training will require updating all levels of the organization on the impact of the revisions. Commanders were already notified of some of the most significant proposed changes in February 2019 and training for the remainder of the year will be revised to incorporate concepts included in the policy revisions.

The Sheriff's Office appreciates the interest and support of the Metropolitan King County Council in evaluating policy revisions in the areas of media communications, use of force, and classification of IIU Complaints. If you should have any questions regarding this report, please call Legal Advisor Erin Overbey at (206) 263-2524.

Sincerely,

Mitzi G Johanknecht
SHERIFF

Enclosures

cc: King County Councilmembers
ATTN: Krista Camenzind, Chief of Staff
Melani Pedroza, Clerk of the Council