

Interim Report –
Law Enforcement Accountability Subcommittee
Community and Local Law Enforcement Task Force
Presented on January 26, 2015 and February 2, 2015

Introduction and Summary

Background:

The Sonoma County Board of Supervisors in public session on December 10, 2013, adopted Action No. 52 titled Community and Local Law Enforcement Task Force Charter (Task Force). The Board of Supervisors acted in response to community concern over the tragic death of Andy Lopez who was shot by a Sonoma County deputy sheriff when he was seen carrying a BB gun designed as a replica assault rifle.

The Task Force is composed of 21 members appointed by the Board of Supervisors, the Sheriff, the District Attorney and the Mayor of Santa Rosa. The Task Force was assigned specific duties and was directed to report back to the Board of Supervisors (Action No. 52 - Attachment 1). A stated purpose of the Task Force is to *facilitate community healing*. In addition to this general purpose several other duties were assigned and set forth in the Action including:

- Review options for, and recommend a *model for an independent citizen review body*
- Review and recommend *options for community policing* to be considered during the next county budget cycle
- Review and recommend *whether the Office of the Coroner should be separately elected* from the Office of Sheriff
- Bring to the Board of Supervisors any additional *feedback from the community* on these issues that merits County attention

To divide the work the Task Force established three Subcommittees:

Community Healing
Community Policing
Law Enforcement Accountability (LEA-SC)

Context and Parameters of Inquiry:

As the Task Force began its work, Members were mindful of input received via public comments to the Board of Supervisors as well as to the Task Force directly. Some of the most salient comments included establishment of a review function which would be fully independent from law enforcement. This independence included physical independence of the offices as well as structural and budgetary independence. Other commentators sought a review office which would have the authority and staffing to conduct its own investigations of law enforcement use of force/critical incidents resulting

in death or serious injury. Still others called for the power to subpoena witnesses and to issue criminal indictments. In the final analysis, many of these expectations cannot be realized due to legal realities assigning that authority to existing officials. For example, the California Constitution sets forth the scope and jurisdiction of the offices of an elected District Attorney and an elected Sheriff. It is not possible to supplant the authority of these offices, or the fact that both are elected, without amending the State Constitution.

The LEA-SC began its work by exploring the expectations of each Member of the Subcommittee. All agreed it was necessary to develop a course of inquiry which met the information needs of each member. It was recognized by all that the best way to assure a high quality product would be for the LEA-SC to develop a work program and research discipline which would provide all Members with the same information. To this end, the LEA-SC relied on county staff to assist in gathering information about the legal context in which law enforcement oversight takes place.

Over the years several law enforcement agencies around the county have had use of force incidents resulting in death. In light of this fact, it was agreed that the LEA-SC would conduct its study with the goal of recommending an oversight structure which could be applied to multiple agencies including the Sheriff's Office and city police departments. As our research unfolded, it became clear that this worthy goal was not feasible due to legal and operational differences between jurisdictions. As a central example, the Sheriff is an elected official as set forth in the California Constitution whose authority derives from the electorate. Chiefs of police are hired by either a city council or city manager. While a city council can establish an oversight office and direct the chief of police to participate, a board of supervisors has no authority to order an elected sheriff to participate. Other complicating considerations are explored later in this report.

It is important to note that the Town of Windsor and the City of Sonoma contract with the Sheriff's Office for law enforcement services and the staff assigned to those jurisdictions would be subject to an oversight office along with the rest of the Sheriff's Office.

Even though there are complexities in designing a system which would fit both cities and the county, it is possible. It is also very feasible that such an office could provide some services to cities by subscription. For example, cities may want to enter into an agreement authorizing the County's law enforcement oversight agency to provide receipt of complaints filed by the public in addition to whatever other locations are offered for that purpose (such as city hall or the police station). Cities may also choose to avail themselves of the education and outreach work expected to be a part of the County's program.

Sonoma County is a general law county so the relationship between the Board of Supervisors and the Sheriff, all independently elected officials, is key to the success of independent law enforcement oversight. The Sheriff has the discretion to decide to

what extent the Office of Sheriff will participate. In light of this fact, it is key to establish the most constructive and cooperative relationship between the Sheriff and the oversight function.

General Law County Considerations

As the Task Force considered the model of oversight to be recommended to the Board of Supervisors, it heard loud and clear the call for:

- Full independence from law enforcement;
- The power to subpoena witnesses;
- The power to conduct independent investigations; and
- The power to indict.

The County of Sonoma exists as a General Law County, with powers provided pursuant to the state's constitution. California Constitution, Article XI, § 1 (b), provides that in each county there be an elected county sheriff, elected district attorney, and an elected governing body. California Government Code § 25303 provides that the Board of Supervisors (BoS) shall supervise the official conduct of all county officers. However, it also prohibits the BoS from obstructing the investigative and prosecutorial functions of both the Sheriff and District Attorney.

The BoS has the authority, under Cal. Govt. Code § 31000.1, to appoint citizen committees to study problems of general or special interest, including the authority to create a law enforcement review committee (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1201). Since the Sheriff is a constitutionally elected official, separate from the Board of Supervisors BoS, the Sheriff retains his independent investigative function (duties which are specified in Govt. Code §§ 26600, et seq.) and the BoS has no authority over that function. Likewise, while there has been some public call for an ability to override the District Attorney's decisions not to bring criminal charges against law enforcement personnel, the BoS would not have the ability to interfere with the District Attorney's prosecutorial function. A law enforcement review committee formed under the BoS's authority would have the same limitations; while it could issue recommendations, it would have no authority to impose discipline or policy changes beyond the BoS's jurisdiction. Its success ultimately depends on the cooperation of the law enforcement agencies involved.

Subpoenas

The BoS has specifically asked for information about the ability of an LEA body to subpoena citizens and witnesses to testify before the review body. As Sonoma County is a general law jurisdiction, the BoS has no statutory authority to confer the power to issue subpoenas to a citizen review board. That ability would have to be created by charter amendment (see *Dibb, supra*), or through the Board's own power to issue subpoenas for testimony, as afforded to it by Govt. Code § 25170. In that instance, the reasons for subpoena could be presented to the BoS, or a subcommittee consisting of

members of the BoS, and the subpoena could be issued within the parameters of Govt. Code §§ 25170-25176.

The BoS could add the power to subpoena directly to the LEA body only through a charter amendment. Our research has found that charter amendments in California are varied - from the much targeted specific amendment of Orange County awarding only the ability to subpoena to the citizens review committee, to a much broader grant of powers to citizens review boards such as that in San Diego and San Francisco counties. The process itself would be time consuming and require either a proposal by the BoS of a charter to be voted upon at special election, or the election of a charter commission which will then propose a charter for the county to be voted upon by the electorate (see generally Cal. Govt. Code §§.23701-23732). Our research has disclosed that while many of the law enforcement oversight bodies in California have the ability to subpoena, the power is not used often. And some do not have the ability to subpoena at all.

Privacy Issues

The BoS has also generally asked for review of the power of a LEA to conduct investigation and review of critical incidents. The largest limitation facing citizen oversight would be the privacy and confidentiality afforded peace officers under the Penal Code §832.7, the Peace Officers Bill of Rights (Cal. Govt. Code §3300 et seq.) and case law, most importantly *Copley Press v. Superior Court*, (2006) 39 Cal. 4th 1272. This body of law prevents the public disclosure of identified confidential information, including disciplinary history, investigative materials, reports, and the officer's identity. It would require that discussion by the review body of a particular investigation or officer be held in closed session. While this would prevent public disclosure of individual officers' actions and names, it should not prevent an LEA's ability to review citizen complaints, track trends within the law enforcement departments, and make recommendations regarding practice and procedure, nor would it interfere with overall community education efforts.

Risk Management

The formation of an organization that provides a round of factual review beyond that performed internally by law enforcement may pose a risk of increasing the County's liability and raising financial exposure from litigation. From a risk management perspective, that additional layer of review poses the potential for a different interpretation of the same facts by an independent body.

In the process of reviewing or investigating a complaint, such a board will also create documentation that may be discoverable during the litigation process and its members could be pursued as witnesses during any litigation that arises out of the incidents they investigate. In some counties, the review board is structured in a manner that reduces the risk of discovery. The Los Angeles County Office of Independent Review (OIR) is composed entirely of contract attorneys hired by the Board of Supervisors. Mike Gennaco, Chief Attorney for the OIR states the attorney client relationship of this model has been successful in protecting its members and documents from subpoena and

discovery. Likewise, the Auditor model used by the City of San Jose employs a director and investigative staff who are each attorneys, and so create an attorney-client relationship with the city, not subject to subpoena or disclosure of confidential information.

On balance to these potential risks, the establishment of an independent review board may also contribute to a reduction in litigation filed against law enforcement agencies, as complainants feel satisfied when an independent oversight board reviews or investigates their allegations. Additionally, police and sheriff's departments report that citizen oversight improves their relationship with the community, provides valuable recommendations for policies and procedure improvements, and in some cases, reduces the number of civil lawsuits against their cities or counties (Citizen Review of Police Approaches & Implementation p. XI).

In reviewing the information available, it is unclear if independent review boards actually increase or decrease liability with respect to civil litigation. The examples provided are anecdotal and overlapping factors regarding cause and effect do not clearly define a link between the establishment of a review board and its impact on civil litigation.

State and National Trends

In the months which have passed since the Task Force was convened, the issue of law enforcement use of force and law enforcement oversight have gained traction in the national public debate. This is the result of events taking place around the country. The scope of the discussion and the heightened level of public awareness may result in changes to some of the assumptions underlying our recommendations. This can best be illustrated by recent remarks of California Attorney General Kamala Harris on the subject of creating a more expansive and direct role of the A.G.'s office in the investigation and charging decisions when officers are involved in use of force fatalities. This point is also illustrated by the fact at least one bill has been introduced in the state legislature calling for state intervention in this challenging arena.

It is possible that the assumptions underlying this set of recommendations could change with a change in state law or expanded involvement of the Attorney General's Office. The Board of Supervisors should be mindful of this possibility. Even if the investigations and charging decisions move from local government to the state, there will still be a need for the other tasks recommended to be performed by the law enforcement oversight body. However, such a change could result in significantly different staffing requirements, including a likely reduction in costs to the County.

In addition to the several points cited above, there are numerous other legal complexities which impact the jurisdictional and procedural options available in an oversight office. These issues are discussed in greater detail later in this report.

Even in the face of the complexity of the task it is believed that an independent review function is important to achieve some key public goals. On the top of this list is

transparency. Improved public confidence in law enforcement will come with greater transparency.

Specific Work of the LEA Sub Committee (LEA-SC):

The LEA-SC investigated several of the assigned topics: 1) investigating the basic issue of establishing a review body, 2) considering what role if any the Grand Jury might play, and 3) the advisability of separating the Office of the Coroner from the Office of Sheriff.

In the course of pursuing these assignments the LEA-SC committed to a regimen of study which included research and analysis of information from a variety of sources as well as interviews of practitioners and experts in law enforcement oversight, grand jury system and the Coroners function (a full inventory of the research done by the LEA-SC can be found in Attachment 2).

RECOMMENDATIONS OF LEA-SC

- 1) On the question of independent review of law enforcement:

The LEA-SC recommends that the Board of Supervisors establish an Office of Independent Auditor (OIA). The concept behind this recommendation is taken in large measure from the Office of the Independent Police Auditor which exists in San Jose, California. The full recommendation is comprehensive and requires a more detailed discussion and explanation which follows in a separate section.

- 2) On the question of the current Grand Jury system:

The LEA-SC advises the Board of Supervisors that the current system wherein a civil Grand Jury is periodically empaneled by the Superior Court to act as a government accountability body is not suited to provide the type of independent review of law enforcement determined to be needed by the LEA-SC. While the Grand Jury is composed of devoted volunteers who engage in many hours of work on behalf of the citizens of Sonoma County, the Grand Jury does not have the statutory authority, time, staffing or expertise to provide a system of independent law enforcement review as well as the community engagement work thought to be a central element of an accountability body. This conclusion is discussed in greater detail in a separate section below.

- 3) On the question of separating the Office of the Coroner from the Office of the Sheriff:

The LEA-SC recommends that the two offices be separated. This change would result in the continuation of an elected Sheriff as specified in the Constitution of the State of California and the establishment of a new Office of the Coroner or Medical Examiner, a non-elected position. The process and reasons for this recommendation are set out in detail in a separate section below.

Discussion of Recommendations

1. Recommendation to establish an Office of Independent Auditor, OIA Citizens Advisory Board and Youth Council

1a. Office of Independent Auditor

Establishing an Office of Independent Auditor (OIA) will introduce significant changes to the relationship between the Sheriff's Office and the community. This recommendation is based in a desire to enhance community confidence in the delivery of law enforcement services and ultimately to bring law enforcement and the community closer together. Achieving this goal will enhance the ability of the men and women of the Sheriff's Office to perform their duties more effectively. This recommendation is made with respect and appreciation of those public employees who willingly take on the task of policing our community and who bear the risks associated with law enforcement work.

The proposed OIA office will have audit authority over employees of the Sheriff's Office, including those employed in the Corrections Division. As the Task Force considered the type of incidents and conduct which will give rise to audit review, it became clear that other County employees should be considered to be included in the scope of the OIA function. Specifically, it is noted that the Sheriff's Office frequently works in close coordination with the Probation Department and employees of both agencies often work together in the field conducting searches and/or arrests. Additionally, the Probation Department operates juvenile detention facilities. In both areas of operation, employees of the Probation Department could be the subject of citizen complaints and even critical incidents. The Task Force respectfully suggests the BoS consider making employees of the Probation Department subject to the audit authority of the OIA if created.

It is also expected that the work of an OIA may reduce risk management costs associated with litigation resulting from use of force. This outcome has reportedly been seen in some communities with oversight offices.

The LEA-SC emphasizes the proposed OIA will have a variety of duties and programs. These include community education and outreach; conveying feedback from the community on law enforcement issues; provision of a neutral location for complaint filing; public discourse regarding policies and procedures; advice and recommendations regarding policies and procedures; complaint tracking and trend analysis; annual reporting to the Board of Supervisors, the Sheriff and community on the work of the OIA on the status of law enforcement oversight; and finally, independent and confidential audit review of internal departmental investigations of officer use of force incidents, incidents of misconduct, and corrective action taken.

The LEA-SC arrived at these recommendations by first developing an inventory of tasks which we believe an oversight office should perform. The task list was developed after study of many different oversight models around the country and a focused investigation of several oversight offices in our region. Focusing first on function, we built the oversight office “from the ground up” and then let form follow function arriving at the independent auditor model. The Office of the Independent Police Auditor in San Jose is the closest program providing an example of the type of operation the LEA-SC determined to be both most effective and also most applicable to our county.

The following list provides brief descriptions of the elements/programs recommended to be performed by the OIA:

- Community education and outreach: following the San Jose model the OIA shall implement a comprehensive outreach program with schools, community based organizations, business and civic groups and individuals interested in promoting maximum communication between law enforcement and the community. There are many models of successful strategies to engage the public and to provide law enforcement with enhanced opportunities to build relationships in the community as demonstrated by the draft recommendations of the Community Policing and Community Engagement and Healing Subcommittees.
- Provide feedback from community on law enforcement issues: a significant measure of transparency is whether a community has the opportunity to comment on policies, practices and other law enforcement strategies. An OIA will be tasked with conducting public presentations and programs explaining law enforcement operations and reducing misunderstanding and divisiveness in a variety of neighborhoods.
- Facilitate public discourse regarding policies and procedures of law enforcement: As mentioned above, a new OIA and the advisory body to the OIA will be positioned to conduct occasional public hearings to present information regarding policies and procedures; deployment of resources; incident trends; etc. This function is a very important aspect of long term success in communities with an oversight office.
- Provide advice and recommendations to law enforcement regarding policies and procedures: The OIA will be headed up by the Chief Auditor who will receive advice from an OIA Citizens Advisory Board. Under direction of the Auditor, the OIA Citizens Advisory Board will convene from time to time to conduct public meetings and hearings to facilitate communication and understanding between the community and law enforcement. As the result of direct public testimony at these public hearings the Auditor’s Office and OIA Citizens Advisory Board would provide advice to law enforcement on policies and procedures, training methods and subject areas, trends and needs within the community, as well as trends in complaints and performance of law enforcement.

- Provide neutral location for complaint filing (including in-person, mail, email, fax, on-line, etc.): This rather obvious element is noted as highly important by jurisdictions with oversight. Traditionally, in order to file a complaint it was necessary to go the law enforcement agency which employs the subject of the complaint. Many people report feeling uncomfortable with this requirement. The goal is to provide a well-advertised set of locations where a complaint can be filed and to forward complaints on to the appropriate agency. All the while the system will be tracking complaints and identifying trends.
- Complaint tracking and trend analysis using technology: Centralized tracking of trends in type and frequency of complaints filed as well as outcomes will provide additional information valuable to both law enforcement and the community. The Sheriff's Office has already begun to implement new software which will improve capacity for tracking to early identify any trends which might be troubling to law enforcement management and the community at large.
- Annual public report to the Board of Supervisors, Sheriff and community on the work of the OIA and the status of law enforcement oversight: A key element of this entire effort is to instill into the day to day routine of local government, especially law enforcement, greater transparency. It is generally agreed that transparency is the starting point to alleviate distrust and suspicion. Having an annual report to the BoS during which the Chief Auditor presents the yearly report of the OIA to the BoS in open session, time certain, with public comment period will be a welcome new approach. It is assumed and hoped that the Sheriff's Office and Sheriff will participate in this annual review. This annual presentation will launch a new opportunity for two-way communication between county government and the community.
- Independent and confidential audit review of internal departmental investigations of officer use of force incidents, incidents of officer misconduct and complaints: The introduction of an OIA will result in the need to develop a new coordinated process of complaint receipt and review involving both the Sheriff's Office and the OIA. The OIA will audit the investigations as well as the conclusions reached to ensure they are complete, thorough, objective and fair and will provide feedback to the Sheriff's Office on each audited investigation. Collaboration is required in order to successfully navigate the complex legal landscape which sets the parameters and authority of an independent auditor function. Given the fact the Office of Sheriff is an elected officer as set forth in the California Constitution, implementation of an audit system can only be successful with the cooperation of the Sheriff. A more detailed discussion of the current complaint/investigation system and the changes recommended is presented below.

The current process for the handling of citizen's complaints by the Sonoma County Sheriff's Office is as follows:

The Sheriff's Office Administrative Captain receives and classifies all complaints, internal and external, alleging peace officer misconduct, dereliction, excessive force, abuse of authority and, policy violations. The Administrative Captain sends a letter to the complainant acknowledging receipt of the complaint. Depending upon the severity of the alleged misconduct or violation, the Administrative Captain assigns the complaint to the Internal Affairs Unit or to the responsible manager for investigation. All complaints once investigated are routed through the executive chain of command for review and sign off. The complainant is sent a letter with findings of the investigation: Unfounded, Exonerated, Not Sustained / Inconclusive, Sustained.

The introduction of an Office of Independent Auditor (OIA) will result in the need to develop a new coordinated process of complaint receipt and review involving both the Sheriff's Office (SO) and the OIA. As previously noted, the OIA will not become a part of the Sheriff's Office review process nor will the OIA be subordinate to the SO. The OIA will be housed in a separate facility with its own budget. The two offices will need to cooperate and coordinate in order for the OIA to successfully perform its duties.

How will that look? The first notable difference will be an expansion of the ways in which a complaint can be filed. The SO does a good job of utilizing a variety of options already and provides for in-person complaints to be made at an office of the department, by letter or email, by telephone, etc. The use of all contemporary communication tools is advisable and should continue. The main difference is an important one. The Task Force has been told that some people are reluctant to file a complaint directly with a law enforcement agency in an office of the agency. In nearly every existing example of oversight offices complaints can be filed at the independent oversight office in person or by the array of regular tools noted above.

When a complaint is filed in the OIA independent review office, staff can assist the complainant with the paperwork which also makes the experience friendlier and suggests by its very nature independence from the law enforcement agency. After receipt of a complaint, the complaint will be forwarded to the SO for standard investigation by Internal Affairs.

The type of complaints received varies as one would expect. In the event of "low level" complaints the matter may be handled early on through mutual agreement to have a "face to face" meeting between the complaining party and the officer under the guidance of a mediator. Other oversight offices report this approach often ends the matter as the complaining party feels that they have been heard. The mediation process would be one wherein Internal Affairs refers the matter to mediation, is agreed upon by both the involved officer and the complainant, and would be administered by the OIA's office. In jurisdictions where this is available, the incentive to the officer is that there would be no further internal affairs investigation.

In matters involving more serious allegations, an internal affairs investigation will be conducted by the SO. At the conclusion of the internal affairs investigation, the

investigative file is handed over to OIA where it is reviewed for completeness and accuracy.

Independent and Confidential Audit Review of Internal Department Investigations of Critical Incidents

Presently, in Sonoma County when there is a defined Critical Incident, investigation thereof is governed by the Protocol established by the SC Law Enforcement Chiefs Association. An incident is defined as one in which a fatal injury occurs, in which a law enforcement employee is involved as an actor or injured person. Examples may include the following:

1. Intentional and unintentional shootings;
2. Use of any dangerous or deadly weapons (e.g. Firearms, knives, clubs, etc.);
3. Assaults upon sworn police officers; assaults upon other law enforcement employees who are on duty or acting within the scope of employment;
4. Attempts by law enforcement employees, within the scope of employment, to make arrests or to otherwise gain physical control of a person;
5. Acts of physical violence in which a law enforcement employee is acting as a private citizen;
6. A law enforcement employee suicide;
7. Fatal injury while a person is in law enforcement custody which includes suicide;
8. Fatal injury to a person who is a passenger of an on-duty law enforcement employee (e.g. Ride-along, emergency transport, etc.);
9. Vehicular collisions with fatal injury . . .

(Sonoma County Law Enforcement Chiefs Association Protocol 93-1, pp.2-3, revsd. 9/2010)

Once invoked, the involved Sonoma County law enforcement agency immediately turns the criminal investigation over to a member agency for investigation in consultation with the Sonoma County District Attorney's office. The purpose of the Protocol is to create separation from the agency which employed the involved law enforcement employee, so that it does not "investigate its own". This type of independent investigation is specifically recommended in the Interim Report of the President's Task Force on 21st Century Policing, p.21.

In a fatal incident investigation, it would be the role of the OIA to audit the internal administrative investigation of officer misconduct, to ensure that the investigation was in fact "complete, thorough, objective and fair". The OIA would make its own recommendations to the Board of Supervisor's, to the Sheriff's Office and report on all non-confidential findings to the public in its annual report.

We acknowledge that there are details of this system that need to be worked out by the OIA; for example, unlike other oversight agencies we have researched, the OIA would not be afforded jurisdiction to separately run a criminal investigation of the incident, as

that is the constitutionally proscribed duty of our elected Sheriff and the District Attorney. And the OIA would not have jurisdiction over a non-county agency that did not consent to be part of the OIA's investigation. But that would not preclude the OIA from conducting an investigation and publicly reporting on its findings.

1b. Office of Independent Auditor Citizens Advisory Committee

In addition to the creation of an Office of Independent Auditor (OIA), the Law Enforcement Accountability Subcommittee also recommends the creation of an OIA Citizens Advisory Committee to complement and work in collaboration with the Auditor. There are several documented benefits of seating a Citizen's Advisory Committee including: improving law enforcement relationship and image within the community, assisting the community to understand law enforcement intent, policies and procedures, assisting in reducing community concerns regarding specific high-profile incidents of alleged misconduct, promoting the goals of community policing and enhance and improve law enforcement practices to best serve the community.

The OIA Citizens Advisory Committee will conduct regular, public meetings in which the Auditor will provide information to the Committee related to trends in law enforcement including complaint tracking, results of situational audits, discussions and conversation with law enforcement related to policies and protocols and efforts to engage and outreach to the public with the aim of supporting the positive relationship between the community and law enforcement. The Committee will also reserve time on each agenda to hear from the public related to their questions and concerns related to law enforcement activity.

The OIA Citizens Advisory Committee is intended to assist and complement the Independent Auditor as liaison between the community and law enforcement with the ultimate aim of creating a sense of security, mutual respect and trust between all parties.

In pursuit of transparency and an aim towards building public confidence in law enforcement practices, it is important that the current policies and procedures which dictate law enforcement activity are understood by the public and that the public have the opportunity to discuss concerns and questions with the Independent Auditor and the OIA Advisory Committee.

There are two specific opportunities for the OIA Citizens Advisory Committee to lend support to both law enforcement and local community members in understanding and providing input to current policies and procedures, trainings and hiring practices. The first is to ensure that current policies, procedures and training curriculum is available to the public for review on the OIA's website and on the website of local law enforcement. The Sheriff's Office has indicated that they are in the process of providing this information on their website; it is estimated that these documents will be available on the Sheriff's website in the spring of 2015.

The second opportunity for the OIA Citizens Advisory Committee to support the community in understanding current policies and procedures and to support law enforcement gaining an understanding of community concerns is for the OIA Citizens Advisory Committee to provide reserved space on its agenda to hear from the public regarding law enforcement policies and procedures. If the Committee is interested in learning more following a community member's concern, the Committee may pursue the issue with law enforcement and may place the topic on the agenda at a subsequent meeting to report back to the public the results of the conversation and to announce any further action if necessary.

Based on community input and discussions with law enforcement, the OIA Citizens Advisory Committee can issue written recommendations related to policies, procedures, training and hiring practices. These recommendations will be created with both input from law enforcement and input from the public. These recommendations will be made public so that the community is made aware of the recommendations. Law Enforcement will then be asked to respond to these recommendations by either enacting the recommendations or providing feedback as to why the recommendations will not be enacted. The response of law enforcement will also be made public in an effort to ensure the community clearly understands the intent and limitations of law enforcement in making changes to protocol.

1c. Office of Independent Auditor Youth Council

In addition to the OIA Citizens Advisory Committee, it is also recommended that the Independent Auditor convene a Youth Council to provide both a forum for youth involvement as well as a permanent venue for input from young people around the County on matters of law enforcement and community relations. The more detailed scope of this body shall be taken up by the Independent Auditor (once hired) with advice from the OIA Citizens Advisory Committee.

2. Current Grand Jury System - Possible Law Enforcement Oversight by Grand Jury

The Task Force has been directed by the Board of Supervisors to inquire into using the mechanism of the Sonoma County Grand Jury for law enforcement oversight. The authority of the Grand Jury is created pursuant to California Constitution art. I, § 23. Grand juries are empaneled annually by the Presiding Judge of the Superior Court; they perform two primary roles. One is to evaluate the validity of charges being brought by a prosecutor, if the charges are not reviewed by a judge, to ensure that they are not frivolous or unsubstantiated. The other is to inquire into, and investigate if necessary, the operations of local government agencies and officials to ensure that activities are valid and services are efficiently and legally provided. On the last day of its term, the Grand Jury is required to issue a public report of its findings (see generally Cal. Penal

Code §§ 888-939; sonoma.courts.ca.gov, Grand Jury, GJbrochure.pdf; glenncourt.ca.gov, Court Information: Grand Jury).

In both instances, the secrecy of the Grand Jury's deliberations is a common thread that ensures independent and objective consideration of facts brought before it. But because these are secret proceedings, there is no public hearing and no transparency of inquiry. Jurors serve a term of one year and are free to investigate any items within their charge. While they may reapply to serve a second term, there is no guarantee that they will again be selected to serve. They are not required to complete investigations begun by the panel that preceded them, nor do they even have to take up the same issues that the previous panel was working on.

The Grand Jurors that were interviewed by the LEA subcommittee reported that they operate with minimal resources (currently they are provided only two computers) and no support staff. They additionally reported that since this is a volunteer position, applicants tend to be retired and higher income, with a homogeneous white, rather than demographically diverse, membership. While jurors are statutorily able to access all public documents, investigate and report on operations and methods of performing duties of any city, county or joint powers agency and make recommendations, they are not trained in investigatory technique and their investigation is procedural only (they can only determine if procedure was followed). They are only able to hire experts to assist them with the permission of the Superior Court. The Grand Jury has no enforcement power; while reports containing recommendations must be responded to by the applicable department or official, they can choose to disagree with the jury's findings and not implement the recommendations.

In July of 2014, the seated Grand Jury issued its findings with regard to the Andy Lopez incident, stating that it had not reviewed the Critical Incident report submitted to it by the District Attorney. In light of a discussion of many of the issues raised above, the Grand Jury reported that "while [it] may investigate officer-involved fatalities, it does not have the resources to perform in-depth reviews or lengthy investigations of every officer-involved fatality", and that "by accepting Critical Incident Reports, [it] may mislead the public to believe that it initiates in-depth investigations of every officer-involved fatality." (Superior Court of California, County of Sonoma, Grand Jury Final Report 2013-2014, pp. 34-36)

In light of our own investigation, and the findings of the 2013-2104 Sonoma County Grand Jury, we do not recommend that the Grand Jury be used as the sole mechanism for Law Enforcement Accountability.

3. Recommendation Regarding Separating the Office of Coroner from the Office of Sheriff

Background

An element of the directive enacted by Sonoma County Board of Supervisors titled Community and Local Law Enforcement Task Force Charter (Task Force) dated December 10, 2013, addresses the Office of the Coroner. Specifically, the third directive to the Task Force states “the task force is charged with reviewing and recommending by June 1, 2014 whether the Office of Coroner should be separately elected from the Office of Sheriff.”

The Task Force assigned this subject to its Law Enforcement Accountability Subcommittee. This summary presents the findings and recommendations of the Subcommittee on the matter of the Coroner question.

The Task Force Charter does not provide any commentary on this assignment. However, several Subcommittee Members have observed that the issue of a separate Office of Coroner was raised during public hearings held by the Board of Supervisors in the weeks following the death of Andy Lopez. The Subcommittee has discussed this assignment and has focused on the core issue driving the question. That issue is the inherent potential for a conflict of interest between the duties of the Sheriff and those of the Coroner.

The potential conflict can be most easily understood by citing one clear example. Among the Coroner’s general duties the Coroner is charged with the specific responsibility of determining cause of death in incidents where an individual dies while in the custody of the Sheriff or by actions taken involving employees of the Sheriff.

It is important to consider how other counties around the state approach this matter. Of the 58 counties in California 48 have the combined Sheriff-Coroner model. Prior to 1974 Sonoma County had a separately elected Coroner. It seems the driving factor in consolidating the two jobs was budgetary.

Conclusion and Recommendation

Since the Office of Sheriff and the Office of Coroner are held by the same person a conflict exists. The conflict is a fact which is the result of the organizational structure and is not a criticism of the performance of the current office holder or his staff. While there are numerous fine points which may be made within a discussion about the degree of conflict or whether a conflict has ever actually occurred, the fact remains that there is a conflict. The only way to eliminate the conflict is to separate the Office of Coroner from the Office of Sheriff.

It is recommended that the two offices be separated by obtaining voter approval in 2016 to take effect in 2019 (see “Process and Timeline” below). As part of the measure

presented to voters in 2016, include a provision which converts the coroner function to a position filled by Board of Supervisors appointment.

Process and Timeline

The incumbent Sheriff - Coroner was re-elected to a second 4 year term in June of 2014. The new term commences in January of 2015 and runs until early January, 2019. The offices cannot be separated during the current term of the elected Sheriff - Coroner.

In order to separate the two offices the matter must be put to the voters of Sonoma County for approval. Approval requires a simple majority. Such a measure could be presented to the voters in either June or November, 2016, to take effect in 2019 when the current combined term ends. The matter can be placed on the ballot by the Board of Supervisors or by initiative. Board action is recommended by this Task Force.

Since the offices cannot be separated until January, 2019, the Board of Supervisors should, during the interim period, seek an arrangement with a Coroner's Office or Medical Examiner's Office of a nearby county, to investigate cause of death whenever any local law enforcement agency within Sonoma County is involved or in the case of the death of any person in custody of the Sheriff's Office.

During the interim period the Board of Supervisors should explore the various options available to the County to separate the Coroner and Sheriff Offices. These options include retaining the Coroner's Office as an elected position which can stand alone or be consolidated with certain other offices such as the District Attorney or the Public Administrator. It should be noted that consolidating the Coroner function with the District Attorney may be viewed by some as not sufficient to completely eliminate a conflict of interest.

Another alternative is the creation of an Office of Medical Examiner which could be placed within an existing county department such as Department of Health Services.