

# The Civil Grand Jury and Critical Incident Reviews

## Summary

The 2013-2014 Sonoma County Civil Grand Jury (Grand Jury) has not reviewed the Critical Incident Report submitted by the District Attorney (DA).

Critical Incidents are defined as officer-involved fatalities. Critical Incident Reports are case file summaries that are prepared by the DA. After a case has been investigated and a final ruling of no criminal liability is issued, the Critical Incident Report is sent to the Grand Jury for review. During this Grand Jury's term, questions have been raised in public forums and the media about the Grand Jury's role in the review process.

The Grand Jury, under the jurisdiction of the California Superior Court of Sonoma County, offers a civil watchdog oversight of the County, special districts, and city governments or agencies. The California Penal Code defines the scope, powers and responsibilities of the Grand Jury.

By investigating the origins and history of Critical Incident reviews, the Grand Jury found no evidence that this body is any more or less qualified than any other citizen group to perform these reviews.

However, the Grand Jury operates under legal and practical constraints of strict confidentiality, annual turnover, little continuity, limited funds, and no support staff. Historically, the Grand Jury has not reflected Sonoma County's demographic diversity. These considerations make the Grand Jury a questionable choice to review Critical Incidents.

## Background

Since 2001, the Grand Jury has issued reviews of Critical Incidents based on case file summaries received from the DA's office. Jurors review these documents to determine if law enforcement agencies have followed the protocol set forth by the Sonoma County Law Enforcement Chiefs' Association in its Law Enforcement Employee-Involved Fatal Incident Protocol (Chiefs' Protocol).

## Approach

The Grand Jury studied both current and archived reports in the County and other California counties regarding the current practice of reviewing Critical Incidents. The Grand Jury also reviewed the 2000 report of the California Advisory Committee to the U.S. Commission on Civil Rights, in addition to the Chiefs' Protocol. Individuals currently serving on the Grand Jury, in their capacity as private citizens, gave a presentation to the Sonoma County Community and Local Law Enforcement Task Force about the Grand Jury's purpose and functions.

## Discussion

Grand Jury members are drawn from a pool of potential volunteers and are not required to have specific backgrounds, experience, or training in order to serve. In July of every year, jurors begin a one-year term by deciding what to investigate and how to proceed. Investigations are not held over from one year to the next. The Grand Jury meets as a body once a week to conduct business. Members also participate in committee meetings, conduct citizen interviews, and voluntarily work from home to keep up with the workflow. At the end of the one-year term, the Grand Jury submits its reports to the County Superior Court for public distribution. The Grand Jury members are legally bound to maintain strict confidentiality both during and after their terms of service.

## **Critical Incident Reports**

The Grand Jury has conducted annual reviews of Critical Incident Reports since 2001. Critical Incidents are defined as officer-involved fatalities, including deaths of those in custody. The 2013-2014 Grand Jury investigated this practice and found that the annual review of Critical Incidents began after the recommendations from the 2000 report of the California Advisory Committee to the U.S. Commission on Civil Rights were rejected by County law enforcement agencies. Reference to the Grand Jury's involvement in Critical Incident reviews is first mentioned in the 17-page Chiefs' Protocol in 2000.

By accepting the Critical Incident Reports for review, the Grand Jury may have created the impression that its members have the time, expertise, and experience to routinely perform in-depth investigations of all law enforcement-involved deaths. However, the Grand Jury must select from among many matters worthy of investigation. If it investigated a Critical Incident thoroughly, the Grand Jury could find its time and resources wholly consumed by such work.

## **Civil Grand Jury's Role**

The Chiefs' Protocol states that law enforcement agencies conducting investigations send their final reports to the DA, who then rules on whether violations of criminal law occurred. If no criminal liability is found by the DA, the Grand Jury receives the Critical Incident Report for review. If the DA's Office does find evidence of criminal liability on behalf of law enforcement, the case remains open while the DA investigates the matter or prosecutes the case. No Critical Incident Report is sent to the Grand Jury until the DA issues its final ruling. Since adoption of the Chiefs' Protocol, no criminal charges have been brought against law enforcement as a result of a Critical Incident.

The Grand Jury's role is to review the Critical Incident Report to confirm that the Chiefs' Protocol was followed. The Grand Jury may choose to pursue its own investigation or review original investigatory documents summarized in the Critical Incident Report.

## **County Grand Jury History of Critical Incident Involvement**

Several important investigations of police shootings and deaths in custody have been done by prior Grand Juries. These investigations focused on the care of inmates with chemical dependency problems or chronic illnesses and resulted in beneficial change in the detention system. Reviews of Critical Incident Reports involve ensuring that the Chiefs' Protocol was followed and that the DA's ruling on the absence of criminal liability is based on the facts in the case summary. A Grand Jury review of the DA's summary report may lead the public to believe this body performs in-depth investigations of all officer-involved fatalities. By issuing this report, the 2013-2014 Grand Jury wishes to correct this possible misconception.

As a result of a 1996 police shooting in Santa Rosa, 28 citizen complaints were received by the Grand Jury, which led to an investigation of a law enforcement-involved shooting. The Grand Jury found that the Santa Rosa Police Department's investigation contained errors, omissions, and a case of mistaken identity. The Grand Jury's 1997 report recommended a protocol change, requiring agencies involved in officer-related fatalities to refer investigations to an outside law enforcement agency. Except for this case, there were no Grand Jury reports on Critical Incidents before 2000.

Between 1997 and 2000, a significant increase in law enforcement-involved fatalities and inmate deaths occurred. The U.S. Commission on Civil Rights asked its California Advisory Committee to investigate. In its final report, issued in 2000, the Advisory Committee recommended the establishment of civilian review boards in the County and in the cities of Santa Rosa and Rohnert Park. The recommendation was not adopted. The Grand Jury began reviewing Critical Incident Reports in 2001.

## **Grand Jury's Responsibility**

The 2013-2014 Grand Jury has declined to review Critical Incident Reports, which is within its right under the Penal Code. A civil grand jury is an independent institution with the principal function of overseeing all aspects of county, special districts, and city governments in a county to ensure that the best interests of the citizens are being served. With scant resources, confidential investigations and deliberations, lack of time, and its practice of responding to citizen complaints, this Grand Jury has chosen not to follow the practice of prior grand juries in reviewing Critical Incidents.

## **Findings**

- F1. While the Sonoma County Civil Grand Jury may investigate officer-involved fatalities, it does not have the resources to perform in-depth reviews or lengthy investigations of every officer-involved fatality.
- F2. By accepting Critical Incident Reports, the Sonoma County Civil Grand Jury may mislead the public to believe it initiates in-depth investigations of every officer-involved fatality.

## **Recommendations**

None.

## **Bibliography**

California Grand Jurors' Association. "Reports from California Counties." Accessed March 7, 2014. <http://www.cgja.org/general-information>.

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*Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the names of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.*