



Stephen J. Connolly
Executive Director

TO: Board of Supervisors
FROM: Stephen J. Connolly
DATE: Friday, September 20, 2013
RE: OIR Activity Report

I. Discipline Process: Cases and Trends

OIR continues to monitor all investigations into allegations of officer misconduct involving the Sheriff's Department. Through late August, the Department had opened 90 new Internal Affairs cases in 2013, which continues a trend toward fewer new cases each year that began in 2010. 83 of the new cases involve on-duty conduct, while only 7 related to off-duty behavior.

Additionally, several cases which were opened last year have reached final resolution. Some included recommendations of discharge for the involved employees, including the following:

- A jail deputy who was found to have developed an inappropriate relationship with an inmate and that inmate's girlfriend, and to have facilitated various favors for the inmate accordingly.
- A custody assistant who was found to have had inappropriate communications with several inmates, including warning them about planned searches by the deputies, etc.
- A jail deputy who was found to be insubordinate to supervisors and to have engaged in low level mistreatment of inmates on several occasions.
- A jail deputy who had been on extended administrative leave as a result of a domestic incident with his wife, and who had a history of disciplinary issues.
- A patrol deputy who failed to properly book a recovered weapon into evidence, and then gave false statements about it.

Six of this year's cases have been assessed for possible criminal prosecution, in coordination with the District Attorney's Office. Among them are the following allegations:

- Inappropriate timekeeping by a supervisor, so as to benefit the members of his team regarding their overtime and vacation pay (investigation pending).
- Theft of inmate property by unknown employees at one of the County jail facilities (investigation pending).
- Inappropriate sexual contact between a deputy and inmate (investigation concluded; charges not substantiated).

OIR also continues to monitor the citizen complaint process. 23 new complaints that originated from the public have gone on to become formal Internal Affairs investigations¹; these allegations range from excessive force (a Taser case that is currently under review) to improper interference by a deputy in a civil dispute, to intimidation by a sergeant against a citizen who wished to make a complaint about a traffic stop. Several of the cases stem from inmates alleging various kinds of mistreatment, including one recently completed case that resulted in discipline for a transportation deputy who acknowledged losing his temper and berating an inmate during a bus ride.

After contact with the complainant, OIR recently requested that the Department expand from its initial review of a traffic stop that alleged discourtesy and retaliation on the part of the officer. The complainant especially resented two of the violations that the deputy added to the original ticket, and also claimed the officer had been disrespectful with the driver's paperwork, tossing it back into the car. Although the audio recording of the incident did not reflect unprofessional behavior, OIR nonetheless asked for a full investigation in light of the range of complainant concerns. The Department agreed to re-open the case, which it had originally closed out at the Division level. The outcome is pending.

II. Safe Driving Initiative

Among the noteworthy administrative investigations reviewed by OIR in the last several weeks (including cases which originated last year) are the following:

A citizen contacted the Sheriff's Department for assistance after an alleged "road rage" incident in the early morning hours. He said that a man in a truck had followed him off the freeway and continued to tail him with high beams on, even after the citizen pulled over to let him pass. The complainant proceeded to a relative's home, where he was confronted by the man – who eventually identified himself as an off-duty deputy. The deputy left the scene prior to the arrival of Sheriff's personnel.

¹ This is out of a total of 78 complaints that have been processed through the Department's Commendation/complaint protocol in the first eight months of 2013. Of these, 13 have been classified as "Service Complaints" that express dissatisfaction with OCS D practices rather than individual officer conduct. The remainder are either still under review, or were resolved at the unit level – prior to becoming a full-fledged and formal personnel investigation – based on the nature of allegation or the initial investigatory findings.

In the subsequent investigation, the deputy claimed that the other driver had initially been driving erratically and following him (instead of vice versa), and that his own subsequent actions were based on legitimate law enforcement concerns. OIR encouraged the Department to conduct further investigation in response to those assertions. After several additional interviews, the Department concurred with OIR's recommendation that the deputy receive a suspension for violating policy in his handling of the incident.

An off-duty investigator was cited by the CHP for speeding on the freeway. After receiving the ticket, he allegedly attempted to retaliate by encouraging deputies at the Sheriff's Department booking facility to delay the processing of arrests from CHP officers. He received a significant suspension for both his driving (which was part of a pattern of behavior) and his unprofessional actions toward another agency.

An on-duty deputy damaged his county vehicle by hitting a curb at approximately 50 miles per hour. He then failed to report the accident to his supervisor, instead simply bringing the car to his substation and reporting the damage (including flat tires) to an employee in the equipment room so it could be repaired. The Department's subsequent investigation led to a suspension for both the careless driving and the failure to report properly.

A deputy attempting to "catch up" to a vehicle pursuit drove at high speeds through a number of intersections before colliding with a civilian motorist, resulting in vehicle damage and significant injuries to both parties. The deputy acknowledged several violations of Department training and policy during the incident, and received a significant suspension.

Two deputies who were attempting to join a pursuit ended up in a collision when one stopped to clear an intersection and was struck from behind by the other. The second deputy had other documented driving issues in his history; the final outcome is pending, but OIR has recommended a significant suspension.

Problematic driving is, of course, the common denominator that links these different incidents. Unfortunately, there is also an additional case pending that involved a single-car accident in the early morning hours. The deputy lost control of his radio car and struck a tree; he was severely injured.

That case, like some of the others described above, reflects the most troubling effect of dangerous driving, which is the physical threat to both the public and the deputies themselves. The obvious additional consequences include property damage and liability exposure. Finally, it is also counterproductive: officers can't render aid and handle a call if they never make it to the scene because of an accident.

The Department is looking at this issue from a variety of directions. As discussed above, a firm stance on discipline is part of that response: all preventable accidents, no matter how minor, are reviewed for possible disciplinary consequences, and the Department's Traffic Collision Review Board (which OIR directly monitors) keeps comprehensive records on individual officer performance as well as cumulative statistics.

Not all the news is discouraging. In fact, the latest TCRB quarterly updates show that overall collision rates decreased in relation to the second quarter of 2012, as did the number of severe and preventable collisions. Among other relevant statistics are the following:

- There were 97 recorded collisions in the first half of 2013.
- Of these, 19 were designated as "severe" based on injury and/or degree of property damage.
- 53 of the 97 collisions were deemed "preventable" in the sense that the deputy driver was found to have been partially or entirely at fault.
- In the "severe" collisions, the leading causal factor was "unsafe speed." For the less severe, "unsafe backing" led the statistics.

This year's serious accidents are a reminder of the importance of the issue and the need for pro-active approaches. At the Sheriff's direction, the Department has put together a committee to assess the causes of, and potential responses to, dangerous driving practices. Two Commanders are co-chairing the committee, but it is also relying on input from actual deputy "end-users" to gain insight into how bad habits develop and what practical reforms might make a difference.

There have already been some interesting findings and recommendations. New software gives the Department the ability to track speeds of individual radio cars, and to provide alerts to the OCSO communication center when threshold speeds are reached. (A recent week-long test run of the software, without identifying information, revealed multiple instances of apparently excessive driving.) The Department is evaluating its options for making use of this information. Clearly, though, the scrutiny represented by any digital monitoring program is likely to make individual deputies more conscious of their driving decisions.

The Department is also considering mapping technologies that would provide directions and other information audibly, and lessen the need for distracted driving. Additionally, in response to articulated concerns about seat belts getting tangled with the equipment deputies wear, the Department is making extenders available for those who wish to have them, and re-emphasizing its policy requirements and training on this issue.

Unfortunately, fast and distracted driving is pervasive throughout law enforcement. It has a variety of causes, ranging from legitimate job-related exigencies to the complacency that can occur when officers are “above the law.” The Sheriff’s Department recognizes the cultural realities and the challenges that go with influencing this behavior. Its determination to address the issue nonetheless is encouraging, and OIR will be watching the progress of the various initiatives.

III. Deputy-Involved Shootings: Updates

The Department’s second officer-involved shooting of the year occurred on August 11 in the city of Yorba Linda. A deputy fired one round and struck the driver of a vehicle that the deputy had pulled over moments before. The deputy was at the driver’s side window of the suspect vehicle, and was approximately two minutes into the contact, when he fired the single shot. The suspect then drove off, leading OCS D personnel on a pursuit that ended up on the freeway. The driver collided with two additional civilian cars. The resultant damage to his own vehicle, perhaps in conjunction with his gunshot wound, eventually caused him to pull over and surrender. He was taken into custody without further incident.

The suspect was hospitalized for several days with a serious injury, but he survived. He is currently out on bail and facing a range of charges in connection with the incident. The deputy was unhurt.

Because it was a “hit” shooting, the District Attorney’s office responded and took charge of the investigation into the legality of the deadly force. OIR also received notification and rolled out to the scene; I had the opportunity to hear the initial briefings at both the location of the first encounter and the site where the pursuit ended.

The investigation has produced much relevant evidence, starting with the recordings from the deputies’ in-car video systems. As for testimony, the shooting occurred in the early afternoon hours in a restaurant parking lot, but the only civilian witness to see the incident directly was apparently the suspect’s female passenger. She gave a statement to investigators – as did the suspect when his condition had stabilized.

Sheriff’s Department personnel – including the backup deputies who had arrived at the car stop just before the shooting – were also interviewed. Most relevant was the voluntary statement provided by the shooter deputy, which obviously bears on his state of mind and justification for the force.

The results of the District Attorney’s review are pending. Meanwhile, the Department has moved forward with its own revamped administrative protocols. The Critical Incident Review Board met in early September to conduct its initial assessment and look for policy, training, or tactical issues relating to the case. Additionally, OCS D has further refined its administrative investigation process to make that component a faster and more robust element of the Department’s response.

Internal Affairs investigators have gone to the scene of shooting incidents since May of 2011, but their subsequent responsibilities have sometimes been unclear – especially in hit shootings where the District Attorney’s criminal investigation has taken precedence. Out of wariness about inadvertent interference with the other process, the administrative evaluation of the force and related issues is often delayed for many months.

OIR recognizes and respects the reasons for this, but it has also urged the Department to be more assertive and pro-active on the administrative side. Incidents often feature a range of components that bear on Department policy and officer performance – many of which are outside the narrow focus of the District Attorney investigation.² OIR has worked with the Department on identifying elements that can and should be addressed more promptly than in the past.

Additionally, the Department has recently buttressed its approach to the administrative evaluation of involved deputies. For example, though Training Division personnel have previously been an under-utilized resource, this is changing.

The Department’s Training Division is best situated to provide authoritative information about specific tactical scenarios. It can evaluate officer performance from the perspective of the actual training that deputies receive, and the “best practices” that are constantly being updated throughout law enforcement. Accordingly, designated representatives from the Department’s Tactical Training Center (TTC) will now participate directly in the administrative review process for shooting cases. This will ensure a coherent and effective analysis that will buttress the outcomes of individual investigations as well as the future training of the Department at large

The final administrative review of several shooting cases – dating back to 2011 – and the relevant investigative interviews and assessments will now incorporate the expertise of the TTC as a formal and documented part of the process. OIR looks forward to monitoring the results of this new approach.

IV. Probation Department: Case Update

OIR recently met with Probation Department executives for a final debrief regarding the Department’s response to the Youth Guidance Center escape that occurred in March of this year. The case gained notoriety because of the subsequent involvement of the escapee in a Nevada car accident that killed five members of a family. As you

² For example, the Department recently concluded an investigation into unprofessional conduct by a deputy at the termination of a vehicle pursuit that started in Stanton and resulted in a shooting last February. As cameramen from the media approached to film the arrest of the suspect, a deputy used profanity repeatedly in trying to move them back from the immediate scene, and later in audibly disparaging them in discussion with other deputies. The deputy took full responsibility for his actions in the interview with Internal Affairs; OIR has recommended minor discipline.

know, the criminal investigation by Nevada authorities determined that the juvenile in question was not the driver of the responsible vehicle, as originally suspected, but instead was only a passenger. Accordingly, he is back in Orange County to face charges related to the escape.³

Since the time of my last report to your Board on these matters, the Department has finalized its administrative investigation and determined that two employees had committed low-level violations of policy in conjunction with the incident. In separate contexts, both fell short of standard due diligence in ways that left the juvenile unmonitored for several minutes. It was during that time that he is believed to have left the facility.⁴

OIR concurred with the outcome and disposition of the case. Neither employee's actions were egregious, but the discipline was warranted and helps to reinforce the expectations that the Department rightly maintains. That said, the juvenile's ability to leave the facility was also a function of the setting itself. By design, the Youth Guidance Center is a non-secured detention complex, and the minors that go there must meet eligibility criteria that relate to low offense levels and the assessment of other risk factors. Probation and the court system recognize the therapeutic and rehabilitative benefits of a camp environment. Accordingly, they also accept the relative ease with which the minors can "escape," or walk away.

In the spring, questions arose as to the nature and sufficiency of Probation's response in the immediate aftermath of the escape – you will recall that several weeks passed between the youth's disappearance and the fatal accident that led to his arrest in Nevada. OIR has reviewed the Department's specific actions in this regard, and concurs with the determination of Probation executives that its staff followed proper protocols in attempting to locate and apprehend the juvenile. It provided prompt notification to the Sheriff's Department, and coordinated with Sheriff's officers in the ensuing days to take affirmative – if unsuccessful – investigative steps. Viewed through the prism of what was known at the time, and of the standard approach to a comparable situation, Probation's response was duly diligent.⁵

OIR also assessed the several days that it took to enter the relevant arrest warrant for the juvenile into the system. While there is no evidence suggesting that this delay had a specific or negative impact on the case, efficiency in this regard is obviously preferable. Accordingly, Probation officials have revamped the Department's policy for "Institutional Escape Warrants" in an effort to streamline the process. The new policy imposes a hand-delivery requirement on the employees who shepherd the packets through to the District Attorney and Juvenile Court.

³ Because he is over eighteen, the youth is now in Sheriff's Department custody in on the of the County Jail facilities.

⁴ Some of the particulars of the young man's departure are still unclear; through his lawyers, and because of related allegations, he is not cooperating with requests to interview him about the escape or its aftermath.

⁵ Were a minor to escape from Juvenile Hall, which is a secured facility for more serious offenses, the standard response would be even more rigorous in light of the relatively higher public safety concerns.

The tragic events in Nevada – and the weeks of confusion as to the juvenile’s culpability for the accident – made this a very unusual case. However, Probation’s response to it has seemingly been thorough and thoughtful in terms of both employee accountability and an examination of its practices.

V. Conclusion

Thank you for your attention to this memorandum. Please feel free to contact me at your convenience regarding these contents or other matters related to my responsibilities.

Best regards,

Stephen J. Connolly
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