

POLICE AND THE MENTALLY ILL: IMPROVING OUTCOMES



**2017-2018 Civil Grand Jury
of Santa Clara County**

May 9, 2018

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SUMMARY

In Santa Clara County during 2013-2017, 31 people died as a result of officer involved shootings. Nine of the 31 suffered from mental illness, and in some of those encounters police used deadly force against unarmed citizens.

Local law enforcement agencies are under scrutiny whenever deadly force is used. This report examines the circumstances around law enforcement officers using deadly force against citizens who were in a mental health crisis, whether or not they were committing a crime. The key focus of this report is law enforcement mental health training policies.

In its examination of the 31 fatal Officer Involved Shootings (OIS) within Santa Clara County during 2013-2017, the Santa Clara County Civil Grand Jury (Grand Jury) learned that the Santa Clara County District Attorney (DA) had determined 28 of the OIS incidents to be justifiable under California Criminal Law. The DA was still reviewing the other three cases as of this report.

The Grand Jury found that major efforts have been undertaken in the County to train law enforcement officers in recognizing and dealing with people in mental health crisis and to provide “in the field” mental health professionals who can respond to these events. The Grand Jury, however, feels there is room for improvement in the depth of training, the number of officers trained, current Crisis Intervention Training (CIT) class protocols and the deployment of “in the field” mental health professional teams.

BACKGROUND

In Santa Clara County, if you dial 911 to report a life-threatening health emergency involving a loved one in your home or a stranger in a public setting, the local fire department and ambulance are dispatched on an Emergency Medical Service. The fire service is responsible for overall scene management; this includes the provision of first-response Basic Life Support or Advanced Life Support services prior to the arrival of the ambulance. If, on the

other hand, that call to 911 involves a mental health crisis — often involving your or somebody else’s loved one — it is the law enforcement community that must respond, safely intervene, de-escalate and provide an appropriate outcome for citizens who may be in crisis. Law enforcement officers have a difficult challenge in responding to these situations, especially where citizens are not committing any criminal acts.

In the 31 deadly encounters with citizens experienced by County law enforcement agencies during 2013-2017, at least nine¹ involved individuals known to have been suffering from a mental illness or crisis. In 2017, police in the County’s largest city, San Jose, faced eight deadly encounters, seven of which reportedly involved individuals with a mental illness.² The San Jose Police Department (SJPD) reports that 15% of all calls for law enforcement involve some element of behavioral health. A Santa Clara County Sheriff’s Office (SO) representative reports an average of two to three mental illness calls daily, though not all are criminal in nature, and five to 10 arrests per month involving individuals with mental illness. Law enforcement officials say these types of calls have become more frequent.

A variety of mental health training courses are available to police agencies in the County that expose officers to mental health syndromes and crisis recognition, de-escalation techniques, and community resources. All local law enforcement agencies within the County mandate some form of mental health training. The level and type of mandated crisis intervention training, however, is not consistent across all agencies. Some patrol officers in the County have not yet undertaken their agency’s mandatory training, but all agencies have some crisis intervention-trained officers on staff. Additionally, the County Behavioral Health Services (BHS) is deploying crisis intervention teams staffed with mental health professionals.

¹ <http://www.fatalencounters.org/people-search/>. A website created by Brian Burghart, founder and executive director of Fatal Encounters Dot Org, and a lifelong journalist and former editor/publisher of the Reno News & Review.

²San Jose Mercury News, 9/17/2017

METHODOLOGY

The Grand Jury conducted this investigation through interviews with law enforcement officers, DA officials, SJPd Communications Center staff and County Behavioral Health Services managers. A total of 15 individuals were interviewed. The Grand Jury surveyed municipal and county law enforcement agencies as to their respective mental health training requirements and compliance statistics. The Grand Jury reviewed the DA's OIS reports, which are published online. Several websites that collect officer involved encounters throughout the U.S. also were reviewed. Members of the Grand Jury monitored portions of a weeklong CIT training class sponsored by the SO and participated in the Force Options Simulator training conducted at the SO's training center.

DISCUSSION

In 2015, California adopted AB 71³, which mandates the reporting on an annual basis of every instance of the use of force by a police officer against a civilian, and vice versa, where death or great bodily injury results. The California Department of Justice (DOJ) collects and tabulates the data into its URSUS (Latin for 'bear') database. The reporting period began with 2016, but for the first year the data collection process was incomplete and not every agency within the County reported.⁴ The DOJ released its initial URSUS report on Use of Force in August 2017. SJPd has submitted data in compliance with AB 71 and has commissioned Police Strategies LLC to collect and analyze all use of force incidents. This police force analysis methodology has recently been made available on SJPd's public website for 2015-2016 and will continue to be available to the public.⁵ It should be noted that there is no mandatory national database that collects OIS statistics. The FBI database on the use of force depends on the voluntary reporting, and many jurisdictions fail to report.⁶ The FBI

³ Government Code Section 12525.2.

⁴<http://www.jrsa.org/pubs/sac-digest/vol-27/ca-ursus-2016.pdf>

⁵ <http://www.sjpd.org/CrimeStats/ForceAnalysis.asp>

⁶ National Data Collection on the Use of Force (1996) US Department of Justice, Bureau of Justice Statistics, Page 3.

continues to encourage law enforcement agencies to take part in the National Use of Force Data Collection program.

The DA has a dedicated team who review OIS incidents to determine if the use of deadly force was justifiable under California law. The DA reviewed 31 officer involved citizen deaths in the County from 2013 through November 2017, the timeframe of the Grand Jury's investigation. The DA publishes reports of those investigations on its website where the use of force was found justifiable. Twenty-seven of the 28 published investigations involved agencies studied by the Grand Jury. Three incidents are still under review. Out of those 28, 13 involved persons who had some history of mental illness, based on the investigative reports.⁷

Under California Penal Code Sections 835a and 196, a peace officer may use deadly force in self-defense, defense of another, or to prevent the escape of a felon who might cause immediate substantial injury to others if not detained.

Penal Code Section 835a reads:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 196 reads:

⁷ Santa Clara County District Attorney Website, Officer Involved Shooting reports.
<https://www.sccgov.org/sites/da/Pages/Search.aspx?k=officer%20involved%20shootings>

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Essentially, an officer is permitted to use reasonable force in the defense of others or the officer, and the officer need not retreat.

The DA's review of the 28 OIS incidents found that in each case, the involved officers' use of deadly force was legally justifiable. The incidents involved a variety of weapons, including guns, knives, a saw blade, a pellet gun and in one incident a power-drill painted black. In only one of the 28 incidents did it appear from the DA's reporting that a crisis intervention-trained officer was available or called to the scene. The question arises whether the presence of a person with enhanced training in crisis intervention and de-escalation techniques could have resulted in a different outcome, especially in six incidents where apparently no bystanders were in immediate danger. The Grand Jury explores the benefit of crisis intervention training in this report.

Survey of County Law Enforcement Agencies

A written survey was sent to the SO and to each of the other 11 law enforcement agencies: Palo Alto, Sunnyvale, Campbell, Santa Clara, Mountain View, Los Gatos-Monte Sereno, Los Altos, Milpitas, San Jose, Gilroy and Morgan Hill. The survey sought data from Jan. 1, 2013, to Nov. 30, 2017, on:

- number of peace officers on staff
- number of OIS incidents

- number of OIS incidents resulting in death
- number of OIS incidents where the deceased was suffering from a serious mental illness (SMI)
- number of officers killed or injured by suspects suffering from a serious mental illness
- number of officers who have taken department mandated Crisis Intervention Training (CIT) beyond the Police Academy training course
- whether recertification training is required
- whether the agency offers the option to take further Crisis Intervention-related Training
- whether the agency employs a CIT team
- whether the agency requires dispatch operators to undergo CIT.

All agencies responded and the survey results are in Table A below. Crisis Intervention Training as used in this report includes developing an awareness of the various forms of mental illness, e.g., autism, excited delirium, development disabilities, and Alzheimer's recognition, as well as instruction in de-escalation techniques.

Combined, the agencies reported a total of 56 OIS incidents during the past five years, which includes 31 fatal incidents. These agencies reporting fatal OIS during this span are: San Jose (15), Sunnyvale (6), Santa Clara (4), Sheriff's Office (4), Gilroy (1) and Palo Alto (1). Of the 56 total OIS incidents, 22 involved a suspect suffering from a serious mental illness. One agency, Sunnyvale, did not track this criterion. One officer was killed and six were injured by suspects suffering from a serious mental illness during this period. Several agencies do not track mental illness involvement when officers are injured or killed.

The number of fatal OIS across all agencies during this period corresponds with the data collected by the “Fatal Encounters” website.⁸

Every agency reported that it mandates that some or all of its officers complete additional CIT beyond the Peace Officer Standards and Training (POST) Basic Police Academy courses. Gilroy, Milpitas and Mountain View require the additional training only of its Field Training Officers. The length of the additional mandated CIT ranged from 40 hours (Campbell, Los Altos, Los Gatos-Monte Sereno, Morgan Hill, Sunnyvale, San Jose and Sheriff) to eight hours (Milpitas, Mountain View) to four hours (Palo Alto, Santa Clara).

Many law enforcement agencies employ uniformed Community Service Officers and Parking Control Officers who are not peace officers and do not carry firearms. Whether these other agency employees should undergo some level of CIT training is an important inquiry but beyond the scope of this report.

The number of officers who have completed the additional mandated training varied as of the date of the survey, ranging from 100% in Campbell and Santa Clara to 19% in Gilroy. Seven agencies reported that at least half of their officers have completed the additional mandated CIT. The total number of officers across all agencies who have not completed any additional mandated Crisis Intervention Training is 1519, or 49%. Some current active officers did not receive CIT in their Basic Police Academy because it was not part of their curriculum.

Four of the 12 agencies deploy a CIT on-call unit or officers (Los Gatos-Monte Sereno, Morgan Hill, Sunnyvale and San Jose). Most agencies dispatch their own public safety responders. Eight of the agencies require that their dispatchers take some level of CIT.

⁸ <http://www.fatalevents.org/people-search/>. A website created by Brian Burghart, founder and executive director of Fatal Encounters Dot Org, and a lifelong journalist and former editor/publisher of the Reno News & Review.

Table A

	Campbell PD	Gilroy PD	Los Altos PD	Los Gatos PD	Milpitas PD	Morgan Hill PD	Mountain View PD	Palo Alto PD	Santa Clara PD	Sunnyvale DPS	San Jose PD	Sheriff's Office	Total
Number of police officers employed	42	62	31	36	81	39	87	80	146	183	1,019	1,302	3108
Number of OIS from Jan. 2013 - Nov. 2017	0	1	0	0	1	0	0	1	6	6	34	7	56
Number of fatal OIS	0	1	0	0	0	0	0	1	4	6	15	4	31
Number of OIS involved SMI as factor	0	0	0	0	0	0	0	1	2	Unk	17	2	22
Number of officers killed in line of duty (SMI)	0	0	0	0	0	0	0	0	0	0	1	0	1
Number of officers injured in line of duty (SMI)	5	0	0	Unk	1	0	Unk	0	Unk	0	Unk	N/A	6
CIT training required above basic academy	Yes	FTOs	Yes	Yes	FTOs	Yes	FTOs	Yes	Yes	Yes	Yes	Yes	-
Number of additional CIT training hours	40	Unk	40	40	8	40	8	4	4	40	40	40	4-40
Number of peace officers completed above	42	12	26	28	49	33	55	60	146	107	511	520	1589
Additional mandated mental health training	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	16	FTOs	Yes	Varies
Number of peace officers completed above	42	N/A	26	32	Unk	39	Unk	65	33	66	13	766	Varies
Other optional mental health-related training	Yes	Yes	Yes	39	81	Yes	Unk	Yes	No	Yes	Yes	Yes	Varies
Dedicated CIT deployed in field	No	No	No	Yes	No	No	Yes	No	No	Yes	Yes	No	Varies
Dispatchers required to complete CIT training	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	N/A	-
Number of hours for dispatchers	0	0	40	40	0	16	0	40	4	4	40	N/A	4-40
Officers not completed mandated CIT (#)	0	50	5	8	32	6	32	20	0	76	508	782	1519
Mandated CIT trained officers (%)	100	19	84	78	60	85	63	75	100	59	50	40	-
Additional mandated mental health training (%)	100	Unk	84	89	N/A	100	Unk	81	23	36	FTOs	59	-

OIS – Officer Involved Shooting SMI – Serious Mental Illness Unk – Unknown FTO – Field Training Officer

Crisis Intervention Training

The Grand Jury attended several sessions of the SO-sponsored CIT held in September 2017. This 40-hour course over four days was presented by the County's Behavioral Health Services and Mental Health Police Liaisons Team. The 70-plus attendees included new Correctional Academy recruits as well as active police officers from several agencies. The sessions attended were the introductory overview, de-escalation and the excited delirium, and de-escalation training, including role playing video simulations.

Students were instructed on identifying and confronting Psychosis, Autism, Development Disabilities, Alzheimer's and Excited Delirium. Given the large audience, mix of academy recruits and sworn officers, and limited time it was impossible for each attendee to engage in the video simulation, only five pairs of students took part. However, the instructors were excellent facilitators for the role playing as they commented and critiqued the student's efforts. It seemed that the video simulations were crucial in introducing and developing mental health recognition and de-escalation skillsets. One police department supervisor commented that devoting two full days to role playing simulations would be more beneficial for officers than the two-plus hours set aside.

The SO and SJPD sponsor crisis intervention/de-escalation training classes that vary in length from four to eight to 16 and to 40 hours. Some of the classes serve to refresh perishable skills for veteran officers. The Mental Health Liaisons Team is involved in many of these trainings and the video simulations. All of these courses must be certified by POST to ensure a consistent level of quality. BHS has commissioned the creation of additional video simulations to update and expand the variety of the scenarios. The Sheriff's Training Unit believes that CIT training is beneficial for veteran officers because "street experience" adds perspective and value to the training that is not available to new deputies. The SO patrol deputies are now required to undergo four-hour refresher training every two years.

The SJPD sponsors a 40-hour course for its own officers that includes the four-hour video simulation segment on de-escalation techniques. New SJPD recruits are now required to take the course during their first months in the field. Given the recent increase in new recruits along with existing staff mandated to take the CIT course, class sizes are large, often 70 or more individuals. Course instructors believe 35 is the optimal class.

County Behavioral Health Services

Santa Clara County BHS provides or funds many mental health community-based services as well as a locked inpatient ward and transitional facilities. The County is developing two Mobile Crisis Response Teams (MCRT) scheduled to begin in spring 2018, one in South County and one in East San Jose. These teams will consist of two mental health professionals (at least one to be licensed to write holds under Welfare & Institutions Code Section 5150⁹) and will be available to respond to non-life-threatening incidents from 8 a.m. to midnight, working four 10-hour shifts. Teams will respond via dispatch or at the request of officers in the field. The idea is to offer an additional resource to field officers during and after incidents. Officials expect the teams will play an important role contacting persons who have been brought to their attention as needing mental health services and channeling those persons to the appropriate resources. All law enforcement agencies in the County favor an increase in the availability of CIT teams.

The County also is sponsoring a Psychological Emergency Response Team (PERT) for the City of Palo Alto, to be funded by an Innovation grant from the Mental Health Services Act (California Proposition 63) funds. This program will team an officer with a licensed mental health worker to focus on Transitional Age Youth (16 to 24) in that community.

⁹ Section 5150 permits a peace officer or other credentialed professional to take into custody a person who appears to be gravely disabled or who presents a danger to themselves or others because of a mental health disorder.

The mental health team professionals staffing these teams will need to have 13 different types of training. A significant challenge to implementing the mobile CIT teams is hiring and retaining qualified professional staff. There is a shortage of qualified mental health professionals who wish to work different shifts and outside of traditional work hours.

Peace Officer Force Options

Most law enforcement agencies have policies that guide their use of force. These policies describe an escalating series of actions an officer may take to resolve a situation. This continuum generally has many levels, and officers are instructed to respond with a level of force appropriate to the situation at hand, acknowledging that the officer may move from one part of the continuum to another in a matter of seconds.¹⁰ A use-of-force continuum includes mere officer presence, verbal commands, empty-hand control, less-lethal methods (blunt impact, chemical and conducted energy devices), and lethal force.

California peace officers are required to complete Perishable Skills and Communications training including Arrest and Control, Tactical Firearms and/or Force Options Simulator in each two-year period as part of their Continuing Professional Training.¹¹

Members of the Grand Jury were exposed to the Sheriff's Force Option Simulator. This experience demonstrated both the need to make swift decisions in threatening situations and the skill necessary to judge people and their cognitive functioning.

There is some public perception that police officers should shoot to disarm a suspect rather than a fatal shot. When an officer must use their firearm, they are trained to aim for the body core (center mass) to avoid missing the target and to ensure the best chance that the threat presented is neutralized. Officers are not trained to shoot at an extremity. This is standard

¹⁰ <https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx>

¹¹ <https://post.ca.gov/perishable-skills-program>

methodology across all U.S law enforcement agencies and is perfected through firearms qualification drills.

Dispatch and Communications

Information is a key resource for officers in the field when responding to a potential dangerous encounter with a person suffering from mental illness, alcohol or drugs. Dispatch operators are a key link in the pipeline as their information is the initial and often the only knowledge that a responding officer has when arriving at a call. The SJPD Communications Center requires that their Operators/Dispatchers undertake the 40-hour CIT training course, and currently 41 of its approximately 130 staff have taken this training. There is no set protocol for determining whether mental health issues are involved in a given 911 situation. However, call center dispatchers do have a standard operating procedure to guide them to identify possible mental health crisis situations that can then be communicated to officers. Communications Center policy requires a "CIT needed" note in the Computer Aided Dispatch remarks when there is a history of a particular individual having crisis incidents or possibly posing a risk to themselves or to others.

FINDINGS AND RECOMMENDATIONS

Finding 1

The County's AB 71-required criminal justice reporting surpasses that of many jurisdictions nationwide. However, the presence of mental illness in a given incident report is not mandated by AB 71. Reporting this data would assist law enforcement agencies in understanding the relationship between mental illness and officer involved shootings, and help in revising their training programs.

Recommendation 1

Law enforcement agencies submitting AB 71-required data should report, to the extent possible, whether mental illness was involved in their use of force data, starting in 2019. This applies to all the agencies reviewed by the Grand Jury, which are the Santa Clara County Sheriff's Office, the Sunnyvale Department of Public Safety and the following law enforcement agencies: Campbell, Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose and Santa Clara.

Finding 2

The Grand Jury found that training in crisis intervention and de-escalation techniques beyond what is included in the POST Basic Police Academy helps improve the outcome of law enforcement contacts with the mentally ill.

Recommendation 2A

The law enforcement agencies of Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, Sunnyvale and San Jose, and the Santa Clara County Sheriff's Office, should prepare a plan to ensure that all their officers receive POST-approved Crisis Intervention Training and De-Escalation technique training, beyond the training included in the POST Basic Police Academy, by the end of calendar 2018.

Recommendation 2B

The law enforcement agencies of Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, Sunnyvale and San Jose, and Santa Clara County, should provide funding for their law enforcement agencies to complete POST-approved Crisis Intervention Training and De-Escalation technique training, beyond the training included in the POST Basic Police Academy, by June 30, 2019.

Recommendation 2C

The following law enforcement agencies should execute their plan to ensure that all officers receive POST-approved Crisis Intervention Training and De-Escalation technique training, beyond training included in the POST Basic Police Academy, by June 30, 2020: Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, Sunnyvale and San Jose, and the Santa Clara County Sheriff's Office.

Recommendation 2D

The following law enforcement agencies should include Crisis Intervention Training and De-Escalation technique training in their Continuing Professional Perishable Skills and Communications training: Santa Clara County Sheriff's Office, the Sunnyvale Department of Public Safety and the following law enforcement agencies: Campbell, Gilroy, Los Altos, Los Gatos-Monte Sereno, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose and Santa Clara.

Recommendation 2E

The law enforcement agencies in the cities of Gilroy, Milpitas and Mountain View should expand their Crisis Intervention Training and De-Escalation technique training to include all of their officers, not just their Field Training Officers.

Finding 3

The Grand Jury found that in large classes, the 40-hour Crisis Intervention Training often does not provide enough time for all attendees to participate in the simulation exercises.

Recommendation 3

The Santa Clara County Sheriff's Office and the San Jose Police Department, as the County's primary Crisis Intervention Training providers, should by Dec. 30, 2018, adjust class sizes in order to provide enough time for all attendees to participate in the simulation exercises.

Finding 4A

It is difficult to recruit sufficient numbers of behavioral health professionals to staff mobile Crisis Intervention Teams and assist law enforcement officers with individuals in crisis.

Finding 4B

Additional mobile Crisis Intervention Teams would be helpful to handle the frequency of law enforcement contacts with citizens suffering adverse mental health issues throughout the county.

Recommendation 4A

Santa Clara County should immediately expand efforts to attract, recruit and train behavioral health professionals to staff existing and future mobile Crisis Intervention Teams.

Recommendation 4B

Santa Clara County should fund additional mobile Crisis Intervention Team units to be deployed within the entire County to increase the geographical area served and the operational frequency, by July 1, 2020.

REFERENCES

1. Santa Clara County District Attorney, Officer Involved Shooting reports. <https://www.sccgov.org/sites/da/Pages/Search.aspx?k=officer%20involved%20shootings>
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5. San Jose Mercury News, 9/17/2017. <http://www.mercurynews.com/2017/09/17/man-shot-cops-san-jose-was-known-armed-police-say>
6. National Data Collection on the Use of Force (1996) U.S. Department of Justice, Bureau of Justice Statistics, Page 3. <https://www.bjs.gov/content/pub/pdf/ndcopuof.pdf>
7. Department of Justice, Uniform Crime Reporting Statistics. (2014) https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2010-2014.xls
8. <http://www.killedbypolice.net/> Six reported in Santa Clara County in 2017: San Jose (4), Sunnyvale (1), Santa Clara (1).

POLICE AND THE MENTALLY ILL

This report was **ADOPTED** by the 2017-2018 Santa Clara County Civil Grand Jury on this
4 day of May, 2018.



Peter L. Hertan

Foreperson