

How Independent is the Office of Independent Review?



GRAND JURY 2021-2022

How Independent is the Office of Independent Review?

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How Independent is the Office of Independent Review?

SUMMARY

The Office of Independent Review (OIR) should be a valuable resource that serves as independent counsel to the Orange County Board of Supervisors (BOS). The OIR provides oversight and conducts investigations while also ensuring transparency and best practices at five public agencies. These agencies are the Orange County Sheriff-Coroner Department (OCS), the Office of the Public Defender (OPD), the Office of the District Attorney (OCDA), the Probation Department (PRO), and the Social Services Agency (SSA). The OIR is tasked with identifying systemic problems and reviewing County Department policies, practices, and procedures. In addition, the OIR is called to the scene of any in-custody death or officer-involved shootings. The OIR's recommendations and advice should be without influence. However, the OIR is experiencing unjustified restrictions from the BOS as it has in the past.

In August of 2020, the OIR commenced investigative and oversight activities with a highly qualified, albeit small, staff of two and a BOS-supported mission to oversee five vital agencies that employ approximately 10,000 people. In August of 2021, the OIR published a report entitled "Investigation of OCS Use of Force Policies and Practices." The OCS reacted both publicly and privately to the report's findings, expressing displeasure with both the content of the report and the use of social media to help publish the findings.¹ Notably, however, Section 1-2-226(d)(3) of the Codified Ordinances of the County of Orange (OCCO) specifically authorizes the use of social media as well as traditional reporting methods.

Despite the support publicly expressed by several Supervisors, a prominent member of the BOS reacted to the OCS's displeasure by contacting the Orange County Chief Executive Officer (CEO)'s office and requesting that a hiring freeze be placed upon the OIR. The CEO's office complied with the Supervisor's request.

The effect of that unwarranted hiring freeze appeared to undermine the credibility of the OIR and challenge its independence. This interference with the OIR through budgetary means repeats a pattern that began with its first iteration dating back over a decade. The decision to place any restrictions on any department's budget, hiring, or operations should not be under the control of a single Supervisor.

Hired in May 2020, the Executive Director of the OIR resigned in April of 2022 following the publication of its first public report. This resignation may have resulted in part from the prolonged and untimely hiring freeze, and left the OIR without an Executive Director and only one Investigations Manager to oversee multiple agencies. The BOS then formed an ad hoc

¹ Letter From Sheriff Don Barnes to the Board of Supervisors Chairman, Andrew Do, August 20, 2021.

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committee of two Supervisors to reassess the mission statement of the OIR and begin a search for a new Executive Director. The Investigations Manager subsequently resigned in June 2022.²

Without a permanent Executive Director and sufficient staffing, the OIR is restricted in its ability to function as intended. The lack of sufficient staffing will create more roadblocks for the OIR in its ability to effectively provide input and oversight of the public agencies under its purview. At a minimum, the BOS should hire a permanent Executive Director who meets the qualifications as publicized in the job posting dated June 1, 2022. That job description requires a candidate who is "...well versed in Federal and State statutory and constitutional laws, policies, and procedures governing the County, laws related to public safety investigations, and the essential elements of the Public Safety Officers Procedure Bill of Rights, (POBAR)... [and] at least three years of related experience in conducting oversight of law enforcement personnel and departments..."³

BACKGROUND

The Orange County Board of Supervisors established the OIR in February 2008. This was in response to the shocking, and possibly preventable, beating death of an inmate. Due to this murder, the ensuing media coverage, and allegations of misconduct on the part of the OCSD, the OIR was created to win back the public's trust.

The original ordinance creating the OIR stated that its purpose was to monitor, assist, oversee, and advise the Sheriff-Coroner in the investigation of:

Selected internal and citizen complaints about the action or inaction of peace officers or custodial officers in the OCSD; and

Incidents of death or serious injury to persons in the custody of the OCSD.

The 2015-2016 Orange County Grand Jury (OCGJ) published exhaustive research on the history of the OIR from its inception to the end of their term in June 2016. During that time, there were several scandals that shook both the BOS and public confidence in the OCSD. The 2015 jailhouse informant controversy and the resulting investigation caused the Board to lose faith in the OIR, so the BOS voted to defund it. With only the OIR Executive Director remaining, County Counsel warned the BOS that the US Department of Justice was concerned that there would be no independent oversight of the OCSD. After much debate, the BOS revamped the office of the OIR. The updated OIR ordinance expanded the OIR's responsibilities to oversee not only the Orange County Sheriff-Coroner Department, but also the Office of the District

² On June 7, 2022, the BOS appointed a special counsel for OIR to facilitate OIR's work in 120-day intervals until a new Executive Director is hired.

³ Orange County Recruitment Brochure for Executive Director of OIR, May 2022.

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Attorney, the Office of the Public Defender, the Probation Department, and the Social Services Agency.⁴

In the spring of 2020, Sergio Perez, who had extensive experience in relevant investigations and oversight, was appointed Executive Director with the strong hope that the OIR could finally function as designed.⁵

REASON FOR THE STUDY

In May of 2020, following two years of dormancy and including a significantly broader scope of responsibilities, the BOS appointed a new Executive Director.⁶ In late August 2020, the OIR in its first status report stated, “Since 2015, the OIR has experienced a tumultuous period characterized by unsteady staffing, questions about its utility and independence, and scant public output.”⁷ The OIR’s mission is to serve as an independent counsel to the BOS and a resource to the community to ensure transparency and best practices within each of the five agencies under its perusal. This report seeks to review the OIR’s activity since its restart and evaluate whether it fulfills the functions ascribed to it by the BOS. In addition, the report will evaluate the issues of funding, independence, and public product output.

METHOD OF STUDY

The OCGJ conducted extensive interviews with members of the Orange County BOS, OIR staff, members of the CEO’s office, and sworn and unsworn staff of the Orange County Sheriff’s Department (OCSD).

In addition, the OCGJ conducted extensive research into the various theories of civilian oversight throughout academic and trade publications as well as numerous media articles.

INVESTIGATION AND ANALYSIS

OIR Executive Director Sergio Perez was hired by the BOS in May 2020. In August of 2020, an Investigations Manager was added to the OIR staff which brought the office to its two approved employees. At the same time, the OIR issued a status report entitled “Office of Independent

⁴ See OCCO § 1-2-225, adopted on December 15, 2015 (describing OIR’s purpose and intent).

⁵ Ben Brazil, “The New OIR Director’s Job is to be a Watchdog Over OC’s Law Enforcement Agencies. But it’s Complicated,” *The Daily Pilot*, May 20, 2020.

⁶ The agencies tasked with OIR review are the Orange County Sheriff’s Department, the Orange County Probation Department, the Orange County Office of the District Attorney, the Orange County Office of the Public Defender, and the Orange County Social Services Agency.

⁷ Office of Independent Review August 2020 Status Report and Workplans, August 27, 2020, p.2.

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Review Status Report and Workplans” which outlined the newly reconstituted OIR’s operational philosophy, outreach efforts, and scope of upcoming work.

The document included the following proposed topics:

1. OCPD and OCSD Use of Force policies, training, and practices.
2. OCSD, ODA, and OPD treatment of evidence relevant to criminal allegations and charges.
3. OCPD, ODA, and OCSD’s use of psychological evaluations in hiring and fitness for duty reviews.⁸

The Report of the 2015/2016 Grand Jury entitled *Office of Independent Review: What’s Next?* found it was “...conservatively estimated that the salaries and benefits of the new OIR could be approximately \$3 million per year....”⁹ That number presupposed overall staffing of the OIR to be twenty employees consisting of an Executive Director, five staff attorneys, five subject experts-investigators, one lead monitor, four jail/juvenile hall monitors, and five clerical positions. These would be assigned to each of the five agencies that the OIR has responsibilities allowing for adequate oversight. The Fiscal Year (FY) 2020-2021 Budget for the OIR was \$587,176 and the FY 2021-2022 Budget was for \$1,077,867.¹⁰

The budgetary/staffing shortfall from the 2015-2016 estimate contributed substantially to a reduced production of investigations and public reports.

Orange County Fiscal Year (FY) budget for OIR¹¹

Final Budget History:

Sources and Uses	FY 2019-2020 ⁽¹⁾	FY 2020-2021	FY 2020-2021	FY 2021-2022	Change from FY 2020-2021	
	Actual Exp/Rev	Budget As of 6/30/21	Actual Exp/Rev ⁽¹⁾ As of 6/30/21	Final Budget	Budget Amount	Percent
Total Positions	2	2	2	4	2	100.0
Total Revenues	0	0	199	0	0	0.0
Total Expenditures/Encumbrances	94,229	587,176	586,643	1,077,867	490,691	83.6
Net County Cost	94,229	587,176	586,444	1,077,867	490,691	83.6

(1) Prior year encumbrances and expenditures are included in Budget Control 100 - County General Fund-Level Transactions.

Columns may not total correctly due to rounding.

Detailed budget by expense category and by activity is presented for agency: Office of Independent Review in the Appendix on page A69

The FY 2021/2022 OIR funding for staff projected an increase from an Executive Director and one investigator to a total staff of four, designated as an Executive Director, two attorneys with

⁸ *Id.*, p.6.

⁹ 2015-2016 Orange County Grand Jury Report, “Office of Independent Review: What’s Next?” p. 29.

¹⁰ Fiscal Year 2021-2022 Budget for Office of Independent Review, p.95.

¹¹ *Ibid.*

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subject matter expertise, and one investigator. At the time of the release of the FY 2021/2022 OIR Final Budget, the OIR had yet to release a public report on any topic; however, several interim reports on a variety of subjects were provided to the BOS and the OCSD during that time frame.

In August 2021, the first comprehensive report of the reconstituted OIR focused on the OCSD's policies. The three primary findings outlined in this report were:

OCSD policies do not provide enough information on de-escalation and other critical areas, including the use of lethal force. Policies also allow avoidable high-risk force practices, like warning shots and what OCSD calls "alternative" force. Alternative force encompasses use of force techniques the Department does not address in its policies or cover in its training. These vulnerabilities increase risk for the public, the Department, and the County.

OCSD training on force and crisis intervention revealed troubling cultural currents that may contribute to undesirable deputy conduct. Specifically, some instructors made statements and shared anecdotes that could encourage bias and run counter to certain policies and law. Certain courses, including those focused on improving interactions with individuals in mental health or other crises, lacked hands-on components or information relevant to deputies working within the jails.

OCSD's force-reporting and review practices make it difficult to fully understand how well the Department is managing the use of force by its deputies. Force reports, which are routinely the only comprehensive record of a force incident, often lacked necessary detail to completely understand the force at issue. The supervisory reviews that followed were, at times, deficient. The OIR also identified a frequent practice of late reports during the review period, which raises concerns about the Department's efforts to ensure deputies comply with its policies.¹²

The OCSD's response to the "Use of Force Report" was not favorable. The OCSD took umbrage to the findings of the Report and the negative publicity it generated. The OCSD contacted the BOS about its displeasure with the findings. The OCSD response was by means of the included attached letter as well as personal one-on-one discussions between the Sheriff and several of the BOS members.¹³

It is unfortunate that a serious investigation by the OIR into the policies and practices of Orange County's largest law enforcement organization was reduced to inflammatory headlines that belie the measured reasoning of the report itself. The media's response would lead to a fissure in the

¹² Investigation of OCSD Use of Force Policies and Practices, August 2021, p. 3.

¹³ Letter from OCSD to the BOS in response to the OIR Report dated August 21, 2021. (See Appendix A.)

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relationship between the OIR and the OCSD. In September of 2021, the OIR requested a meeting with the Sheriff to review the OIR Use of Force report.¹⁴ This request was not accepted. Continued efforts on the part of the OIR to keep monthly meetings with the Sheriff after the release of the report were denied.

In October 2021, the Office of the CEO informed the OIR's Executive Director of an immediate hiring freeze despite prior approval of the OIR staffing budget (FY 2021/2022). This hiring freeze was at the direction of a prominent member of the Board of Supervisors. It is worth noting that two additional staff members had just been approved by the BOS several months prior. At that time, Orange County Human Resources Services had already posted position openings, received candidate responses, and conducted initial interviews. All that remained prior to formal offers of employment was a solitary round of interviews with the OIR Executive Director. The previously budgeted and approved OIR staff expansion came to an immediate halt. The OIR had been effectively crippled by the lack of staff and resources, creating an almost impossible workload for two people.

In February 2022, the staffing budget was reinstated with new BOS leadership, and the employment process was resumed. In May 2022, two attorney candidates were presented with offers of employment to work in the OIR which they accepted.

However, the resignation of the Executive Director in April 2022 led to an administrative bottleneck and an impossible workload for the remaining OIR staff member, its Investigations Manager. For example, the OIR cannot review complaints that it receives until it has an Executive Director. OCCO Section 1-2-226, subdivisions (g)(2) and (h) provide:

The Executive Director or his or her designee shall keep a log of the name, address, and telephone number of the complainant as well as a copy of the complaint referred to relevant County Department heads for their review... [and] if the Executive Director of the OIR, in his or her absolute discretion, determines that such complaints do not warrant exercise of the authority set forth in this article, the Executive Director may refer such complaint or complaints to the body selected by the County of Orange to provide such mediation.

At the time of this report, the OIR's workload consisted of the following investigations that were already in progress or in the planning stages:

- Assessment of Evidence Booking Failures regarding the OCDA and the DA's office
- Force Policies and Practices of the Probation Department

¹⁴ Letter from Office of Independent Review to Orange County Sheriff Don Barnes, dated September 15, 2021. (See Appendix B.)

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- Peace Officer Psychological Evaluations and Hiring Practices Assessment
- Major policy manual revisions of the DA’s policy manual
- Allegations of biased statements made by the DA during a death penalty meeting
- Systemic issues underlying allegations of harassment in the DA’s office
- Deputy-involved shootings that occurred in 2022
- OCSD compliance with AB 732, which sets standards for reproductive health care for pregnant women in county jails
- The increased rate of suicides in the Orange County jails.

The current level of staffing at the OIR is woefully insufficient to complete the investigations that are in progress, ongoing, or planned. These duties are in addition to all previously described duties and do not include standing meetings with relevant agencies, as well as the Coroner’s Death Reviews, Critical Incident Reviews, and Child Death Reviews.

OIR Publications

From the hiring of an Executive Director in May 2020 through April 2022, only one comprehensive report has been released by the OIR for public scrutiny. This was the OCSD’s “Use of Force Report.” Given the initial scope of work that the OIR defined for itself in the “Office of Independent Review Status Report and Workplans” in August of 2020, the quantity of public reports is understandably minimal due to the lack of adequate staffing. The initial staffing of a single Executive Director and an Investigations Manager was inadequate to task with the oversight of five large county agencies. This staffing, or lack thereof, does not compare to similar agencies. In addition, the implementation of a reactive and unwarranted hiring freeze imposed on previously approved positions only exacerbated the problem.

The OIR’s current and ongoing reviews include analysis of multiple departments within its purview, including investigations into various allegations within the District Attorney’s office. These reviews are at the request of the BOS but are currently restricted by severely limited staff resources.

OIR Independence

According to the National Association for Civilian Oversight of Law Enforcement, Thirteen Principles for Effective Oversight:

One of the most important and defining concepts of civilian oversight of law enforcement is independence. In its broadest sense, it refers to an absence of real or perceived influence from law enforcement, political actors, and other special interests looking to affect the operations of the civilian oversight agency. In order to maintain legitimacy, an agency must be able to demonstrate the extent and impact of its independence from the

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overseen law enforcement agency-especially in the face of high-profile issues or incidents.¹⁵

The BOS immediately responded to the OIR's "Use of Force Policies and Practices" and one BOS member's direction froze a budgeted staff expansion which undermined the concept of independence as defined above. This undermining of the independence of the OIR following its initial public report reduces the perception of the OIR to that of "window dressing" instead of a productive public benefit.

FINDINGS

- F1 The Orange County Sheriff's Department reacted to the Office of Independent Review's *Investigation of OCSD Use of Force Policies and Practices* report by publicly and privately lobbying the OC Board of Supervisors to discount the findings of said report.
- F2 A prominent member of the BOS reacted to the OCSD's dispute with the findings of the *Investigation of OCSD Use of Force Policies and Practices* by unilaterally directing the office of the Orange County CEO to initiate a hiring freeze despite a previously budgeted OIR staff expansion.
- F3 The hiring freeze, following so closely to the publication of the OIR report and the OCSD's objections, precipitated the viewpoint that the independence of the OIR was marginalized.
- F4 Until the BOS appoints an Executive Director with sufficient staffing, OIR is limited in its ability to investigate complaints and challenges to ongoing investigations and those in the planning stages.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2019-2020 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation described herein, the 2021-2022 Orange County Grand Jury makes the following recommendations:

¹⁵ National Association for Civilian Oversight of Law Enforcement, "Thirteen Principals for Effective Oversight."

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- R1. The BOS should appoint a qualified Executive Director so that the OIR can respond to complaints it receives and continue with its investigations, both ongoing and in the planning stages. (F4)
- R2. By October 1, 2022, the BOS should approve the number of staff for the OIR that the Executive Director “recommends are necessary” in accordance with OCCO Section 1-2-226. (F3, F4)
- R3. By October 1, 2022, to maintain the integrity and independence of the OIR, the BOS should adopt a policy that requires all members of the BOS to publicly vote on any alteration to the OIR budget. (F1, F2)

REQUIRED RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g., District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.

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- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

90 Day Response Required	F1	F2	F3	F4
OC Board of Supervisors	X	X	X	X

90 Day Response Required	R1	R2	R3
OC Board of Supervisors	X	X	X

Responses Requested

60 Day Response Requested	F1	F2	F3	F4
Office of Independent Review	X		X	

60 Day Response Requested	R1	R2	R3
Office of Independent Review	X	X	X

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REFERENCES

2015-2016 Orange County Grand Jury Report, “Office of Independent Review: What’s Next?”

Letter from the Orange County Sheriff’s Department to the Chairman of the Orange County Board of Supervisors, cc’d Frank Kim, Orange County CEO, Sergio Perez, Executive Director of the Office of Independent Review. August 20, 2021.

Investigations of OCSD Use of Force Policies and Practices, Office of Independent Review, report.

OIR Issues Report on Investigation of Sheriff’s Department Force Practices, Press Release dated August 25, 2021.

“The new OIR Directors job is to be a watchdog over O.C. law enforcement agencies. But it’s complicated” Times OC May 20, 2020.

Office of Independent Review Budget Request Memo for FY 2022-2023. March 1, 2022.

FY-2022-2023 CEO Department Budget Meeting notes, Office of Independent Review. March 10, 2022.

“Head of OC’s law enforcement watchdog agency to leave for Los Angeles DWP. Orange County Register. April 20, 2020.

GLOSSARY

BOS	Orange County Board of Supervisors
DA	Orange County District Attorney
OCCEO	Orange County Chief Executive Officer
OCCO	Codified Ordinances of the County of Orange
OCGJ	Orange County Grand Jury
OCSD	Orange County Sheriff’s Department
OPD	Office of the Public Defender
POST	Peace Officer Standards Training
PRO	Orange County Probation Department
SSA	Social Services Agency

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APPENDICES

Appendix A. Letter from the Sheriff to the Board of Supervisors.

Appendix B. Letter from the OIR to the Sheriff-Coroner.

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Appendix A: Letter from the Orange County Sheriff-Coroner to the Orange County Board of Supervisors



ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

OFFICE OF THE SHERIFF

August 20, 2021

The Honorable Andrew Do, Chairman
Orange County Board of Supervisors
333 W. Santa Ana Boulevard
Santa Ana, CA 92701

RE: Review of Use of Force Policies and Practices by the Office of Independent Review

Dear Chairman Do:

I am in receipt of the report published by the Office of Independent Review (OIR) concerning use of force. The purpose of this letter is to provide the Board my perspective on the content and highlight some concerns about the work product.

As a department we strive to use force sparingly and only to preserve the safety of the public. As the Board is aware, and as highlighted in an April 2021 briefing with Board of Supervisors' staff, my department has strict policy governing the use of force to ensure it is used appropriately and in accordance with the law. In 2020, out of 309,009 calls for service and thousands of other daily public interactions, force was used in the community only 372 times. Even still, we can always improve. Refinement of policies, practices, and training must and does occur on an ongoing basis.

This refinement is further enhanced by the inclusion of additional perspectives. As a result, I have welcomed the opportunity to work with OIR and consider the perspective offered through this report on use of force. As indicated in the report, my staff and I took a collaborative approach toward our interactions with OIR. My expectation for my staff was that they provide OIR open access to the Department and respond to requests in a timely manner. This approach was taken to meet the spirit of the County's OIR ordinance and with the hope that the report would provide useful information to improve Department policies, procedures and training. After a thorough review of the report, I find it to be lacking in substance and useful recommendations.

I do have concerns that merit addressing in order to ensure the effectiveness of OIR and enhance the credibility of future recommendations. My concerns are as follows:

- **Commentary in the report suggests an unfamiliarity with contemporary legislative changes.** As an example, on page eight of the report the narrative is critical of language in Policy 300 concerning chokeholds and the carotid constraint. The chokehold is "prohibited" while the carotid restraint is "not authorized." OIR calls the nuance in this language confusing, but fails to recognize the fact that this language is necessary in order to be in compliance with the California Peace Officers Standards and Training (POST) Commission and a 2020 Federal Executive Order. My agency is obligated to be in compliance with POST and federal orders.

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Integrity without compromise | Service above self | Professionalism in the performance of duty | Vigilance in safeguarding our community

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OIR Use of Force Report

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- **The report minimizes the extent to which de-escalation is utilized by the Department.** On page 12, the report criticizes the Department for not having a stand-alone de-escalation policy. While it may be OIR's preference to have a separate policy, the fact is that de-escalation is ingrained in our culture. De-escalation is currently a component of our use of force policy, is part of our training, and (evident by our low use of force numbers) is part of the day-to-day practice of deputies. In taking this approach we are following the National Consensus Policy on use of force. The OIR would do better to focus on the substance of what actually exists, rather than get distracted by the style of a policy document.
- **The Department's responsibility to follow the Peace Officer Bill of Rights (POBR) and the constitutional rights of citizens cannot be superseded.** On page 27 of the report it is noted that use of force investigations do not always include interviews of all deputies involved or relevant witnesses. While this sentence seems to imply a department shortfall, it fails to note the reason why an interview might not occur. The chain of command will not interview all deputies involved because the use of force must be reviewed and if a personnel investigation is initiated, then POBR rights apply. If those interviews take place we have violated the employee's rights, and ultimately, will not be able to hold the employee accountable for potential misconduct.

Similarly, on page 32 there is an implication that reports are incomplete because subjects are not generally interviewed. Again, the reason for not interviewing a subject is a result of the need to respect the rights of the suspect. Failure to follow these rights would expose the County to significant liability. Often, use of force cases are coupled with violations of the law- such as Penal Code 148 (resisting/obstructing an officer) or Penal Code 69 (resisting an executive officer in performance of their duties). Questions will be limited depending on whether the suspect invoked their Miranda rights. Questions often must be very limited to not violate an arrestee's constitutional rights.

- **Examples of policies cited in the report are recommended as a model to follow without providing justification as to why the recommended policy is a best practice.** The report references policies followed by the Oklahoma City Police Department and New York Police Department, amongst others. It is not made clear why the particular policies of these agencies (which represent populations very different from Orange County) should be emulated or if the policies have resulted in a benefit to public safety. The report would be more useful in my decision making if additional information was included regarding the benefit of these particular policies. I cannot in good faith adopt recommendations based on opinion alone.

I share these concerns with the intent of strengthening the OIR's value to the Board, my department and, most importantly, the public we serve. OIR can be most effective if the recommendations are evidence based and consistent with state and federal law. I am hopeful that the Board will ensure future reports will take into account the issues identified in this letter.

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OIR Use of Force Report

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August 20, 2021

My department and I remain committed to working with OIR, provided the effort results in a meaningful benefit to the public. As was noted previously, my staff has replied in a timely manner to the numerous requests from OIR. Since May 2020 a total of 322 requests from OIR have been received. Responses involved hundreds of hours of work by a multitude of Sheriff's Department personnel. It is important to note that no additional resources have been provided to my department to accommodate this increased workload. As a result, staff is re-tasked from their primary duties in order to meet the short deadline for completing an OIR request. I expect that there is a potential for the number of requests to increase due to the recent addition of OIR personnel. I ask that the Board be mindful of the workload placed upon my department without additional resources.

I hope this letter is taken in the spirit that it is intended. Maintaining a collaborative approach to working with OIR remains my goal. To that end, my department has added a component to our policy development process that includes an opportunity for comment by OIR staff. The OIR perspective will continue to be considered and evidence-based recommendations rooted in best practices will be adopted.

Please do not hesitate to contact me if you would like to further discuss the report or the Department's use of force policies and practices.

Sincerely,



Don Barnes
Sheriff-Coroner

Cc: Orange County Board of Supervisors
Frank Kim, County Executive Officer
Sergio Perez, Office of Independent Review

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Appendix B Letter from the OIR to the Orange County Sheriff-Coroner.



Office of Independent Review

Correspondence.

Sheriff-Coroner Don Barnes
Orange County Sheriff's Department
550 N. Flower St.
Santa Ana, CA 92703

September 15, 2021

Via Email.

RE: Request to Meet on OIR Report and Other Matters.

Dear Don,

I am writing to follow up on my request to meet with you, originally made on August 30, 2021. I appreciate your willingness to meet and am hoping to schedule it soon to address various pressing issues. During our meeting, I'd like to discuss the Office of Independent Review's August 25, 2021, public report related to the use of force by the Orange County Sheriff's Department (OCSD). I also hope to discuss on-going and future collaboration between our two organizations and revisit the timeframe, established by our Memorandum of Understanding, for OCSD comments to OIR draft reports moving forward.

As you have repeatedly stressed, both publicly and privately, a cooperative relationship between our two agencies is in the best interests of the residents of Orange County. I believe that consistent engagement between us will better enable our respective agencies to carry out necessary work, including securing law enforcement services that effectively ensure officer and public safety.

The OIR's public report consistently highlights areas in which OCSD is performing well. It also identifies clearly undesirable outcomes that could likely be avoided with changes to policies, training, and practices. While you dismissed the report's value in public statements, I understand the Department is currently assessing the recommendations made in the report. I believe that my Office can inform and ease that process.

How Independent is the Office of Independent Review?

Efforts to amplify the success of your Department and to improve it where necessary will benefit tremendously from open lines of communication. I look forward to setting a time to meet with you soon. Please contact me at your earliest convenience in order to do so.

Sincerely,



Sergio Perez
Executive Director
Office of Independent Review