



King County

Office of Law Enforcement Oversight

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M E M O R A N D U M

Date: September 7, 2012

TO: Metropolitan King County Councilmembers

FROM: Charles E. Gaither, Director

SUBJECT: Risk Assessment of the King County Sheriff's Office

In October 2011, the Office of Law Enforcement Oversight (OLEO) began the work of overseeing the King County Sheriff's Office (KCSO). Guided by Ordinance 16511, Section 2.75 of the King County Code, and Article 22 of the Collective Bargaining Agreement between King County and the King County Police Officer's Guild (Guild), OLEO sought to ensure the public trust by identifying risks inherent to policing in King County and by offering meaningful recommendations for reform.

Fully acknowledging that a similar review was conducted in 2006 by the King County Council's Law, Justice, and Human Services Committee and the KCSO's Blue Ribbon Panel, OLEO set out to identify challenges within the KCSO that have limited its alignment with best practices in the law enforcement community and to establish a baseline of risk to track the KCSO's progression toward accountable policing. Section 2.75.050(c)(2) of the King County Code provides the mechanism by which OLEO assessed "global issues" impacting the KCSO and provides the following:

Make recommendations for action by the sheriff on needed improvements in policies, procedures, and practices stemming from analysis that look beyond the individual cases of misconduct to identify systemic problems within the sheriff's office. In addition to [investigative] materials available to the office, the director shall make use of all other materials, including internal and external audits and reviews of the sheriff's office and critical incidents reviews, in developing and making recommendations for improvements. (Ord. 16511 § 5, 2009; Ord. 15611 § 6, 2006).

Recognizing that recommendations on needed improvements to police operations cannot be based on anecdotal evidence or innuendo and turns on extensive analysis of internal processes, OLEO retained the services of the Police Assessment Resource Center (PARC) to conduct an independent risk assessment of the KCSO. The primary purpose of the risk assessment was to "identify areas where improvements in policies, procedures, and practices are needed to mitigate

risks arising from categorical use of force incidents,¹ [to] assure the adequacy of KCSO's early intervention program, and [to] assure the internal investigative processes are thorough and consistent with best practices."² PARC also assessed high risk areas inherent to KCSO's internal investigations and related civil matters that resulted in significant financial settlements by King County.

Based on the results of the risk assessment (PARC Report), we concluded that significant challenges have negatively impacted the KCSO's ability to comport with best practices in the review of critical incidents and personnel complaints.

Some of the key findings noted in the PARC Report include:

- Following the investigation of a recent use of force incident that resulted in a \$10 million settlement, PARC found that the KCSO did not rigorously analyze the case and that its conclusions were not supported by the record. The KCSO's discussion of the incident "provided no facts upon which a conclusion could be based that the Deputy's actions were reasonable and that there was no alternative [approach] to handle the incident." PARC further noted, "The paucity of reasoning and critical analysis in this case was troubling, particularly in light of widespread public awareness of the incident. It suggests that [the] KCSO's use of force analysis needs to be more rigorous." The conclusion that the use of force was justified lacked investigative support.
- The KCSO's early intervention program is ineffective. This program is subject to a rolling 90-day review period. As the rolling 90-day period of review is short in duration when compared to early intervention programs administered by other police agencies, misconduct occurring outside of this rolling review period could escape review and limit KCSO's ability to identify at-risk deputies to reduce the risk of repeated or future misconduct.
- PARC reviewed 15 deputy-involved shootings that took place from 2005 to 2011 and found important documents and files had been lost, misplaced, or destroyed, which hampered its analysis of these incidents. PARC further noted that the KCSO's was seriously deficient in its record keeping and that it failed to recognize the importance and necessity of fully investigating and retaining investigatory evidence.
- An examination of the shooting of an unarmed suspect found no discussion of the possible strategic, tactical, and procedural errors that gave rise to the confrontation that ended with an unarmed person dead. The memorandum of the Post Action Review displays a less than inquisitive response to the shooting in question and in essence exonerated the deputy without investigation: "Nothing in this review is intended to

¹ A categorical use of force incidents is 1) an officer involved shooting resulting in death or injury; 2) a use of force incident resulting in death or serious bodily; 3) an in custody death; 4) a vehicular pursuit resulting in death or serious bodily injury; 5) a traffic collision involving an officer that results in death or serious bodily injury; or 6) any incident of workplace violence.

² RFP – Risk Assessment of KCSO Investigative Processes (November 23, 2011).

judge the involved personnel who had to make a split-second decision upon which they may have felt their lives depended.” To ignore the elephant in the room – whether it really was a split second decision and whether it was an objectively reasonable tactical choice and whether there were equally effective alternatives – is to ignore the principle purpose of a lessons learned review.

- KCSO's use of force policy does not comport with best practice: It is too general and vague. It lacks many of the elements that have been considered best practice by the Department of Justice since 2001.³ More importantly, it misstates the law.
- The Shooting Review Board does not maintain adequate records of the evidence presented during its review of deputy-involved shootings. The shooting review packets for deputy-involved shooting incidents from 2005 to 2011 were not properly maintained. Documents relevant to each deputy-involved shooting had to be located from other locations of the KCSO (i.e. Major Crimes, Patrol Operations, etc.) to recreate the Shooting Review Board packets for PARC's review. After the initial analysis of each packet, it was determined that crucial documents were missing. Interviews or first person statements by the firing deputies or key witnesses were not initially included in the packets. Many of these transcribed interviews and statements were eventually located and forwarded to our organization, but a few remain absent.
- Of the 15 deputy-involved shootings PARC reviewed, none of the deputies who discharged their firearm were formally interviewed. Rather, the deputy provided a written statement and was not challenged as he or she might have been during a formal recorded interview.
- KCSO's analysis of deputy-involved shootings were “pro forma and not calculated to achieve meaningful internal review.” PARC further noted that none of the deputy-involved shootings it reviewed were found to be unjustified or out of policy.⁴
- IIU cannot self-initiate personnel misconduct investigations in use of force incidents unless a complaint against the deputy is made or the incident is a shooting where the subsequent Shooting Review Board rules that the discharge of the firearm was unjustified. As the Shooting Review Board's assessment of deputy-involved shootings is limited in scope, ancillary policy violations of department policy may escape review.

To address these and other concerns, PARC presented 25 recommendations to align the KCSO with best practices in the law enforcement community and to assure accountable policing throughout King County and its contract cities. OLEO concurred with all 25 recommendations while the KCSO concurred with 23 of the 25 recommendations. The KCSO did not disagree with any of the recommendations advanced by PARC and simply noted that Recommendation

³ These elements are listed in the Department of Justice's Principles for Promoting Police Integrity (January 2001).

⁴ OLEO reviewed the PARC Report and the internal practices of the KCSO and noted that none of the 15 deputy-involved shootings incidents were reviewed by Internal Investigations Unit, an investigative entity responsible for conducting administrative reviews of police misconduct.

No. 6 requires more information and that Recommendation No. 22 requires additional review and research. For more information on the KCSO's response to the PARC Report, please refer to the attached document.

The recommendations set out in the PARC Report provides a baseline to measure risk and to assess accountability protocols within the KCSO. We are encouraged by the KCSO's response to the PARC Report and its commitment to implement these needed reforms.



KING COUNTY SHERIFF'S OFFICE
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Steven D. Strachan
Sheriff

August 31, 2012

Charles Gaither, Director
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Re: OLEO Audit Report on Managing the Risk of Misconduct

Dear Mr. Gaither,

Thank you for the opportunity to provide a preliminary response to the OLEO audit report on Managing the Risk of Misconduct provided by Merrick Bobb. As we have discussed, and as I have discussed with the County Council, many of these issues have been identified and we have been in the process of addressing these concerns for some time. The audit, the information provided in it, and the recommendations assist us in migrating to best practices, and are consistent with our Business Plan.

Of particular note is the recommendation regarding a monthly use of force review group, which begins as an informal group in September, as well as good information on best practices for timeframes and management rights regarding investigations. This provides excellent information as we bargain necessary changes.

On behalf of our department and our profession, thanks for your good work and we look forward to continuing to improve our processes and keeping a positive and open dialogue.

Sincerely,

A handwritten signature in black ink that reads "Steven D. Strachan". The signature is written in a cursive, flowing style.

Steven D. Strachan
Sheriff

KCSO RESPONSE TO PARC RISK MANAGEMENT REPORT

September 11, 2012

AUDIT RECOMMENDATION	AGENCY POSITION	SCHEDULE	COMMENTS
1. Use Austin, Texas Use of Force policy as a model for KCSO's general use of force policy.	Concur	Austin policy has been referred to the KCSO Use of Force Policy Group and Inspectional Services Unit. ¹ The Use of Force Policy Group is currently reviewing the KCSO policy and this information will be considered by the group at its next meeting.	All of the individual policies (deadly force, taser, OC Spray, beanbag etc.) referenced in the report will be reviewed by the Use of Force Policy Group. KCSO is also evaluating other use of force policies including the Las Vegas Police Department policy.
2. New guidelines for Taser targeting	Concur	This policy has been referred to the Use of Force Policy group and training unit.	
3. Compel deputies to make statements immediately after use of force incidents, as a recorded interview and not a written statement.	Concur	Under evaluation by Labor as to aspects that require bargaining.	This issue has been an area of concern for some time and is not unique to KCSO. The Guild has a differing opinion about the best timing for statements.
4. Create a Use of Force Review Board	Concur	Beginning September 2012, a command and training group will convene monthly to discuss and evaluate pending uses of force. The decisionmaking will remain with the supervisory chain. Later, after labor issues are identified and addressed, the goal is to create a Use of Force Review Board that will issue findings on individual use of force cases.	The purpose of the monthly use of force discussion and review group is to increase consistency, supervisory accountability and enhance early warning system.
5. Entire use of force case file, including board findings be combined into one file in IIU	Concur	All use of force records, including Shooting Review Board records, are now housed in IIU.	As the Use of Force Review and Board processes are developed, those records will also be housed in

¹ The Inspectional Services Unit oversees policy manual updates. The Use of Force Policy Review Group includes representatives from Advanced Training, Patrol, Special Operations, Legal, Internal Investigations, and Inspectional Services.

AUDIT RECOMMENDATION	AGENCY POSITION	SCHEDULE	COMMENTS
			<p>IIU. Any use of force, review or complaint records arising out of a specific event will be linked electronically.</p> <p>Currently these interviews are done by the supervisor. KCSO plans to provide all supervisors with digital recorders and other tools to assist with gathering this information.</p>
6. Deputies should interview suspects involved in use of force incidents and include statements in review packets	More information needed	In fall of 2012, after the first round of use of force policy changes have been implemented, KCSO will evaluate this proposed change.	
7. Add "were there any reasonable alternatives for the use of force?" to Supervisor Use of Force review forms	Concur	Proposed policy change will be drafted and sent for concurrence in September 2012.	
8. Recommend that supervisors answer #7 by listing potential alternatives and why those would have been reasonable or unreasonable	Concur	See #7	Training and communication to supervisors will accompany this policy change.
9. Make greater use of less lethal options and that consideration be included in any shooting analysis	Concur	Consideration of less lethal options will be included in future shooting analyses.	As noted in the report, KCSO has added more reflective and process questions to Shooting Review Board.
10. Develop a Crisis Intervention Team (CIT) to help manage mental illness and drug dependency incidents	Concur	In 2013 KCSO will evaluate the cost of providing this service.	Nearly all KCSO deputies have received specialized Crisis Intervention Training. There clearly is a need for a CIT to respond in the field. Ability to provide such a team would be based on available resources and geographic focus. A CIT Team has been piloted at Metro Transit.
11. Deputies involved in a shooting should give a formal, recorded interview - by Major Crimes if voluntary and IIU if compelled	Concur	Under evaluation by Labor as to aspects that require bargaining.	This has been under review for the last several months - it is a best practice

AUDIT RECOMMENDATION	AGENCY POSITION	SCHEDULE	COMMENTS
12. IIU should roll out with Major Crimes to shootings or categorical uses of force to conduct a parallel investigation	Concur	IIU has been responding to these incidents to provide informal review, supervisor administrative review now coincides with the criminal investigation.	This has been under review for several months- it is a best practice
13. Focus more of their investigation of shooting incidents on the deputy and our processes as opposed to just the circumstances surrounding the suspect	Concur	Implemented.	
14. Incident reports regarding deputy involved shootings should include more balance in details of the incident and the investigation	Concur	See #13	
15. The Shooting Review board should release a detailed, written statement on how the Board decision was made and be included in the review packet.	Concur	Under evaluation by Labor as to aspects that require bargaining.	Much of this information is currently being captured in the documents resulting from the "Lessons Learned" meetings.
16. Retain a permanent file of each SRB with proceedings notes	Concur	This recordkeeping change as been implemented.	
17. Allow and encourage, when appropriate, dissenting opinions in SRBs, and that all votes are recorded	Concur	The Chief who chairs the shooting review board will ensure that dissenting opinions are heard and encouraged.	
18. No longer include deputies on the SRB or Use of Force Review Group	Concur	Under evaluation by Labor as to aspects that require bargaining.	Changes to the composition of the Shooting Review Boards (which will eventually develop into a more general Use of Force Review Board) will be discussed with all of the labor unions representing the commissioned employees.

AUDIT RECOMMENDATION	AGENCY POSITION	SCHEDULE	COMMENTS
19. Remove all representatives of the Guild from all future SRB and Use of Force Review Groups	Concur	Under evaluation by Labor as to aspects that require bargaining.	See #18
20. Add a citizen member to SRB and Use of Force review group	Concur	Under evaluation by Labor as to aspects that require bargaining.	See #18
21. Clearly indicate when the criminal investigation is completed whether the department is meeting its own deadlines and to adhere to the 30 day rule of holding an SRB	Concur	Implemented	An entry will be made into the criminal investigation file stating the date of completion to have a clear date for triggering subsequent review processes. KCSO is currently using a matrix to ensure timely processes and clear outcomes.
22. IIU handle all complaints of KCSO employees	Review and research	Workload and staffing analysis will be done by October 2012.	KCSO will review how many additional complaints would be transferred to IIU and evaluate staffing needs based on workload and determine the appropriate threshold for sending complaints to IIU.
23. Repeat the policy of immediate reporting of criminal misconduct so all observations of general misconduct are reported as well	Concur	Policy change has been made.	
24. Immediately end the 180-day tolling period for administrative investigations	Concur	Issue will be discussed in contract negotiations that begin in fall 2012.	The 180-day time period for completing investigations is set forth in the collective bargaining agreement and cannot be changed unilaterally.
25. Create clear written standards for all IIU investigations	Concur	Standards are currently being developed.	KCSO is sending a group of commanders to LAPD in October 2012 for training for developing law enforcement standards. These principles will be used to develop final standards for IIU investigations.