



Stephen J. Connolly  
Executive Director

**TO: Board of Supervisors**  
**FROM: Stephen J. Connolly**  
**DATE: Friday, May 4, 2012**  
**RE: OIR Activity Report**

## **I. Officer-Involved Shootings: Updates**

The Sheriff's Department has been involved in two shootings during this calendar year: February 7 in San Clemente, and March 10 in Rancho Santa Margarita. The latter shooting, which occurred after my last report to your Board, involved a daytime confrontation between a deputy and a motorcyclist. As with other officer-involved shootings and critical incidents, I received prompt notification, responded to the scene, and participated in the initial briefing regarding the known facts.

The RSM incident began when a deputy was investigating the 20 year-old suspect for possible reckless driving offenses, including evading an attempted traffic stop and driving at speeds of more than 100 mph. When the suspect arrived at his home and was confronted by the deputy, he allegedly failed to obey commands and came at the officer, prompting him to fire six rounds. The suspect proved to be unarmed, though the deputy alleges the man was reaching for his waistband as he approached.

Both of this year's officer-involved shootings remain under investigation by the District Attorney's Office. This time period is very typical for cases of this nature; indeed, depending on various factors, the formal review process often extends for several months before a final outcome is reached. While the San Clemente shooting was fatal, the suspect in the Rancho Santa Margarita case survived his injuries. He is out of the hospital and currently housed in the county jail system. He has been charged with a variety of offenses relating to reckless driving, evading, and his encounter with the deputy. The deputy gave a voluntary statement to the District Attorney investigators, and third-party witnesses to the shooting also provided information.

In my previous report to your Board (dated 2-28-12), I wrote of “halting communication” by the Department and “the absence of a clear vision for effective outreach to the public” in the first days after the San Clemente shooting. The tragic overtones of the incident were obvious, and scrutiny from the public and the media had quickly become intense. In spite of that dynamic, however, the Department had been slow to provide appropriate updates in a clear and coherent fashion. This compounded the public’s initial concerns.

It was true that deference to the District Attorney’s official investigation was necessary, and confidentiality regarding specific details is generally important to investigative integrity. Nonetheless, the Department soon recognized that it needed to enhance its internal process for review and distribution of news about evolving critical incidents. The goal was to improve transparency by making executive-level input more efficient and unified.

After consulting with OIR and assessing the specific dynamics after the San Clemente incident, the Department moved to create the new “Community Programs & Services Division,” which was in place by the end of February. Coordinating public outreach and media relations is one of several responsibilities for this new command.

The new Division quickly had the opportunity to put its goals into practice in the aftermath of the Rancho Santa Margarita shooting in early March. After rolling out to the scene of that incident, I observed very effective teamwork among captains from several involved areas of the Department: Patrol Operations, Investigations, Internal Affairs, and Community Programs & Services. They worked with responding representatives from the D.A.’s Office to ensure that accurate and relatively detailed information was provided in a timely fashion – a response that helped eliminate many of the pitfalls that had complicated the San Clemente incident just weeks before.

OIR has also worked with the Department in terms of its internal assessment of both shootings, and its use of the Critical Incident Review process to draw lessons from each event and enhance the effectiveness of future responses. That process is ongoing, as is any administrative assessment of individual performance and accountability by the involved personnel. I will provide updates to the Board as they become available; meanwhile, I welcome any specific questions you may have.

## **II. Discipline Process: Cases and Trends**

OIR’s function continues to be the monitoring of investigations into alleged misconduct by OCS D personnel. Thus far in 2012, the Department has initiated 62 new cases: 54 related to on-duty misconduct, while 8 pertain to off-duty activity. Four of the cases involve criminal allegations that are being evaluated for possible prosecution.

The numbers for the first third of this year continue a downward trend in the volume of new personnel investigations. From a high of 364 new cases in 2009, the numbers had dipped to 251 in 2011, and this year’s projected total would be considerably

lower than that. A significant part of that difference continues to be the advent of the “Commendation/Complaint” system, which allows for a triage process that filters citizen complaint allegations of lower-level misconduct (often discourtesy or overzealous enforcement) and puts the responsibility on the unit of origin for review and proper handling. (OIR monitors these complaints as well.)

Among the allegations since my last report that are currently being investigated are the following:

- A deputy allegedly fell asleep while guarding an arrestee who had been brought to the hospital for treatment.
- A civilian jail worker allegedly neglected his duties and was discovered watching TV instead.
- A patrol sergeant allegedly became involved in a vehicle pursuit without following the proper protocols; the pursuit ended in a minor traffic collision.
- In two separate cases, deputies are alleged to have neglected proper notification of supervisors prior to encounters with inmates that resulted in uses of force.
- A patrol deputy allegedly made a discretionary arrest against a third party as a favor to an acquaintance.
- Two sergeants are alleged to have abused their authority by habitually arriving late to/leaving early from work.

So far in 2012, 19 citizen allegations have been referred to Internal Affairs for a formal investigation of policy violations. Meanwhile, a total of 54 new citizen complaints have been received and assessed through the citizen complaint process. While 26 are still pending, in 14 cases the conduct was determined to be in policy, while 12 have resulted in documented counseling or training for the named employees.

### **III. Bail Solicitation and Other Jail Issues**

After an inquiry from a Board office, and following recent media coverage of convictions and indictments in connection with illegal bail bond solicitation in the county jails, OIR reviewed the Sheriff’s Department’s response to this problem. The current phase of the Department’s efforts began in 2009, in response to a federal lawsuit. The suit had alleged that the Department was complicit in the unlawful activities of some bail companies, who used unauthorized means to acquire new clients from among the county jail’s inmate population.

When the lawsuit allegations emerged, the Department conducted an internal review at the Sheriff’s direction. Though the Department’s investigation refuted claims of involvement by OCSD personnel, and though the suit against the Department was eventually dismissed, the Department maintained its focus on the illegal activity that was indeed occurring. The bail industry in California is closely regulated; however, the

Department of Insurance is overmatched in its ability to monitor and enforce those regulations, and abuses do occur.

Accordingly, the Sheriff's Department decided in 2009 to take a more pro-active role in policing unscrupulous conduct within Orange County jail facilities. It assigned an investigator to work full time on bail solicitation cases. He, in turn, coordinated with the Department of Insurance, the District Attorney's Office, and other local agencies to undertake an aggressive enforcement posture. The investigator's subsequent efforts have yielded results in the form of more than 150 different felony counts and the closing of several bond agencies that were operating inappropriately within Orange County.

While the progress is encouraging, the scope of the problem is also a reminder of the Department's need to remain vigilant in the inherently challenging work of policing criminal activity within the jail population. Typically, for example, the bail solicitation cases involve the companies improperly using current inmates as their representatives to identify new "customers" and to steer business in a particular direction. While this is unauthorized even in its most benign form, it obviously also carries with it the potential for significant exploitation and abuse.

Those concerns also extend to the possibility of improper relationships between inmates and OCSD personnel. Two custody deputies are currently on administrative leave and are the subjects of pending criminal allegations relating to inappropriate relationships with inmates. Four other pending cases involve allegations of significant on-duty misconduct by institutional cooks who have regular dealings with inmate workers.

To its credit, the Department has responded decisively in each of the cases listed above. OIR is also working with the Department on potential systemic reforms, including new jail policies and/or adjustments to protocol that might provide additional safeguards. I will provide the Board with updates as this process continues.

#### **IV. Civil Detainees**

OIR recently became aware of the Sheriff's Department's challenge with the housing of "sexually violent predators" in the county jails. "SVP's" who have completed prison terms for criminal convictions are sometimes required to remain in custody pending a mental evaluation about their ability to function in society without presenting a harm to others. As a technical and legal matter, these individuals are "civil detainees" – entitled to greater privileges and fewer restrictions than the mainstream inmate population. There are currently 13 SVP's housed in the Men's Jail.

Because of their unique status, because they must under law be kept separate from regular inmates, because the law is ambiguous about the nature and scope of special treatment to which they are entitled, and because some of them currently happen to be very litigious, the SVP's have been a "high-maintenance" issue for the Department in recent months. Some of them have also discovered OIR as a resource and contacted the

office on numerous occasions. They have raised concerns about the fundamentals of their housing status, and numerous specific instances of alleged deputy misconduct.

The Department has been responsive to OIR's questions, and seemingly cognizant of the challenging dynamics and risk management issues inherent in the housing of the civil detainee SVP's. At the same time, OIR has noted some lack of consistency in terms of how grievances are being processed, and some tensions arising from the lack of clear standards for deputies in terms of enforcing the rules while providing the SVP's with the "better than inmate" latitude that court cases have required.

OIR has worked with the Department and County Counsel in an effort to help establish effective approaches to the various points of contention that have recurred (e.g. access to dayroom, television, roof time, visiting, telephones, etc.). Very recently, the Department updated its Jail Operations Manual with a seven-page policy that addresses the different areas in impressive detail. OIR has also met with the Department to discuss how the high volume of grievances might be addressed with more consistency and efficiency. As a result, the Central Jail Complex has called for lieutenant-level (as opposed to sergeant-level) monitoring of the SVP grievances until the situation stabilizes.

The Department has gone beyond the efforts of other local jurisdictions in grappling with these questions and attempting to satisfy the spirit of a complex and ambiguous legal situation. Ideally, the result will be a reduction in "friction-points" and a greater insulation against litigation exposure.

## **V. OCSD Traffic Collision Reduction Program**

OIR has been an active participant in the Orange County Sheriff's Department Traffic Collision Review Board (TCRB) since 2009. The TCRB meets every quarter to review and discuss all on-duty traffic collisions involving department members. The TCRB expanded its mandate at that time, developing a greater focus on accountability and risk management, and has worked assiduously to clear a significant backlog in cases.

The TCRB closely reviews each traffic collision to determine if the collision could have been prevented. During 2010, a total of 226 traffic collisions were reviewed by the TCRB, with 107 of them being classified as preventable on the part of the OCSD employee-driver. In 2011 the total number of traffic collisions dropped to 196, with 87 of the traffic collisions deemed preventable. OIR has worked with the Department to refine its system of addressing preventable collisions. OCSD now offers a remedial instruction program for a "first offense" with no aggravators (such as recklessness, extreme carelessness, etc.); second accidents are forwarded to Internal Affairs for formal disciplinary consideration.

The TCRB also examines and tracks causal factors such as Unsafe Backing, Unsafe Speed, Unsafe Turning Movements, Driver's Inattention, etc. This allows the Department to look for trends and address patterns in a proactive way. For example, in 2010 approximately 25% of all preventable traffic collisions were due to unsafe backing.

In 2011, that number grew to approximately 40% of all preventable accidents. It was interesting to note that while the total number of preventable collisions declined, the number of incidents involving unsafe backing increased.

OIR's case analyst, who attends all TCRB meetings, had familiarity with a specific POST (Peace Officer Standard Training) program for accident reduction that could be modified to the Department's specific needs. The hope was that the Department could replenish a "perishable" driving skill and hopefully reduce the number of collisions due to unsafe backing. The Department adopted this recommendation and has made it mandatory that all patrol personnel attend the course on a regular and documented basis.

The program, which is still in its infancy, has been very well received by both its instructors and the personnel attending the course. Since the addition of the "safe vehicle-backing practical exercise" in January of 2012, 170 OCSD deputies have been trained. Approximately 851 OCSD deputies will receive the training during the proposed 24-month training cycle. OIR considers the TCRB to be part of the Department's progressive approach to risk management, and will continue to monitor the relevant trends.

## **VI. Probation Department: Incident Review**

In 2010, OIR issued a report to your Board that provided an overarching assessment of the Probation Department's internal review structures. Later that same year, my contract was amended in order to authorize an attorney-client relationship with Probation and leave open the possibility that OIR could monitor selected misconduct investigations or critical incidents at this Board's request.

The first of those assignments has arisen this spring. As you know, in February of this year, a male and female minor were discovered inside of her cell at Juvenile Hall having sex. The fact that they were housed in the same building was a surprise to some members of the public as the story became publicized; this was, however, based on conscious classification decision-making that takes into account multiple factors and is far from unprecedented within the facility. Obviously, though, the fact that they ended up in the same room, and for a period of some duration, is inherently reflective of a lapse in proper supervision and monitoring. Probation's executive team worked quickly to place implicated staff members on administrative leave, and to begin its internal investigation.

At the Board's request, OIR will monitor the case and consult with Probation on the progress and outcomes of the investigation. The goal (as articulated in a letter to Juvenile Court Presiding Judge Douglas Hatchimonji) is to assess Probation's response, with a focus on "accountability issues relating to its personnel, and systemic and policy reforms the incident may indicate are necessary. Because of the confidentiality rights attaching to juvenile records, OIR has worked with Probation and the Court to secure the appropriate access needed for the assignment.

Thus far, I have met with Probation executives and received an overview of the incident and the allegations. I have also had an opportunity to tour the Juvenile Hall facility and talk with staff members there. The investigation is pending; I will provide the Board with further updates as it continues.

## **VII. 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  
Executive Director, Office of Independent Review