

July 24, 2020

## Reform Recommendations of the Civilian Oversight Commission

To: Lael Rubin, Chair, Sheriff Civilian Oversight Commission

From: Rob Bonner, Chair of the Ad Hoc Committee re Use of Force<sup>i</sup>

Following the adoption of the reform recommendations put forward by the Use of Force Ad Hoc Committee (Committee) at the June 18, 2020 COC meeting, the Committee has considered several additional reform recommendations and some relatively slight modifications of those it originally proposed, which are highlighted by underlining below. As noted earlier, this list of reforms is not intended to be exhaustive.

### **RECOMMENDED REFORMS FOR LASD<sup>ii</sup>**

1. *Immediately* assure that Use of Force policy clearly and unequivocally prohibits chokeholds and other restraints on the carotid artery by whatever means, except in life threatening situations, and assure that this prohibition is immediately made part of Deputy training.<sup>iii</sup>
2. *Immediately* make clear in policy that a deputy witnessing excessive or unnecessary force being used by another deputy has an affirmative duty to intervene and attempt to stop such use of force.<sup>iv</sup>
3. *Immediately* require de-escalation before resort to use of lethal force unless it is objectively impossible to de-escalate before using such force.<sup>v</sup>
4. *Immediately* fund and deploy Body Worn Cameras to all Patrol deputies.<sup>vi</sup>
5. *Immediately* fund and complete the full rollout of Mental Health Evaluation (MET) teams.<sup>vii</sup>
6. *Immediately* require not just tracking of deputy complaints and discipline, but documented management action, especially where there is a history of potentially unnecessary and/or excessive uses of force.
7. *Immediately* disband deputy cliques by implementing the Sheriff's policy announced in April 2020.<sup>viii</sup>
8. *Immediately* increase hours of deputy training devoted to tactics, de-escalation and crisis intervention.
9. *Immediately* provide the Office of Inspector General and the Civilian Oversight Commission with unfettered access to proposed policies, internal and disciplinary processes, investigations and decisions, including deputies' record of complaints, including complaints regarding the use of excessive force and sexual misconduct, and disciplinary record, including briefs of the COC's Ad Hoc Committee on the Use of Force at the earliest opportunity after lethal force has been used.

10. Henceforth, it is essential that all lethal uses of force by deputies should be investigated by an agency other than the LASD. In this regard there are several potential options. One is to designate the Office of Inspector General to be the primary investigative agency for all lethal uses of force by deputies. Another is to staff and task the California Department of Justice with the responsibility for investigation all fatal uses of force by peace officers employed by a California law enforcement organizations. A third option is to have a taskforce of detectives from regional law enforcement organizations conduct such investigation with the proviso that no investigator could be employed by the law enforcement organization whose officer or deputy was involved in the shooting or other use of force that led to the death of a civilian. Lastly, in some jurisdictions, Orange County and San Francisco, DA investigators lead investigations.<sup>ix</sup>
11. Without further delay, the LASD should comply with Penal Code 832.7(b), effective January 2019, codifying SB 1421.
12. Modify collective bargaining agreements and Civil Service rules to make it easier to terminate deputies who have used unnecessary or excessive force, have a history of doing so, failed to take action to prevent same, or have misled or concealed from investigators such conduct on the part of other deputies.
13. Exclude from the purview of collective bargaining agreements matters that relate to on-the-job accountability of deputies, including internal investigations and discipline.<sup>x</sup>
14. Assure that the Table of Discipline provides for termination of any deputy determined to have used unnecessary, excessive or out-of-policy use of force and similarly for any deputy who takes no action to prevent it, and/or does not promptly or accurately report same.
15. Amend laws and regulations to permit prompt termination and/or putting a deputy on leave without pay in cases where excessive use of force is apparent.
16. At least annually, LASD should publish data regarding the number of fatal uses of force by deputies and with regard to such cases, the number of deputies disciplined as well as the level of discipline.<sup>xi</sup>
17. Without delay, through policy, training and example, begin to develop a culture within the LASD where all members of the community are treated with dignity and respect.
18. Encourage the Sheriff to embrace the foregoing reforms and establish a working group to work with the Civilian Oversight Commission to accomplish Recommendations 1-17, above, as expeditiously as possible.

#### **OTHER RECOMMENDATIONS:**

19. Remove qualified immunity for law enforcement personnel, who have intentionally violated the constitutional rights of citizens, in federal civil rights suits.

20. Recommend that the U.S. Justice Department re-instate its investigation, oversight and mandated reforms of law enforcement organizations who have a history or pattern of use of excessive force or racial bias.
21. Encourage District Attorneys to become more aggressive in prosecuting law enforcement officers where the facts indicate criminal culpability.
22. Encourage U.S. Attorneys to collaborate and institute parallel investigations where lethal force appears to be excessive or unnecessary.
23. Establish a national registry of police officers who have been discharged for misconduct or who have resigned pending disciplinary action.<sup>xii</sup>
24. Bar unions representing California peace officers from contributing to elected officials having management, oversight, collective bargaining or budgetary responsibilities over the agency employing such peace officers.<sup>xiii</sup>

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<sup>i</sup> The COC's Use of Force Ad Hoc Committee is made up of Commissioners Thompson, Harris, Kennedy and Bonner.

<sup>ii</sup> As amended by the full Commission at its June 18, 2020 meeting.

<sup>iii</sup> On June 8, 2020, the LASD amended its *Custody* Division Manual to prohibit "Any choke holds including carotid restraints (June 8, 2020)." Custody Division Manual 7-01/030.00 (November 2015), Importantly, our Recommendation No. 1 requires that there be a prohibition of choke holds and other carotid artery restraints that applies to deputies assigned to the LASD's *Patrol* Division. Since the COC adopted this recommendation, the LASD has made clear in the LASD Manual of Policy and Procedures that the ban on chokeholds and carotid artery restraints applies to all deputies, including the *Patrol* Division. Regarding the underscoring, there are limited, but life threatening situations in which such restraints may be appropriate. We believe that the LASD should have an opportunity to be heard on this issue.

<sup>iv</sup> This is currently required for deputies and custody assistants working in the LA County Jail system. Custody Division Manual 7-01/010.00 (January 2017). Our Recommendation No. 2 makes clear that this duty also applies to *Patrol* deputies. Since the COC adopted this recommendation, the LASD has modified its Manual for Policy and Procedures to specifically require such interventions for all deputies, including *Patrol* deputies.

<sup>v</sup> The Full Commission deleted the underscored language by a 5-3 vote. Some members of the Committee consider the deletion unwise and suggest the COC reconsider.

<sup>vi</sup> As per the recommendation of the COC in its July 2018 report on Body Worn Cameras.

<sup>vii</sup> As per the recommendations of the COC in its February 2018 report on The Mental Evaluation Team Program. The COC recommended 60 MET Teams. So far, only 34 MET Teams have been deployed.

<sup>viii</sup> See LASD Manual of Policy and Procedures, section 3-01/050.83 – Employee Groups which Violate Rights of Other Employees or Members of the Public.

<sup>ix</sup> To assure accountability and avoid actual and perceived conflicts of interest, it is highly desirable and unquestionably the best practice to have an independent, outside agency investigate lethal uses of force. See, generally, *At Arm's Length: Improving Criminal Investigations of Police Shootings*. Stanford Criminal Justice Center, <https://law.stanford.edu/publications/at-arms-length-improving-criminal-investigations-of-police-shootings/><https://law.stanford.edu/publications/at-arms-length-improving-criminal-investigations-of-police-shootings/> All members of the Ad Hoc Committee favor having an outside, independent agency be the lead or primary investigative agency where fatal force is used. The Ad Hoc Committee considered recommending that such outside investigations be undertaken by the California Department of Justice (DOJ) or the San Joaquin model where other local law enforcement agencies not involved in the fatal use of force conduct the investigation. At least one member of the Ad Hoc Committee would favor having the California DOJ rather than the OIG be the lead on such investigations. Another member favors the OIG being designated the lead agency until such time as the

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California Department of Justice is given the responsibility for investigating all fatal uses of force by California law enforcement agencies. Since the COC adopted this recommendation, the Committee believed it appropriate to amplify on the various options for independent, outside investigations.

<sup>x</sup> This recommendation is intended to prevent the collective bargaining process from delaying or reducing discipline, e.g., for the use of excessive force, failure to intervene to prevent such force, not reporting excessive use of force, false reporting, and the like.

<sup>xi</sup> The recommendation was suggested at the COC's June 18, 2020 meeting.

<sup>xii</sup> The COC should support a state and national registry.

<sup>xiii</sup> True change in the status quo will require that elected officials, such as the Sheriff, who is responsible to the people, not be beholden or have the appearance of being beholden to unions representing public employees in his/her organization. This has been identified as one of the impediments to reform of law enforcement organizations in particular.