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August 10, 2020

To: Supervisor Kathryn Barger, Chair
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From: Sachi A. Hamai
Chief Executive Officer

INVESTING IN THE PUBLIC DEFENDER LAW ENFORCEMENT ACCOUNTABILITY UNIT (ITEM NO. 12, AGENDA OF JULY 7, 2020)

On July 7, 2020, the Board of Supervisors (Board) directed the Chief Executive Officer (CEO), in collaboration with the Public Defender (PD) to report back in 30 days with recommendations on scaling the Law Enforcement Accountability Unit (LEAU) within the PD's office to improve the tracking, utilization, and transparency of law enforcement uses of force, including fatal uses of force, and other forms of misconduct in order to improve accountability and prevent such incidents from occurring. Additionally, the Board directed the CEO to evaluate ongoing funds that could be made available in the Fiscal Year (FY) 2020-21 Supplemental Budget to expand the LEAU.

BACKGROUND

On March 12, 2019, the Board directed the CEO, in consultation with the PD and District Attorney (DA) to formulate recommendations on how to expand the integrity units of each office to respond to issues of officer misconduct and secret deputy subgroups within the Sheriff's Department. The CEO requested that PD, DA and the Department of Human Resources (DHR) identify the resources necessary to respond to officer misconduct, ensure the disclosure of officer exculpatory evidence, and implement policies and procedures to address workplace hostility, harassment, and discrimination. As the result of this study, the CEO recommended, and the Board approved, the addition of 1.0 Law Enforcement Accountability Advisor (LEAA) position in the PD's budget during the FY 2019-20 Final Changes Budget to strengthen existing practices related to officer accountability and advised the Department's senior leadership on developing and implementing new policies and procedures to respond to relevant issues.

EXECUTIVE SUMMARY

The attached report outlines the proposed expansion of PD's LEAU to increase the Department's police monitoring capabilities and help facilitate the disposition of cases involving alleged police misconduct. The recommendations are based on the LEAA's evaluation of PD's Public Integrity Assurance Section (PIAS), which was originally tasked with monitoring and seeking post-conviction relief for clients in response to the Los Angeles Police Department's Rampart scandal, but which has since taken on additional responsibilities related to recent State mandates. A separate LEAU was created to advise on cases involving alleged officer misconduct and to take on the police monitoring responsibilities of the PIAS. The current LEAU consists of 1.0 Law Enforcement Accountability Advisor, 1.0 Deputy Public Defender IV, and 1.0 Student Worker.

The purpose of the LEAU is to ensure officer misconduct is uncovered and used to exonerate clients in instances where their rights were violated. The unit is currently tasked with seeking and handling exculpatory evidence obtained through public records requests, Brady disclosure letters received from the prosecution, and Pitchess discovery motions made by the defense. Brady letters are provided by the prosecution to the defense and inform of potential officer misconduct that could potentially impact the outcome of a case. Pitchess motions are made by the defense to review officer personnel files in instances where the defendant alleges excessive force or dishonesty regarding the circumstances leading to arrest. Information sought include prior incidents of use-of-force, allegations of excessive force, citizen complaints, pre-employment background check information, and others.

The LEAU is currently responsible for intaking, reviewing, and managing information gathered using these types of requests, as well as maintaining a database to track, process, and organize information related to officer misconduct. This includes making the information available to trial attorneys and cataloging the information with the appropriate case files. The unit advises trial attorneys by identifying and monitoring the actions of police officers who abuse their authority, engage in unconstitutional behavior, and/or have displayed racial and other biases. It is also responsible for training staff on how to obtain police misconduct information in court through the filing of Pitchess and Brady motions, and how best to use the information gathered in the representation of clients.

The PD proposes 11.0 positions to expand the existing LEAU: 4.0 Deputy Public Defender III; 1.0 Investigator II; 4.0 Paralegals; 1.0 Legal Office Support Assistant II; and 1.0 Application Developer II. The annual cost for these positions including related services and supplies is estimated to be \$2,294,000.

CONCLUSION

The County recognizes that maintaining accountability of law enforcement contributes to transparency and the safety of our communities, and that it is necessary to deter and discourage potential incidences of police officer misconduct. This could be achieved by leveraging existing staff resources and employing technologies such as the Client Case Management System to monitor and track exculpatory information, as well as to make the information available to trial attorneys. It is also anticipated that the eventual roll-out of body-worn cameras will improve the accountability of police interactions and provide resources to the PD that may address the workload of the LEAU. Given the current fiscal environment and the projected declines in net County cost revenue, it is recommended that these initiatives be considered prior to implementing a broad expansion of the LEAU. Due to fiscal constraints, funding considerations to expand this program will be made during the 2020-21 Supplemental Budget within the context of existing programs and numerous competing funding requests and priorities.

SAH:FAD:MM:SW
RP:MX:cc

Attachment

c: Executive Office, Board of Supervisors
County Counsel
District Attorney
Public Defender

**Board Motion – Investing in the Public Defender
Law Enforcement Accountability Unit**



**LOS ANGELES COUNTY INVESTMENT
IN THE PUBLIC DEFENDER LAW
ENFORCEMENT ACCOUNTABILITY UNIT
(LEAU)**

**REPORT BACK WITH
RECOMMENDATIONS ON SCALING
LEAU**

August 7, 2020

Prepared by:

Los Angeles County Public Defender, Ricardo D. Garcia

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Board Motion – Investing in the Public Defender Law Enforcement Accountability Unit

On July 7, 2020, the Board of Supervisors unanimously voted on Supervisor Mark Ridley-Thomas's motion to invest in the Public Defender Law Enforcement Accountability Unit. In the wake of the murder of George Floyd and subsequent nationwide protests, the Board of Supervisors directed the CEO in collaboration with the Public Defender (PD) to:

1. Report back in writing in 30 days with recommendations on scaling the Law Enforcement Accountability Unit within the PD's office to improve the tracking, utilization and transparency of law enforcement uses of force, including fatal uses of force, and other forms of misconduct to improve accountability and prevent such incidents from occurring; and
2. Report back during Supplemental Budget and ongoing funds that could be made available in FY 2020-21 to achieve this.

Summary & Background of Public Defender Law Enforcement Monitoring

Approximately 20 years ago, the Public Defender created the Public Integrity Assurance Section (PIAS) in response to a scandal that rocked the Los Angeles Police Department's Rampart Community Resources Against Street Hoodlums (C.R.A.S.H.) anti-gang unit. The Rampart Scandal involved more than 70 Los Angeles Police Officers engaging in criminal activity including using unreasonable force, stealing drugs, selling drugs, fabricating reports, lying under oath, and a common tattoo donned by many of the officers. PIAS's initial mandate was to bring post-conviction relief for former clients based on police malfeasance by these officers.

The unit grew to 19 lawyers, four investigators, four support staff, one paralegal, and many years' worth of law clerks. Over 100 convictions were overturned as a result of the probe into the police misconduct, and the unit created a system to track police officer misconduct information gathered from attorneys within the office, newspaper articles, lawsuits, and other public sources.

Once the post-conviction work involving the Rampart Scandal concluded, however, the resources of the unit were reduced to five attorneys, two support staff and two paralegals. At about the same time, new laws dealing with sentencing reform came into being. With each new law came another unfunded mandate for the Public Defender: DNA Innocence cases; Intimate Partner Battery cases; an LAPD latent fingerprint scandal; *Hofsheier* relief cases; Proposition 36; Proposition 47; Proposition 64 and, most recently, Senate Bill 1437. With each new law, the post-conviction facet of PIAS drew time and resources away from police misconduct work. The ability to proactively gather information on police officer misconduct became overshadowed by the large number of post-conviction cases.

In response to growing concerns about secret deputy cliques and subgroups within the Sheriff's Department which have contributed to acts of insubordination, aggressive behavior, and excessive force, on March 12, 2019, the Board of Supervisors directed the

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Chief Executive Officer (CEO) to consult with the Public Defender and the District Attorney's Office, and report back with recommendations on how to expand the integrity units of each office to appropriately respond to issues relating to officer misconduct. In response to this motion, the CEO created the position of Law Enforcement Accountability Advisor (Advisor) within the Public Defender's office "[to] provide the Public Defender new opportunities to reconstitute its police monitoring capabilities." On July 1, 2019, the Advisor was hired and was tasked with assessing "current PD practices relating to police misconduct, including *Pitchess* and *Brady* information monitoring, as well as implementing new policies and procedures to address Senate Bill (SB) 1421, which became effective on January 1, 2019."

The Advisor completed the assessment in three months and recommended a new unit be created separate from PIAS. The unit would focus on gathering, reviewing, processing, and organizing police officer misconduct information. Additionally, the unit would provide training to attorneys on filing *Pitchess* motions for police personnel complaints and records, filing public records act requests for police records made public pursuant to SB 1421, reviewing and processing *Brady* information involving police misconduct received from prosecutors, and collaborating with defense counsels from the Alternate Public Defender, private law firms, appellate counsels, civil rights advocates, law enforcement oversight agencies, public interest groups and community organizations. Due to the pandemic and resulting budget cuts, however, the Public Defender was unable to expand the unit as recommended by the Advisor. Nonetheless, in May 2020, the Public Defender created a Law Enforcement Accountability Unit (LEAU) by transferring the Deputy-in-Charge (DIC) of PIAS, who worked on creating methods of identifying and gathering police misconduct information during the Rampart Scandal, to the LEAU and assigning a part-time student worker studying criminal justice to assist the Advisor and attorney.

Current LEAU Program Overview

The current LEAU is comprised of a Law Enforcement Accountability Advisor who holds the payroll title of Constitutional Policing Advisor, and a Deputy-In-Charge who holds the payroll title of Deputy Public Defender IV. The following is a description of their roles:

Law Enforcement Accountability Advisor

In addition to assessing the PD's law enforcement monitoring capabilities and recommending the creation of a unit which focuses on tracking and utilizing police misconduct information, the Advisor has established a protocol with the District Attorney's Office whereby all *Brady* Notification letters involving police misconduct information, as well as Charge Evaluation Worksheets on criminal cases reviewed by the District Attorney's Justice Integrity Division (JSID), are sent directly to the Advisor and the unit charged with evaluating criminal misconduct by police officers. JSID also provides the Advisor with a list of case names and numbers for all criminal cases filed by JSID or referred to another prosecutorial agency or branch office. The Advisor has additionally gathered volumes of officer-involved shooting investigations and other misconduct

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information made public by SB 1421¹ and is collaborating with a number of agencies to gather information on police practices and/or misconduct, including the Alternate Public Defender, the Federal Public Defender, the California Appellate Project, individual police agencies, police oversight agencies, professionals and commissions, and the ACLU of Southern California.

Since August 15, 2019, the Advisor has received approximately 1,700 *Brady* Notification letters from the District Attorney, gathered about 1,000 Charge Evaluation Worksheets, 300 Officer Involved Shooting Memoranda, 300 filed cases involving officers, almost 100 In-custody Death Evaluations, and thousands of investigations disclosed by police agencies in response to public records act requests filed pursuant to SB 1421.²

This information is only a fraction of the information available publicly and does not include police misconduct information from the community, news reports, court cases, posts on social media, attorneys or other stakeholders.

Once the unit is fully staffed, the Advisor will be able to continue to reach out and collaborate with individuals and organizations, consult on police misconduct, policies and practices, and develop ongoing strategies for the development and enactment of policies and legislation to ensure police misconduct accountability and transparency.

Deputy-in-Charge (DIC)

The DIC is currently conducting trainings on how to obtain police misconduct information in court through the filing of *Pitchess/Brady* motions and how to use the information gathered in the representation of clients. The DIC is also working on technical solutions to expand the ability to process police misconduct information in a manner which makes the information readily available to attorneys. Once the unit is fully staffed, the DIC will guide, mentor and supervise unit members with assigned tasks and functions; develop and update training programs for various classes of employees, office-wide, regionally, and within the unit; develop strategies for collecting, cataloguing, and distributing misconduct materials to staff; monitor workloads to balance work among unit members; and together with the Advisor attend various stakeholder meetings and commissions for both information gathering and as a subject matter expert. The DIC will also develop investigation and action plans in coordination with unit members, regional and central leadership when specific acute misconduct is identified in a region, branch, or area; monitor quality control processes in relation to entry and maintenance of data; and provide guidance to management in relation to developing issues in law enforcement.

¹ SB 1421 provides the public access to records involving officer-involved shootings and other major use of force incidents, as well as confirmed cases of sexual assault and lying while on duty.

²The Los Angeles Sheriff's Department is one of the only agencies in Los Angeles County which has not produced a single document in response to Public Defender requests. The responses received from the Sheriff's Department either indicate that they have no responsive documents, they need more time to respond, or that the request is overbroad.

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Goals of the LEAU

The main goal of the unit is to mitigate the impact of police misconduct by establishing a robust tracking system of both public and attorney-work product information which can be readily accessed remotely by attorneys representing indigent clients. The following are examples of some of the work the LEAU can do if properly resourced:

- Review Body Worn Camera footage identified by attorneys which conflicts with police testimony in court or police reports, catalogue the information, and make it available to other attorneys for impeachment when those officers are identified as witnesses on cases;
- Establish a mechanism whereby the public and community organizations can easily provide the PD with police misconduct information, complaints and audio/video evidence of police misconduct they have witnessed even if the misconduct did not lead to an arrest or a filed criminal case;
- Search for and review videos and verbal accounts of abuse that are prevalent on the internet and in news reports, investigate who the officers are, interview the witnesses, and ensure that the information is brought before the court when those officers testify;
- Gather, organize and compile information on officers who don matching tattoos or belong to secretive cliques which advocate for or engage in excessive force, lie on police reports or commit other Constitutional violations;
- Gather, organize and compile information posted by officers in social media posts which glorify violence or evidence racial or other biases;
- Gather and catalog force and misconduct information being released pursuant to SB 1421 to identify the use of excessive force and other trends amongst officers;
- Review the cases where police officer misconduct information is received from prosecutors after a conviction to determine if the officer's testimony was material and whether the conviction or sentence should be vacated or reduced as a result;
- Review government claims, and state and federal lawsuits alleging police officer misconduct, and partner with civil rights attorneys to gather information on officers who engage in misconduct;
- Implement a multifaceted training program to assist trial attorneys with motion practice regarding discovery of misconduct information held in confidential personnel files; develop targeted investigations; use evidence of misconduct in pretrial motions work; and effectively litigate misconduct evidence in hearings and trials.

Why Additional Personnel are Needed to Continue to Gather and Process Police Misconduct Information

In the last ten years, police officers who engage in unconstitutional behavior have become emboldened rather than deterred, in part due to the lack of resources available at the PD's office to call out and report police misconduct. Current and former members of LASD were federally indicted, including the former Sheriff, the former Undersheriff, and

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investigators in the unit charged with investigating deputies within the department for criminal behavior. According to U.S Attorney Andre Birotte, Jr., their behavior “had become institutionalized” and they “considered themselves to be above the law.” The former Undersheriff himself was found to be part of a “neo-Nazi, white supremacist gang” with matching tattoos named the Vikings 30 years ago but was nonetheless allowed to rise through the ranks until his indictment.

Media accounts of deputies with matching tattoos who exhibit gang-like behavior and bond over aggressive behavior have resurfaced in recent years, and there have been a number of publicized accounts of police officers who have committed serious sexual assaults against members of the public and individuals in their custody. Moreover, in November of 2017, the deputies’ union made public the fact that about 300 deputies were believed by the previous Sheriff to have police officer misconduct information involving moral turpitude in their personnel files. The current sheriff, however, has indicated he will not maintain any such list despite a recent Supreme Court decision allowing law enforcement agencies to create and provide such lists to prosecutors on pending cases. Moreover, the current Sheriff has greatly reduced administrative investigations into deputy misconduct and attempted to reinstate a deputy who was fired for lying, as well as who is an admitted member of a deputy clique whose members don matching tattoos.

Additionally, now more than ever, the people in Los Angeles and throughout the nation are demanding accountability for police misconduct. Legislators are responding by carving out exceptions to police secrecy laws which have prevailed in California for decades. This moment presents us with a critical need to expand cost-effective programs within the County that will best serve to hold police officers who engage in misconduct accountable.

Because Public Defenders represent the vast majority of individuals who encounter law enforcement, they are on the frontlines of witnessing abuse and dishonesty by police officers. If properly scaled, the LEAU can identify and confront police officers who abuse their authority, engage in unconstitutional behavior, and/or have displayed racial and other biases. Misconduct information gathered on officers can be used to defend clients in current cases, it can assist former clients who may have been wrongfully convicted, and future clients arrested by those officers who have engaged in misconduct. When exposed in hearings and trials, law enforcement leaders will be in a better position to remove personnel from their agencies. As Supervisor Mark Ridley Thomas’ July 7, 2020 motion notes, “[w]hen law enforcement officers and prosecutors know [misconduct] information will be utilized, there is stronger incentive for both better legal practices and retaining law enforcement officers that display a high degree of integrity.”

Investing in more robust police monitoring capabilities will also have the incidental benefit of reducing the litigation costs associated with the use of unreasonable force and wrongful convictions, and it will reduce ineffective assistance of counsel claims by clients who later discover that police misconduct information which may have changed the outcome of their case was publicly available but was not discovered due to the lack of resources available to public defenders.

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The current staffing of the LEAU is woefully insufficient to review and process all the information gathered and publicly available on police misconduct. In order to fully and effectively collect, review, process and make information available to attorneys representing clients in cases where police officers have engaged in current or prior misconduct, it is imperative that the LEAU be equipped with additional resources to review, catalogue and upload the information currently in their possession, to actively collect and organize police officer misconduct information in a manner which is usable and easily accessible, and to review misconduct information to determine if post-conviction relief is appropriate. While creating the LEAU was the first step toward rebuilding the Public Defender's police monitoring capabilities, it is necessary for the LEAU to be properly staffed to ensure the highest standards of transparency and accountability.

Specific Resources Needed for the LEAU

The initial three-month assessment and subsequent follow-up assessment completed by the Advisor concluded that the bare minimum staffing necessary to effectively monitor, gather, review, and utilize police officer misconduct information currently available through a variety of sources consists of 11.0 total positions: 4.0 Deputy Public Defender III; 1.0 Investigator II,PD; 4.0 Paralegal; 1.0 Legal Office Support Assistant II; and 1.0 Application Developer II. The specific duties of these positions are detailed below.

- **4.0 DEPUTY PUBLIC DEFENDER III:** Assist with reviewing and processing *Brady* Notification letters; review closed cases to determine if the *Brady* information received is material; take any action deemed appropriate as a result of receiving police officer misconduct information, including but not limited to contacting client, consulting with the Immigration Unit, consulting with the client's attorney, seeking additional information from prosecutors and coordinating with the Post-Conviction Unit to seek any post-conviction relief deemed appropriate; consult with trial attorneys on police officer misconduct issues; review and litigate protective orders being sought on *Brady* information; monitor public record act requests filed with prosecutors and law enforcement agencies; and litigate failures to adequately and timely respond to public records act requests.
- **1.0 INVESTIGATOR II, PD:** Assist with collecting and reviewing police misconduct information gathered from the public as well as through social media websites; conduct investigations to determine the identity of police officers depicted in video engaging in misconduct; interview witnesses and victims of police misconduct who were not arrested or charged with an offense but who have relevant information about police misconduct and might be able to testify as witnesses in current or future cases.
- **4.0 PARALEGAL:** Review, organize and upload the backlog and future receipt of filed cases, declination letters, shooting review memoranda, and in-custody death reviews; review, sort and upload the backlog of all SB 1421 documents received

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to date; assist in gathering police officer misconduct information from public sources; file and follow up on public records act requests; and review and upload the influx of police officer misconduct information gathered on an ongoing basis.

- **1.0 LEGAL OFFICE SUPPORT ASSISTANT II:** Compile TCIS summaries and docket, keep track of *Pitchess* motions and *Brady* Notification letters, track all public records act requests, and provide secretarial support.
- **1.0 APPLICATION DEVELOPER II:** Manage database; develop an automated method to submit PRA requests on a rolling basis for public information such as, but not limited to, SB1421 documents, police roster information, police salary information, filed case information, state and federal lawsuit filings and declination letters; develop a method or program to automate the transfer of information gathered on an ongoing basis which does not require review by paralegals or attorneys such as roster and salary information and ensure that the information is accurately uploaded; assist with reviewing, correcting and/or removing information from our database which is stale or inaccurate; identify and research data inconsistency issues; work with paralegals and attorneys to resolve and improve the flow of information in the database housing police officer misconduct information and attorney work product information; develop internet mining/scraping solutions for gathering information on police misconduct from public websites; develop applications to allow attorneys to easily access and use information in the database; interface or modify database to integrate it into CCMS and provide technical support to personnel using the database.

Conclusion

In this moment more than ever, it is imperative to invest in cost-effective programs which answer the public's call for reform and promote 21st century constitutional policing. Due to the Public Defender's unique position on the frontlines of witnessing police misconduct, an appropriately funded Law Enforcement Accountability Unit will have a direct impact on much needed law enforcement accountability and transparency.