



Office of Independent Review

August 2020 Status Report and Workplans.

August 27, 2020

To: Chairwoman Michelle Steel, Supervisor, 2nd District.
Vice Chairman Andrew Do, Supervisor, 1st District.
Supervisor Donald P. Wagner, 3rd District.
Supervisor Doug Chaffee, 4th District.
Supervisor Lisa A. Bartlett, 5th District.

From: Sergio Perez, Esq. 
Executive Director, Office of Independent Review.

Subject: Office of Independent Review Status Report and Workplans.

The Office of Independent Review serves as counsel and as an independent resource for the Board of Supervisors (Board), working to ensure transparency and accountability in the operations of the Orange County Sheriff-Coroner Department (OCSD), the Probation Department (OCPD), the Office of the District Attorney (ODA), the Office of the Public Defender (OPD), and the Social Services Agency (SSA), collectively referred to hereinafter as “relevant County Departments.”

The OIR is authorized by law to provide periodic status reports on its activities to the Board of Supervisors, relevant County Departments, and the public. Orange County Code Title 1, Div. 2, Art. 18, Sec. 1-2-226(d)(1). This report provides such an update, detailing the following:

1. Recent work to revitalize the OIR, including a statement of its operational philosophy, outreach efforts focused on community stakeholders, and ongoing coordination and cooperation with relevant County departments;
2. Summary of recent efforts and workplans outlining the OIR’s current and pending monitoring, investigation, and review activities; and,
3. Recommended staffing.

If you have any questions about the information contained in this report, please do not hesitate to contact me at sergio.perez@ocgov.com or 714-834-2038.

Work to Revitalize the Office of Independent Review

The OIR was created in 2008 to monitor OCSD and assist in improving its practices. Following a series of scandals that shook the public's confidence in the Orange County criminal justice system, the Board expanded the OIR's oversight, monitoring, and investigative powers in 2015. The OIR now has jurisdiction over five County Departments, along with access to confidential information, proceedings, and the concrete authority to review both systemic issues and individual incidents. To carry out its work, the OIR is empowered to communicate its reviews and findings to the public, the Board, and the relevant County Departments, so long as it does not disclose confidential information without necessary authorizations.

Since 2015, the OIR has experienced a tumultuous period characterized by unsteady staffing, questions about its utility and independence, and scant public output. However, given its mission and authority, the OIR is well-situated to meet the renewed local scrutiny on government services that followed recent disclosures of local evidence handling issues and the tragic murder of George Floyd in Minneapolis. Beginning with the appointment of an Executive Director in May 2020, the OIR is now working steadily to establish a clear operational philosophy, develop necessary relationships with stakeholders, and coordinate with the relevant County Departments to carry out its work. Each of these efforts is described in turn below.

Operational Philosophy

The Orange County Code requires that the OIR set an "operational philosophy" that ensures the needs and goals of the Board, the community, and the County are met. Sec. 1-2-226(d)(14). An effective operational philosophy reflects and structures the work of an organization while creating a set of expectations by which to judge its performance.

The nature of the OIR's work is shaped by the relevant County Departments that it oversees. Every one of these agencies is engaged in high-risk, high-impact work that shapes the fabric of our community. The relevant County departments provide essential services to the most vulnerable members of our community, including those who are struggling economically, adults and youth in distress, residents who are victims of crime, and those who are accused of a crime but cannot afford legal representation. The OIR is tasked with helping improve these services by increasing transparency, securing accountability, and recommending changes based on the law and best practices.

With that in mind, the OIR and its work will always be in keeping with the following principles:

1. **Independence**: The OIR will carry out its work free from improper interference, obstruction, or influence. Its fact-finding will be motivated by a zealous focus on understanding high-risk County practices, ensuring compliance with applicable law and best practices, and preventing harm to the public and the County whenever possible.

2. Transparency and Accountability: Consistent with applicable laws, the OIR will prioritize the issuance of periodic and special reports, with the aim of contributing to the Board and public's understanding of the policies and practices of relevant County departments.
3. Integrity: The OIR and its staff will conduct its work with the goal of always helping improve the County Departments with which it works. It will conduct its work in accordance with all applicable laws, codes of conduct, and oversight best practices.
4. Responsiveness: The OIR will continuously communicate with the community, the Board, and relevant County Department heads, with a focus on ensuring that its work is reflective of their needs.

Outreach Efforts

The success of oversight and accountability agencies hinges on maintaining effective relationships with individuals and organizations who reflect the needs of the community and hold relevant information. In keeping with this reality, the Orange County Code requires that the OIR “establish and maintain liaison” with various stakeholders, including employee unions, community-based organizations, and relevant law enforcement organizations. Sec. 1-2-226(d)(11). Sustained engagement with stakeholders ensures the flow of necessary information to the OIR that improves the quality, accuracy, and usefulness of its reviews.

Despite the ongoing pandemic, the Executive Director has met with various stakeholders over the last quarter. The meetings are aimed at increasing public awareness of the Office, its duties and authority, and towards developing and maintaining an understanding of the relevant needs of the participants. During the last quarter, the OIR met with:

1. County employee unions;
2. Relevant county executives and staff, including members of the Office of Risk Management;
3. Various local community and advocacy groups; and,
4. State and federal law enforcement agencies.

The meetings were productive and continue. Groups that would like to meet with the OIR are encouraged to reach out.

The OIR is also currently in the process of improving its website, with the goal of providing visitors with helpful information about its role, activities, and plans. The website now contains a clearer description of its authority and jurisdiction. It also provides the public with an updated phone number and email account to contact the Office. Since that update, the OIR has received several complaints regarding relevant County Departments.

Ongoing Coordination and Cooperation with Relevant County Departments.

The Orange County Code calls on the OIR to coordinate and cooperate with relevant County Department heads in its monitoring work and in its participation in confidential meetings

and proceedings. Sec. 1-2-226(d)(10). To date, relevant County Department heads have engaged with the OIR in good faith and with a collaborative spirit. During the period at issue, OIR information and access requests were responded to in a timely fashion. Several requests are currently pending.

In the spirit of coordination and cooperation, and to ensure smooth and routine access to necessary information, the OIR has entered into two agreements with County Counsel and OCSD. The documents detail agreed-upon guidelines for information sharing and access, including schedules for producing information following a request from the OIR. Nothing in the agreements limit or enhance the authority, independence, or duties of the OIR, or the County departments at issue – and they can be modified as needed. The current agreements are included in Attachment A to this report.

The OIR is also working to establish routine access to sensitive information in accordance with all applicable laws, which at times requires engagement with stakeholders outside of County government. For example, OCPD routinely gathers and makes use of sensitive and confidential information related to juveniles. State law restricts access to this information and empowers the Presiding Judge of the County’s juvenile court to determine instances in which protected or related information can be released. The Executive Director is currently seeking an order from the Court to obtain access to information of this type, including use of force related documents that do not implicate protected juvenile information.

Recent and Upcoming Work

The OIR is authorized to review systemic issues and specific incidents involving relevant County Departments, and to provide advice and counsel on relevant issues to both the Board and County partners. Generally, this work takes two different forms: active monitoring of the activities of relevant County Departments and independent investigations and reviews.

The OIR routinely receives resident complaints regarding services provided by the County Departments it oversees. When appropriate, it investigates these allegations independently to assess their merit and to recommend appropriate redress. Depending on the allegations and issues at play, it may also forward the complaints to the County Department at issue and monitor the investigation that ensues.

Over the last calendar quarter, the OIR worked to monitor and, as necessary and appropriate, participate in the internal processes of relevant County departments. For example, the Executive Director has attended OCSD critical incident reviews following deputy involved shootings. The OIR is also scheduled to attend meetings reviewing in-custody deaths. In attending meetings like this, the Executive Director aims to understand the deliberations of the Department at issue, and to recommend, as necessary, system-focused improvements.

The OIR also routinely provides advice and counsel to County Department heads working to improve their policies and practices. The OIR is currently assisting with the OCDA’s review and update of internal policy documents. The OIR also carried out an initial assessment of certain internal oversight processes within SSA and is working to implement modifications to

improve them. At the invitation of Director Debra Baetz, the OIR is currently working on identifying best practices to ensure that SSA can better identify and address likely instances of employee fraud.

Workplans

The OIR is required to solicit from, and provide regular feedback to, the Board regarding its work. Sec. 1-2-226(d)(2). The OIR has met with Board members, relevant County Department heads, and community stakeholders to preview its plans and to solicit areas of interest for reviews. With information gleaned from these meetings, the OIR developed a set of workplans that outline its current and future work. Each of these workplans is listed, in no particular order, and briefly summarized below and provided in Attachment B to this report. Unforeseen developments may lead to changes in these plans.

1. OCPD and OCSD Use of Force policies, training, and practices.

The OIR's highest priority review during the 2020-2021 cycle will focus on use of force policies, training, and practices of the OCSD and the OCPD. As proven by recent events throughout the country and local conversations about law enforcement, the decision to use force, whether lethal or less-lethal, serves as an area of high concern to the public. It is also a source of significant risk and liability for the County.

The final report will provide an overview of the use of force by the OCSD and OCPD and identify, if necessary, areas for improvement given relevant state and federal laws and ever evolving best practices. To ensure a full understanding of current practices, the OIR will review force policies and observe relevant training courses. It will also seek and review other information, including notable and recent uses of force, settled litigation related to use of force where the County is a party, and community and stakeholder input.

2. OCSD, ODA, and OPD treatment of evidence relevant to criminal allegations and charges.

In November of 2019, the OC Register published an article detailing a two-year OCSD audit that identified potentially systemic evidence handling failures.¹ According to the article, the audit found a "lack of consistent and accurate entries" and insufficient systems to ensure accountability.² Leading up to and following this and other public disclosures, the ODA began providing notice to affected individuals and their attorneys, including the OPD.

The OIR will carry out a review of evidence booking failures in order identify the causes for the failures, whether systems were in place both within and outside the OCSD to identify such failures as they took place, and the effectiveness of current remedial measures. Given the breath of time and incidents at issue, and the limited resources of the OIR, the review will focus

¹ Saavedra, Tony. *4 Orange County deputies fired after audit finds systemic abuses in booking evidence*, available at <https://www.ocregister.com/2019/11/18/4-orange-county-deputies-fired-after-audit-finds-systemic-abuses-in-booking-evidence/> (last accessed August 5, 2020).

² *Id.*

on instances in which evidence was not booked at all, not on instances in which evidence was booked late. Its review will also include an assessment of individual incidents.

3. *OCPD, ODA, and OCSD's use of psychological evaluations in hiring and fitness for duty reviews.*

On June 23, 2020, the Orange County Board of Supervisors (Board) approved a psychological evaluation services contract to support the work of the OCSD, the OCPD, and the ODA. In support of that contract, District Attorney Todd Spitzer requested that the Board direct the Office of Independent Review (OIR) to assess the “current psychological testing process and to make recommendations to ensure appropriate screening procedures are in place so that the most qualified job candidates are referred for hiring.”

The OIR will work to understand the methodologies and metrics that underly the psychological evaluations currently conducted in support of the hiring and assessment processes of the relevant County departments. It will then work to understand the impact of the evaluations on the candidate pool and current staff of each department and seek to ensure that the County's use of the evaluations maximizes the likelihood that it will identify candidates that are unsuitable for service as peace officers, and provide necessary support to its peace officers.

Recommended Staffing

County code permits the OIR's Executive Director to make recommendations regarding its staffing. Sec. 1-2-226(a). The OIR enjoys a broad jurisdiction, with the enviable mission of working with some of the largest, most complex County departments. Despite its extensive mandate, it currently only has one staff member: the Executive Director, with a budgetary allotment to hire an administrative assistant. The current staffing level makes it difficult for the OIR to carry out its work in a timely manner. In contrast, the Los Angeles County Office of Inspector General, which only provides oversight of that county's Sheriff's and Probation Departments, currently has approximately 28 staff, including six line attorneys.

The Executive Director has worked with the County's Chief Executive and Board offices to assess the OIR's staffing and ensure it meets the County's needs. Guided by those conversations, the OIR recommends hiring an Investigations Manager (classified as an Administrative Manager II) that will work with the Executive Director to develop and carry out its investigations and monitoring functions. The position requires extensive and diverse experience in investigations, audits, and government oversight and accountability work. With that experience, the OIR's permanent bandwidth for work will increase significantly – allowing it to request and review more information, conduct more interviews, and to more effectively engage with stakeholders. Several available candidates, each with relevant subject matter expertise and extensive experience, have been identified for the position.

The OIR is working within the County's budget process so that its recommendation is presented to the Board at the appropriate time. Considering the continuing negative impact of the coronavirus on the County's budget, the request is likely to propose a modification to the currently allotted administrative assistant position, dedicating those funds towards the proposed

Investigations Manager position. To accommodate the new position, the OIR's budget will require a restore augmentation of approximately \$132,000 for the 2020-2021 budget.

Conclusion

The OIR will be providing the Board with quarterly reports describing its work, along with special reports as it completes its reviews. It will continue to solicit feedback from the Board and relevant County and community stakeholders on a continual basis. It welcomes any and all opportunities to meet with interested parties.

Attachment A

**Memorandum of Understanding
Between
Office of Independent Review and County Counsel**


This Memorandum of Understanding (MOU) is entered into by and between the Orange County Office of County Counsel ("County Counsel") and the Orange County Office of Independent Review (OIR), collectively referred to herein as the "Parties," to address the provision of County confidential information by County Counsel to the OIR.

1. The term "information" as used herein refers, but is not limited to, documents in both printed and native electronic formats, including databases, and audio and/or visual recordings, photographs, and other documents.
2. The term "County confidential information" as used herein refers to information in the possession, custody, or control of the Office of County Counsel, the public disclosure of which is limited by privilege or law.
3. The OIR serves as an independent resource and counsel to the Orange County Board of Supervisors, and is authorized to review systemic liability issues with regard to performance and operations, investigate specific incidents, and identify and address high risk and potential liability involving the following Departments: Orange County Sheriff-Coroner, Probation, Office of the District Attorney, Office of the Public Defender, and the Social Services Agency. The OIR is further authorized to provide periodic and special reports to the Board of Supervisors, relevant County Department heads, and the public, as it deems proper and appropriate.
4. The OIR is authorized to work with relevant County Department heads to monitor active investigations, have access to and participate in confidential meetings and proceedings, and review and critique internal investigations and their conclusions, and review and develop corrective actions, among other things.
5. The Office of County Counsel serves as legal counsel for the County of Orange and represents the Board of Supervisors, County officers, and all County departments. The Office of County Counsel provides civil advisory and litigation services oversees the Orange County Fraud Hotline.
6. Title 18, Section 1-2-226, of the Orange County Codified Ordinances, provides the OIR Executive Director and staff with the same access to County confidential information as County Counsel.
7. The Parties recognize that, to perform its functions, the OIR may request information from County Counsel. When responding to requests from the OIR for County confidential information, County Counsel will identify both the County confidential information requested and the relevant privilege(s) or law(s) that impact the disclosure of said County confidential information.
8. In the event County confidential information is disclosed by County Counsel to the OIR, the OIR will treat that information as confidential in accordance with California Government Code section 6254.5(e). When disclosing County confidential information to the OIR, County Counsel does not waive any applicable privileges or confidentiality as to that confidential information.

9. Any County officer, agent, or employee who improperly discloses County confidential and/or privileged information is subject to discipline and may further be subject to criminal and/or civil penalties where applicable.
10. If the OIR intends to disclose any portions of, or statements derived from, County confidential information in the possession of and provided by County Counsel, at least 5 business days before the intended disclosure, OIR will provide County Counsel a written draft of the relevant language and identify the intended recipients. County Counsel will treat any draft language it receives pursuant to this agreement as confidential.
11. If County Counsel objects to the disclosure of the provided draft language, it will provide OIR with notice of objections no later than three (3) business days following its receipt.
12. If the OIR does not receive objections within the allotted time period, then it will proceed with its disclosure.
13. In the event of a dispute between the Parties over the disclosure or use of County confidential information, the Parties will confer in a timely fashion and endeavor to reach a mutually agreeable resolution.
14. The parties understand and agree that the OIR may directly request and obtain information from County Departments, and that the use of such information will not be subject to this MOU.
15. This document constitutes the entire agreement between the OIR and County Counsel on the matters raised herein. The MOU may be amended only in writing.
16. The MOU will be terminated upon written notice of either party.
17. Notwithstanding any provision to the contrary contained in this MOU, the parties agree that no provision of this MOU shall require any party to violate any applicable statute, rule of law or regulation.

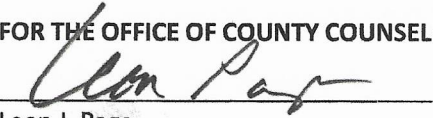
The Parties acknowledge that they have read and understand and agree to comply with the terms and consequences this MOU.

FOR THE OFFICE OF INDEPENDENT REVIEW:


Sergio Perez
Executive Director
Office of Independent Review

June 3, 2020
Date

FOR THE OFFICE OF COUNTY COUNSEL:


Leon J. Page
County Counsel
Office of County Counsel

June 3, 2020
Date

Memorandum of Understanding

This Memorandum of Understanding (MOU) is entered into on this 10th day of June, 2020 by and between the Orange County Sheriff's Department ("OCSD") and the Orange County Office of Independent Review ("OIR").

I. Introduction

It is understood and agreed that a cooperative relationship between OCSD and the OIR is in the best interest of the residents of Orange County. OCSD embraces transparency in its operations and is committed to carrying out the provisions of Title 18, Section 1-2-225 and 1-2-226. OCSD and the OIR (collectively "the Parties") enter into this Memorandum of Understanding (MOU) with the goal of ensuring cooperative interaction such that law enforcement services are delivered in Orange County in a manner that effectively ensures officer and public safety, empowers the OIR to carry out its accountability functions, and promotes public confidence in OCSD and the OIR and in the services each delivers.

Nothing in this MOU shall limit or enhance the respective authority, independence, or duties of OCSD and the OIR. The parties intend that all disclosures contemplated by this MOU comply with all applicable laws, and it does not expand or restrict the authorities of the parties set forth in Title 18, 1-2-226.

II. Definitions

"OIR" – means the Executive Director of the OIR, who reports to the Board of Supervisors and anyone employed by the OIR, including attorneys, investigators, staff, and volunteers.

"Employee or "Employees" – means anyone employed by OCSD, including, but not limited to, the Sheriff, Executive Command Members, Division Command Members, Deputies, Special Services Officers, or professional staff members.

"Information" – means any oral or written communication, including formal and informal discussions, documents in both printed and native electronic formats, databases, and audio and/or visual recordings, photographs, and other documents.

III. Authority & Scope

1. The authority of the OIR is set forth in Title 18, 1-2-226. The OIR serves as an independent resource and counsel to the Orange County Board of Supervisors, and is authorized to review systemic liability issues with regard to performance and operations, and review specific incidents, which may identify and address high risk and potential liability issues involving numerous County Departments, including the Orange County Sheriff-Coroner.
2. The parties understand and agree that the OIR has the same access to confidential information as the Orange County Office of County Counsel. The OIR shall be provided upon request non-

confidential and/or non-privileged information permitted by law or otherwise publicly released by OCSD. The remainder of this MOU shall address access to privileged and/or confidential information.

IV. Cooperation & Access

3. OCSD agrees to facilitate and promote cooperation with the OIR in the performance of its work. Such cooperation shall include: notification of critical incidents, including but not limited to, Officer-Involved Shootings and In-Custody Deaths, with sufficient time to allow the OIR to respond, as necessary and appropriate, to the scene of relevant investigations; and the timely and complete production of requested information to the full extent permitted by law.
4. The OIR shall generally have routine and timely access to relevant Department policy, practice, and training-related information, including, but not limited to, manuals, memoranda, and live-trainings.
5. OCSD agrees to provide timely responses to OIR requests for information. In the event that a response cannot be provided within 10 business days, OCSD will notify the OIR and the parties will agree to an estimated timeline for responding.
6. The OIR shall receive timely notice of, access to, and ability to participate in meetings and proceedings in order to carry out its duties. The OIR shall also have, as necessary and appropriate, access to OCSD facilities in order to carry out its monitoring duties.
7. The OIR will limit its monitoring to the authority provided in Title 18, 1-2-226. The OIR will not interfere with the Sheriff's investigative authority or obstruct any investigation, and the Sheriff may limit the manner of such monitoring to protect an active investigation.
8. Without specific authorization from the Sheriff, OIR personnel will not interview any of the involved parties or witnesses or independently collect evidence while there is an active, related OCSD criminal or administrative investigation. The incidental gathering of information for an unrelated purpose, such as taking a complaint from a complainant, shall be permitted if it is done in a manner that does not interfere with or obstruct the pending investigation.
9. If the OIR becomes aware of, or possesses, any information relevant to an OCSD investigation that the OIR has reason to believe is not already known to or in the possession of OCSD, such information will be promptly provided to the appropriate OCSD personnel.

V. Confidentiality

10. The OIR will maintain the confidentiality of all confidential information received from OCSD and its employees, and of any confidential information derived therefrom. For example, confidential information protected from disclosure by law, include but is not limited to, personnel records under Penal Code §§ 832.7 and 832.8 and Cal. Const. art. 1, § 1 et seq.; criminal investigations under Evidence Code § 1040, specified victim and juvenile information under Penal Code §§ 293 and 11167.5, Welfare and Institution Code §§ 15633 and 827; CLETS and criminal history information

pursuant to Government Code § 15153, and Penal Code §§ 11105 and 13300; or decedents' medical information in Coroner Records under Civil Code §§ 56.10(b)(8) and 56.13.

11. The parties agree that the OIR's presence at certain meetings, reviews, and other proceedings where discussions are had with the Sheriff's legal counsel regarding incidents, investigations, and/or disciplinary matters, is necessary in furtherance of Title 18, 1-2-226. Disclosure of information to the OIR by OCSD employees does not waive any applicable privileges or confidentiality. However, attendance may be restricted if the Sheriff determines such presence would interfere with or obstruct an ongoing investigation. All information provided to the OIR by OCSD employees that is not otherwise publicly available is deemed to be confidential and subject to the Attorney-Client Privilege set forth in Title 18, 1-2-226(b). The OIR agrees to maintain and safeguard the confidentiality of all such discussions.
12. No files, records or copies thereof shall be made or removed from OCSD premises without the express permission of the Sheriff's Department. Notetaking by OIR shall not violate this provision. OCSD will provide copies of completed investigations, upon request. Notwithstanding the foregoing, the Sheriff retains the discretion, in unusual circumstances, to require that records be reviewed by the OIR on OCSD premises.
13. The OIR will not disclose publicly, including in any open session of the Board of Supervisors, any privileged or confidential information provided by the Sheriff's Department. OIR agrees that should the OIR receive a request from the Board of Supervisors for confidential information received from the Sheriff's Department, the OIR will not turn over the requested information until the Sheriff has been advised of the request and the Sheriff has been given an opportunity to make a formal objection to the Board of Supervisors regarding the disclosure.
14. The OIR will take steps to ensure that disclosure of confidential records does not occur. Such steps shall include the requirement that all OIR personnel be provided a copy of this MOU and written advisement of their duty to maintain the confidentiality of all privileged and/or confidential information they access, and that those individuals also sign a nondisclosure agreement.

VI. Reports to the Board of Supervisors and the Public

15. The parties agree that the OIR shall make available for review by OCSD any reports intended for the Board of Supervisors or for public dissemination containing non-public information at least five (5) business days prior to their release, in order to afford OCSD a reasonable opportunity to verify that no confidential or erroneous information is included within. OCSD agrees to treat such draft reports as confidential, to be released or distributed beyond OCSD employees only with the express approval of the OIR.
16. If OCSD objects to the disclosure of the provided draft language, it will provide the OIR with notice of objections related to confidential or erroneous information no later than three (3) business days following its receipt. The parties agree to work together in good faith to resolve any objections in a timely manner.

VII. Penalties for Improper Disclosure and Withdrawal

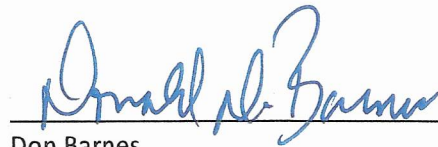
17. Any County officer, agent or employee who improperly discloses confidential and/or privileged information is subject to discipline, up to and including termination, and may further be subject to criminal and/or civil penalties where applicable. The parties agree to cooperate fully with any investigation of an alleged improper disclosure of confidential and/or privileged information.
18. This document constitutes the entire agreement between the OIR and OCSD on the matters raised herein. The MOU may be amended only in writing. Either party to the MOU may terminate its participation at any time, upon written notice to the other party. Any information provided prior to such notice, and within 24 hours following such notice, remains subject to the terms of the agreement. Any such information must be returned to OCSD forthwith. The Parties acknowledge that they have read and understand and agree to comply with the terms and consequences of this MOU.

FOR THE OFFICE OF INDEPENDENT REVIEW:

A handwritten signature in black ink, appearing to read 'S. Perez', written over a horizontal line.

Sergio Perez
Executive Director

FOR THE ORANGE COUNTY SHERIFF-CORONER:

A handwritten signature in blue ink, appearing to read 'Don Barnes', written over a horizontal line.

Don Barnes
Sheriff-Coroner

Attachment B



Office of Independent Review

Assessment of Evidence Booking Failures

Background

On November 18, 2019, the Orange County Register published an article detailing an Orange County Sheriff's Department (OCSD) audit that identified "systemic abuses in the handling of evidence."¹ According to media reports, OCSD deputies did not book approximately thirty (30) percent of the evidence in a timely fashion, in violation of department policies. Public accounts that followed further identified deputies who had failed to book evidence, despite filing reports that attested to proper treatment and logging.² OCSD moved to hold deputies accountable, and to improve its policies and practices to address these failures.

The proper treatment and booking of evidence is a necessary component of a fair criminal justice system, serving as a lynchpin guarantee that affects criminal charges, defenses, and the pleas, exonerations, or convictions that follow. The past failure of OCSD to effectively deal with evidence is likely to continue impacting Orange County's justice system, and its partner agencies – the Orange County Office of the District Attorney (ODA) and the Office of the Public Defender (OPD) – in the future.

Scope and General Objectives

The Orange County Code authorizes the OIR to work with relevant County Department heads to review allegations implicating significant liability, and to independently participate and review the development of corrective actions. It is also empowered to review County policies and recommend reforms consistent with evolving best practices.

The OIR's review will focus on instances in which OCSD deputies failed to book evidence – not on instances in which evidence was booked late. The review will assess OCSD policies and practices that were in place during and after evidence booking issues were uncovered – enabling it to determine the causes of the failures and to assess the corrective actions that followed. The OIR will then make any necessary recommendations.

¹ Saavedra, Tony. *4 Orange County deputies fired after audit finds systemic abuses in booking evidence*, available at <https://www.ocregister.com/2019/11/18/4-orange-county-deputies-fired-after-audit-finds-systemic-abuses-in-booking-evidence/> (last accessed August 5, 2020).

² Saavedra, Tony. *Former OC deputies plead guilty to misdemeanors for mishandling evidence*, available at <https://www.ocregister.com/2020/06/08/former-oc-deputies-plead-guilty-to-misdemeanors-for-mishandling-evidence/> (last accessed August 5, 2020).

The review will also seek to determine when other justice-related County departments – the ODA and OPD – became aware of booking issues. It will review the policies and practices that were in place at the time to help determine whether any changes should be made to ensure that such issues, should they reoccur, are spotted in a timelier fashion.

This assessment will answer the following questions:

- 1. What systemic issues contributed, caused, or facilitated evidence booking failures?**
 - a. What were the relevant policies and practices in place at the time?**
 - b. What relevant accountability mechanisms, if any, existed at the time?**
- 2. Did the ODA and OPD have policies or processes in place to identify, in a timely fashion, evidence booking failures? Are those frameworks in place now?**
- 3. What corrective measures did OCSD undertake to remedy evidence booking failures?**
 - a. Are the corrective measures likely to prevent evidence booking failures in the future?**

The finished review will be memorialized in a report to the Board and relevant County department heads. It will not contain any confidential information which has not been authorized for release by the relevant County departments.

Information to be Reviewed

The OIR will request and review several different categories of information to carry out its review. While categories of information are listed below, they are likely to change as the review goes on.

1. OCSD, ODA, and OPD policies relevant to the treatment of evidence;
2. OCSD audits of evidence treatment and booking by its deputies;
3. Information gathered through a review of a selection of administrative and criminal investigation records related to individual instances of the failure to book evidence;
4. Information gathered through interviews of relevant stakeholders, including OCSD line staff, instructors, command staff, organized labor representatives, ODA staff, OPA staff, and community members; and,
5. Information related to best practices in evidence gathering, documentation, treatment, and storage, including policy and practice documents of similarly situated law enforcement, prosecution, and public defender agencies.



Office of Independent Review

Use of Force Policies and Practices Assessment

Background

On June 9, 2020, the Orange County Board of Supervisors (Board) adopted a resolution acknowledging the “anguish and anger at the inexcusable treatment of Mr. George Floyd in Minneapolis, Minnesota.” Floyd was killed on May 25, 2020, during an arrest for allegedly using a counterfeit bill. The event triggered a newly resurgent and visible conversation regarding policing practices, with use of force at the center. The Board’s resolution affirmed its continuing commitment to community policing, intolerance of racism, and justice reforms.

The authority to use force to address threatening situations, prevent harm, and conduct an arrest is one of the most impactful and high-risk practices entrusted to our peace officers. Over the last several years, the County has faced numerous claims and legal judgments arising from uses of force by its employees. For that reason, the policies and practices of the Orange County Sheriff’s Department (OCSD) and the Probation Department (OCPD) merit an assessment focused on ensuring they reflect current legal requirements and established best practices.

Scope and General Objectives

The Orange County Code empowers the OIR to review County policies and recommend reforms consistent with evolving best practices. It is also authorized to identify high liability issues and to ensure they are addressed. Both the OCSD and OCPD employ sworn officers in correctional and field settings that are authorized to use less-lethal and lethal force, including firearms. The use of force is a high liability issue.

This review will assess the use of force policies and practices of the OCSD and OCPD by (1) comparing relevant policies to applicable laws and established best practices; (2) reviewing training curricula and practices to ensure that policies are effectively communicated to their respective members; and, (3) assessing practices to identify any issues that suggest policies and training merit modifications.

This assessment will answer the following questions:

- 1. What use of force policies guide the actions of OCSD and OCPD members?**
 - a. Are the policies in compliance with applicable laws and best practices?**
 - b. Are the policies sufficiently clear and comprehensive to enable members to lawfully and effectively do their work?**

2. **What use of force training do OCSD and OCPD members receive?**
 - a. **Is the training in accord with relevant policies and reflective of best practices?**
3. **What processes are in place to review uses of force?**
 - a. **Are existing reviews of force in compliance with best practices?**
4. **What does a review of a sample of use of force incidents, and related information, show about the effectiveness of OCSD and OCPD force policies and training?**

The finished review will be memorialized in a report to the Board and relevant County department heads. It will not contain any confidential information which has not been authorized for release by the relevant County departments.

Information to be Reviewed

The OIR will request and review the following categories of information to carry out its work, with necessary modifications as the review unfolds:

1. Use of force policies from the OCPD and OCSD;
2. Use of force training materials, including, schedule permitting, access to live courses provided by the OCPD and OCSD to recent-hires and members;
3. Use of force incident information, including but not limited to, use of force reports, videos, and information related to their review by the OCPD and OCSD;
4. Information gathered through interviews and conversations with relevant stakeholders, including line staff, instructors, command staff, organized labor representatives, and community members; and,
5. Information related to use of force best practices, including from the International Association of Chiefs of Police, the Police Executive Research Forum, California POST, and policy and practice documents of similarly situated law enforcement agencies.



Office of Independent Review

Peace Officer Psychological Evaluations Assessment

Background

On June 23, 2020, the Orange County Board of Supervisors (Board) approved a psychological evaluation services contract to support the work of the Orange County Sheriff's Department (OCSd), the Probation Department (OCPD), and the Office of the District Attorney (ODA). In support of that contract, District Attorney Todd Spitzer requested that the Board direct the Office of Independent Review (OIR) to assess the "current psychological testing process and to make recommendations to ensure appropriate screening procedures are in place so that the most qualified job candidates are referred for hiring."

The work of a peace officer is difficult and high-risk. Peace officers are routinely exposed to stressful crises and their after-effects – interacting with Orange County residents on their worst days, and often reviewing and summarizing sensitive and traumatic information. The toll of the job can be great, and it can potentially lead to impaired decision-making that negatively impacts both the peace officer at issue, her or his loved ones, and the public. For those reasons, County departments that employ peace officers must effectively assess the psychological fitness of applicants and ensure that current sworn officers are provided necessary support services.

Scope and General Objectives

The Orange County Code provides the OIR with the authority to review systemic issues involving relevant County Departments, and to increase accountability by assessing their transparency and performance. Psychological Consulting Associates, Inc (PCA). provides psychological evaluation services for the OCSd, OCPD, and ODA. The relevant County departments make use of these services to vet peace officer candidates and to carry out, as needed, fitness for duty evaluations. As such, these services and their impact are within the purview of the OIR.

Peace officers wield a tremendous amount of necessary discretion in their day-to-day work, making their psychological health and temperament an essential component of providing effective and constitutional policing services. This assessment will seek to assess the psychological evaluations provided by PCA to the relevant County departments, including those administered during the hiring process and in fitness for duty assessments. It will also assess the treatment of the results by the relevant County departments in comparison to best practices by similarly situated law enforcement agencies. If necessary, the review will provide tailored recommendations to address any needed improvements.

This assessment will answer the following questions:

- 1. What are the methodologies and metrics that underlie the psychological evaluations conducted by PCA?**
- 2. Do the methodologies and metrics applied in current psychological evaluations measure propensity for undesirable behavior and issues related to employee wellness?**
- 3. How are the results of the psychological evaluations used by the relevant County departments?**
- 4. What are the characteristics of the applicant pool before and after psychological evaluations?**
- 5. What policies are in place to determine whether a peace officer, once hired, should be psychologically evaluated?**
 - a. What triggers a “fitness for duty” psychological evaluation for peace officers working for the relevant County departments?**
 - b. How many fitness for duty evaluations were conducted over the last two years?**
- 6. Are the current use(s) of the psychological evaluations by the relevant County Departments in line with best practices?**

The finished review will be memorialized in a public report to the Board and relevant County department heads. It will not contain any confidential information which has not been authorized for release by the relevant County departments.

Information to be Reviewed

The OIR will request and review several different categories of information to carry out its review. While categories of information are listed below, they are likely to change as the review goes on.

- 1. Policies from each of the relevant County Departments related to psychological evaluations and their use in hiring and employee assessment processes;**
- 2. Information related to the psychological evaluations administered by PCA, including materials describing the process, and information related to relevant metrics;**
- 3. Information related to the applicant pools for the relevant County Departments, including demographic data (self-reported age, gender, race/ethnicity, etc.), for the last two years;**

4. The number of psychological tests conducted by each of the relevant County Departments, broken down by purpose (hiring or fitness for duty assessment), for the last two years;
5. Information related to best practices with regards to the use of psychological evaluations of applicants and peace officers, including from the International Association of Chiefs of Police and California POST, and similarly situated law enforcement agencies.