

2/25/20
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February 24, 2020

2020 FEB 25 PM 12: 58

Dear Sheriff Johanknecht,

CLERK
KING COUNTY COUNCIL

The undersigned organizations write to urge you to modify and strengthen the King County Sheriff's Office's (KCSO) use of force policies. We make this request following the February 2020 report issued by the Office of Law Enforcement Oversight (OLEO) regarding the investigation into the death of Mi'Chance Dunlap Gittens.

On January 27, 2017 Mi'Chance Dunlap-Gittens was shot in the back and killed by KCSO as he was running away from deputies. Five months later, Tommy Le was killed by KCSO deputies. Tommy Le was unarmed and only holding a pen. Shortly after Tommy's death, KCSO issued a press-release describing Tommy as a "knife-wielding man." These killings generated widespread outrage—not just about the events that led to their deaths, but about KCSO's investigative process.

In December 2019, KCSO announced changes to its use of force policies. While KCSO's new policies are a step-forward, they fall well short of community expectations. Instead of establishing itself as a leader in use of force policies, KCSO has fallen behind neighboring departments, such as the Seattle Police Department (SPD). KCSO's policies are deficient in several key areas: 1) they lack a strong standard for the use of deadly force; 2) they do not include policies that prevent unnecessary escalation; 3) they do not provide for timely interviews of deputies after using deadly force; 4) they do not allow use-of-force reviewers to answer some of the most important questions after a death. KCSO's new policies have numerous other areas for improvement. These areas are beyond the scope of this letter but are of great importance and warrant future discussion.

We have drafted this letter with a keen interest in KCSO's feedback. We hope that this letter can serve as the starting point of a collaborative dialogue—allowing us to identify where we agree, disagree, and agree in principle but issues, such as collective bargaining, prevent immediate implementation. KCSO has been a strong community partner and shown an exemplary willingness to engage in collaborative dialogue. In this spirit, we offer the following principal areas for improvement in KCSO's use of force policies:

1. KCSO Should Create a More Robust Standard for the Use of Deadly Force

The use of deadly force should only be authorized when there is "an imminent risk of serious physical harm to the law enforcement member or others." KCSO's current standard for the use of deadly force does not require that the risk of serious physical harm be imminent.¹ Deadly force

¹ KCSO General Orders Manual (GOM) 6.00.045.

should not be used lightly, and should be reserved for those situations where all other options have failed and the risk to deputies or others is imminent. By failing to require that a threat be imminent, KCSO's current definition is inconsistent with the principles of de-escalation, which instructs deputies to use tactics, communication and actions to reduce the need for force when doing so would not endanger the safety of others.² For these reasons, it is national best practice, and the practice of the Seattle Police Department, that a risk must be imminent in order for the use of deadly force to be authorized.³

Furthermore, requiring imminent risk is responsive to the concerns raised in OLEO's February 2020 report. Recommendations 18-20 in that report addressed various concerns related to the use of force when danger was not imminent: 1) expressing concern about the use of deadly force when a subject is running away; 2) showing skepticism about the idea that a subject fleeing to higher ground poses an imminent threat, given that de-escalation teaches deputies that time and distance improve officer options; and 3) suggesting that concerns that a subject may escape and harm unknown third parties should not justify the use of deadly force.⁴ The best way to address these lessons learned from the death of Mi'Chance Dunlap-Gittens is to require that the risk of serious physical harm be imminent prior to the use of deadly force.

2. KCSO Should Implement Policies Aimed Towards Preventing Escalation

Just as de-escalation is a critical technique in avoiding the unnecessary use of force, preventing escalation must be as well. The goal underlying de-escalation is to use techniques to minimize the level of conflict with a subject and, thus, reduce the need to use force. The same goal is advanced by avoiding escalation.

One of the primary findings from OLEO's review of the Mi'Chance Dunlap-Gittens shooting was that the detectives unnecessarily placed themselves in harm's way, creating the very risk of serious bodily injury that led them to kill Mr. Dunlap-Gittens. Detectives escalated the risk to all involved by jumping out of a van, in the dark, without easily-identifiable uniforms and immediately confronting two subjects who had reason to think they might be the victims of a robbery. OLEO's review explains, "In the split second that the detectives burst from the back of the van, it was reasonable to expect that the subjects would bring their guns up to protect themselves and then run – which is exactly what occurred."⁵

One of the most important policy changes that KCSO can make to avoid officer-involved

² See KCSO GOM 6.00.025.

³ SPD Manual 8.200(4).

⁴ King County Office of Law Enforcement Oversight, "Evaluation of the King County Sheriff's Office: Policy, Practice, and Review Mechanisms for Officer-Involved Shootings," Feb. 2020, 30.

⁵ King County Office of Law Enforcement Oversight, "Evaluation of the King County Sheriff's Office: Policy, Practice, and Review Mechanisms for Officer-Involved Shootings," Feb. 2020, 32.

shootings is to explicitly forbid deputies from unnecessarily escalating an incident. Risk is inherent in policing, but that risk should be minimized whenever possible. Accordingly, deputies should be forbidden from using tactics that increase risk without benefitting a law enforcement objective.

3. KCSO Must Strengthen Policies to Improve Accuracy and Utility of Deputy Interviews

The King County Sheriff's Office must strengthen policies to ensure that, after a critical force incident, investigators are able to obtain useful statements from involved deputies that best reflect the deputies' recollection of the incident. Currently, deputies are only required to provide a written statement within 48 hours of the incident.⁶ Instead, as OLEO has suggested, deputies must be required to provide a video-recorded statement, subject to investigator questioning, prior to the end of their shift.

Interviews will elicit substantially more relevant and detailed information than a simple written statement. An interview allows investigators to ensure that all relevant questions are asked and fully answered. Conversely, a written statement allows deputies to carefully craft an account of the incident, allowing them to omit information whenever such an omission would be to their benefit. Precisely for this reason, interviews are the universal standard in police investigations. In no other investigative context would a witness, victim, or suspect be asked to provide a written statement instead of participating in an interview. In fact, in KCSO's own critical incident reviews, deputies involved in the use of force are the only individuals who offer written statements instead of interviews—investigators are instructed to conduct taped interviews with all civilian witnesses.⁷

As suggested by OLEO, KCSO should follow SPD's lead and require that interviews be completed prior to the end of the members' shift.⁸ Delaying interviews (or written statements) 48 hours generally results in reduced recall accuracy.⁹ Additionally, by delaying interviews, news reporting, video footage, and general discussion of the incident threaten to contaminate deputies' recollection of the incident.

In order to prevent statement contamination, after a critical incident, involved deputies should be separated and prohibited from discussing the incident, unless such a discussion is necessary to ensure safety or apprehend a suspect. Separating witnesses is standard law enforcement practice

⁶ GOM 6.01.020(5)(c).

⁷ See KCSO GOM 6.01.025(1)(c).

⁸ SPD Force Investigation Team Manual—Operations—Officer Involved Shooting Investigations(I)(B)(9)

⁹ Brendon Butler, Elizabeth Loftus, and Rebecca Grady, *What Should Happen After an Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures*, *Journal of Applied Research in Memory and Cognition*, 5 (2016) 246–251.

and is even required in critical incident investigations for civilian witness interviews.¹⁰ There is no reason that different practices should be used for law enforcement members. Additionally, involved deputies should not be permitted to review any incident recordings prior to conducting an initial interview. It is essential that deputies offer their perspective to investigators, free from any contamination generated by reviewing recordings that may cause deputies to change their description of the incident. After conducting an initial interview, deputies should be permitted to review any recordings of the incident and participate in a follow-up interview should they wish to supplement or clarify their initial statement.

Finally, interviews should be video-recorded. Investigations often focus on topics, such as deputy positioning and movements, which are hard to describe through audio. These topics are often best explained by members by creating diagrams or demonstrating their actions, which can only be captured on video.

4. KCSO Must Enable the Critical Incident Review Board to Conduct a Full Review

The Critical Incident Review Board (CIRB) must provide a comprehensive review of all officer involved shootings and serious force incidents, analyzing how the totality of events contributed to the use-of-force. Currently, KCSO policy does not permit the CIRB to adequately address the events preceding the use of force—a policy that has recently drawn OLEO’s concern. The CIRB determines whether a use of force was justified, “regardless of the tactics or choices leading up to the use of force.”¹¹ As a result, a deputy could make a series of errors, contrary to both training and policy, escalating a situation and resulting in a need to use force, and the use of force would still be found to be justified. If a deputy’s policy violations directly contributed to the need to use lethal force, which could have otherwise have been avoided, the use of force should not be found justified. Instead, in determining whether a use of force is justified, the CIRB should consider the moment force was used *and* whether a deputy’s “violation of policy or failure to follow training prior to the use of force contributed to the need to use a higher level of force than otherwise may have been required.”

Similarly, the CIRB’s review of other questions should account for the deputy’s actions throughout the entire incident. Instead of narrowly focusing whether the “use of force involve[s] a policy violation” the CIRB should determine whether the deputy’s “actions prior to, during, or after the use of force involve a policy violation.” Additionally, it is not enough to simply ask whether the deputy’s actions were a product of inadequate training. The CIRB must also determine whether the “member’s actions prior to, during, or after the use of force [were] inconsistent with training?”

¹⁰ KCSO GOM 6.01.025(1)(c).

¹¹ KCSO GOM 6.02.055(6)(b).

Finally, the CIRB should consider whether the deputy used proper de-escalation tactics. KCSO policy requires that “when safe and feasible, members shall use de-escalation tactics in order to reduce the need for force.”¹² De-escalation tactics are a critical part of KCSO training and recognized as essential skills in reducing the need to use force. The CIRB’s review should reflect that by assessing whether the deputy used proper de-escalation tactics prior to the use of force.

We appreciate you taking the time to review this letter and look forward to discussing KCSO’s use of force policies in more detail. Although KCSO’s current policies fall short of community expectations, we hope that this is not taken as an indictment of KCSO or its leadership. This is a story that does not yet have an ending. What matters is where we go from here.

Sincerely,



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ACLU of Washington



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and REFERRAL SERVICE

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¹² KCSO GOM 6.00.025.



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MOTHERS FOR POLICE
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Rev. Harriett Walden

Mothers for Police Accountability



Andre Taylor

Not This Time



Rich Stolz

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Vietnamese Community Leadership Institute

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