County of Los Angeles
Sheriff's Department Headquarters
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JOHN L. SCOTT, SHERIFF

May 13, 2014

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Dear Supervisors:

**LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
REPORT BACK ON THE PLAN TO IMPLEMENT STAFF TRAINING
AND INCORPORATE THE REVISED USE OF FORCE POLICY RELATING TO
HAYES V. COUNTY OF SAN DIEGO**

This letter is being provided in response to the Board's request to have the Los Angeles County Sheriff's Department (Department) report back on the plan to implement staff training and incorporate revised use of force policies into the Department's Manual of Policy Procedures (MPP) related to the use of force, in light of the California Supreme Court ruling in Hayes v. County of San Diego 57 Cal. 4th 622 (Hayes).

HAYES DECISION

On August 19, 2013, the California Supreme Court held, in Hayes, that liability can arise from tactical conduct and decisions employed by law enforcement preceding the use of force, stating:

> "Law enforcement personnel's tactical conduct and decisions preceding the use of deadly force are relevant considerations under California law in determining whether the use of deadly force gives rise to negligence liability. Such liability can arise, for example, if the tactical conduct and decisions show, as part of the totality of circumstances, that the use of deadly force was unreasonable."

It should be noted that there is a difference between federal constitutional liability (for excessive force) and state tort liability (for negligence). The Hayes decision did not change the objectively reasonable federal standard (Graham v. Connor 1989 490 U.S.) which states:

> "As long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the 'most reasonable' action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect, in order to avoid liability for negligence."

SHERIFF'S DEPARTMENT POLICY AND TRAINING

The Department's current policy has been in effect for the past 20 years. Presently, force incidents are evaluated in their entirety. The use of force, including the tactics leading up to the use of force are evaluated in terms of whether or not the force was reasonable and whether or not the tactics complied with Department policies, procedures, and training.

Department personnel are held accountable for their use of force and for their tactics leading up to their use of force. Force incidents are evaluated either at the Division level or by the Executive Force Review Committee (EFRC). For example, in 2012, the EFRC evaluated 55 shootings and use of force incidents (excluding K-9 bites) involving 164 personnel; the EFRC determined that 15 employees violated Department policy with respect to tactics. The primary reasons for the discipline included: violating the foot pursuit policy; violating the vehicle pursuit policy; failing to properly communicate/broadcast over the radio; and, chasing an armed suspect instead of establishing a containment. The EFRC also recommended training for 50 employees for their performance during the incident. In 2013, the EFRC evaluated 70 shootings and use of force incidents (excluding K-9 bites) involving 209 personnel; the EFRC determined that 38 employees violated Department policy with respect to force and/or tactics. The primary tactical policy violations were similar to those listed for 2012 and there were two force policy violations. The EFRC also recommended training for 45 employees for their performance during the incident.

Currently, the Department uses the Performance to Standards policy section of the MPP for violations of tactics. A more specific policy section was created to better track this type of violation. The new policy, which is currently in the approval process, includes a list of tactics that shall be evaluated. The draft policy states:

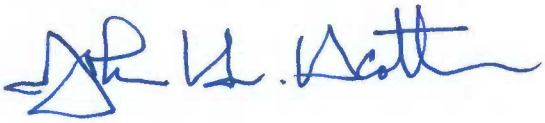
> "The evaluation of a member's performance includes the strategies or tactics used leading up to, during, and following a use of force. These strategies and tactics shall be evaluated in terms of whether or not they comply with Department

policies, procedures, and training. A member's performance associated with the use of force that does not comply with Department policies, procedures, and training may subject that member to discipline under this section."

The Department's current force training is based on the Graham objectively reasonable standard. The Hayes decision will be incorporated into the Department's training curriculum. This will be done so Department personnel are aware that their tactical conduct and decisions leading up to their use of force will be considered as part of the totality of circumstances for determining liability for negligence in a state tort action, and, if their tactical conduct was so substantially deficient or reckless that it created a need to use force, the force could be deemed unreasonable and, therefore, negligent, and could lead to discipline.

Should you have any questions, please contact Commander Bobby Denham, Office of the Sheriff, at 323 526-5001.

Sincerely,



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