

**San Diego County Sheriff's Department's
Response to
Use of Force Audit Recommendations**



**William B. Kolender
Sheriff**

June 18, 2007



San Diego County Sheriff's Department

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William B. Kolender, Sheriff

William D. Gore, Undersheriff

June 18, 2007

Michael Gennaco
Office of Independent Review
4900 South Eastern Avenue, Suite 204
Commerce, CA 90040

Dear Mr. Gennaco:

I am writing to thank you for the diligent work performed by you and the other members of the Office of Independent Review. We began searching for a way to provide an independent assessment of the Department's use of force practices following the unfortunate incidents that occurred in the City of Vista during the summer of 2005.

The Office of Independent Review was selected to perform the use of force audit of the San Diego County Sheriff's Department based on several factors, including its reputation as a fair and impartial reviewing body in Los Angeles County, and the makeup and experience of its staff. The fact that several members of your office were former prosecutors, some with civil rights experience, gave the Department comfort that your audit would be a comprehensive, thorough, and unbiased examination of the Department's policies and practices.

The Department has received and reviewed your draft report. As expected, your report indicates that the Department's deadly-force policy adheres to the legal standard and compares closely to other jurisdictions. Notably, your report also indicates that the "Department's statistics in terms of number of shooting incidents are below the average of most other major law enforcement jurisdictions in southern California."

While your report confirms that the citizens of San Diego County have a Sheriff's Department that they can be proud of, it also contains recommendations for ways in which we can improve upon the work we do. My staff and I have reviewed those recommendations and you will find our responses enclosed with this letter. I firmly believe that all agencies should constantly strive to improve their practices and procedures. As you will see by our responses, some of your recommendations have already been implemented, and many more will be implemented in the future.

"Keeping the Peace Since 1850"

Mr. Gennaco

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June 18, 2007

With the public release of your report, it is my desire that the citizens of San Diego County come to view the men and women of this Department as I do. They are hard working, dedicated law enforcement employees who constantly work under difficult and dangerous conditions to provide the highest quality public safety services to their communities.

Again, I thank you and your staff for your hard work, commitment, and dedication to this project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Kolender".

William B. Kolender, Sheriff

WBK:aeb

1. **We recommend, with regard to the Department’s use of deadly force policy involving fleeing felons, that it reconcile potentially inconsistent language in the Policy and Procedures sections of the Manual in order to provide clarity to its deputies, and, in doing so, adopt the more restrictive calculus set out in the Procedures section.**

1. The Department agrees with the above recommendation in part. The Department believes that the guidelines set forth in its use of force policy relating to apprehending fleeing felons is an appropriate statement of the law as set forth by the United States Supreme court. However, the Department recognizes that confusion could occur with the definitions set forth in Department Procedure section 8.1. As a result, the Department will implement a policy change to clarify the definition of a fleeing felony suspect contained in Procedure section 8.1.

2. **We recommend that the Department revise its “shooting at vehicles” policy to provide more guidance to deputies regarding the decision to shoot. We further recommend that the Department revise the policy to address related tactical decisions – such as the advisability and effectiveness of moving into the real or potential path of a moving vehicle.**

2. The Department agrees with the recommendation. The recommendation has not yet been implemented, but the Department is in the process of reviewing its policies and practices with regard to “shooting at vehicles.”

3. **We recommend that the Department create a foot pursuit policy that states that deputies will be expected to:**

- ✓ **broadcast the pursuit and their position as soon as possible**
- ✓ **reassess the pursuit if the suspect enters a structure**
- ✓ **desist pursuing if the deputy loses sight of the suspect**
- ✓ **not split from their partners**

3. The Department agrees with the recommendation to create a foot pursuit policy. The recommendation has not yet been implemented, but the Department is in the process of drafting a foot pursuit policy.

4. **We recommend that the Department adopt a standard practice of interviewing all deputy witnesses to the shooting and/or events leading up to the shooting.**

4. The Department agrees with the above recommendation. The recommendation has been implemented by a change in the Homicide policy manual.

5. **We recommend that the Department consider adopting a practice of conducting a brief “walk through” of the scene for all investigators prior to conducting any interview of involved personnel.**

5. The Department agrees with the above recommendation. Although this has been practice in most investigations, the recommendation has been formalized in the Homicide policy manual.

6. **We recommend that the Department adopt a practice of documenting the comments made by the deputy shooters during the walk through. We also recommend that the**

Department consider adopting a practice of consistently documenting how deputies were transported and separated when performing these “walk throughs”.

6. The Department agrees with the above recommendation. The Department will be meeting and conferring with the Deputy Sheriff’s Association on implementation of the above recommendation.

7. **We recommend that the Department consider ways in which the Medical Examiner can be afforded access in a more timely fashion without compromising the integrity of the scene.**

7. The Department agrees with the above recommendation. The Homicide policy manual has been updated to reflect that detectives should make every effort to avoid any lengthy delays to the removal of a body from a crime scene. Further, the Department is constantly looking at ways to expedite the access afforded to the Medical Examiner.

8. **We recommend that the Department not be deterred by language-related obstacles to information gathering, and that it continue its recent emphasis on bolstering the relevant foreign-language skills of its officers.**

8. The Department agrees with the above recommendation. It is the Department’s intention to continue its emphasis on bolstering the foreign language skills of its officers. The Department presently contracts for language services and will continue to ensure that deputies are aware of other existing resources to prevent deputies from being deterred from information gathering.

9. **We recommend that the Department formalize its protocols for promoting the cooperation of witnesses and acknowledging their rights under the prevailing circumstances. One option is to promulgate a form and waiver system that clarifies the status of witnesses and their options about traveling to the station to be interviewed.**

9. The Department agrees with the above recommendation. Homicide has in place a form and waiver system as outlined in the recommendation above. Further, the Department is currently in the process of expanding the use of the form Department wide.

10. **When, for instance, investigators need to enter a suspect's residence or look in a parked car for evidence, we recommend that they consider developing a protocol whereby they will obtain warrants or consent and document those efforts in the investigation file.**

10. The Department agrees in part with the above recommendation. With regard to entering a suspect's residence in search of evidence, it is the position of the Department that a warrant or consent should be obtained and documented in the investigatory file. This has been clearly articulated in the Homicide policy manual. With regard to the search of an automobile, the U.S. Supreme Court has said that a search warrant is not necessary given the fleeting nature of a vehicle. However, the Department realizes that best practices dictate that whenever possible, deputies should attempt to first obtain consent.

11. **We recommend that the Department adopt a protocol to**

ensure that relevant information about criminal charges and prosecutorial or judicial decisions regarding persons shot by deputies be included or updated in investigation files in shooting cases.

11. The Department agrees with the above recommendation. The above recommendation has been implemented by the Homicide Unit.
12. **We recommend that, when radio traffic has a significant bearing on the incident and how it unfolded, a transcript of that traffic be included in the investigative books.**
12. The Department agrees with the above recommendation. When radio traffic has a significant bearing on an incident, the Homicide division will continue to transcribe radio traffic and place it into the investigation books. In all situations, including where the radio traffic does not have a significant bearing on an incident, the audio recordings will continue to be maintained with the investigation book.
13. **We recommend that the Department explore ways to provide Risk Management personnel with a limited authority to respond to shooting scenes and immediately provide appropriate compensation to innocent parties who have suffered damage as a result of Department actions.**
13. The Department agrees with the above recommendation. Implementation of the above recommendation requires further analysis, to determine whether an ordinance would have to be adopted by the Board of Supervisors allowing the Sheriff's

Department to settle claims on behalf of the County.

14. We recommend that the Department revamp its Critical Incident Review Process in the following ways:

14 a. By assigning a separate team of investigators outside of Homicide Bureau to roll to the scene of officer-involved shootings – including both hit and non-hit incidents – and take responsibility for a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.

14 a. The Department disagrees in part with the above recommendation. While the Department agrees that a separate unit should take responsibility for a full and comprehensive investigation of the incident, the Department disagrees with the assertion that the actual investigation of the incident could not be done by the Homicide Unit.

The Department has created a Professional Standards Unit that will respond to officer-involved shootings and have the responsibility for ensuring that a full and comprehensive investigation is conducted.

14 b. By changing the structure of the Critical Incident Review Board to foster clear lines of authority, focused decision-making, continuity, and follow-through. We recommend appointing a small panel of Commanders to review the investigative reports, hear a presentation by the administrative shooting review investigators, and make decisions on each case, as advised by legal counsel, Training, and the unit commander of the station of origin for the

incident.

14 b. The Department agrees with the above recommendation. The above recommendation will be implemented as part of a complete modification of the critical incident review process.

14 c. By encouraging a heightened willingness to promote officer safety and sound policing practice by holding deputies accountable when policy violations or performance issues influence shooting incidents.

14 c. The Department agrees with the above recommendation. The Department believes that its new critical incident review process will encourage a willingness to promote officer safety and sound policing practice by holding deputies accountable when policy violations or performance issues influence shooting incidents.

14 d. By expanding the options of CIRB to include ordering individualized training and briefing of involved personnel.

14 d. The Department agrees with the above recommendation. The above recommendation will be implemented as part of a complete modification of the critical incident review process.

14 e. By requiring timely investigations and review presentations.

14 e. The Department agrees with the above recommendation. The new critical incident review board policy will continue to be a

two part review ensuring for early review of critical incidents and intervention if necessary. A second review at the conclusion of the formal investigation will allow for thorough follow up.

15. We also recommend that the jurisdiction of the re-designed CIRB be expanded to include a protocol for the automatic review of additional categories of incident, as itemized and explained below:

- **Deaths incident to arrest by Department deputies**
- **Non-hit shootings**
- **A selection of serious force incidents**
- **Bites by the Department's K-9 Unit**

15. The Department agrees in part with the above recommendation. The jurisdiction of the re-designed CIRB will include in custody deaths; use of deadly force by a department employee; pursuits ending with any injury requiring hospitalization, major property or major vehicle damage; death or serious injury resulting from an action of a member of the Department; law enforcement related injuries requiring hospital admittance; discharge of a firearm by sworn personnel; and any other incident involving the discharge of a firearm by a member of this Department or other critical incident which, in the judgment of the Sheriff, Undersheriff, Assistant Sheriff, or board warrants review. The Department's new critical incident review policy will not review K-9 bites as a matter of routine, unless they fall within one of the above categories.

16. We recommend that a supervisor take responsibility for interviewing the suspect on tape about force in cases where injury either resulted or is complained of.

16. The Department agrees in part with the above recommendation. In significant injury cases, a supervisor will be required to take responsibility for interviewing the suspect about the force used during the incident. Whenever possible, employees will be required to record a suspects statements relating to the use of force.

17. We recommend that the Department develop a separate team of investigators that can respond to a selection of critical force cases (based on extent of injury and other pre-determined standard) and assume responsibility for compiling the facts and information needed for a a full and comprehensive investigation of the event, with an emphasis on issues of policy, tactics, training, and deputy performance.

17. The Department agrees in part with the above recommendation. The Department has created a Professional Standards Unit whose responsibility it will be to ensure that critical force cases are investigated fully, and issues, such as policy, tactics, training, and deputy performance are addressed. The Professional Standards Unit will rely on detectives at the individual work locations to actually conduct the investigations.

18. We recommend that the Department create a separate “force package” protocol to document significant force in a thorough and comprehensive fashion, and an accompanying review process at the supervisory level to address attendant issues of policy, training, officer performance, and risk management.

18. The Department disagrees with the above recommendation. The above recommendation will not be implemented. The Department believes that a separate “force package” would be redundant to the

reports already prepared by the deputies. An administrative investigation will be conducted, and an investigative file or package prepared when appropriate.

19. We recommend that the Department require per policy that deputies who witness force deployed by fellow deputies report and document those observations in a timely manner.

19. The Department agrees with this recommendation. The above recommendation will be implemented. The Department will ensure that its policies reflect the recommendation.

20. We recommend that the Department encourage responding supervisors and/or handling deputies to interview civilian witnesses to force incidents, especially those that appear likely to engender controversy.

20. The Department agrees with this recommendation and currently has a policy covering this recommendation. The Departments use of force policy states that a supervisor or his designee will respond to the scene or medical facility to investigate uses of force that result in a complaint of injury or an injury that necessitates medical treatment and investigate the circumstances surrounding the incident.

21. We recommend that the Department to standardize and improve its attention to collecting evidence in force incidents as follows:

- **by photographing suspect injuries**
- **by obtaining records of medical treatment of arrestee**
- **by documenting where applicable the suspect's refusal of**

medical treatment.

21. The Department agrees with this recommendation and will be re-emphasizing its policy and practices covering this recommendation. Additionally, the Department's use of force policy indicates that photographs should be taken of any injury or damage resulting from force incidents.

22. **We recommend that the Department explore the restructuring of the K-9 unit. While centralization may not prove to be preferable, the Department could nonetheless take constructive lesser steps to mitigate existing weak points:**

- **by committing of necessary time and resources for more meaningful regular training.**
- **by assigning a high-ranking supervisor to head the unit, so as to strengthen its internal workings and reduce friction with various patrol supervisors**
- **by better integrating the K-9s with regular patrol functions, through training bulletins, video presentations, recurrent briefings, and other relevant techniques.**

22. The Department agrees with this recommendation. The Department has assigned a Lieutenant and Sergeant to oversee the K-9 unit and is in the process of providing more extensive training to all deputies regarding K-9s.

23. **We recommend that the Department modify its carotid restraint policy to require that suspects exhibit assaultive behavior or “aggravated active resistance or aggression” [SDSD Use of Force Options Chart] before deputies are justified in using the technique. We further recommend that**

the carotid restraint be viewed as an important perishable skill that merits frequent refresher training at mandatory periodic training.

23. This recommendation requires further analysis. As a result, the Department can neither agree or disagree with the recommendation at this time.

24. We recommend the Training Division develop and promote a teaching scenario which guides deputies on the best range of options for dealing with unruly suspects in the back of patrol cars.

24. The Department agrees with the above recommendation. The Department has instructed the training division to prepare a teaching scenario consistent with the above recommendation.

25. We recommend that the Department implement a requirement for deputies who wish to continue to carry saps and nunchakus that they receive recurrent training and remain proficient in their use. The Department should also maintain documentation of this recurrent training. If those requirements prove to be impracticable, the Department should consider eliminating saps and nunchakus as authorized force options.

25. The Department agrees with the above recommendation, and will implement it as set forth above.

26. We recommend a revision of the Taser policy to clarify the threshold for use as being assaultive behavior on the part of

the suspect, and we encourage the Department to review and adapt its relevant Training and practices as more information about actual Taser deployment in the field becomes available.

26. The Department agrees with the above recommendation. The recommended clarification will be made as set forth above.
27. **We recommend that significant force incidents in the jails should be handled as separate force investigations, similar to the protocols we recommend for investigating force in the patrol setting.**
27. The Department agrees in part. Ensuring proper investigations of significant force incidents occurring within the jails will be the responsibility of the Professional Standards Unit similar to the procedures set forth for investigating force in the patrol setting.
28. **We recommend that Detentions incidents involving injuries requiring hospital care, or recognizable significant failures in equipment or procedures be subject to the Department's CIRB review process.**
28. The Department agrees with this recommendation. The above recommendation will be implemented with the Department's revised Critical Incident Review Board process.
29. **We recommend that inmate assaults that are criminal in nature and result in injury should be referred to the District Attorney when sufficient evidence exists, regardless of the stated preference of a deputy victim or inmate victim.**

29. The Department agrees in part with the above recommendation. All assaults with cooperative victims or where independent evidence exists will be forwarded to the District Attorney's office.
30. **We recommend that the Department prioritize the design and implementation of its proposed Early Intervention System, and that it maximize that system's effectiveness by promoting its varied and widespread use among Department managers.**
30. The Department agrees with the above recommendation. The recommendation is in the process of being implemented.
31. **We recommend that the Department explore means of regularly sharing information with the public about numbers of shooting and force incidents, types of uses of force, numbers and types of internal affairs investigations and the number of times in which investigations were sustained.**
31. The Department agrees with the above recommendation. The number of investigations and number of sustained cases are currently published in the Sheriff's Department's annual report. The Department will implement the above recommendation by creating a more detailed report that is separate from the annual report. The Department intends this report to be available on its website.
32. **We recommend that the Department develop a set of disciplinary guidelines that set out penalty ranges for particular policy violations and assist the decision maker in considering how aggravating and mitigating factors are to be applied. At the very least, it should articulate principles that**

would help promote consistency and reduce arbitrary penalties.

32. The Department agrees in part with the above recommendation. No discipline above a written reprimand is imposed within the Sheriff's Department until it is reviewed and approved by the affected employee's Assistant Sheriff, the Undersheriff, and the Sheriff. The Department believes that this process ensures that the appropriate level of discipline is given for each incident. The Department however, will implement a portion of the above recommendation by preparing and distributing a training bulletin that articulates principles to help promote consistency and reduce arbitrary penalties.

33. We recommend that the Department re-examine its Manual in relation to Risk Management issues, and create and memorialize a feasible action plan and structure that will achieve the objectives behind the ambitious current language.

33. The Department agrees with the above recommendation. The Department has begun to re-examine its policies and procedures as they relate to Risk Management issues.

34. We recommend that the Department adapt its training curriculum in dealing with the mentally ill in jail to the patrol setting and provide that training to its patrol deputies.

34. The Department agrees with the above recommendation. Implementation will require further analysis. However, the Department will implement the above recommendation as appropriate. A revised policy and procedure is in the process of

being formulated.

35. We recommend that the reference in the Department's policy Manual to an advisory requiring complainants to acknowledge that it is a crime to make a false statement against peace officers be removed.

35. The Department disagrees with the above recommendation. On July 25, 2006, the California Attorney General issued a law enforcement bulletin that stated that "the Attorney General sees no need to eliminate the warning language from the complaint form" because "[t]hat language is mandated by the Legislature under California law." The bulletin went on to hold that a decision by the Ninth Circuit court of appeal "did not enjoin the enforcement of the statute statewide..." As a result, the Department has opted to leave the language on its form to comply with current existing state law.