

Independent Office of Law Enforcement Review and Outreach



Report on Recommendations to Sonoma County Sheriff: Policies & Practices Related to Administrative Investigations and Audits of Investigations

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INTRODUCTION

The missions of the Independent Office of Law Enforcement Review and Outreach (“IOLERO”) were developed by the Community and Local Law Enforcement (“CALLE”) Task Force during its countless meetings and discussions with community members and experts in law enforcement and civilian review. The core missions of IOLERO were derived by the CALLE Task Force in part from the influential *Final Report of the President’s Task Force on 21st Century Policing*, itself a product of countless meetings by national law enforcement experts. IOLERO’s missions were set out clearly in the CALLE Task Force Report and carried forward largely intact by the Board of Supervisors, as evidenced by their hearings on establishment of the office.¹

One of the chief charges of IOLERO is “**to propose thoughtful policy recommendations to the [Sonoma County Office of the] Sheriff-Coroner.**”² In describing the intended mission of IOLERO and its Community Advisory Council (“CAC”), the CALLE Task Force stated:

A significant measure of transparency is whether a community has the opportunity to comment on policies, practices and other law enforcement strategies. [. . .] [IOLERO] will be headed up by the Chief Auditor who will receive advice from an [IOLERO CAC]. Under direction of the Auditor, the [IOLERO CAC] 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 the [IOLERO CAC] 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.³

These principles have been carried forward in IOLERO’s practice of seeking input from the community and in making recommendations to the Sheriff’s Office on possible changes to its policies and practices.

In 2008, the Office of Community Oriented Policing Services, U.S. Department of Justice, published “Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice,” a series of recommendations by policing experts on best practices for Internal Affairs Investigations. As succinctly stated therein, “Implementing an honest and fair fact-finding process that uncovers the truth is the important role of the internal affairs function of a law enforcement agency, and it is essential to maintain a process that protects the rights of all involved[.]” In this report, IOLERO recommends changes in agency policies and practices related to the administrative investigation of complaints of employee misconduct, as well as those related to audits by IOLERO of these investigations.

These recommendations on improvements to the investigation and audit process result from

¹ See, for example, the August 18, 2015 hearing of the Board, during which some of these issues were discussed. (http://sonoma-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=521&meta_id=168318)

² *Sonoma County Municipal Code Section 2.392(a)(2)*.

³ See *Final Recommendations Report*, Volume 1, Sonoma County Community and Local Law Enforcement Task Force, May 12, 2015, pp. 28-29.

IOLERO's experience over the course of over two years in reviewing investigations completed by the Sheriff's Office. These audits resulted in multiple recommendations for ways to improve those investigations, most of which are collected here. In addition, these recommendations are informed by public hearings of the IOLERO CAC in which that body considered conflict of interest issues raised by agency investigations under certain circumstances. During public meetings of the CAC on these issues, testimony was provided by Sheriff's staff, as well as the public. These recommendations are based on direct input from Sheriff's staff and community members, as well as research on best practices for administrative investigations, and on a careful consideration of the various interests that impact the policies in this area.

SUMMARY

IOLERO recommends that the Sheriff's Office amend its policies and practices related both to its conduct of administrative investigations, as well as with regard to audits of investigations by the IOLERO Auditor. These recommendations are designed both to bring the administrative investigation process of the Sheriff's Office in line with best practices in the field, and to help ensure the public that the investigative process is as objective and fair as possible. There is little more important to the perceived validity of a law enforcement agency than the integrity and credibility of the agency's process to handle investigations of alleged employee misconduct, and these recommendations are intended to assist in that endeavor.

Procedural Background to the Policy Recommendations

Beginning with its first audits in the summer of 2016, and continuing to the present, the IOLERO Auditor has made multiple recommendations to the Sheriff's Office concerning the conduct of its administrative investigations and IOLERO audits of these investigations. Most of these recommendations were made in audit reports related to individual investigation and therefore were not produced to the public. Additional recommendations were made in the First Annual Report in the summer of 2017 and in individual communications to the Sheriff and his staff. In addition, some recommendations were the result of public hearings before the IOLERO Community Advisory Council where both Sheriff's staff and the public had input to recommendations on proposed policies. All of these related recommendations are collected here for publication to facilitate public transparency of recommendations by IOLERO and of the responses by the Sheriff's office.

Current Policies of the Sheriff's Office

The overall current policy of the Sheriff's Office governing administrative investigations of employees is embodied in its Personnel investigation Procedure in the Office-Wide Policy and Procedure Manual (see attached Exhibit A). This policy, as a general matter, largely addresses what types of investigations will be handled by the Internal Affairs Division of the agency, as well as how such investigations interact with the statutory and Constitutional rights of employees. The policy does not offer much guidance on best practices for conducting such investigations. Nor does it incorporate the role of IOLERO in the current investigation and audit process for certain types of investigations. IOLERO recommends that this policy be updated to incorporate these recommendations.

INVESTIGATION AND AUDIT POLICY AND PRACTICE RECOMMENDATIONS

During the last two years of audits, the Auditor has identified several areas across multiple investigations where practices could be improved to better adhere to investigative best practices. These issues are identified in this section, along with recommendations to address them. Most of these recommendations fall under the general principle that an investigation should be reasonably complete in order to ensure that it will reach valid conclusions that considered all of the relevant, material evidence. Others involve ensuring that an investigation is objective and fair to all participants, both in reality and in perception. Other areas that impact these principles also may be addressed.

Identifying Potential Problem Behavior Prior to or Absent a Complaint Investigations

Given the experience of IOLERO in auditing investigations over the last two years, IOLERO recommends that the Sheriff's Office work to ensure that its systems include greater attention to performance in previous jobs, increased supervisory review of probationary employee job performance, and better means for employee peers to provide feedback on such performance to supervisors. Such review and feedback need not and should not wait for an employee performance review during the probationary period. The Auditor reviewed two investigations where closer attention to these issues may have caught potential problems before they became more significant.⁴ One way this could be implemented would be for supervisors to regularly review random BWC footage of employees under their command during the probationary period. Another way would be for supervisors to regularly check in about a probationary employee's performance with their peers, and with community members where they are assigned, and to document the feedback from such sources.

The Field Training Officer ("FTO") Program of the Sheriff's Office provides focused training and attention on the performance of a new hire for a limited period of time while a new employee is in that program.⁵ However, given some problems that have arisen with new employees beyond the FTO period, it may be beneficial to extend that period of closer monitoring in these limited way throughout the employee's entire probationary period. This approach would provide a means to collect valuable information about whether an employee will be a good fit for the agency during a period when the agency can still terminate an employee without cause.

Investigative Process

Complainant, Witness, and Deputy Interviews

Investigator interviews of complainants, accused employees, and witnesses are the core of any administrative investigation of alleged misconduct. Certainly, an investigator should make every reasonable effort to interview every complainant, both to ensure that the investigator understands fully the nature of the complaint and the complainant's view of the available evidence, as well as to convey to the complainant that the agency takes seriously all complaints

⁴ See Complaint investigations # 16-IA-0006 and 16-IA-0012.

⁵ For the Patrol Division, the average FTO period is around 10 or 20 weeks, depending on whether the recruit is hired as a Deputy Sheriff I or Deputy Sheriff II. For the Detention Division, the FTO period lasts about 14 weeks.

of employee misconduct. In multiple investigations, the Auditor found that additional efforts by the investigator to conduct such interviews would have been reasonable.⁶

Additionally, all subject deputies and employees named in a complaint should be interviewed. This is particularly true where allegations involve the reasonableness of force used by an employee, since the determination of reasonableness will depend to a significant degree on the perceptions of the employee at the time force was used. Here, too, the Auditor found that this was not done in multiple investigations.⁷ Where possible, the investigator also should interview at least one third party witness outside the Sheriff's Office in any investigation involving serious allegations, such as excessive force, racial bias, etc. This could take the form of any responding fire personnel, intake hospital staff, bystanders, etc.⁸ Regardless of the seriousness of the offense, all witnesses with information relevant to the investigation should be interviewed. In multiple investigations, the Auditor found that witnesses with evidence relevant to the resolution of significant facts were not interviewed.⁹

When interviews are conducted, the investigator should ensure they are digitally recorded and secured so that there is an exact record of the interview available for review by supervisors and the Auditor. This ensures that the Auditor, or an agency supervisor in the investigative chain of review, may refer to source material instead of relying on characterizations of that material by the investigator. Absent this source material, an audit cannot truly be considered independent. The Auditor reviewed multiple investigations where this information was absent,¹⁰ and thus was forced to rely on the investigator's characterization of the interviewee's responses.

Even better than a digital sound recording, which is often currently employed, would be a digital video recording with both sound and visual information that could be reviewed by the Auditor. This would ensure a fuller, more precise record and provide additional insight into tone of voice, physical expressions, and demeanor, all of which assist in assessing the credibility and meaning of witness statements.

Where the investigator is interviewing an employee that is the subject of the investigation, or a complainant, the Auditor further recommends that the Sheriff's Office allow the Auditor to be present during the interviews. There is no better way to gather information about the demeanor and credibility of a witness than personal observation. In addition, the presence of the Auditor at an interview would eliminate any ambiguity about what was said or done prior to initiating a recording of the interview. The Auditor reviewed several investigations where the digitally recorded interview included statements by the investigator that referred to discussions between the investigator and witnesses that happened prior to the start of the recording.¹¹ While, of course, all statements by an investigator and witness about an investigation should be recorded, the best method to avoid any question of discussions occurring off record is through the presence of the Auditor at the interview.

⁶ See Complaint Investigations # 16-C-0036; 17-C-0031; 16-C-0007; 16-C-0039; 16-C-0040; and 17-C-0013.

⁷ See, e.g., Complaint investigations # 16-C-0005; 16-C-0023; 16-C-0039; 17-C-0003; and 17-C-0024.

⁸ See, e.g., Complaint investigations # 16-C-0004; 16-C-0023; 16-C-0031; 17-C-0016; and 17-C-0038.

⁹ See, e.g., Complaint investigations # 16-C-0002; 16-C-0023; 16-C-0024; 17-C-0016; and 17-C-0038.

¹⁰ See, e.g., Complaint investigations # 16-C-0002; 16-C-0010; 16-C-0023; 16-C-0036; 16-C-0040; 16-C-0042; 17-C-0013; 17-C-0020; and 17-C-0038;.

¹¹ See, e.g., Complaint investigations # 16-C-0024 and 16-C-0040.

Preserving Investigative Evidence Throughout the Review Process

Equally or more important, all documentary and video evidence that may play a role in any future investigation should be carefully preserved by the agency, with a clear chain of custody showing when and if it has been viewed or in the possession of any agency employee. Given current technological capabilities, any use or viewing of any such evidence should be documented with an electronic time stamp in a database managing such evidence. Over the course of multiple investigations reviewed by the Auditor, especially on the detention side of the agency, documentary or video evidence that was discussed in incident reports, supervisor reviews, or the investigative report, were no longer available for review by the Auditor at the time of the independent review of the investigation.¹² Such missing evidence may raise serious questions about the integrity of the investigative process and the accountability system.

Other Investigative Evidence

The last two year's audits also have shown that a policy for administrative investigations should emphasize the need to find, secure, and evaluate third party, documentary evidence relevant to an investigation. Investigators should make every reasonable effort as soon as possible to identify and secure any third party evidence identified by the complainant or other witnesses, or any evidence that otherwise arises during the course of an investigation. In several investigations audited by IOLERO, the investigator failed to timely secure such evidence, including cell phone videos, security camera videos, and cell phone records. In each case this evidence was material to the issues under investigation, but became unavailable due to lack of significant and/or timely effort.¹³ Such evidence can be crucial in resolving conflicts in the testimonial evidence, especially where the body worn camera video is inconclusive. Collecting third party evidence quickly is essential, so as to not lose the opportunity to access it. It therefore should be prioritized in any investigative plan.

In addition, for investigations where conflicts in witness statements are not easily resolvable, it is important to consider evidence that bears on the credibility of the accounts of the complainants, employees, and witnesses. For this reason, it is important that each investigation include the following information about any employee: previous complaints filed, investigations and outcomes, performance evaluations, commendations awarded and/or discipline imposed and why, and information about if and why an employee is on the agency's *Brady* list,¹⁴ including any investigative or complaint file associated with that determination. This information should be considered and weighed by the investigator in the investigative report, especially where the credibility of witness statements could influence the outcome of investigative findings. This type of evidence also should be provided to the Auditor without the need to specifically request it

¹² See, e.g., Complaint Investigations # 15-AR-0006/17-IA-0009; 17-C-0020; and 17-C-0047.

¹³ See, e.g., Complaint Investigations # 16-C-0005; 16-C-0024; and 17-C-0038.

¹⁴ *Brady v. Maryland*, 373 U.S. 83 (1963), is a seminal Supreme Court case in which the justices held that a criminal defendant is entitled to receive from the prosecution any material exculpatory evidence. Exculpatory evidence is "material" if "there is a reasonable probability that his conviction or sentence would have been different had these materials been disclosed." *Strickler v. Greene*, 527 U.S. 263, 296 (1999). *Brady* evidence includes statements of witnesses or physical evidence that conflicts with the prosecution's witnesses and evidence that could allow the defense to impeach the credibility of a prosecution witness. A *Brady* list is a list of law enforcement officers that may have information in their personnel files that could be used as exculpatory evidence by the defendant.

from the agency. Most audited investigation reports have included a section noting any commendations and performance evaluations of employees. However, none noted any previous discipline or complaints against the involved employees, despite the potential relevance of this information and despite confirmation that such information existed.

Also bearing on the credibility of witnesses or subject deputies are situations where evidence that is material to the investigation is not present when it should be.¹⁵ In some cases, this has involved documentary evidence mentioned by witnesses or the investigator that is no longer in the investigative file and cannot be located. In other cases, this has involved video footage that is required to be recorded of particular types of incidents, but nevertheless witnesses state that the video was not recorded, in violation of policy. In either case, the absence of such material evidence is a fact of not inconsiderable significance both to the investigation and to the credibility of any witness who may have some responsibility for or connection to the missing evidence. Where these situations exist, *the lack of such evidence should be a separate subject of the investigation and the investigation should explore the reasons for the absence of the evidence in some detail.*

Integrity and Objectivity of the Investigation

All investigations should include a thorough investigation of all allegations made by the complainant, plus any other possible violations raised by the alleged facts or evidence that becomes available during the course of the investigation. The Auditor has reviewed multiple investigations that have failed to meet this standard.¹⁶ This recommended practice helps ensure that the agency will hold employees accountable for violations of policy, practice and training whenever they become evident. This essential goal should not depend on whether a complainant named the violation in their allegations. For example, in the investigation of Complaint 17-C-0027, the investigator failed to analyze multiple potential violations of policy raised by the evidence in the BWC video, including conduct unbecoming, violation of the Maximum Restraint Policy, and filing of inaccurate Incident Reports. In addition, in the investigation of Complaint 17-C-0013, the investigator failed to analyze allegations by a complainant that a deputy failed to investigate threats of gang retaliation against the victim for reporting a crime.

During the last 2.5 years of community engagement, the IOLERO Director has repeatedly been told by community members that they are afraid to file a complaint against agency employees due to fear of retaliation. In fact, some potential complainants have refused to follow through on filing potentially meritorious complaints due to such fears. As a result of this experience, and some evidence of fear of retaliation weighing against witnesses cooperating with administrative investigations, IOLERO has several times recommended that the agency adopt a formal written policy forbidding any acts by employees to retaliate against complainants.¹⁷ The Sheriff's Office has expressed its support for such a policy. While the Sheriff's Office has stated that retaliation is forbidden as a matter of law, there still appears to be no written policy forbidding retaliatory behavior by agency employees. IOLERO again recommends that a written policy to this effect be

¹⁵ See, e.g., Complaint Investigation # 15-AR-0006/17-IA-0009.

¹⁶ See, e.g., Complaint Investigations # 16-C-0005; 16-C-0040; 17-C-0009; 17-C-0024; 17-C-0027; 17-C-0037; 17-C-0044; and 18-C-0015.

¹⁷ See, e.g., IOLERO First Annual Report, p. 29; Complaint Investigations # 16-C-0024 and 16-C-0039

adopted. In addition, the agency should include this non-retaliation policy statement on its formal complaint forms and any brochures that describe the complaint process.

IOLERO has reviewed multiple investigations where agency employees were involved in matters in which they had a personal interest.¹⁸ For example, in one investigation related to a legal claim, one of the employees accused in the claim of violating the claimant's constitutional rights was assigned and completed the investigation denying the claim. In another example, an employee was involved in a criminal investigation that involved the deputy's child as a potential victim of the crime, even though the criminal investigation ordinarily would not have involved the deputy's unit. Such practices may undermine public perception of the objectivity and integrity of the agency and should be prohibited. IOLERO recommends that the agency adopt a formal Conflict of Interest Policy to forbid involvement of employees in any investigation that involves a person or organization with which the employee has a familial, financial, and/or significant personal relationship. The policy also should forbid any employee from involvement in the conduct or management of any investigation in which that employee is implicated as a subject, supervisor, or witness.

In addition, IOLERO has reviewed multiple investigations over the last two years in which the investigator has interviewed a witness or interested party in such a way as to suggest a lack of curiosity and objectivity.¹⁹ In some cases, this has involved an investigator questioning a complainant in a hostile and confrontational fashion, rather than in a neutral manner that encouraged the complainant to provide their full views of the matter. In other cases, this involved an investigator questioning a subject deputy in a leading fashion that suggests answers to the questions, rather than in a neutral manner that encouraged the deputy to provide their frank and full views of the matter. These practices should be discontinued. When conducting witness and deputy interviews, investigators typically should utilize open ended questioning (as opposed to leading or hostile questions) and maintain a neutral demeanor, so as to encourage the witness to remember and provide all of the information of which they may be aware.

Administrative investigations differ from criminal investigations, and complainants should not be treated by an investigator like a criminal suspect or subjected to hostile questioning. The agency's investigators should treat every complainant in a manner that will convey that the agency is receptive to and interested in their complaints of employee misconduct and takes their allegations seriously. Likewise, no agency employee should be questioned in such a manner as to suggest that certain answers are more welcome by the investigator than other answers, especially when the suggested answer would tend to exonerate the employee of misconduct and/or the employee and agency of legal liability. The investigator is an agent of management and leading questions may convey to a deputy that a failure to provide the responses suggested by leading questions may displease agency management. Therefore, the use of leading questions has a potential to distort the information provided by a deputy in response to such questions. Because the aim of an administrative investigation is to determine objectively the truth of what happened, leading questions generally are inappropriate.

¹⁸ See, e.g., Complaint Investigations # 17-C-0025; 17-C-0009; and 15-AR-0006/17-IA-0009.

¹⁹ See, e.g., Complaint Investigations # 16-C-0005; 15-AR-0006/17-IA-0009; 17-C-0016; and 17-C-0027.

IOLERO also has reviewed multiple investigations that include an analysis of the facts that is less than robust in reaching its findings. Prime examples of this tendency were Complaint Investigations # 15-AR-0006 and 17-IA-0009, in which there was substantial evidence supporting the allegations which were let unanalyzed or summarily dismissed without analysis by the investigator. A full analysis of factual evidence should consider and weigh all material evidence, both for and against a specific finding, rather than selectively considering only some evidence that supports a conclusion. In addition, where investigative findings are made as to violation of or compliance with an agency policy, the analysis should reference specific criteria of that policy and explain why the evidence meets or does not meet that criteria. Investigative findings should not simply reach a summary conclusion after a recital of certain facts based on the “totality of the circumstances.” Such summary conclusions lack the type of analytical specificity that is the hallmark of an objective review.

For example, investigative findings regarding the reasonableness of force used by an employee should reference specific criteria set out in the agency policy to guide that determination, such as the seriousness of the suspected offense or reason for contact, the immediacy and severity of a threat to deputies or others, etc. Multiple investigations have lacked such reference to agency criteria in conducting the analysis.²⁰ Of course, there may also be criteria that is relevant to an analysis that is not included in an agency policy, as no policy can be realistically be expected to be exhaustive. If an investigative finding analyzes circumstances not specified in the policy criteria, it should explain why those circumstances are relevant to the analysis and how the evidence supports a finding under that additional criteria. An investigative conclusion regarding the reasonableness of force used should not rely summarily on the “training and experience” of the investigator. While such training and experience may support the validity of the conclusions reached by an investigator (especially where the investigator can point to specific training or experience and connect it to the incident in question), there is no substitute for a careful, full, objective analysis of specific facts under the criteria set out in the relevant policy.

IOLERO Investigative Audit Process

The recommendations above address mainly the investigative side of the process, while this section addresses the process by which IOLERO audits the investigation once completed. After two years of experience with audits of investigations, IOLERO recommends that changes be made to the audit process in order to strengthen the integrity of that process.

Unfettered, Direct Access to Information and Staff

As recognized by the National Association for Civilian Oversight of Law Enforcement, one key to effective oversight is ***unfettered, direct access*** to law enforcement agency information and decision makers.²¹ Most basically, to independently and effectively review the adequacy of an investigation, it is crucial that the Auditor have *unfettered, direct access to all of the source material* reviewed by the investigator in reaching a conclusion on findings. This need is even

²⁰ See, e.g., Complaint Investigations #16-IA-0012 and 16-C-0024.

²¹ See, e.g., National Association for Civilian Oversight of Law Enforcement website, FAQs, “what are the features of an effective police oversight body?” p. 11 (https://www.nacole.org/police_oversight); *Civilian Oversight of Law Enforcement | Assessing the Evidence*, Joseph De Angelis, Richard Rosenthal, Brian Buchner, (September, 2016), p. 9.

more crucial where the evidence is referenced or cited by the investigator in their analysis. Yet, there have been multiple investigations where such evidence is not provided in the first instance to the Auditor, but only upon specific request. More importantly, there have been some investigations where the agency has informed the auditor that, although evidence is cited by an investigator, the original evidence cannot be located.²² Under such conditions, it is not possible to have firm confidence in the effectiveness of an independent audit.

In addition, as explained above, it also is important that the Auditor have *full, direct access to information available to and/or used by the investigator*. This is important not only to ensure that no relevant information from these sources was overlooked by an investigator, but also to ensure that Auditor agrees from an independent review that the evidence reviewed was accurately characterized and fairly evaluated by the investigator. As it stands, IOLERO has no direct access to multiple sources of information from which an investigator can draw to conduct an investigation. Among the sources of documentary information relevant to investigations to which IOLERO currently has no direct, unfettered access are the following:

- Administrative Investigations Management (AIM) – AIM is the database system that manages the agency’s personnel files, including its investigations. IOLERO has limited access only to investigation or use of force report files *after* each file is designated as completed by a staff member with administrative privileges.
- Evidence.com – Evidence.com is a database website maintained by the Axon Corporation, formerly known as Taser International, and accessible to users to store and manage videos uploaded from Axon’s body worn cameras, which are used by the Sheriff’s Office. IOLERO has access only to those videos to which a Sheriff’s staff member specifically grants access and usually only for a limited time period. IOLERO is unable to access other videos uploaded to evidence.com by the agency, nor to search independently for any video that may be relevant to a particular incident, complaint, and/or deputy.
- Intergraph Law Enforcement Automated Data System (I/LEADS) – I/LEADS is the records management database system used by the Sheriff’s Office to create and manage incident reports. IOLERO has no access to I/LEADS and thus is unable to independently search for reports that may be relevant to a particular date, time, and location; incident; complaint; and/or deputy. IOLERO instead must rely on the investigators to provide whatever reports they deem relevant to the complaint under investigation.
- Criminal Justice System (CJS) Database – CJS is the jail’s management system, and includes information such as incident and use of force reports that involve inmates. While the Criminal Justice Partners (such as the District Attorney and Probation) have limited access to CJS, IOLERO has no access to this system. IOLERO instead must rely on the investigators to provide whatever information from this system that they deem relevant to the complaint under investigation.
- Inmate Grievance Database - Tracking of inmate grievances is accomplished through the Detention Division’s use of an Access database maintained by Correctional Deputies assigned to inmate disciplinary and grievance processes. This database currently is accessed only by internal Sheriff’s staff and is hosted on the agency’s servers. IOLERO has no access to this database and instead must rely on the investigators to provide whatever

²² See, e.g., Complaint Investigations # 17-C-0020 and 17-C-0044.

information from this system that they deem relevant to the complaint under investigation.

In addition, when reviewing an investigation, the Auditor may have questions about the investigation or analysis that are best answered by the investigator. *Direct access to the investigator* facilitates answers to questions from the person best positioned to provide them. Direct access also would help foster a positive relationship between investigators and the Auditor. Investigators currently have no ability to explain directly their investigative and analytical choices to the Auditor, who reviews their work based mainly on the final, written investigative report. In the one instance where the Auditor was allowed direct access to an investigator to discuss the investigative report, it took place with his supervisor present. Nevertheless, the frank and honest exchange of information during that meeting and subsequent communications greatly assisted the Auditor in understanding the difficulties the investigator faced in that particular investigation. In addition, the meeting greatly assisted the investigator in understanding the reasons behind the Auditor's questions and helped calmed anxieties related to those questions. As a result, that particular audit was more impactful than it otherwise might have been.

All of the above recommendations related to audit protocols are consistent with recommended best practices acknowledged throughout the field of civilian oversight of law enforcement. Without the type of access recommended here, there is no realistic way for IOLERO to independently verify for the public that all evidence relevant to an investigation has been collected and considered in an investigation. The lack of such access undermines a key mission of IOLERO, which is to provide some measure of transparency with regard to the administrative investigation of alleged employee misconduct. IOLERO therefore recommends that the office have unfettered, direct access to these sources of investigative information.

Audit Timelines and Investigative Findings Notifications

When IOLERO first established audit protocols with the Sheriff's Office, the discussion of the protocols included an agreement that one key value of such audits was that the process allowed for an independent auditor to comment on the completeness, timeliness, and especially the fairness of an investigation *prior* to its findings becoming final. The process was set up with the intention that, where the investigator and the auditor reached different conclusions on findings, that would lead to a discussion of those differences and an attempt to resolve the differences. It was recognized by all participants, at that time, that the potential for an audit to affect the outcome of investigative findings was of value in assuring the public that investigations were fair. These discussions, where they happened, have been valuable and resulted in changes in findings both by the Sheriff's Office and by the Auditor. However, over time, there have been several departures from this ideal that undermine the potential to realize this value.

Beginning in the first year of audits, there were occasions when the Sheriff's Internal Affairs staff sought to speed up audits of more serious investigations, due to an understandable concern about the anxiety that such pending investigations can cause to employees. While the Auditor made every effort to accommodate these concerns, it was not always possible due both to investigation complexity and to competing demands on the time of IOLERO staff to perform other parts of IOLERO's missions. In addition, during this first year, IOLERO developed a backlog

in audits due to lack of sufficient staffing to perform both effective community engagement and timely, complete audits. In some cases, the Auditor was asked to complete a review of an investigation on a much more compressed timeline than the investigation itself took. During this first year, there were multiple investigations where the Sheriff's Office closed the investigation, notified employees of findings clearing them of misconduct, and notified the complainant, prior to the completion of the related audit.²³

As a result of these dynamics, IOLERO agreed in the fall of 2017 to a proposal by the Sheriff's Office that IOLERO audits ordinarily would be completed within 14 working days from the referral of the investigation. This was intended to create a framework of predictability around completion of the investigation and audit process, a goal supported by IOLERO as benefitting both complainants and employees who are the subject of a complaint. This general agreement included conditions that were important to IOLERO, but likely less crucial from the perspective of the Sheriff's Office. Unfortunately, from the perspective of IOLERO, this agreement proved unworkable over time for multiple reasons, both anticipated and unanticipated.

At the time IOLERO agreed to this new timeline, the IOLERO Director expressed several concerns. Foremost was that the agreement might require completion of an audit in 14 days when the investigation itself was complex enough that it took many weeks to complete. Therefore, the agreement was qualified to allow extending the 14-day deadline if certain circumstances were present: 1) if an investigation were more complex, as evidenced by the time it took to complete, or by an initial review of it by IOLERO or Sheriff staff; or 2) if there were other unavoidable time pressures on IOLERO that would interfere with the ability to focus on the audit. IOLERO also requested that each investigation be rated by Sheriff's staff at the time of its referral to IOLERO by the degree of its complexity, so as to allow for a discussion about whether the 14 working day deadline would work.

The experience of the first half of fiscal year 2017-18 demonstrated that these challenges made a general expectation of a 14-day deadline for audits unworkable for IOLERO. First, more investigations over the last fiscal year have been considerably more complex than those reviewed during the first fiscal year. Second, many of those investigations were lacking necessary information or evidence, or otherwise incomplete, or had other deficiencies that increased the time and complexity of the audit. Where an investigation is incomplete or otherwise deficient, the Auditor may need to analyze evidence in the first instance, rather than reviewing the analysis of the investigator – a more time consuming process.

Third, the agreement called for consideration of competing, unavoidable time pressures on IOLERO in setting timelines for an audit. However, in practice, the Sheriff's Office did not consider multiple investigations referred during the pendency of other audits to be a competing time pressure that would justify agreeing to extend deadlines for any particular audit. As a result, the timelines were running coincidentally, causing a perceived backlog of audits. And delay in meeting expected timelines has been a rationale for the Sheriff's Office closing investigations and notifying both complainants and subject deputies of the findings, prior to completion of the related IOLERO audit.

²³ See, e.g., Complaint Investigations # 16-C-0004; 16-C-0005; 16-C-0007; 16-C-0009; 16-C-0010; 16-C-0016; 16-C-0039; 16-C-0040; and 16-C-0050.

In February 2018, because of the problems with the workability of this system for IOLERO, IOLERO informed the Sheriff's Office that it would use a different measure for the relevant timelines for audit completions, moving forward. IOLERO is here again recommending that the Sheriff's Office adopt these same guidelines for its own decision making purposes, including when to issue notifications to complainants and deputies. Ideally, both agencies should use the same timeline criteria.

*The **timeline protocol** currently used by IOLERO and recommended to the Sheriff's Office is as follows. Timely completion of an audit should be defined for each audit separately, with no overall expectation that each audit will be the same. Generally, completion of an audit should take about one-half of the time it took for completion of the investigation being audited, assuming the investigation is complete when referred. An audit will be considered simple if it takes 30 working days or less for the investigator to complete and refer it for audit. Under those circumstances, an audit should be completed in 14 working days or less, assuming that there are no other pending audits preceding it, nor similar unavoidable time conflicts. If an investigation is referred while another audit is pending, the deadline for the new referral would not begin until the deadline on the audit of the previously referred investigation has run. If IOLERO must request evidence not included in the investigative file, or request investigation of issues not explored in the investigation report, the audit deadlines for that investigation should be stayed while these tasks are completed by the investigator. As a general matter, absent unavoidable time pressures such as an approaching statutory deadline to impose discipline for a finding of misconduct, the Sheriff's Office should wait until the audit process has been completed to notify employees or complainants of findings.²⁴*

In addition, as noted above, the audit protocols originally contemplated that, where there is a difference between the findings of the investigator and that of the Auditor, this difference would result in discussions between IOLERO and the Sheriff's Office to try to resolve those differences. While there were several such discussions early in the process of audits, it has been quite some time since there was any response by the Sheriff's Office to differences in findings, other than in the Annual Report process. The absence of that resolution process, prior to notifications being issued, also undermines the value of the audits to the public. *IOLERO therefore recommends that the agency again embrace this part of the protocols.*

Sheriff's Office Response to IOLERO Audit Recommendations

As is evident from this report, IOLERO makes numerous policy and/or practice recommendations that result from audits of individual investigations. To date, there has been no firm protocol for the Sheriff's response to those recommendations. This has led in some cases to confusion both between IOLERO and the Sheriff's Office, and internally within the Sheriff's Office, about whether the agency has accepted particular recommendations contained within an audit. IOLERO therefore recommends that, in addition to providing the agency with a confidential Investigative Audit Report that reviews the investigation and its findings, IOLERO also *issue (where appropriate) an accompanying Audit Recommendations Report* that will become public. The Audit Recommendations Report would include any recommendations for changes to policy,

²⁴ These same recommendations on waiting to notify complainants and employees of findings were issued previously to the Sheriff's Office in audits where those practices were not followed, such as Complaint Investigations # 16-C-0004, 16-C-0023, 16-C-0039, and 17-C-0016.

practice, or training that may have resulted from the audit of the investigation. IOLERO also recommends that the *Sheriff's Office respond publicly to the recommendations* contained in any Audit Recommendation Report within 30 days of its issuance.

Transparency on Employee Discipline Outcomes

In collecting data for IOLERO's 2017 Annual Report, IOLERO was informed by the Sheriff's Office that the agency does not routinely track data on whether discipline is imposed for a sustained finding of misconduct after an investigation. This limits the ability of IOLERO, and of the Sheriff's Office, to study and analyze trends and correlations in discipline data. As a result, in the Annual Report, IOLERO recommended that the Sheriff's Office begin to collect and track data on all discipline imposed as a result of sustained findings of employee misconduct, and to allow IOLERO access to that data from within the AIM system viewed by the Auditor.²⁵

Meaningful, fair, and predictable discipline for employee misconduct is a crucial component of any agency's employee accountability system. Such a system improves both external and internal perceptions of an agency's validity.²⁶ Data on discipline imposed for sustained findings of misconduct is therefore a crucial component of measuring whether the accountability system is working. Transparency around such data ideally assures the public that the employee accountability system works when misconduct is found, or at least identifies areas that need work. *IOLERO therefore renews its recommendation that the Sheriff's Office collect, analyze, and publish such data, and allow IOLERO access to such data directly from within the AIM system.*

CONCLUSION

In conclusion, IOLERO respectfully submits the forgoing analysis and policy recommendation to the Sheriff's Office and respectfully requests that the Sheriff respond to the recommendation as quickly as possible and within 30 days. For ease of understanding, each specific recommendation is set out in the attached numbered list following this report, as Exhibit B.

²⁵ See, IOLERO First Annual Report, p. 37.

²⁶ See *Final Report of the President's Task Force on 21st Century Policing*, Washington, D.C.: U.S. D.O.J., Office of Community Oriented Policing Services, May 2015, p. 14; see, also, "Procedural Justice: A Training Model for Organizational-Level Change," *Police Chief Magazine*, (<http://www.policemagazine.org/procedural-justice-a-training-model-for-organizational-level-change/?ref=79808d3317aac99415431c216c2de015>)

Exhibit A

SONOMA COUNTY SHERIFF'S OFFICE OFFICE -WIDE POLICY AND PROCEDURE MANUAL

PERSONNEL INVESTIGATION PROCEDURE

- 1.0 POLICY STATEMENT
- 2.0 DEFINITIONS
- 3.0 *MANDATES*
- 4.0 GENERAL INFORMATION
- 5.0 PROCEDURES
 - 5.1 SOURCE AND ACCEPTANCE OF COMPLAINTS
 - 5.2 INVESTIGATIVE RESPONSIBILITY
 - 5.3 FORMAL INVESTIGATIONS
 - 5.4 INVESTIGATION REPORT FORMAT
 - 5.5 COMPLETION OF FORMAL INVESTIGATIONS
 - 5.6 DISPOSITION OF PERSONNEL COMPLAINTS
 - 5.7 ALLEGATIONS OF CRIMINAL CONDUCT
 - 5.8 ADMINISTRATIVE SEARCHES
 - 5.9 ASSIGNMENT TO ADMINISTRATIVE LEAVE
 - 5.10 CONFIDENTIALITY OF PERSONNEL FILES
 - 5.11 APPEAL PROCESS
- 6.0 *REVISION HISTORY*

Sheriff's Office Version: 11.09.14

1.0 POLICY STATEMENT

This policy is for the reporting, investigation and disposition of complaints regarding the conduct and/or performance of members of the Sonoma County Sheriff's Office. This policy covers all members of the Sonoma County Sheriff's Office.

2.0 DEFINITIONS

- Allegation** A claim, assertion or accusation of an act or omission that has not been proven to be factual.
- Complainant** The person or group who files a complaint with the Sheriff's Office alleging a violation of law, ordinance or Sheriff's Office Policy, rule, regulation or order by a member of the Sheriff's Office.

Conclusion(s)/Finding(s)	Results of the investigation of any allegation, including the observations and conclusions of the investigating officer.
Demotion	The reassignment of a member from a position in one class to a position in another class which is allocated to a lower salary or salary range.
Disposition	The status assigned to a case by the Sheriff/Designee following the conclusion of the investigation.
Documented Counseling	Written documentation regarding a member's actions that does not become a permanent record, has an expiration date and is not placed in the member's personnel file. The document is retained by the member's immediate supervisor until the date of expiration, at which time the letter shall be purged from all records. The conduct referenced in the Documented Counseling memorandum may be documented in the member's evaluation.
Formal Investigation	An investigation in which an allegation, made verbally or in writing, of a member's misconduct or neglect of duty, which if true, could lead to disciplinary action beyond Documented Counseling.
Informal Investigation	An investigation in which an allegation, made verbally or in writing, of a member's misconduct or neglect of duty which, if true, would not lead to discipline higher than Documented Counseling.
Last Chance Agreement	An agreement between the Sheriff's Office and the member where the member agrees to changes in behavior or performance that are required for the member to remain in his/her position. Failure to make the changes usually results in termination.
Letter of Reprimand	Written documentation regarding a member's actions that becomes a permanent record in the member's personnel file until destroyed.
Members	All persons employed by, appointed or assigned to the Sheriff's Office (including peace officers and non-sworn personnel, reserve deputies, interns, and volunteers).
Rules and Regulations	The administrative acts disseminated by the Sheriff that are designed to regulate Sheriff's Office standards of conduct and responsibility.
Suspension	The temporary removal of a member from active employment for a definite period of time.
Termination	The permanent removal of a member from active or suspended employment.
Types of Discipline	Include but are not limited to a Letter of Reprimand, Reduction in Pay, Suspension of Property Rights, Demotion, and Termination.
Violations	Under these procedures where it is shown by a preponderance of the evidence that a member of the Sheriff's Office has: <ol style="list-style-type: none"> 1. Violated any rule, procedure, or lawful order of the Sheriff's Office and/or County. 2. Violated any law, whether codified by county statute, state or federal statute, or constitutional provision.

3. Violations include any established violation, whether or not it was originally alleged in a complaint.

Witness

A person who can produce evidence relevant to an alleged violation or infraction.

3.0 MANDATES

Government Code (GC) 3300-3311 (Public Safety Officers Procedural Bill of Rights)

Sonoma County Civil Service Rules

Penal Code (PC) 832.5 (Complaint by Public against Peace Officers)

Penal Code (PC) 832.7 (Confidentiality of Peace Officers Personnel Records)

Penal Code (PC) 148.6 (False Complaints/Allegations against Peace Officers)

Labor Code (LC) 432.7(b) (Release of Information)

4.0 GENERAL INFORMATION

- A. This policy shall not apply to any interrogation, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to an investigation concerned solely and directly with alleged criminal activities (Cal. Govt. Code 3303(i)).
- B. Peace officer members have specific rights and privileges per the Public Safety Officers Procedural Bill of Rights' (GC §3300-3111).
- C. Not all administrative investigations need to be done at the Internal Affairs Unit level. This is for two main reasons. First, the alleged member's immediate supervisor should be involved in the disciplinary process. Discipline is a supervisory function. If the immediate supervisor is allowed to become removed from the investigation and adjudication phases, the supervisor can avoid any accountability, responsibility and association with the disciplinary process. Second, most investigations can be done by the immediate supervisor or line supervisor. This is particularly true of those allegations of an internal nature, procedural violations or allegations such as discourtesy, rudeness or poor service response that normally require less time to investigate (i.e., informal investigations).
- D. Complaints that come from inmates will be reviewed by the Administration Division Captain and will typically be forwarded to the Detention Division Assistant Sheriff for investigation (as a grievance) and not subject to the requirements of this policy.

5.0 PROCEDURES

There are four types of personnel investigations:

- Internal Affairs
- Citizen Concerns (Complaints)
- Performance/Policy
- Administrative Review

These investigations are organized and investigated in relatively the same manner (Investigation Report Format 5.4). Informal Performance/Policy investigations are the only investigations that the supervisor/manager has discretion to decide whether documentation is necessary.

5.1 Source and Acceptance of Complaints

A. Source of Complaint:

1. Any person or group (anonymous or not), third party, or member of the Sheriff's Office.
2. News media, notice of a civil claim, or court proceedings.

B. Acceptance of Complaints:

A complaint may be filed in person, in writing, or by telephoning the Sheriff's Office. If written, the complaining party should be provided with a copy of their original complaint at the time the complaint is filed. Any on-duty member must accept submitted complaints against any other member of the Sheriff's Office. The member receiving the complaint shall determine if the complainant wishes to speak to a supervisor.

Every effort shall be made to facilitate the making of the complaint by ensuring that the process is convenient, courteous and prompt. No member shall be subjected to any criticism, retaliation or reprisal for accepting or initiating a complaint.

The following should be considered upon receipt of a complaint:

1. When an uninvolved supervisor or the Watch Commander determines that the reporting person is satisfied that his/her complaint required nothing more than an explanation regarding the proper/improper implementation of Sheriff's Office policy or procedure, a written complaint need not be taken, as detailed in section C (below). Ensure that the supervisor of the involved member is notified of the circumstances surrounding the complaint.
2. When the complainant is intoxicated to the point where their credibility appears to be unreliable, information shall nevertheless be documented per section C (below), and identifying information should be obtained and the person should be provided with a Citizen Commendation and Complaint Procedure form.
3. Depending on the urgency and seriousness of the allegations involved, complaints from juveniles shall be taken, however, their parents and/or guardians shall be advised of the circumstances prompting the complaint after taking the juvenile's information.
4. Sheriff's Office members becoming aware of alleged misconduct shall immediately notify a supervisor.

C. Complaint Documentation:

1. Documentation of a complaint shall be prepared if the alleged misconduct or job performance is of a nature which, if true, would normally result in disciplinary action (beyond Documented Counseling). The supervisor shall ensure that the nature of the complaint is defined as clearly as possible and forwarded via the chain of command to the appropriate Captain.
Exception: Complaints that are minor in nature can be resolved informally. Refer to section B.1., above.
2. If a supervisor is not immediately available, the member receiving the complaint shall record as much of the information as possible and advise a supervisor at the earliest moment.
3. When a Citizen Commendation and Complaint Procedure form is completed in person, the complainant should be encouraged to write a detailed narrative of his/her complaint. If circumstances indicate that this is not feasible, the complaint

may be dictated to the member receiving the complaint or the receiving supervisor.

4. A member who receives a complaint shall promptly notify the on-duty Watch Commander or supervisor in his/her respective division. If the complaint involves a member from another Division, it is the responsibility of the on-duty Watch Commander or supervisor to notify the Watch Commander of the involved Division.
5. Every effort will be made to comply with PC §148.6 by having the complainant sign the complaint form.

D. Withdrawal of Complaints:

The complainant, at various stages of the investigation, may want to withdraw his/her complaint. This request cannot be refused; however, it is the policy of the Sheriff's Office to continue the investigation as far as possible with or without the assistance of the complainant. The cooperation of the complainant is important and desired, but it is not mandatory.

5.2 Investigative Responsibility

- A. It is the responsibility of the Internal Affairs Unit to investigate and/or provide staff assistance for the investigation of all complaints.
- B. The assigned investigator shall be directly accountable to the Sheriff/Designee on all matters within the purview of these procedures.
- C. The assigned investigator shall complete his/her investigation as soon as possible (see section 5.2~G.~8.), keeping in mind that, with certain exceptions, Government Code 3304(d)(1) states, "Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Intended Disciplinary Action (aka NOIDA) articulating the discipline that year...The public agency shall not be required to impose the discipline within that one-year period."
- D. In addition to complaints alleging misconduct, the Administration Division Captain/Designee shall, unless otherwise assigned by the Sheriff, have authority to conduct or, as in cases involving bodily injury or homicide, supervise and control the internal investigation into the following situations and circumstances:
 1. Any situation where a member has been injured or killed by the willful or deliberate act of another person.
 2. Any situation where a person has been killed or injured by a member, whether on duty or not.
 3. Any situation involving the discharge of a firearm by an officer, other than in training or the dispatching of an injured animal.
 4. Assisting or otherwise taking charge of any disciplinary cases when instructed to do so by the Sheriff or Assistant Sheriff.

- E. If a complaint alleges misconduct on the part of a member responsible for or assigned to the Internal Affairs Unit, the Sheriff may assign the case to another commanding officer.
- F. The Sheriff shall have the authority to obtain the assistance of, or refer an investigation to, external law enforcement agencies in any case where criminal charges are alleged or whenever the public interest would best be served.
- G. Complaint Log: After the complaint has been received, the following should be recorded:
 - 1. Name of the complainant.
 - 2. Date of the alleged incident.
 - 3. Brief description (e.g. use of force) of alleged incident.
 - 4. Who was assigned to investigate the complaint?
 - 5. Disposition, including level of discipline, if given.
 - 6. Name of Skelly hearing officer, if applicable.
 - 7. The complaint log serves as a record of all complaints in a given year and contains sufficient information to produce a report at the end of the year for the California Department of Justice.
 - 8. When an investigation is opened (Performance/Policy, Citizen Concern or Internal Affairs), notification will be sent to the appropriate Divisional managers and lieutenants, including the applicable civilian manager. Lieutenants will notify appropriate supervisors of involved member(s).
 - 9. There are four different classifications of investigations that will be recorded:
 - a. *Internal Affairs (I.A.) Case Numbers*: This type of investigation can be either citizen or Sheriff's Office generated. The Sheriff's Office command staff can request an internal affairs investigation of a complaint by contacting the Administration Division Captain. These cases will be issued an Internal Affairs Case Number.
 - b. *Citizen Concern Case Numbers*: This type of investigation can either be citizen or member generated. These cases will be reviewed by the Administration Division Captain and distributed for investigation. If the case is handled as a Citizen Concern, the case will generally be assigned a Citizen Concern Case Number by the Sheriff's secretary and the case will be given a Citizen's Complaint Routing Form. **The investigation shall be completed within 60 days upon assignment unless approval for extension is permitted by the assigning Captain or Administration Division Captain.**
 - i. Extensions may be granted in 30 day increments.
 - ii. The approving Captain shall notify the Sheriff's Secretary or the Internal Affairs Unit of the extension so tracking can be updated.
 - iii. When this investigation is concluded, it shall be forwarded, via the chain of command, to the Administration Division Captain and ultimately to the Internal Affairs Unit for filing.
 - c. *Performance/Policy Case Numbers*: This type of investigation is generated by either a manager or a supervisor. The appropriate

Captain shall be notified. If the case involves a Policy & Procedure violation, the investigator shall contact the Internal Affairs Unit to obtain a Performance/Policy Case Number or use the AIM program to obtain one. **The investigation shall be completed within 60 days upon assignment unless approval for extension is permitted by the assigning Captain or Administration Division Captain.**

- i. Extensions may be granted in 30 day increments.
 - ii. The approving Managers shall notify the Sheriff's Secretary or the Internal Affairs Unit of the extension so tracking can be updated.
 - iii. When this investigation is concluded, it shall be forwarded, via the chain of command, to the Administration Division Captain and ultimately to the Internal Affairs Unit for filing.
- d. *Administrative Review Case Numbers:* This type of investigation is Sheriff's Office generated by either the Sheriff or his/her designee to review Sheriff's Office policy, procedure and any training issues surrounding an incident. In these cases the investigation will be issued an Administrative Review Case Number. Administrative Reviews do not have a completion date requirement unless a violation of policy is discovered, which upon discovery, requires the investigation to be completed within one year.

5.3 Formal Investigations

Whether conducted by a supervisor/manager or an assigned member of the Internal Affairs Unit, the following procedures shall be followed with regard to the accused peace officer member:

- A. Interviews of all accused members shall be conducted during reasonable hours and, if the member is off-duty, the member shall be compensated (GC §3303(a)).
- B. No more than two interviewers may ask questions of an accused member (GC §3303(b)).
- C. Prior to any interview, an accused member shall be informed of the nature of the investigation (GC §3303(c)).
- D. All interviews shall be for a reasonable period and the member's personal needs shall be accommodated (GC §3303(d)).
- E. No member shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. However, any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively or be subject to discipline for insubordination. Once again, nothing administratively ordered may be provided to a criminal investigation. However, the District Attorney may review the interview (832.7 PC).
- F. Absent circumstances preventing it, the interviewer should tape (or digitally) record all interviews of members and witnesses. The accused member may also record the interview. If the member has been previously interviewed, a copy of that interview shall be provided to the member prior to any subsequent interview (GC §3303(g)).
- G. If the allegations involve potential criminal conduct, and if it is deemed that the member shall be charged with a criminal offense and he/she is providing an uncompelled statement, the member may be advised of his/her constitutional rights (Miranda) (GC §3303(h)).

- H. All accused members subjected to interviews that could result in punitive action (beyond Documented Counseling) shall have the right to have an uninvolved representative present during the interview (GC §3303(i)).
- I. All members shall provide complete and truthful responses to questions posed during interviews. Failure to respond completely and truthfully to these questions is separate grounds for discipline, up to and including termination of employment.
- J. No member may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (GC §3307).

5.4 Investigation Report Format

- A. **Formal investigations** of members, except as provided under 5.4 B, shall be detailed, complete, and follow the format laid out by the AIM program.
- B. **Formal Investigations, completed by the Internal Affairs Unit, shall essentially follow this format:**
 - 1. **Investigation Cover Page:** Include the identity of the member, the identity of the assigned investigator, the initial date, and source of the complaint, as well as the violations investigated.
 - 2. **Background Summary:** Provide a very brief summary of the facts giving rise to the investigation.
 - 3. **Complaint and Authorities:** List the allegations separately (including applicable policy sections).
 - 4. **Investigation:** A thorough investigation shall be completed considering all relevant information is chronicled, including comprehensive summaries of member and witness statements.
 - 5. **Conclusions and Findings:** Each allegation should be set forth with the details of the evidence applicable to each allegation provided. Other evidence related to each allegation should also be detailed in this section. A recommendation regarding further action or disposition should be provided. Discipline should not be recommended or specified.
 - 6. **Exhibits:** A separate list of exhibits (CD-R's, tapes, photos, documents, chronological log, etc.) should be attached to the report.
 - 7. A final disposition letter to the complaint shall be prepared once a finding has been determined. The letter shall contain a brief summary of the investigation and one of the dispositions listed in Section 5.6 of this policy. The original letter shall be attached to the investigation.
 - 8. A final disposition letter and/or email to the member(s) involved shall be prepared. The letter and/or email shall contain a brief summary of the investigation and one of the dispositions listed in Section 5.6 of this policy. The original letter and/or email shall be attached to the investigation.
- C. **Informal Investigations** may be documented in a memorandum.
 - 1. The memorandum shall document the steps taken to investigate the complaint (including all attempts to contact the complainant), and a finding of any alleged or noted policy violations.
 - 2. This format may be used with Policy/Procedure and Citizen Concern investigations that do not reasonably appear to rise to the level of a Formal Investigation.

3. This format may also be used to document certain uncomplicated Policy/Procedure investigations, even though the violation may result in discipline beyond Documented Counseling. Examples include vehicle accidents, negligent firearms discharges, or other cases authorized by a Captain.
4. Assignment / Review Process:
 - a. All complaints are sent to the Administration Division Captain for review.
 - b. Cases that are assigned a Citizen Concern number are then sent by the Administration Division Captain to the Assistant Sheriff (or Captain) in charge of the Division.
 - c. The Assistant Sheriff (and/or Admin. Captain) then assigns to a Captain.
 - d. The Captain can either complete the investigation or assign the investigation to a Lieutenant, Sergeant or Supervisor.
 - e. When the investigation is complete, it is returned via the chain of command to the Division Assistant Sheriff (and/or Captain).
 - f. After approval of the Division Assistant Sheriff (and/or Captain) the entire (original) investigation will be forwarded to the Administration Division Captain.
 - g. The Administration Division Captain/Designee will ensure the disposition letter is mailed to the complainant and the involved member. The letter will be forwarded to the Internal Affairs Unit for filing.

5.5 Completion of Formal Investigations

- A. All Personnel investigations, except those conducted by the Internal Affairs Unit, shall be completed within 60 days. The investigation shall be completed within 60 days upon assignment unless approval for extension is permitted by the assigning Administration Division Captain.
 1. Extensions shall be granted in 30 day increments.
 2. The approving Captain shall notify the Sheriff's Secretary or the Internal Affairs Unit of the extension so the tracking form can be updated.
- B. If the nature of the allegation(s) dictates that confidentiality is necessary to maintain the integrity of the investigation, the involved member need not be notified of the pending investigation unless and until the member is interviewed or formally charged.
- C. Within one year of becoming aware of an act, omission, or other misconduct, the formal investigation must be completed and the member notified of any intended disposition. The year begins when someone within the Sheriff's Office, who has the authority to initiate an investigation, becomes aware of the act, omission, or other misconduct. There are some exceptions that allow the investigation to be extended beyond a year (i.e., criminal investigation, etc.) (GC § 3304(d)).
- D. If the complaining party is charged with a criminal offense associated with the investigation, the investigation may be suspended until the completion of the criminal trial.
- E. Upon completion, the report should be forwarded through the chain of command to the Captain of the involved member.

- F. Once received, the Sheriff/Designee may accept or modify the classification and recommendation for disciplinary action contained in the report.
- G. Within 30 days of having made a decision to impose discipline (from the time that the final reviewer dates, signs and lists a disposition), a peace officer must be notified in writing of that decision in the form of a Notice of Intended Disciplinary Action (NOIDA). The member may ask for and shall receive upon request a copy of the investigation if discipline is proposed, unless the member is unavailable.
- H. In the event of a Skelly Hearing, a peace officer must also be notified in writing within 30 days of the hearing officer's decision of any intended discipline (GC § 3304(f)).
 - 1. Skelly Hearings for Letters of Reprimand shall be conducted by a Captain of a different Division.
 - 2. Skelly Hearings for Suspensions or Terminations in the Law Enforcement or Detention Division shall be conducted by the Assistant Sheriff of the opposite Division.
 - 3. Skelly Hearings for the Administration Division shall be conducted by either Assistant Sheriff.
- I. NOIDA's shall be prepared by the investigator. All NOIDA's shall be sent to County Counsel and/or Human Resources Department to ensure the NOIDA is as complete as possible.
- J. Orders of Discipline shall be prepared, served and filed with the Board of Supervisors by the Internal Affairs Unit.
- K. Upon final review by the Sheriff/Designee, written notice of the findings shall be sent to the complaining party. This "Closure Letter" shall indicate the findings; however, it will not disclose the amount of discipline, if any imposed. The letter will also include the Investigator's contact number for questions regarding the investigation. **The complainant must be notified by letter within 30 days of making the finding PC § 832.7(e).** This letter shall be sent by the Sheriff's Administrative Secretary at the direction of the Administration Division Captain or his/her designee. If the member appeals the results of the investigation, the 30 days starts when a final disposition is rendered after set hearing.
- L. In those instances where no discipline is imposed, the involved member may view the investigation on his/her own time. This request will be made through the Internal Affairs Unit. The entire report may not be available for viewing due to confidentiality issues.

5.6 Disposition of Personnel Complaints

Each allegation shall be classified with one of the following dispositions:

Unfounded	The investigation clearly established that the allegation is not true.
Exonerated	The investigation clearly established that the actions of the member that formed the basis for the complaint are not violations of law or Sheriff's Office policy.
Not Sustained/Inconclusive	The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation, by a preponderance of the evidence.
Sustained	The investigation disclosed sufficient evidence to clearly prove the allegation, by a preponderance of the evidence.

If an investigation discloses misconduct or improper job performance that was not alleged in the

original complaint, the investigator shall notify the appropriate Division Assistant Sheriff and/or Captain for further direction

5.7 Allegations of Criminal Conduct

When a member is accused of potential criminal conduct, a supervisor or detective shall be assigned to investigate the criminal allegations apart from any administrative investigation. An administrative investigation may parallel a criminal investigation.

- A. The Sheriff shall be notified as soon as practical when a member is formally accused of criminal conduct. (In the event of serious criminal allegations, the Sheriff may request a criminal investigation by an outside law enforcement agency.)
- B. A member accused of criminal conduct shall be provided with all rights and privileges afforded to members of the public. The member may not be administratively ordered to provide any information to a criminal investigator.
- C. No information or evidence administratively compelled from a member may be provided to a criminal investigator, unless dictated by law.
- D. Any law enforcement agency is authorized to release information concerning the arrest or detention of a peace officer, which has not led to a conviction (LC § 432.7(b)). However, no disciplinary action shall be taken against the accused member based solely on an arrest or crime report. An independent administrative investigation may be conducted based upon the allegations in the report in accordance with Sheriff's Office policy.

5.8 Administrative Searches

- A. Any member exhibiting objective symptoms of intoxication who is involved in a shooting, death from police action or injury/fatal traffic collision, may be administratively ordered to submit to a blood, breath or urine test. The results of such compelled testing shall be restricted to the administrative investigation.
- B. Members that appear to be under the influence of drugs or alcohol may be tested pursuant to CAO policy 8-02 (located on the County Intranet site under the CAO).
- C. Any member may be compelled to disclose personal financial information pursuant to proper legal process, if such information tends to indicate a conflict of interest with official duties or, if the member is assigned to or being considered for a special assignment with a potential for bribes (GC § 3308).
- D. Members shall have no expectation of privacy when using telephones, computers, radios, or other communications provided by the Sheriff's Office.
- E. Assigned lockers and storage spaces may only be administratively searched:
 - 1. In the member's presence, or;
 - 2. With the member's consent, or;
 - 3. With a valid search warrant, or;
 - 4. Where the member has been given reasonable notice that the search will take place (GC § 3309).
- F. All other Sheriff's Office assigned areas (e.g. desks, office space, and assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes (e.g. obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved and under the same conditions as listed in Section D above (GC § 3309).

5.9 Assignment to Administrative Leave

When circumstances dictate, the Sheriff may assign the involved member to paid administrative leave pursuant to Sonoma County Civil Service Rule 12. A member placed on paid administrative leave:

- A. Will continue to receive regular pay and benefits pending the outcome of the investigation;
- B. May be required by the Sheriff/Designee to relinquish any badge, Sheriff's Office identification, assigned weapon(s) and any other Sheriff's Office equipment. Will temporarily be assigned to the Personnel Bureau for monitoring, although the member will continue to be paid out of their normal budget index;
- C. May be ordered to refrain from taking any action as a Sheriff's Office member or in an official capacity, or from carrying a firearm as an on or off duty peace officer. The member shall be required to continue to comply with all policies and lawful orders of a supervisor;
- D. May be temporarily reassigned to a different shift (generally normal business hours) during the investigation and may be required to remain available for contact at all times during such shift and report as ordered.

5.10 Confidentiality of Personnel Files

- A. All investigations of personnel complaints shall be considered confidential. The contents of such files shall not be revealed to anyone other than the accused member or authorized personnel, except pursuant to lawful process (PC 832.7).
- B. In the event that an accused member (or the representative of such member) knowingly makes false representations regarding any internal investigation and such false representations are communicated to any media source, the Sheriff's Office may disclose sufficient information from the member's personnel file to refute such false representations (PC § 832.5).
- C. All personnel complaints and investigations shall be maintained for a period of no less than five (5) years (PC § 832.5).
- D. Personnel complaints and investigations shall be destroyed pursuant to the Sheriff's Office's Record Retention Schedule, with the following exceptions: internal investigations concerning officer involved shootings, in-custody jail deaths, domestic violence, sexual/workplace harassment, terminations, mutual separation agreement, or other investigations specified by the Sheriff shall be retained for ten years from the date the Sheriff's Office becomes aware of the misconduct and then destroyed.
- E. Investigations that result in other than a "Sustained" finding may be maintained pursuant to the Sheriff's Office's Record Retention Schedule, but may not be used by the Sheriff's Office to adversely affect a member's career (832.5(c)).
- F. Complaints shall be maintained by the Internal Affairs Unit apart from the member's personnel file. Discipline above Documented Counseling shall be maintained in the member's personnel file for the minimum of five years from the date the Sheriff's Office becomes aware of the misconduct and then destroyed.

5.11 Appeal Process

Under applicable law and the Rules of the County Civil Service Commission, a member will have various legal rights in connection with any disciplinary action taken against them.

6.0 REVISION HISTORY

Version: 11.09.14

Replaces v. 10.12.13, replaces v. 9.04.11, replaces v. 8.12.10, replaces 7.10.10; replaces v. 6.08.10; replaces v. 5.02.10, v. 4.02.10, replaces v. 3.11.08; Replaces v. 2.08.05 (Reformatted 8/12/05); Replaces v. 1.04.03 (New 4/01/03) Replaces Old General Order P-1, Personnel Investigations, (5/01/80).

Exhibit B

SUMMARY OF IOLERO RECOMMENDATIONS RELATED TO ADMINISTRATIVE INVESTIGATIONS AND AUDITS

Identifying Potential Problem Behavior Prior to or Absent a Complaint Investigations

1. During a new employee's probationary period, supervisors should regularly review Body Worn Camera footage of probationary employees under their command.
2. During a new employee's probationary period, supervisors should regularly check in about a probationary employee's performance with their peers, and with community members where they are assigned, and document the feedback from such sources

Investigative Process

Complainant, Witness, and Deputy Interviews

3. An investigator should make every reasonable effort to interview every complainant, both to ensure that the investigator understands fully the nature of the complaint and the complainant's view of the available evidence, as well as to convey to the complainant that the agency takes seriously all complaints of employee misconduct.
4. Additionally, all subject deputies and employees named in a complaint should be interviewed.
5. Where possible, the investigator also should interview at least one third party witness outside the Sheriff's Office in any investigation involving serious allegations, such as excessive force, racial bias, etc.
6. Regardless of the seriousness of the employee conduct alleged in a complaint, all witnesses with information material to the investigation should be interviewed.
7. When interviews are conducted, the investigator should ensure they are digitally recorded and secured so that there is an exact record of the interview available for review by agency supervisors and the Auditor.
8. The agency should improve on its documentation of interviews by moving from digital sound recording, which is often currently employed, to digital video recording with both sound and visual information that could be reviewed by the investigator and the Auditor.
9. Where the investigator is interviewing an employee that is the subject of the investigation, or a complainant, the Sheriff's Office should allow the Auditor to be present during the interviews.

Preserving Investigative Evidence Throughout the Review Process

10. All documentary and video evidence that may play a role in any future investigation should be carefully preserved by the agency, with a clear chain of custody showing when and if it has been viewed or in the possession of any agency employee.

Other Investigative Evidence

11. Investigators should make every reasonable effort as soon as possible to identify and secure any third party evidence identified by the complainant or other witnesses, or any evidence that otherwise is identified during the course of an investigation.
12. Each investigation should include the following information about any employee:
 - a. previous complaints filed,
 - b. administrative investigations and outcomes,
 - c. performance evaluations, commendations awarded and/or discipline imposed and why, and
 - d. information related to an employee's inclusion on the agency's *Brady* list, including any investigative or complaint file associated with that inclusion.

This information should be considered and weighed by the investigator in the investigative report, especially where the credibility of witness statements could influence the outcome of investigative findings. This type of evidence also should be provided to the Auditor without the need to specifically request it from the agency.

13. Where documentary evidence is mentioned by witnesses or the investigator but is no longer in the investigative file and cannot be located, the lack of such evidence should be a separate subject of the investigation and the investigation should explore the reasons for the absence of the evidence in some detail.
14. Where video footage is required to be recorded of particular types of incidents, but nevertheless witnesses state that the video was not recorded, in violation of policy, the lack of such evidence should be a separate subject of the investigation and the investigation should explore the reasons for the absence of the evidence in some detail.

Integrity and Objectivity of the Investigation

15. Each investigation should include a thorough investigation and analysis of all allegations made by the complainant
16. Each investigation should include a thorough investigation and analysis of any other possible violations raised by the alleged facts or evidence that becomes available during the course of the investigation, even if not alleged by the complainant.
17. The Sheriff's Office should adopt a formal written policy forbidding any acts by agency employees to retaliate against community members who file complaints against, or give evidence in investigations of complaints against, employees or the agency.
18. In addition, the agency should include this non-retaliation policy statement on its formal complaint forms and any agency written materials that describe the complaint process.
19. The Sheriff's Office should adopt a formal Conflict of Interest Policy to forbid involvement of employees in any investigation that involves a person or organization with which the employee has a familial, financial, and/or significant personal relationship.
20. IOLERO further recommends that the Conflict of Interest Policy should forbid any employee from involvement in the conduct or management of any investigation in which that employee is implicated as a subject, supervisor, or witness.
21. When conducting witness and deputy interviews, investigators typically should utilize open ended questioning (as opposed to leading or hostile questions) and maintain a neutral demeanor, so as to encourage the witness to remember and provide all of the information of which they may be aware.

22. Investigators should undertake a full analysis of factual evidence and should consider and weigh all material evidence, both for and against a specific finding
23. In addition, where investigative findings are made as to violation of or compliance with an agency policy, the analysis should reference any specific criteria of that policy and explain why the evidence meets or does not meet that criteria.

IOLERO Investigative Audit Process

Unfettered, Direct Access to Information and Staff

24. The Sheriff's Office should provide the Auditor with *unfettered, direct access to all of the source material **reviewed by*** the investigator in reaching a conclusion on findings.
25. The Sheriff's Office should provide the Auditor with *full, direct access to all information **available to and/or used by the investigator.***
26. The Sheriff's Office should allow the Auditor direct access to the investigators who prepare the Investigative Reports that serve as the basis of the independent audits.

Audit Timelines and investigative Findings Notifications

27. Timely completion of an investigation audit should be defined for each audit separately, with no overall expectation that each audit will be the same.
28. Generally, completion of an audit should take about one-half of the time it took for completion of the investigation being audited, assuming the investigation is complete when referred.
29. An audit should be considered simple if it takes 30 working days or less for the investigator to complete and refer it for audit. Under those circumstances, an audit should be completed in 14 working days or less, assuming that there are no other pending audits preceding it, nor similar unavoidable time conflicts.
30. If an investigation is referred for an audit while another audit is pending, the deadline for the new referral should not begin until the deadline on the audit of the previously referred investigation has expired.
31. If IOLERO must request from the Sheriff's Office evidence not included in the investigative file, or request investigation of issues not explored in the investigation report, the audit deadlines for that investigation should be stayed while these tasks are completed by the investigator.
32. As a general matter, absent unavoidable time pressures such as an approaching statutory deadline to impose discipline for a finding of misconduct, the Sheriff's Office should wait until the audit process has been completed to notify employees or complainants of findings.
33. Where an investigation audit results in a different finding by IOLERO on a complaint allegation, the Sheriff's Office should engage in an attempt to resolve that difference between the agencies prior to issuing notifications to the deputy and the complainant.

Sheriff's Office Response to IOLERO Audit Recommendations

34. In addition to providing the Sheriff's Office with a confidential Investigative Audit Report that reviews the investigation and its findings, IOLERO also should issue (where

- appropriate) an accompanying Audit Recommendations Report that will become public. The Audit Recommendations Report would include any recommendations for changes to policy, practice, or training that may have resulted from the audit of the investigation.
35. The Sheriff's Office ordinarily should respond publicly to the recommendations contained in any Audit Recommendation Report within 30 days of its issuance.

Transparency on Employee Discipline Outcomes

36. The Sheriff's Office should begin to collect and track data on all discipline imposed as a result of sustained findings of employee misconduct, and should allow IOLERO unfettered, direct access to that data from within the AIM system viewed by the Auditor.