

Independent Office of Law Enforcement Review and Outreach



Comments on Sheriff's Responses to IOLERO

Recommendations: Policies & Practices Related to Administrative Investigations and Audits of Investigations

Jerry Threet, Director
September 27, 2018

OVERALL COMMENTS

On July 25, 2018, IOLERO provided to the Sheriff's Office 36 separate recommendations to improve that agency's administrative investigations and the IOLERO audits of those investigations. On August 27, 2018, the Sheriff's Office responded to those recommendations. IOLERO now provides these written comments on the Sheriff's responses. IOLERO hopes and expects that this iterative process will help the public better understand the issues related to these recommendations. Before commenting on responses to individual recommendations, IOLERO first provides some overall observations on the Sheriff's response.

First and foremost, it is unclear from many of the Sheriff's responses whether the Sheriff has accepted or rejected IOLERO's recommendations. It would be very helpful, both for IOLERO and the public if the Sheriff could provide a list with a simple declaration for each numbered recommendation that states either "ACCEPTED" or "REJECTED". This will allow all interested parties to understand what may be next steps in this process.

Investigation Recommendations

These recommendations are based on IOLERO's experience with over 2 years of audits of investigations. Many of the recommendations were first made in an audit of a specific investigation and addressed a problem raised by that investigation that should be addressed. Some of the recommendations were made multiple times in multiple audits, yet investigative deficiencies addressed by the recommendation persisted over time. When deficiencies persist despite recommendations for improvement, the logical conclusion is that there has been no effective change in the system that allows the deficiencies to continue.

It is because of persistent investigative deficiencies identified in multiple audits over time that IOLERO packaged these related recommendations into this single report, and recommended that these changes be included in a written policy to govern administrative investigations. As mentioned in the original recommendation report, the Sheriff's Office does have a policy governing its administrative investigations. That policy lacks overall guidance on best practices for conducting such investigations, and does not incorporate the role of IOLERO in the current investigation and audit process. The existing policy does have explicit guidelines for honoring employee rights under the Peace Officer Bills of Rights, however, demonstrating the importance the agency assigns to this aspect of an investigation. Best practices for administrative investigations deserve equal or greater emphasis in a policy that guides such investigations.

In discussions of this issue with the Sheriff, he acknowledged that investigative deficiencies persist in some areas, but queried how the agency could deal with this persistence since they had told the investigators what was expected. The IOLERO Director suggested two approaches. First, enshrine expectations on best practices for investigations into policy, as is done for other types of investigations, such as sexual assault or elder abuse investigations. A policy that includes written expectations on investigative best practices provides a way to hold investigators accountable if they persist in violating those standards. Second, the Director suggested that if an investigator violates such expectations on multiple occasions, then perhaps that employee no longer should continue in that assignment.

What is most important here is the IOLERO recommendation that many of these requirements be put into written policies guiding administrative investigations. Without a clear written expectation communicated to employees, it is challenging to hold an employee accountable in any meaningful way for violating those expectations. The administrative discipline system is a primary means of accountability for employees in a law enforcement agency, and IOLERO recommends that these recommendations be included in written policy so that they will be taken serious by those who work as investigators.

Audit Timelines Recommendations

Turning to the recommendations on audit protocols, many of the recommendations relate to a ***realistic timeline for IOLERO to complete audits***, based on 2 years of experience with them. IOLERO would be thrilled to be able to complete each and every audit in the ideal time period envisioned by the Sheriff's Office. Unfortunately, that is currently not possible for the reasons laid out in the report on these recommendations. However, with additional staffing, IOLERO likely could meet the timeline goals on audits for many investigations. IOLERO therefore invites the Sheriff to advocate for and support IOLERO's ongoing requests for additional staffing, so that the office will be able to perform its missions effectively and reduce this source of ongoing inter-agency friction.

The Internal Affairs Division of the Sheriff's Office handles most investigations audited by IOLERO. That division includes an Administrative Lieutenant to supervise the work of 3 Sergeants who act as investigators, as well as an Administrative Assistant. Therefore, it is possible for the division to distribute the investigative work load of Internal Affairs so as to avoid any one investigator developing a backlog. In addition, for less serious allegations, an investigation typically is handled by the sergeant supervising the deputy who is the subject of a complaint, further distributing the workload of investigations. Even under these circumstances, the Sheriff's Office allows itself 30-60 days for less serious investigations, and up to 150 days for more serious allegations. IOLERO is still expected by the Sheriff's Office to meet a relatively short timeline whatever the allegations or the time it took to investigate them.

Even with additional staffing, however, IOLERO still will face audits where completion in an independent, complete and competent manner is not possible within the ideal 30 days envisioned by the Sheriff's Office. This past fiscal year saw an increased rate of complaints being filed, as well as multiple complex investigations referred for audit. For example, last year IOLERO audited two related administrative investigations connected to incidents that were the subject of the federal "yard counseling" lawsuit. The investigations themselves, taken together, took over 473 calendar days to complete. In addition, the two investigative reports totaled over 380 pages. There were scores of related evidentiary documents and also significant video footage involved in the review. This audit took over 180 hours to complete, over the course of 10-12 weeks, resulting in an audit report of over 75 pages. While the auditor requested additional time due to the complexity of this matter, the Sheriff's Office agreed to extend their expected completion date by only an additional 30 days, for a total of 60 days. It simply will never be reasonable to expect an audit to be completed in the expected timeline, under circumstances such as these.

In addition some of the recommendations in this section relate to ***what to do when an investigation is not complete*** when referred to the IOLERO Auditor. The Sheriff's Office responded by arguing that IOLERO is attempting to conduct its own investigation rather than an audit. The protocol for audits agreed to by the Sheriff includes auditing for the completeness of an investigation, and every audit conducted by IOLERO for over 2 years has audited this aspect. The Sheriff therefore should expect that this is an ongoing focus of audits. There have been multiple audits where an investigative report made a finding, and yet the report or the evidence itself showed issues and evidence that were not investigated. When an audit points these discrepancies out, that is not an attempt by IOLERO to conduct an independent investigation, but rather the performance of a basic audit function. An audit identifying a failure to investigate or analyze material evidence is valuable because it allows the agency to correct that deficiency and ensure the integrity of the investigative findings. The Sheriff's response suggests that an opportunity to correct the deficiency should be ignored and that the Sheriff should respond to such an audit finding only at the close of the year, in a response to the IOLERO Annual Report.¹ This suggests that the agency undervalues the importance of a complete investigation to the integrity of investigative findings.

Also concerning is the Sheriff's response to the recommendation that agency staff ***consult with IOLERO when the Auditor's findings differ from that of the investigation***, in an attempt to resolve such differences. The Sheriff asserts that IOLERO uses an inappropriate standard to evaluate the evidence in the investigation in reaching its findings. IOLERO has been crystal clear on numerous occasions that the standard used by the Auditor to evaluate which finding is appropriate for any investigation is "the preponderance of the evidence." Elsewhere, the Sheriff also states that "it may not be necessary to interview all witnesses to determine a finding by a preponderance of the evidence." IOLERO is concerned that this approach can result in circumstances where several witnesses give a statement that exonerates a deputy, but other material witnesses are not interviewed on the assumption that their testimony will be consistent with the evidence already collected. The "preponderance of the evidence" standard does not countenance halting an investigation once enough evidence is obtained to support a particular finding. Witness testimony can and often does include discrepancies in observed facts and each material witness can shift the conclusions to be drawn from the totality of the evidence. All material evidence should be collected, reviewed and evaluated.

The Sheriff's response also says the agency will respond to differences in findings only at the time of the IOLERO Annual Report. One key value of independent audits is that they provide the Sheriff's Office with an opportunity to consider an independent perspective on the incidents being investigated, including whether the preponderance of the evidence of the investigation supports the finding reached by the investigator. The IOLERO audit protocols agreed to by Sheriff contemplate a discussion between staff of the agency and of IOLERO when such differences arise.² A key value to the public of a discussion of such differences is the possibility that it may

¹ The audit protocols between the Sheriff's Office and IOLERO include the following provisions related to this discussion:

- H. At the conclusion of the audit, IOLERO will provide any recommendations deemed necessary to the Sheriff's Office.
- I. Any recommendations will be discussed between IOLERO and the Sheriff's Office.
- J. In the event those recommendations are accepted and require additional work, the case will be sent back to the investigator for follow-up.

² *Id.*

lead to a different outcome, or to a broader perspective by an investigator in future investigations. The Sheriff's response suggests that the agency is abandoning its commitment in the audit protocols to discuss these differences when they arise and when they could affect investigative outcomes. IOLERO urges the Sheriff to recommit to this process.

Auditor Access Recommendations

Other IOLERO recommendations relate to the Sheriff's Office providing the Auditor unfettered access to Sheriff's Office staff and to the sources of investigative evidence used by Internal Affairs investigators. As a reminder, this is a basic best practice for civilian review of law enforcement. It is recommended as a requirement for effective oversight by the National Association for Civilian Oversight of Law Enforcement. Access to sources of investigative evidence allows a civilian review office to assure the public that it has independently reviewed the completeness of law enforcement investigations and that all material evidence has been considered in reaching findings on allegations of misconduct. Access to Sheriff's staff facilitates the building of relationships, allows the frank exchange of information in less informal ways, and fosters trust between the staff of the law enforcement and civilian review agencies. Successful civilian review practitioners across the county regularly are granted this type of basic access.

The Sheriff's rejection of these recommendations is concerning. The reasons offered for the rejection of the recommendations do not appear to have sound legal or factual foundations. The Sheriff offers no specific legal barrier to justify this rejection, and County Counsel was unable to identify one upon request of IOLERO. If legal barriers prevented an auditor from having access to such records, then other civilian review agencies in California also would be prevented from such access, yet that is not the case. Also, the Auditor has reviewed complaint investigations that involved confidential matters, such as sexual assault, over the last fiscal year. No issues were raised by the Sheriff's Office during this audit about the propriety of the auditor's access to this information at the time. The legal issues would be largely the same under the recommendation of access to evidentiary source material, as they were in the audit completed this year.

The Auditor is Special Counsel to the County, including the Sheriff's Office. Therefore, the Auditor may access confidential material in the same way as the Sheriff's staff does in these circumstances, without violating legal confidentiality requirements.³ Also, the IOLERO Ordinance prohibits the disclosure by the IOLERO Director of any information in a way that would violate statutory or other legal confidentiality requirements applicable to such information. Stripped of the claim that legal barriers prevent such access, the Sheriff's response depends on the bare assertion that such access by the Auditor "would not be appropriate." Access to such material to determine whether all evidence related to a complaint has been obtained and analyzed by an investigator in reaching findings on that complaint, is appropriate in the same way as is access to such evidence by a deputy to determine whether a crime was committed. Not granting such access simply prevents IOLERO from being able to perform its review function in a full and independent manner.

³ See *Michael v. Gates* (1995) 38 Cal. App. 4th 737, 745; *People v. Superior Court (Gremminger)* (1997) 58 Cal.App.4th 397, 405.

COMMENTS ON INDIVIDUAL RESPONSES TO RECOMMENDATIONS

In this section, IOLERO comments on the Sheriff's responses to individual recommendations. The format will include the IOLERO recommendation, the Sheriff's Response in italic, and then the IOLERO comment on that response in **bold italic**

1. During a new employee's probationary period, supervisors should regularly review Body Worn Camera footage of probationary employees under their command.

Supervisors routinely audit Body Worn Camera (BWC) footage of not only probationary employees, but all employees under their command. Director Threet was given this information in November of 2017. Additionally, BWC video of all use of force incidents are reviewed by the immediate supervisor and the Professional Standards Lieutenant.

It is unclear whether the Sheriff accepts this recommendation, IOLERO requests that the Sheriff clarify whether he accepts or rejects this recommendation.

It is commendable that the Sheriff's Office routinely audits BWC footage of all employees. IOLERO recommends that the Sheriff share with IOLERO and the public the nature, scope and frequency of such routine audits. IOLERO further recommends that such routine BWC audits be included as a policy of the Sheriff's Office, and that the Sheriff share the results of those audits on a summary level with the IOLERO Auditor and the public.

The Director has no record of ever being informed that routine audits of employees BWC footage would be undertaken in a manner that would be useful to evaluate their performance during a probationary period or otherwise. Such a practice does not appear in the policies of the Sheriff's Office. IOLERO was informed in 2017 that the Sheriff's Office changed their use of force policy to require that supervisors review all BWC footage associated with a use of force report, but that is a narrower practice than this recommendation. IOLERO also was informed that the Sheriff's Office intended to perform an audit of compliance with BWC policies, but that also is a different type of audit than what was described in this recommendation.

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

In the course of their duties as supervisors, sergeants routinely evaluate the performance of all employees. Supervisor's notes in our personnel management database (known as the AIM system) are used to document the employee's performance as part of their performance evaluations. The feedback for employees comes from multiple sources, including members of the public, random BWC audits, peers, and other members of the Sheriff's Office.

It is unclear whether the Sheriff accepts this recommendation, IOLERO requests that the Sheriff clarify whether he accepts or rejects this recommendation.

This specific recommendation contemplates regular check-ins by supervisors with members of the public who have interacted with a probationary employee. Relevant members of the public

can be readily identified through a review of incident reports, dispatch records, and other records that reflect the employee's contacts with the public. Such feedback from the public can be a valuable indicator of whether a probationary employee will be a value to the organization moving forward.

It is commendable that Sheriff's Office supervisors routinely evaluate the performance of all employees, and documents feedback in AIM. IOLERO recommends that investigators review this information as part of any complaint investigation. IOLERO further recommends that the agency allow access by the IOLERO Auditor to supervisor notes in AIM when an employee is a subject of an investigation being audited by IOLERO. This information may be relevant to issues raised in complaint allegations.

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.

This recommendation was included in the IOLERO FY 16-17 Annual Report. In response to that recommendation, we now interview all willing complainants regardless of the circumstances. We do not rely exclusively on the written complaint and BWC to close out investigations. This practice has been in effect since 2016.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

This recommendation was indeed made in the IOLERO FY 16/17 Annual Report and the Sheriff did not respond to that recommendation publicly. In addition, there was at least 1 new investigation during FY 17/18 in which the Sheriff's investigator did not interview the complainant during the investigation. In this investigation, the investigator made 1 call each to 2 telephone numbers for the complainant taken from the arrest report for the incident in question, but did not reach complainant. The investigator neglected to use the email address complainant provided as the preferred means of contact on the IOLERO complaint form. No further attempt was made by the investigator to contact complainant during the investigation, and complainant was never interviewed. There were other investigations where investigators made only minimal attempts to contact inmates released from jail who filed complaints related to their incarceration.

IOLERO recommends that this requirement be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations for the reasons previously discussed.

4. Additionally, all subject deputies and employees named in a complaint should be interviewed.

Investigators routinely interview all subject deputies and employees in most cases. There are exceptions when BWC footage and other testimony (witness or employees) shows the complaint to be false, frivolous, and without merit. In these circumstances additional interviews are not warranted.

It is unclear whether the Sheriff's Office accepts this recommendation. IOLERO requests that the Sheriff clarify whether this recommendation is accepted or rejected.

There have been multiple complaint investigations audited by IOLERO since 2016 that lacked interviews with deputies who were a subject of the complainant, including at least 3 during FY 17/18. In few if any of these complaint investigations were all the allegations of the complaint frivolous. In addition, some investigations revealed evidence of employee policy violations not alleged in the complaint, and the employees involved were not interviewed about those potential violations. It is not advisable to avoid interviewing any material witness to an incident, regardless of how consistent previous testimony has been.

IOLERO recommends that this requirement be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

In most cases and when prudent, investigators make every effort to interview third party witnesses. There are occasions where witnesses are not available, or other evidence exists (BWC), supporting the determination that additional interviews by the investigator are not necessary.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

There have been multiple complaint investigations audited by IOLERO since 2016 that lacked interviews with third party witnesses, including several during FY 17/18. In few if any of these complaint investigations were all the allegations of the complaint frivolous. It is not advisable to avoid interviewing any independent, material witness to an incident, regardless of how consistent previous testimony has been.

IOLERO recommends that this requirement be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

6. Regardless of the seriousness of the employee conduct alleged in a complaint, all witnesses with information material to the investigation should be interviewed.

In investigating a case, investigators make the judgment based on their training and experience which witnesses have evidence material to an investigation. Investigators assigned to Internal Affairs have completed numerous criminal investigations where the burden of proof is much higher than that of an administrative investigation. Though other witnesses to an event may exist, evaluated on a case by case basis, it may not be necessary to interview all witnesses to determine a finding by a preponderance of the evidence.

Additionally, investigators have no legal authority to order witnesses not employed by the Sheriff's Office to submit to interviews. Therefore, witnesses can and do decline to be interviewed.

It is unclear whether the Sheriff's Office accepts this recommendation. IOLERO requests that the Sheriff clarify whether this recommendation is accepted or rejected.

There have been multiple complaint investigations audited by IOLERO since 2016 that lacked interviews with material witnesses, including several during FY 17/18. This included multiple investigations where a witness was not interviewed and was not asked to make a statement and therefore did not decline. It is not advisable to avoid interviewing any independent, material witness to an incident, regardless of how consistent previous testimony has been. Nor is it advisable to halt an investigation when the existing evidence collected will support a finding by a preponderance of that evidence, when additional evidence remains uncollected that has the potential to change that finding.

IOLERO recommends that this requirement be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

It is the Sheriff's Office belief and practice that, when practical, investigators should record and store all their interviews for later review. There have been cases where this has not been done; however this is not the norm, and the majority of interviews are available for review by supervisors and the Auditor. There are times when recording is not possible, such as a witness who refuses to be recorded. There were also times that we failed to meet our best practice standard in this area. Corrective action has been taken to resolve this.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

There have been multiple complaint investigations audited by IOLERO since 2016 that lacked recordings of interviews with material witnesses, including several during FY 17/18. In none of these examples of missing recordings did a witness decline to be recorded.

IOLERO recommends that this requirement be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

The Sheriff's Office addressed this recommendation in 2016. The industry standard is the audio recording of interviews. The Office believes video recording is cumbersome, interrupts the process, intimidates witnesses, and is significantly more expensive.

The Sheriff's Office has not previously responded publicly to this recommendation. It appears that the Sheriff's Office rejects this recommendation. IOLERO requests that the Sheriff clarify whether this recommendation is accepted or rejected.

The IOLERO Director has participated as a trial attorney in numerous video recorded depositions of witnesses, and that experience revealed no instance where a witness felt intimidated, or the logistics of video recording interrupted or interfered in the process of taking a witness' statement. Nevertheless, if video recording is believed to intimidate members of the public who are witnesses, it can be limited to interviews of agency employees who are witnesses or the subject of a complaint. Because video recording is so easily achieved with today's technology, it is unlikely to add any significant expense to the investigative process. Now would the number of video recordings of investigative witnesses add significant expense to the video storage already required for BWC video. While audio recordings may be more common in the law enforcement field, video recordings undoubtedly provide better quality and more information useful for evaluating the witness's statement. It is those qualities that make video recording a "best practice."

IOLERO recommends that this requirement be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

The Sheriff's Office addressed this recommendation in August 2017. There are several objections to this recommendation. The first objection is the belief of the Office that the Auditor's presence in an interview places him in the role of investigator and not an auditor. As envisioned by the CALLE Task Force, "the OIA⁴ will not become a part of the Sheriff's Office investigation process." The Auditor's presence in the interview removes the appearance of Auditor's independence and impartiality. The Auditor's presence may also interrupt the flow of the interview and negatively impact the comfort of the deputy or witness being interviewed.

It appears that the Sheriff's Office rejects this recommendation. While IOLERO respects this decision, we nevertheless offer these clarifying comments on the Sheriff's response.

IOLERO's recommendation contemplates the presence of the Auditor as an observer and not a participant in the interviews of employees and complainants. This allows personal observations of witness demeanor and other matters that are invaluable in assessing the credibility of interview statements and the objectivity of the investigation process. The simple presence of the Auditor in the room during the interview would not transform the role of the Auditor into an investigator, just as the Auditor's independent review of all evidence of the investigation does not transform the Auditor's role. Nor would the Auditor's presence as an observer remove any reasonable appearance of independence or impartiality. On the contrary, the ability of the Auditor to personally observe factors important to assessing credibility and objectivity actually would enhance the independence and impartiality of the Auditor.

⁴ The CALLE Task Force referred to the civilian review office they envisioned as the Office of Independent Auditor or "OIA". The board of Supervisors renamed the Office the Independent Office of Law Enforcement Review and Outreach or "IOLERO".

As with any new process, one may expect that employees at first may find it uncomfortable, but comfort will increase over time with experience. The Auditor believes that third party witnesses likely will find greater comfort in the presence of an independent Auditor during their interview by Sheriff's investigators.

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.

Sheriff's Office BWC evidence, as well as interview room recordings, are maintained and preserved on Evidence.com. Evidence.com has an audit trail function that maintains a chain of custody showing every time the video has been accessed/viewed and by whom. Research on the best method and the cost is currently underway with the intent to include any additional funding needs in the FY 19-20 budget request.

Other evidence, such as video maintained in the Detention Division is currently not preserved in Evidence.com; however, the Detention Division is in the process of obtaining body worn Cameras, and their body worn camera video and other digital evidence will be stored on Evidence.com in the near future.

It is the intention of the Sheriff's Office to eventually store all digital evidence on a platform that will maintain a chain of custody and an audit trail.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO strongly supports the effort to preserve video recordings from the Detention Division, as the absence or loss of such video has been a significant concern arising from auditing of investigations involving that division. In addition, there have been several investigations on both sides of the office that involved documents or other evidence reviewed by an investigator that was not preserved for review by the Auditor. This evidence, also, should be subject to preservation and chain of custody procedures.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

Investigators routinely make reasonable efforts to identify and obtain third-party evidence. In one of the cases mentioned by the Auditor in his report (16-C-0024), it was not certain that this evidence ever existed. There was third-hand information that there may have been a video. There were several attempts to interview this witness and obtain the video, but the witness refused to be interviewed. Investigators have no legal recourse when this occurs. Additionally, in administrative investigations, investigators do not have the legal authority to seek search warrants to order individuals to turn over cell phone video, phone records, GPS information or any other possible evidence. This specific case was referenced in the IOLERO FY16-17 Annual Report and the Sheriff's Office has responded to the Auditor's comments.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

In Complaint Investigation 16-C-0024, multiple witnesses stated that another witness had recorded a cell phone video of the incident in question. This incident predated the adoption of body worn cameras by the Sheriff's Office. The investigator scheduled an interview at the Sheriff's Office with the witness alleged to have recorded the video, but the witness did not show up. The investigator then left one telephone message for the witness and made no further efforts at contact. Because this video could have resolved many outstanding conflicts in witness statements about the complaint, which involved allegations of excessive force against an undocumented immigrant, the IOLERO Auditor believes additional attempts to secure the cooperation of the witness were warranted and reasonable. In addition, another complaint investigation in FY 17/18 alleged lying by a deputy about whether he was using his cell phone at the time he collided with another vehicle. In that case, the investigator did not try to secure the deputy's detailed cell phone billing records when the investigation was opened, at a time they would have been available. The investigator requested the records only after they no longer were available, more than 12 months after the incident and more than 3 months after the complaint was filed.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

12. Each investigation should include the following information about any employee:
 - a. previous complaints filed,

This information is included in the investigation if the complaint is sustained.

It appears that the Sheriff's Office rejects this recommendation. IOLERO's recommendation was that this information should be included in every investigative file, regardless of whether the previous complaint was sustained.

A key part of the IOLERO audit function is to assess whether a preponderance of the evidence supports the finding of the investigation. There may be evidence supporting a previous similar complaint in that file, even if it was insufficient in that instance to support a finding of "sustained". A pattern of such complaints therefore can be of probative value. The number and type of complaints filed against an employee is evidence relevant to examining the credibility of the employee as a witness in the allegations against the employee. Allegations from previous complaints also may be relevant to determining the credibility of similar allegations in a complaint under investigation. The absence of that information from an investigative file deprives the investigator and the IOLERO Auditor of information that is relevant to independently determining if the finding was a valid one, based on the totality of the evidence.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

- b. administrative investigations and outcomes,

This information is included in the investigation if there is a finding of sustained.

It appears that the Sheriff's Office rejects this recommendation. IOLERO's recommendation was that this information should be included in every investigative file, regardless of whether the previous complaint was sustained.

A key part of the IOLERO audit function is to assess whether a preponderance of the evidence supports the finding of the investigation. There may be evidence supporting a previous similar complaint in that file, even if it was insufficient in that instance to support a finding of "sustained". A pattern of such complaints therefore can be of probative value. The number and type of complaints filed against an employee is evidence relevant to examining the credibility of the employee as a witness in the allegations against the employee. Allegations from previous complaints also may be relevant to determining the credibility of similar allegations in a complaint under investigation. The absence of that information from an investigative file deprives the investigator and the IOLERO Auditor of information that is relevant to independently determining if the finding was a valid one, based on the totality of the evidence.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

- c. performance evaluations, commendations awarded and/or discipline imposed and why, and

This information is included in the investigation if the above information is within the records retention period.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO's recommendation was that this information should be included in every investigative file. This recommendation was made because IOLERO believes that this information was missing from multiple investigative files referred to IOLERO for auditing. The Auditor has never received a single investigative report that includes information about any discipline imposed on an employee that is the subject of the investigation being audited, although many (but not all) have included a list of commendations and performance evaluations. IOLERO's belief about the absence of commendation and discipline information from many investigations referred for audit was confirmed in a meeting in January 2018 with the Sheriff's management team.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

- 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 is included in the investigation if it exists. The facts of the case, including the

employee's presence on the Brady list, are considered by the investigators, evaluators, and ultimately the command staff upon final adjudication of the case. In addition, the Auditor has access to all completed cases and can search for cases by employee name to determine the facts of other cases. This information was communicated to IOLERO in November 2017.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO's recommendation is that this information should be included in every investigative file at the time it is referred for audit. This recommendation was made because IOLERO believes that this information was missing from an investigative file referred to IOLERO for auditing. IOLERO did search for other cases about the subject deputy in this instance, but it was not yet in AIM due to a backlog in loading older cases into that database system. Also, if another case results in Brady issues for a deputy subject to an audited investigation, then that information should be included in the investigative file to assist the Auditor in identifying the other case that is relevant.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

The Sheriff's Office agrees the matter should be investigated, but does not believe in most cases that this investigation should be separate from the original investigation.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO's recommendation is that the absence of the evidence should trigger an investigation of that fact within the investigation being done and subject to IOLERO audit. Thus, IOLERO and the Sheriff's Office agree.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

The Sheriff's Office agrees the matter should be investigated, but does not believe in most cases that this investigation should be separate from the original investigation.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO's recommendation is that the absence of the video should trigger an investigation of that fact within the investigation being done and subject to IOLERO audit. Thus, IOLERO and the Sheriff's Office agree.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

15. Each investigation should include a thorough investigation and analysis of all allegations made by the complainant.

Investigators currently investigate allegations made by a complainant unless the allegation is proven not to be factual upon initial review of the case, or complainant lists an allegation on the complaint form, and they do not provide a statement in support of the allegation during the interview.⁵

It is unclear whether the Sheriff's Office accepts this recommendation. IOLERO requests that the Sheriff clarify whether this recommendation is accepted or rejected.

IOLERO's position is that typically there is insufficient evidence from which to conclude that an allegation is "not factual" upon an initial review of a complaint, and that most allegations therefore should be investigated before drawing such a conclusion. One exception may be where a complainant suffers from mental health issues, such as paranoid delusions that are highly unlikely to be true. Even in such cases, however, it may be possible that a complainant has experienced something that raises issues justifying investigation, but misperceives what is actually going on. Only through at least some investigation, including a complainant interview if possible, can it be determined with confidence that the allegations have no factual merit.

In addition, on occasion, a complainant will neglect to mention facts about an allegation made on a complaint form. Under such circumstances, it is advisable for the investigator to question the complainant about that allegation in greater depth to determine if they have facts to support that allegation.

Finally, Penal Code Section 832.7(e)(1) requires the agency to notify a complainant of a disposition within 30 days of finalizing the disposition of a complaint. IOLERO believes the best reading of this statutory requirement is that the agency must notify the complainant of a finding on every allegation in a complaint.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

The Sheriff's Office agrees. Significant violations should become part of the investigation.

⁵ In case 17-C-0027 the complainant alleges Bias-Based Policing because of her gender and age. In the complainant's account, there were no statements that showed any indication of Bias-Based Policing

Minor offenses are referred to the individual employee's supervisor for follow up and resolution.

It appears that the Sheriff accepts this recommendation, at least in part, which is commendable. IOLERO requests that the Sheriff clarify the extent of this acceptance.

IOLERO recommends that any potential violation revealed by the evidence of an investigation is best handled within the context of that investigation, regardless of whether it is considered significant. The investigation of minor violations in the course of an incident may reveal evidence that bears on the larger investigation and the best view of any violation is within the context of the full investigation.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

Though there is no formal policy addressing retaliation against community members who file complaints against employees or the agency, the Office believes this behavior is a violation of the following Policies:

RULES AND REGULATIONS REGARDING CONDUCT

5.0 PROCEDURES

B. DUTIES, CONDUCT, AND RESPONSIBILITY

4. Standard of Conduct: Members shall conduct their private and professional lives in such a manner so as to avoid bringing discredit upon the Sheriff's Office.

5.0 PROCEDURES

B. DUTIES, CONDUCT, AND RESPONSIBILITY

17. Conduct Toward the Public: Members shall foster good public relations by treating the public with courtesy while keeping in mind the necessity of maintaining public respect for the Sheriff's Office. Upon request, all members are required to supply their name in a courteous manner. They shall attend to requests from the public quickly and accurately, avoiding unnecessary referrals to other parts of the Sheriff's Office or other agencies

Additionally, at the suggestion of the Auditor (see below #18), the following was added to the Citizen's Complaint form:

"Sonoma County Sheriff's Office will not tolerate any intimidation or retaliatory action against any person who files a complaint against a member of this office."

Following the Sheriff's written response to this recommendation on August 27, 2018, the Sheriff's office notified the IOLERO Director that the agency had amended its official policies to include the following language:

"1010.2.1 RETALIATION

It is also the policy of this office to ensure that the community can report misconduct without concern for reprisal or retaliation. Therefore, retaliation by any member of this office for the filling of a complaint will not be tolerated. Any allegations of retaliation will be investigated pursuant to this policy."

It therefore appears that the Sheriff has accepted this recommendation, which is commendable, and has added a clear prohibition against retaliation to its written policies. This will help make the requirement clear, enforceable and useful in holding deputies accountable.

The policy would be improved upon by adding language to protect from retaliation those who give evidence in an investigation. Also, given the broad discretion provided to deputies in choosing when to take enforcement action for observed violations of the law, it may be useful to further define the circumstances that may constitute an act of retaliation or reprisal by an employee.

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.

Under the leadership of retired Sheriff Freitas, this change was made at the suggestion of the Auditor. The Auditor was advised of this in August of 2017.

It is true that a statement was added to the complaint form in August 2017. IOLERO commends the Sheriff for making this change. This notice could be improved by adding language to prohibit retaliation against a witness who gives evidence in an investigation

In addition, the Sheriff's webpage includes information about the complaint process, along with a link to the complaint form, but this information does not mention the prohibition against retaliation and reprisal for making a complaint. This webpage information would be improved by including the prohibition of retaliation against a complainant and also by adding language to prohibit retaliation against a witness who gives evidence in an investigation.

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.

The Sheriff's Office is currently working to address this suggestion.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policies governing both criminal investigations and administrative investigations.

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.

The Sheriff's Office is currently working to address this suggestion.

It appears that the Sheriff's Office accepts this recommendation, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policies governing both criminal investigations and administrative investigations.

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.

The Sheriff's Office agrees investigators should not use leading questions. However, depending on the nature of the investigation and the person being interviewed, questions that challenge the witness (employees, witness and complainants) are not only appropriate but necessary to obtain a truthful answer. These types of questions are not only acceptable in investigations but are also commonly used in civil and criminal courts.

It appears that the Sheriff's Office accepts this recommendation, as to leading questions, which is commendable. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

The use of leading questions by investigators has been an ongoing, serious issue in administrative investigations audited by IOLERO, including in several audits during FY 17/18.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

It appears that the Sheriff rejects the recommendation against use of hostile questions, which is concerning. The use of hostile questions, sometimes referred to as cross-examination, is justified in court due to the adversarial nature of our civil and criminal justices systems. That system is built on conflict between opposing sides, with the idea that the truth will emerge between such courtroom combat. While there are many studies that question this premise, this nevertheless remains the philosophy of our current justice system. Even in this setting, however, there are strict limits on how hostile the questions can become. IOLERO has reviewed investigations that included questioning of a complainant that went beyond the limits that would be allowed in a court of law.

More importantly, an administrative investigation of a complaint against an employee is not a process founded on adversarial combat. It should never be viewed as a battle between the agency and a complainant. Such investigations depend on the cooperation of the complainants and the witnesses, who are not compelled to provide testimony by legal process. Law

enforcement agencies should make every effort to ensure that complainants feel welcome and appreciated for coming forward to share their perspective on the actions or behaviors of an agency employee. Such complaints can bring to light information that otherwise would remain unknown, and can avoid damage to the reputation and relationships of an agency. This view of administrative investigations also underlies many of the provisions of the Peace Officer's Bill of Rights ("POBR"), Cal. Govt. Code §3300, et seq. POBR prohibits harassing threatening or intimidating a peace officer who is the subject of an administrative investigation, during an interview of the officer. The officer also is entitled to representation, which helps ensure that they will be treated in a very straightforward and respectful way. Complainants and other witnesses likewise should not be subject to hostile questioning.

It can indeed be useful to present a witness or a complainant with evidence that is inconsistent with their own statement about what happened in an incident that is the subject of a complaint. This allows a witness to consider whether their recollection is accurate, and may refresh their recollection and make their statement more accurate as a result. This practice also can provide an opportunity to gain better information about the credibility of the witness. Yet, an investigator can do this in a calm, friendly and helpful manner. Hostility is not necessary to gain a better understanding of the truth.

While hostile questioning, including deception, is used by many law enforcement agencies in interrogating criminal suspects, there is a growing body of evidence that such interrogation techniques create a significant risk of false confessions, especially among people of color, for a variety of reasons.

Given the differing functions and settings of criminal or civil trials and administrative investigations, and the benefits of making the investigative process as welcoming as possible for complainants and witnesses, IOLERO continues to recommend that hostile questioning of complainants or witnesses be ended, and that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

The Sheriff's Office believes its investigators do undertake a full analysis of factual evidence and consider and weigh all material evidence, both for and against a specific finding, rather than selectively considering only some evidence that supports a conclusion. If the Auditor believes this is not the case, it should be addressed in the individual review of the case during the Annual Report.

It appears that the Sheriff accepts the recommendation that investigators undertake a full analysis of factual evidence and consider and weigh all material evidence in making a finding on each allegation. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO made this recommendation because there have been multiple investigations referred for audit lacking such an analysis, including some in FY 17/18.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

This information is included in the 'Conclusions and Findings' section of the investigative report.

It appears that the Sheriff accepts the recommendation that an investigative analysis supporting findings should refer to specific criteria of the policy and examine how the evidence meets the criteria at issue. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

IOLERO made this recommendation because there have been multiple investigations referred for audit lacking such an analysis, including some in FY 17/18. In many audits, there is only the most cursory analysis of compliance with policy criteria. Multiple investigations simply mention the criteria, then state in a conclusory fashion that the "totality of the evidence" meets the criteria, based on the "training and experience" of the investigator. This does not constitute a meaningful analysis that is readily subject to an evidence-based audit.

IOLERO recommends that these requirements be incorporated by the Sheriff's Office in the agency's policy governing administrative investigations.

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.

The Sheriff's Office provides access to all source material associated with investigations reviewed by the Auditor. The systems in which some of this material is stored contains not only evidence of cases audited by the Auditor, but other cases as well. For example, Evidence.com may contain video and photographic evidence including interviews with homicide suspects, sexual assault victims, child molestation victims, child pornography and a host of other videos and evidence that are not in the purview of the Auditor. It would not be appropriate to allow the Auditor "unfettered" access to this or systems that contain material outside of the purview of the Auditor.

Additionally, there has been no case in which the Auditor has asked for evidence in possession of the Sheriff's Office that was not released to him.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation, which is concerning.

The IOLERO Auditor on multiple occasions has asked for information that was not provided by the Sheriff as part of the investigation file. In one audit involving a vehicle accident of an employee, IOLERO was not initially provided any vehicle accident report although that was key evidence in the investigation. Upon request, the Auditor was provided with the vehicle

accident report directly involved in the complaint investigation, but not previous accident reports of the employee. The Auditor only discovered a previous accident from reading in the vehicle accident report provided that the employee had previous accidents. Thus, it appears that the Auditor must discover this relevant evidence on his own and specifically request it before it will be provided. Yet, there is a real possibility that the Auditor will not know that such evidence exists and thus will not know to ask for it from the Sheriff's Office. Thus, all such evidence should be accessible to the Auditor.

In another audit, which involved deputies assisting on a Santa Rosa Police Department enforcement action, IOLERO requested the SRPD incident report and investigation that fully described the incident, as the Sheriff's Office had only a brief report of the deputies responding to the call for assistance. The Sheriff's staff declined to request the incident report from SRPD, leaving the Auditor to review only the interview statements of deputies and the complainant's written allegations. In this same investigation, the complainant alleged multiple incidents of harassment by deputies over a course of months. Yet, the investigator provided only incident report for the dates specifically named by the complainant, and did not appear to search for other incidents involving the complainant during the time period named in the complaint. The lack of such evidence, and the Auditor's inability to look at the database which contains the incidents reports so as to check on whether other relevant reports exist yet were not provided, frustrates the Auditor's ability to independently audit the completeness of the investigation.

And this is the larger point of this recommendation. As any good investigator knows, "you don't know what you don't know". The same is true of an auditor. IOLERO will not know what material evidence may be available, absent access to the sources of that evidence. IOLERO is charged with independently auditing investigations for completeness and bias, factors that can be related. Currently, IOLERO must rely on the Sheriff's Office to provide all evidence related to an investigation and trust that there is no further relevant evidence. It therefore is not possible for the Auditor to independently assure the public that an investigation was complete.

25. The Sheriff's Office should provide the Auditor with full, direct access to all information available to and/or used by the investigator.

The Sheriff's Office provides access to all information associated with audited investigations. In some cases, the Auditor may not be able to legally access or view this information, or systems available to and utilized by investigators.

Additionally, similar to Evidence.com, systems such as I-Leads (the report writing system) the majority of the cases stored there contain written reports and associated photographic evidence of cases the Auditor would not audit and have no legal right to review. These types of cases include domestic violence, homicides, sexual assaults, child molestation, child pornography and other cases that are not in the purview of the Auditor and would never be audited. It would not be appropriate to allow the Auditor full and direct access to the I-Leads system or any other system that maintains information that is not solely for the purposes of auditing Sheriff's Office internal investigations.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation, which is concerning.

The IOLERO Auditor on multiple occasions has asked for information that was not provided by the Sheriff as part of the investigation file. In one audit involving a vehicle accident of an employee, IOLERO was not initially provided any vehicle accident report although that was key evidence in the investigation. Upon request, the Auditor was provided with the vehicle accident report directly involved in the complaint investigation, but not previous accident reports of the employee. The Auditor only discovered a previous accident from reading in the vehicle accident report provided that the employee had previous accidents. Thus, it appears that the Auditor must discover this relevant evidence on his own and specifically request it before it will be provided. Yet, there is a real possibility that the Auditor will not know that such evidence exists and thus will not know to ask for it from the Sheriff's Office. Thus, all such evidence should be accessible to the Auditor.

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And this is the larger point of this recommendation. As any good investigator knows, "you don't know what you don't know". The same is true of an auditor. IOLERO will not know what material evidence may be available, absent access to the sources of that evidence. IOLERO is charged with independently auditing investigations for completeness and bias, factors that can be related. Currently, IOLERO must rely on the Sheriff's Office to provide all evidence related to an investigation and trust that there is no further relevant evidence. It therefore is not possible for the Auditor to independently assure the public that an investigation was complete.

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.

The Sheriff's Office will allow access to the investigators when appropriate as has been our practice to date.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff accepts this recommendation, in part. The Sheriff's response is unclear about what circumstances would make such contact appropriate. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

For most investigations, when the Auditor has requested access to an investigator, he has been directed to work instead through the Administrative Lieutenant who serves as liaison to IOLERO. In some cases, an investigator has contacted the Auditor on his own initiative to provide information or answer questions posed to the Administrative Lieutenant. During the last 9 months, the response times of the liaison to IOLERO have become increasingly longer, even for basic information. While IOLERO recognizes the need for a point person for Sheriff's Office interactions with IOLERO, direct access to investigators for issues about the investigations they performed would have many benefits, as previously outlined.

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.

Sheriff's Office investigators are required to complete their investigations within 60 calendar days for citizen complaints and policy and procedure investigations and 150 days for internal affairs investigations unless there are extenuating circumstances. The Sheriff's Office believes for the integrity of the process and timeliness, the Auditor should adhere to the timelines he established in Suggestion 28 ("about one-half of the time it took for completion of the investigation being audited").

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff accepts this recommendation, in part. IOLERO requests that the Sheriff clarify whether this recommendation is accepted.

Because each investigation took a different amount of time to complete, each audit would have a different timeline if calculated to be ½ of the investigative time. An agreement on this recommendation alone would be very helpful.

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.

The Sheriff's Office and IOLERO agreed a two week timeline for audits unless more time was requested. This is the current expectation of the Sheriff's Office of the Auditor timelines. It should be noted, for FY 17-18, the average investigative time in days were 58/39 (total days/work days). The FY 17-18 audit days were 93/64 (total days/work days). These audit dates do not meet the timelines requested by the Auditor or agreed to by the Sheriff's Office and IOLERO.

Please refer to the Overall Comments section for comments applicable to this response.

It appeared that the Sheriff accepted this recommendation in his response to the previous recommendation. Yet, in this particular response, it appears the Sheriff rejects the recommendation. IOLERO respectfully requests that the Sheriff clarify his response.

IOLERO explained in the July 27, 2018 recommendation report that the Sheriff was notified in February 2018 that IOLERO would not be able to meet the general 2 week expectation for

audits moving forward, and the reasons why. Insisting on timelines that cannot be met with current IOLERO staffing is a recipe for conflict and frustration between the two agencies.

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.

The Auditor assumes the length of time it takes an investigator to complete an investigation determines the complexity of the case. Often this is not true. More often than not in Citizen Complaints and Policy and Procedure violation investigations other factors determine the length of the investigation. These factors include but are not limited to, the individual schedule of the investigator (training, vacation, collateral assignments, etc.) caseload of the investigator, prioritizing of cases based on the nature of the allegations, availability of witnesses, and availability of legal representation for the employee. Therefore, the determining factor of the complexity of the case should not be based on the length of time it takes the investigator to complete the investigation.

Additionally, the complexity of the case does not change the amount of time the investigator has to complete the investigation (the exception being cases with possible criminal proceedings and Administrative Reviews where outside agencies are conducting an investigation in accordance with the Sonoma County Critical Incident Protocol). The Sheriff's Office believes the Auditor should be held to the same standards of timeliness as the Sheriff's Office investigators.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation, although this is not entirely clear. The response to this recommendation concludes that the "Auditor should be held to the same standards of timeliness as the Sheriff's Office investigators." If this were actually the expectation, IOLERO would have much longer to complete any audit than has been previously expected by the Sheriff. IOLERO therefore respectfully requests the Sheriff to clarify this response.

IOLERO offers these additional comments on the information provided by the Sheriff in its response to this recommendation.

The Sheriff explains that multiple "other factors" may affect the amount of time it will take an investigator to complete an investigation. In the same manner, those factors also affect the ability of the IOLERO Auditor to complete an audit. Similar to an investigator, the IOLERO Director, who completes every audit, must also spend time on training and other matters (such as community outreach, attending Community Advisory Council meetings, taking an occasional vacation or being sick) that may conflict with the ability to complete an audit in a quick manner.

Unlike investigators, who are managed by the Administrative Lieutenant, the Director also must administer his department and manage the other staff member of IOLERO, plus attend meetings where department heads are expected to participate. Also, there are 3 investigators

working in Internal Affairs, among whom investigative workload may be distributed and balanced, while the Auditor is one person who must audit every referred investigation. The Sheriff's position is that these "other factors" understandably may lengthen an investigator's timeline, but similar and additional factors preventing the Auditor from completing every audit quickly should not be considered in establishing timeline expectations for audits. This is not a realistic or fair approach.

Finally, the complexity of a case does affect the timelines for an investigation by the Sheriff, contrary to the Sheriff's assertion. The agency expects that less complex investigations (citizen complaints and policy and procedure investigations) should be completed within 60 calendar days, while more complex investigations (internal affairs investigations) should be completed within 150 days. Despite these expectations, the agency sometimes takes much longer, especially for complex investigations. Yet, the Sheriff insists in his response that IOLERO should not have additional time for audits in such cases. Insisting on timelines that cannot be met with current IOLERO staffing is a recipe for conflict and frustration between the two agencies.

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.

Section 3304(d) (1) of POBR allows up to one year for the Office to impose discipline on employees. Section 3304(d) (1) does not make an exception for an audit of an investigation. IOLERO only receives approximately half of Sheriff's Office investigations, this is by Director Threet's request. Investigators maintain a caseload apart from cases that are audited.

Additionally, the realities of law enforcement are that complaints are filed at the will of the complainant, the Sheriff's Office has no control over their timeline. Although the Sheriff's Office is committed to the process of review, audits should be timely for the benefit of employees and complainants. The Sheriff's Office believes the Auditor should be held to the same standards of timeliness as the investigators no matter the caseload.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation, although this is not entirely clear. The response to this recommendation concludes that the "Auditor should be held to the same standards of timeliness as the Sheriff's Office investigators." If this were actually the expectation, IOLERO would have much longer to complete any audit than has been previously expected by the Sheriff. IOLERO therefore respectfully requests the Sheriff to clarify this response.

IOLERO offers these additional comments on the information provided by the Sheriff in his response to this recommendation.

IOLERO agrees with the Sheriff that there can be no allowance for IOLERO audit timelines to extend the investigation process beyond the 1 year statute of limitation under POBR.

While IOLERO may receive only half of the Sheriff's Office investigations, we receive those involving the most serious and complex allegations, including those that involve scores of

witnesses, video and documents, such as the yard counseling investigations and critical incident investigations. Therefore, the percentage of investigations referred is not an accurate gauge of the percentage of the 3 IA investigators' time spent on referred investigations.

In addition, while a quick turn-around on audits is ideal for everyone, the Auditor believes that most complainants would strongly prefer for an audit to be completed prior to their investigation being finalized by the Sheriff's office.

As previously mentioned, the Auditor can only work on one thing at a time, so multiple audits referred during the same time period inherently means something must be delayed. Yet, the Sheriff insists in his response that IOLERO should not have additional time in these circumstances. Insisting on timelines that cannot be met with current IOLERO staffing is a recipe for conflict and frustration between the two agencies.

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.

The function of IOLERO is to audit the Sheriff's Office investigations, not to act as a second investigator. The request for what the Auditor believes is additional evidence that was not included in the investigation places the Auditor in the position of determining what is evidence. Doing so places him in the role of an investigator.

If the Auditor believes the investigation is incomplete, the Auditor should note this on the case audit and include it in the Annual Report. The Sheriff's Office will respond to the Auditors comments in their response to the Annual Report.

Currently, all information obtained by an investigator is forwarded to the Auditor along with the case. There may have been cases where evidence was not forwarded with the case and was later not available, but that was not and is not the norm and has been addressed.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation, although this is not entirely clear. IOLERO therefore respectfully requests the Sheriff to clarify this response.

IOLERO offers these additional comments on the information provided by the Sheriff in his response to this recommendation.

As previously mentioned, one of the Auditor's basic functions is to review and assess the completeness of each complaint investigation. This is done from the standpoint of evaluating evidence identified by statements of the complainant, witnesses and deputies. Possible material evidence also is revealed from other evidence in the investigative file, such as incident or investigative reports that mention evidence, and BWC video that reveals evidence. When the Auditor identifies examples of potentially material evidence in this way, yet that evidence has not been secured, reviewed, and analyzed by the investigator, the Auditor then suggests to the Sheriff's Office that the investigation should be supplemented to obtain and analyze such

evidence. This does not constitute the Auditor acting as a “second investigator”, but rather fulfilling the auditing role as envisioned by both the Sheriff’s Office and IOLERO when the audit protocols were agreed upon. The Sheriff’s investigators have undertaken supplemental investigation or otherwise sought to complete the investigative file on multiple occasions following identification of missing evidence by the Auditor.

The Auditor does, in fact, identify incomplete investigations in the IOLERO Annual Report. Unfortunately, the Annual Report reveals these deficiencies to the public at the end of the year. This is well after when a supplemental investigation would have included such evidence in the investigation so that it would be complete and reach conclusions based on all the material evidence. This public reporting function, although valuable for the general public, therefore does little to ensure a complainant that their complaint was fully investigated and treated seriously by the Sheriff’s Office.

The types of deficiencies discussed here have persisted over time, including in investigations referred for audit in FY 17/18, which is why this recommendation was made at this time.

Because the Sheriff’s Office agrees that there are cases where the Auditor must request that such deficiencies be addressed, IOLERO requests that the Sheriff’s Office clarify whether they accept or reject this recommendation when it is necessary to make such requests.

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.

Though section 3304(d) (1) of POBR allows up to one year for the Sheriff’s Office to impose discipline, the Sheriff’s Office believes it is unreasonable for employees and complainants to wait an extended period to learn the outcome of an investigation. It was in the spirit of this belief that in 2016, investigative timelines were imposed on IA investigators requiring them to complete their investigations within 60 calendar days for citizen complaints and policy and procedure investigations and 150 days for internal affairs investigations. The Sheriff’s Office believes the timely resolution of cases benefits complainants and employees.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation. IOLERO respectfully requests the Sheriff to clarify whether this response is a rejection.

IOLERO offers these additional comments on the information provided by the Sheriff in his response to this recommendation.

IOLERO agrees with the Sheriff that it is best both for employees and complainants that all investigations and audits be completed in a thorough, unbiased manner as soon as possible. Despite the ideal timelines that guide Sheriff’s investigators, there are multiple examples where investigators have significantly exceeded those guidelines, including an officer involved shooting where the investigation remains open at this time, more than one year after it was begun. Yet, even in such examples, the Sheriff’s Office does not allow that a requisite amount

of time may be necessary for IOLERO to audit such a complex investigation. Because there is a double-standard used between investigations and audits, this expectation creates pressure on the IOLERO Auditor to complete an audit in a manner that would not allow for a complete and independent review of complex or deficient investigations. IOLERO therefore again respectfully recommends this change.

In addition, while a quick turn-around on audits is ideal for everyone, the Auditor believes that most complainants would strongly prefer for an audit to be completed prior to their investigation being finalized by the Sheriff's Office. This is especially true for the type of significant incidents, such as officer involved shootings, that lead to complex investigations and audits.

Also, IOLERO would be much better equipped to more quickly complete complex audits if the office had additional staffing to assist with its missions. IOLERO therefore invites the Sheriff to support IOLERO's requests for additional staffing. Insisting on timelines that cannot be met with current IOLERO staffing is a recipe for conflict and frustration between the two agencies.

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.

The Sheriff's Office believes the Auditor uses a different standard to evaluate cases than the established standard for administrative investigations. The Sheriff's Office believes, when its investigations are complete, the appropriate finding has been reached. The IOLERO Annual Report is the proper venue for the Auditor to register his disagreement with the findings of individual cases. The Sheriff's Office will respond to the Auditor's comments when the Annual Report is released.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation. IOLERO respectfully requests the Sheriff to clarify whether this response is a rejection.

IOLERO offers these additional comments on the information provided by the Sheriff in his response to this recommendation.

The Sheriff's response to this recommendation suggests that the agency has abandoned its commitment in the protocols signed by the Sheriff in 2016, which call for a discussion of differences over findings and an attempt to resolve them. In addition, these protocols were embodied in the description of the audit process that is included in both the IOLERO website and on the IOLERO complaint brochure provided to the public. The language used in those explanations, which was approved by then Assistant Sheriff Giordano, states:

"At the conclusion of its audit, IOLERO will inform the Sheriff's Office if it disagrees with the findings of the Sheriff's Office and/or has concerns about the investigation process. IOLERO will attempt to resolve differences with the

Sheriff's Office over these issues, such as by requesting additional investigation or a reconsideration of the findings of the investigation."

This process provides an assurance to the public that the agency will at least have an opportunity to consider the independent perspective of an outside, civilian auditor prior to concluding an investigation and finalizing findings. If the only time such a review occurs is during the Annual Report process, that assurance becomes a fiction.

IOLERO strongly believes that this proposed change in protocols suggested by the Sheriff's response is in the interest of neither the Sheriff's Office nor the public. IOLERO therefore again respectfully urges acceptance of this recommendation.

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.

The IOLERO's Annual Report is a public report that includes IOLERO's recommendations for changes to policy, practice, or training that may have resulted from the audit of the investigations. A separate report for each investigation would be redundant, unnecessary, and time-consuming. This process would also negatively impact the time frame for audits of each investigation sent to IOLERO.

It is also the belief of the Sheriff's Office that this practice is the primary cause for the delay of the Auditor's Annual Report. This delay does not allow the Sheriff's Office to make timely changes to policy and procedure. On occasion, the Auditor has listed recommendations for policy and procedures that are no longer in place.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation. IOLERO respectfully requests the Sheriff to clarify whether this response is a rejection.

IOLERO offers these additional comments on the information provided by the Sheriff in his response to this recommendation.

In this responses, the Sheriff suggests that the delay in the Auditor providing completed audits prevents the agency from effectively responding to IOLERO's policy and practice recommendations in a timely manner, thereby depriving the public of the benefit of timely implementation of worthy suggestions. Yet, the Sheriff also takes the opposite position, suggesting that all such recommendations should await publication and transparency until the Annual Report, and only at that time would the Sheriff respond to the recommendations.

Policy recommendations that result from audits of investigations seldom if ever delay the completion of an audit. Rather, they flow naturally from the investigation itself. For example, in 1 investigation the Auditor reviewed whether there was compliance with the agency's Maximum Restraint Policy during the incident that was subject to a complaint. This review

resulted in the agency informing the Auditor that the policy was outdated, would soon be revised, and that deputies were not trained to act in compliance with the policy as then written. This quite naturally resulted in the Auditor recommending that the agency revise its written policy, practices, and training, to be internally consistent, and reflective of best practices in this area.

Previously it has been strongly suggested that IOLERO make policy recommendations to the Sheriff arising only from circumstances seen in audits. However, this response appears to suggest that even in those circumstances, IOLERO should not make recommendations on changes to policies and practices. This is inconsistent with the missions assigned to IOLERO by the IOLERO Ordinance and recommended by the CALLE Task Force.

While IOLERO is open to discussing the best method to publicize recommendations made by IOLERO to the Sheriff in confidential audits, IOLERO believes it is important to provide timely transparency to these recommendations. IOLERO therefore may publicize significant recommendations from audits on a more frequent basis than the Annual Report. The Sheriff's Office can then choose when and/or whether it will respond to such publicized reports.

35. The Sheriff's Office ordinarily should respond publicly to the recommendations contained in any Audit Recommendation Report within 30 days of its issuance.

The Sheriff's Office has advised the IOLERO Director that responding to numerous Audit Recommendation Reports is redundant and an unreasonable expectation given the Sheriff's Office public safety mission and the current workload. The agreement between the Sheriff's Office and IOLERO has been that there would be a response to the Annual Report within 30 days. We have agreed to this timeline. We do not have the ability to respond to every individual audit recommendation report issued by the Auditor.

Please refer to the Overall Comments section for comments applicable to this response.

It appears that the Sheriff rejects this recommendation. IOLERO respectfully requests the Sheriff to clarify whether this response is a rejection.

IOLERO offers these additional comments on the information provided by the Sheriff in his response to this recommendation.

In this responses, the Sheriff suggests that it would be unreasonable to expect agency staff to respond to IOLERO recommendations within 30 days of their issuance. When IOLERO was created, the Board of Supervisors received input from the Sheriff's Office that suggested they would need to add two additional staff members in order to be responsive to the needs of IOLERO. These additional staff were an Administrative Lieutenant and an Administrative Assistant, which were estimated in 2015 to cost \$620,000. The Board responded by funding these two additional positions. The Administrative Lieutenant also plays a key role in the consideration of changes to policy and training by the agency.

While IOLERO is open to discussing the best method to publicize recommendations made by IOLERO to the Sheriff in confidential audits, IOLERO believes it is important to provide timely

transparency to these recommendations. IOLERO therefore may publicize significant recommendations from audits on a more frequent basis than the Annual Report. The Sheriff's Office can always choose when and/or whether it will respond to such publicized recommendations.

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.

This data is not located in the AIM system as the AIM system has no mechanism for tracking this type of data. The Sheriff's Office has started tracking data on discipline imposed as a result of sustained findings and will share that with the Auditor.

It appears that the Sheriff accepts this recommendation, which is commendable.

This recommendation was made in IOLERO' First Annual report last year. IOLERO respectfully requests that the Sheriff's Office clarify when this practice of tracking discipline began, what data is included in this tracking, what application will be used to track the data, and when the data will be shared with IOLERO on an ongoing basis. IOLERO currently receives very little data in this category, and only at the time of the Annual Report when specifically requested. The data received this year was a summary that included on the number of complaints sustained, without identifying the nature of the allegations. This information also lacked the full context that would be provided by data on the deputy and complainant characteristics, such as employee tenure with the department and in law enforcement, employee training completed, employee demographics, complainant demographics, etc.