



# IOLERO

Annual Report 2022-2023



# TABLE OF CONTENTS

- EXECUTIVE SUMMARY .....3
- MESSAGE FROM THE CAC CHAIR AND VICE-CHAIR.....5
- I. SONOMA COUNTY’S MEASURE P.....6
- II. IOLERO’S BUDGET AND STAFFING.....7
- III. OUTREACH UPDATE .....8
- IV. THE COMPLAINTS AND AUDITS.....9
  - A. GENERAL BACKGROUND ABOUT IOLERO’S AUDITING .....9
    - 1. WHAT IS AN ADMINISTRATIVE INVESTIGATION?.....9
    - 2. WHAT IS AN AUDIT? .....10
    - 3. WHAT CAN IOLERO SHARE ABOUT EACH AUDIT? .....11
    - 4. NUMBER AND TYPE OF INVESTIGATIONS AUDITED.....12
    - 5. WHAT CONSTITUTES A “COMPLETE” ADMINISTRATIVE INVESTIGATION?.....14
    - 6. WHAT CONSTITUTES A “COMPLETE” ANALYSIS? .....16
    - 7. SCSO’S LAW ENFORCEMENT (PATROL) AND DETENTION POLICIES .....17
    - 8. IOLERO’S AUDIT “NOTES” AND “RECOMMENDATIONS” .....18
  - B. OBSERVATIONS / TRENDS FROM THIS YEAR’S AUDITS .....19
    - 1. COMPLETENESS OF ADMINISTRATIVE INVESTIGATIONS.....19
    - 2. USE OF CANINE BITES TO APPREHEND .....20
    - 3. USE OF FORCE INVESTIGATIONS IN GENERAL.....22
    - 4. SCSO SOCIAL MEDIA COMMENTS REGARDING USE OF FORCE INCIDENTS .....22
    - 5. COMPLIANCE WITH GOVERNMENT CODE § 3304 .....24
- V. CASES AUDITED BY IOLERO .....25
  - 1. SCSO ADMINISTRATIVE REVIEWS (“AR”) .....25
  - 2. SCSO INTERNAL AFFAIRS ADMINISTRATIVE INVESTIGATIONS (“IA”) .....34
  - 3.CITIZEN COMPLAINTS (“C”) .....40
  - 4.CANINE USE OF FORCE .....77
- CONCLUSION .....84
- CAC MEMBER BIOGRAPHIES .....86
- APPENDICES .....91
  - A.WORK PLAN FROM CAC 2023 RETREAT.....91
  - B. IOLERO COMPLETENESS CHECKLIST FOR AUDITING IAD INVESTIGATIONS 7-1-23 .....96
  - C. CAC USE OF FORCE AD HOC COMMITTEE: DRAFT RECOMMENDATIONS TO SONOMA COUNTY SHERIFF’S OFFICE TOPIC: CANINES (7/12/2021).....99

# EXECUTIVE SUMMARY

Looking back, we feel we re-launched IOLERO this last fiscal year. Call it IOLERO 3.0.

First, we brought on almost entirely new staff this year. I had the good fortune to be named as Director of IOLERO in August, 2022, and began my work in September, 2022. We had only one long-term member of IOLERO already on board when I joined in 2022. We added two new team members in addition to me in 2022, and three more employees in the spring of 2023. By the end of the fiscal year on June 30, 2023, we had seven employees, the part-time services of a member of the County Administrator's Office, plus the help of contractors like Watza Lab, who are responsible for the lovely design of this report. Now all of our positions are filled, and we're moving forward full steam! More information about this can be found in Section II, IOLERO's Budget and Staffing.

Second, we finally resolved our authority to launch all of the provisions of Measure P. With the resolution of our first set of Letters of Agreement in the summer of 2022, we were finally empowered to implement all of Measure P. We continued to work on revisions to those Letters of Agreement in 2022 and 2023, resulting in a new set of Letters of Agreement in May, 2023. Those new Letters allow IOLERO to start some of our most important investigations sooner than before. A more detailed discussion is found in Section I, Sonoma County's Measure P.

Third, we launched many new endeavors this year. This was the first year we started independent investigations under Measure P, but have not yet finished any, so they don't appear in this report. We launched a radio advertising program to Spanish-speaking listeners as part of our outreach program. We also have constructed a Spanish-language version of the IOLERO website. This year we created a checklist for how we determine that SCSO

investigations are "complete," as noted in the audits in this annual report. Moving into the new fiscal year, we'll be using this checklist in each of our cases to ensure consistency of work at IOLERO, and also to let the SCSO know in advance the standards we'll be using to assess their work. See Section IV, The Complaints and Audits, for more detail.

Finally, we caught-up on our reporting to the public this year. We finished the 2021-2022 annual report in the spring of 2023, and this report in the summer of 2023. So now we are back on track with our annual reports. We began, for the first time, to release the text of some of our audits to the public on our website<sup>1</sup>, thanks to new state laws over the last four years that have expanded public

<sup>1</sup> <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/independent-office-of-law-enforcement-review-and-outreach/audit-reports>



access to our work. We had been meaning to start that process for some time since those laws were passed, but finally had the staff this year to make that form of reporting a reality. These cases are flagged in our audit summaries in Section IV so you know which ones have more detail on our website.

While staying current on our reporting is important in its own right, staying on top of our caseload also allowed us to better focus on identifying patterns in those audits, which in turn led to policy recommendations. Section IV of this report includes policy recommendations to the Sheriff's Office on completeness of administrative investigations, use of canine bites to apprehend, use of force in general, use of social media, and timeliness of investigations.

This was also the year the world came out from under the shadow of the COVID epidemic. This allowed us to re-launch some endeavors from before COVID. We started having in-person Community Advisory Council (CAC) meetings again, including a first-ever CAC retreat to setup an annual workplan for the CAC. (See the Message from the CAC Chair and Vice Chair, and Appendix A.) IOLERO staff and CAC members attended festivals, fairs, holiday celebrations, and community meetings all over Sonoma County this past year, broadening

our outreach tremendously. See the Outreach Update at Section III to learn more.

And of course Sonoma County elected a new Sheriff at the start of this fiscal year, Sheriff Eddie Engram. Sheriff Engram was sworn into office in January, 2023, at roughly the mid-point of the fiscal year. He launched the calendar year with a strong emphasis on communicating with the public, including spending a weekend afternoon in person with the CAC at their Annual Retreat in February 2023. We have appreciated his open, collaborative approach to the CAC and IOLERO.

We're looking forward to moving forward on the community's vision of transparency and accountability for law enforcement here in Sonoma County. We hope you'll join us in our ongoing efforts to foster collaboration between the community and the Sheriff's Office on these important goals.

## John Alden

Director



# MESSAGE FROM THE CAC CHAIR AND VICE-CHAIR

The Community Advisory Council (CAC) saw several membership changes during the last fiscal year (July 2022-June 2023). A new Chair (Lorena Barrera) and Vice-Chair (Nancy Pemberton) were selected. The CAC thanked the previous Chair, Evan Zelig, for his strong leadership and his exemplary commitment to continuing the work of the CAC throughout the COVID-19 pandemic. The CAC said goodbye to three members -- Dora Estrada (District 1), Lorez Bailey (District 2), and Nzinga Woods (District 3) – and welcomed new members Robin Jurs (District 1), Tom Rose (District 2), and Darnell Bowen (at-large). In early 2023, CAC meetings returned to in-person and are now conducted in a hybrid-style with an option for remote participation via Zoom videoconference/teleconference for members of the public.

The CAC welcomed and introduced to the community IOLERO's new Executive Director John Alden and new Community Engagement Manager Lizett Camacho. A new liaison to CAC from the Sheriff's Department was appointed when the long-time liaison Lieutenant Brandon Cutting was promoted. The Sheriff's Department also faced a change in leadership with the election of Eddie Engram to Sheriff. Sheriff Engram was sworn into the office on January 4, 2023.

More importantly, the CAC tackled several significant issues during the last year, both reactively and proactively.

When the County announced that negotiations with the Sonoma County Deputy Sheriff's Association (DSA) and Sonoma County Law Enforcement Association (SCLEA), the CAC quickly pointed out the ways in which those agreements did not comport with the intent of the voters in passing Measure P.

When David Palaez-Chavez was shot and killed by a Sheriff's Deputy on July 29, 2022, we wrote to Attorney General Bonta requesting an independent investigation into the use of deadly force as required by AB 1506 (Gov't Code 12525.3). We were joined by the Sonoma County District Attorney in that request but the Attorney General disappointingly declined to conduct such an investigation. As of this writing, we still await word from D.A.'s office on whether criminal charges will be pursued.

The Sheriff's Department was invited to make a presentation about jail conditions and jail policies, giving the public an introduction (or re-introduction) to the detention facility and the challenges it faces.

The Ad Hoc Committee on Extremism issued its report and recommendations that the Sheriff's Department take measures for rooting out extremism in the Sheriff's Department. True to his promise, Sheriff Engram met with the Committee and responded in writing to the recommendations. Based on the dialogue between the Sheriff and the Committee, the Committee revised its report and recommendations which the CAC adopted. The Sheriff has agreed to require Sheriff's sworn personnel sign an attestation that they continue to abide by the Sheriff's policies aimed at preventing extremism in the force. We are grateful to the Sheriff for his responsiveness to CAC's recommendations.

Most notably, the CAC held a retreat in February which was also attended by Supervisor Chris Coursey and Sheriff Engram. With input from the public participants, we established priorities for the coming twelve to eighteen months. The workplan was officially adopted in April. (See Appendix A.) The CAC has begun, and will continue to, research and develop recommendations on the following issues: data gathering of stops initiated by sheriff deputies; recruitment, hiring and retention practices to increase a diverse sheriff's force; the use of non-law enforcement responders to mental health crises; how the sheriff's office responds to the post-pandemic increase in evictions; and the policies and practices promoting de-escalation.

We are excited to be a part of a vibrant group of volunteers working to improve the ways law enforcement and the many communities in the County interact and engage. We encourage participation in our work from the communities served by the Sheriff's office.

Further information about the work of CAC can be found at: <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/independent-office-of-law-enforcement-review-and-outreach/who-we-are/community-advisory-council-cac>.

**Lorena Barrera**

Chair

**Nancy Pemberton**

Vice-Chair

## I. SONOMA COUNTY'S MEASURE P

The original ordinance that governed how IOLERO operates was approved by the Board of Supervisors in September of 2016. That ordinance specified that IOLERO is 100% “subject to the Sheriff’s collaboration.” (Ordinance No. 6174, § 2-394(e)). IOLERO’s authority was limited to objectively auditing the Sheriff’s internal affairs investigations and making recommendations that the Sheriff was free to adopt or not adopt. Under state law, IOLERO did not have the legal authority to release the audits to the public except in limited circumstances. IOLERO’s work under this former model was described in detail in our prior annual reports.

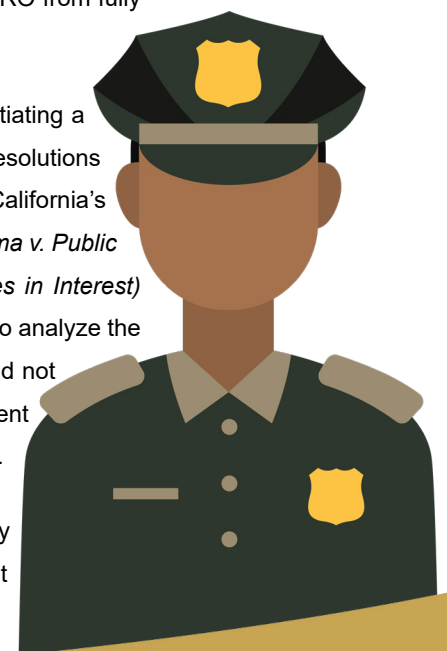
In November 2020, the Board of Supervisors placed Measure P on the ballot to allow voters to decide whether to greatly expand IOLERO’s powers and duties. On November 3, 2020, Sonoma County voters showed their overwhelming desire for enhanced law enforcement oversight by passing the measure with nearly 65% of the vote.

Our prior reports discussed Measure P in detail. In short, Measure P granted IOLERO increased authority to do the work of law enforcement oversight including: subpoena power (which was solidified with the passage of AB 1185 in September 2020), direct access to the Sheriff’s records including body-worn camera (BWC) videos, posting of BWC videos to IOLERO’s website, the power to conduct independent investigations in specific kinds of cases, the power to make discipline recommendations, and the authority to act as a receiving and investigating agency for whistleblower complaints. Measure P also set IOLERO’s budget at no less than 1% of the Sheriff’s budget.

After Measure P passed, the Sonoma County Law Enforcement Association (SCLEA) and the Deputy Sheriff’s Association (DSA) filed labor complaints asserting that Measure P violated labor laws requiring a “meet and confer” with the unions prior to placing Measure P on the ballot. In June 2021, the Public Employment Relations Board (PERB) agreed with the “meet and confer” challenge, and declared provisions related to IOLERO’s investigatory power, subpoena power, ability to post body-worn camera video and authority to make discipline recommendations “void and unenforceable” and ordered IOLERO to “cease and desist” from engaging in any investigations or other conduct related to those provisions. This order effectively prevented IOLERO from fully implementing Measure P.

The Sonoma County Board of Supervisors appealed the PERB ruling while at the same time initiating a “meet and confer” process with the bargaining units that filed the complaints. In June 2022, resolutions were reached with each of the four unions resulting in “Letters of Agreement”. That same month California’s First Appellate District issued an opinion on the County’s appeal from PERB (see *County of Sonoma v. Public Employment Relations Board (Sonoma County Deputy Sheriff’s Association, et al., Real Parties in Interest)* (2022) 80 Cal.App.5th 167). The Appellate Court sent the matter back to PERB with instructions to analyze the case again. In February 2023 PERB again concluded that the “meet and confer” requirement had not been met prior to placing Measure P on the ballot, but in light of the subsequent Letters of Agreement that had been reached with the labor unions, PERB did not prevent implementation of Measure P.

Among its expanded authorities, Measure P provided IOLERO with authority to independently investigate deputy-involved incidents that resulted in a death. The 2022 Letters of Agreement



described above initially provided for IOLERO to commence its independent investigation only after SCSO completed its own Administrative Investigation. This particular provision was met with some concern among the public, including from the CAC. In response to this concern, we began re-negotiating that provision in the fall of 2022. In May 2023 the County and the labor unions reached a new agreement to allow IOLERO to independently investigate such incidents simultaneously with SCSO's Administrative Investigation. Pursuant to this revision, IOLERO is now for the first time actively investigating an officer-involved death simultaneously with SCSO's own Administrative Investigation.

All of these agreements, as well as the Operating Agreement between IOLERO and SCSO implementing Measure P, and a more in-depth discussion of their effects, can be found at <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/independent-office-of-law-enforcement-review-and-outreach/who-we-are/measure-p-information>

In short, the County, SCSO and the applicable unions have agreed how to implement all of the provisions of Measure P. We again thank the Board of Supervisors for their leadership on this issue, and thank the people of the County of Sonoma for embracing Measure P.

## II. IOLERO'S BUDGET AND STAFFING

IOLERO entered the 22-23 Fiscal Year with a budget of \$2,020,415, including the addition of \$46,545 to meet the funding mandate of 1% of the Sheriff's Office budget. IOLERO also entered the fiscal year with six full-time positions, however, only the Programs Manager and one Law Enforcement Auditor positions were filled and an interim extra-help Director was in place while the recruitment for a new permanent Director was ongoing. In September of 2022, we welcomed our permanent Director and our new Community Engagement Manager. In June of 2023, we welcomed our new Administrative Coordinator and two new Law Enforcement Auditors, one to fill the permanent position and one extra-help part-time auditor.

With a fully staffed IOLERO team, including the support of an Administrative Services Officer we share with the County Administrator's Office and the Office of Equity, IOLERO is poised to begin work in earnest to fully implement our Measure P authorities. This work includes working with our chosen vendor to develop a complaint tracking database, gearing up to conduct investigations, and establishing processes for identifying audits subject to public release under SB 1421.

Since its inception, IOLERO has faced the obstacles of being underfunded and not having adequate staffing. (See, for example, our 2019-2020 Annual Report on this issue.) It is an exciting time here at IOLERO, as we enter the 23-24 Fiscal Year having finally navigated those hurdles.

Information about IOLERO's budget for this new fiscal year can be found by viewing the County's Fiscal Year 2023-2024 Recommended Budget at: <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/county-administrators-office/budget-and-operations/budget-reports>.

### III. OUTREACH UPDATE

IOLERO engages in community outreach to establish an ongoing dialogue with the community we serve and to build a transparent, collaborative relationship between the Sheriff's Office and the community. We seek to develop relationships with the residents, community groups, non-governmental organizations, educators, and vulnerable populations. We are committed to following up with complainants and also to understanding community needs.

In this section of our annual report we highlight the community engagement events attended by our Community Advisory Council members, our Community Engagement Manager and other staff, and the IOLERO Director. The goals of community outreach are to invite the Sonoma County community to get involved with the Community Advisory Council and IOLERO as they work to recommend policy recommendations to the Sonoma County Sheriff's Office, and also to spread awareness that IOLERO is available to take complaints about the conduct of Sheriff's Office personnel.

Some examples of IOLERO's outreach work in 2022-2023 included presentations made by Director Alden at Santa Rosa Junior College Public Safety Training Center, the Oakmont Democratic Club, the Sonoma County Coast Municipal Advisory Council, Sonoma County Farm Bureau, North Bay Organizing Project (NBOP), and the Committee for Law Enforcement Accountability Now (CLEAN).

We are pleased to welcome our new Community Engagement Manager, Lizett Camacho, who came on board in September 2022. With Lizett's leadership, IOLERO staff and CAC members have been able to staff a table offering information at the LandPaths Harvest Festival, Dia de los Cien, Martin Luther King Jr. (A Day On!, Not a Day Off!), Wednesday Night Market, Juneteenth Festival, Festival Día of the Child, Grand Opening of the Sonoma Community Mental Health Hub at Hanna, cinco de Mayo in Sonoma, cinco de Mayo Celebration in Santa Rosa, Indigenous People's Gathering, Sonoma County Pride Festival, Los Cien's Youth Perspective, and the Marin-Sonoma Fair. Along with members of the CAC, Lizett also helped present at the Lower Russian River Municipal Advisory Council.

IOLERO has continued to publish its bilingual newsletter which provides updates on the work on the office, cases of significant interest to the community, legal updates from the courts and legislative developments on criminal justice and police reform. Lastly, Lizett has done some wonderful work by participating in Spanish radio ads with Exitos 98.7 and Latino 100.9 via Wine Country Radio about the work of IOLERO and the CAC.





## IV. THE COMPLAINTS AND AUDITS

### A. General Background About IOLERO'S Auditing

#### WHAT IS AN ADMINISTRATIVE INVESTIGATION?

The Sonoma County Sheriff's Office (SCSO), like other Sonoma County government agencies, employs a wide range of personnel. SCSO's employees include law enforcement and correctional officers, management and staff. SCSO members are required to comply with applicable federal, state and local laws and regulations, and to comply with SCSO's own written policies.

If there are allegations that a SCSO employee violated existing law or policy, SCSO conducts an Administrative Investigation and if the employee is found to have violated law or policy, employment discipline can be imposed. Discipline can range from informal counseling all the way to termination of employment, depending on the seriousness of the violation.

Law enforcement personnel must also comply with specific laws and rules concerning their unique law enforcement powers, including most prominently the ability to use force and make arrests. Accordingly, even if there has been no alleged misconduct, SCSO automatically conducts Administrative Investigations where an officer used deadly force (whether or not a death actually resulted), and where a person died while in SCSO custody (regardless of how the death occurred) to determine if laws and policy were followed.

It is important to note that an Administrative Investigation is not a criminal investigation into an officer's actions. The Administrative Investigation is an internal employment and agency process and is therefore governed by a lower standard of proof—preponderance of the evidence. Any investigation into whether the officer's actions violated criminal law is conducted by a separate law enforcement agency in conjunction with the Sonoma County District Attorney's Office. This means that even if the District Attorney concludes that there is insufficient evidence to prove a crime beyond a reasonable doubt, the Administrative Investigation could still find that a preponderance of the evidence shows an officer violated law or SCSO Policy and is therefore subject to administrative discipline.

Unlike a criminal case, law enforcement personnel can be compelled by SCSO to provide information during an Administrative Investigation, including sitting for an interview with the SCSO's Internal Affairs Division (IAD). California's Government Code §§ 3300 *et seq.* provides law enforcement employees certain procedural rights, including the ability to have a representative present during any interview and a requirement that Administrative Investigations be completed within 12 months in order to impose any discipline. The employee also has rights to appeal any disciplinary decision.

Complaints against SCSO employees may be made directly to SCSO. Through Measure P, IOLERO is also authorized to receive complaints against the SCSO, which IOLERO forwards to SCSO for investigation.

Typically IOLERO waits until SCSO completed the Administrative Investigation and then Audits SCSO's investigation. However, IOLERO may independently investigate cases simultaneous with SCSO where there is an in-custody death or death due to the actions of an SCSO employee. IOLERO is presently engaged in such an independent investigation involving a deputy-related death.

## WHAT IS AN AUDIT?

Once SCSO completes the Administrative Investigation, it forwards the record and its report back to IOLERO for review known as an "Audit." IOLERO also audits a type of investigation known as an "administrative review" that SCSO conducts automatically when potentially deadly force is used, or a person dies in custody.

In our Audits, IOLERO issues an independent opinion as to whether the Administrative Investigation was complete, whether IOLERO agrees with the conclusions reached, and any recommendations for institutional improvement such as policy changes.

An SCSO Administrative Investigation results in one of four general findings about each allegation:

1. **"Sustained," meaning SCSO found a violation of its policies;**
2. **"Exonerated," meaning SCSO found that the employee's conduct did not violate policy;**
3. **"Not sustained/Inconclusive," meaning there was not enough evidence to either prove or disprove the claim; or**
4. **"Unfounded," meaning SCSO found the employee did not engage in the alleged conduct.**

In its Audit, IOLERO reviews the record and SCSO's findings, and provides the following conclusions:

1. **"Agree," meaning IOLERO agrees that the finding reached by SCSO was supported by the material gathered in the investigation;**
2. **"Disagree," meaning IOLERO believes a different finding would have been more appropriate given the material gathered in the investigation, usually accompanied by a statement of which finding IOLERO thought should have been reached;**
3. **"Incomplete," meaning IOLERO believed that the investigation was not thorough enough to justify reaching a conclusion yet, such as cases in which additional evidence could and should have been gathered, or better articulation of the rationale for the finding should have been memorialized.**
4. **IOLERO may also recommend changes to policy.**
5. **IOLERO may request SCSO to further investigate a matter or IOLERO may choose to conduct**

**further investigation itself if it finds SCSO's investigation to have been incomplete or deficient.**

Law enforcement policy, procedure and training are generally not well known to the public. Sometimes officers' actions are consistent with policy, procedure and training but are nonetheless upsetting to members of the public. Where possible, IOLERO flags this disconnect between existing law enforcement practices and public expectation so that the SCSO can consider altering policy, procedures, and training to meet community expectation.

## WHAT CAN IOLERO SHARE ABOUT EACH AUDIT?

California law governs the information IOLERO can reveal about the complaints, investigations, and Audits. We discuss this law briefly to frame the discussion of the information set out in the Audit Summary below. These laws govern all California law enforcement agencies and all law enforcement oversight agencies like IOLERO. These rules have been the subject of significant controversy in recent years, with some asking them to provide greater public access, and some urging less. Nonetheless, these rules cannot be modified by anyone in Sonoma County.

Generally speaking, "[t]he people have the right of access to information concerning the conduct of the people's business [such as the business of the Sheriff's Office] and, therefore...the writings of public... agencies shall be open to public scrutiny." (*Pasadena Police Officers Assn. v. Superior Court* (2015) 240 Cal. App. 4th 268, 282-283 citing Cal. Const., art. I § 3 subd. (b)(1)). However, the right to inspect public records is not absolute. (*Pasadena Police*, 284, citations omitted). California courts have found that the public's interest in disclosure varies on a case by case basis. For example, "[i]n a situation involving an officer's use of lethal force against an unarmed suspect, the public's interest in disclosure is 'particularly great.'" (*Id.* at 291). "Nevertheless, in enacting [confidentiality statutes], the legislature made a policy determination that the desirability for confidentiality in police personnel matters outweighs the public's interest in openness." (*Pasadena Police* at 291 citing *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1282).

Balancing these interests, California law provides protections for two categories of confidential peace officer records: (1) personnel records, and (2) records of citizen complaints about individual officers, and reports or findings relating to investigation of such complaints or incidents. (*Pasadena Police* at 285; see also Cal. Pen. Code § 832.7). "Personnel records" are records that relate to "advancement, appraisal, or discipline" of a particular officer. (*Id.* at 292). "Appraisal" does not encompass review of an agency's practices and procedures. (*Id.* at 298).

The Audits included in this Annual Report derive from SCSO's Administrative Investigations of citizen complaints and department-initiated investigations. Generally information obtained from SCSO Administrative Investigations must and will remain confidential as required by law. However, the law allows IOLERO to address non-confidential information including critiques and evaluation of the Administrative Investigation, the manner in which SCSO procedures and practices may have contributed to the basis of the complaint or incident, and IOLERO's recommendations for institutional improvement. (*Pasadena Police* at 289-290). Further information will be shared when the case is one of media interest where factual information has already been shared publicly, or when another exception applies (discussed below). Unless an individual's name has already been made public in relation to one of these incidents, or another exception applies, names and other personally identifying information must be kept confidential.

In 2019, SB 1421 expanded the information that may be shared with the public by creating four exceptions to confidentiality restrictions. Those exceptions include cases involving the discharge of a firearm, the use of force causing “great bodily injury,” and cases involving sustained findings of sexual assault or dishonesty. These exceptions were further expanded in late 2021 with the passage of SB 16, which allows sustained cases of excessive force to be made public. It is important to note that most of cases that fall under these exceptions are only sustained cases, which may leave the public in the dark as to why cases reach exonerated or unfounded dispositions. That said, we’re grateful that the Legislature saw fit to create this enhanced level of transparency for our work, and that of many other agencies across the state.

SCSO has applied SB 1421 by posting materials concerning various incidents, including in some cases its IAD Administrative Investigation Report, on its website, <https://www.sonomasheriff.org/sb1421>.

Starting this year, IOLERO has also posted on its website those Audits that fall within the SB 1421 exceptions. <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/independent-office-of-law-enforcement-review-and-outreach/audit-reports>. Some of the Audits included in this Annual Report fall within SB 1421 and are also being posted on IOLERO’s website. Those Audits from this year that are being posted on IOLERO website are identified in the Audit Summary below.

## NUMBER AND TYPE OF INVESTIGATIONS AUDITED

IOLERO audited 27 SCSO Administrative Investigations in Fiscal Year July 1, 2022 through June 30, 2023. (SCSO was unable to investigate one complaint due to lack of information. That complaint is not included in the 27 Audits reported below.) We also received 29 cases from SCSO for auditing this past year, so we have been able to keep up with the flow of audits without incurring a backlog.

That said, we received 53 complaints from the public this year, which we forwarded to SCSO for investigation. We can expect those cases will be coming back to IOLERO for auditing in the next year, so next year’s workload will be much higher for our auditing team than it was this past year. Fortunately, we hired one full time and one part time auditor in June, 2023, just in time to help with the increased caseload we expect in 2023-2024.

SCSO’s investigations fell into three general types: Administrative Reviews (“AR”), Internal Affairs Administrative Investigations (“IA”), and Citizen Complaint Administrative Investigations (“C”):

TYPE	NUMBER
<b>ADMINISTRATIVE REVIEW INVESTIGATIONS (AR)</b>	<b>5</b>
<b>INTERNAL AFFAIRS INVESTIGATIONS (IA)</b>	<b>3</b>
<b>CITIZEN COMPLAINT INVESTIGATIONS (C)</b>	<b>19</b>

As discussed in more detail in our Audit Summary below, the investigative approach is different between an Administrative Review, on one hand, and an Internal Affairs/Citizen Complaint, on the other.

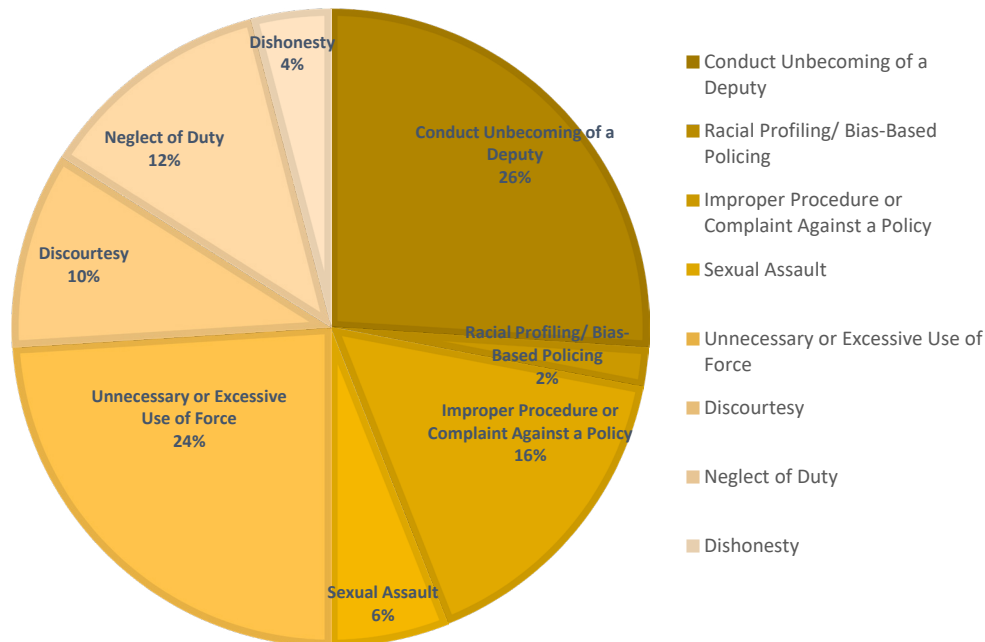
Generally speaking, an Administrative Review does not involve allegations of misconduct. Instead SCSO automatically reviews an incident (usually involving an officer shooting or in-custody death) to determine if any policies were violated and see if any policies should be adjusted or changed. Internal Affairs and Citizen Complaint investigations, on the other hand, are generally based on a specific allegation that an SCSO employee violated policy or engaged in misconduct.

These investigations span several subject matters including Use of Force, In-Custody Deaths, the Prison Rape Elimination Act (PREA), interactions with the Homeless Community, Officer Discourtesy and Conduct Unbecoming, Response to Calls for Service, and various civil issues. The claims that were investigated can generally be broken down as follows:

**IOLERO BY THE NUMBERS, 2022-2023**

Total Complaints Received at IOLERO		Number of complaints received in Spanish		Complaints SCSO processed as Grievances		Total Cases sent to IOLERO from SCSO for Auditing	
53		1		7		29	
Total Audits Completed	<b>COMPLAINTS MAY CONTAIN MULTIPLE ALLEGATIONS</b>						
28							

Total Allegations investigated/Audited	Conduct Unbecoming of a Deputy	Racial Profiling/ Bias-Based Policing	Improper Procedure or Complaint Against a Policy	Sexual Assault	Unnecessary or Excessive Use of Force	Discourtesy	Neglect of Duty	Dishonesty
50	13	1	8	3	12	5	6	2



## WHAT CONSTITUTES A “COMPLETE” ADMINISTRATIVE INVESTIGATION?

IOLERO Audits have in prior years concluded that some SCSO investigations were “incomplete”. The issue as to what a “complete” Administrative Investigation entails has been the subject of past discussions between SCSO and IOLERO. During this past year both agencies have renewed a concerted and cooperative effort to create a common understanding as to what a “complete” Administrative Investigation requires. One thing both agencies already agree upon: SCSO dislikes receiving “incomplete” findings as much as IOLERO dislikes making them. IOLERO is confident that the agencies will succeed in this effort.

To facilitate public understanding of this issue, it is helpful to examine why “completeness” is important to an Administrative Investigation.

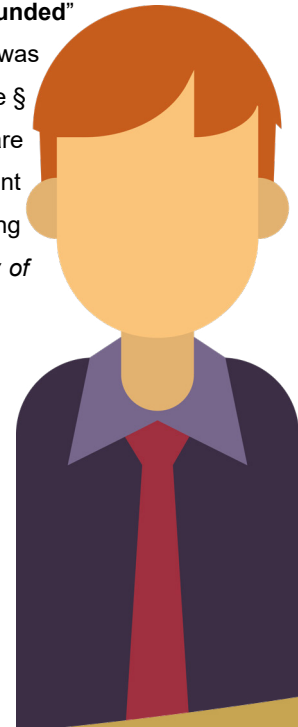
In an employee investigation, a claim of misconduct may be “sustained” and discipline imposed if a preponderance of the evidence shows the employee violated law or agency policy. See Sonoma County Civil Service Commission Rule 10.5(I)(2). “Preponderance” is defined as evidence that “has more convincing force and the greater probability of truth” than the opposing evidence. (*Id.*). “Sustained” claims may be retained in the employee’s general personnel records and could be (in some circumstances) subject to public records requests. See Penal Code §§ 832.5, 832.7, 832.8.

On the other hand, where a preponderance of the evidence shows that the allegations are untrue or that the employee complied with law or policy, discipline may not be imposed. Under California Penal Code §§ 832.5, 832.7 and 832.8, such un-sustained claims are segregated from the employee’s personnel file and/or are generally exempt from public records requests and cannot be used to assess the employee’s future employment conditions. Matters falling within this category are those found to be (i) “**frivolous**” (relatively rare) because they are “totally and completely without merit or for the sole purpose of harassing”, (ii) “**unfounded**” because the allegation was determined to be “not true”, and (iii) claims in which the employee was “**exonerated**” because the actions were “not violations of law or department policy”. (Penal Code § 832.5(c), (d); Code of Civ. Proc. § 128.5(b)(2)). A fourth category, “**not sustained**”, is relatively rare and used when “the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member”. See U.S. Dep’t of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* at 50.

Nearly all of the un-sustained findings made by SCSO are “unfounded” or “exonerated”.

To qualify as “unfounded” or “exonerated” (and thus to qualify for removal from an employee’s personnel records), Penal Code § 832.5 requires that the “investigation *clearly establish*” that the allegations are “not true” or that the actions “are not violations of law or department policy”.

IOLERO interprets “clearly establish” to mean the investigation was sufficiently thorough to establish a *complete* factual and analytic record. Only when the investigation is “complete” can a



determination properly be made as to whether a preponderance of the gathered evidence shows the claim to be “exonerated” or “unfounded”. In other words, “complete” looks to whether the investigation compiled all relevant evidence and identified all relevant issues; “preponderance” looks to how persuasive that record is.

The “completeness” of an investigation is important to not only properly evaluate the issues presented, but also to establish public acceptance of the investigative results. It protects against an agency which is otherwise acting in good faith from relying on an unduly limited record or analysis that does not adequately capture the issues involved. It also protects against a more extreme case of an agency’s intentionally creating an artificially limited record or analysis in order to label a claim “unfounded” or “exonerated” and thereby shield it from the employee’s personnel file and possible public disclosure. To address all of these issues, “unfounded” and “exonerated” findings must be “clearly established” by the investigation—in other words, by a “complete” investigation.

For example, an investigation which relies solely on an officer’s written “incident report” to “exonerate” the officer on a claim of excessive force during an arrest is an “incomplete” investigation, in our view, even if the fuller range of evidence would later show the officer’s actions to be appropriate. To properly evaluate the claim, the investigation must determine whether the force was objectively reasonable. This evaluation generally cannot be made without reviewing all of the facts actually known by or available to the officer leading up to the use of force and the officer’s explanation as to how they perceived those facts. Written incident reports are intended to assist future investigation of the suspect’s actions, but they are not designed to assess the reasonableness of force used by the deputy. Nor can they be expected to capture every detail a deputy witnessed. At a minimum, before an investigation can be said to “clearly establish” that an officer’s force was reasonable and the officer should therefore be “exonerated”, the investigation must include review of not just the incident report, but Body Worn Camera video of the incident (if there is any) and interview of the involved officer (and maybe more materials depending on the facts). Only a “complete” investigation can “clearly establish” the record that is necessary to decide whether force was “objectively reasonable”.

To be sure, the facts of law enforcement encounters are as varied as the persons and circumstances involved. What constitutes a “complete” investigation is therefore not a one-size-fits-all standard. Some complaints are based on undisputed facts and can be resolved by analysis of the relevant policies. In such instances, the “completeness” of the investigation may depend not on the compilation of the factual record but rather on whether the analysis itself was sufficient to reasonably reveal how SCSO’s interprets its policy. (This “analytical completeness” is discussed separately in the next section). Some claims involve allegations that can be verified or disproved solely from written or electronic records, such as confirming that an officer worked for another agency and not SCSO, or the officer was on vacation at the time he or she is accused of issuing a traffic ticket. In such instances the preliminary evidence compiled by SCSO may be sufficiently “complete” to evaluate the claim without the need for any interviews.

In addition, some investigations are “complete” as to some issues, but “incomplete” as to others. An investigation may understandably focus primarily on a use of force claim, while providing less emphasis on a procedural issue during the same incident. In this regard, what is “complete” may depend on whether the issue is related to the core subject under review or is largely tangential. Investigations require significant resources and SCSO (like any agency) must prioritize budgetary and employee resources. Again, this has to be evaluated on a case-by-case basis.

Applying the principles described above, IOLERO’s audits this past year have sought to flesh out in more detail whether SCSO’s investigations were complete. Working with SCSO, IOLERO has also created a “checklist” to provide guidance as to what steps should be taken during an Administrative Investigation to make it complete. That checklist is attached at Appendix B.

### WHAT CONSTITUTES A “COMPLETE” ANALYSIS?

Part of the “completeness” inquiry is whether the analysis provided by SCSO to support its Administrative Investigative findings was sufficient. Because of the distinct importance of this element, we discuss it separately.

SCSO Policies (as do all law enforcement policies) must govern deputy actions across a wide range of factual scenarios in which no two events are exactly the same. For this reason policies are broadly worded to provide sufficient discretion for the deputy to react to each situation based on the actual facts presented to them. At the same time, policies must have sufficient specificity to provide meaningful and enforceable guidance for a deputy’s actions.

Bridging the gap between broad policy language, on one hand, and providing meaningful and enforceable guidance to address a specific factual event, on the other hand, requires SCSO to explain how it interprets the policy in specific cases. This interpretation is essential to provide deputies notice of how SCSO expects the policy to apply, to provide the public the ability to understand the policy and raise concerns in a meaningful way, and to promote consistent and objective application of policy.

IOLERO has noted that SCSO investigations more often than not lack the level or detail of policy analysis and interpretation that is generally required by such reviews. Among other things, the investigative reports are not structured along what is known as the “IRAC” system: identifying the **I**ssue, identifying the applicable **R**ule, **A**pplying the rule to the issue, and explaining the **C**onclusion. The IRAC system is common in structuring analyses and is equally applicable in the administrative context concerning employee investigations. This analytic structure provides a more precise explanation of the issues actually under review, the policy and legal authorities that apply, and the substantive interpretation given to the specific policy or law. The IRAC model is not the only one available, but it is broadly accepted in the field.

SCSO’s administrative investigative reports generally lack this analytical structure. Administrative investigations are conducted by officers who themselves were patrol deputies and they often draw upon their own subjective familiarity with practices and training. While the investigator’s subjective knowledge and experience is an important asset, this can (and often does) lead to an investigative report written in “shorthand” that the investigator



(subjectively) understands but an outside reader may not. It also infuses the risk that policy compliance is being evaluated based on subjective expectations rather than the “objective” standards required by governing law. It further raises the likelihood that the investigation may be found “incomplete” if the report does not contain sufficient policy interpretation or analysis to objectively determine how SCSO has actually applied the policy in practice, and how SCSO is expected to apply it to future matters. A “shorthand”-based report further impedes the ability to impose discipline because a deputy may object that SCSO’s expectation of how the policy operated was not previously made objectively clear.

IOLERO and SCSO have discussed this issue and are actively working together to address this concern. Specifically, IOLERO will be looking for more specific interpretations of SCSO Policy when necessary and appropriate.

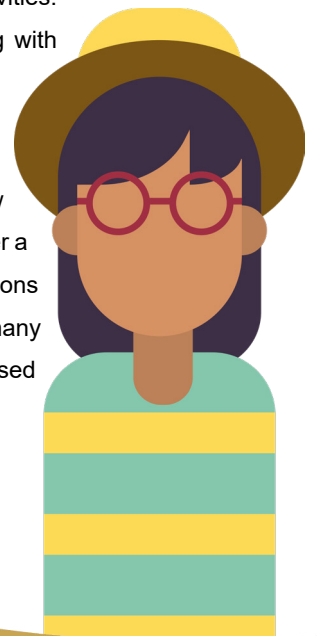
## SCSO’S LAW ENFORCEMENT (PATROL) AND DETENTION POLICIES

IOLERO’s Audits involve reviewing SCSO investigations for both completeness and for the substantive conclusions reached by SCSO. In doing this, IOLERO applies SCSO’s Policies which in turn must comply with governing federal and state legal standards. These include the 4th, 5th, 8th and 14th Amendments to the U.S. Constitution, the California Penal Code, the California Government Code, the California Administrative Code, and governing federal and state court decisions. IOLERO also looks to the California Commission on Peace Officer Standards and Training (POST) materials and guidelines, U.S. and California Department of Justice guidelines, and local county ordinances and regulations.

SCSO’s Policies are divided between the Law Enforcement (Patrol) Division and the Detention Division. They are available for public review at <https://www.sonomasheriff.org/policies-and-training>. IOLERO encourages the public to review these policies and SCSO’s related training materials posted at the same website.

**Law Enforcement Division.** The Law Enforcement Division encompasses what the public traditionally understands by the term “police”: patrol deputies and officers engaged in law enforcement and patrol activities. This includes responding to calls for service, investigating criminal activity, making arrests and assisting with prosecution, and general interactions with the public commonly expected from a deputy or officer.

SCSO has extensive written policies governing law enforcement actions. Many of these policies are based on model policies prepared by Lexipol, LLC, a private for-profit company that prepares policy forms for law enforcement agencies that can be altered by each jurisdiction to meet its specific needs. These policies cover a wide range of topics including use of force (generally and specific types of force), arrests, investigations, interactions with the public, Body Worn Cameras, preparation of reports, responding to calls for services, and many, many more subjects. Often policies cross-reference each other and adopt or incorporate mandatory standards imposed by law. Law enforcement is a complicated endeavor and SCSO’s policies reflect this.



SCSO updates these policies through Lexipol, LLC periodically. IOLERO tracks the updates to identify the policies that were in place when a specific incident under investigation occurred.

**Detention Division.** SCSO (like other sheriff's offices in California) differs from city police departments in that SCSO also oversees the detention facilities. The Detention Division encompasses SCSO's operation of the Main Adult Detention Facility (MADF) and the North County Detention Facility (NCDF), which are staffed by Correctional Deputies, SCSO staff and contract medical providers. Detention operations cover inmate intake, classification, security, housing assignment, food services, visitation, telephone access, hygiene, out of cell and recreational time, court appearances, medical and mental health care, and many other issues.

Currently only the MADF is in use. The MADF is a "Type II" detention facility under California regulations meaning it houses persons awaiting trial (known as a "pre-trial detainee") and persons serving a sentence imposed by a court after conviction (usually for non-violent or lower level crimes). In recent years, NADF has been closed; should it reopen, the Detention Division would still staff it using the policies described herein.

California state law requires detention facilities to have written policies covering their operation. California Code of Regulations Title 15 and Title 24 provide general requirements for written policies and for the physical requirements of detention facilities.

Constitutional requirements, including the 4th, 8th and 14th Amendments, also apply to detention facility operations, including medical care, use of force and protecting inmates from violence. Constitutional standards may differ depending on whether the incarcerated person is a "pretrial detainee" or a person who has been convicted and sentenced to jail time. To its credit, SCSO has chosen to apply the higher of these two standards across the board wherever they may be different. Federal laws also apply, including the Prison Rape Elimination Act of 2003 (PREA) and the Americans with Disabilities Act (ADA).

Until February 2023, SCSO had a single policy covering detention facility operations. In February 2023, SCSO adopted a separate detention "Custody Manual" prepared by Lexipol, LLC and an SCSO "Procedure Manual". IOLERO tracks changes in the detention policies and applies the SCSO policies that were in effect at the time of the incident under review.

## IOLERO'S AUDIT "NOTES" AND "RECOMMENDATIONS"

In addition to substance and completeness, in some Audits IOLERO makes a "Note" about a particular issue. IOLERO does so when we identify a particular issue or item in the investigative materials that is relevant to law enforcement or detention practices, but which was not directly raised by the issues under investigation. IOLERO's identification of such "Notes" does not mean SCSO's investigation was incomplete or call into question the legitimacy of the investigative conclusions. Rather, they are intended to provide SCSO with IOLERO's observations about other issues that merit further thought and review in the future.

As noted earlier, IOLERO also makes “Recommendations” in some of the Audits. A Recommendation is a formal IOLERO proposal to SCSO to address a policy gap, investigative issue, or other matter identified by IOLERO in its Audit and which IOLERO believes should be fixed by SCSO. IOLERO has no authority to direct SCSO to take any actions concerning its operations, so Recommendations are advisory only.

## **B. Observations / Trends from This Year’s Audits**

Based on the investigations audited in the 2022-2023 Fiscal Year, IOLERO has made some observations.

### **1. COMPLETENESS OF ADMINISTRATIVE INVESTIGATIONS**

IOLERO has carefully reviewed SCSO’s investigations for “completeness” in accordance with the principles set out earlier in this Report. IOLERO concluded that the Administrative Investigations were sufficiently complete to properly address the issues raised in 21 of the 27 cases (78%), even though SCSO’s analysis was often not as clear as it could or should have been.

Of the 27 Audited cases, IOLERO identified “Incomplete” investigations of one or more allegations in 6 cases, or 22% of all cases. As a percentage of the total number of cases reviewed, this is a substantial improvement over past years. In the prior year, 2021-2022, 19 of 36 cases audited had incomplete allegations, which was over 50% of cases. That said, this year’s incomplete count bears further discussion.

In two cases IOLERO found the investigation incomplete, even though SCSO may have arrived at the correct outcome. In No. 20-C-0032 the incompleteness stemmed from the untimely nature of interviews with the potentially involved officers, but the investigation was otherwise prompt and substantive and the existing record generally supported SCSO’s conclusion. We are considering in the upcoming year whether and how to flag untimeliness separately from completeness for greater clarity. In No. 22-IA-0004, the involved deputy was not interviewed regarding use of force, although the overall record did not suggest misconduct by the deputy.

By contrast, the other four cases—representing 15% of the 27 cases Audited—involved more substantive defects.

In 19-AR-0004, the Administrative Review was entirely insufficient to evaluate the issues associated with an in-custody death, and IOLERO concluded that even applying the defectively created record there was likely a policy violation. Case Nos. 20-C-0007 and 21-C-0019 both involved canine bites used for apprehending a person; both failed to investigate and analyze the relevant issues involved and IOLERO again concluded additional policy violations were likely based on the limited record that was created. Case No. 22-C-0010 involved use of uniforms in campaign photos; the investigation did not interview the involved parties or other relevant persons, and did not sufficiently analyze the policy and legal issues involved.

Thus, the total number of cases in FY 2022-2023 found to be incomplete (22%) and the subset of cases found to have more extensive deficiencies (15%) is a significant drop, both in raw numbers and as a percentage of overall cases reviewed, from those found incomplete in 2021-2022.

IOLERO agreed with SCSO's *conclusions* in 19 of the 27 cases (70%). This means IOLERO's independent analysis of the evidence and IOLERO's independent interpretation and application of policies and legal principles supported SCSO's ultimate conclusion—for example, that the deputy complied with policy. But this does *not* mean that IOLERO agreed with SCSO's *analysis*.

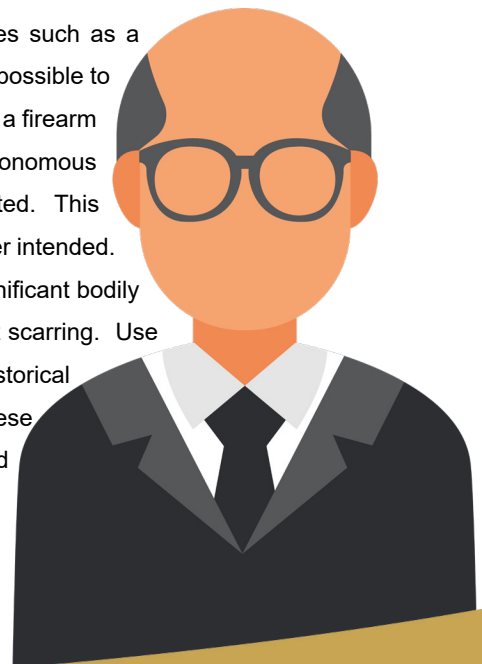
To the contrary, IOLERO's independent analysis was required because, as noted earlier, SCSO's investigative reports generally do not outline SCSO's own analysis with sufficient clarity to identify the basis for its interpretations which led to its conclusions. This “analytical completeness” is a critical component of an Administrative Investigation and IOLERO will continue discussions with SCSO to address this issue.

While it is premature to identify a long-term trend based on a single year of data, IOLERO is optimistic that the percentage of incomplete findings will continue to decrease, and the level of analytical completeness will begin to increase, as SCSO and IOLERO continue to address these issues.

## 2. USE OF CANINE BITES TO APPREHEND

IOLERO reviewed three matters involving the use of canines to apprehend a person. In each of these cases, SCSO had itself selected these incidents for review in part because of the injury sustained by the person bitten by the canine, regardless of whether a complaint was filed. That decision should be applauded; proactive review of this sort is a recognized best practice and also required by California law. This also means that this set of three cases include all of the known cases in which canines caused injury in this reporting period. In each case, IOLERO concluded the investigative record showed a likely violation of use of force rules and policy.

Canine force presents unique considerations not presented by other force techniques such as a firearm, Taser or pepper spray. No matter how much training a canine receives, it is impossible to predict what the canine will actually do once it has been released from its leash. Unlike a firearm where the officer generally controls where and when to fire, an off-leash canine is an autonomous animal beyond the officer's immediate physical control that might not act as anticipated. This may include holding a bite longer than commanded or inflicting wounds the deputy never intended. Canine bites almost invariably result in skin punctures, are painful, and can lead to significant bodily injuries including death. Even a minor canine puncture wound could leave permanent scarring. Use of canine bites to apprehend a person also carries a public stigma resulting from historical abuses, including their use against civil rights advocates in the 1950s and 60s. These factors strongly counsel in favor of strictly confining the use of a canine bite to apprehend a person to the most limited of circumstances where the need to protect the safety of officers, the public and the person being taken into custody is compelling.



IOLERO's review of SCSO's canine policy found that that policy restricts use of canine bites to generally defined circumstances. However, IOLERO identified some broad problems within that policy.

First, in allowing use of a canine bite, the policy relies on whether the person's suspected crime was "serious" but does not define that term. This lack of definition undercuts the ability to assess whether the force was "objectively" reasonable.

Second, it appeared in one case that SCSO deputies relied on the "seriousness" of past crimes committed by the person rather than the "seriousness" of the current suspected crime as required by policy. This creates a discrepancy between policy and practice, leads to undesired results by impeding deputy ability to deal with dangerous crimes and exposing suspects of non-dangerous crimes to disproportionate force. It also raises concerns of compliance under governing use of force legal standards.

Third, while SCSO policies provide guidelines limiting the use of canine bites, those guidelines are more permissive than what may be necessary or, in some cases, legally allowable, especially in light of the risks inherent in canine bites.

Fourth, in one case IOLERO concluded that a deputy's stated reliance on tactical practices he was in the habit of employing obscured important facts known to the deputy at the time. This tunnel vision resulted in canine force that IOLERO concluded violated use of force rules.

Thus, the three canine bite cases reviewed by IOLERO showed that deputy decisions to use canine bites were made too quickly, without appropriate de-escalation consideration, and without assessing proportionality of the force to the suspected offense and/or threat posed by the person. This is a significant problem, but one that can be cured by reassessing policy and training.

IOLERO recommended that SCSO revisit its canine policy with these factors in mind. Specifically, IOLERO recommended changes to address the lack of definition of "serious offenses" and clarify whether "seriousness" applies to the suspected offense for which the person is being arrested or a prior offense. IOLERO has also referred SCSO to the Community Advisory Council recommendations previously submitted to SCSO on possible modifications to the canine policy. IOLERO recommended that SCSO review not only the CAC submission but all other available information and re-evaluate its canine policy in light of these observations. A copy of the CAC's Canine Recommendation is attached as Appendix C.

## USE OF FORCE INVESTIGATIONS IN GENERAL

IOLERO has observed two broader issues in SCSO's Use of Force investigations that we identify here.

First, SCSO's Administrative Reviews of officer-involved shootings or in-custody deaths conducted under the Critical Incident Protocol have relied solely on the criminal record created by the criminal investigating agency, including the agency's interviews of the involved officer. In such cases SCSO has not separately interviewed the involved deputies. This limits the Administrative Review, in practice, to simply duplicating the criminal investigation and adopting the district attorney's decision of whether the officer's actions were criminal violations. However, Administrative Reviews are supposed to assess whether SCSO policies were violated and whether they should be altered or amended, not whether the officer committed a crime. Relying solely on the criminal records and/or District Attorney's charging decision—which applies much stricter evidentiary and prosecutorial standards and which specifically do not evaluate SCSO policy or employment issues—renders the “administrative” portion of SCSO's use of force review largely ineffective. It also implicitly suggests that SCSO's Use of Force Policy incorporates only the minimum standards required by the criminal law. If this is how SCSO in fact interprets its Use of Force Policy that should be made explicit.

Second, in one Internal Affairs Use of Force investigation, SCSO relied solely on Body Worn Camera, surveillance video, and the written incident report to evaluate Use of Force. There was no interview of the involved deputy by SCSO or any other agency. Federal constitutional and state legal standards evaluate whether force was “objectively reasonable” from the perspective of an officer in the same circumstances at the time force was used. This standard requires identifying what facts the officer actually knew (or was exposed to and should have known) when the force was used. Written incident reports are not prepared for this purpose. BWC video of the incident, while a necessary factor in the evaluation, is not always sufficient in of itself because the officer may not have perceived the same sights and sounds that the BWC captured. Absent a very strong reason to the contrary, the officer's own statements and explanations of what they saw, heard and thought, expressed in a properly focused interview, is required to assess whether the officer's actions were objectively reasonable based on what the officer actually perceived.

## SCSO SOCIAL MEDIA COMMENTS REGARDING USE OF FORCE INCIDENTS

IOLERO has reviewed SCSO's use of social media to comment on use of force incidents.

SCSO has historically posted videos on social media concerning use of force incidents. These postings are entitled “Use of Force Community Briefing” or “Critical Incident Video”. Generally, the videos are posted within days of an incident and provide a timeline of events leading to the use of force, along with portions of Body Worn Camera video and written on-screen commentary provided by SCSO. The videos sometimes (but not always) contain a prefatory statement from the Sheriff. Videos posted by SCSO can be found at <https://www.facebook.com/sonomasheriff/videos> and also at <https://www.youtube.com/@SonomaSheriff/videos>.

The posting of community briefings is not unique to SCSO; many law enforcement jurisdictions do the same. Community briefings provide a valuable service by informing the public about the basic factual events leading to the use of force and promote early discussion. Accordingly, IOLERO believes that when used properly, community briefings can be a valuable tool to promote dialogue between SCSO and the public.

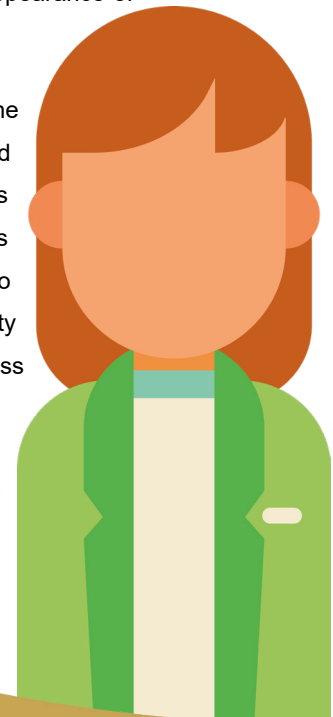
At the same time, IOLERO notes that community briefings must be carefully restricted. Advising the public about basic facts is one thing; swaying public opinion about a conclusion before the investigation is started is another. The underlying incidents remain under active review by the criminal investigative agency and/or SCSO's administrative review process. Accordingly, special care must be taken to ensure that no information or commentary is made by SCSO that could (or may reasonably be anticipated to) impact, alter or sway public opinion or the course or outcome of the criminal and/or Administrative Investigation.

One video cited in the Audited cases below concerned the arrest of Jason Anglero-Wyrick in April 2020. <https://www.facebook.com/sonomasheriff/videos/community-briefing-for-graton-incident-on-april-4-2020/299507084375956>. IOLERO has strong concerns that some of the commentary improperly goes beyond the recitation of basic facts and instead provides interpretative commentary that is both premature and not supported by facts knowable to that point. For example, the briefing video asserted that the canine and Taser were deployed "simultaneously" (an important factor in the subsequent administrative investigation) when the record showed this was not the case. IOLERO has further concerns about the source upon which the premature interpretation is based, given that the investigation in that incident had not yet been conducted when the briefing was posted.

Moreover, IOLERO is concerned about the impact such interpretative comments have on the resulting investigation. The importance of maintaining objectivity in conducting Administrative Investigations cannot be overstated; it is the cornerstone of public acceptance and transparent accountability. Objectivity, and also the appearance of objectivity, is also essential to successfully imposing discipline, when discipline is warranted.

An investigation must be based upon, and follow, the facts as they are discovered through the investigative process. An interpretative opinion formed before the investigation has commenced and aired publicly by SCSO could inject a predisposition into the process and generally undermines the integrity and reliability of the investigative outcome. This is so even if the predisposition is unintentional and the outcome is eventually supported by the record. This defect may give rise to accusations that the investigative process was intentionally tainted, further undermining the integrity of the investigatory process. Public doubt will always linger about whether the investigative process was truly objective and neutral.

IOLERO is closely monitoring SCSO's Use of Force Community Briefings and Critical Incident Briefings with the foregoing issues in mind.



## COMPLIANCE WITH GOVERNMENT CODE § 3304

Government Code § 3304(d) allows a peace officer to be administratively disciplined only if the administrative investigation is completed by the agency within 12 months of when the acts were discovered by a person authorized to initiate an investigation. This time period is subject to some exceptions, the most well-known being an exception where deputies themselves might be charged with a crime, such as in-custody deaths and deputy-involved shootings.

During FY 22-23 IOLERO began noting to SCSO when an investigation was provided to IOLERO for Audit after the § 3304 period had expired. This note was made in 5 cases (18%), once we began to notice the pattern. That said, some cases may have been Audited prior to IOLERO's practice of making this notation, and therefore the total number may be higher. And from the records we have today, we don't believe this issue was tracked by IOLERO in prior years.

While many of these matters exonerated the deputy or found the claim to be unfounded and therefore would not have resulted in any disciplinary action, IOLERO was not provided an opportunity to review the matter prior to the expiration of this deadline. Accordingly IOLERO was unable to provide SCSO with its views or recommendations that SCSO could have considered and implemented before the deadline expired.

To be timely, SCSO should provide IOLERO the completed investigation well before the § 3304 deadline. Sufficient time should be reserved for IOLERO to conduct the Audit, identify any issues or further needed investigation, and provide SCSO sufficient time review the Audit and comment as appropriate. Moreover, IOLERO's new power under Measure P to recommend discipline is only effective if IOLERO has an opportunity to recommend that discipline before the deadline for discipline has run out.

IOLERO and SCSO have discussed this issue and are working to address it. To their credit, current SCSO leadership see the issue and are working to correct it. And, in fairness to the current administration, those cases that were not resolved in a timely way were generally allowed to do so under prior leadership back in calendar year 2022 and earlier. We anticipate collaborating with SCSO on a series of understandings about timeliness in the next fiscal year, much as we did about completeness this year.



## CASES AUDITED BY IOLERO

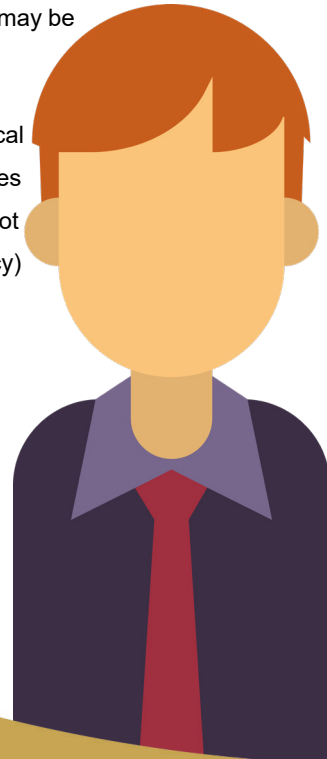
### SCSO ADMINISTRATIVE REVIEWS ("AR")

The matters in this section involve Audits of "Administrative Reviews" conducted by SCSO pursuant to "Sonoma County Law Enforcement Chiefs' Association Critical Incident Protocol 93-1". The Critical Incident Protocol is an agreement between various Sonoma County law enforcement agencies, including SCSO, as to how certain "critical" incidents such as officer-involved shootings, officer-involved deaths, and in-custody deaths are to be investigated. The Critical Incident Protocol can be found as part of SCSO Law Enforcement Division (Patrol) Policy 305 at <https://www.sonomasheriff.org/policies-and-training>.

Under the Protocol, the criminal investigation into a shooting is to be conducted by a law enforcement agency that does not employ the involved officer. When the involved officer is an SCSO deputy, the criminal investigation is conducted by the Santa Rosa Police Department or the Petaluma Police Department. Upon completion the criminal investigation is transferred to the Sonoma County District Attorney who decides whether charges are to be brought against the involved officer, and the District Attorney often issues a public report outlining its findings and charging decision. The District Attorney's public reports can be found at <https://da.sonomacounty.ca.gov/critical-incident-reports-index>.

The Protocol also provides that the agency that employs the involved officer (in this case SCSO) may conduct its own separate, non-criminal Administrative Review of the incident. This Administrative Review is not based on a Complaint or allegations of misconduct against a SCSO deputy. Rather, the purpose of the Administrative Review is to assess generally whether any laws and/or SCSO Policies were violated, and to identify areas where improvements or modifications to policy may be warranted. If a policy violation is noted, it may be referred to Internal Affairs for a more formal administrative investigation.

Although the Administrative Review is a non-criminal investigation, when it concerns a Critical Incident, SCSO usually relies solely on the criminal investigative records and typically does not separately interview the involved deputy. When the Administrative Review does not involve a Critical Incident (and there is no separate criminal investigation by another agency) SCSO may interview the involved deputy.



## OFFICER-INVOLVED SHOOTINGS

<b>Case Number 18-AR-0007</b>	<b>OFFICER INVOLVED SHOOTING NO. 1</b>
<b>Origin of Complaint</b>	SCSO – Internal Administrative Review Pursuant to Critical Incident Protocol 93-1
<b>Race/Ethnicity of Involved Person</b>	Unknown
<b>Issues Under Review</b>	<p>SCSO deputies responded to an employer’s call that an employee brought a handgun to the workplace. SCSO deputies arrived at the business and were informed by the employer that the employee was working his shift and had the gun with him. Deputies started to make contact with the employee who then pulled the gun and fired at one deputy. That deputy returned two shots at the employee with the service weapon. The deputy was hit with shot-gun-type pellets fired by the employee; the employee was not injured by the deputy’s return fire. The deputy was treated for injuries and the employee taken into custody. The employee’s weapon was found to have a mix of pellet-type and full metal jacket bullets, and the weapon was found to have jammed preventing the employee from firing additional rounds.</p> <p>The primary issue under review was whether the officer’s return of gunfire complied with SCSO Policy 300 concerning use of force, with a secondary focus on compliance with Patrol Functions Policy 400, and Body Worn Camera Policy 425.</p>
<b>SCSO Conclusion</b>	<p>SCSO concluded that the deputy’s return of gunfire at the employee complied with SCSO policy concerning use of force.</p> <p>SCSO also found that the deputies’ decision to make contact with the employee and place him under arrest complied with the deputies’ Patrol Functions which includes the duty to apprehend criminal offenders.</p>
<b>IOLERO’s Conclusion</b>	<p>The District Attorney’s Office reviewed the criminal investigation and issued a public report declining to charge the deputy with criminal violation concerning the officer’s use of force. IOLERO’s review may differ in some respects from findings reached by the DA, and the DA’s review and charging decision is outside the purview of IOLERO’s auditing function. IOLERO’s review is focused entirely on SCSO’s non-criminal Administrative Review of the incident.</p>



IOLERO **AGREES** with SCSO's Administrative Review findings.

**The Audit in this matter is publicly available on IOLERO's website pursuant to SB 1421.**

The record showed that the deputy was fired upon by the employee without warning and a deputy in that circumstance could reasonably deem the employee as presenting an imminent threat of causing death or serious bodily injury to officers and/or other persons present at the scene. The deputy's use of deadly force by returning fire was objectively reasonable under these circumstances as required by SCSO Policy 300. We noted that based on SCSO's analysis, it appears (although it was not clearly stated) that SCSO interprets its Policy 300 as mirroring governing law concerning use of force without imposing additional or more stringent requirements.

The record also showed that the deputies' decision to make contact with the employee and to arrest the employee following the gunfire exchange complied with SCSO Policy 400 which identified the "Patrol Functions" of SCSO. The Patrol Functions include a general responsibility to apprehend criminal offenders.

However, we also noted that the Patrol Function further includes responding to calls for service, including public assistance and public safety. The deputies initially indicated to the employer that the matter was an employment issue and that the employer might have to fire the employee, despite the fact the he had clearly brought a firearm to the workplace and still had it in his possession. When the employer started to go tell the employee that he was fired, the employer's staff noted the danger of doing so because the employee possessed a gun. At this point, the deputies decided to make contact with the employee directly. Because the deputies had authority to make contact with the employee without the need for a citizen's arrest or formal "trespass" claim by the employer, we noted that SCSO should review this decision-making process in the future to clarify deputies' initial statement that this was a civil matter.

IOLERO did not make any formal recommendations in this matter.

IOLERO specifically **NOTED** two items of substance in connection with this matter. These items did not undermine the validity of SCSO's findings, but they nevertheless speak to broader law enforcement practices: (i) a deputy's delay in activating their BWC, and (ii) evaluating the decision-making process involving responses to a call concerning an employee with a gun—specifically whether a citizen's arrest or trespass claim is needed before making contact with the employee.

## **IOLERO's Recommendations**

<b>Case Number</b> 19-AR-0003	<b>OFFICER INVOLVED SHOOTING NO. 2</b>
<b>Origin of Complaint</b>	SCSO – Internal Administrative Review Pursuant to Critical Incident Protocol 93-1
<b>Race/Ethnicity of Involved Person</b>	Black
<b>Issues Under Review</b>	<p>An SCSO deputy responded to a call of an armed robbery and came upon the suspect walking along a street. The deputy ordered the suspect to stop but the suspect ignored the command. The deputy deployed a Taser without effect, and the suspect then walked up to and entered the deputy's patrol vehicle. The deputy attempted to remove the suspect from the vehicle and when the suspect pulled the door closed and appeared to be preparing to drive away the deputy fired several shots through the window with a service firearm, striking the suspect. Santa Rosa Police arrived and the suspect was taken into custody and treated at the hospital.</p> <p>The Santa Rosa Police Department conducted the criminal investigation into the deputy's use of force.</p> <p>SCSO conducted a separate Administrative Review of the incident.</p> <p>The primary issue reviewed was whether the duty's use of deadly force complied with SCSO Policy 300 concerning Use of Force.</p>
<b>SCSO Conclusion</b>	SCSO concluded that the deputy's use of deadly force did not violate SCSO Policy.



### IOLERO's Conclusion

The District Attorney's Office reviewed the criminal investigation and issued a public report declining to charge the deputy with criminal violation concerning the officer's use of force. IOLERO's review may differ in some respects from findings reached by the DA, and the DA's review and charging decision is outside the purview of IOLERO's auditing function. IOLERO's review is focused entirely on SCSO's non-criminal Administrative Review of the incident.

IOLERO **AGREES** with SCSO's Administrative Review findings.

The Audit in this matter is publicly available on IOLERO's website pursuant to SB 1421.

The record showed that the deputy had information that the suspect was reported as having wielded a knife during a robbery. The suspect ignored the deputy's lawful commands to stop, and then entered the deputy's vehicle which contained department-issued weapons and ammunition which could later be accessed by the suspect if he drove away. The deputy tried to remove the suspect from the vehicle and only when the suspect closed the door and reached for the gear shift to drive away did the deputy fire the service weapon.

An officer presented with these circumstances could reasonably conclude that the suspect presented an imminent threat of death or bodily injury to the officer or others. The suspect had just been reported as committing an armed robbery. Had the suspect driven away he could have used the vehicle to harm others, including the deputy, and he would have had access to deadly weapons stored in the vehicle. The suspect's entry into a patrol vehicle was an unusual circumstance, but use of deadly force to prevent the suspect from driving away was nevertheless "objectively" reasonable under governing law and SCSO Policy.

Although it did not undermine SCSO's conclusions in this matter, we noted that the Administrative Review did not address the deputy's delay in activating their Body Worn Camera. It appeared the deputy may have tried twice unsuccessfully to activate the BWC before exiting the vehicle and was successful on the third try after exiting the vehicle. We noted that because of its importance, the timely activation of a BWC should be part of every Administrative Review.

We also noted our view that this Administrative Review was too narrow. The purpose of the Administrative Review is to broadly assess compliance with SCSO Policies and to identify areas where policy changes may be warranted. In this case, additional Policies may be relevant to the overall officer response, including those addressing how and when a deputy is to respond to calls (Policies 308, 327, 429). The events leading up to the use of force are also relevant in evaluating how general policies and procedures led to the circumstances in which use of force was ultimately needed. These are observations only and were provided to facilitate development of best practices in reviewing critical incidents. However, their lack of inclusion in the Administrative Review did not, in our view, undermine SCSO's core investigation into, or ultimate conclusions regarding, use of force in this matter.

### IOLERO's Recommendations

IOLERO did not make any formal recommendations in this matter.

IOLERO specifically **NOTED** two items of substance that did not undermine the validity of SCSO's findings, but nevertheless speak to broader law enforcement practices: (i) every Administrative Review should evaluate and document compliance with Body Worn Camera Policy (ii) Administrative Reviews are not restricted by specific allegations of misconduct or whether use of force was unlawful, but instead extend to a broader evaluation of how SCSO Policies apply in practice. Limiting an Administrative Review solely to whether use of force was lawful is duplicative of the criminal investigation and is unduly narrow for the stated purposes of an Administrative Review.

## IN-CUSTODY DEATHS

<b>Case Number</b> <b>19-AR-0004</b>	<b>IN-CUSTODY DEATH NO. 1</b>
<b>Origin of Complaint</b>	SCSO – Internal Administrative Review Pursuant to Critical Incident Protocol 93-1
<b>Race/Ethnicity</b> <b>of Involved Person</b>	Hispanic
<b>Issues Under Review</b>	<p>SCSO deputies responded to a “check the welfare” call regarding a person parked in a vehicle on a private driveway. The deputies contacted the person who explained that he had a heart condition. The person was also an active drug user and informed the deputies there was a warrant out on him. The senior deputy who was acting as a Field Training Officer (FTO) ordered the person to get out of the vehicle and after seeing indicia of drug use in the vehicle, directed the trainee deputy to handcuff the person and move them to the rear of the vehicle. The person explained to the deputies multiple times that they had a medical condition and had difficulty breathing. When the person reached the rear of the vehicle he collapsed to the ground and lost consciousness. The FTO administered Narcan and called for medical assistance while the trainee monitored for pulse. When the ambulance arrived the person’s pulse was lost and he was pronounced deceased after unsuccessful efforts by paramedics to revive.</p> <p>The Petaluma Police Department conducted a criminal review of the in-custody death.</p> <p>The primary issues under SCSO’s non-criminal Administrative Review was whether the person’s death was due to the officers’ actions.</p>
<b>SCSO Conclusion</b>	SCSO concluded that the person’s death was not due to the actions of the deputies and no policy violations were noted.
<b>IOLERO’s Conclusion</b>	<p>The District Attorney’s Office reviewed the criminal investigation and issued a public report declining to charge the deputies with criminal violations concerning the in-custody death. IOLERO’s review may differ from findings reached by the DA and the DA’s review and charging decision is outside the purview of IOLERO’s auditing function. IOLERO’s review is focused entirely on SCSO’s non-criminal Administrative Review of the incident.</p> <p>IOLERO <b>DISAGREES</b> with SCSO’s Administrative Review findings and concludes instead that (i) the Administrative Review was <b>INCOMPLETE</b> and <b>DEFICIENT</b>, and (ii) the record shows the senior FTO deputy <b>VIOLATED POLICY</b>.</p>

The record showed that the person told the deputies multiple times that he had a heart and lung condition, and stated at least 16 times throughout the encounter that he had difficulty breathing and walking. The BWC videos show the person's distress became more urgent as he was moved to the back of the vehicle, and he was clearly laboring for breath and struggling to walk. After seeing indicia of drug use in the vehicle the FTO categorically rejected the person's multiple medical complaints and when the person stated they were doing the best he could while handcuffed, the FTO directed the deputy to just pull the person to the back of the vehicle. When the person stated he could not breathe the FTO summarily dismissed this stating "you can breathe". When the person stated he was going to pass out the FTO stated "ok". After the person fell to the ground unconscious, the FTO told the trainee that the person was just playing games. During the next 90 seconds while the individual was unconscious the FTO asked the person if the vehicle was registered to them, during which time the person experienced a spasm visible in the BWC footage.

Although the call was for a "check the welfare", the FTO told the supervising sergeant responding to the scene that the call had been for a suspicious vehicle. The trainee told investigators that the person had walked on their own, but the BWC clearly shows the person struggling to walk and was shuffling their feet along the ground. The person explained to the trainee that they had trouble standing up because they were retaining significant water and the trainee dismissed this by stating that bending over showed the person had strength to walk. The FTO told investigators that they assisted the person to the ground when their legs gave out, but the BWC shows the FTO tried only to grab the person's shirt to arrest the fall.

The Administrative Review did not address any of these facts and contradictions all of which were clearly evident in the BWC footage and written records. The Administrative Review summary of the BWC footage was cursory, incomplete and materially inaccurate, and the analysis of the policies in issue was cursory and contained no substantive discussion.

In contrast to SCSO's conclusion, the record shows that the FTO violated SCSO Policy 435 which requires medical assistance to persons when they are exhibiting, among other things, breathing problems or another illness that reasonably warrants an emergency response. It also shows the FTO violated Policy 418 concerning FTO duties which includes providing emergency services as soon as possible and complying with state "Peace Officer Standards and Training" (POST) guidelines. Specifically POST "Basic Course Workbook Series, Learning Domain 34, First Aid, CPR, and AED (Ver. 6.1)" identifies shortness of breath as indicative of cardiac distress, and specifies that while cardiac issues resemble other medical conditions a peace officer "should always first assume that a cardiac emergency exists" and keep the person in a seated or supine position. Respiratory distress can also be the result of a drug overdose in which case the person should be seated or placed in a supine position and kept "calm and still".

In short, the FTO and his trainee conducted a "check the welfare" and encountered a homeless person in a vehicle who expressed clear indications of medical distress. After noting the person was a drug user, the FTO categorically ignored those medical concerns and did not call for medical assistance until after the person had collapsed to the ground unconscious. This record shows a violation of Policy.

SCSO relied entirely on the deputies' statements to the criminal investigators and did not interview the deputies separately concerning compliance with SCSO Policies.

IOLERO recommended that although the time in which disciplinary action could be taken had expired, SCSO should nevertheless further administratively investigate this matter in order to properly assess compliance with SCSO Policy.

IOLERO further recommended that SCSO emphasize to deputies the need to recognize when a medical response is required and to request it immediately, particularly when the person is an apparent user of drugs.

## **IOLERO's Recommendations**

<b>Case Number</b> 20-AR-0006	<b>IN-CUSTODY DEATH NO. 2</b>
<b>Origin of Complaint</b>	SCSO – Internal Administrative Review Pursuant to Critical Incident Protocol 93-1
<b>Race/Ethnicity of Involved Person</b>	White
<b>Issues Under Review</b>	<p>SCSO deputies responded to a report of possible domestic violence. On arrival deputies encountered an individual holding onto his wife, with the wife asking the deputies for help. When the deputies separated the individual from his wife, the individual, who had a strong physical build, refused to place his hands behind his back and instead leaned against a vehicle. One deputy placed his arms around the individual from behind and took him to the ground. The individual attempted to stand and the second deputy deployed his Taser which caused the individual to drop back to the ground. As soon as the Taser cycle was stopped the individual started to rise again and subsequent applications of the Taser cycle were applied. A total of six Taser cycles were deployed. After the last Taser cycle was deployed both deputies were able to bring the individual's hands behind his back for handcuffing. Soon after he was handcuffed the individual became unresponsive. The deputies immediately called for emergency medical response and conducted CPR continuously for several minutes until medical personnel arrived. The individual was subsequently pronounced deceased.</p> <p>The Santa Rosa Police Department conducted a criminal review of the in-custody death.</p> <p>The primary issues under SCSO's non-criminal Administrative Review was whether the officers' actions complied with Use of Force Policy 300 and Taser Policy 304.</p>
<b>SCSO Conclusion</b>	SCSO concluded that the deputies did not violate SCSO Policies.
<b>IOLERO's Conclusion</b>	<p>The District Attorney's Office reviewed the criminal investigation and issued a public report declining to charge the deputies with criminal violations concerning the in-custody death. IOLERO's review may differ from findings reached by the DA and the DA's review and charging decision is outside the purview of IOLERO's auditing function. IOLERO's review is focused entirely on SCSO's non-criminal Administrative Review of the incident.</p> <p>IOLERO <b>AGREES</b> with SCSO's Administrative Review findings.</p> <p>The Audit in this matter is publicly available on IOLERO's website pursuant to SB 1421</p> <p>The record showed that upon arrival on scene the deputies encountered a large individual holding onto his wife who was pleading for help. After deputies were unable to physically move the individual's arms behind his back due to the individual's strength, one deputy used a controlled physical takedown to bring the individual to the ground and a second deputy deployed a Taser cycle 6 times to maintain control of the individual until he was handcuffed.</p> <p>In accordance with federal and state law, SCSO Policy 300 requires all force to be "objectively reasonable" and identifies various factors to consider including the relative size/strength of the deputies and the individual, the individual's apparent mental state, and risk of injury to deputies, the individual and bystanders. A deputy presented with the individual's superior strength, his apparent mental condition, the risk of harm to bystanders standing nearby, and risk of harm to the individual (who in this case could have run onto an adjacent active roadway), could reasonably conclude that use of a controlled physical takedown was reasonable under these circumstances to place the individual under control.</p>



The deputy deploying the Taser explained that based on the significant strength demonstrated by the individual before he was taken to the ground, the deputy believed that use of the Taser was necessary to maintain control of the individual after the physical takedown as deputies tried to place handcuffs. The record shows that the individual was in fact incapacitated while the Taser cycle was engaged but began to rise or move away from the deputies as soon as the cycle was stopped. The individual was told the Taser cycle would be applied and he continued to refuse to place his hands behind his back.

The “objective reasonableness” standard does not require the use of the least amount of force possible; it requires that the amount of force used be objectively reasonable based on the specific facts of the incident. A deputy presented with these circumstances could reasonably conclude that deployment and cycling of the Taser was necessary to maintain control over a person exhibiting superior strength and resistance under the specific circumstances presented here.

The record also shows that once handcuffed the individual was held in a prone position for a brief time and no additional force was applied by the deputies. The individual was conscious and speaking without any apparent medical distress after being placed in the prone position, but then without warning became unresponsive. Deputies immediately called for medical aid and conducted CPR until medics arrived.

Separate from “use of force”, SCSO Policy 304 governing Tasers specifically states that multiple application of the Taser should be avoided unless the deputy “reasonably believes the need to control the individual outweighs the potentially increased risk posed by multiple applications”. (§ 304.5.4). When determining whether multiple Taser applications are needed the deputy should evaluate the situation before using the next Taser cycle and determine if other options may be more effective. SCSO Policy does not specify the risks to be weighed, but the Taser manufacturer identifies excited delirium and exhaustion from physical struggle as risk factors.

The record shows each time the Taser cycle was discontinued the man started to either stand or move away and the deputies were unable to overcome his strength in order to place his hands behind his back. The individual did not outwardly fall within a category of persons at high risk from Taser use. The elapsed time between the first and last Taser cycle was 65 seconds during which the deputies sought to maintain control of the individual.

A deputy presented with these specific circumstances could reasonably believe that multiple Taser cycles were necessary to maintain control of the man until he was sufficiently restrained.

While we ultimately agreed with the Administrative Review findings based on independent review of the record and independent analysis, we **NOTED**, as we have in other Administrative Reviews, that SCSO relied too heavily on the criminal investigation in conducting the Administrative Review. SCSO did not interview the deputies and instead relied solely on the deputy interviews conducted as part of the separate criminal investigation. SCSO also did not provide a substantive analysis of the use of force issues, relying instead on reference to the conclusions reached in the criminal investigation.

SCSO should not rely on the criminal investigative record alone. Administrative Reviews evaluate whether SCSO Policies were violated (not whether the deputies’ are criminally liable) and whether policies are adequate or should be modified.

**IOLERO’s  
Recommendations**

IOLERO did not make formal recommendations in this matter.

## SCSO INTERNAL AFFAIRS ADMINISTRATIVE INVESTIGATIONS ("IA")

The matters in this section involve Audits of SCSO's Internal Affairs Administrative Investigations ("IA"). An "IA" investigation is not necessarily based on a citizen complaint. Rather, it can be based on facts or reports identified by SCSO internally that could constitute misconduct or Policy violation by an SCSO employee and therefore merits an administrative investigation.

IA investigations are conducted under SCSO Policy 1010 which outlines the procedures for investigating complaints against SCSO employees. Policy 1010 outlines the procedure for conducting the investigation and the category of findings that can be reached: Sustained, Exonerated, Unfounded and Not Sustained. Policy 1010 is part of SCSO's Law Enforcement Division (Patrol) Policies which can be reviewed at <https://www.sonomasheriff.org/policies-and-training>.

The "IA" investigations audited below address (i) Prison Rape Elimination Act ("PREA") compliance at the Main Adult Detention Facility ("MADF"), and (ii) a Use of Force ("UOF") review where the force resulted in serious bodily injury.

### PREA INVESTIGATIONS

Case Number 21-IA-0005	PREA INVESTIGATION NO. 1
Origin of Complaint	Main Adult Detention Facility (PREA Investigation)
Race/Ethnicity of Complainant	White
Allegations in the Complaint	This matter involved the discovery by an inmate of a prophylactic condom with them in their cell. The inmate could not explain how it got there and suggested that it could have been the result of someone having engaged in sexual intercourse with them the night before in their cell.
SCSO Conclusion	<p>The federal Prison Rape Elimination Act of 2003 (PREA), 34 U.S.C. §§ 30301 <i>et seq.</i>, requires correctional facilities and jails to implement safeguards to prevent sexual assault within jails, to investigate such claims and to report incidents to the U.S. Department of Justice. In accordance with PREA, SCSO's Domestic Violence / Criminal Assault Unit conducted a criminal investigation and found no evidence of a sexual assault or sexual conduct by anyone in the MADF.</p> <p>SCSO conducted a separate non-criminal IA Administrative Investigation to determine whether any SCSO member may have been involved in any PREA-related actions. SCSO concluded that there was no evidence that any SCSO employee engaged in sexual assault or sexual conduct, and that a PREA based claim was "<b>unfounded</b>".</p>

**IOLERO's Conclusion**

IOLERO **AGREES** with SCSO's IA Administrative Investigative Review finding.

SCSO reviewed the PREA-related criminal reports and related interview summaries and medical records, identified the MADF employees on duty during the relevant time frame, and reviewed surveillance video of the inmate's cell for the relevant time frame. This record showed that during the time in question no employee entered the inmate's cell and no suspicious interactions occurred between the inmate and MADF staff while the inmate was at the facility. In addition, medical examination identified a likely mechanism by which the inmate had brought the condom into the facility unawares. For this reason, it appeared that the condom that was unrelated to any PREA-based conduct.

Accordingly, the preponderance of the record evidence showed that no MADF staff engaged in sexual assault or sexual activity with the inmate, and no MADF staff were involved with or connected to the presence of the condom. Accordingly, IOLERO agrees that a possible PREA-based claim involving MADF staff was "**UNFOUNDED**".

**IOLERO's  
Recommendations**

Federal PREA rules require that the credibility assessment of an inmate or staff member shall be based on the specific circumstances and not simply because they are an inmate or staff member, and that credibility assessments are documented in writing. One purpose of this requirement is to prevent an Investigator from inappropriately discounting an inmate's credibility simply based on their inmate status, or inflating a staff member's credibility simply based on their employment position.

The record shows that SCSO took this PREA matter seriously, promptly investigated it, and did not inappropriately inflate or discount credibility of the inmate or any staff. Nevertheless, we **NOTED** that written summaries of credibility determinations are required, and they further increase transparency and strengthen the investigative findings.

Accordingly, IOLERO recommended that SCSO include in every PREA-based Internal Affairs administrative investigation a written assessment of credibility and the underlying reasoning for that assessment.

<b>Case Number</b> <b>22-IA-0003</b>	<b>PREA INVESTIGATION NO. 2</b>
<b>Origin of Complaint</b>	Main Adult Detention Facility (PREA Investigation)
<b>Race/Ethnicity of Complainant</b>	White
<b>Allegations in the Complaint</b>	An MADF inmate filed an internal grievance claiming a deputy had touched him in a sexually inappropriate manner. During the ensuing investigation the inmate also claimed that the same deputy purchased narcotics years earlier at a local bar.
<b>SCSO Conclusion</b>	<p>SCSO's Law Enforcement Division conducted a criminal PREA investigation and concluded that the PREA claim was unsubstantiated.</p> <p>SCSO also conducted a separate non-criminal IA Administrative Investigation into the PREA allegation against the deputy. The Investigator reviewed the PREA-related criminal reports and related interview summaries and medical records, interviewed the inmate and the named deputy, interviewed an inmate witness, and interviewed several other deputies who were on duty at the time when the inmate claimed the alleged PREA conduct occurred.</p> <p>In the course of the investigation the inmate further claimed that he had seen the deputy purchase narcotics years prior at a local bar. The Investigator included this allegation in the investigation, reviewing the history of the local bar and questioning the deputy and witnesses about this issue. The Investigator further identified and reviewed prior grievances filed by the inmate and a separate investigation conducted by the Santa Rosa Police Department.</p> <p>SCSO concluded that there was no evidence that the deputy touched or spoke to the inmate in an inappropriate manner and no evidence the deputy purchased narcotics at a bar several years prior. Accordingly SCSO concluded that the PREA and narcotics-purchase claims were <b>"UNFOUNDED"</b>.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO <b>AGREES</b> with SCSO's IA Administrative Investigative Review finding.</p> <p>With respect to the PREA claim, there was no evidence that any MADF staff engaged in sexual or other improper conduct. There was also no evidence supporting the claim that the inmate saw the deputy purchase narcotics years ago. The sole basis for the inmate's claims were the inmate's own statements which were not corroborated by any evidence, and the inmate had significant credibility issues.</p> <p>Accordingly the preponderance of the evidence does not support the inmate's PREA and drug allegations and we therefore <b>AGREE</b> with SCSO's finding that the claims were <b>UNFOUNDED</b>.</p>

## USE OF FORCE REVIEWS

<b>Case Number</b> 22-IA-0004	<b>USE OF FORCE REVIEW NO. 1</b>
<b>Origin of Complaint</b>	SCSO – Internal Administrative Investigation of Use of Force Involving “Serious Bodily Injury”
<b>Race/Ethnicity of Involved Person</b>	White
<b>Issues Under Review</b>	An SCSO deputy responded to a call of an intoxicated person at a strip mall punching business and car windows, and physically assaulting persons. Upon arrival the deputy saw the suspect hit a person. The deputy used a running tackle to take the person to the ground and the person hit their head on the concrete surface resulting in a serious bodily injury. The person was taken to the hospital and treated.
<b>SCSO Conclusion</b>	<p>SCSO conducted a “Use of Force” (UOF) Review of the incident pursuant to SCSO Policy 300.7 and Gov’t Code § 7286(b)(14), and reported the incident to the California Department of Justice pursuant to Gov’t Code § 12525.2 because it involved a “serious bodily injury”.</p> <p>No complaint was submitted concerning the deputy’s use of force. However, SCSO requested Internal Affairs conduct an administrative investigation to determine whether use of force was consistent with SCSO Policy.</p> <p>SCSO concluded that the deputy’s use of force (consisting of the running tackle) was reasonable and necessary to bring the situation under control in compliance with SCSO Policy and that the deputy should be <b>EXONERATED</b>.</p>
<b>IOLERO’s Conclusion</b>	<p>IOLERO <b>DISAGREES</b> and concludes instead that the investigation was <b>INCOMPLETE</b> and the finding on use of force should be <b>NOT SUSTAINED</b> because the record is inconclusive.</p> <p>The Audit in this matter is publicly available on IOLERO’s website pursuant to SB 1421.</p> <p>Under governing law and SCSO Policy 300 peace officers may use “objectively reasonable” force to effect an arrest. “Reasonableness” is judged from the perspective of the officer on scene based on facts actually presented to them at the time force was used (not using 20/20 hindsight), and makes allowance for the fact that officers are often required to make split second judgments.</p> <p>At the same time California law requires use of force evaluations to reflect the gravity and seriousness of using force, to use force that is proportional to the offense or threat, to de-escalate when reasonably feasible, and to comply with agency guidelines regarding the “methods and devises” for application of force.</p> <p>One use of force technique identified by the California Commission on Peace Officer Standards and Training (POST) is a “takedown” used to gain control of a person and prevent them from attacking. The “mechanics” of a takedown should include controlling the force used and employing proper technique. SCSO deputies are trained in the use of takedowns.</p>

In this case, the record shows that the Investigator relied solely on the deputy's incident report, and BWC and business surveillance video of the incident.

However, a use of force review under an "objective reasonableness" standard requires looking to what the deputy knew at the time he decided to use force and the factors that led the deputy to conclude a running tackle was appropriate. To conduct this review, an interview with the deputy is almost always required to determine the facts upon which they based their decisions. Many of the objective facts can be identified from BWC and other video but these sources do not provide the deputy's own explanation as to how they perceived the incident. The deputy's incident report is also a source of relevant facts but they are only intended to document a broad outline of what occurred for future investigation; they are not intended to discern the deputy's knowledge at the time force was used with the specificity required for a use of force evaluation.

Accordingly, an interview to obtain the deputy's direct explanation as to what they perceived and the facts upon which they based that perception is a critical component of a Use of Force review under the "objectively reasonableness" standard. The deputy's perceptions would include the relevant use of force factors, including proportionality, de-escalation and the use-of-force technique employed.

In relying solely on the video and incident report SCSO concluded that the takedown force complied with Policy. IOLERO agrees that based on these materials a controlled "takedown" may be appropriate in these circumstances as a general matter, and we further note that these records do not indicate any intentional misconduct by the deputy.

However, the deputy here used a running tackle against an intoxicated person standing off-balance on a concrete pavement, factors which outwardly present an increased risk of injury from an uncontrolled fall to the ground. These facts raise the question of whether the deputy considered the surface and/or unstable gait when using a running uncontrolled takedown, and whether the deputy considered de-escalation factors.

It may turn out that the deputy's explanations confirm and/or bolster a finding that the use of a running tackle was "objectively reasonable" and thus such an interview might be considered

a waste of time. But the "objective" standard requires such an assessment, and a deputy's confirmation of the facts serves to strengthen the investigative findings and fosters confidence in the conclusions.

Because SCSO did not interview the deputy to complete the "objective reasonableness" analysis, we concluded that the investigation was **INCOMPLETE**. Moreover, without a deputy interview the existing record is inconclusive as to whether the deputy's use of force complied with Policy and therefore we believe the appropriate finding on the existing record should be **NOT SUSTAINED**.

IOLERO **NOTED** that the deputy did not activate their Body Worn Camera until after the takedown was conducted. As a result the deputy's verbal commands to the suspect prior to the takedown were not recorded. SCSO Policy 425 requires activation of the BWC upon arrival on scene. SCSO did not review this issue, and IOLERO noted this omission as part of this Audit.

**IOLERO's  
Recommendations**

In addition to the Audit analysis, IOLERO made two recommendations: (i) Use of Force reviews should address all applicable requirements—"objective reasonableness", proportionality, de-escalation, and specific SCSO training as relevant; and (ii) interview deputies in all Use of Force Reviews absent a compelling reason otherwise.

## CITIZEN COMPLAINTS ("C")

The Audits in this section concern complaints made by citizens concerning officer or employee conduct.

A citizen can submit a complaint directly to SCSO, or they can submit it to IOLERO which records the complaint and transfers the matter to SCSO for investigation. All complaints submitted directly to IOLERO will be Audited by IOLERO when SCSO's investigation is completed. Complaints submitted directly to SCSO are also subject to IOLERO Audit if they fall within certain categories outlined in Measure P such as officer-involved shootings, officer involved or in-custody deaths, and use of force matters.

An inmate in the Main Adult Detention Facility (MADF) may also submit a complaint to SCSO or IOLERO. Because pursuant to state law the MADF has a separate internal process for handling inmates' "grievances" concerning "conditions of confinement", SCSO may preliminarily assess whether the matter should be processed through the MADF "grievance" process or separately investigated by SCSO for IOLERO Audit and review. Claims such as improper use of force and Internal Affairs review of PREA claims (see IA Investigations above) are some of the categories generally investigated directly by SCSO's Internal Affairs and Audited by IOLERO.

Citizen complaint investigations are conducted under SCSO Policy 1010 which outlines the procedures for investigating complaints against SCSO employees. Policy 1010 outlines the procedure for conducting the investigation and the category of findings that can be reached: Sustained, Exonerated, Unfounded and Not Sustained. Policy 1010 is part of SCSO's Law Enforcement Division (Patrol) Policies which can be reviewed at <https://www.sonomasheriff.org/policies-and-training>.

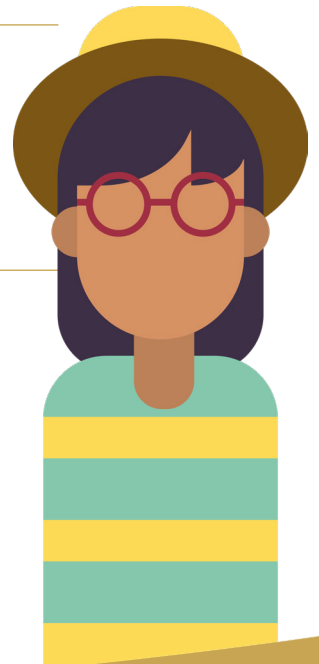
The Audits listed below involve citizen complaints spanning a wide range of topics. Because different substantive rules apply to different topics, these Audits are organized by the predominant issue raised by the complaint. This organization should provide the reader with a more substantive insight into the issues raised and how SCSO's investigations have addressed them.

### NEGLECT OF DUTY / IMPROPER PROCEDURE

<b>Case Number</b> 21-C-0018	<b>CITIZEN COMPLAINT NO. 1</b> <b>FAILURE TO INVESTIGATE</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	White
<b>Allegations in the Complaint</b>	The complainant alleged that a deputy failed to properly investigate a report of a landlord sexually exposing himself to the complainant, sexually harassing the complainant, and hitting the complainant with a door.



<b>SCSO Conclusion</b>	<p>SCSO reviewed the event records, the deputy's recorded telephone call with the complainant, and a criminal investigative report prepared on a subsequent call for service made by the complainant months later based on the same incident. SCSO also interviewed the complainant by telephone regarding the allegation.</p> <p>SCSO found that the deputy timely contacted the complainant by telephone concerning the allegations, obtained factual information as to what occurred, and informed the complainant that the facts did not support criminal charges.</p> <p>Accordingly, SCSO concluded that the deputy properly investigated the call for service and that the complainant's allegation to the contrary was <b>UNFOUNDED</b>.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO <b>AGREES</b> with SCSO's conclusion that the deputy properly investigated the criminal report pursuant to SCSO Policy.</p> <p>SCSO reviewed the relevant records of the event, the deputy's recorded call with the Complainant, and interviewed the Complainant. The resulting record was sufficient to properly evaluate the complainant's allegations and therefore was <b>COMPLETE</b>.</p> <p>SCSO Policy 400 requires deputies to respond to reports of "criminal and non-criminal acts", and Policy 600 requires deputies to conduct an investigation to include "at a minimum" a preliminary determination of whether a crime has been committed. When the deputy determines that a crime was not committed, they should assess what other options may be available and advise the person who requested assistance.</p> <p>This record shows that the deputy complied with these policies. The deputy contacted the complainant in a timely manner, properly adduced the relevant facts necessary to investigate the claims, and properly explained to the Complainant that the facts did not support criminal charges.</p> <p>Because the issue in this matter is whether the deputy's investigation complied with Policy, rather than whether the deputy in fact conducted an investigation, the appropriate finding should be <b>EXONERATED</b> (meaning the deputy's actions complied with policy) rather than <b>UNFOUNDED</b>.</p>
<b>IOLERO's Recommendations</b>	<p>IOLERO made no formal recommendations in this matter.</p> <p>However, IOLERO <b>NOTED</b> that SCSO's investigation was completed after the time to impose discipline under Gov't Code § 3304 had expired. While discipline was not warranted here, IOLERO requested as a general matter that SCSO complete their investigations before expiration of the § 3304 deadline.</p>



<b>Case Number 21-C-0016</b>	<b>CITIZEN COMPLAINT NO. 2 FAILURE TO INVESTIGATE</b>
<b>Origin of Complaint</b>	IOLERO / SCSO
<b>Race/Ethnicity of Complainant</b>	White
<b>Allegations in the Complaint</b>	<p>The complainant called SCSO to report being physically assaulted on his property. The complainant alleged that when the deputy responded, the deputy treated complainant with anger and contempt, threatened complainant, interrogated rather than interviewed complainant as a victim, refused to provide identifying information, stated the assaulting party could sue if complainant hit them, and made no effort to interview the assailants.</p> <p>Based on these allegations the complainant accused the deputy of neglect of duty, discourtesy, and conduct unbecoming.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed the deputy's incident report and Body Worn Camera video of the incident. SCSO also contacted the complainant by telephone. SCSO also interviewed the involved deputy.</p> <p>SCSO found that the deputy timely responded to the call, properly investigated the allegations by interviewing the complainant, interviewing a trespasser on the property, and interviewing the alleged assailant. The deputy properly concluded that there was insufficient evidence to charge an assault and referred the trespassing issue to the Sonoma County District Attorney's Office. Accordingly SCSO concluded that the deputy should be <b>EXONERATED</b> on the claim of neglect of duty.</p> <p>SCSO also found that the deputy did act impolitely in some respects and by so doing likely contributed to the complainant's already dim view of SCSO. Accordingly SCSO concluded that the deputy violated Policy and this allegation should be <b>SUSTAINED</b>. The deputy acknowledged this violation and was counseled.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO <b>AGREES</b> with SCSO's findings.</p> <p>The record shows that the deputy timely responded to the call for service, interviewed the complainant and the alleged assailant, and properly addressed a separate unrelated trespass issue found at the scene. The deputy appropriately concluded that based on the competing statements of the complainant and the alleged assailant that there was insufficient evidence to make a criminal charge of assault because the fight appeared to be mutual. Wee agree that the deputy appropriately responded to and investigated the alleged assault and trespass. Accordingly we agree with SCSO that the deputy should be <b>EXONERATED</b> on the neglect of duty claim.</p>

With respect to the claim of discourtesy and conduct unbecoming, the record shows that while the complainant used dismissive language and showed hostility from the outset, the deputy later fed into this by making sarcastic comments back at the complainant. The deputy candidly admitted as much and acknowledged the policy violation. We agree that the deputy's actions violated SCSO Policy; deputies must remain courteous to the public. Accordingly we agree with SCSO's finding of **SUSTAINED** as to discourtesy/conduct unbecoming.

Thee record also showed that about halfway through the deputy's interaction with the complainant, the complainant reacted angrily to one of the deputy's comments, prompting a warning from the deputy. We **NOTED** that deputies have authority under Penal Code § 148 to arrest a person who willfully obstructs a peace officer in the conduct of their duties. However, neither § 148 nor SCSO Policy permit a deputy to arrest a person for obstruction where the deputy's actions generates the interfering conduct. SCSO did not address this issue. While this did not undermine the findings made by SCSO in this matter, IOLERO concluded that this issue was significant and should be specifically noted for future reference.

<b>IOLERO's Recommendations</b>	IOLERO did not make any formal recommendations in connection with this Audit.
<b>Case Number 21-C-0006</b>	<b>CITIZEN COMPLAINT NO. 3 FAILURE TO INVESTIGATE</b>
<b>Origin of Complaint</b>	IOLERO / SCSO
<b>Race/Ethnicity of Complainant</b>	White
<b>Allegations in the Complaint</b>	<p>A press article reported that a church was conducting indoor services in violation of County COVID-19 health orders and that when a call was made to SCSO to investigate, the responding deputy documented a smaller outdoor gathering which appeared to contradict larger indoor gatherings witnessed by third parties. Two complainants alleged that the deputy falsified their record of the call.</p> <p>Based on these allegations the complainant alleged against the deputy neglect of duty, conduct unbecoming, dishonesty, and improper procedure or complaint against policy.</p>



**SCSO Conclusion**

SCSO interviewed the involved deputy, a county code enforcement officer who was present at the indoor service in question, and two church volunteers who assisted with services. SCSO contacted the reporter who ran the story but they declined to participate. SCSO further reviewed the deputy’s reports and records for the call, the deputy’s history of COVID-related calls for service, the code enforcement officer’s notes, and internal SCSO emails concerning the handling of COVID-related calls for service.

SCSO found that the deputy’s written report was consistent with the witnesses’ and deputy’s statements. Accordingly SCSO concluded the deputy should be **EXONERATED** on the claim he falsified his written notes.

SCSO further found that the deputy responded to COVID-related calls as an educational service and not as enforcement, which was consistent with SCSO Policy. Accordingly, SCSO found that the deputy did not provide preferential treatment to the church and the deputy should be **EXONERATED**.

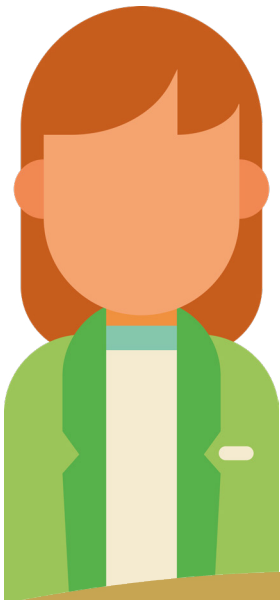
In the course of the investigation SCSO noted that the deputy failed to activate his Body Worn Camera for the call in violation of SCSO Policy. The deputy acknowledged this failure and SCSO **SUSTAINED** the violation for which the deputy was counseled.

**IOLERO’s Conclusion**

IOLERO **AGREES** with SCSO’s findings.

SCSO reviewed relevant records, SCSO policy, and interviewed the deputy and other witnesses. The resulting record was sufficient to properly evaluate the complainant’s allegations and therefore was **COMPLETE**.

The preponderance of the evidence shows that the deputy’s notes accurately reflect the deputy’s observations. Those observations were necessarily limited due to the cursory manner in which the deputy conducted the field visit, which (consistent with SCSO policy) was limited to a brief outdoor discussion with church volunteers. Accordingly, we **AGREE** with SCSO that the evidence shows the deputy did not intentionally falsify his written notes of the call as was alleged. Because the issue was whether the deputy in fact falsified his notes, rather than whether his notes complied with policy, we conclude that the appropriate finding should be **UNFOUNDED** rather than **EXONERATED**.



The preponderance of the evidence also shows the deputy violated Policy 425 by failing to activate his Body Worn Camera during the call. Accordingly we **AGREE** with SCSO's finding that **SUSTAINED** a violation of Policy 425.

IOLERO also addressed two items not directly reviewed by SCSO.

First, the perfunctory nature of the deputy's response to a limited call in a limited timeframe resulted in note entries that did not reflect the *overall* activities at the church as observed by third parties over the course of two days. This discrepancy is what gave rise to the complaints in question. SCSO should be cognizant of this when narrowing the focus of a field review in response to *any* call for service, not just those related to COVID.

Second, while the complaints specifically accused the deputy of misconduct (which claims were shown by the SCSO investigation to be unfounded), the broader underlying suggestion was that the Sheriff was not enforcing the law because of its COVID policy. IOLERO did not conduct an exhaustive evaluation of whether the Sheriff's COVID policy was or was not lawful during the timeframe in this case.

Instead, we assessed whether this deputy applied policy as directed. In that regard, we did note the general timelines concerning the County's historical response to COVID issues. SCSO's policy of responding to COVID-related calls as educational rather than enforcement was publicly announced in May 2020 and was the topic of a joint public statement by the Sheriff and the Board of Supervisors Chair in June 2020. In August 2020 the County provided for administrative enforcement of the COVID orders through civil fines. Whether SCSO's policy complies with Government Code §§ 26600–26602 (which address the sheriff's obligations and discretion in carrying out health orders) is not within the scope of this Audit. However, this history makes clear that the deputy's understanding of SCSO's policy when responding to the call was reasonable, and that he complied with the policy as it existed at the time.

### **IOLERO's Recommendations**

IOLERO did not make any formal recommendations in connection with this Audit.

### **Case Number 21-C-0014**

### **CITIZEN COMPLAINT NO. 4 IMPROPER PROCEDURE/IMPROPER ARREST**

### **Origin of Complaint**

IOLERO

### **Race/Ethnicity of Complainant**

White

### **Allegations in the Complaint**

Deputies responded to a home on a disturbing the peace call. The occupant was intoxicated and yelling at the neighbors and told the deputies to take her to jail. The deputies arrested the occupant for public intoxication and disturbing the peace and booked the occupant into the Main Adult Detention Facility (MADF).

The complainant was present at the arrest and filed a complaint alleging that the occupant was improperly arrested for public intoxication because they were on their own property, the occupant should have been left at home and not taken to jail, and deputies and MADF staff provided false information about when the occupant would be released from jail.

Based on these allegations the complainant alleged improper procedure and dishonesty by SCSO deputies and staff.

### SCSO Conclusion

SCSO reviewed records concerning the incident and arrest, the booking materials, the citizen's arrest form and affidavit of probable cause, and Body Worn Camera video from the two deputies who responded to the call. SCSO also spoke with MADF staff and reviewed MADF phone records concerning the occupant. Finally, SCSO interviewed the complainant twice by telephone.

SCSO found that the occupant had voluntarily exited their home and was therefore in "public" as defined under California law. SCSO further found that the occupant did not qualify to be released on a field citation under SCSO Policy because they were heavily intoxicated, refused to cease their actions, asked to be taken to jail and made suicidal references. Accordingly, SCSO **EXONERATED** the deputies on the claim that the occupant was improperly arrested and taken to the MADF.

SCSO found that BWC video showed that neither deputy told complainant that the occupant would call complainant when they were released from the MADF, as complainant alleged. Accordingly SCSO found this claim to be **UNFOUNDED**.

On the claim that MADF provided complainant false information about the occupant's release, SCSO found that MADF staff were barred by privacy laws and policies from providing that information to the complainant. Accordingly SCSO found that MADF staff should be **EXONERATED**.

Finally SCSO concluded that because the specific MADF staff to whom the complainant spoke could not be identified, a finding on complainant's allegation that MADF staff was rude was **NOT SUSTAINED/ INCONCLUSIVE**.

IOLERO **AGREES** with SCSO's findings.

SCSO reviewed relevant records, SCSO policy, BWC video, and twice interviewed the complainant. The resulting record was sufficient to properly evaluate the complainant's allegations and therefore was **COMPLETE**.

California Penal Code § 647(f) makes it an offense to be intoxicated in a public place and unable to care for oneself. "Public" does not include being inside one's home, but it does include private property outside the home if it is accessible to the public. Whether a person is unable to care for their self depends on each case, but evidence of this can include unsteady gait, bloodshot or glassy eyes, slurred speech and strong alcoholic beverage scent.

California Penal Code § 415(2) separately makes it an offense to willfully disturb another by loud and unreasonable noise.

California Penal Code § 853.6 and SCSO Policy 411 further generally provide for persons arrested on misdemeanor charges be issued a citation in the field rather than taken to jail. However, this does not apply where due to the intoxication the person is a danger to themselves or unable to care for themselves, or it is reasonably likely the person will continue or resume their offending conduct. In such cases the person may be taken to jail and released later by jail staff on citation.

The deputies had probable cause to arrest the occupant for public intoxication. The occupant had voluntarily exited the home, was clearly intoxicated, and deputies could have reasonably concluded from the occupant's actions that the occupant was unable to care for their self in their present condition. The deputies further had probable cause to arrest the occupant for disturbing the peace. The neighbor executed a private arrest form which was supported by facts showing the occupant was yelling at the neighbors.

### IOLERO'S Conclusion

The deputies also had discretion under California law and SCSO Policy to take the occupant to jail instead of issuing a citation. The deputies had a reasonable basis to conclude the occupant was unable to care for their self and that the disturbance of the peace was likely to resume or continue. Under these circumstances the deputies’ decision to take the occupant to jail for booking was reasonable and within Policy.

The complainant’s objections to the occupant’s arrest was based on the understanding that a person cannot be “publicly” intoxicated if they are on their own property. This is a reasonable understanding based on common experience, but it did not accurately reflect the law. The complainant’s perception that arresting the occupant appeared to take sides in the long-standing dispute between the neighbors is also understandable. But the record shows the deputies had probable cause to make the arrest, doing so complied with policy, and there was no evidence of bias or favoritism.

Accordingly, we **AGREE** with SCSO that the preponderance of the evidence shows that the deputies complied with policy in making the arrest and taking the occupant to jail, and that the deputies should be **EXONERATED** on this claim.

With respect to complainant’s allegation that the deputies told complainant that the occupant would call from the jail when they had been released, BWC video shows that neither deputy made any such statement. There were no gaps in the BWC recordings in which a statement could have been made and not captured. Accordingly, we **AGREE** with SCSO that the preponderance of the evidence shows that the deputies never made the alleged statement and that the claim is **UNFOUNDED**.

Finally, with respect to the claim that MADF provided the complainant with false information about the occupant’s detention status, California state regulations (Title 15) and MADF Policy restrict the amount and type of information that may be publicly released about a person in custody, including information concerning release and/or transfers.

The record shows that MADF staff provided very limited information to the complainant which the complainant interpreted as misleading or false based on information the complainant later obtained, and which the complainant further characterized as rude. This disconnect was likely the result of miscommunication brought about by State regulations and SCSO policies preventing disclosure of information. There is no evidence that it reflected any intent to deceive by an MADF employee, and while it may certainly have been perceived that way by the complainant who was unhappy with the events, there is no evidence that MADF staff were rude.

Accordingly, we **AGREE** with SCSO that the preponderance of the evidence shows that MADF staff’s disclosure of limited information complied with SCSO Policy and that the MADF should be **EXONERATED** on this claim. With respect to the claim that MADF staff were rude, we **DISAGREE** with SCSO that the record is inconclusive and conclude instead that a preponderance of the evidence shows no MADF staff were rude in this particular context, and that the finding should be **UNFOUNDED** on this claim.

### IOLERO’s Recommendations

IOLERO did not make any formal recommendations in connection with this Audit.

However, as in other cases IOLERO noted that SCSO investigation was not provided to IOLERO until after the period in which discipline could be imposed under Gov’t Code § 3304 had expired. While this record does not support disciplinary action, we requested that SCSO as a general matter provide investigated matters to IOLERO for review before the § 3304 time limit had expired.

IOLERO also noted that the responding deputies exhibited professionalism, patience and courtesy to all parties through the incident.

<b>Case Number</b> 22-C-0009	<b>CITIZEN COMPLAINT NO. 5</b> <b>IMPROPER PROCEDURE/IMPROPER ARREST</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	White
<b>Allegations in the Complaint</b>	<p>Deputies responded to a call that a neighbor—the complainant—was violating a Civil Harassment Restraining Order which prohibited certain conduct involving the property line. The deputies reviewed evidence showing probable cause that the complainant had violated the restraining order and were preparing to issue the complainant a citation. The complainant became argumentative and challenged the deputies to arrest the complainant which the deputies did. The complainant was booked into the Main Adult Detention Facility (MADF) and released a few hours later on a citation.</p> <p>The complainant alleged that the deputies used excessive force in the arrest, provided preferential treatment to the other party, refused to allow a telephone call in the field, and improperly searched the complainant's home and personal property.</p> <p>The complainant alleged discourtesy, improper procedure, conduct unbecoming, and excessive force.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed the complaint, the arrest report, the incident report, photographs provided by the complainant, video from the complainant's home surveillance, and the Body Worn Camera video of both responding deputies. SCSO also review records regarding staffing during the incident and prior responses to calls involving the other neighbor. Finally SCSO conducted an extensive interview with the complainant.</p> <p>SCSO organized and addressed the allegations in several categories.</p> <p><u>Use of Force</u>: SCSO found that the only force applied was holding on to the complainant's arms and placement of handcuffs, and the handcuffs were properly applied and double-locked to prevent tightening. SCSO found the deputies complied with policy and thus <b>EXONERATED</b> them on the use of force claim.</p> <p><u>Miranda Warnings</u>: SCSO found that no <i>Miranda</i> warnings were given, but concluded that none were required because the complainant was never subjected to a custodial interrogation following the arrest. SCSO concluded that this claim was <b>UNFOUNDED</b>.</p> <p><u>Probable Cause / Cite and Release</u>:</p> <p>SCSO found the deputies had probable cause that the complainant violated the restraining order, and that while misdemeanor violators are generally released in the field on citation, deputies concluded that the restraining order violation was likely to escalate and they properly exercised their discretion to book complainant into jail prior to being released on citation. SCSO therefore <b>EXONERATED</b> the deputies on this claim.</p>





On-Scene Arrest Practices: SCSO found the deputies properly responded to the call. Deputies honored complainant's denial of consent to enter the backyard, and entered the home only to retrieve complainant's wallet and keys to accommodate complainant's request. SCSO thus **EXONERATED** the deputies on this issue.

Discourtesy / Conduct Unbecoming: SCSO found that contrary to complainant's allegation that deputies showed no compassion, the deputies were calm, tried to explain the situation to complainant, repeatedly asked for cooperation, gathered complainant's personal items as promised, called complainant's relative to come to the home and care for the pet, and arranged for placement of the house key for the relative. SCSO thus **EXONERATED** the deputies on this claim.

Participation of a Specific Officer: SCSO found that a specific officer against whom complainant had previously complained and whom complainant now alleged had directed deputies to take her to jail, was not on duty during the incident. SCSO concluded that this claim was therefore **UNFOUNDED**.

IOLERO **AGREES** with SCSO's findings.

SCSO reviewed relevant records, SCSO policy, BWC video, surveillance video, prior call for service records, and conducted an extensive interview with the complainant. The resulting record was sufficient to properly evaluate the complainant's allegations and therefore was **COMPLETE**.

A peace officer may arrest a person based on a citizen's arrest supported by probable cause, and intentional violation of a restraining order is a misdemeanor. Persons arrested for misdemeanors generally should be released at the scene after being issued a citation, but deputies have discretion to first book the arrested person into jail before being released on citation. Penal Code § 853.6. SCSO Policy 411 allows booking prior to release on citation when it is not "feasible or desirable" to release the person in the field.

The record shows deputies were presented with a citizen's arrest request by a party protected by the restraining order, and that the citizen arrest request was supported by probable cause. The deputies were initially intending to issue a citation at the scene but when the complainant became aggressive and challenged the deputies to take them to jail, the deputies reasonably concluded that release on citation in the field was not "desirable" because the conduct was likely to continue or escalate. Accordingly, we **AGREE** that a preponderance of the evidence shows that the deputies' decision to arrest complainant and to book complainant into jail before being released on citation complied with SCSO Policy, and the deputies should be **EXONERATED**.

The record also shows that the only force used was holding on to complainant's arms while handcuffs were applied. There is no evidence that the handcuffs were improperly applied or tightened, and deputies explained to complainant how to place them in an alcove in the seat to accommodate them. The deputies also did not provide *Miranda* warnings, but the BWC video shows that no custodial interrogation was conducted of the complainant and therefore no *Miranda* warnings were required. The record further shows that a deputy entered complainant's home to retrieve a wallet and keys to be brought with complainant to the jail at her request. The BWC video shows the deputy did not search any portion of the home,

## IOLERO's Conclusion

confined their action solely to retrieving the identified personal property, and reasonably believed complainant gave permission to enter the home to retrieve the requested items. The deputies also conducted an inventory of the wallet in accordance with SCSO procedures. Throughout the incident deputies were courteous, polite, spoke in measured tones, sought to calm complainant and at one point "begged" complainant to cooperate.

Accordingly we **AGREE** with SCSO that a preponderance of the evidence shows that deputies acted within law and policy during the arrest process and the deputies should be **EXONERATED** on the claims of Use of Force, On-Scene Arrest Practices, and Discourtesy/Conduct Unbecoming. We also conclude that the finding on the claim of failing to provide *Miranda* warnings should be **EXONERATED** rather than **UNFOUNDED** as determined by SCSO.

The record also shows that the officer accused by complainant as directing the arrest was not on duty at that time, and that complainant was placed under arrest prior to the deputies' communications with Dispatch. Accordingly, we **AGREE** with SCSO that this claim was **UNFOUNDED**.

Finally, while SCSO did not review it directly, we addressed the issue that underlay complainant's allegations: that government agencies, including SCSO, had favored the other party over the complainant in their years-long disputes and complainant believed this same favoritism was the basis of the deputies' actions in this case.

The record showed that the deputies' did not simply defer to the other party's request. The deputies made clear to the other party that the deputies were enforcing a court-issued order, that complainant had a restraining order against them as well, and that the deputies would enforce that other order if the other party violated it. The record shows no evidence the deputies based the decision to make the arrest on anything other than the probable cause and a determination that complainant was likely to continue the violation. Accordingly, we conclude that there was no evidence supporting complainant's broader suggestion that the deputies were motivated by any favoritism.

### **IOLERO's Recommendations**

While the record showed the deputy's understanding that they had the complainant's consent to enter the home to retrieve a wallet and key was reasonable, IOLERO recommended as a best practice that deputies specifically document consent on their BWC video to eliminate any doubts.



<b>Case Number</b> <b>22-C-0015</b>	<b>CITIZEN COMPLAINT NO. 6</b> <b>IMPROPER PROCEDURE/NEGLECT OF DUTY/DISCOURTESY/</b> <b>CONDUCT UNBECOMING</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	White
<b>Allegations in the Complaint</b>	<p>A deputy responded to the complainant's call for service claiming trespass and excessive noise by their neighbor. The deputy arrived, contacted the neighbor, and concluded the property in question was a common area open to all tenants and therefore there was no trespass by the neighbor's children. The neighbor admitted having music on earlier but the music was off when the deputy arrived. As the deputy was leaving, the complainant came outside and the deputy spoke with complainant and their spouse, explaining that the property in question was common area open to the various tenants and thus there was no trespassing. The deputy further informed complainant that they should discuss the matter with their landlord.</p> <p>The complainant alleged that the deputy failed to investigate the neighbor's open carry of a handgun during the incident, that the deputy granted the neighbors permission to go anywhere on complainant's property, and that the deputy told the neighbors there was no noise ordinance. Complainant asserted they felt like a prisoner in their own home and had to get their own restraining order against the neighbor, and that the deputy's response to their call for service was "unbelievable".</p> <p>The complainant alleged conduct unbecoming, improper procedure, discourtesy and neglect of duty.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed the complaint, the Dispatch records of the call for service, and the deputy's Body Worn Camera video. SCSO also left a telephone message for complainant but did not receive a return call.</p> <p>SCSO concluded that there was no evidence that the deputy engaged in conduct unbecoming or discourtesy and <b>EXONERATED</b> the deputy on these claims.</p> <p>SCSO interpreted the "Improper Procedure" claim as referring to the allegation that the deputy did not investigate the trespass or the open carrying of a handgun. SCSO concluded that the trespass claim was made against a person under 14 years of age who lacked capacity to commit a trespass, and that California law allowed open carry of a handgun by a tenant on their rented residential property. Accordingly SCSO <b>EXONERATED</b> the deputy on this claim.</p> <p>For neglect of duty, SCSO interpreted this as a claim that the deputy began to leave before speaking with the complainant, and the deputy did not identify their name or leave a card. SCSO found that the deputy did not leave the property before speaking with the complainant and the deputy provided their name earlier to the neighbor. Accordingly SCSO <b>EXONERATED</b> the deputy on this claim.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO <b>AGREES</b> with SCSO's findings.</p> <p>SCSO reviewed the complaint, the Dispatch records of the call for service, and the deputy's Body Worn Camera video. SCSO also left a telephone message for complainant but did not receive a return call. The resulting record was sufficient to properly evaluate the complainant's allegations and therefore was <b>COMPLETE</b>.</p> <p>California Penal Code § 602(k) makes it a misdemeanor to trespass by entering lands for the purpose of interfering with the rights of the landowner or person in lawful possession. Persons under age 14 are generally not capable of criminal acts unless the child knew the wrongfulness of the act.</p>

Sonoma County does not have a specific noise regulation. Instead excessive noise may be a disturbance of the peace and is classified as a public nuisance under County Code § 4-104. SCSO Policy 428 provides deputies discretion to enforce an unabated excessive noise nuisance, and if the deputy chooses to enforce the deputy should provide the person with a written notice that they could be held responsible for costs for future calls about the nuisance.

California Penal Code § 25400 generally prohibits carrying a concealed handgun but a handgun carried openly in a holster is not considered "concealed". California Penal Code § 25605(a) allows persons over age 18 to carry a handgun either openly or concealed anywhere within that person's place of residence or on private property lawfully possessed by that person without any permit or license.

SCSO Policy 400 also specifies that when conducting an investigation deputies shall at a minimum make a preliminary determination of whether a crime has been committed by speaking with witnesses or the complainant, and conducting a cursory examination of the evidence. Where the deputy determines no crime occurred, the deputy should determine what other course of action is available and inform the complainant.

The record shows that there was insufficient evidence that complainant had lawful possession of any specific common areas and thus there was no evidence of a trespass. We **AGREE** with SCSO that a preponderance of the evidence shows the deputy properly investigated the trespass claim under SCSO Policy and that the deputy should be **EXONERATED** on this claim.

The record also shows that while the neighbor had been playing music earlier, the music had stopped when the deputy arrived. SCSO Policy 428 provides deputies with discretion to enforce a disturbance of the peace under County Code § 4-104 by issuing a notice. Because there was no on-going noise that would constitute a disturbance of the peace, the deputy's exercise of discretion to not issue a notice was reasonable. Accordingly we **AGREE** with SCSO that the deputy properly investigated the disturbing the peace matter under SCSO Policy and that the deputy should be **EXONERATED** on this claim.

The record also shows that after arriving on scene the neighbor informed the deputy they were openly carrying a handgun on a waist holster. The deputy advised the neighbor that carrying the handgun could be misconstrued by others, admonished the neighbor to be careful and included a warning to not carry the weapon in any vehicle. The complainant alleged that the deputy should have checked the firearm and/or the neighbor. However, there was no evidence giving rise to a reasonable suspicion that the handgun possession was illegal and it is not clear the deputy could have seized the weapon for this purpose. The deputy might have run a background check on the neighbor but there was no evidence of illegality and doing so might have unduly exacerbated the situation. The complainant's subjective expectation as a member of the general public that the firearm or background would be checked is understandable, but the deputy's decision to not run a background check was within the deputy's discretion under law and SCSO Policy 100 and 420

Accordingly we **AGREE** with SCSO that the deputy properly responded to the open carry of the handgun under SCSO Policy and that the deputy should be **EXONERATED** on this claim.

The record shows that the deputy never told the neighbor that they could go anywhere on complainant's property or left complainant with "no recourse" as alleged. The deputy did not provide law enforcement recourse but the deputy advised the complainant to address the matter with the landlord.

The deputy did start to leave without speaking to the complainants as alleged. But the record shows the deputy intended from the outset to inform the neighbor about the complaint and leave. Because the matter involved loud music and children running around outside the deputy's intended response was not unreasonable. The complainant was entitled to call the deputy back and speak with the deputy but the deputy's response does not reflect improper procedure or neglect of duty.

The deputy also did not provide the complainant their name or a business card, as alleged. However, the complainant never asked for the deputy's name or card. The record shows that the deputy provided his name to the neighbor's children earlier, and there is no evidence that the deputy would not have provided their name to the complainant had they asked.

The complainant stated they felt like a prisoner in their own home. The record shows that the deputy explained their conclusions and recommendations and complainant expressed satisfaction with the deputy's explanations at that time. The complainant's subsequent frustration with the result of the deputy's response appears to be the product of the limited options available to the deputy under existing law and/or subsequent events that arose between the complainant and the neighbor.

Accordingly we **AGREE** with SCSO that the deputy's response complied with SCSO Policy and the deputy did not engage in discourtesy, conduct unbecoming, neglect of duty, or improper policy or procedure, and that the deputy should be **EXONERATED** on these claims.

#### **IOLERO's Recommendations**

IOLERO did not make any formal recommendations in connection with this Audit.



<b>Case Number 21-C-0017</b>	<b>CITIZEN COMPLAINT NO. 7 CONDUCT UNBECOMING/RACIAL PROFILING</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Possibly Hispanic
<b>Allegations in the Complaint</b>	<p>Complainant's dogs ran onto the neighbor's property. The neighbor was an off-duty SCSO deputy. When someone from the complainant's house retrieved the dog, the deputy told them the dog was constantly coming onto the property and defecating, and that they needed to gain control of the pets.</p> <p>Complainant alleged that the deputy yelled at and otherwise degraded complainant and threatened to take their dogs. Complainant claimed they feared for the dogs' safety and alleged the deputy engaged in racial profiling. Complainant later stated in a follow up email to SCSO that the deputy called animal control in retaliation for Complainant having filed a complaint. Complainant also broadly alleged that law enforcement were "power abusing snobs" who engaged in "disgusting behavior".</p> <p>The complainant alleged conduct unbecoming, racial profiling, and retaliation.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed the complaint and interviewed the deputy. SCSO also attempted seven times to arrange a meeting with the Complainant, including visiting Complainant's home. Complainant ultimately declined to meet with SCSO. SCSO also reviewed the deputy's home security video which captured the incident and reviewed animal control records.</p> <p>SCSO found that the incident was a minor neighbor dispute in which the deputy expressed frustration with the dog coming onto the property and used some profanity, but the deputy did not make insulting or aggressive comments to Complainant. The deputy was not in uniform and did not identify any relationship to SCSO. Accordingly, SCSO determined that the deputy's conduct did not bring discredit upon SCSO. SCSO also concluded that the deputy's domestic partner, not the deputy, later called animal control when the dogs were again running loose which that person had the legal right to do. Accordingly SCSO concluded that the deputy should be <b>EXONERATED</b> on the claim of conduct unbecoming.</p> <p>SCSO also found no evidence of racial profiling and concluded that this allegation was <b>UNFOUNDED</b>.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO <b>AGREES</b> with SCSO's findings.</p> <p>SCSO reviewed relevant records, SCSO policy, surveillance video, and interviewed the deputy. SCSO also sought unsuccessfully on seven occasions to arrange a meeting with the complainant and the complainant eventually declined to participate in the investigation. While we <b>NOTED</b> procedural defects in how the record was memorialized, the resulting record was nevertheless sufficient to evaluate the complainant's allegations and therefore was <b>COMPLETE</b>.</p> <p>Under SCSO Policy 320.5.2, SCSO members may be sanctioned for disclosing one's relationship to SCSO in a way that could "reasonably be perceived as an attempt to gain influence or authority for non-office business or activity".</p>

SCSO Policy 320.5.3 and 320.5.9 prohibit deputies from discriminating against any person on the basis of race, from being "discourteous" or "disrespectful" to the public or engaging in "disgraceful" conduct, and from engaging in on- or off-duty conduct that is unbecoming a member of SCSO.

SCSO Policy 1010 also prohibits a deputy from retaliating against a member of the public for having made a complaint against the deputy.

The record shows that two of complainant's dogs ran onto the deputy's driveway startling the deputy's young child and causing the deputy's dog to chase the others away. Complainant's dog then entered the deputy's garage. When a person retrieved the dog from the garage the deputy stated that the dogs needed to be controlled or he would have to contact animal control. The deputy showed frustration but never yelled.

The deputy was dressed in civilian clothing and never disclosed the SCSO affiliation or identified as a deputy, and there is no basis for a person to reasonably perceive the deputy was attempting to gain influence by the SCSO affiliation. The record also shows no evidence of racial bias or profiling by the deputy; the incident is based solely on the actions of the loose dogs. The deputy did use profanity twice when describing the dog problem, but it is clear from the record that the profanity was the result of frustration with the dogs and was not directed personally at complainant or anyone else.

In short, the deputy did not state anything that could objectively be characterized as rude, belittling, hostile or aggressive toward complainant. It is understandable that complainant felt overwhelmed by the events but the record shows no evidence of conduct unbecoming as characterized by complainant.

Finally, the record shows that the deputy's domestic partner reported complainant's dogs running loose several weeks after the incident. There was no dispute that there was a history of complainant's dogs running loose and the domestic partner had a facially legitimate reason to contact animal control. There was no evidence that contacting animal control was directly or indirectly motivated by an intent to retaliate and the deputy had been previously advised to stay out of direct contact with complainant and let animal control handle the issue.

Accordingly, we **AGREE** with SCSO that the preponderance of the evidence shows that the deputy should be **EXONERATED** on the claim of conduct unbecoming and retaliation.

We also **AGREE** that the preponderance of the evidence shows that the claim of racial profiling was **UNFOUNDED**.

IOLERO did **NOTE** that SCSO advised the deputy to refrain from engaging with the complainant and to contact animal control, but that this advice was not formally documented. In addition, the deputy was not interviewed a second time regarding the retaliation claim which arose after the first interview. Claims of retaliation are serious and SCSO has zero tolerance for such conduct under Policy 1010. SCSO's advice that the deputy contact animal control and not engage further with the complainant is important in assessing whether the deputy acted with retaliatory motive. Generally all interviews should be recorded and documented and follow up interviews conducted when additional facts or events occur.

### **IOLERO's Recommendations**

IOLERO recommended that (1) SCSO ensure the entire investigatory record be completely and formally memorialized, including any instructions by SCSO to the deputy (2) a second interview be held when facts arise after the first interview has concluded and (3) investigative reports provide express written analyses of each issue raised as part of the findings and conclusions.

<b>Case Number 22-C-0010</b>	<b>CITIZEN COMPLAINT NO. 8 NEGLECT OF DUTY</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainants</b>	White
<b>Allegations in the Complaint</b>	<p>Members of the SCSO appeared in campaign photos wearing uniforms identical to SCSO uniforms, except that the name of the agency was redacted. Complainants alleged these appearances in uniform for campaign purposes violated California law, Sonoma County Code, and SCSO Policy 1024.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed the complaint and interviewed the incumbent Sheriff as to application of the relevant policies. SCSO did not interview the SCSO members who appeared in the campaign photos, or other persons involved in creating the photos.</p> <p>SCSO concluded that the Sheriff gave implied permission to SCSO members to use SCSO uniforms in this manner, such that the members should be <b>EXONERATED</b>.</p> <p>SCSO also found that the purpose of limiting uniform use to on-duty time is to prevent the public from mistakenly seeking assistance from an off-duty officer in uniform. Because the context of the photos showed no risk that the public would seek assistance from the SCSO members, they should be <b>EXONERATED</b>.</p> <p>Finally, SCSO found that claims of deputies not covering their uniforms while attending campaign events lacked information as to time and date, and SCSO did not find any instances of such conduct. Accordingly SCSO determined the claim to be <b>UNFOUNDED</b>.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO <b>DISAGREES</b> with SCSO's findings.</p> <p>First, SCSO had a <b>CONFLICT OF INTEREST</b>. The investigator was subordinate to members under investigation and the incumbent Sheriff who was a material party. This created an actual conflict and required referral of the complaints to a third party. See SCSO Policy 1010.</p> <p>IOLERO also had a potential or apparent conflict of interest. One of the complainants was a member of the Community Advisory Council (CAC). While the CAC has no authority or role in IOLERO's investigative or auditing function, the CAC is administratively supported by IOLERO, thereby creating the potential or appearance of a conflict of interest for IOLERO's investigation or review of that claim.</p> <p>Second, to the extent SCSO reviewed the merits of the claims, IOLERO concludes that the investigation and analysis was <b>INCOMPLETE</b> and therefore does not support SCSO's conclusions.</p> <p>The federal Hatch Act, 5 U.S.C. §§ 1501 <i>et seq.</i> prohibits federal, state and local government employees from using the influence of their employment to affect the result of any election. Among other things, this includes a bar against law enforcement officers wearing their uniforms while campaigning for office or in campaign advertisements. Law enforcement officers may reference their employment title in a resume but not in campaign materials.</p> <p>California's Government Code §§ 3201 <i>et seq.</i> mirrors the Hatch Act and provides that no officer or employee of any local agency shall participate in political activities of any kind while in uniform.</p>



ISCSO's further regulates use of uniforms. Policy 1024 provides that uniforms are provided by SCSO and identify the deputy as a law enforcement authority. They are to be worn on-duty or in court, at official SCSO functions, or while in transit to/from work (but should be covered with an outer garment while off-duty). SCSO Policy also prohibits any deputy or SCSO member from wearing or being photographed wearing “any part of the uniform”, including the badge or other official insignia, in connection with a political campaign “unless specifically authorized by the Sheriff”. (Policy 1024.6).

Thus, the Hatch Act and California law broadly prohibit a government employee from participating in political activities while in uniform. Neither of these statutes, nor the interpretations provided by the U.S. Office of Special Counsel charged with enforcing the Hatch Act, allow an incumbent Sheriff to waive the restrictions. To the extent SCSO Policy allows the Sheriff to issue such a waiver, it is facially inconsistent with governing law. Even if the Sheriff could grant a waiver, Policy requires “specific” or “expressed” authorization, which is inconsistent with SCSO's conclusion that the Sheriff only implicitly granted a waiver.

SCSO did not review these authorities or address these (and other) issues.

SCSO provided only limited interpretations without any supporting basis, and did not interview the SCSO members in the photographs, or any other persons, concerning the time, place, manner and circumstances under which the photos were taken, all of which are relevant to the legal issues raised under the Hatch Act, California law and SCSO Policy.

SCSO's findings relied heavily on the Sheriff's identifying a custom and practice of campaigning in uniform as long as indicia of affiliation with the specific agency was blurred (*i.e.*, the name “Sonoma County” or the California flag). This custom and practice does appear to be widespread among local law enforcement agencies. The SCSO members – while not interviewed by SCSO - appear to have relied on this custom in good faith and without intent to violate any rules. However, the governing legal authorities do not appear to support such a custom or practice, and further and more complete investigation of this issue was required to ascertain if these members actually relied on this custom. Moreover, the SCSO investigation should have assessed whether SCSO policy should be revised, since the custom is inconsistent with law.

Accordingly, IOLERO **DISAGREES** that the limited investigation and analysis conducted by SCSO supports the findings **EXONERATING** the SCSO members' appearance in uniform for campaign purposes.

### **IOLERO's Recommendations**

IOLERO made two recommendations.

1. SCSO should review and amend Policy 1010 to provide more detailed guidance as to when a conflict of interest arises how such a case would be referred to a third party for review. IOLERO will conduct the same review of its procedures.
2. Based on the facial requirements of existing law, SCSO should amend its Policy to clearly bar use of uniforms by any employee in any political activity without exemption.

<b>Case Number</b> <b>22-C-0001</b>	<b>CITIZEN COMPLAINT NO. 9</b> <b>CONDUCT UNBECOMING</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainants</b>	Unknown
<b>Allegations in the Complaint</b>	<p>Sheriff Mark Essick posted on the official SCSO Facebook page a response to a Facebook posting by former IOLERO Director Jerry Threet commenting on an SCSO officer in relation to a political campaign, which the Sheriff interpreted as race-based. It should be noted that neither then-Sheriff Essick nor former-Director Threet possess a right of confidentiality in this matter, as do SCSO deputies and complainants in this and other audits, so both men are named here.</p> <p>Complainants, one of which was on the Community Advisory Council (CAC), alleged the Sheriff's posting constituted an improper campaign endorsement using County assets and was inflammatory, in violation of County and SCSO Policy.</p> <p>This incident was the subject of significant public press coverage.</p>
<b>SCSO Conclusion</b>	<p>SCSO's analysis relied entirely on the complaints, and research into legal principles, social media, and historical racial references. No interviews were conducted.</p> <p>SCSO concluded that Mr. Threet was a public figure, the post was not private, and that the Sheriff perceived the post as racially biased. Accordingly, SCSO concluded the Sheriff was within policy to comment on the racial component of the post and this did not constitute a campaign endorsement. SCSO further concluded that the Sheriff's posting did not compromise or damage the mission of SCSO. Accordingly SCSO concluded the finding should be <b>EXONERATED</b>.</p>
<b>IOLERO's Conclusion</b>	<p>SCSO had a <b>CONFLICT OF INTEREST</b>. The investigator was subordinate to the Sheriff who was under investigation. This created an actual conflict and required referral of the complaints to a third party. <i>See</i> SCSO Policy 1010. IOLERO also had the appearance of a conflict of interest. One of the complainants was the Community Advisory Council (CAC) submitted as part of a publicly adopted Resolution. While the CAC has no authority or role in IOLERO's investigative or auditing function, the CAC is administratively supported by IOLERO, thereby creating a conflict of interest for IOLERO's investigation or review of that claim.</p> <p>To the extent SCSO reviewed the issues, IOLERO agrees that the Sheriff's posting did not constitute an endorsement of a political candidate. The Sheriff's posting responded to a perceived racial bias in Mr. Threet's post which referenced the SCSO member's race and a well-known historical literary reference to race identity. That Mr. Threet made the racial comment as part of his own messaging as a public figure did not prevent the Sheriff from stating SCSO's view as to the racial component of the message as it concerned an SCSO employee, nor did this convert the Sheriff's response into a political endorsement. The Sheriff's response was limited to the racial component and it did not reference or address any other aspect of any campaign</p>

However, IOLERO also concludes that to the extent it made personal attacks against Mr. Threet, the Sheriff’s posting was inflammatory in violation of County and SCSO Policy. SCSO’s finding that the Sheriff has a First Amendment right of Free Speech is the correct first step in this analysis, but it does not address the otherwise valid restrictions imposed on the speech of public employees or officials to the extent such speech undermines the agency’s mission. For example, the First Amendment does not create a blanket right for county employees or officials to use County resources to publish inflammatory statements. The Sheriff had authority to address the racial issue on behalf of SCSO, but any comments beyond that should not have been aired on the official SCSO page.

**IOLERO’s  
Recommendations**

IOLERO recommended that SCSO review and provide more detailed guidance as to when a conflict of interest arises how such a case would be referred to a third party for review. IOLERO will also review its own policies in this regard.



## USE OF FORCE

<b>Case Number</b> 22-C-0012	<b>CITIZEN COMPLAINT NO. 1</b> <b>USE OF FORCE; CONDUCT UNBECOMING; DISCOURTESY</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Possibly Hispanic
<b>Allegations in the Complaint</b>	<p>Complainant was a defendant attending a criminal hearing at the superior court and walked out of the courtroom against the directive of the judge to remain present. A deputy assigned to courtroom security followed complainant into the courthouse hallway and used a controlled physical takedown to arrest complainant. The complainant was then placed into handcuffs by several additional deputies, taken back into the courtroom and transferred to the Main Adult Detention Facility (MADF). Complainant sustained a cut above an eye.</p> <p>Complainant alleged that deputies slammed his head into the floor after he was on the ground resulting in the cut to his face, that deputies were discourteous, that they exceed authority to make the arrest, and that they engaged in conduct unbecoming.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed Body Worn Camera video of the four deputies involved in apprehending the complainant, the complainant's medical record, minutes of the court hearing and the arrest report concerning complainant's flight. SCSO also interviewed three deputies involved in the apprehension and unsuccessfully sought multiple times to contact complainant for an interview.</p> <p>SCSO found that complainant fled following the court's remand order, did not comply with the deputy's order to get on the ground, and turned to face the deputy in a manner the deputy perceived as preparing to fight. The complainant was physically larger than the deputy, and SCSO concluded that the deputy's use of a physical takedown was consistent with SCSO Policy and training. Accordingly SCSO concluded that the deputy should be <b>EXONERATED</b> on the use of force.</p> <p>SCSO also found that the deputy used profanity when ordering complainant to get on the ground but this was limited to the command to stop running. The complainant was then taken back into the courtroom and later to a side remand room where he received medical care. Accordingly SCSO determined there was no evidence of any deputy being discourteous to complainant and concluded that the deputy should be <b>EXONERATED</b>.</p> <p>SCSO also found that the deputy had authority to arrest complainant on the court's order remanding complainant into custody, and that the deputies did not engage in any conduct that brought discredit upon SCSO. Accordingly, SCSO concluded that the claims of improper procedure and conduct unbecoming were <b>UNFOUNDED</b>.</p>
<b>IOLERO's Conclusion</b>	<p>SCSO reviewed relevant BWC video, court records, medical and arrest records and interviewed the involved deputies. SCSO also sought multiple times to interview complainant without success. The investigative record was sufficient to properly evaluate complainant's allegations and the investigation was <b>COMPLETE</b>.</p> <p>IOLERO <b>AGREES</b> with SCSO's findings.</p>

The 4<sup>th</sup> Amendment, California law, and SCSO Policy all require force used by law enforcement to effect an arrest be "objectively reasonable". Reasonableness is viewed from the perspective of the officer at the scene, taking into account the totality of facts known to that officer at that time. Use of force should be reviewed in a manner that reflects the gravity of that authority, and should be proportional to the seriousness of the suspected offense. California law and SCSO Policy also require deputies to consider de-escalation options when reasonably feasible.

SCSO requires training in California Peace Officer Standards and Training (POST) use of force techniques for arrest and control. Among these techniques is a "takedown" which is intended to take a person to the ground to diffuse a situation, achieve control of the person, and reduce the person's ability to attack. Considerations in using a physical takedown include immediate threat to the deputy and others, the person's display of aggressiveness, and the need for control under the circumstances. "Mechanics" of a takedown should include controlling the force used and employing the proper technique.

SCSO is responsible for providing security to the superior court through deputies serving as bailiffs. When serving as a bailiff, the deputy retains the same law enforcement authority as when they are on patrol. SCSO Policies do not specifically outline a bailiff's duties, but SCSO's website notes that its Court Security Bureau is responsible for court security, including effecting arrests and remands.

The record shows that the judge ordered complainant to stop and remanded complainant into custody, but complainant fled the courtroom. Based on the judge's order, the deputy had probable cause to arrest complainant. Accordingly, we **AGREE** with SCSO that a preponderance of the evidence shows the deputy complied with law and SCSO Policy in arresting complainant. However, we believe the appropriate finding should be **EXONERATED** rather than **UNFOUNDED** and we further believe the **EXONERATED** finding should apply to all deputies who assisted in apprehending the complainant.

The record also shows that complainant complied with the deputy's order to stop running, but did not comply with the order to get on the ground and instead turned to the deputy with arms out to his side which could reasonably be interpreted as positioning into a fighting or fleeing stance. The record further shows that the takedown was controlled, complied with the general POST principles, and the deputy explained he used his own body weight as trained by SCSO which is corroborated by the BWC video. Accordingly, the force used by the deputy was objectively minimal and proportional to the suspected offense under these circumstances.

SCSO did not specifically address the use of de-escalation techniques. Based on our review of the record, further de-escalation was not reasonably feasible. Complainant had fled a lawful court order, did not comply with deputy commands to get on the ground and assumed what could reasonably be perceived as a fighting/running stance, was significantly larger in physical build than the deputy, and was in a courthouse hallway open to the general public. Immediate use of a physical take down was objectively reasonable.

	<p>The complainant alleged that he sustained a cut when a deputy slammed his head to the ground. A careful review of BWC videos show that the injury would have occurred during a 2-3 second period, and that no physical movements by a deputy are observed during this time suggesting complainant's head was specifically slammed into the floor (either intentionally or inadvertently) as complainant alleged. Rather, the BWC videos show that it is highly likely that the cut resulted when deputies pulled complainant's arms to his back for handcuffing during which time his head struck the floor.</p> <p>Accordingly, we <b>AGREE</b> with SCSO that a preponderance of the evidence shows that the deputy's use of force to arrest the complainant complied with law and policy and that the finding should be <b>EXONERATED</b>. However, we further conclude that the finding should apply to all deputies involved in the arrest.</p> <p>The record also shows that the arrest complainant was taken into the courtroom and then into a side remand room where he received immediate medical attention for the cut. There is no evidence in the record suggesting any deputy's actions or statements were discourteous or improper. Accordingly we <b>AGREE</b> with SCSO that a preponderance of the evidence shows the deputies actions were not discourteous and did not constitute conduct unbecoming and that the deputies should be <b>EXONERATED</b> on these claims.</p>
<b>IOLERO's Recommendations</b>	IOLERO made no formal recommendations in this matter.

## ENCOUNTERS WITH HOMELESS PERSONS

<b>Case Number</b> 21-C-0012	<b>CITIZEN COMPLAINT NO. 1</b> <b>CONDUCT UNBECOMING; DISCOURTESY</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	White
<b>Allegations in the Complaint</b>	Complainant alleged they were contacted by a deputy in their non-mechanized trailer that was parked on a county road. The deputy allegedly broke a window on the trailer door, threatened that the trailer would be towed and their dogs placed in an animal shelter unless they moved the trailer, and did not provide homeless information to them as required by policy. Accordingly the complainant alleged the deputy was discourteous, engaged in conduct unbecoming, and violated SCSO policy concerning contacts with homeless persons.

### SCSO Conclusion

SCSO reviewed Body Worn Camera video of the deputy's contact which lasted about 2 minutes. The BWC shows that the deputy knocked on the door and explained to the occupants that the trailer had been tagged by CHP for removal and asked how they would tow it. After the complainant stated that a friend was coming to tow them, the deputy stated that if he came back the next day the trailer would be towed and the dogs (if unlicensed) would be impounded.

SCSO found that BWC video showed the door window was already broken with the deputy approached and therefore the claim of property damage was **UNFOUNDED**.

SCSO also found that the deputy spoke direct and to the point which may be a delivery style to gain compliance, but was not discourteous or rude and therefore found this claim **NOT SUSTAINED**.

Finally, SCSO found that the California Highway Patrol (CHP), not SCSO, gave the order to complainant to vacate and SCSO policy does not specify whether a deputy must provide materials to homeless persons when following up on another agency's order to vacate, and thus concluded the deputy was **EXONERATED** under SCSO homeless policy.

### IOLERO's Conclusion

The facts underlying the complaint were fully documented in the BWC footage of the deputy's field contact with the complainant and are not in dispute. The only issue to be resolved was whether the deputy's undisputed actions complied with SCSO Policy. Accordingly this record was sufficient to properly evaluate complainant's allegations and the investigation was **COMPLETE**.

Property Damage: IOLERO **AGREES** with SCSO's finding that the property damage claim was **UNFOUNDED**. The BWC clearly shows the door window was already broken when the deputy arrived.

Discourtesy / Conduct Unbecoming: IOLERO also **AGREES** that the deputy was not discourteous and did not engage in conduct unbecoming as those terms are used in SCSO Policy and should be **EXONERATED**.

Sonoma County Ordinance § 18-3 and California Vehicle Code § 22651(k) provide for the CHP to tag for removal a vehicle parked on a county road for more than 72 consecutive hours. Under SCSO Policy 507, traffic enforcement on county roads is left to the CHP which is responsible for marking vehicles parked past the 72 hour limit; SCSO is responsible for towing the vehicle when the CHP notice expires



The CHP provided complainant a notice to move the trailer which expired the day after the deputy's contact with complainant. SCSO has no authority to review whether the CHP provided notices to the complainant that may be required under the court decision in Martin v. Boise, 930 F.3d 584 (9<sup>th</sup> Cir. 2019) (homeless persons cannot be criminally prosecuted for their homeless status).

The record shows the deputy followed Policy 507 in warning the complainant that the trailer was subject to tow due to the CHP's prior notice. In doing so, the deputy engaged in a rigid business-like approach that revealed some impatience and left no room for doubt as to what would happen if the trailer was not moved. However, the deputy did not raise his voice, did not use any profanity, did not verbally attack complainants, and did not make any inaccurate statements. "Conduct unbecoming" denotes actions that a deputy would reasonably understand is inconsistent with their core duties as a peace officer and prevents them from carrying out those duties. The deputy's statements here were curt and abrupt, but they did amount to discourtesy or conduct unbecoming as reflected in SCSO Policy.

In this regard, the complainant's characterization of the deputy's actions do not accurately reflect what occurred. For example, the deputy never asked "what the hell are you doing here", never said they were "tired of this", never stated they did not care where the complainant went, the complainant never asked the deputy for a referral for services, and the deputy did not "tower" over the complainant. The BWC video shows that none of these actions, as characterized by the complaint, occurred.

Accordingly, we **AGREE** that the deputy did not engage in conduct unbecoming or discourtesy. However, because the evidence shows it more likely than not that the deputy's actions complied with policy, the appropriate finding should be **EXONERATED** rather than **NOT SUSTAINED** as stated by SCSO.

Policy 431 Homeless Person Contacts. IOLERO **DISAGREES** with SCSO that the deputy complied with SCSO Policy 431 concerning contacts with homeless persons, and instead concludes that the deputy **LIKELY VIOLATED POLICY**.

Policy 431 specifically addressed deputy contacts with homeless persons, with a stated goal of protecting the "dignity" of homeless persons. The policy "encourages" deputies to refer homeless persons to resources and to provide an SCSO or County outreach guide when "reasonably apparent that such services may be appropriate".

The deputy's terseness did not rise to the level of conduct unbecoming or discourtesy, but it contradicts Policy 431's facial commitment to protect dignity and to account for the "special protection and services" needed by homeless persons. Informing the complainant the trailer would be towed could have been conveyed in less blunt or terse manner and Policy 431 provides that the deputy should have done so. Providing homeless brochures is not mandatory under Policy 431. But not providing them where it is reasonably apparent that such services are appropriate is at odds with even the permissive language of Policy 431 and no reason was identified for why none was provided. That the deputy was following up on the CHP's prior notice does not relieve the deputy of his direct duties under Policy 431 which requires information be provided by the deputy during "all contacts" with homeless persons "whether consensual or for enforcement purposes".

Accordingly, we **DISAGREE** with SCSO and conclude that with respect to Policy 431 the record shows the deputy more likely than not violated policy and that this specific portion of the claim should have been **SUSTAINED**.



<p><b>IOLERO's Recommendations</b></p>	<p>IOLERO made no formal recommendations in this matter.</p> <p>However, IOLERO <b>NOTED</b> that SCSO's investigation was completed after the time to impose discipline under Gov't Code § 3304 had expired. The violation identified by IOLERO would likely have been subject to counseling or admonishment. IOLERO requested as a general matter that SCSO complete their investigations before expiration of the § 3304 deadline.</p>
<p><b>Case Number</b> 22-C-0005</p>	<p align="center"><b>CITIZEN COMPLAINT NO. 2</b> <b>CONSTITUTIONAL ISSUES; CONDUCT UNBECOMING</b></p>
<p><b>Origin of Complaint</b></p>	<p>IOLERO</p>
<p><b>Race/Ethnicity of Complainant</b></p>	<p>Unknown</p>
<p><b>Allegations in the Complaint</b></p>	<p>Complainant, a homeless person, alleged several deputies' failed to provide notices to vacate, showed a lack of respect for their human rights, and did not identify alternative shelter in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution. Although alleging such actions were "constant" and occurred on an "almost daily basis" the complainant focused on four alleged contacts with SCSO officers.</p>
<p><b>SCSO Conclusion</b></p>	<p>SCSO interviewed two of the identified officers regarding the claims. Both were familiar with the complainant. The third officer was not interviewed as they had retired and moved out of state. SCSO searched for records for the alleged incidents including BWC video files but none were found. SCSO did not interview the complainant.</p> <p>SCSO found with respect to one alleged encounter that the complainant's own allegation that they were directed to move because they were within 150 of a waterway was required under California Game &amp; Fish Code and was therefore compliant with Policy. SCSO <b>EXONERATED</b> the officer on this claim.</p> <p>On the second encounter, SCSO found that a week prior the officer had warned the complainant as the officer drove by in their patrol vehicle that complainant had been parked on the public street too long and that they needed to clean their property from the sidewalk. SCSO found that because the officer neither ordered complainant to leave nor threatened arrest, the officer complied with policy and should be <b>EXONERATED</b>.</p> <p>On the third claim, an officer allegedly contacted the complainant based on a call for service from a third party. SCSO found that an officer is obligated to investigate a call for service and contacting the complainant to conduct such investigation was legitimate and complied with policy and the officer should be <b>EXONERATED</b>.</p> <p>Finally, SCSO found the complainant did not provide sufficient information to identify the fourth encounter in which the complainant allegedly had to sit on the bumper of the vehicle and was told not to park along a certain road. Accordingly, SCSO concluded this allegation was <b>UNFOUNDED</b>.</p>

### IOLERO's Conclusion

IOLERO **AGREES** with SCSO's findings.

The complainant's allegations (submitted through an attorney) largely lacked detail such as dates and locations. Generally interviewing the complainant is best practice, especially where it would provide clarity to factual issues left open by the complaint's allegations. However, in this case the complaint was submitted by an attorney on behalf of the complainant and it was primarily based on application of legal principles to a defined set of facts. Accordingly, while interviewing the complainant would have been a better practice, the lack of interview in the specific circumstances of this case did not prevent SCSO from properly evaluating the claims. Accordingly the investigation was **COMPLETE**.

In evaluating SCSO's findings IOLERO reviewed the broader legal issues involved. The decision in Martin v. Boise, 920 F.3d 584 (9<sup>th</sup> Cir. 2019) held that criminalizing homeless persons for the bare act of living in public when there was no other shelter available violated the Eighth and Fourteenth Amendments. The holding was narrow and did not require a jurisdiction to allow persons to sit, lie or sleep in public "at any time and any place".

SCSO Policy 431 specifically regulates officer contacts with homeless persons, and includes a requirement that public areas occupied by homeless persons remain open to public access in general and that public places remain clean and sanitary and accessible for their intended uses.

Applying the constitutional and SCSO policy principles to the complainant's allegations, an officer may legitimately warn a person to not camp within 150 feet of a waterway in compliance with state law. An officer may further warn a person they have parked in a public spot past the lawful time limit and needed to remove property from obstructing a public sidewalk. Moreover, an officer is required to respond to calls for service and to make contact with a person in response to such a call. Finally, an officer may reasonably have a person stay by their vehicle during a field contact. Accepting as true all of the complainant's allegations, the officers' various warnings were legitimate, they did not threaten arrest, and they did not target complainant for criminal conduct based on their homeless status. Issuing warnings without further criminal enforcement is consistent with the Martin requirements.

On the claim of conduct unbecoming, accepting the complainant's allegations as true, an officer speaking to the complainant from inside his vehicle is not unusual or improper—there was no allegation the officer used improper tone or was threatening or acted in an inappropriate way. Conduct unbecoming refers to actions that any deputy would reasonably understand is incompatible with the ability to perform as a peace officer. The officers' interaction with the complainant were based on legitimate law enforcement functions and there is no evidence that any officer targeted the complainant for criminal enforcement based on complainant's unhoused status.

Accordingly, we **AGREE** with SCSO that the officers' alleged encounters with complainant, accepting as true complainant's own allegations, did not violate the Eighth Amendment by improperly targeting complainant based on their unhoused status, that the officers' actions did not constitute conduct unbecoming, and that the officers should be **EXONERATED** on the three incidents in which SCSO made that finding

However, on the fourth incident SCSO determined that because it could not confirm the officer's interaction with the complainant (in which complainant was required to sit on the vehicle bumper), SCSO concluded the claim was **UNFOUNDED**. We disagree and instead conclude that based on the facts alleged by complainant and the history of interactions with the officers, the preponderance of the evidence is that that incident most likely did occur but as alleged by complainant, the officer more likely than not complied with SCSO policy and the finding should therefore be **EXONERATED**.

### IOLERO's Recommendations

IOLERO made no formal recommendations in this matter.

## MADF CLAIMS

<b>Case Number</b> 20-C-0032	<b>MADF COMPLAINT NO. 1</b> <b>USE OF FORCE</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Likely White
<b>Allegations in the Complaint</b>	<p>Complainant had been in and out of the MADF over nearly three decades.</p> <p>Complainant alleged that MADF deputies were part of the “Green Wall Gang”, in apparent reference to a rogue gang of correctional officers that was allegedly created at the California Department of Corrections in Salinas Valley in 1998 following a prison riot. Complainant alleged that these gang members assaulted and sexually abused inmates and deprived them of their rights, and stated he was an FBI informant who could brief the FBI to bring the gang down.</p>
<b>SCSO Conclusion</b>	<p>SCSO interviewed the complainant about the allegations. Complainant stated he had not personally witnessed sexual assaults, declined to identify possible witnesses, and believed some inmates’ stories were not true. Complainant stated he was never physically assaulted, could not provide a date or time for any alleged assaults on other inmates, and that he had no issues with SCSO but did have issues with another law enforcement agency.</p> <p>Accordingly, SCSO concluded that complainant’s claims were <b>UNFOUNDED</b>.</p>
<b>IOLERO’s Conclusion</b>	<p>IOLERO concluded that the investigation in this case, based on the specific and unique facts presented, was sufficiently <b>COMPLETE</b> to evaluate the claims. SCSO’s investigation consisted of reviewing the complaint and interviewing complainant. Complainant’s allegations were vague and provided no information as to time or date of alleged conduct. SCSO interviewed complainant in a reasonably prompt manner, and complainant provided no further information to permit further meaningful investigation.</p>



The BWC recording of the interview was later inadvertently purged by SCSO. However, on the specific facts of this matter IOLERO does not believe this undermines the credibility of SCSO's findings. SCSO's investigative report recounted the substance of the interview and was completed within 3 weeks of the interview. Therefore the report was reasonably contemporaneous with the event. There is also no suggestion that SCSO's investigator knew the BWC file would be purged, and the investigator would likely assume the report could be checked against the BWC file for accuracy and would therefore be deterred from writing an incomplete, misleading or inaccurate report. While destruction of BWC files could undermine an investigative record in some circumstances, the record in this case remains sufficiently complete.

IOLERO further **AGREES** with SCSO's findings that the claims were **UNFOUNDED**.

Complainant provided no factual basis to support the claim that a gang existed among MADF correctional officers. Complainant stated he never personally witnessed sexual abuse and questioned the competency and credibility of a witness whose name he declined to provide. Complainant further stated he had never been personally assaulted by MADF staff and could not identify a date or time in which he witnessed any other inmate having allegedly been assaulted. Based on the vagueness of the allegations, complainant's statements and unwillingness or inability to identify dates, times, persons or places, a preponderance of the evidence shows that it is far more likely than not that the alleged activities did not occur and therefore the claims were **UNFOUNDED**.

As with other Audits, IOLERO **NOTED** that SCSO provided its investigation to IOLERO after the time in which discipline could be imposed under Government Code § 3304 had expired and requested future investigations be provided to IOLERO prior to expiration of the § 3304 deadline.

IOLERO further **NOTED** the importance of preserving interview audio and video files.

### **IOLERO's Recommendations**

IOLERO made no formal recommendations in this matter.



<b>Case Number 21-C-0027</b>	<b>MADF COMPLAINT NO. 2 USE OF FORCE</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Likely White
<b>Allegations in the Complaint</b>	<p>Complainant was being held in the MADF after being arrested on various charges. During this time complainant was going through withdrawal from opioid use and repeatedly misused the emergency call button in his cell. Sometime after being booked into the MADF complainant developed bruising below one eye.</p> <p>During a visit with medical staff, complainant gave staff a note claiming he was being physically and emotionally abused by deputies and requested that his attorney be contacted. The note was provided to an MADF sergeant who initiated an investigation.</p>
<b>SCSO Conclusion</b>	<p>SCSO interviewed complainant about an hour after receiving the note, and again a couple of days later. SCSO also reviewed complainant's MADF out of cell records, cell door operation records, and medical records (including Body Worn Camera video) to determine if an assault had occurred. Several months later, SCSO interviewed five correctional deputies who were on staff during the alleged incident. These interviews were perfunctory, each lasting 2-3 minutes and followed a pre-written set of questions.</p> <p>SCSO found that complainant could not identify any deputy alleged to have hit him, identified inconsistent times when the alleged assault may have occurred, told medical staff no one had hit him, and ultimately suggested to the SCSO sergeant that he would trade information in exchange for more out of cell time, telephone access and expedited release from jail. SCSO determined that the investigation was <b>INCONCLUSIVE</b> as to whether an assault did or did not occur.</p>
<b>IOLERO's Conclusion</b>	<p>In seeking to determine how complainant received his bruising, SCSO conducted a timely review of MADF records and interviews of the complainant. As discussed below, this review provides strong reasons for concluding no assault occurred.</p> <p>However, ten months later SCSO interviewed the deputies on duty in perfunctory interviews lasting 2-3 minutes each. Because of the lapse of time, memories were faded and the utility of the interviews was largely lost. Accordingly, IOLERO concluded that while the initial investigative record strongly suggests that there was no assault, the deputy interviews were not timely and substantive which rendered the investigation <b>INCOMPLETE</b>.</p>

Because the investigative record does strongly suggest there was no assault, IOLERO has revisited this "incomplete" finding. IOLERO concludes that this finding should remain, but clarifies that under the specific facts of this case the "incompleteness" of the deputy interviews does not suggest that the alleged assault actually occurred or that SCSO's other investigative actions were in any way deficient. Rather, this "incomplete" finding is specifically limited to the timing and substance of the deputy interviews. In all other respects the SCSO investigation was diligent and prompt.

On the merits, the record shows that it is possible that complainant's bruising was caused by someone striking complainant. However, the record provides several reasons to conclude the bruising was not caused in this manner. Complainant's admitted to using the assault claim as a way to by-pass the MADF process to receive more out of cell time, raising serious doubt about complainant's motive in making the accusation. Complainant also relied on his own misuse of the call button to insinuate (but not directly allege) that a deputy may have had reason to hit him. Complainant told medical staff no one had hurt him. The timing of the alleged assault was inconsistent with complainant's interactions with the same deputies the next day as recorded on BWC video during which there was no hint by anyone of an alleged assault. Finally, the record shows that the bruising could have resulted when complainant was mule kicking the cell door while he was experiencing opioid withdrawals and dizziness and would have been in a position (on his hands and knees facing the floor) to sustain the injury by slipping.

IOLERO made two formal Recommendations in this matter.

### **IOLERO's Recommendations**

1. Install Surveillance Cameras in all Common Areas of the MADF, as permitted by Budgetary and Technical Considerations. Such systems would provide valuable information that could corroborate or contradict a complainant's accusations.
2. Conduct Timely Interviews of Deputies.



<b>Case Number</b> 21-C-0015	<b>MADF COMPLAINT NO. 3</b> <b>USE OF FORCE</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Unknown
<b>Allegations in the Complaint</b>	Complainant was held in the MADF for an extended time before being transferred to a state correctional facility. Complainant alleged a wide range of misconduct, including a claim that MADF staff assaulted him.
<b>SCSO Conclusion</b>	<p>SCSO reviewed MADF shift logs, personnel records, and incident reports for the dates covering the alleged assault. Based on the records, SCSO determined that complainant's injuries were self-sustained and were medically treated by MADF staff and at the hospital. Accordingly SCSO concluded this claim was <b>UNFOUNDED</b>.</p> <p>SCSO found the complainant did not receive a shower for several days and found this claim to be <b>SUSTAINED</b>.</p> <p>SCSO found no evidence to support the remaining claims and concluded they were either <b>UNFOUNDED</b> or <b>NOT SUSTAINED</b>.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO <b>AGREES</b> with SCSO's findings, except IOLERO believes that the claim of delayed showering should be <b>EXONERATED</b> rather than <b>SUSTAINED</b>, and a claim of use of force against an inmate should be <b>EXONERATED</b> rather than <b>NOT SUSTAINED</b>.</p> <p>1. <u>Completeness</u>. To "clearly establish" an administrative investigative finding, the investigation must be thorough enough to properly evaluate the claim. What constitutes a "complete" investigation depends on (among other things) the substance of the claim, the factual circumstances in which the claim was raised, and whether the claim is facially plausible.</p> <p>In this case, complainant's allegations were an unfocused story of his arrest and trial, grievances against the courts and legal system, and complaints about conditions at the MADF (including food quality, clothing, commissary costs, theft of inmates' intellectual property rights in their art class drawings, and the grievance process). These claims span a multi-year period and the complaint was submitted nearly several years after alleged events occurred. To the extent decipherable from the complaint, the claims lack dates, times, or other factual detail and most of the claims are generally subject to a separate inmate grievance procedure.</p>

To evaluate this unfocused complaint, SCSO reviewed incident reports and shift logs based on the names of deputies that were referenced by complainant, personnel records, inmate records, and facility information. These materials squarely contradicted complainant's claims.

While interviews of the complainant, witnesses and deputies is generally required where the existing record contains unresolved issues that could be answered by such interviews, the initial investigation conducted by SCSO showed that complainant's claims were facially meritless and lacked credibility. Interviewing SCSO employees and/or complainant (who is no longer at the MADF, and thus difficult to interview) would not likely identify additional information relevant to addressing his claims.

In view of these considerations, we conclude that under the specific and narrow circumstances presented in this case the investigation was sufficiently **COMPLETE** to evaluate and address the claims.

2. Merits. The record shows that complainant's injuries were self-inflicted. There was no evidence supporting the claim that he was assaulted by any SCSO employee or inmate. There was also no evidence supporting a claim of sexual activity by any MADF employee, improper use of force against another inmate, or racial profiling. Accordingly IOLERO agrees that a preponderance of the evidence shows these claims to be **UNFOUNDED**.

The record also shows that one claim of use of force had been separately documented and investigation by SCSO and determined to be within Policy. Accordingly, IOLERO concluded that this specific claim was **UNFOUNDED** rather than **NOT SUSTAINED**.

The record further shows that complainant was housed with another inmate in a single cell at one point but the investigation was unable to determine if that inmate had lice or was unstable, as complainant alleged. Accordingly IOLERO **AGREES** with SCSO that a preponderance of the evidence does not support either a sustained or exonerated finding and therefore the finding should be **NOT SUSTAINED**.

Finally, an inmate is entitled to shower every two days which cannot be denied by MADF staff if requested. The record shows that complainant in fact did not take a shower on the required schedule, but there was no allegation or evidence that complainant actually requested a shower or was denied by MADF staff. Rather, the record shows that the delay in shower schedule occurred while complainant was recovering from self-inflicted injuries. Accordingly, IOLERO concluded that the preponderance of the evidence showed that complainant's shower was delayed but the delay more likely than not complied with policy, and therefore the finding should be **EXONERATED** rather than **SUSTAINED**.

### **IOLERO's Recommendations**

IOLERO made no formal recommendations in this matter.



<b>Case Number</b> 22-C-0017	<b>MADF COMPLAINT NO. 4</b> <b>CONDUCT UNBECOMING; NEGLIGENCE OF DUTY; IMPROPER PROCEDURE</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Unknown
<b>Allegations in the Complaint</b>	<p>Complainant was held in the MADF and claimed another inmate had sexually harassed him. That PREA claim was administratively and criminally investigated as separate matters.</p> <p>Complainant also alleged that he was improperly classified and housed with the other inmate, that mental health staff did not properly protect his privacy during a mental health review, and that he was improperly placed into COVID quarantine.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed the incident reports and criminal reports concerning the PREA matter, housing records for complainant and the other inmate, SCSO's classification and COVID policies, and California Title 15 regulations concerning detention facilities. SCSO also spoke with the mental health worker in question.</p> <p>SCSO concluded that complainant was properly classified and housed and that contact with the other inmate was incidental while complainant was out of his cell on the way to see medical staff. Accordingly SCSO concluded the classification claim was <b>UNFOUNDED</b>.</p> <p>SCSO also found that mental health staff leaving an interview door ajar during a meeting with an inmate was an acceptable and common practice to comply with security concerns. Accordingly SCSO found the claimed lack of privacy to be <b>UNFOUNDED</b>.</p> <p>Finally SCSO found that complainant's later reclassification required transfer to another housing module, but because complainant's existing module was under COVID quarantine, complainant had to be isolated in a separate module for the required COVID period before being transferred to the new module. However, SCSO did not make a specific finding on this claim.</p>
<b>IOLERO's Conclusion</b>	<p>SCSO reviewed the incident reports and criminal investigative reports of the PREA claim (which involved interviews with the complainant), housing records, classification records, classification policies and COVID policies. These materials were sufficient to properly evaluate the additional claims presented here and IOLERO therefore agrees that the investigation was <b>COMPLETE</b>.</p> <p>On the merits, IOLERO <b>AGREES</b> with SCSO's finding that the improper classification claim was <b>UNFOUNDED</b>. The record showed that complainant was housed in a mixed module according to policy, that he was not placed in out of cell time with the other inmate who had a different classification, and that the contact between the inmate and complainant was incidental resulting from complainant's temporary movement through the module.</p> <p>We did note, however, that SCSO policies did not specifically address procedures governing incidental contact between inmates of different classifications as occurred here. Such incidental contact does not <i>per se</i> violate policy or law, but it could result in violation of law and constitutional standards if it results in injury to or assault upon an inmate. Accordingly, IOLERO recommended SCSO review its Detention Policies within this issue in mind.</p>

IOLERO also **AGREES** with SCSO that there was no violation of privacy policy but that the finding should be **EXONERATED** rather than **UNFOUNDED**. The record shows that mental health staff met with complainant in an interview room in the detention module and left the door ajar for the staff member's safety. Generally mental health meetings are to be held in private but all staff, including medical staff, must comply with security requirements. The National Commission on Correctional Health Care (NCCHC) standards which SCSO's mental health provider is required to apply at the MADF further specify that privacy must be balanced with security interests and when safety concerns prevent full privacy, "partial visual and auditory" privacy alternatives should be considered. In this case, a decision to leave the door ajar within a confined module is a legitimate response to safety concerns. Accordingly IOLERO concluded that staff's actions complied with policy.

IOLERO **NOTED**, however, that an inmate's concern about mental health privacy is real and legitimate, and that NCCHC standards require use of partial privacy alternatives be addressed by the health care provider's written policy and defined procedures. SCSO did not address whether the staff's decision was made pursuant to such written policy and IOLERO recommended that future review of privacy claims in the MADF look to and document the health care provider's written policies as it relates to this issue.

Finally, IOLERO **AGREES** that there was no policy violation in placing complainant into COVID quarantine and that the finding should be **EXONERATED**. The record shows that complainant was reclassified which required transferred to another module. However complainant was under COVID quarantine in the current module where he could not remain due to his reclassification, and he could not move to the new module without first going through COVID quarantine. Complainant was therefore placed in a separate module for quarantine and was moved to the new module immediately after quarantine expired. COVID quarantine was in accordance with SCSO policy.

### **IOLERO's Recommendations**

IOLERO made two formal Recommendations in this matter.

1. SCSO review its Detention Policy concerning incidental contacts between inmates of different classifications during out of cell movements to prevent risk of assault and exposure to liability.
2. Document the medical provider's written policy and procedure as it relates to the specific medical issue under review.



<b>Case Number</b> <b>22-C-0019</b>	<b>MADF COMPLAINT NO. 5</b> <b>MEDICAL CARE; DISCIPLINARY SEPARATION; GRIEVANCE</b> <b>PROCEDURE</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Unknown
<b>Allegations in the Complaint</b>	<p>Complainant was held in the MADF and claimed he was denied medical care; denied out-of-cell time, visitation and telephone access; denied review of grievances; and was not provided proof of mailing a court document.</p>
<b>SCSO Conclusion</b>	<p>SCSO reviewed complainant's medical records, grievance records, housing records, and telephone records. SCSO sought twice to interview complainant but complainant declined.</p> <p>SCSO found that complainant met with medical staff 17 times and medical staff concluded outside care was not warranted, and therefore the claim of denial of medical care was <b>UNFOUNDED</b>.</p> <p>SCSO found that complainant had averaged over one hour a day of out of cell time, had placed over 1,400 calls, and had 48 visitors, and that the claims on these issues were <b>UNFOUNDED</b>.</p> <p>SCSO also found that all of complainant's grievances were addressed by medical staff and processed through the review procedure, and that this claim was <b>UNFOUNDED</b>.</p> <p>Finally, SCSO found that Detention Policy did not require staff to provide proof of mailing a court document to complainant and therefore this claim was <b>UNFOUNDED</b>.</p>
<b>IOLERO's Conclusion</b>	<p>SCSO reviewed complainant's health care records, housing, telephone use history, grievances and visitation. SCSO also twice sought to interview complainant who declined to participate. These materials were sufficient to properly evaluate the claims presented here and IOLERO therefore agrees that the investigation was <b>COMPLETE</b>.</p> <p>On the merits, IOLERO <b>AGREES</b> with SCSO's finding that the complainant received medical care, but concludes that the finding should be <b>EXONERATED</b> rather than <b>UNFOUNDED</b>. The record shows that complainant received periodic medical examinations by MADF medical staff. With respect to a specific chronic condition, staff determined it was stable and no outside referral was warranted. California regulations and the National Commission on Correctional Health Care (NCCHC) standards which SCSO's health provider is required to apply at the MADF specify that clinical judgments are within the health provider's determination and there is nothing in the record that contradicts that determination. SCSO Policy allows complainant to obtain outside medical care at their own expense and health care staff informed complainant of this option.</p>

IOLERO also **AGREES** with SCSO's finding that the complainant received access to telephones, visitors and out-of-cell time as required by policy. Records show that complainant's access to these items was restricted for a period while he was placed in disciplinary separation for a major rule violation, but this restriction was within policy. Thus, to the extent complainant alleged he was generally denied appropriate out of cell time, visitation or telephone access, IOLERO agrees that the claim was **UNFOUNDED**. To the extent this claim is limited to the time complainant was in disciplinary separation, IOLERO concludes that the finding should be **EXONERATED**.

IOLERO further **AGREES** with SCSO's finding that the complainant's grievances were processed in accordance with policy. Grievances relating to medical care were addressed by medical staff, MADF staff, and the Disciplinary Grievance Officer where required and complainant was informed of the decisions and of his right to seek outside medical care at his own expense. A separate grievance claiming the disciplinary separation deprived complainant of his rights as a *pro se* defendant was also reviewed through the grievance process and was on final appeal to the lieutenant when complainant was transferred out of the MADF. However, complainant had never been granted *pro se* status by the court and the record therefore did not reveal any supporting grounds for the grievance. Accordingly IOLERO agrees that the grievances were processed according to policy and that the finding should be **EXONERATED**.

Finally, IOLERO **AGREES** with SCSO's finding that the handling of complainant's court filing complied with policy. Detention Policy required MADF staff to deposit sealed mail provided by an inmate to the U.S. Postal Service. There is no requirement that MADF obtain proof of mailing, or proof that the court received the filing. MADF in fact provided the filing to the Postal Service and policy did not require providing complainant proof of mailing or filing. Accordingly, IOLERO agrees that the finding on this claim should be **EXONERATED**.

### **IOLERO's Recommendations**

IOLERO made no formal recommendations in this matter.

## CANINE USE OF FORCE

The Audits in this section address the three cases involving the use of canine force. Two of the claims involve citizen Complaints, and the third involves an Administrative Review of a canine deployment where no formal complaint was made to SCSO.

As discussed earlier in this Report, the issues concerning canine deployment are complex. The three cases Audited by IOLERO are discussed here in a single section to facilitate review of the canine issues in general.

Because these cases involved use of force which resulted in great bodily injury, IOLERO's Audits of these matters is subject to public disclosure in accordance with SB 1421. The redacted Audits of each matter are therefore posted on IOLERO's website.

<b>Case Number</b> 21-C-0019	<b>CANINE DEPLOYMENT NO. 1</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Possibly Hispanic
<b>Allegations in the Complaint</b>	<p>Seven SCSO officers conducted a nighttime arrest of complainant on bench warrants issued for failure to appear in court. Complainant was on probation for conviction of domestic violence and other offenses and had fled from deputies when they tried to arrest him on the warrants several days earlier. Deputies surrounded a shed in which complainant and his girlfriend were staying and order them to come out. The girlfriend came out but the complainant partially hid behind a shelf inside. A K-9 deputy warned complainant several times that the canine would be used if they did not come out and the canine was deployed, resulting in a bite wound to complainant's arm and shoulder. Complainant was arrested and medically treated.</p> <p>Complainant alleged that the canine was improperly deployed and resulted in scarring, nerve damage and post traumatic distress.</p>

### SCSO Conclusion

SCSO reviewed Body Worn Camera video of the seven deputies involved in apprehending the complainant, the Incident/Investigative report, complainant's medical records, and complainant's criminal record. SCSO also spoke with complainant by telephone to schedule an interview, but complainant asked SCSO to call back which SCSO did four times without success. SCSO did not interview any of the involved deputies.

SCSO found that the K-9 deputy was aware that complainant had a history of possessing weapons and resisting law enforcement, complainant was believed to be affiliated with a street gang, that entry into the shed would jeopardize deputy safety, and that complainant had an outstanding domestic violence case pending in court. SCSO further found that complainant did not comply with repeated orders to come out, that the K-9 deputy ordered the canine to release the bite when complainant's hands were behind his back, and medical care was promptly provided.

Accordingly, SCSO concluded that the K-9 deputy's use of canine force was reasonable and that the deputy should be **EXONERATED** under both Use of Force Policy and the more specific Canine Policy.

### IOLERO'S Conclusion

IOLERO's Audit of this matter is posted on its website pursuant to SB 1421.

SCSO reviewed Body Worn Camera video of the seven deputies involved in apprehending the complainant, the Incident/Investigative report, complainant's medical records, and complainant's criminal record.

However, SCSO did not interview any of the involved deputies, a core requirement in a use of force administrative investigation. Moreover, SCSO's analysis did not address various important legal and SCSO Policy standards governing the use of canine force.

Accordingly, IOLERO concluded that the investigation and analysis was not sufficient to evaluate complainant's allegations and that the investigation was **INCOMPLETE**. IOLERO therefore **DISAGREES** with SCSO's findings, made on this record and analysis, that use of canine force complied with law and policy.

The 4<sup>th</sup> Amendment, California law, and SCSO Policy all require force used by law enforcement to effect an arrest be "objectively reasonable". Reasonableness is viewed from the perspective of the officer at the scene, taking into account the totality of facts known to that officer at that time. Use of force should be proportional to the seriousness of the suspected offense, and California law and SCSO Policy require deputies to consider de-escalation options when reasonably feasible. With respect to canine force in particular, "reasonableness" looks at the severity of the intrusion on the person, the government's interest, and the balance between the two.

SCSO Policy also addresses canines specifically. A canine may be used to apprehend a person with a bite when the handler reasonably believes the person has committed, is committing or is threatening to commit a "serious offense", and there is a reasonable belief the person poses an imminent threat of violence or harm, is physically resisting, or is concealed in an area that poses a threat to deputies. Apprehending a person for a "lesser criminal offense" requires Watch Commander approval and should be conducted on-leash or in a manner that minimizes the likelihood of a bite or other injury. SCSO Policy 309.

Warnings of canine use should generally first be given to allow the person to surrender. If the canine apprehends a person with a bite, the handler should promptly command the canine to release the person when the handler believes the person no longer poses a threat.

Applying SCSO's Canine Policy, the threshold question is whether complainant was suspected of a "serious offense"; if not, use of a canine bite to apprehend is limited to Watch Commander approval and on-leash control. SCSO Policy, however, does not define "serious offense", and the record raises more questions than answers on this issue. SCSO relied on complainant's prior conviction for domestic violence, but SCSO Policy looks to the crime for which the person is suspected of currently committing—in this case a failure to appear at a court hearing, the "seriousness" of which is an open question. Relying on past convictions to justify using canine force to apprehend for a present or future suspected crime would raise significant constitutional and other legal issues. SCSO did not address this critical issue.

Canine Policy also requires the person be given a reasonable time to surrender. The record here shows that both complainant and his girlfriend did not comply with order to come out for 51 seconds during which time the canine was not deployed. After the girlfriend later came out the canine was deployed against complainant only 7 seconds later, at a time when complainant's location was known to the deputies. SCSO did not address this issue.

Canine Policy also requires the handler to release the canine bite as soon as the handler believed the person no longer poses threat. The record here shows that the deputy took physical control of the canine immediately after entering the shed and issued repeated commands that appear to direct the canine to release the bite when complainant was on the ground surrounded by deputies. However, the canine did not release the bite for an additional 18 seconds. SCSO did not address this issue.

Applying the more general Use of Force "reasonableness" standard, SCSO did not specifically address the level (or quantum) of force resulting from the canine's bite or the "seriousness" of the suspected offense as discussed above. SCSO correctly noted that deputies faced danger if they entered the shed, but SCSO did not address the level of danger faced by deputies while they remained outside the shed and complainant was confined inside. SCSO should have evaluated whether the deputies could reasonably conclude complainant presented an immediate threat while he remained isolated within the structure, and whether there was a reasonable belief that complainant could flee or evade detection. SCSO also did not conduct a "balance of interest" between the level of intrusion on the complainant by the force used versus the governmental interest in using canine force to apprehend the complainant under these factual circumstances.

SCSO also did not specifically assess whether the level of canine force used was proportional to the seriousness of the suspected offense or reasonably perceived level of resistance, as required by California law. "Proportionality" is already an implicit requirement in the general use of force analysis, but California law requires "proportionality" be specifically evaluated.



SCSO also did not evaluate whether de-escalation was reasonably feasible to avoid the use of canine force. The canine was deployed seven seconds after the girlfriend left the shed and the record does not reveal any steps taken by deputies to de-escalate the situation or use alternative tactics that would reduce the need to use force. Post-apprehension statements by complainant indicate he did not comply because he panicked. The only reference to de-escalation was one deputy's repeating the same order for complainant to come out which was not an alternative method to de-escalate the situation. The record further suggested that the K-9 deputy concluded beforehand that canine force would be used if the complainant resisted, which would impeded de-escalation evaluations and is inconsistent with the requirement of assessing the need for force at the time it is actually used.

Finally, as noted above, SCSO did not interview the K-9 deputy or the supervising officer concerning the decision to use canine force and the manner in which the canine was handled (including the reason for 18-second continuation of the bite). The "objective reasonableness" standard governing permissible use of force requires assessing whether the officer could reasonably believe force was necessary based on facts known to or perceived by the deputy at the time of the incident. This "objective" evaluation generally cannot be made without interviewing the involved deputy as to the facts they perceived or knew at the time of the incident, and how the deputy processed those facts.

In addition to the foregoing, IOLERO **NOTED** that the investigative report had been sent to IOLERO for audit after the time for possible discipline had expired under Government Code § 3304. IOLERO requested that SCSO provide the investigations for audit prior to the expiration of this deadline.

IOLERO made several formal RECOMMENDATIONS based on this Audit.

1. Provide Definition to the Term "Serious Offense" in SCSO Policy 309. Currently the term is undefined and therefore insufficient to determine whether a deputy's actions at the time of the incident were "objectively reasonable" as required by law and policy.
2. Clarify Whether "Serious Offense" Means the Suspected Offense for which the Person is Being Arrested, or Previously Convicted Crimes. Basing use of canine force on whether a person has been convicted of a "serious offense" (however defined) rather than the crime they are suspected of currently committing, raises significant constitutional and legal issues, would lead to undesired outcomes, and could hamper deputy ability to respond to dangerous suspects.
3. Review Canine Policy in Light of Public Perceptions and Historical Abuse. Canines involve risks not presented by other use of force techniques. They also carry high risk of inflicting lacerative or puncture damage to the body in almost every instance, and often causes serious bodily injuries. Such injuries carry tremendous consequences for those so bitten, and can also expose the County to significant financial liability. Canines also have a public stigma flowing from a long and documented history of abuse and misuse to persecute persons which affects the public's perceptions of canine use. In light of these factors, we recommend SCSO review Policy 309 and Policy 300 as they relate to use of canines to apprehend persons to determine whether the policies appropriately reflect a narrowness of permitted canine use.

## IOLERO's Recommendations



<b>Case Number 20-C-0007</b>	<b>CANINE DEPLOYMENT NO. 2</b>
<b>Origin of Complaint</b>	IOLERO
<b>Race/Ethnicity of Complainant</b>	Black
<b>Allegations in the Complaint</b>	<p>This matter concerned SCSO's response to a 9-1-1 call reporting that Jason Anglero-Wyrick had brandished a firearm at the reporting party. SCSO officers deployed a Taser and a canine against Mr. Anglero-Wyrick resulting in serious injuries to his leg.</p> <p>Complainants made several allegations that SCSO's response to the 9-1-1 call, including use of force, was improper.</p> <p>IOLERO's Audit and SCSO's investigative report were previously made public and both can be accessed on IOLERO's website <a href="https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/independent-office-of-law-enforcement-review-and-outreach/audit-reports">https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/independent-office-of-law-enforcement-review-and-outreach/audit-reports</a></p>
<b>SCSO Conclusion</b>	<p>SCSO investigated the claims and issued an investigative report <b>EXONERATING</b> the deputies for deploying a Taser and the canine, for the property search, for alleged bias, and for use of force in arresting Mr. Anglero-Wyrick's girlfriend. SCSO <b>SUSTAINED</b> a finding that failure to disengage the canine violated SCSO Policy, and that a sergeant and a deputy's de-activation of their Body Worn Camera violated policy.</p>
<b>IOLERO's Conclusion</b>	<p>IOLERO's Audit of this matter is posted on its website pursuant to SB 1421.</p> <p>IOLERO <b>AGREED</b> with SCSO's findings <b>EXONERATING</b> deputies on (i) deployment of the Taser against Mr. Anglero-Wyrick (ii) the scope of the search of the property (iii) the lack of evidence of any racial or other prohibited biased in the law enforcement response, and (iv) the use of force to arrest Mr. Anglero-Wyrick's girlfriend.</p> <p>IOLERO also <b>AGREED</b> with SCSO in <b>SUSTAINING</b> violations of (i) Body Worn Camera policy by a deputy and a sergeant who deactivated their units during the incident and (ii) canine policy by the canine deputy for failing to disengage the canine's bite from Mr. Anglero-Wyrick for 63 seconds after handcuffs had been applied.</p>

However, IOLERO further found that SCSO's investigation into other issues was **INCOMPLETE** and identified several other **LIKELY POLICY VIOLATIONS**. These include a second deputy's pointing a Taser at Mr. Anglero-Wyrick's head and at two bystanders and the same deputy's use of force by stomping on Mr. Anglero-Wyrick's leg during the canine deployment. We also identified a broader pattern of Body Worn Camera violations by other deputies that were not addressed by SCSO and which raised credibility issues regarding the investigatory process. There were also issues associated with the supervisory sergeant's actions at the scene and the lack of interview of that officer which further raised policy compliance and credibility issues.

We also **DISAGREED** with SCSO regarding **deployment of the canine** and the deputy's decision to maintain the canine bite and concluded instead that these actions **LIKELY VIOLATED POLICY** under the circumstances presented here. The canine was deployed after the Taser caused Mr. Anglero-Wyrick to fall to the ground and he began placing his hands behind his back. Contrary to the deputy's statements later publicly repeated by SCSO, the canine and Taser were not deployed "simultaneously". The canine deputy later acknowledged they were not simultaneously deployed and he failed to provide an adequate factual basis for deploying the canine after Mr. Anglero-Wyrick had been incapacitated. The canine deputy further intentionally maintained the canine bite for 27 seconds while handcuffs were being applied when the record showed inadequate factual basis for doing so.

**IOLERO's  
Recommendations**

IOLERO made no formal recommendations in this matter.

**Case Number  
21-AR-0001**

**CANINE DEPLOYMENT NO. 3**

**Origin of  
Complaint**

SCSO Self-Initiated Administrative Review

**Race/Ethnicity of  
Complainant**

White

### Issues Under Review

In response to a reported armed carjacking, a K-9 deputy and other deputies drove to the area where the suspect had first met the victim looking for a specific make and color vehicle the suspect had originally arrived in. The K-9 deputy encountered a person in a vehicle of the same make but a different color than the suspect's, and the person was a different race than the suspect. The K-9 deputy initiated a high risk stop to investigate the person, and the person initially refused to cooperate or step out of the vehicle. Eventually the K-9 deputy was able to convince the person to get out, walk to the deputy, and get on his knees with hands raised. However, when directed to crawl to the deputies, the person became angry and the K-9 deputy deployed the canine which bit the person. The person was taken into custody and treated at the hospital. The suspected carjacker was arrested shortly thereafter when he drove the stolen vehicle back to the same area. The person bit by the canine was later cleared of any involvement.

SCSO conducted an Administrative Review primarily focused on whether the use of canine force complied with law and policy, and secondarily whether the K-9 deputy's failure to activate his Body Worn Camera violated policy.

### SCSO Conclusion

SCSO reviewed Body Worn Camera video of the deputies involved in apprehending the person, Dispatch audio, Computer Aided Dispatch entries, and the criminal investigative report concerning the carjacking call. SCSO also conducted an interview with the K-9 deputy.

SCSO found that based on the circumstances in which the K-9 deputy encountered the person (nighttime, area involving carjacking, similar vehicle) the K-9 deputy had a reasonable basis to detain the person for further investigation. SCSO also found that the person was muscular, could understand the deputy's command but was uncooperative, and when he was on his knees with hands raised he looked around in what the K-9 deputy perceived as a pre-assault indicator or intent to flee. SCSO also found that the K-9 deputy used de-escalation tactics throughout the incident.

Accordingly SCSO concluded the K-9 deputy's use of canine force at that point to apprehend the person was reasonable and there was **NO POLICY VIOLATION** of the general **USE OF FORCE** rules.

SCSO also found that the K-9 deputy believed the person was an accomplice in the carjacking who posed an imminent threat of violence or serious harm, who could be armed, whose non-compliance with directives was a pre-assault indicator or indication of intent to flee, and that the person was building towards either attacking or fleeing.

Accordingly SCSO concluded that the K-9 deputy's decision to deploy the canine was reasonable and there was **NO POLICY VIOLATION** of the **SCSO CANINE POLICY**.

Finally, SCSO noted during the investigation that the K-9 deputy failed to activate his BWC. The deputy acknowledged this and **SCSO SUSTAINED** a violation of Policy **425 BWC**.

IOLERO's Audit of this matter is posted on its website pursuant to SB 1421.

IOLERO **DISAGREES** with SCSO conclusions concerning compliance with law and Policy regarding use of force and canine deployment. Instead, IOLERO concluded that the canine deployment in this case likely violated law and policy.

The 4<sup>th</sup> Amendment, California law, and SCSO Policy all require force used by law enforcement to effect an arrest be "objectively reasonable". Reasonableness is viewed from the perspective of the officer at the scene, taking into account the totality of facts known to that officer at that time. Use of force should be proportional to the seriousness of the suspected offense, and California law and SCSO Policy require deputies to consider de-escalation options when reasonably feasible. With respect to canine force in particular, "reasonableness" looks at the severity of the intrusion on the person, the government's interest, and the balance between the two.

SCSO Policy also addresses canines specifically. A canine may be used to apprehend a person with a bite when the handler reasonably believes the person has committed, is committing or is threatening to commit a "serious offense", and there is a reasonable belief the person poses an imminent threat of violence or harm, is physically resisting, or is concealed in an area that poses a threat to deputies.

In his case, the record showed the K-9 deputy knew that the person in the vehicle was not the suspect and that the vehicle was not the same color as suspect's vehicle. While the person was initially resistant and argued with the K-9 deputy, he eventually complied with directives by exiting the vehicle, walking to the deputies, and getting on his knees with hands raised. Multiple other deputies were also on scene, reducing the risk of flight or assault. When the person was then directed to crawl he became angry again and the K-9 deputy deployed the canine.

IOLERO concluded that use of canine force against the person, while he was on his knees with hands raised, was not objectively reasonable under these circumstances. The deputy's explanation that he believed the person was an accomplice to the carjacking was not objectively supported by evidence in the record. IOLERO also concluded that the deputy did not continue de-escalation efforts that had been working up to that time, and that the force used was not proportionate to the level of threat posed by the person at that point.

### IOLERO's Conclusion

### IOLERO's Recommendations

IOLERO recommended that SCSO review its canine and use of force policies to ensure alignment with use of force law and with public expectations concerning canine force in particular.

## CONCLUSION

---

This past year, IOLERO worked hard to move forward on the voters' vision in Measure P. We hired new staff, kept up with the flow of audits, identified patterns in those audits that allowed us to flag policy issues for the Sheriff's Office, and reached out to the public.

Next year, we hope to do even more. Now that we are fully staffed, we have turned our attention to other Measure-P-mandated programs to launch: a Whistleblower reporting system, audits of civil cases, and our first independent investigation, among other things.

We also look forward to continued collaboration between the SCSO and the CAC in the next year. Sheriff Engram's transparency and accessibility with the CAC has been commendable. Already we have seen the SCSO and CAC work together productively on policy challenges like rooting out extremism in law enforcement. We're anticipating an even more fruitful collaboration in the next fiscal year.

For those of you reading this report, we hope you'll come talk with us at our tables at public events, attend or send comments to our CAC meetings, or subscribe to our newsletter at our website. Come let us know what else you'd like to see as we continue to build out IOLERO and the CAC in order to foster transparency, accountability, and collaboration between the community and the Sonoma County Sheriff's Office.

**John Alden, Director**



## CAC Member Biographies

### FIRST DISTRICT



#### ROBIN JURJ

Robin has lived in Sonoma County since her retirement from a 40 year career in Early Childhood Development in 2016. Over the years, her work with young children brought her into contact with hundreds of families. It is this

investment in family as one of the pillars of our social fabric that makes her want to make law enforcement more accountable to the community it serves. She cannot imagine being a mother who worries everytime her daughter or son walks out of the house if they will return alive or not. The death of George Floyd pushed her over the edge at which point she knew she had to take steps herself to work toward better policing policy and practice in her own community and throughout this country. Robin lives in Oakmont, District 1, where she founded a club called Standing for Justice. She provides educational forums about racial justice which lead people to civic action. Her interests take her outside the boundaries of Oakmont and into the Sonoma County community. She feels fortunate to live somewhere that the citizens' voices can make a difference.

Robin is the 5th of 6 children in her family, grew up in the East Bay (Berkeley) and has stayed in and around the Bay Area most of her life with the exception of 17 years she spent with her young family in New England. She is a member of an organization based in Los Angeles called White People for Black Lives which educates white people to the role they have played and continue to play in

upholding white supremacy as well as leading them into action that can help to dismantle white supremacy. She is a member of the local NAACP and has just allied herself with the Police Accountability Task Force of the North Bay Organizing Project. She hopes to learn from her tenure on the CAC of IOLERO as well as to make any contributions she may be able to make.



#### NATHAN SOLOMON

Mr. Solomon holds a Bachelor of Arts in Psychology and a Master of Science in Computer Information Systems. In college he was first introduced to the psychology of policing when taking coursework from Craig Haney who conducted the Stanford Prison experiments.

He currently works as a Senior Information Security Analyst for Jackson Family Wines. Nathan has over 25 years of experience in IT working various roles including founding his own software company.

Nathan is a native of Sonoma county and has lived in Santa Rosa for the past 14 years. He has a 17 year old son and wife of twenty one years who was raised in Santa Rosa. Nathan's interest in serving on the Community Advisory Council for IOLERO stems from the Andy Lopez homicide primarily and the recognition that we as a community have to do better.

Nathan lives in Sonoma County's first district represented by Supervisor Susan Gorin.



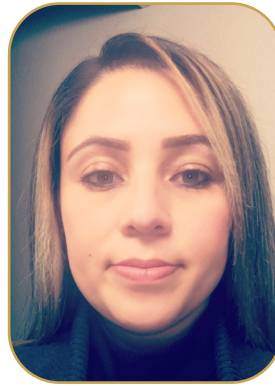
**SECOND DISTRICT****TOM ROSE**

Mr. Rose grew up in Southern California and received a Bachelor of Arts degree from California State University Fullerton. He moved to San Francisco to attend Golden Gate University School of Law, where he earned a Juris Doctorate degree and

subsequently became a member of the State Bar of California.

Mr. Rose's professional career was primarily with a bank affiliated entity in San Francisco. As a Senior Officer, he was the primary interface with internal, Federal Reserve, and National Bank examiners. Mr. Rose recognizes the importance of having reviews by outside oversight entities, such as IOLERO, and the necessity for openness and cooperation between the entity being reviewed and the investigating team. While living in San Francisco, Tom was serving as chair of the Glide Finance Committee when two major achievements were completed: the opening of a Family, Youth & Childcare Center on Ellis St. which provides neighborhood child care, after-school activities, and parental training classes; and the construction of a six story Community House on Taylor St.

Mr. Rose moved to Petaluma in 1999 and is pleased to be appointed to the CAC by Supervisor Rabbitt.

**THIRD DISTRICT****LORENA BARRERA**

Ms. Barrera attended the University of California, Merced where she received a Bachelor's Degree in Political Science. Following her graduation, she moved to Sonoma County to attend Sonoma State University as a graduate student

in the field of Public Administration. In 2016, she received her Master's Degree.

Around this time, Lorena began working as a staffer for a member of Congress where she was exposed to policy analysis and became more aware of the loopholes that exist in policy that affect both the public and the public agencies. As a minority in society, setting an example in the community is of great importance to Ms. Barrera. She believes in informing and educating people in order to strengthen communities.

As a resident of Sonoma County, Ms. Barrera seeks opportunities that will allow her to serve as a community representative because she cares about making a difference for everyone. Ms. Barrera has served on Sonoma County's Commission for the Status of Women (CSW) since 2015 where she currently serves as the vice-chair. As a member of the CSW, she served on the CSW's Mental Health Ad Hoc Committee where she did research on mental health and the stigmas that surround mental health conditions. Ms. Barrera brings to the CAC her experience studying mental health conditions and she will be instrumental in integrating that information into the CAC's outreach and policy work.

Ms. Barrera lives in Sonoma County's third district represented by Supervisor Chris Coursey.

## FOURTH DISTRICT

**MARCY FLORES**

Ms. Flores Suazo was raised in Geyserville, California and has been active in the Sonoma County community and school districts for the past 11 years. Her passion for working with the Latinx community came after her active involvement

and political activism with Movimiento Estudiantil Chicana/o de Aztlán (M.E.Ch.A.) and through her work with California Migrant Education - Mini-Corps, working with Healdsburg migrant students and their families during her studies at Sonoma State University. Ms. Flores studied Chicano and Latino Studies and Early Childhood Education and worked for Sonoma State University Upward Bound Programs, supporting first-generation high school students on their path to a 4-year university. With her background and passion in education, Ms. Flores returned to her former high school in Geyserville to support parents and students to pursue their post-secondary education and career goals by providing them with opportunities and the tools to succeed.

She was a former steering committee member with the Hispanic Chamber Young Professionals, Vice Chair Commissioner with Healdsburg Parks and Recs, Crew Supervisor with Social Advocates for Youth (SCYEC Program), Ballet Folklórico volunteer instructor and Alliance Medical Center Board Member. Ms. Flores loves spending time with her two children and enjoys volunteering in her local community.

Ms. Flores currently works for Corazón Healdsburg as the Interim Executive Director working to support individuals, families and children in Northern Sonoma County through strong community partnerships, resources, in-house support services, educational programs and community building and engagement.

**EVAN ZELIG, ESQ.**

Mr. Zelig has been a licensed attorney in the State of California since 2003 and is President of Law Offices of Evan E. Zelig, a professional corporation. His practice focuses solely on criminal defense, representing individuals

charged with misdemeanor and felony criminal offenses. He also serves on the indigent criminal defense panel. Mr. Zelig earned a Bachelor of Arts in Political Science at University of California, Irvine and his Juris Doctor from McGeorge School of Law, University of the Pacific.

Mr. Zelig looks forward to serving as a liaison between members of the community and members of law enforcement. He believes his work within the criminal justice system, his volunteer work, and life experiences that have allowed him to live, interact and work with diverse populations will serve him well as a member of the CAC. Mr. Zelig states, "Understanding what all parties in a situation may be dealing with and looking at policies objectively will allow us to better understand what changes may need to be made."

Mr. Zelig lives in Sonoma County's fourth district represented by Supervisor James Gore.





## FIFTH DISTRICT

**MAXWELL PEARL**

Mr. Pearl received his B.A. in Natural Science and Mathematics from Bennington College, and his Ph.D. in Neuroscience from Case Western Reserve University. He was an HIV/AIDS educator and advocate in the early part of the HIV epidemic in Cleveland, OH, and was part of

training hotline workers that staffed the first statewide HIV/AIDS Information hotline. Mr. Pearl taught at Hampshire College from 1989 through 1999, as Assistant and Associate Professor of Biology. He conducted studies primarily on the AIDS epidemic, particularly as it affected women and people of color. He was also involved in AIDS education and advocacy during the first half of the 1990s. He was involved in several grant-funded projects to enhance in-service science education for educators in the region, particularly in terms of use of technology in the classroom.

Mr. Pearl was a nationally recognized leader in the nonprofit technology field. He was on the steering committee of the Non Profit Open Source Initiative (NOSI), and was a member of the boards of NTEN, the Nonprofit Technology Network, and of Aspiration, an organization that fosters software development in the nonprofit/NGO sector. Mr. Pearl has worked with organizations focused on women's rights, human rights, the environment, and internet freedom.

Mr. Pearl is a long-time practitioner of contemplative spirituality. Mr. Pearl has a Certificate of Theological Studies from Pacific School of Religion, in Berkeley, and has been teaching contemplative practices since 2005. Mr. Pearl's current work is teaching embodiment, mindfulness and self-compassion to marginalized folks, as well as working with organizations with a trauma-informed lens to apply harm-reduction principles to organizational structure.

Mr. Pearl has written many articles and reports for scholarly journals, educational and nonprofit audiences, and the public, and is also a multi-genre creative writer.

Mr. Pearl lives in Sonoma County's fifth district represented by Supervisor Lynda Hopkins.

**NANCY PEMBERTON**

Nancy Pemberton obtained her B.A. degree at San Francisco State University and her J.D. degree at Berkeley Law School (then known as Boalt Hall). For most of her legal career, she specialized in representing defendants charged with

capital crimes and facing possible execution, both as an attorney and mitigation specialist. Now retired from legal representation, she works part-time writing and editing content for a website used by capital litigators.

As part of her litigation practice, Ms. Pemberton volunteered time to train attorneys and investigators in capital litigation issues, presenting at legal and investigative conferences and seminars throughout the country. She also taught a clinical course, the Art of Investigation, at Santa Clara University Law School in conjunction with the Law School's Innocence Project.

In 2000, Ms. Pemberton and a fellow investigator co-founded the Institute for International Criminal Investigations (IICI), an organization that trains professionals in the investigation of human atrocities. She continues to sit on the IICI board. She also sat on the board of the American Civil Liberties Union of Northern California for many years, including chairing the board for six of those years.

Having moved to Sonoma County in 2014, Ms. Pemberton became involved in the campaign to pass the Evelyn Cheatham Effective IOLERO Ordinance, also known as Measure P, adopted in November 2020 with the approval of almost 2/3 of the vote. She now serves on the Committee for Law Enforcement Accountability Now (CLEAN), a group dedicated to ensuring the robust implementation of Measure P.

Ms. Pemberton is delighted to serve on the Community Advisory Council. She believes that it is the responsibility of everyone in a democracy to oversee the people in law enforcement to whom they have granted such enormous responsibility and authority; and she aspires to live in a community where law enforcement officers and the people they serve view each other with mutual respect and trust. She looks forward to doing her part to achieve those goals.

Ms. Pemberton lives in Sonoma County's Fifth District represented by Supervisor Lynda Hopkins.

## AT-LARGE REPRESENTATIVE



### DARNELL BOWEN

Darnell Bowen, a twenty plus years Sonoma County resident, is the co-founder of Nuestra Comunidad (NC) a local non-profit organization. NC's mission is to enhance the health, safety, and wellbeing of the community with an emphasis

towards underserved communities by delivering services to improve the quality of life and fostering a culture of disaster preparedness. His professional experience encompasses leading the finance, accounting, and human relation functions for organizations ranging from fast growing, private equity backed start-ups to larger Fortune 500 companies. Darnell pursues the vision of a socially just society by serving organizations that focus on solutions including promoting equitable healthcare for vulnerable communities, providing housing & life skills support for those battling substance abuse, and supporting the work of local churches in the community. Darnell's educational background includes an MBA from the University of Arizona and a Bachelor of Science in Business Administration from California State University, Fresno. In his leisure time he enjoys spending time with his wife and children, gardening, swimming, and backpacking.





John Alden, Director | IOLERO | 3333 Mendocino Avenue, Suite 240,  
Santa Rosa, CA 95403 | 707-565-1534 IOLERO@sonoma-county.org  
[www.sonoma-county.org/IOLERO](http://www.sonoma-county.org/IOLERO)

**DATE: March 22, 2023**

**TO: Members of the Community Advisory Council (CAC)**

**FROM: John Alden, IOLERO Director**

**RE: Work Plan from CAC 2023 Retreat**

The Community Advisory Council (CAC) held a retreat on Saturday, February 25, 2023, to discuss, among other issues, what policy issues the CAC might address in the upcoming year. This memo memorializes for the CAC the policy issues identified as priorities at the CAC Retreat, the committees the CAC chose to form at that Retreat, and the calendar of meetings for the upcoming year. Together, these comprise the Work Plan for the CAC for the upcoming year.

### **A. PRIORITY POLICY ISSUES**

The policy issues identified by the CAC were as follows, in the priority order created by the CAC:

#### **1. TRAFFIC STOPS / RIPA REPORT FOLLOW-UP (9 VOTES)**

Racial disparities in traffic stops have been an issue of much discussion nationwide, and for some time. Recently the State of California has begun requiring individual law enforcement agencies to record the perceived race of stopped drivers, among other characteristics. Many agencies in Sonoma County just began to record such data in mid-2021. The state board responsible for gathering and reporting this data to the public is called "RIPA." The RIPA annual reports summarizing and analyzing this data are far too complicated to recount accurately here. But in short, they do indicate that traffic stops of BIPOC drivers happen at a higher rate than BIPOC residents in California as a whole.

The 2023 RIPA Report showing Sonoma County's data for the second half of 2021 is now available here: <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf> At page 34, one can find the total number of reported traffic stops for the SCSO and the contract agencies of Sonoma PD and Windsor PD. In total, these are just over 3,000 reported stops. This is fewer than the reported stops for Petaluma PD in the same period, and roughly half that of Santa Rosa PD.

Some agencies have begun exploring ways to address these disparities. As noted in the 2023 RIPA Report, some Bay Area cities have considered whether local law enforcement should create local policies changing their traffic enforcement priorities. To date, these ideas have been met with some debate, including varying responses from different BIPOC communities in San Francisco, Los Angeles and other communities to such proposals.

Questions for the CAC to consider will include, among other issues, what conclusions, if any, can be reached about the impact of SCSO detentions on BIPOC communities in Sonoma County, and what specific changes to traffic stop or detention policies can be recommended in Sonoma County.

The CAC has decided to form an Ad Hoc Committee on this topic.

## 2. RECRUITMENT AND HIRING BEST PRACTICES / LAW ENFORCEMENT CULTURE (9 VOTES)

Recruiting new hires has been a substantial challenge for law enforcement throughout the state and nation in the last few years. The SCSO has been assertive in the last few years in recruiting new members, and continues to need more recruits to maintain staffing. See, for example, the SCSO recruiting page: <https://sonomasheriffjobs.wordpress.com/>

Diversification of the law enforcement workforce has also been a priority nationwide. Sheriff Engram has stated his commitment to diversifying the SCSO workforce, as well, both by race and gender. Some studies suggest diversification of law enforcement agencies may lead to increased community trust. See, for example, the US Department of Justice / Equal Employment Opportunity Commission's Advancing Diversity in Law Enforcement initiative: <https://www.eeoc.gov/advancing-diversity-law-enforcement>

The CAC will consider whether the CAC can assist with outreach to potential employment candidates, whether the SCSO would benefit from more public attention on this issue through the CAC, and whether the CAC could provide any insight into changes in recruiting, screening, hiring, and retention practices that might assist with diversification and recruitment. The CAC has also identified these practices as key in creating community-oriented culture within law enforcement.

The CAC decided to create an Ad Hoc Committee on this topic.

### 3. MENTAL HEALTH (6 VOTES)

Provision of mental health treatment by first responders is evolving throughout the state.

The County of Sonoma and several cities within the County have already created systems to respond to calls for service for those experiencing mental health crises, rather than simply sending law enforcement to handle these issues themselves. For example, the County's Behavioral Health Division within the Department of Health Services offers the "Mobile Support Team":

<https://sonomacounty.ca.gov/health-and-human-services/health-services/divisions/behavioral-health/services/community-response-and-engagement/mobile-support-team>

After that first response, continued treatment can be hard to secure. People needing treatment can then receive mental health services from local hospitals, but such resources in Sonoma County are reportedly strained to keep up with demand. As a result, many of the detainees in the jail are suffering from mental health challenges, making the jail the largest single *de facto* mental health treatment facility in Sonoma County.

The Board of Supervisors has prioritized expansion of mental health services. Funding and locating sufficient treatment professionals in Sonoma County remain key challenges.

The CAC will consider these distinct issues:

- a. Assessing how best to support the continuation of alternatives to having law enforcement be first responders, like the Mobile Support Team.
- b. Considering policy or budgetary changes that might support mental health treatment in custody at the jail.
- c. Advocacy in support of additional treatment options other than jail or emergency rooms in order to reduce the need for SCSO to have to respond to mental health crises in the field.

### 4. EVICTIONS AND UNLAWFUL DETAINERS (5 VOTES)

Sheriffs Offices are the only law enforcement agencies specifically charged with handling evictions. The rate at which tenants across California are evicted is wide expected to increase as COVID-era eviction protections slowly roll back. Generally speaking, whether a person is evicted is a decision made by courts, not sheriffs. But local sheriffs do have some control over how they communicate with tenants, and how the evictions are carried out. See, for example, some examples from other communities:

<https://www.sfsheriff.com/services/civil-processes/evictions/get-help-if-youre-being-evicted>  
<https://dcba.lacounty.gov/portfolio/eviction/>

To date, how the SCSO approaches evictions in Sonoma County has not been addressed by the CAC. If the CAC were interested in this issue in the next year, the CAC might consider how many evictions are likely in 2023 and/or 2024 as a tool to assess how urgent this issue might be, and whether the CAC might contribute towards policies at the SCSO that might make the eviction process clearer or less stressful for tenants being evicted.

## 5. DE-ESCALATION (4 VOTES)

The CAC previously provided suggested policies with respect to de-escalation of force:

[https://sonomacounty.ca.gov/Main%20County%20Site/General/Sonoma/BCCs/Department%20Information/\\_Documents/7-12-2021-De-Escalation-Policy-Recommendations-Final.pdf](https://sonomacounty.ca.gov/Main%20County%20Site/General/Sonoma/BCCs/Department%20Information/_Documents/7-12-2021-De-Escalation-Policy-Recommendations-Final.pdf)

The SCSO subsequently enacted a de-escalation policy, as required by state law:

<https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/61e07774d365911a737b8270/1642100596719/De-Escalation.pdf>

But since then, the CAC and SCSO do not appear to have followed-up on de-escalation with each other. Given the centrality of de-escalation to modern use of force, the CAC will continue the conversation with the SCSO on this topic by inquiring as to the differences between the recommended and adopted policies, examining current training at the SCSO on de-escalation, and assessing whether any data shows how well de-escalation policy and training have improved outcomes in the field for both the public and SCSO personnel.

The CAC also noted the following policy areas as being of interest should time permit this year (3 votes each):

## 6. FOLLOW-UP ON IOLERO 2017-2019 RECOMMENDATIONS ON IMPROVEMENTS TO SCSO INTERNAL AFFAIRS DIVISION INVESTIGATIVE PROCEDURES AND PRACTICES.

## 7. TREATMENT OF TRANSGENDER INMATES

### **B. COMMITTEES**

The CAC also agreed to make the following changes to its committee structure to accomplish its goals in the next year:

- a. Wind down the Extremism in Policing Ad Hoc once its recommendations are finalized by the full CAC;

- b. Create a Standing Committee for Community Engagement, since this is an ongoing responsibility of the CAC;
- c. Create two new Ad Hocs on specific policies, as noted above: a. Traffic Stops / RIPA Report Follow-Up;
- d. Recruitment and Hiring Best Practices / Law Enforcement Culture

Members for these new committees have not yet been selected. Dates for launching each committee are noted below in the Calendar section.

## C. CALENDAR

The CAC also agreed to the following calendar for its future meetings in order to work on the above priorities, modified slightly to reflect work completed at the first meeting in March, 2023:

### MARCH 2023:

IOLERO Annual Report 2021-2022

Investigative Process presentation from IOLERO to CAC

### APRIL 2023:

SCSO Presentation on Traffic Stops / RIPA Report

Extremism In Policing Report and Ad Hoc Close-Out

### MAY 2023:

IOLERO Update on Measure P Letters of Agreement

SCSO Presentation on Recruitment and Hiring Best Practices, and Ad Hoc Launch

Consideration of Community Engagement Standing Committee

### JUNE 2023:

SCSO Presentation on De-Escalation Presentation

De-Escalation Ad Hoc Launch

### JULY 2023:

No Meeting; Summer Break

### AUGUST 2023:

SCSO Presentation on Eviction Processes

### SEPTEMBER 2023:

Mental Health First Response and Alternatives to Jail / ER

### OCTOBER 2023:

Report Out from Recruitment and Hiring Best Practices Ad Hoc on Recommendations

## IOLERO COMPLETENESS CHECKLIST FOR AUDITING IAD INVESTIGATIONS 7-1-23

PRELIMINARY ITEMS	Mark when Completed
Identify and list the issues/allegations reasonably raised by the incident.	
FACT DEVELOPMENT	
Timely gather documentary / video / audio evidence, including BWC files and Dispatch files. If any are missing, explain why in the report.	
Timely interview subjects, complainants, witnesses (recorded by audio/video)	
<p>** Explore and where necessary, challenge, factual assertions to ensure objective record; eliminate shorthand use of phrases/terms of art, and/or require they be substantively explained on the record. Interviews need not be adversarial, but they do need to be probative. Avoid leading questions and questions suggesting justifications for the deputy's conduct.</p> <p>Obtain non-interrupted narratives from interviewees when possible and clarify/elaborate with targeted follow up questions.</p> <p>** Have deputies identify with as much specificity as possible the facts known to or perceived by the deputy at the time actions were taken, and the source of those facts, as they relate to the incident under review</p>	
<b>Use of Force Matters</b> (in addition to the foregoing)	
Establish whether (and specifically how) use of force factors listed in policy were considered by deputy(s)	
Establish whether (and specifically how) <u>proportionality</u> was considered by deputy(s)	
Establish whether (and specifically how) <u>de-escalation</u> was considered by deputy(s)	



<b>Use of Force Matters</b> (in addition to the foregoing)	
Provide complete analysis of balancing of interests under <i>Graham v. Connor</i> .	
Provide complete analysis of relevant use of force factors in SCSO Policy and California statutes.	
Provide complete analysis of <u>proportionality</u> balance.	
Provide complete analysis of <u>de-escalation</u> considerations.	
<b>Critical Incident Protocol Matters</b> (when SCSO is Employing Agency)	
Do not rely solely on the District Attorney's evaluation of whether charges will be filed <u>criminally</u> ; conduct separate analysis of whether deputy followed SCSO <u>policy</u> . This will often involve separate administrative interviews.	
WRITTEN REPORT	
All the facts and analysis used to reach a conclusion should be stated here, so the reader does not have to go elsewhere to understand the report.	
Avoid terms-of-art, or otherwise explain such terms. For example, instead of writing "the deputy de-escalated," instead write "The deputy stepped back a few paces, and told the man to take his time to explain what was going on."	
Summary of how record supports the finding of sustained, exonerated, unfounded, or not sustained, based on statutory and policy definitions. Use the "Allegation, Policy, Facts, Conclusion" four-sentence paragraph as a start.	
PRESERVATION OF RECORD	
Place all materials and evidence in AIM.	
Retain all BWC files in Evidence.com.	

Establish specific facts which deputy believed showed reasonableness of the force under the Fourth Amendment.	
<b>Critical Incident Protocol Matters</b> (when SCSO is Employing Agency)	
Check for compliance with the SCSO policy, not just assessing whether the deputy committed a crime. For example, check for compliance with the Critical Incident Protocol at the scene and for deputy compliance with SCSO de-escalation policy and training. This will often require a separate interview of involved deputies/witnesses to address SCSO policy, not just reliance on the investigating agency's interviews.	
Remember that the District Attorney or Attorney General's decision not to file criminal charges does not tell us whether there was a violation of policy.	
EVALUATION OF LAW / POLICY	
Explain SCSO's interpretation of the law/policy in issue.	
Summarize training, if relied on by deputy.	
Summarize experience, if relied on by deputy.	
Summarize deputy understanding of law/policy.	
APPLY LAW / POLICY TO FACTS	
Analyze facts under the law/policy as interpreted by SCSO.	
Identify ambiguity in law/policy.	
Identify and address factual contradictions and credibility issues, such as the impact of missing BWC or contradictions in witness testimony.	
Address whether deputy was directed by superiors to take specific action.	

July 12, 2021

CAC - Use of Force - Ad Hoc

Draft Recommendations to Sonoma County Sheriff's Office Topic: CANINES

### 309.6 APPREHENSION GUIDELINES - PROPOSED ADDITIONAL LANGUAGE

A canine may not be used to apprehend a suspect when a reasonable officer would perceive that the suspect had already surrendered and poses no imminent threat of violence or serious harm to the public, or the handler.<sup>1</sup>

A properly trained, certified canine may be used to apprehend an Active Resister whenever the handler has probable cause to believe that person has committed a crime, and less intrusive means of apprehension have been exhausted, or under the totality of the circumstances, determined to be ineffective or unavailable.<sup>2</sup>

Whenever possible, canine handlers should employ a "find and bark" approach rather than a "find and bite" approach. Under a find and bark, or "handler control" practice, a canine is trained and deployed to identify, find, and corner a suspect so that she or he can be apprehended. Find and bite generally refers to deployments that end in canine units biting a suspect, resulting in injuries that are potentially avoidable. The use of "bite and hold" techniques are prohibited.<sup>3</sup> In the event a canine is used in apprehension of a suspect, the canine handler must immediately call off the canine when he/she or another deputy is able to control the suspect or the suspect surrenders.<sup>4</sup>

#### 309.6.3 REPORTING DEPLOYMENTS, BITES AND INJURIES - PROPOSED ADDITIONAL LANGUAGE

##### ADDITION TO SECOND PARAGRAPH:

Any failure to disengage unintended bite or injury caused by a canine, including but not limited to bites to an unintended subject, bites resulting in significant injury, and/or bites to the head,

<sup>1</sup> Chew v. Gates (9<sup>th</sup> Cir. 1994) 27 F.3d, 1432 (see also Campbell v. City of Springboro (6<sup>th</sup> Cir. 2012), 700 F.2d.779, 787-789; and Robinette v. Barnes (6<sup>th</sup> Cir. 1988) 854 F.2d 909, 910-911, 914.) Campbell v. City

of Springboro (6<sup>th</sup> Cir. 2012), 700 F.2d.779, 787-789; Robinette v. Barnes (6<sup>th</sup> Cir. 1988) 854 F.2d 909,

910-911, 914.

<sup>2</sup> Camden County Police Department, Use of Force Policy, pg. 16) in consultation with the NYU Policing Project.

<sup>3</sup> Office of the Attorney General's Recommendations to the Sacramento Police Department which were subsequently the basis for recommendations to LE agencies statewide: <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>

<sup>4</sup> Alameda County Sheriff's Office, General Orders, GO 5.34 - Canine Program, pg. 6.

neck, or groin, shall be promptly reported to the canine supervisor<sup>5</sup> and the canine should be terminated from duty. Additionally, the handler should undergo additional training and re-certification before being allowed to continue as a canine handler."

<sup>5</sup> Tucson Police Department, General Orders, Use of Force, Section 2072, Office of Professional Standards in consultation with the NYU Policing Project.

