

**USE OF FORCE COMPLAINT PROCESSING
IN THE
KING COUNTY SHERIFF'S OFFICE**

**REPORT FOR
OFFICE OF LAW
ENFORCEMENT OVERSIGHT**

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I. Introduction

The Office of Law Enforcement Oversight (OLEO¹) engaged the Review Team to examine a sample of unnecessary and/or excessive use of force complaints made to the King County Sheriff's Office (KCSO) by members of the public over a two-year period of time; to provide quantitative and qualitative feedback about policy compliance, investigative thoroughness, potential differential treatment of certain types or classes of complainants, and documentation deficiencies; and to make recommendations for policy, procedure and training improvements, where appropriate.

The Team's objective in compiling this report for OLEO and the King County community is to provide a clear picture of what sort of KCSO actions lead to use of force complaints, how such complaints are categorized and investigated by KCSO, how well KCSO processes reported force related to complaints, and the outcomes for use of force complaints. The report below is divided into the following sections:

- Methodology – Our sample size, sources of information, use of KCSO databases, and methods for examining the underlying uses of force.
- Life Cycle of a Use of Force Complaint – How KCSO performs intake and triage of complaints; policies on investigation and review; how force is reported within the Office; how outcomes are determined.

¹ OLEO represents the interests of the public in its efforts to hold the King County Sheriff's Office accountable for providing fair and just police services. OLEO works toward this end by reviewing misconduct investigations, reviewing policies, procedures and training for recommended improvements, rolling out to critical incident scenes, and engaging the King County community for input.

- Overview of 2015 and 2016 Closed Use of Force (UOF) Complaints – A summary of the types of force that must be reported and a summary of the UOF complaints reviewed, with observations about the significant number of UOF complaints with no underlying use of force report.
- Observations and Recommendations Regarding the Use of Force and Internal Investigation Review Systems – Our observations of how use of force and complaints about force are investigated and reviewed, and issues and recommendations regarding these processes.
- Literature Review – To provide context for our observations of the complaint process within KCSO, the literature summary distills academic research and findings about complaints to law enforcement agencies.
- Use of Force Complaints Comparison with All Uses of Force in 2015 and 2016 – Further providing context for our observations and recommendations concerning KCSO’s use of force investigations is an overview of all uses of force by KCSO deputies during 2015 and 2016.
- Conclusion – A summary of the Review Team’s most significant observations and recommendations.
- Glossary of Acronyms – A list of acronyms and their meanings commonly used by KCSO in investigating and reviewing use of force and UOF complaints.
- Appendix I – Dr. Matthew Hickman’s full summary of the academic literature on police misconduct complaints.
- Appendix II – Police Force Analysis System (PFAS) results and capabilities, including sample dashboards for analysis of some KCSO use of force data for 2015-2016, and a summary of the PFAS analysis for complaints closed in 2015–2016 linked to use of force.
- Appendix III – A list of all recommendations.

II. Methodology

The Review Team was asked to examine a sample of complaints of unnecessary and/or excessive use of force lodged with KCSO over a two-year period of time. We determined that, rather than using a sample, we would review all use of force (UOF) complaints closed in 2015 and 2016 by the KCSO Internal Investigations Unit (IIU) in order to explore a data field large enough to indicate trends. IIU oversees KCSO's complaint investigation process, including complaints involving alleged misuse of force. The second prong of the Team's approach used the Police Force Analysis System (PFAS) to outline some of the characteristics of the uses of force underlying the 2015 and 2016 complaints. Also, Dr. Mathew Hickman summarized scholarly research regarding police misconduct complaints, providing context for the findings outlined below and the Review Team's process improvement recommendations.

We met with OLEO staff and KCSO IIU personnel to consolidate the Team's understanding of procedures for reporting and reviewing use of force incidents and investigating complaints associated with those uses of force, to discuss the Team's quantitative and qualitative observations, and to review recommendations for improvement. The focus of this review was on use of force complaint processing, which inherently involved consideration of how the original use of force is reported and reviewed. Though this report includes observations comparing overall use of force by KCSO with characteristics of the incidents underlying use of force complaints, it was outside the scope of this project to analyze any specific use of force.

A software system called IAPro, with an interface called Blue Team, records and tracks use of force reports, along with complaint intake and investigation. KCSO deputies, supervisors, command staff, IIU personnel, and others make the initial entry concerning a force incident or complaint, and then can access the associated file in Blue Team/IAPro as the use of force report is reviewed, or the misconduct complaint is investigated. The Review Team accessed, through IAPro, all 2015 and 2016 closed use of force complaints and use of force reports associated with the closed complaints.

We reviewed a total of 82 closed use of force cases, 43 from 2015 and 39 from 2016. An individual complaint often involved more than one deputy, more than one type of use of force, and/or misconduct allegations in addition to misuse of force. However, each closed complaint was counted as only one incident.

The Review Team focused on use of force allegations and the underlying use of force reports, with the goal to identify trends observed in the various processes involved. The Team did not make an independent assessment as to whether a particular use of force was justified legally or under KCSO policy, but rather examined types of force used and in what circumstances, and how that correlated to complaints.

IAPro uses a template approach so that users can enter and review the same categories of information for all misconduct complaints and use of force reports. The Review Team was able to assess how consistently different system users entered relevant information, the overall thoroughness of investigations, and other aspects of use of force complaint processing and use of force incident reviews.

In addition to examining the use of force leading to complaints to look for trends in how force is reported and reviewed, PFAS was used to establish a baseline picture of all force used by KCSO in 2015 and 2016 and was then compared to those force incidents that led to complaints.

III. Life Cycle of a Use of Force Complaint

When deputies use reportable force during an encounter or arrest, they are directed to notify their field supervisor, usually a sergeant. For all reported UOF, the supervisor must immediately respond to the scene to secure, investigate, and review the incident.² Specific supervisory responsibilities after a deputy reports any use of force include: going to the scene, interviewing the involved deputies and civilian witnesses, collecting relevant evidence, and preparing a

² GOM 6.00.115.1. – [“GOM” refers to the Sheriff’s Office General Orders Manual, its central policy document. This and following citations will refer to the GOM followed by the section number.]

Supervisor's Use of Force Investigation and Review.³ Once the incident report and supervisor's review is forwarded up the chain of command, it is to be reviewed by the Precinct/Section Commander or contract City Chief and Division Commander.⁴ UOF packets are then forwarded to IIU for final review.

When there is a misconduct complaint against a KCSO member⁵, including allegations of misuse of force, it is overseen by IIU, whether the complaint is received directly by that unit or referred from another source. A field supervisor or IIU conducts a preliminary investigation to determine if an alleged complaint is potential misconduct. Except in unusual situations, such as an incapacitated complainant, the preliminary investigation is not considered complete until the complainant has been interviewed.⁶ If a complaint is made at the time of the incident, the field supervisor responding most often interviews the complainant at the scene.

When the field supervisor documents the incident or during review by command staff, IIU is notified of the force complaint.⁷ Once IIU becomes aware of alleged misconduct and the preliminary investigation is complete, the IIU Captain classifies the complaint, which determines whether and to what extent there is follow up to the preliminary investigation. The complaint is classified based on whether misconduct is alleged and the seriousness of the allegations.

Under KCSO policy, complaints are classified as an "inquiry" and fully investigated if the allegations involve misconduct "that [is] egregious, repeated, criminal, or an abuse of authority, complex or ordered by the Sheriff."⁸ For allegations involving minor policy violations, IIU classifies the complaint as a "Supervisor Action Log" (SAL) and refers the matter to a supervisor

³ GOM 6.01.020.

⁴ GOM 6.01.025 and 6.01.030.

⁵ GOM 3.03.010 defines a "member" of the Sheriff's Office as including all employees and volunteers, sworn and civilian. This report is focused on use of force review and complaint processes involving deputies, their supervisors, and the chain of command.

⁶ GOM 3.03.010.

⁷ Like others in the KCSO system, OLEO can receive and refer complaints to IIU and has access to IIU processes through IA Pro.

⁸ GOM 3.03.030 and 3.03.080.4.

outside IIU. The supervisor may “resolve these incidents and immediately take necessary action, but shall document the incident and actions taken.”⁹ For complaints that do not allege potential misconduct, IIU classifies it as a “Non-Investigative Matter” (NIM) for information purposes only.¹⁰ Whether classified as an Inquiry, SAL, or NIM, all complaints are entered into Blue Team/IAPro, and IIU is responsible for overseeing and monitoring the process and ensuring investigations are conducted in a timely manner.

Once IIU completes an investigation, it notifies OLEO that the investigation is complete and ready for OLEO review and certification.¹¹

During OLEO’s independent review of completed IIU investigations, it can seek clarification from the IIU investigator (e.g., to document why a particular witness was not interviewed or to explain discrepancies in the evidence) or suggest additional investigative steps. When finalized, OLEO certifies an investigation as “thorough and objective” or does not certify the case if it determines that standard is not met. Examples of reasons OLEO might not certify an IIU investigation include failure to interview witnesses, failure to obtain perishable evidence that no longer exists, and/or missed investigative deadlines.¹²

After OLEO provides its certification letter or its timeframe for review has passed, IIU then notifies the involved employee’s Section Commander that the case is ready for review in IAPro. The Section Commander is required to submit a Findings memorandum, which is routed through IIU, and then sent for a final review and disposition by the Undersheriff.¹³ When these steps are completed, the IIU Commander is responsible for ensuring that the complainant is

⁹ GOM 3.03.030.

¹⁰ GOM 3.03.030.

¹¹ Ibid.

¹² Per GOM 3.03.150, administrative investigations generally must be completed within 180 days if findings are to be entered or discipline imposed by KCSO.

¹³ Standard Operating Procedures, Internal Investigations Unit, 6/9/16 (SOPs-IIU), I. General Overview – Complaint Process. Note that the designation “Under Sheriff” formerly was referred to as “Chief Deputy” by KCSO, and the term may still be found in some of its policies.

notified in writing of the disposition of the complaint, though the “specific nature of any action taken against the accused shall not be revealed to the complainant.”¹⁴

In the 2015–2016 use of force complaint investigations reviewed, 60 of the cases (approximately 73%) were determined to be Unfounded. There was one Sustained finding during the two-year period and three complaints that resulted in Performance Related Training for the involved deputies. The remaining cases were found to be Exonerated, Not Sustained, or Undetermined. Observations and recommendations about complaint dispositions are discussed below in section V.J.

Where a serious use of force or critical incident is involved, such as an officer-involved shooting or in-custody death, policy requires that the supervisor take other steps, such as calling out Major Crimes and notifying the Administrative Review Team (ART).¹⁵ OLEO monitors and may attend critical incident scenes and subsequent Use of Force Review Boards.¹⁶ For the 2015–2016 cases examined by the Team, there was no documentation in the cases of review by ART or the Use of Force Review Board. The scope of the project limited review to use of force resulting in complaints. While we were informed that there were critical incidents that were documented in IAPro and referred to ART or the Use of Force Review Board in 2015 and 2016, they did not result in complaints and, thus, were not reviewed during this project. See section V.F. for further discussion and recommendations related to this issue.

Because IIU conducts a final review of all use of force reports, and also receives, classifies, and investigates complaints involving force, there is a potential for conflict of interest, or at least the appearance of a conflict. For example, IIU might determine that a particular use of force is

¹⁴ SOPs-IIU, III.B.8.

¹⁵ Per GOM 6.00.110, “serious force incident” means: (1) Intentional firearm discharges or other uses of deadly force (Excludes training and shooting animals, either intentionally or as euthanasia); (2) Unintentional discharges where there are injuries that require hospital admission; (3) A use of force that results in death (even if the type of force used is not defined as deadly force (e.g., CEW application); (4) A use of force resulting in an injury requiring hospital admission; and, (5) Use of any intervention by a vehicle that results in injuries that require hospital admission. In the same section, “critical incidents” are defined to include use of deadly force, in-custody deaths, officer-involved shootings, and any use of force that results in death or injury requiring hospital admission.

¹⁶ GOM 6.00.135.

within policy, but later receives a complaint regarding the same force incident. It could be difficult for IIU to objectively consider the nuance involved in the use of force having already found it within policy. Further, if a complaint about use of force is classified as a SAL, it could be referred to the same Field Supervisor who handled the underlying use of force investigation, adding another level of potential or apparent conflict of interest.¹⁷ While we were informed that these processes were in place, at least in part, because of IIU's technical expertise and KCSO's limited resources, the system potentially is compromised where the same individuals review and investigate force and complaints of misuse of force.

Recommendation 1 – Designate a commander outside of IIU responsible for reviewing use of force reports for quality assurance and for consideration as to whether any policy or training issues are identified that should be referred to IIU or elsewhere.

IV. Overview of 2015 and 2016 Closed Use of Force Complaints

When a deputy uses force, KCSO policy sets out various reporting requirements, including the duty to notify an on-duty supervisor.¹⁸ A use of force report is required for both on-duty and off-duty incidents when a deputy:

- Hits with open or closed hands
- Hits with an object such as a baton or flashlight
- Kicks a subject
- Uses any chemical agent such as mace or tear gas
- Uses pepper spray
- Uses a Taser or any less lethal weapon

¹⁷ While the Review Team was informed a UOF complaint could be classified as a SAL, we were limited to examining complaints that were investigated by IIU. Thus, it is not clear how many, if any, UOF complaints were handled as SALs during the 2015–2016 review period.

¹⁸ GOM 6.01.015.

- Uses any other force that results in injury or complaint of injury
- Uses any application of force to the neck
- Intentionally shoots a dangerous animal in defense of self or others¹⁹

As noted above, the Review Team examined 82 investigations involving allegations of misuse of force, 43 cases from 2015 and 39 from 2016. Of the 82 case files reviewed, 57 included an underlying report of the use of force. “Underlying reported use of force” was defined by the Review Team as the existence of a UOF incident report attached or referred to in the IPro complaint file. Many of the incidents where misuse of force was complained of did not have an underlying use of force report in the file. Of the 82 misuse of force investigations studied by the Review Team:

- 15 of 43 cases from 2015 had no underlying report of force²⁰
- 10 of 39 cases from 2016 had no underlying report of force²¹

Thus, 25 of 82 UOF complaints, or almost one-third of all 2015 and 2016 force complaint cases, related to incidents where the involved deputies did not report force. Though it is beyond the scope of this project to fully explore the issue, the Review Team notes the following concerns and potential explanations regarding the significant number of complaints about UOF where deputies did not report use of force:

- Are KCSO deputies underreporting use of force? The Team did not see obvious examples of intentional failure to report use of force in those cases where there was no underlying UOF report, though a thorough study of this issue would require a larger incident sample, including those where there was no misuse of force allegation.²²

¹⁹ GOM 6.01.010. The policy specifically notes that a UOF report is not required for “routine handcuffing and control holds” not amounting to the conditions listed or when the Taser is only displayed. GOM 6.02.000 covers reporting and investigation obligations when a member discharges a firearm, though is silent on whether a UOF report is required for drawing and pointing a firearm.

²⁰ The 28 UOF complaints from 2015 include one incomplete UOF report, though there did not appear to be reportable force, and one with no IPro link to the UOF Report, though it was referenced in the IIU file.

²¹ The 29 UOF complaints for 2016 include 3 with reference to UOF Report in the IIU file, but no link in IPro.

²² The Review Team only had access to UOF complaints and related incident reports as maintained in IPro, and it did not have access to all KCSO incident records tracked through IPro.

- Are some complainants frustrated with being stopped or arrested, but instead complain of force when reportable force was not used? This issue is explored below in the broader discussion of KCSO use of force as analyzed through the Police Force Analysis System.

- Are members of the public and deputies using different criteria to define use of force? Law enforcement agencies' general deficiency in providing education about use of force was addressed in a 2012 report from the U.S. Justice Department Office of Community Oriented Policing Services, titled *Emerging Use of Force Issues – Balancing Public and Officer Safety*.²³ The report notes that “no common language exist[s] for talking about use of force between police and the communities they serve.”²⁴ KCSO has set the threshold for reportable force above some lower-level force techniques such as control holds and wristlocks unless it results in injury or complaint of injury.²⁵ Arrestees and others may nevertheless lodge complaints about these techniques, and not necessarily understand that no reportable force was involved. KCSO, to its credit, investigates such complaints, though this creates a disparity between use of force complaints and reported uses of force. The lack of a common understanding about reportable force might underlie this disparity.

- Is the threshold for reportable force too high at KCSO? For example, KCSO policy does not consider a deputy's draw and point of a firearm to be a use of force, though some jurisdictions require a report of UOF in such situations.²⁶ If force is not reported at the time of the incident, but there is a complaint about the force later, the force investigation protocol will not have been activated immediately and facts about the incident may be more difficult to gather at the later date. This serves neither the complainant nor KCSO well.

²³ The report can be found at <http://www.theiacp.org/portals/0/pdfs/emerginguseofforceissues041612.pdf>

²⁴ Ibid, p.17. In an effort to encourage public education about UOF, the Police Foundation recently created an informational overview that is being used in some communities to help explain when police use of force is legally viewed as reasonable and justified and how incidents are generally investigated.

<https://www.policefoundation.org/the-police-foundation-releases-infographic-on-police-use-of-force/>

²⁵ Many law enforcement agencies require a report if the force results in a complaint of pain, which could include control holds as they typically induce pain.

²⁶ See, e.g., the Seattle Police Department Manual, 8.400.

The points above may not account for all “absent” force reports. However, concerns or ambiguity about unreported force can erode public trust and hamper investigations of some complaints.²⁷ Adding more detail in incident reports about actions taken, including the use of low-level force, contributes to KCSO accountability and transparency. For example, instead of the deputy stating, “I placed the subject in the back seat of the patrol vehicle,” a more detailed account might explain, “I initially used a wrist lock on the subject before placing him in handcuffs and, after walking him to the patrol vehicle, placed my right hand on top of his head and my left hand on his shoulder to lightly push him down and guide him into the back of the vehicle.”

Recommendation 2 – Require more detailed documentation of uses of low-level force in arrest reports, and supervisors should enforce the practice by sending reports back for more detail when necessary.

Recommendation 3 – Consider whether the threshold for reportable force should include control holds, a complaint of *pain* rather than *injury*, and drawing and pointing a firearm.

Recommendation 4 – To enhance transparency and build a shared understanding between KCSO and the community concerning use of force, provide more public information about use of force definitions, policies, tactics, usage rates, de-escalation efforts, and other issues related to force. Also, solicit input from the public to consider the need for changes in use of force policy and practices to ensure they conform to community values.

V. Observations and Recommendations Regarding the Use of Force And Internal Investigation Review Systems

When a KCSO deputy uses reportable force and there is a complaint about the incident, two investigations occur: one is the investigation by the Field Supervisor who responds to the scene

²⁷ The KCSO General Orders Manual is available to the public online, an important factor in law enforcement transparency and public education about use of force: <https://www.kingcounty.gov/depts/sheriff/about-us/manual.aspx>

when there is a report of force, and the second is the investigation, conducted by IIU, of the complaint related to the force. The following sections address observations and recommendations about both types of investigations.

A. Interviews in Use of Force Investigations at the Scene and in IIU Complaint Investigations

In-person interviews in any investigative process provide an opportunity for the investigator to ask open-ended questions related to the matter under investigation and to follow up on answers that are unclear or responses that suggest other avenues for questioning. Interviewers have the opportunity to observe and explore demeanor, body language, and other non-verbal communication that might suggest credibility concerns, nervousness related to the subject matter for reasons other than lack of credibility, or confidence in relaying what was witnessed. Because an in-person interview allows the interviewer to establish rapport and trust with the interviewee, interviewees also may be more forthcoming in their testimony. Despite the many benefits of using the interview process to fully understand a use of force incident or all of the facts relevant to a complaint of misuse of force, the Review Team observed inconsistencies in the use of interviews in the field and by IIU.

1. Field Supervisor Witness Interviews

KCSO policy requires that the supervisor investigating a use of force identify and interview the involved deputy and all witnesses, civilian or sworn.²⁸ If a complaint of excessive use of force is made, separate policies require that the on-duty supervisor photograph injuries or claimed injuries, obtain recorded statements from complainant and witnesses, consider the need for medical aid, request a Release of Medical Information, and identify currently unavailable witnesses (if any).²⁹ After examining use of force reports associated with 2015 and 2016 closed

²⁸ GOM 6.01.020.

²⁹ GOM 3.03.055 and GOM 5.01.015.

UOF complaints, the Review Team made the following observations regarding interviews by the supervisor investigating UOF at the incident scene.³⁰

- **Regarding complainant and other civilian witness interviews by the UOF investigating Field Supervisor:**
 - In the 57 UOF complaints received where there was an underlying UOF Report, the Field Supervisor interviewed or attempted to interview the complainant in 51 instances and succeeded in doing so in 33 of the cases.³¹
 - There were three 2015 closed cases where there was no complainant interview. In two cases, there was an apparent, though unverified explanation (e.g., the complainant was transferred to the hospital, though there was no documentation as to whether an attempt was made to later interview the complainant). There was no identified or obvious explanation in the third incident. There was an apparent explanation in seven of the eight 2016 closed cases where there was no complainant interview, most frequently that the complaint was not lodged until months or even years after the incident. In one 2016 incident, where the force complained about was a takedown and the subject complained at the scene, there was no documented explanation why there had been no scene interview of the complainant by the supervisor.
 - The Field Supervisor investigating the UOF incident recorded virtually all interviews with complainants, unless the subject refused.³²

³⁰ Note that in the 2015 closed UOF complaints, IIU investigations referenced UOF reports where one linked report was incomplete and there was no link to the report in a second case. Regarding 2016 closed UOF complaints, 3 of the IIU investigations referenced UOF, but there was no link to a UOF report in IAPro.

³¹ 25/28 closed 2015 UOF complaints and 26/29 closed 2016 UOF cases.

³² While GOM 6.01.020 allows the investigating supervisor to take written or taped statements of civilian witnesses involved in a UOF, GOM 3.03.025 requires that a supervisor receiving a misconduct complaint take a recorded statement from the complainant and non-department member witnesses, “for complaints considered to be more than a minor infraction.”

- Civilian witnesses, aside from the complainant, generally were interviewed and recorded at the scene when they were identified at the time of the incident. The record in many cases indicates a conscientious effort to identify potential witnesses; however, reports were sometimes silent on the extent of canvassing or the presence of witnesses.
- KCSO policy requires that deputies provide Miranda rights when a suspect is interrogated and advise suspects who are arrested but not interrogated of their right to counsel (collectively referred to as “Miranda rights” or “Miranda warning” in following discussion).³³ A department issued card with Miranda rights is issued to deputies and required to be in their possession while on duty. When UOF complainants were interviewed at the scene, there was inconsistent evidence as to whether they were given the Miranda warning prior to questioning, regardless of whether the subjects were under arrest at the point of the interview. In a few instances, the Field Supervisor investigating the UOF indicated to the complainant that the purpose of the questioning was administrative, to see if deputies had behaved in line with KCSO policy. In the majority of cases, however, neither an informal admonition nor a Miranda warning was captured in the recording of the complainant interview.³⁴

When a Field Sergeant seeks further information from a subject who has just been arrested or detained and has a complaint about the deputies’ use of force, the sergeant is, in effect, called upon to perform a preliminary administrative investigation to determine if the use of force complies with KCSO standards and policies.

³³ GOM 5.01.025.

³⁴ GOM 5.01.025 specifically provides that deputies should not include the rights in incident or follow up reports, but rather to state, “I read the suspect his/her legal rights from my department issued rights card,” or “Advised suspect his/her right to a lawyer.”

As previously discussed, the sergeant interviews the complainant, and then forwards the complaint to IIU. The purpose of this interview is not to confirm the criminal acts of the subject to support the subject's arrest, but to focus on the substance of the complaint of misuse of force. Such circumstances may appear to call for a Miranda warning before the questioning proceeds. Many law enforcement agencies administer Miranda warnings to complainant/arrestees as a matter of course. This approach, however, can undermine the main purpose of the Field Supervisor's inquiry – to receive fresh and candid complaints about officer use of force – by discouraging the complainant from talking at all.

Alternatively, the Field Supervisor could advise the subject that the sole purpose of the interview is to determine whether the deputies used force in compliance with KCSO policy and that the sergeant will not ask any questions or seek any statements about the subject's allegedly criminal actions. This can be a practical and productive approach to avoid an unintended "chilling effect" on use of force complaints since the Field Supervisor should not be interrogating the subject for criminal purposes at this time,³⁵ and presumably does not expect to use the subject's statements in court.

Many law enforcement agencies employ a standard explanatory formula that all Field Supervisors are trained on that incorporates Miranda rights into the complaint interview process, where the complainant is under arrest or could be concerned about complaint questioning that could touch upon alleged criminal activity. KCSO does not appear to use a standard procedure of this nature. On at least one occasion, the Field Sergeant employed a KCSO form called "Recorded Complaint Statement" that includes Miranda warnings and post Miranda questions, but in most cases the form was not used or, if used, was not documented in writing or on the

³⁵ It is important to note that we reviewed a number of tapes or transcripts of Field Sergeant interviews of complainants and saw no indication that these interviews were used for criminal investigative purposes.

recording of the complainant. KCSO should consider standardizing procedures and developing supervisor training in this area.

Recommendation 5 – Develop and implement policy and training for Field Supervisors that will provide appropriate and consistent admonitions or explanations prior to subject/complainant interviews and help preserve the integrity of the complainant interview process.

- **Regarding Field Supervisor interviews of the involved deputy and other sworn personnel who witnessed use of force:**
 - In all 2015 and 2016 closed UOF complaints reviewed by the Team, the involved deputy and witness deputies provided written statements, but were not interviewed as part of the supervisor’s UOF investigation or review, despite the interview requirement set out in GOM 6.01.020.³⁶

Generally, Field Supervisors appear to follow policy requirements concerning UOF investigations, with regards to interviewing the subject and witnesses at the scene. Though they consistently collected the involved and witness deputies’ reports and statements, they did not conduct interviews, as noted above.

2. IIU Interviews of Complainants and Deputies

After the preliminary investigation of the complaint is conducted by the Field Supervisor, as explained above, the matter is referred to IIU for review and, if IIU determines it necessary, further investigation.

³⁶ In addition to the policy requiring interviews of the involved and witness deputies following a use of force, when an excessive force complaint has been made, GOM 3.03.055 provides that recorded statements be taken from witnesses, if possible, and appears to also apply to sworn employees who are potential witnesses. The policy section is not explicitly limited to civilian witnesses.

- **Regarding IIU interviews of complainants alleging misuse of force**
 - The IIU investigator often interviewed or attempted to interview the complainant, at least when there was no interview by the Field Supervisor, either because there was no force reported and investigated and the complaint alleged misuse of force at a later date, or because force was reported but the Field Supervisor was not able to interview the complainant for some reason. IIU attempted to interview the complainant in 49 of the 82 UOF complaint cases reviewed and was successful in interviewing 33 of those complainants.
 - Where there were both reportable use of force and a complaint about the UOF, it appeared to the Review Team that IIU relied heavily on the force investigation conducted at the incident scene by the Field Supervisor, rather than fully investigating the matter at the IIU level. For example, in the 57 cases in 2015 and 2016 where there was a UOF report underlying the complaint (or reference to the report, but it wasn't linked in IAPro):
 - IIU interviewed the complainant in 11 cases (nine in 2015 and two in 2016), or only about 20% of the time when complainant had been interviewed during the supervisor's investigation and review.
 - In the majority of the cases, IIU relied on the Field Supervisor's interview of the complainant, rather than conducting an independent interview.

When a complainant initially makes an allegation of misconduct, the stress of the incident that just occurred, along with other factors (such as time of day or the influence of bystanders), can impact the completeness of the first statement of the complaint. Regardless of how well intentioned the Field Supervisor is while interviewing the complainant, other responsibilities at the scene can influence how thoroughly the supervisor can walk the complainant through the incident details. For these reasons, along with the other benefits of interviews discussed at the outset, IIU should always attempt to interview the complainant.

Recommendation 6 – Policy should require that regardless of whether the Field Supervisor conducted an interview of the complainant during the use of force investigation, the IIU investigator should always attempt to conduct an in-person interview of the complainant, unless the complainant refuses or is not geographically accessible. If IIU does not interview the complainant, an explicit statement as to why the interview was not necessary or possible should be included in the file.

- **Regarding IIU interviews of the involved and witness deputies**
 - As for deputies involved in the incidents underlying complaints, IIU investigators contacted the involved and witness deputies in 7 of the 28 cases from 2015 and 23 of the 25 cases in 2016 in which there was an underlying UOF report. However, rather than conducting an oral interview, IIU usually sent the deputy a brief questionnaire on a form called an A-150, which might request information generally about the UOF incident, or might include more detailed questions.³⁷
 - Regardless of whether detailed questions were asked, in a number of cases IIU accepted responses consisting only of a copy of the deputy's Officer Witness Statement (OWS) or the original UOF report from the underlying incident (documents that would already be available to the IIU investigator through IAPro).

As with complainant interviews, in the majority of UOF complaint investigations where there was an underlying force investigation and report, IIU did not interview the involved or witness deputies. Where there was no underlying UOF report (in 25 of 82 cases), IIU interviewed (and recorded) the involved and witness deputies in only 15 cases (5 in 2015 and 10 in 2016). IIU relied upon A-150 written questions or determined there was no need to interview the deputies in the remaining 10 cases.

³⁷ It's possible that specific questions were included with some A-150s, but they were not included in the IAPro IIU file and/or the Review Team could not access them.

There are a number of potentially negative consequences to relying upon written questions for sworn personnel during an administrative investigation.

- Investigations that rely entirely upon written questions can cause investigators to assume or surmise the answers to questions that should be asked and answered during face-to-face interviews.
- If there are information gaps in the file, the investigator might be more likely to ask the interviewee for clarification rather than make assumptions about missing facts (e.g., assume there was an effort to locate witnesses, though none are named and there is no indication witness canvassing with location specificity occurred).
- Investigations relying on written questions don't easily lend themselves to follow up questions where the written answers are not clear or suggest another avenue of questioning.
- Written investigative questions do not provide the investigator with the opportunity to observe non-verbal responses that might confirm or detract from the verbal content of answers.
- IIU investigations, in contrast to underlying UOF investigations, should focus on compliance with policy and appropriate use of tactics, along with decision-making leading up to use of force. Standard incident reports or force reports do not often address these issues, with the result that performance problems might be overlooked.

When an individual lodges a force complaint, it is valuable to obtain a nuanced and detailed picture of what occurred at the scene from the deputy's point of view. The constraints of police report formats rarely provide for this. "Interview" by questionnaire has comparable limitations and suppresses detail and follow up questions. Furthermore, based on our review, deputies'

terse responses to A-150 questions often suggested that they did not take the paper interview process seriously.

Recommendation 7 – IIU interviews of deputies for UOF complaint investigations should take place in person or, if necessary, by telephone. If an in-person or telephonic interview is not conducted, an explicit statement of the reasons the deputy was not interviewed should be included in the file.

B. Recording Witness Interviews

When IIU did interview complainant or civilian witnesses, the interviews were routinely recorded. As previously discussed, testimony from KCSO sworn personnel was generally elicited through written questions. However, in the limited cases when IIU did conduct an oral interview of the involved or witness deputies, interviews were recorded. Recording witness interviews is a standard practice in misconduct investigations, ensuring a complete record of the witness' testimony and a means for supervisory review of the investigator's interview skills.

C. Supervisor and Commander Reviews of Field Officer Investigation of Use of Force

GOM 6.01.020 provides that supervisors review written statements available from the involved and witness deputies. However, relying on documentation available through IAPro, it was not possible to confirm that supervisors or others in the line of command actually reviewed each Officer Witness Statement (OWS). Likewise, it appeared there was seldom follow-up to the Officer's Report or OWS by the supervisor or command staff during the UOF investigation and review process to resolve contradictions or provide material information. Though deputies might have been directed to clarify their statements or provide other information related to the UOF incident, there was no means to confirm such follow up through UOF documentation available through IAPro.

KCSO policy provides for three levels of review when use of force has been reported, setting out the responsibilities of the supervisor, Precinct/Section Commander or Contract City Chief (“Unit Commander”), and Division Commander.³⁸ Based on their presence in most UOF packets, template forms apparently are to be used during the review process. Policy should, but does not, specify timelines for completing the supervisor’s UOF investigation, does not require that the supervisor sign and date the related form, and does not require users to thoroughly respond to all questions in the template. Similarly, there are no such guidelines for the Unit Commander’s review or review by the Division Commander (though the term “without delay” is used).

The Team observed a great deal of inconsistency as to how the supervisors and Unit Commanders completed investigation and review template forms, noting:

- Some forms were missing entirely or attached in IAPro but blank.
- Many of the forms that were included were not fully, or even mostly, completed.
- Less than 1 out of 10 UOF Commander forms had the section titled “Findings and Recommendations” completed.
- Many of the forms were not signed or dated.
- There were no template forms or other documentation in IAPro evidencing the Division Commander’s (Major’s) review in any of the 2015 and 2016 UOF complaints evaluated by the Review Team. The Team was informed that sometimes a Division Commander uses Blue Team routing notes to record the review. However, this practice does not appear to be uniform and would not provide the formal review documentation required for accountability, to ensure consistency and thoroughness by all involved.

The UOF investigating Field Supervisor is directed by policy to forward the original incident report and associated documents to the appropriate detective unit, with the GOM specifically stating, **“Do not include the Supervisor’s Use of Force Investigation and Review with the**

³⁸ GOM 6.01.020, 6.01.025, and 6.01.030.

original incident report.” (Emphasis in the original.)³⁹ Though the purpose for keeping the supervisor’s review form separate from the incident report and associated documents is not stated in the policy, KCSO personnel informed us that the intent is to keep the supervisor’s investigation separate from other incident material referred to the Criminal Investigations Unit or prosecutor. However, all reports related to any one incident involving UOF are collected in IAPro, including the supervisor’s review form, in apparent contradiction to the direction to keep the supervisor’s report separate.

Recommendation 8 – Explicitly state in GOM 6.01.020 that the reason for keeping the Supervisor’s Use of Force Investigation and Review separate from the original incident report is to not taint the criminal investigation, and should confirm that the Criminal Investigations Unit does not have access to supervisory investigation and review materials through IAPro or otherwise.

The GOM requires that the supervisor make “a recommendation whether or not the force used was within policy.”⁴⁰ More often than not, records contained no explicit statement by the supervisor as to whether or not the force investigated complied with policy. Similarly, though policy requires that the reviewers ensure a complete investigation has been conducted, potential policy violations have been identified, and any necessary comments and/or recommendations have been attached, these items were often incomplete or missing. Other files had the forms but they were blank.⁴¹

This lack of consistency in documenting the review of UOF incidents led the Review Team to the following questions:

- Do supervisors and commanders understand the purpose of these forms?

- Is KCSO auditing the forms or otherwise ensuring thoroughness in the UOF investigation and review process?

³⁹ GOM 6.01.020.

⁴⁰ GOM 6.01.020.

⁴¹ GOM 6.01.025.

- Are the forms unclear or difficult to use?
- Has there has been long-term inconsistency in completing the forms? If so, what are the disincentives to completing them?
- Have the forms outlived their purpose?
- Have the forms been amended to include questions regarding de-escalation, per GOM 6.00.020 (01/17), which states in part, “When safe under the totality of the circumstances and time and circumstances permit, deputies shall use de-escalation tactics in order to reduce the need for force.”⁴²
- Where does responsibility and accountability for quality control of UOF reporting reside?
- How will Mark 43, KCSO’s new platform for records management, impact the UOF reporting and review process?

The supervisor and commander review forms contain KCSO conclusions about use of force incidents. They are an important expression of any concerns or lessons that may have been derived from the UOF review. If they are neglected or missing, the use of force file gives the impression that KCSO does not take the force investigation and review process seriously.

⁴² As the Team only reviewed complaints related to force used in 2015–2016 or earlier, the de-escalation policy, which was adopted in January 2017, was not in place.

Recommendation 9 – Convene a group of representatives across KCSO to consider the utility of and need for changes with all UOF investigation and review template forms. Once the forms are updated, all supervisors and commanders should be retrained on completing the forms, and a single entity should have responsibility for ensuring quality control on the use of force review process overall.

Recommendation 10 – Make clear to those responsible for filling out use of force review forms that they are mandatory.

Recommendation 11 – Require that the supervisor investigating UOF and everyone in the chain of command reviewing the investigation make a specific finding as to whether the force was within policy, including whether it was necessary, proportional (not excessive), and took de-escalation obligations into account.

Recommendation 12 – Include a check box in the review forms or devise another approach for the Field Supervisor and chain of command to document that no follow-up is necessary or to list the specific supplemental actions taken.

D. Source of the Complaint

While the date KCSO and IIU received notice of a complaint was regularly noted, the source of the misconduct complaint was seldom clear from the IAPro IIU file without some digging.

While many of the complaints appeared to have been communicated to the supervisor on scene investigating the underlying UOF, it was not always obvious whether in other incidents, complaints were received by mail, through OLEO, by other means, or were initiated internally.

Policy requires that members of KCSO accept all misconduct complaints and refer them to a supervisor, who must forward the complaint to IIU via the chain of command.⁴³ However, without clarity about how complaints are conveyed to IIU, it is difficult to assess if everyone responsible for accepting and referring complaints is regularly doing so. This information is

⁴³ GOM 3.03.015 and 3.03.025.

also useful for reporting purposes, to provide transparency and accountability to the public about the misconduct complaint investigation process.

Recommendation 13 – The IIU complaint face sheet should state the origin of the complaint, alongside the date the complaint was received by KCSO and IIU.

E. Whether All Allegations Are Identified and Investigated

KCSO policy provides that the assigned investigator should identify allegations and related issues to cover in the investigation and “allegations should specifically list the actions taken, or behavior of the deputy.”⁴⁴ To assess compliance with this policy, the Review Team looked at Follow-up Reports entered into IAPro by IIU investigators, detailing the steps taken in the investigation.⁴⁵ The first section to be completed is “Accused Employee(s)/Allegation(s).”

- In the UOF complaints reviewed by the Team, this section usually referenced the GOM policy number and/or subject “excessive or unnecessary use of force,” without a clear, concise statement about the specific behavior at issue.
- The written statement of allegations seldom specified what about the use of force was at issue; i.e., the UOF complaint is noted, without explanation as to whether complainant’s concern was that no force was necessary at all, or that the force used was excessive, in light of other factors. For example, KCSO policy provides that physical force may be used to overcome a subject’s combative or active resistance.⁴⁶ In one 2016 investigation that was particularly thorough, the complainant did not think that it was necessary for the deputy to have used a Taser under the circumstances. The IIU investigator recognized that the sub-issue was whether or not the complainant had been actively resisting, which is not defined in the policy, such that physical force could

⁴⁴ GOM 3.03.155.

⁴⁵ GOM 3.03.175 sets out the format to be used in investigative Follow-up Reports.

⁴⁶ GOM 6.00.025.

be used. This took the investigator on a track relevant to the complainant's specific concerns and led to recognition of the need for a policy clarification, and is an example of a high quality investigation.

Without an explicit statement of the conduct at issue, IIU can misdirect its investigation of the complaint of misuse of force and/or miss non-UOF issues raised, including issues related to the stop, a search, or matters of discourtesy. Furthermore, few if any of the 82 closed cases reviewed listed any allegation of misconduct in addition to the UOF allegation. It seems highly unlikely that complainants would never have other complaints about their encounter with KCSO, particularly if use of force was involved.⁴⁷

Recommendation 14 – IIU complaint allegations involving use of force should state whether the misconduct involves alleged unnecessary use of force, excessive UOF, or both, with the behavior or conduct at issue specified.

Recommendation 15 – IIU complaint statements involving use of force should indicate whether only misuse of force is alleged or whether there are other allegations to be investigated.

F. Use of KCSO Internal Resources in Analyzing UOF Complaints

In several of the closed UOF complaint cases reviewed (three in 2016 and at least one in 2015), the investigative files show that the IIU investigator consulted KCSO experts or someone higher in the chain of command weighed in on the advisability of a particular force tactic or technique underlying the complaint. This is a commendable form of self-examination and a constructive use of IIU and other KCSO resources. However, it was not apparent to the Review Team how KCSO determines which members have sufficient training and experience to qualify as an internal expert on specific use of force policies, training, and tactics. Furthermore, it was not always clear from the file reports whether there was any resulting change in training or policy

⁴⁷ A content analysis of complainant interviews by supervisors investigating a reported use of force was outside the scope of this project, though would be informative on this issue.

or any remedial outcomes, except in the one Sustained case in 2016 and a documented deputy counseling in one 2015 case.

- KCSO could benefit from a standardized way to memorialize constructive dialogue and critique that can develop through the complaint investigation process, so that lessons learned are shared throughout KCSO and to ensure that any necessary policy/procedure or training changes take place. Making explicit the qualifications necessary to become an internal expert in specific aspects of use of force policy, training, and tactics will help ensure that KCSO use of force is consistently held to the most current standards.

Recommendation 16 – Establish a system to track whether changes in training or policy resulted from a complaint. Memorialize such changes in training or policy in a standard fashion and include the documentation in the IAPro file of the complaint.

Recommendation 17 – Make explicit the qualifications necessary to become an internal expert in specific aspects of use of force policy, training, and tactics.

- The lack of memorialization extends to force reviews through ART, the Use of Force Review Board, criminal investigations related to administrative complaints, and/or review by Risk Management. None of the 82 closed UOF complaints reviewed included IAPro documentation with regards to interface with these other review systems. The way the Blue Team/IAPro files are set up, it's not clear where such an interface would be recorded, either. However, the lack of coordinated review of use of force for accountability and transparency purposes can produce an outcome where nobody is really responsible for the overall review of UOF.
- Related to the bullet point above, the GOM guidance on when ART and the Use of Force Review Board will be called into play and the purpose of each entity overlaps, in sometimes confusing ways.⁴⁸ Both are to review serious use of force and both are to

⁴⁸ GOM 6.00110.

produce “lessons learned,” though ART also presents information to the UOF Review Board. The UOF Review Board makes findings and recommendations, and can refer misconduct to IIU, though IIU is also tasked with making findings and recommendations concerning use of force when presented through a complaint. ART’s review is to focus on training, tactics, and policy and procedural issues/violations, though IIU is tasked with overseeing misconduct, which could include policy or procedural violations.

- Because ART and the Use of Force Review Board focus on serious use of force, the opportunity for KCSO to routinely consider training, tactics, and other issues that relate to less serious force is lost. Issues might come up in the context of a complaint or through routine supervision. However, KCSO would benefit from creating a mechanism for all uses of force, serious or less serious, to be considered from a variety of angles, including by ART and/or the Use of Force Board.

Recommendation 18 – Review the purpose behind ART and the Use of Force Review Board to identify any unintended overlap of duties and provide clarification where needed.

Recommendation 19 – All IAPro use of force reports should contain references to reviews and recommendations made by ART or the Use of Force Review Board.

G. Timeliness in Completing Investigations

The majority of IIU investigations appeared to be completed in a timely fashion, though the Review Team did not closely study this issue, nor compute an average length of time involved with investigation of UOF complaints. IIU’s propensity to rely on the supervisor’s UOF investigation completed at the scene might account for the relatively speedy resolution of many complaints, but is not a good substitute for conducting thorough complaint investigations.

H. Inclusion of IRIS Information in IIU File

KCSO policy requires that the complaint investigator, “Gather and review all relevant reports related to the incident (e.g., CAD print outs, Incident Reports, Officer’s Reports, etc.)”⁴⁹ Before interviewing complainants and witnesses, KCSO policy provides that investigators “should know as much as possible about the person to be interviewed,” which includes checking records and other sources of information about the individual and checking “to see if the complainant has filed complaints in the past and the nature of those complaints.”⁵⁰ Presumably for these reasons, Incident Reporting and Investigation System (IRIS) information concerning the complainant’s background and criminal record was frequently included in the IAPro IIU documentation. However, the relevance of such information for complaint processing is questionable. It can be easy for some to assume that someone with a criminal background or a complainant who appears guilty for the crime related to the deputy’s conduct at issue is inherently lacking in credibility as to any misconduct complaint. Reviewing IRIS information or a complainant’s complaint history before investigating the facts at hand can contribute to unconscious or conscious bias against the complainant’s testimony. If such information is ever relevant, it should be considered after all investigative steps have been taken and only where relevance is explicitly stated (e.g., there is a credibility issue to be decided or the deputy knew the information ahead of the incident and it factored into his or her tactical decision-making).

Recommendation 20 - IRIS information should not be considered or included in the complaint investigation file. Following a full investigation, if either the complainant’s criminal or complaint filing history is considered relevant to the complaint at hand and facts investigated, the link should be clearly articulated.

⁴⁹ GOM 3.03.155.4.

⁵⁰ GOM 3.03.160.1.

I. Evidentiary Standard

KCSO policy recognizes that the “preponderance of the evidence” is the standard of proof in most administrative investigations.⁵¹ The Review Team noted inconsistent application of the preponderance of the evidence standard. Because often there was little explicit analysis of the evidence, it was difficult to know if the preponderance standard was appropriately applied. For example:

- IIU often found a complaint “Not Sustained” if there was no independent witness, despite the strength of other evidence.
- In one case where the investigator clearly noted inconsistent statements between the complainant and deputy, a commander later wrote “no inconsistencies,” without explanation.
- In numerous investigations, the investigator simply listed all evidence from the underlying UOF report that found the force was within policy and did not discuss the evidence from the perspective of the complainant and through the lens of the preponderance standard.

Recommendation 21 – Standard Operating Procedures (SOPs) for the Internal Investigations Unit should include a discussion about the standard of proof in complaint misconduct investigations, with examples of when it is and is not met.

Recommendation 22 – IIU personnel and others who routinely investigate such complaints should receive training on the application of the standard of proof in misconduct investigations.

⁵¹ GOM 3.03.180. The policy provides that where criminal or serious misconduct is alleged, and there is a likelihood of suspension, demotion or termination, the standard of proof is “clear and convincing,” a higher standard than “preponderance of the evidence.”

J. Use of Force Complaint Disposition

The Review Team's analysis of the complaint disposition for the 2015 and 2016 closed UOF cases are as follows:⁵²

2015 Closed UOF Complaints

- Unfounded: 38
- Exonerated: 3
- Not Sustained: 1
- Sustained: 0
- Undetermined: 0
- Performance Related Training: 1

2016 Closed UOF Complaints

- Unfounded: 22
- Exonerated: 11
- Not Sustained: 2
- Sustained: 1
- Undetermined: 1
- Performance Related Training: 2

A number of observations can be made with regard to the complaint disposition process.

- As noted in section III, the complainant receives notification of the complaint disposition, though any specific actions taken against the involved deputy are not revealed, nor is other information provided about the steps taken in the investigation, to explain the meaning of the disposition, or to note whether the complaint led to

⁵² Note that any single case could involve more than one deputy, more than one type of UOF, and/or allegations besides those related to UOF, which were not analyzed.

organizational policy or training changes. This lack of detail does not provide transparency about the investigation process, does not help the public better understand use of force policy and practices, and can exacerbate feelings of mistrust in the community.

- There were numerous cases in which the ultimate finding appeared contrary to the definition associated with the finding, particularly with regards to Unfounded and Exonerated determinations. KCSO policy defines Unfounded as “The allegation is not factual and/or the incident did not occur as described.” Exonerated is defined as “The alleged incident occurred, but was lawful and proper.”⁵³ Observations concerning findings that did not appear appropriate for the associated definition of the finding include:
 - In 40 of the cases reviewed (24 in 2015 and 16 in 2016), the finding was Unfounded, but should have been Exonerated, because force was used and reported, but justified.
 - In five of the cases (one in 2015 and four in 2016), the finding was Exonerated, but should have been Unfounded, because no force was used or reported.
 - In one 2015 case, the finding was Unfounded, but the complaint had been withdrawn. Under KCSO policy, it appears the case should have been Undetermined.⁵⁴

⁵³ GOM 3.03.185.

⁵⁴ GOM 3.03.185 defines “Undetermined” as: (a) The completed investigation does not meet the criteria of [the other 4 classifications]. (b) This may involve the following: The complainant withdraws the complaint; The complainant cannot be located; The complainant is uncooperative; The accused member separates from the Sheriff’s Office before the conclusion of the investigation and the investigator cannot reach another classification. (c) Notwithstanding the above situations, if enough information has been collected to close the investigation with [one of the other 4 classifications], an Undetermined classification will not be used.

Recommendation 23 – Review the complaint disposition scheme to determine if there is a need for all six possible findings and, if so, to clarify the definition and applicability for each finding, particularly with regards to the findings of Exonerated, Unfounded, and Undetermined.

Recommendation 24 – Determine ways to provide complainants with more information concerning the disposition of their complaints, including details about steps taken in the investigation, whether policy or training changes resulted from the investigation, and the meaning of specific findings.

- Another issue that was seen in several cases involved a finding of Not Sustained because there was conflicting evidence and no independent witness to the alleged misuse of force. In such situations, no effort was made to consider credibility factors to help resolve the complaint.

Credibility determinations can be difficult, but when necessary, the investigator should thoroughly describe all factors supporting the evaluation of whether or not a witness was in a position to accurately perceive the incident and is telling the truth. It can be very important to question a witness about discrepancies between current and past statements or other evidence, to ensure the investigator draws the correct conclusion concerning credibility. Examples of issues to consider when weighing the credibility of any witness, civilian or sworn, include:

- Opportunity to perceive
- Whether the witness has a motive to falsify
- Whether the statement is consistent with previous testimony or other evidence
- The witness' past record involving similar allegations
- The amount of detail in the witness' account
- Witness demeanor (with specific behaviors noted)⁵⁵

⁵⁵ Attard, Barbara and Kathryn Olson, *Police Misconduct Complaint Investigations Manual* (2016), p. 44-45.

Recommendation 25 – Address how credibility determinations can impact an investigation and ways to resolve credibility disputes in KCSO’s SOPs.

Recommendation 26 – Provide training on how to make credibility determinations for IIU personnel and others who routinely investigate misconduct complaints.

VI. Literature Review: The Context of Police Misconduct Complaints

To provide context to this review of KCSO use of force complaint investigations, the report next addresses research that has been conducted regarding police complaints, and the final section compares a number of data points on KCSO use of force in general to force that leads to complaints. First, Dr. Matthew Hickman summarized the academic literature on police misconduct complaints in general. An introduction to the research that has been done on police misconduct complaints is presented below, with the full summary attached in Appendix I.

In any analysis of citizen complaint processing and outcomes, it is important to consider the findings in the context of what is known about complaint processing from studies conducted within and across other jurisdictions. Without a basis for comparison, it is difficult to understand the meaning of a particular statistic, such as a sustain rate: is it low, high, or typical? However, there are some challenges to synthesizing this research literature. While social science research on citizen complaints started about 50 years ago, the volume of research conducted within that 50-year span is relatively small, in part due to the fact that police departments have generally been unwilling to share their data with researchers. In addition, police complaint processes can be somewhat idiosyncratic, with variation in the complaint intake processes, codes of conduct, degree of internal and/or external review, and policies and procedures. Despite these idiosyncrasies, we are able to draw the following general conclusions from the research literature on citizen complaints about police around the country (see Hickman and Poore, 2016):

1. ***A relatively small proportion of officers are responsible for a large proportion of complaints.*** However, it should be noted that this does not necessarily mean that these

constitute a small number of “problem” officers, as some research has linked high rates of complaint to arrest activity and other measures of officer productivity.

2. ***On-view incidents (involving direct observation by the deputy) and more “proactive” policing assignments may be more likely to lead to complaints than dispatched calls.*** In a broader sense, this points to the need to consider officer assignments as well as work context in understanding differential rates of complaint.

3. ***Minority citizens complain in numbers disproportionately greater than their representation in the population served.*** The research shows that this is particularly true for Black or African-American citizens. However, it is unclear whether a racial group’s representation in the population served is the appropriate denominator for this type of analysis.

4. ***Minority officers are disproportionately the subject of citizen complaints, as well as internal (i.e., police-initiated) complaints.*** It is not clear what accounts for these findings, although racial bias has been suggested.

5. ***Younger officers and those with fewer years of experience tend to receive more complaints.*** While this may be attributable to having less experience, maturity, and/or skill in interacting with the public, it could also reflect greater exposure in terms of officer assignments and productivity.

6. ***There is wide variation in sustain rates across agencies.*** Some of this variation may be attributable to structural differences (such as the presence or absence of an external civilian complaint review board in a jurisdiction), but also to idiosyncrasies in how agencies process complaints.

7. ***Despite the wide variation in sustain rates across agencies, in general, sustain rates are lower for physical force complaints as compared to other types of complaints.*** This general finding is supported by a broad range of studies over time; a recent eight-city comparative study documented an overall force complaint sustain rate of 1.9%, ranging from zero to 4.5% across the agencies studied (Terrill & Ingram, 2016). While some may attribute this to a departments’ unwillingness to address the problem of physical force, this may also reflect the sizeable gap between citizens’ perceptions of what constitutes “excessive” force, and force as it is understood in terms of departmental policy and/or the law.

8. ***Internal (police-initiated) complaints tend to have higher sustained rates than citizen complaints.*** This can also lead to higher sustain rates for minority officers, as minority officers are disproportionately the subjects of internal complaints.

VII. Use of Force Complaints Comparison with All Uses of Force in 2015–2016

The patterns of use of force complaints emerge more clearly when compared with a baseline of all use of force by KCSO during the time period studied. In order to establish this baseline and give context to the complaint data, the Review Team turned to the Police Force Analysis System (PFAS), a process that identifies patterns and trends in use of force both within and across law enforcement agencies.⁵⁶ PFAS had previously been used by KCSO to collate data on all force incidents in 2014 through 2016.

In this report, PFAS data from KCSO use of force during 2015 and 2016 is presented to provide a better understanding of UOF complaints as compared to all use of force.⁵⁷ Copies of dashboards presenting this information and other details are attached in Appendix II, along with a report on the PFAS analysis of force underlying complaints.

A. Use of Force Incidents Overall Versus Those Resulting in Complaints

In its analysis of 2015 and 2016 UOF complaints, the Review Team counted each complaint with an underlying use of force incident report one time, though any single incident could involve multiple officers and/or multiple uses of force. The Review Team initially analyzed all 82 closed force complaint investigations (as discussed earlier in the report), but because some

⁵⁶ PFAS was developed by Police Strategies, LLC. Further information can be found at: <http://policestrategies.com>

⁵⁷ Note that in some cases, force underlying a complaint closed in 2015 or 2016 might have occurred in an earlier year, depending on the timing of the incident and when the complaint was filed. Five of the incidents related to cases closed in 2015 occurred in 2014, while four of the complaint investigations closed in 2016 involved incidents occurring pre-2015.

complained about force when there was no reported UOF, the Team separately analyzed the complaints where there was a force report.⁵⁸

Under the PFAS analysis, in 2015 and 2016, KCSO had 366 incidents involving 291 officers and 643 reported uses of force.⁵⁹ Thus, in comparing all KCSO incidents that involved force to the number that resulted in complaints, approximately 15% of incidents involving at least one use of force resulted in a complaint of misuse of force.

B. Where Force Incidents Occurred and Type of Incident

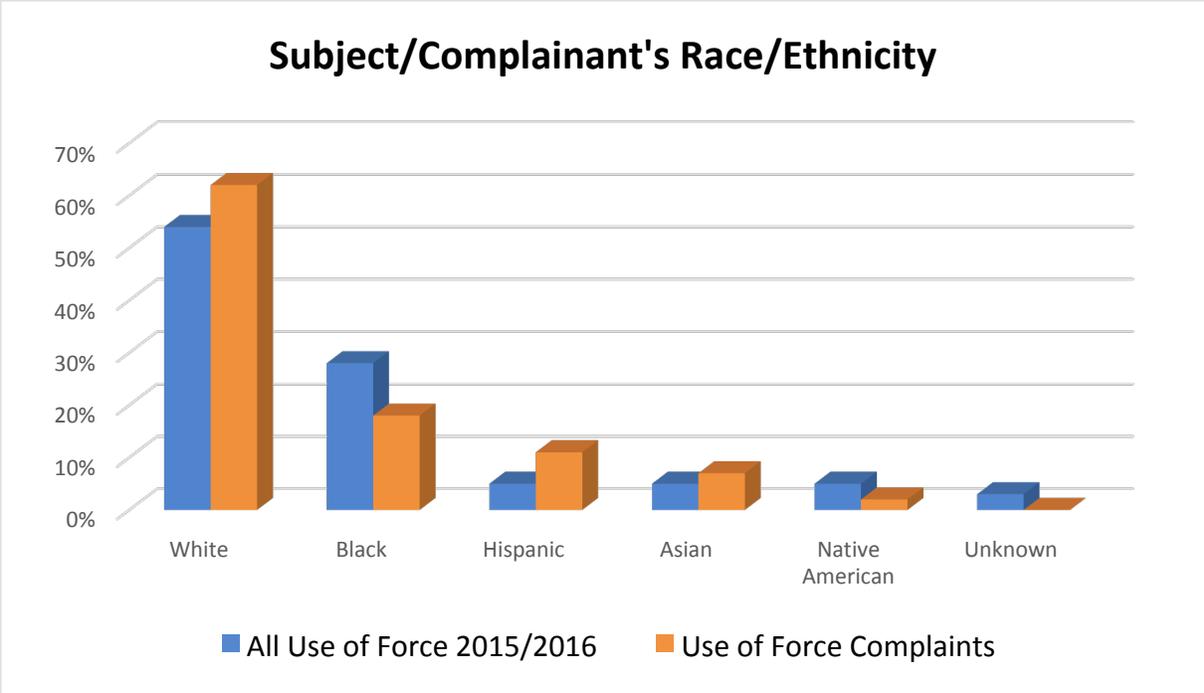
- Half of all force incidents underlying the complaints occurred in Precinct 4, and were concentrated in Burien/White Center.
- Nearly 50% of the force incidents occurred on the street, as opposed to inside a home, business, or other location.
- The majority (60%) of force incidents from all precincts grew out of deputies responding to dispatch calls versus a deputy observing and responding to suspicious activity or assisting another deputy.

C. Demographic Information about Subjects/Complainants

- Men are involved as subjects in the great majority of use of force incidents and, subsequently, as complainants alleging misuse of force.
 - 90% of subjects in force incidents were male
 - 91% of complainants were male

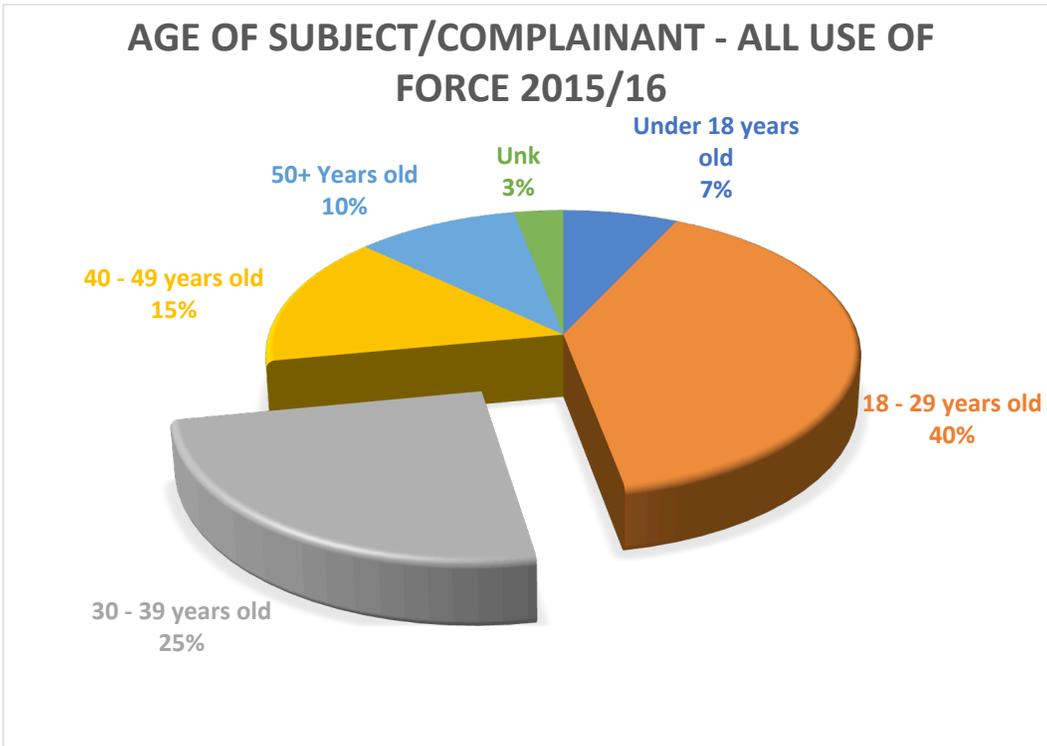
⁵⁸ However, for PFAS analytic purposes, if the force report was not linked to the investigation, data concerning the complaint of misuse of force was not included. Thus, PFAS considered 55 UOF complaints closed in 2015 and 2016 and the associated use of force report, as no report was available for two cases.

⁵⁹ Of the 366 incidents involving force, 176 were in 2015 and 190 in 2016.



- The majority of both the force incidents and complaints involved use of force on individuals reported to be White. This might be expected given that 64.8% of King County residents identified themselves as Non-Hispanic Whites in the 2010 Census.⁶⁰ However, as noted in Dr. Hickman’s literature review, it is unclear whether a racial group’s representation in the population served is the appropriate denominator for an analysis of police use of force or the filing of misconduct complaints. See section VI and Appendix 1.
- In this two-year sample, Black subjects were significantly less likely than other groups to make complaints about use of force. While there could be a number of explanations for this disparity, it’s possible that Black subjects are dissuaded from filing complaints about use of force or that they do not have confidence in the complaint processing system. Further study is needed.

⁶⁰ <https://www.kingcounty.gov/depts/executive/performance-strategy-budget/regional-planning/Demographics.aspx>



- The majority of both force incidents and complaints involved subjects/complainants 18 to 39 years old.
- The sample shows that subjects 40 to 49 years old were significantly more likely to make use of force complaints than all other groups.

Subject/Complainant Residence		
Residence	All Use of Force in 2015 and 2016	Use of Force Complaints
King County	59%	53%
Seattle	22%	27%
Other	9%	13%
Transient	6%	7%
Unknown	4%	N/A

The majority of both force incidents and complaints involved subjects/complainants who live in King County (outside Seattle) or in Seattle. Given that KCSO’s jurisdiction in Seattle is focused on the King County Metro Transit Police Department, the number of uses of force and complaints involving incidents in Seattle appears relatively high and calls for closer study, in part because KCSO might be handling matters that should be addressed by the Seattle Police Department.

D. Deputies Involved in Use of Force Incidents Resulting in Complaints

The 55 force incidents from 2015–2016 that resulted in complaints and were analyzed through PFAS involved a total of 82 deputies. The following are observations about the deputies involved, some of which might call for further exploration by KCSO:

- The majority of deputies involved received only one complaint during the time period reviewed; 18% received two complaints; and 6% (five deputies) received three or more complaints.⁶¹

⁶¹ Because OLEO was provided limited information from the PFAS database, no other details about the officers are available; e.g., number of years in patrol, age, etc. Also, though the Review Team was not focused on individual officers or particular force incidents, information on complaint history for an involved officer can be useful in

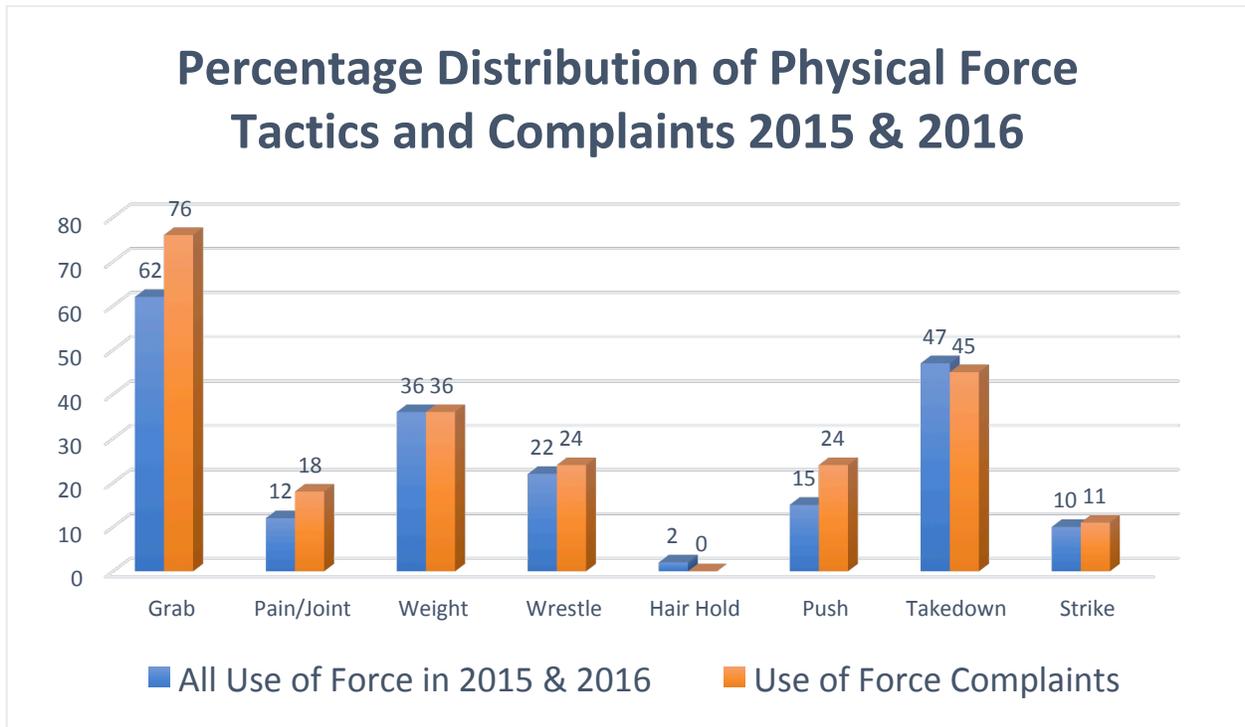
- The deputy was acting alone in 9 of the 55 uses of force that resulted in a complaint (17%).

- Nearly two-thirds of the force incidents involved more than one deputy.
 - Of the 416 deputies on patrol, 36% have less than five years of experience. Some 71% of all deputies with less than five years of experience are assigned to patrol. As nearly one-half of all use of force resulting in a complaint involved deputies with less than five years of experience, those with less experience are significantly more likely to use force resulting in a complaint.

 - Of the 416 deputies assigned to patrol, 39% have 16+ years of experience, while only 12% of the complaints about force involved deputies with 16+ years of experience.

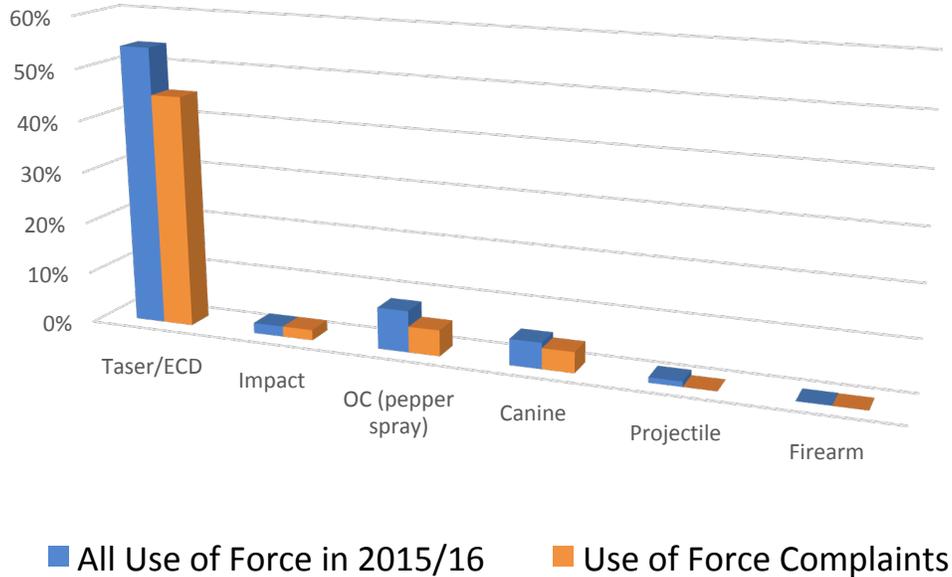
evaluating whether Early Intervention might be appropriate or to take into consideration at the discipline stage where there's a sustained finding on a complaint.

E. Types of Force and Force Tactics Used by Deputies



- About 44% of all use of force in 2015 and 2016 involved physical force only, as opposed to using a weapon, and 40% of the force related to complaints was physical only. Grabs – which involve pulling at subjects – and takedowns were the two most common types of physical force tactic used in both overall force and force complaints.

Percentage Distribution of Force and Complaints Involving Weapons



- Deputies used a weapon in 56% of all force incidents in 2015 and 2016. Only one type of weapon was used in each incident resulting in a complaint.
- Where a weapon was used, 54% of the force incidents involved use of the Taser. By way of comparison, in a PFAS study published by the San Jose Police Department (SJPD), it was reported that an electronic control device was used by SJPD in 17% of incidents involving force, which is considered average in interagency comparisons.⁶²
- Six of the Taser related complaints involved only one deputy and the Taser was the only force used.
- Nineteen of the Taser related complaints involved both the use of the Taser and other force. Of these incidents, three involved one deputy, eight involved two deputies, and eight had three or more deputies using force during the event.

⁶² See full report at: https://www.sjpd.org/CrimeStats/San_Jose_Summary_Force_Report.pdf

- Given the relatively high Taser usage among all use of force involving weapons and force resulting in complaints, it is not surprising that the use of other less-lethal weapon options, such as OC spray, is relatively low.

Though the Review Team notes the relatively high frequency of Taser usage when a weapon is used in force incidents and the high representation of UOF complaints involving Tasers, there is not sufficient data to opine on possible explanations for these outcomes. However, the data on Taser use calls for the need for further study.

Recommendation 27 – Conduct an audit to provide a meaningful level of detail about Taser usage and evaluate compliance with policy and training. Examples of useful data to collect include, but are not limited to: when and where Tasers are used, circumstances and conditions resulting in Taser usage, whether Tasers were used in fired probe or contact-stun mode, the number of applications used, the parts of subjects’ bodies on which Tasers were deployed, whether medical aid was called or subjects were taken to a medical facility, and whether and how Taser applications resolved incidents.

F. Levels of Resistance by Subjects

PFAS analyzes each use of force event from the perspective of the subject’s level of resistance. Maximum resistance exhibited during the event is classified as: passive, threats, defensive, active, less lethal, or deadly.⁶³

⁶³ Under PFAS, sequences of resistance and force during an event are considered, with levels of resistance defined as follows (more detail and specific examples are provided to coders):

- Passive resistance – verbally or physically refusing the officer’s commands
- Threats – attempts to intimidate or poses a physical threat to the officer; assumes a threatening posture or makes verbal threats
- Defensive – escapes or flees to avoid custody
- Active physical resistance – uses violent, offensive, or aggressive actions against the officer
- Use of less lethal weapon – uses an object as a weapon in a manner that is not likely to cause serious bodily injury or death
- Use of deadly weapon – uses an object as a weapon in a manner that is likely to cause serious bodily injury or death

- In every case where a reported UOF led to a complaint, the deputies reported some level of resistance by the subject/complainant.
- In 3 of the 55 incidents, the maximum level of resistance reported was only passive resistance, and in three other cases, the only resistance reported was the subject's use of threatening words or posture.
- Some level of physical resistance was reported in the remaining 90% of incidents.

G. Subject and Deputy Injuries

- Most complaints (86%) with a linked UOF report involved force that resulted in subjects/complainants sustaining some type of injury.
- KCSO has had a policy since June 1992 that required its members ensure that all persons involved in a use of force receive medical treatment if needed or requested.⁶⁴ However, in reviewing closed complaints and use of force from 2015–2016, the Team found that the use of force forms used did not directly cover the issue of whether or not medical aid was necessary, offered, or called, making it difficult for the supervisors or investigators to determine if medical aid was properly summoned. The Review Team was told that the forms used to track this or other issues were not automatically updated when policies are adopted or revised.

⁶⁴ Current GOM 6.00.015.1, effective December 2017, requires “[m]embers shall call for medical aid, as soon as possible, when there is an obvious, suspected or alleged injury to any person involved in the use of force.”

Recommendation 28 – When policy changes are made, update all forms to ensure that they are consistent with relevant policies and that the forms contribute to an overall system for tracking questions such as whether medical aid was offered or summoned.

- The most serious reported injuries for those who filed complaints about use of force included:⁶⁵
 - Complaint of pain only – 29%
 - Taser probe puncture – 24%
 - Cut – 13%
 - Bruise or scrape – 11%
 - Chemical irritation – 5%
 - Canine bite – 4%
- Deputies reported receiving injuries in 13 out of 55 force incidents underlying complaints, or 24% of the time. Considering all force used in 2015–2016, officers were injured 15% of the time.

H. Complainant Characteristics

- The 55 complainant/subjects were reported to have exhibited the following conditions⁶⁶:
 - Angry or aggressive – 25%
 - Yelling or screaming – 25%
 - Under the influence of drugs or alcohol – 45%
 - Mental health issues – 13%
 - Suicidal – 7%

⁶⁵ PFAS captures only the most serious injury sustained by the subject. Thus, the 24% injury from a Taser probe would represent incidents where the probe was the only injury recorded. If a Taser was used and the subject fell and broke his nose, only the fracture would be recorded as an injury.

⁶⁶ This list of conditions is based on descriptors used by deputies in their reports. It is not intended to align with the levels of resistance defined and discussed above. A subject might be reported as having been angry and yelling, but passively resisting, or angry and yelling and making threats to the officer, and the resistance would be classified at a higher level.

- Complainant/subjects were reported to have posed a threat prior to UOF in 41% of the use of force incidents underlying the complaints analyzed⁶⁷:
 - Verbal threat – 4%
 - Furtive movements or threatening posture – 24%
 - Assault or attempted assault – 6%
 - Deadly weapon – 7%.

- Complainant/subjects were reported to have possessed or used a weapon in approximately 18% of the use of force incidents underlying the complaints analyzed:
 - Possessed a firearm – four incidents
 - Pointed a firearm – one incident
 - Possessed a knife – one incident
 - Used an impact weapon or vehicle as a weapon – four incidents

- In the 35% of complaint incidents where complainants were reported to have assaulted deputies without a weapon, they used the following means:
 - Push – 15%
 - Kick – 11%
 - Punch – 7%
 - Spit – 2%

- Of the 55 subjects, 17 were reported to have fled from deputies (12 on foot, 4 by vehicle, 1 by bicycle) before force was used.

⁶⁷ Other circumstances leading to UOF besides the subject posing a threat include a reported crime, subject flight, or information the subject is armed.

I. Force Incident Outcomes

- Following the force reported in the 55 incidents studied:
 - 47 of the subjects were arrested, most commonly for a warrant.
 - Arrest for six of the subjects was based on obstructing arrest.
 - Of the eight who were not arrested, seven were taken to the hospital for mental health evaluation or detox, and one was given a traffic citation and released.

J. Force Justification and Proportionality

In addition to collecting and reporting out on the kind of data described above, PFAS can be used to assess the reasonableness of each use of force, or whether it was necessary, and whether the force used in proportion to the level of resistance exhibited could be found excessive. The Review Team applied this component of PFAS to the overall force incidents and complaint incidents in 2015 and 2016 and made the following observations. (For an explanation of the methodology and definitions employed, please refer to Appendix II.)

1. Force Justification

When levels of force used by deputies are considered in light of: (1) the severity of the crime being investigated; (2) the immediate threat posed to the officer, third parties, or the subject; (3) the level of resistance presented by the subject; and, (4) whether the subject fled from the officer, uses of force can be assigned a “justification score.”⁶⁸ The higher the justification score, the more likely the use of force would be found justified.

- Considering all use of force for KCSO in 2015 and 2016, 17% had a low force justification score, as compared to 28% with low force justification score when looking only at the 55 UOF incidents related to complaints. This suggests that subjects were more likely to

⁶⁸ The four factors considered are taken from *Graham v. Connor*, 490 U.S. 386 (1989), the case in which the Supreme Court adopted an objective reasonableness standard for evaluating uses of force, taking into consideration the information the officer was aware of at the time force was used and then comparing the officer’s actions to what a reasonable officer would have done when faced with the same situation.

complain about UOF when they were involved in lower-level offenses, did not threaten the deputy, did not flee, and resisted at lower levels, if at all.

- The original reason for the stop in the 28% of complaint related cases with low force justification included traffic stops, welfare checks, and alcohol violations.
 - None of the subjects involved fled or were armed.
 - Three of the subjects were reported to have made furtive movements, which were interpreted by the deputies as threats.
 - 80% of the subjects passively resisted when the deputy used force.⁶⁹

2. Force Proportionality

When levels of force used by deputies are compared to the levels of resistance or aggression exhibited by subjects, the resulting difference can be assigned a number or force factor.

- The force factor distribution of the 55 incidents underlying the complaints reviewed through PFAS is typical of what is seen in all force incidents for KCSO for 2015–2016.
- Of the 55 incidents, 5 had a high force factor, involving use of less lethal weapons (four Tasers and one pepper spray).
- These cases with a high force factor involved higher-level offenses and generally some type of threat to the deputy or others, or a suspected firearm.

⁶⁹ In the PFAS scheme, “passive resistance” refers to the first force sequence, not the entire force incident. “Passive resistance” means not complying with the officer’s orders (e.g., the subject’s refusal to put hands behind the back). The next force sequence usually involves the officer going hands on or using a weapon; at that stage, subjects often do use more active resistance. In the cases analyzed in this Review, the percentage of passive resistance in the first force sequence is very high compared to all force incidents. This may indicate that officers could wait longer before using force since the subjects were not threatening or assaulting the officers or others. Note that the data analyzed is limited.

- In four of the five cases with a high force factor, the subject was intoxicated or had mental health issues.

3. Conclusions when Force Justification and Force Factor Scales are Combined

- Only 2 of the 55 cases analyzed had both a low justification score and a high force factor score.
 - Both incidents involved a subject being investigated for what PFAS classifies as a medium-level crime (trespass and warrant).
 - When the subjects refused to comply with orders, the deputies used less lethal force (Taser and pepper spray).

K. Unnecessary versus Excessive Force

While limited data was reviewed, the PFAS analysis of 55 closed UOF complaints suggests that subjects are more likely to complain when they feel that the force used was unnecessary, rather than excessive, represented by a low justification score, rather than a high force factor score. Thus, it appears as if the motivation for the complaint is not about the level of force that was used (i.e., whether it was excessive), but rather the fact that force was used at all (i.e., whether it was necessary).

Information gathered from jurisdictions outside KCSO indicate that complaints of misuse of force are more common when low levels of force are used against subjects engaged in minor offenses or when they are incorrectly suspected of criminal behavior. If these individuals fail to cooperate, the officer usually gains control with a minimal amount of force and no or minor injury. However, the subjects in these types of situations tend to view any force used against them as unwarranted and, therefore, any amount of force used may generate a

complaint.⁷⁰ Further study of the circumstances leading up to use of force and the justifications KCSO deputies provide would be useful, both to ensure that people are stopped for legal purposes and that any force used meets the requirements of the law and policy, including de-escalation obligations.

VIII. Conclusion

The recommendations within this report are aimed at improving KCSO processes with respect to use of force complaint handling and investigation.⁷¹ The steps we identified can help enhance accountability and transparency, and maximize the ways in which KCSO serves its community. Our recommendations fall under a few key headings.

More Training Needed

A number of observations and recommendations relate to the need for more training for everyone involved with investigating and reviewing use of force incidents and complaints. The Review Team appreciates the often complex and challenging issues involved with investigating use of force and complaints about force, making routine training on the law, KCSO policy, and the processes involved all the more important.

Related to recommendations for training KCSO members are suggestions about ways to better educate the community about use of force and complaint investigations. Thus, while we recommend that KCSO review its complaint disposition system because some appear confused as to the appropriate finding to use in particular cases, the system is likely even more confusing and frustrating for complainants who receive little information to explain a particular outcome on their complaint. Providing more information to individual complainants about dispositions

⁷⁰ This finding is consistent with a recent study indicating, "...citizens' assessments of procedural justice are shaped much less by how officers use their enforcement powers – such as using physical force or conducting searches – than whether they use them...[O]fficers' decisions about whether to use their coercive authority matter far more to public perceptions of police legitimacy than how they use it." <https://thecrimereport.org/2017/07/18/building-trust-in-police-what-really-works/#>

⁷¹ Throughout its report, the Review Team also points to issues outside the scope of this project, but worthy of further study by OLEO and KCSO.

on their allegations of misuse of force and educating the public about use of force policies, training, tactics and other force issues will help align KCSO and the community on use of force matters in general.

Step-up Interview Practices

Throughout our review, we noted deficiencies related to whether and how interviews were conducted of involved officers, complainants, and witnesses. We noted the benefits of conducting in-person interviews in the investigation process, including the opportunity to establish rapport and encourage information sharing, the ability to observe and respond to non-verbal communication, and the likelihood that the interviewer will discover areas for follow-up questions. Because of problems observed with interviews, or lack of interviews, during the use of force and IIU investigation process, we recommended that policy requires interviews or that an explicit statement be made in the file as to why a particular interview was not conducted. Related to interviews, we also recommended that investigators make credibility determinations when necessary.

Treat Uses of Force as Opportunities to Learn

KCSO's use of force review and UOF complaint investigation processes provide an opportunity for insights and discussions about tactics, choice of weapons, field communications, de-escalation, courtesy and fairness. These systems provide feedback that can lead to changes at the individual level or broader modifications in policies, procedures, equipment, or training.

Improve Underlying Review Systems

It is our hope that the Review Team's recommendations will help refashion UOF investigations and review and the complaint investigation systems so that all processes better serve KCSO in its efforts to be a learning organization. Ways to make the overall process more effective and useful include: coordinating the purposes behind ART, the Use of Force Review Board, and other use of force investigation and review; improving and making more consistent review by the chain of command; and, appointing an internal entity responsible for quality assurance on all use of force investigations and review.

Acknowledgements

We are grateful to KCSO for providing access to use of force complaints for this review and for the explanation we received about the process involved in UOF and complaint investigations and review. We look forward to discussing with the Sheriff and her staff the observations and recommendations made in the report and ways to implement the suggested changes.

Glossary of Acronyms

A-150 – A form used by KCSO investigators and employee witnesses to provide written notification of the complaint, what the allegations are and what information is needed from them.

ART – Administrative Review Team

CAD – Computer Assisted Dispatch

ECD – Electronic control device, for instance a Taser

GOM – General Orders Manual, which contains KCSO's written policies and procedures

IAPro – Software brand name used for Internal affairs case management and database system

IIU – Internal Investigations Unit

IRIS – Incident Reporting and Investigation System

KCSO – King County Sheriff's Office

Mark 43 – KCSO's records management system

NIM – Non-Investigative Matter

OC – Oleoresin capsicum spray, commonly known as pepper spray

OLEO – King County's Office of Law Enforcement Oversight

OWS – Officer witness statement

PFAS – Police Force Analysis System

UOF – Use of force

SAL – Supervisor Action Log

SJPD – San Jose Police Department

SOP – Standard operating procedure