



**INTERNAL AFFAIRS INVESTIGATION  
ADMINISTRATIVE REVIEW  
AUDIT**

<b>CASE DETAILS</b>	
Complainant Name	SCSO Self-Initiated Administrative Review
Case Nos.	21-AR-0001 22-PP-0003
Type of Investigation	Use of Force; Canine Deployment; [REDACTED]
Incident Date	June 2, 2021
Date/Origin of Complaint	Administrative Review Assigned July 19, 2021 (Self-Initiated by SCSO)
Date IA Sent to IOLERO	October 20, 2022 (re-sent Feb. 2, 2023)
Date Preliminary Audit Returned to SCSO	May 9, 2023
Date Audit Becomes Final if SCSO Provides No Response	May 30, 2023

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## SUMMARY

This Audit addresses an internal Administrative Review (AR) conducted by the Sonoma County Sheriff's Office (SCSO) in connection with the use of canine force to apprehend Adam Gabriel during an investigation of an armed carjacking.

As discussed below:

1. The record shows that at the moment of the canine deployment, Mr. Gabriel posed minimal risk of violence or flight. Accordingly, based on the record as it presently stands, we conclude use of canine force violated prevailing law and SCSO Policy.
2. The record suggests that adherence to high risk stop and "red-flag" canine deployment procedures resulted in the deputy overlooking or unduly discounting the cumulative impact of discrepancies in vehicle color and suspect description and the lack of information about a second suspect, all of which are critical in assessing the need to use force. Likewise, these same factors, and loss of patience by the deputy, led to the deputy failing to continue de-escalation efforts that had been successfully used up to the moment that canine force was deployed. In other words, this deputy used a decision-making process that was inconsistent with law.
3. The Fourth Amendment and SCSO Policy look at use of force from the deputy's perspective. But the public views use of force from its own perspective and expectations. In this case, the raw BWC video shows a canine deployment against an unarmed kneeling individual with his hands raised. A member of the public would likely view such deployment as inappropriate, such that endorsing deputies perceiving such an unarmed kneeling person as "high risk" may serve only to deepen that view and raise distrust. The disconnect between what the law might permit, and what the public perceives and expects, militates heavily in favor of carefully restricting canine deployment in the future, as previously recommended by the Community Advisory Council.
4. SCSO submitted its investigative report to IOLERO in February 2023, past the usual 12-month disciplinary period in Government Code § 3304. However, Mr. Gabriel filed a civil lawsuit concerning the canine deployment in February 2022. *See* "Lawsuit accuses Sonoma County Sheriff's deputy of excessive force for deploying K-9 on wrong man", *Press Democrat*, Feb. 7, 2022. Therefore the § 3304 disciplinary period is tolled. (§ 3304(d)(2)(F)). SCSO should identify as part of its investigative report whether the § 3304 disciplinary period had expired and/or whether the disciplinary period has been tolled.

## MATERIALS REVIEWED

All materials provided by SCSO in the AIM system were reviewed in connection with this Audit. A full list of this material is attached as **APPENDIX A**.

## FACTUAL BACKGROUND

### **I. ARMED CARJACKING 9-1-1 CALL**

At approximately 9:52 p.m. on June 2, 2021, ██████ made a 9-1-1 call from south Santa Rosa to report his 2000 black Jaguar convertible had been stolen by a man displaying a black handgun. (Dispatch Audio 0:12–0:24, 0:45–1:11).<sup>1</sup>

█████, ██████ stated the suspect (later identified as Rajesh Suman) had met him and his ██████, ██████, at Houser Lane and Redwood Blvd. in Cotati. The suspect arrived in a green Subaru Forester, parked it in Cotati, and test-drove the Jaguar (with ██████ as passenger) to south Santa Rosa where the suspect stated he lived. ██████ followed them in a rented truck.

█████ described the suspect as “Hispanic, about 6 foot, 230 [lbs.]. He had a big shaved head, but he was wearing a baseball cap. He had a white hoodie on and jean shorts” and was about 35 years old. The baseball cap was black with a red bill. ██████ stated the suspect was alone and that his name was “Raj”. (Dispatch at 0:01–7:15; CAD 21:52:18–21:59:51; 22:01:10).

### **II. DISPATCH COMMUNICATION WITH OFFICERS**

#### **A. Description of Crime and Suspect**

About a minute after the 9-1-1 call started (9:53 p.m.) and while the call was in progress, SCSO Dispatch radioed to deputies that a carjacking had occurred “5, 10 [minutes] ago” in which a male suspect pulled a firearm and took the victim’s black Jaguar. (Dispatch Audio 7:20–7:49; CAD 21:53:39). Dispatch repeated this report a minute later adding that the suspect pointed a gun at ██████ and was last seen heading west on Mountain View Ave. (Dispatch Audio 9:20–9:36; CAD 21:54:24).

Immediately after these broadcasts, Dep. Shawn Forghani logged into SCSO’s Computer Aided Dispatch system (CAD). (CAD 21:54:56). Dep. Forghani was at the main SCSO office in Santa Rosa and responded with his K-9 partner “Max”. (Interview of Dep. Shawn Forghani 2:27–2:43).

A minute later at 9:55 p.m. Dispatch described the suspect as “an HMA [Hispanic male adult], 35 years old, 6 foot 230 with a shaved head, wearing a baseball cap, white hoodie and jean shorts”. (Dispatch Audio 11:49–12:01; CAD 21:55:26). At 10:01 p.m., Dispatch repeated the suspect’s description and stated “he’s armed with a semi-auto handgun.” (Dispatch Audio 14:25–15:10; CAD 22:01:13).

#### **B. Description of Suspect’s Vehicle and Location in Cotati**

At 10:02 p.m., a deputy (F35) radioed that the suspect might be heading back to the area of Houser and Redwood in Cotati and that he was “possibly associated with a Subaru Forester of some sort.” Dep. Forghani responded he was heading to Cotati. (Dispatch Audio 16:48–17:18; CAD 22:02:27) A minute later at 10:03 p.m. another deputy (F44) radioed

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<sup>1</sup> The Dispatch Audio consolidates segments of recorded radio and other SCSO communications. Reference to “Dispatch Audio” is to the elapsed time in the consolidated file at which the communication appeared, which is not necessarily the time the communication occurred during the incident. For example, the first 7 minutes and 14 seconds of the file consists solely of the 9-1-1 call. Immediately following the 9-1-1 call is the initial radio dispatch to units regarding the carjacking, which occurred while the 9-1-1 call was in progress. Our chronology is based on cross-referencing events in the Dispatch Audio with the Computer Aided Dispatch (CAD) log.

“sounds like the suspect parked a Subaru Forester, *green in color*, on Aaron Street near Houser Street. Parked it there and then went on a test drive with the victim.” (Dispatch Audio 17:21–17:40; CAD 22:03:58) (*italics added*).

C. Deputies’ Encounter with Adam Gabriel in Cotati

Dep. Forghani arrived at the Houser Street / Redwood Dr. area in Cotati at 10:08 p.m. (CAD 22:08:55), and at 10:09 p.m. he radioed “I’ve got a Forester, Primero, at the intersection of Primero, stand by, Primero and Portal.” (Dispatch Audio 24:33–24:45; CAD 22:09:52). Shortly thereafter another deputy (F55) radioed that they had made a felony stop at Primero and Portal. (Dispatch Audio 25:15–25:22; CAD 22:10:34).

At 10:11 p.m., Dep. Forghani asked Dispatch “Did we ever get a second suspect description?” to which Dispatch responded “Negative”. (Dispatch Audio 25:40–25:50; CAD 22:11:14). A few seconds later Dep. Forghani radioed Dispatch asking to run the license of the Subaru, describing it as a “*silver* Subaru Forester”. (Dispatch Audio 26:06–26:21; CAD 22:11:36; 22:11:50) (*italics added*).

At approximately 10:13 p.m., Dep. Forghani radioed Dispatch that the “suspect is refusing to cooperate with us. Can we get a 40 [millimeter non-lethal weapon] started our way?” (Dispatch Audio 27:06–27:18).<sup>2</sup>

At 10:14, the deputy en route with the 40 millimeter (S34) radioed “I’m heading down there and confirming this is the suspect vehicle of the 215 vehicle?” to which Dispatch replied “The suspect vehicle we initially pulled up on was a green Subaru.” (Dispatch Audio 29:57–30:20; CAD 22:14:51). A moment later a deputy (F54) radioed that the K-9 had been deployed. (Dispatch Audio 30:21–30:30; CAD 22:14:59). About 30 seconds later Dep. Forghani radioed that the K-9 deployed, one person was in custody, and requested medical. (Dispatch Audio 30:40–30:52; CAD 22:15:38).

### **III. CANINE DEPLOYMENT**

Various Body Worn Camera (BWC) videos show that several deputies had surrounded Mr. Gabriel’s Subaru. Dep. Forghani’s BWC was not recording, but Dep. Benjamin Pike parked next to Dep. Forghani and his video provides a vantage substantially similar to what Dep. Forghani would have seen.

Mr. Gabriel is holding his left arm up outside the driver side window as Dep. Pike arrived next to Dep. Forghani. (Pike BWC 1:02–1:07). While Mr. Gabriel sat in his vehicle, Dep. Forghani radioed a license check on the “silver Subaru Forester”. (Pike BWC 1:28–1:40). Dep. Forghani then told Dep. Pike that he was going to call Mr. Gabriel out of the vehicle and bring him over to the deputies. (Pike BWC 1:50–1:52).

Dep. Forghani stated to Mr. Gabriel “Alright, slowly open the door, walks towards me, alright?” (Pike BWC 1:59–2:03). Mr. Gabriel responded by asking why he was being stopped and Dep. Forghani responded “We’ll get to that. But what I need you to do right now is listen to what I’m saying, alright?” (Pike BWC 2:04–2:12). Mr. Gabriel continued to question why he was being stopped and Dep. Forghani replied “You need to get out or you’re going to get bit by the dog.” (Pike BWC 2:13–2:19). Mr. Gabriel continued to demand why he was being

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<sup>2</sup> The Dispatcher appeared initially to misunderstand that the suspect was “cooperative”. A second deputy clarified the driver was uncooperative. (Dispatch Audio 27:18–27:32; CAD 22:13:39).

stopped and Dep. Forghani replied “I will explain that to you once you’re out of the car. Right now is not the time for this discussion. Ok?” (Pike BWC 2:19–2:25).

Mr. Gabriel continued to ask if he was under arrest; Dep. Forghani replied “Right now you’re being detained. I need you to step out of the vehicle and walk towards us, alright?” Mr. Gabriel asked “for what” and Dep. Forghani replied “For a carjacking. Step out of the vehicle with your hands up.” Mr. Gabriel continued to argue and starting demanding that the deputies “show me a warrant.” Dep. Forghani replied “Listen man, you’re making this a lot more difficult than it needs to be. Alright? Your options right now are to get out of the vehicle and cooperate and we can explain what’s going on, or we stay like this and we’re going to have to continue to escalate to get you out of that vehicle. Alright?” (Pike BWC 2:25–3:11).

Mr. Gabriel continued to argue and asked what crime he committed. Dep. Forghani replied “Listen man, listen. What’s your name? [Mr. Gabriel replied “Adam”]. Adam. Listen, Adam. This scenario that we’re in right now is not the time to have this discussion. Do you understand me? Ok? Get out of the vehicle, head towards us and we can talk.” Mr. Gabriel continued to argue, asking if the deputies were “taking my rights away”. Dep. Forghani replied “Right now I’m trying to get you into safe position to have a conversation. Alright?” (Pike BWC 3:11–3:33).

Mr. Gabriel stated that he had a dog in the car and Dep. Forghani replied “I understand. I got a dog right here. So step on out so we can talk.” Mr. Gabriel then asked repeatedly whether he was under arrest, and Dep. Forghani replied “You’re being detained.” When Mr. Gabriel continued asking if he was under arrest, Dep. Forghani stated “Well, if you would like to be under arrest for delaying and resisting, yes, you are under arrest. Step out of the vehicle.” (Pike BWC 3:33–3:56).

At this point Mr. Gabriel started exiting the vehicle. As he did so he asked “what investigation” and Dep. Forghani replied (this time in a tone revealing frustration) “My investigation for the carjacking.” (Pike BWC 3:56–4:02).

Dep. Forghani directed Mr. Gabriel to keep his hands up as he exited the vehicle. After returning his dog to the vehicle Mr. Gabriel complied with Dep. Forghani’s directive to keep his hands up and walk towards him slowly. As he came closer it is apparent on BWC footage that Mr. Gabriel was a White adult male with a black beard, wearing a green t-shirt and a brown baseball cap. (Pike BWC 4:02–4:23).

When Mr. Gabriel was approximately 15 feet from the deputies, Dep. Forghani ordered Mr. Gabriel to get on his knees which he did (his hands still raised). (Pike BWC 4:22–4:25). Dep. Forghani then directed Mr. Gabriel “crawl towards us.” (Pike BWC 4:25–4:29). Mr. Gabriel started to lean forward and then yelled “What crime have I committed?” (Pike BWC 4:29–4:30). Dep. Forghani stated “Crawl towards us right now.” Mr. Gabriel and Dep. Forghani then went back and forth with Mr. Gabriel asking what crime he committed and Dep. Forghani directing him to crawl. Throughout this exchange Mr. Gabriel remained on his knees with his hands raised. (Pike BWC 4:30–4:38).

At this point as he and Mr. Gabriel were cross-taking over each other, Dep. Forghani stated “I’m not going to tell you again. You will be bit.” (Pike BWC 4:38–4:40). Immediately after stating this Dep. Forghani deployed the canine. Mr. Gabriel was still on his knees with his hands in the air. The canine initially bit Mr. Gabriel’s right arm; Mr. Gabriel was able to disengage the bite after approximately 2-3 seconds and he wrestled with the canine for a few more seconds before the canine was called off. (Pike BWC 4:40–4:56).

The AIM record does not document the extent of Mr. Gabriel's injuries. However, photos released by SCSO as part of its public disclosures under SB 1421 shows Mr. Gabriel having received three puncture wounds and a significant fourth cut on his right bicep, along with bruising and discoloration. Whether and to what extent Mr. Gabriel sustained muscular, nerve or other impairment is not documented in AIM.

#### **IV. SUBSEQUENT APPREHENSION OF CARJACKING SUSPECT**

After Mr. Gabriel was taken to the hospital, Dep. Formasi observed the stolen Jaguar near the Cotati area where Mr. Gabriel had been apprehended. The driver, identified as the carjacking suspect Rajesh Suman, was arrested and was found to possess a key for a Subaru Forester different from the one driven by Mr. Gabriel.

Investigation later showed that Mr. Gabriel had no connection with the carjacking.



#### **V. CRIMINAL INVESTIGATIVE REPORT**

The criminal investigative report sets out the deputies' observations from the incident. The reports are generally consistent with the Dispatch audio, CAD notes and BWC video with the noted exception of Dep. Forghani's description of the color of Mr. Gabriel's vehicle. To avoid repetition we identify those portions of the report most relevant here.

**Dep. Veronica Ordaz** stated that the suspect had been described as a "Hispanic/Armenian male, 6'00 ft, 230 lbs, bald, wearing blue jeans, white T-shirt with old English writing, white hoodie, black base hat with red bill, red and white tennis shoes." (Report at 3). The suspect was driving "a *green-colored* Subaru Forester" when he met the victims. (*Id.*) (italics added)

**Dep. Richard Dunlap** wrote that he took [REDACTED] to Cotati where [REDACTED] stated the Subaru was the same one Mr. Suman had driven because he "recognized the rims, roof rack and Subaru emblem". The vehicle's color was not referenced. (Report at 6).

**Dep. Forghani** wrote that he heard over the radio that the suspect had arrived in a "green Subaru Forester". (Report at 6). When he arrived in Cotati he observed a "*light grey or green* Subaru Outback (similar to a Forester and I called it a Forester)" occupied by a male. "Based on the vehicle description, vehicle location, and time and proximity of the event, I believed I had located the Subaru that the suspect had arrived in." (*Id.* at 7) (italics added).

Dep. Forghani wrote that he could see when Mr. Gabriel exited his vehicle that he was well built and "knew a physical confrontation would result in significant injury to all involved." Because of his build, his argumentative interaction and the report of a firearm, the deputy had Mr. Gabriel "go down to his knees once he was approximately 10 feet in front of my patrol car." (*Id.* at 7).

When Mr. Gabriel was on his knees he screamed in a "primal fashion" demanding to know what he was being arrested for. Dep. Forghani stated he ordered Mr. Gabriel to crawl so as to place him in a position of "disadvantage" and be safely taken into custody. Mr. Gabriel "refused" and asked repeatedly "in an almost mantra-like fashion" why he was being arrested. After being warned "3 separate times" about canine deployment Mr. Gabriel "began scanning left and right with his head" which "[b]ased on my training and experience I [Dep. Forghani] recognized" as "a pre-assault indicator that he was either planning to attack or flee" and



because of his “close proximity” to the deputies, he deployed the K-9 to “mitigate the situation, gain compliance, and take [Mr. Gabriel] into custody”. (*Id.* at 7).

**Dep. Robert Sutherland** wrote that he responded to the Cotati area after Mr. Gabriel had been taken into custody and “observed a *silver* Subaru” and that [REDACTED] later arrived and identified the vehicle as the one associated with the carjacking suspect. (Report at 10) (italics added).

**Dep. Anthony Crivello** wrote that he responded to Cotati to secure Mr. Gabriel’s vehicle which he described as “a *silver* 2016 Subaru”. (Report at 11) (italics added).

**Dep. Joseph Myers** responded to Cotati and assisted in clearing Mr. Gabriel’s vehicle which he described as “a *green* Subaru”. (Report at 11) (italics added).

## VI. **INTERVIEW OF DEP. FORGHANI**

The AR Investigator interviewed Dep. Forghani on August 16, 2021. (Int. 1:03–1:12).<sup>3</sup>

Dep. Forghani explained that he was at the main office when he heard a dispatch regarding an armed carjacking and he left with his canine to respond. (Int. 2:27–2:43). While en route, he heard that the victim had met the suspect in Cotati, that the suspect had initially arrived in a green Subaru Forester, and that the suspect may be headed back to Cotati in the stolen Jaguar. (Int. 2:44–3:11).

- **Suspect and Vehicle Description**

Dep. Forghani headed to Cotati to see if he could find the suspect’s Subaru and he came across a “*greenish-gray* Subaru.” (Int. 3:11–4:00) (italics added). In coming upon the Subaru, he noted it was the “right area”, “right time of day”, and a “*similar* vehicle” in which a person was “just sitting” at the intersection at a stop sign. The deputy immediately stopped and notified dispatch that he found a “possible match” to the suspect’s vehicle. (Int. 4:00–4:22) (italics added).

Dep. Forghani confirmed that the suspect’s vehicle had been described by Dispatch as a *green* Subaru. (Int. 5:03–5:55). The deputy also confirmed that he knew at that time that Mr. Gabriel was *not* the carjacking suspect based on the radioed description, but he was operating under the “premise” that the suspect could have initially arrived with another person who could be the get-away driver of the Forester. Dep. Forghani stated that when Dispatch radioed that there was no information about a second suspect, he interpreted that as meaning there was “no information about a second suspect” rather than “there is no second suspect.” (Int. 13:17–14:34).

- **Factors Leading to Canine Deployment**

Dep. Forghani stated he initiated and followed “standard” high risk stop protocol requiring Mr. Gabriel to exit the vehicle, get on his knees and, when he was close to the deputies, to crawl. (Int. 4:22–5:03). Dep. Forghani described Mr. Gabriel as “non-compliant” and “confrontational” because he demanded to know what the stop was about, denied he committed a carjacking, questioned whether he was under arrest, and engaged in other “back

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<sup>3</sup> Dep. Forghani stated that he had reviewed his report and “video related to the case” prior to the interview. As noted earlier, Dep. Forghani did not activate his BWC until after Mr. Gabriel was already in custody. Accordingly, the deputy’s reference to “video” in this matter may be to his later recorded BWC footage or to video recorded by other deputies, or both. The AR Report does not clarify which “video” Dep. Forghani reviewed.

and forth” which the deputy characterized as the “constitutionalist, the, you know, sovereign citizen type jargon.” (Int. 6:26–7:30).

Dep. Forghani stated that in his 16 years in law enforcement he participated in no less than 50 high risk stops and described five usual outcomes: (i) the person is innocent and complies 100% “no questions asked”; (ii) the person is innocent but a “little resistant” because they are innocent and ask what is going on, but they still comply; (iii) the person is guilty and denies involvement, but is cooperative; (iv) the person is guilty and uncooperative; and (v) the person is just simply uncooperative. (Int. 7:30–9:43). The deputy stated this incident showed the “guilty suspect” version because it concerned a potentially armed suspect who, when told what the matter was about, continued to ask the same thing. The deputy then stated that “[t]he guy’s either under the influence of something, he’s altered state of mind, or he’s just, you know, trying to come up with a, excuse, escape, some sort of plan in his head on what he’s going to do so he’s repeating himself over and over again.” (Int. 10:11–11:00).

Dep. Forghani explained that “in the canine world we always talk about building a case” and on every call “I’m putting little pinpoints, little red flags that I’m picking up so that ultimately if things are turning I have all these red flags along the way that I’ve made my decision on. This guy was giving me multiple red flags over and over and over again.” (Int. 12:00–13:17). When asked to elaborate, Dep. Forghani stated:

Yeah. So I’ll start from the beginning. I go to the area I was told the suspect may be. Within 10 minutes of the crime I find a vehicle that matches the description. There’s red flag one. Occupied vehicle, red flag two. Immediate non-compliance, red flag three. The repeated non-compliance it’s over and over again. Call that another red flag four. Again, those are the four that established that, ok, I got the right guy.

(Int. 22:18–23:54).

Dep. Forghani stated he saw Mr. Gabriel was very muscular and later when he was on his knees and told him to crawl Mr. Gabriel became “more agitated”, “more angry” and started to “look around” which Dep. Forghani described as “pre-assault indicators” meaning Mr. Gabriel is “either preparing for an attack or to flee.” If Mr. Gabriel charged at the deputies, “it was going to be a mess because you have a deputy with a firearm now wrestling with a guy, and I got a dog and I can’t wrestle with the guy. That wasn’t an option that I was going to let happen.” (Int. 14:34–17:14). When the Investigator suggested that “deploying the dog and just getting him into custody was the best avenue to basically de-escalate the situation”, Dep. Forghani agreed. (Int. 19:42–20:29).

Dep. Forghani also stated he believed Mr. Gabriel presented an “immediate threat” when he deployed the canine, explaining:

As I mentioned, he had, up to this point he had given me so many red flags, the statements, the repeating himself over and over again, the non-compliance to my very reasonable requests. . . . So I tried reasonable conversations, I tried ordering him, I tried you know threatening him with a dog bite. Nothing was working. . . . Either he going to reach for his waistband for a weapon . . . [o]r he was going to get up and run at that point and a physical confrontation with him at that point was going to be a mess.

(Int. 17:15–19:01).

Dep. Forghani then reiterated his “red flag” case for deploying the canine, stating “I got the, you know, involved individual, suspect vehicle, location, time, non-compliance, agitated behavior, you know, not complying to my reasonable efforts to negotiate with him, then

ramping it up, the pre-assault indicators. All those went into my decision making. . . . [A]ny reasonable person or any innocent person not involved at this point, whether they feel right or wrong, is going to listen and say ok, fine. This guy wasn't that." (Int. 23:54–25:15).

• [REDACTED]

[REDACTED]

## THE ADMINISTRATIVE REVIEW

### I. SCOPE AND PURPOSE OF ADMINISTRATIVE REVIEW

SCSO Internal Affairs opened an “Administrative Review” concerning the use of canine force to apprehend Mr. Gabriel. An Administrative Review is an internal SCSO process to “determine if the [SCSO] policies were followed or if any policy can be improved upon.” (AR Report at 2). This type of administrative evaluation is not based on a specific allegation, or even a suggestion, of wrongdoing. Instead, it conducts a higher-level look at whether policies *might* have been violated during the incident and to assess whether policies or training are adequate or should be modified or changed. In the Administrative Review, the Investigator must “correlat[e] appropriate policies that govern some of the actions taken by employees during the incident in order to compare and contrast actions. Based on those policies, the actions of the employees [are] examined to determine if the policies were followed or if any policy can be improved upon.” (AR Report at 2).

While SCSO Policy 1010 outlines procedures and standards for conducting administrative investigations of complaints against SCSO members and conducting Internal Affairs administrative investigations of employee conduct generally, SCSO Policy does not specify the procedural or substantive standards to be applied in an “Administrative Review”. The AR Report also does not issue findings under Penal Code §§ 832.5, 832.7 and 832.8 and SCSO Policy 1010 such as “exonerate” or “unfounded”, but instead states only whether “policy violations” are “noted”. Where a violation is “noted”, the matter may be referred to Internal Affairs for a follow-up administrative investigation under Policy 1010. (*See* SCSO Policy § 1010.3 [“Personnel complaints may be generated internally or by the public.”]).

In this case, the Investigator identified three policies for general review: (i) Policy 300—Use of Force; (ii) Policy 309—Canine, and (iii) [REDACTED]. (AR Report at 2).<sup>4</sup>

<sup>4</sup> The notice provided by the Investigator to Dep. Forghani at the outset of the Administrative Review stated that as a result of his conduct, Dep Forghani “*could* be in violation of Office Rules and Regulations and Department Policies, and therefore *could* be subject to disciplinary action, up to and including termination of your employment status with the Sheriff’s Office.” (SCSO Notice dated July 19, 2021) (*italics added*). The notice informed the deputy that it may be necessary to “formally interview” him. (*Id.*). Dep. Forghani was also provided an Administrative Admonishment compelling him to provide truthful information, and he appeared for the interview with his counsel. (Int. 0:30–

## II. THE ADMINISTRATIVE REVIEW RECORD

The Investigator reviewed the Dispatch Audio, the CAD entries, and the criminal investigative report (with supplements). The Investigator further reviewed BWC video for Dep. Anthony Crivello, Dep. John Formasi, Dep. Marcus Holton, Dep. Scott McCracken and Dep. Benjamin Pike.<sup>5</sup>

The Investigator also separately interviewed Dep. Forghani.

## III. THE ADMINISTRATIVE REVIEW CONCLUSIONS

### A. Use of Force—Policy 300

The Investigator found that the detention of Mr. Gabriel was lawful. Facts known to Dep. Forghani at the time were that the carjacking victim stated the suspect may be returning to the Cotati location where he left his Subaru Forester. Mr. Gabriel was in a vehicle that “closely matched” the suspect’s vehicle and was two blocks away from where the suspect had left it. The area had only closed businesses and Mr. Gabriel was idling in place as if he was waiting. (AR Report at 23–24). Based on these facts, Dep. Forghani had reasonable suspicion to detain Mr. Gabriel.

In detaining Mr. Gabriel, the Investigator found that facts known to Dep. Forghani at that time were that the crime under investigation was a felony carjacking involving a firearm. Mr. Gabriel was muscular, had the ability to hear and understand commands, but was “largely non[] cooperative”. The vehicle and surrounding area had not been cleared of potential suspects and when Mr. Gabriel was on his knees he became more agitated and “looked around” which the deputy perceived as “pre-assault” indicators or looking for avenues of escape. (AR Report at 24).

Based on Mr. Gabriel’s general lack of compliance, his refusal to crawl, and his increasingly agitated state, Dep. Forghani believed that Mr. Gabriel was “building to an ‘event’”. Dep. Forghani had requested a 40 millimeter launcher but it had not arrived. Accordingly, the deputy determined using canine force to take Mr. Gabriel into custody was the safest option at that moment. (AR Report at 24).

With respect to de-escalation efforts, the Investigator found that Dep. Forghani maintained a distance from the vehicle, kept a calm demeanor and explained to Mr. Gabriel why he was being detained, asked Mr. Gabriel for his name and spoke with him using his name, and tried to reason with Mr. Gabriel by explaining that he wanted to make sure everyone was in a safe position to have their conversation. (AR Report at 24).

Based on these factors, the Investigator concluded that Dep. Forghani’s use of force with the canine was “reasonable and within policy” and that there was “**no violation noted**”. (AR Report at 25).

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0:37). Dep. Forghani’s counsel explained at the outset of the interview that he understood the Administrative Review was not a typical investigative process, but because it was possible that some type of disciplinary action could later result, SCSO was complying with the Peace Officer’s Procedural Bill of Rights by providing the Notice, Administrative Admonishment and permitting counsel to be present. (Int. 1:40–2:10).

<sup>5</sup> The Investigator reviewed a total of 12 BWC videos (including those listed above), some of which did not record the canine deployment. (AR Report at 3).

B. Canine Deployment—Policy 309

The Investigator found that at the time of canine deployment, Dep. Forghani believed that Mr. Gabriel was an accomplice in an armed carjacking. The deputy also believed Mr. Gabriel poses an imminent threat of violence or serious harm. Because a firearm was involved in the carjacking Dep. Forghani feared Mr. Gabriel could be armed. The deputy also believed that Mr. Gabriel’s non-compliance was an effort to “buy time to formulate a plan” and when Mr. Gabriel was on his knees he “looked around” which the deputy perceived as a “pre-assault” indicator or effort to find an avenue to flee. Mr. Gabriel was muscular and once in close proximity to the deputies became increasingly agitated which the deputy perceived as “building toward an action of either attack or flight”. When presented with the canine and warnings, Mr. Gabriel still did not comply.

Based on these factors, the Investigator concluded that Dep. Forghani’s canine deployment was “reasonable and within policy” and that there was “**no violation noted**”. (AR Report at 26).

C. [REDACTED]

[REDACTED]

**APPLICABLE LAW AND POLICIES**

I. APPLICABLE LAW

A deputy may arrest a person if the officer has “reasonable cause to believe” that a person has committed a public offense. (Pen. Code § 835a(b), § 836(a)). A deputy may use “objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.” (Pen. Code § 835a(b)).

However, a deputy may not use force that is “unreasonable”. *Graham v. Connor*, 490 U.S. 386, 396 (1989). The “reasonableness” standard balances governmental interests against the nature and quality of intrusion and consideration of the severity of the crime, whether the suspect posed an immediate threat to officers or others, and whether the suspect was actively resisting or evading. (*Id.*). “Reasonableness” is judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”, and makes “allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” (*Id.*).

Nevertheless, the peace officer’s “perspective” must be “objectively” reasonable in light of the “totality” of the “facts and circumstances” that actually confronted them. *Id.*; *Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1006–07 (9<sup>th</sup> Cir. 2017), citing *Saucier v. Katz*, 533

U.S. 194, 207 (2001) (excessive force claims evaluated for objective reasonableness based on information officer had when conduct occurred); *Glenn v. Washington County*, 673 F.3d 864, 873 n.8 (9<sup>th</sup> Cir. 2011) (because reasonableness of force must be judged from perspective of reasonable officer on scene, cannot consider evidence of which officer was unaware at the time force was used). Accordingly identifying what the officer actually knew and what they were actually faced with is critical to assessing whether their perceptions, and their actions, were “objectively reasonable”.

California has adopted the Fourth Amendment safeguards, requiring use of force be evaluated “from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight”, and account for occasions when an officer must make a quick judgment. (Pen. Code § 835a(a)(4)).

At the same time, authority to use force is a “serious responsibility that shall be exercised judiciously and with respect for human rights and dignity”. (Pen. Code § 835a(a)(1)). Accordingly, while evaluated from the officer’s perspective, use of force shall be reviewed “in a manner that reflects the gravity of that authority and the serious consequences of the use of force” in order to “ensure that officers use force consistent with law and agency policies.” (Pen. Code § 835a(a)(3)). *See also* SCSO Policy 300.2 (“Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.”).

California also requires law enforcement agencies to require officers to (i) use de-escalation techniques when feasible; (ii) only use a level of force “that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance”; and (iii) adopt comprehensive guidelines regarding “methods and devises” for the application of force. (Gov’t Code § 7286(b)) (*italics added*).

## II. SCSO POLICIES

SCSO incorporated the above-referenced use of force requirements into its policies as of December 2020.<sup>6</sup>

### A. Use of Force—Policy 300

SCSO Policy 300 defines “**force**” as the “application of physical techniques or tactics, chemical agents or weapons to another person.” (§ 300.1.1). “**Deadly force**” is force that “creates a substantial risk of causing death or serious bodily injury”, and “**serious bodily injury**” is defined as “[a] serious impairment of physical condition, including but not limited to” “loss of consciousness”, “concussion”, “bone fracture”, “protracted loss or impairment of function of any bodily member or organ”, “a wound requiring extensive suturing” and “serious disfigurement”. (§ 300.1.1). “**Less lethal weapon**” is defined as an “authorized weapon used to launch, fire, or propel less-lethal munitions to engage a subject with the intent to gain their compliance and overcome a subject’s active resistance or assaultive behavior.” (§ 300.1.1).<sup>7</sup>

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<sup>6</sup> This Audit references SCSO Policies dated December 23, 2020. The arrest in this case occurred on June 2, 2021. We are not aware of any revised policies released by SCSO between December 2020 and June 2, 2021.

<sup>7</sup> Specific examples given of less-lethal munitions are Taser, foam/rubber batons and chemical agents. (§ 300.1.1).

Consistent with the Fourth Amendment and Penal Code § 835a requirements, SCSO Policy 300 provides that “Deputies shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the deputy at the time of the event to accomplish a *legitimate law enforcement purpose*.” (§300.3) (italics added). “Reasonableness” is to be judged from the perspective of a reasonable deputy at the scene at the time of the incident and must account for the fact that deputies are often required to make split-second decisions under tense, uncertain or rapidly evolving circumstances. (*Id.*).

Having generally adopted the constitutional standards, SCSO Policy sets out some limiters. “Deputies shall use only that force which is objectively reasonable . . . to *effectively bring an incident under control*.” (§ 300.2) (italics added). By these terms, once an incident has been brought “under control” use of force is to terminate.<sup>8</sup>

Moreover, “[d]eputies may only use a level of force that they reasonably believe is *proportional* to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.” (§ 300.3; Gov’t Code § 7286(b)(2)).

SCSO Policy also provides that, when reasonable, deputies “should consider actions that may increase deputy safety and may decrease the need for using force” by summoning additional resources, formulating a plan to handle an unstable situation that does not appear to require immediate intervention, or employing other tactics that do not increase deputy jeopardy. (§ 300.3.6). Deputies “should” also, when feasible, consider and use “reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force”. (§ 300.3.6.; Gov’t Code § 7286(b)(1)).<sup>9</sup>

Policy § 300.3.2 further identifies factors to “consider” both when “determining whether to apply force” and later when “evaluating whether a deputy has used reasonable force”. These include:

- immediacy and severity of the threat
- the individual’s conduct as reasonably perceived by the deputy
- proximity of weapons
- the availability of other reasonable options
- seriousness of the suspected offense or reason for contact with the person
- training and experience of the deputy
- potential for injury to the deputies or suspect
- whether the person is resisting or attacking the deputy
- the risk of escape

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<sup>8</sup> Facially, bringing an incident “under control” is not the same as achieving a “legitimate law enforcement purpose.” The latter addresses the officer’s legal authority to address an incident while the former speaks to the more practical issue of controlling the parties and the scene.

<sup>9</sup> Government Code 7286(b)(1) requires SCSO to maintain a policy that “*shall include*” “a *requirement* that officers utilize de-escalation techniques . . . when feasible”. By its terms, SCSO Policy § 300.3.6 and § 300.1.1 provide only that deputies “should consider” de-escalation techniques or “should consider” slowing down the incident. Thus SCSO Policy appears to impose a more discretionary standard for assessing de-escalation alternatives than the mandatory terms of Government Code § 7286(b)(1). For present purposes, and unless informed otherwise by SCSO, we assume that SCSO Policy intends to follow the mandatory requirements of Government Code § 7286(b)(1) notwithstanding SCSO’s use of the term “should”.

- apparent need for “immediate” control of the person
- prior contacts with the person or awareness of propensity of violence
- “any other exigent circumstances”

(See Gov’t Code § 7286(b)(21) (requiring policies to identify “factors for evaluating and reviewing all use of force incidents”).

B. Use of Canine—Policy 309

Using canines to physically apprehend a person is a “use of force”. See, e.g., *Chew v. Gates*, 27 F.3d 1432 (9<sup>th</sup> Cir. 1994) (canine use to apprehend through bite is use of force). Canines are not specifically identified by SCSO Policy 300 or Policy 303 as a use of force “technique” or “control device”. Instead, SCSO Policy 309 provides that canines are to be used for three general purposes to “augment police services to the community”, only one of which involves force: (i) locate individuals (ii) locate contraband and (iii) “apprehending criminal offenders.” (§ 309.1).

Policy 309 allows canines to “locate and apprehend a suspect” if the handler “reasonably believes that the individual has either committed, is committing or threatening to commit any *serious offense* and if any of the following conditions exist:

- (a) There is a reasonable belief the suspect poses an imminent threat of violence or serious harm to the public, any deputy or the handler.
- (b) The suspect is physically resisting or threatening to resist and the use of a canine reasonably appears necessary to overcome such resistance.
- (c) The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of deputies or the public.

(§ 309.6) (*italics added*). Use of a canine to apprehend in other circumstances must comply with the “objectively reasonable” standard. (*Id.*).<sup>10</sup>

Prior to using a canine to “search for or apprehend” a person, the handler or supervisor on scene “should carefully consider all pertinent information reasonably available at the time” including:

- the nature and seriousness of the suspected offense
- whether violence or weapons were used or anticipated
- the degree of resistance or threatened resistance the suspect has shown
- the suspect’s known or perceived age
- potential for injury to deputies or the public if the canine is not used
- potential danger to the public or deputies if the canine is released
- potential for the suspect to escape or flee if the canine is not utilized

“It is the canine handler’s responsibility to evaluate each situation and determine whether the use of a canine is appropriate and reasonable.” (§ 309.6.1).

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<sup>10</sup> Using a canine to “locate and apprehend a suspect wanted for a *lesser criminal offense*” requires approval from the Watch Commander. Unless circumstances change that present an imminent threat to deputies, the canine or the public, canine use involving lesser offenses “should be conducted on leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual.” (§ 309.6) (*Italics added*).



Unless it would increase the risk of injury or escape, “a clearly audible warning announcing that a canine will be used if the suspect does not surrender should be made prior to releasing a canine. The handler should allow a reasonable time for a suspect to surrender”. (§ 309.6.2).

If the canine has “apprehended” a person with a bite and the handler believes the suspect no longer poses a threat, he or she should “promptly command the canine to release the suspect.” (§ 309.6). When a canine deployment results in a bite or causes injury, a supervisor should be promptly notified, the injuries documented in both a “canine use report” and the incident report, and the injured suspect provided medical care. Photographs shall be made of the injuries and retained. (§ 309.6.3).

C. [REDACTED]

[REDACTED]

## DISCUSSION AND CONCLUSIONS

As previously noted, the purpose of an Administrative Review is to evaluate whether deployment of the canine under the circumstances of this case was consistent with law and SCSO policy, and whether adjustments or changes to training or policy should be made. Because the Administrative Review is not responding to a specific allegation or claim of wrongdoing by a deputy, its review is more generalized than investigation of a specific claim of misconduct.

Based on our review of the investigation and resulting record, and bearing in mind the purpose and parameters of an Administrative Review, we conclude:

(1) The administrative investigative record, as it presently stands, shows that Mr. Gabriel presented minimal risk of flight or violence at the moment the canine was deployed and therefore use of canine force violated law and SCSO Policy.

(2) SCSO’s high risk stop and “red flag” canine protocol may have resulted in the deputy overlooking or unduly discounting clear discrepancies in vehicle color and suspect description, leading to the use of canine force that is legally questionable. This protocol, combined with the deputy’s growing impatience with Mr. Gabriel, further resulted in a failure to continue de-escalation efforts that were being successfully used up to the moment canine force was employed.

(3) Canine force carries risks not presented by other use of force techniques, it has a history of abuse, and it carries considerable social stigma. Accordingly, canine force should be strictly limited to narrowly defined circumstances.

**I. BASED ON THE PRESENT ADMINISTRATIVE INVESTIGATIVE RECORD, USE OF CANINE FORCE VIOLATED LAW AND POLICY**

**A. Fourth Amendment**

Assessing the objective reasonableness of canine force looks at (i) the severity of intrusion on the person and amount of force inflicted (ii) the government interest in using force, and (iii) the balance between the gravity of intrusion and the government’s need for intrusion. *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017) (*en banc*).

• ***Severity of Intrusion***

The force actually employed by the canine in this case consisted of a 2 to 3 second interaction with Mr. Gabriel with immediate disengagement of the canine. The bite inflicted three puncture wounds and a fourth significant cut on Mr. Gabriel’s right bicep with significant bruising. This level of force would likely be termed “moderate” under Ninth Circuit law, but it could be deemed to be a higher “severe” level based on the wounds inflicted (the record does not indicate whether muscle, nerve or other damage resulted from the bite). *See Lowry v. City of San Diego*, 858 F.3d at 1256–57 (reviewing quantum findings in canine deployment cases); *Ochoa v. County of Kern*, 2023 U.S. Dist. LEXIS 28349 at \* 9–10 (E.D. Cal. Feb 21, 2023) (factors determining canine force as moderate or severe).

This “severity of intrusion” factor looks at what the canine actually did following deployment, not what the handler expected the canine to do when released. *Lowry v. City of San Diego*, 858 F.3d at 1257. In this regard, canine handlers cannot predict whether the level of force inflicted by a canine will be moderate or severe at the time the canine is deployed, and therefore have to assume at the time of deployment that use of the canine will be severe.

• ***Government Interest in Using Force***

SCSO’s interest in using canine force to apprehend depends on (a) the severity of the crime at issue (b) whether Mr. Gabriel posed an immediate threat to the safety of officers or others, and (c) whether Mr. Gabriel was actively resisting or attempting to evade by flight. *See Lowry*, 858 F.3d at 1257.

**(a) Severity of Crime.** The crime for which Mr. Gabriel was being detained was serious: an armed carjacking in which the suspect was reported to have used a handgun. The record shows that when initially encountering Mr. Gabriel in his Subaru, Dep. Forghani had reports that the suspect was armed, the suspect was heading back to the area where he left his Subaru, and the deputy came upon Mr. Gabriel sitting in an idling Subaru at night in the same area shortly after the carjacking occurred. A deputy coming upon the scene under these circumstances could reasonably conclude that a person in the idling Subaru merited further investigation and, if necessary, detaining the vehicle and its occupant for questioning concerning the carjacking. (*See* SCSO Policy 420.3 [identifying requirements for detaining and conducting field interviews]). Thereafter Mr. Gabriel’s multiple refusals to comply with the deputy’s lawful commands to exit the vehicle provided probable cause that he was violating Penal Code § 148(a) (interfering with law enforcement investigation), making him subject to lawful arrest.

**(b) Mr. Gabriel Did Not Objectively Pose an Immediate Threat.** Mr. Gabriel did not objectively pose an immediate threat to the officers, regardless of whether Deputy Forghani is sincere in his subjective belief in this regard.

There is no dispute that a deputy confronting a carjacking suspect reported to be armed with a handgun could reasonably believe that the suspect presented a possible threat to officers.

The problem is that Dep. Forghani did not confront the suspect or the suspect's vehicle. The record shows that Dep. Forghani understood at that time that Mr. Gabriel's Subaru was *silver*, and that the suspect's vehicle was green. Dep. Forghani also knew Mr. Gabriel was *not* the suspect because he did not match the physical description. The deputy was also informed by Dispatch that there was no information regarding a second suspect.

In his AR interview, Dep. Forghani acknowledged these points but explained that as the incident unfolded he was operating under the "premise" that Mr. Gabriel could have been an accomplice who was to drive the Subaru when the suspect arrived with the stolen Jaguar. The other factors the deputy then identified as leading to his decision to use canine force built up from, and expressly relied upon, this "premise". Thus, as Mr. Gabriel became uncooperative and more agitated, Dep. Forghani became "100%" convinced Mr. Gabriel was involved in the carjacking. Dep. Forghani therefore believed Mr. Gabriel presented an immediate threat even though he was kneeling with arms raised because (i) the suspect was reportedly armed (and by extension Mr. Gabriel could be as well), and (ii) he felt Mr. Gabriel was preparing to either flee or attack as indicated by his refusal to crawl and based on what he termed "pre-assault" indicators such as looking around and repeating questions to cause delay. However, the Investigator never asked, and Dep. Forghani never explained, how the deputy came to the initial "premise" of a carjacking accomplice in the first place when he understood, at the time of the incident, that the Subaru he encountered was silver, not green.<sup>11</sup>

The Investigator also did not delve into Dep. Forghani's statement that he understood that there had been no *information* about a second suspect, as opposed to there being *no* second suspect at all. The record shows there was never a suggestion of a second suspect in any radio broadcast or CAD entry. Thus, there does not appear to be any difference in this case between having no *information* about a second suspect and there being *no* second suspect. Based on the information presented at that time, the belief that a second suspect may exist as an accomplice under these circumstances is largely surmise, and therefore not objectively credible as a basis for use of force. Whether Deputy Forghani is sincere in his belief is an entirely different question, and we don't suggest that he is insincere. But the fact remains that objectively it was not reasonable to conclude Mr. Gabriel's vehicle was that of a second suspect based on the facts presented here.

The Fourth Amendment "reasonableness" test views the situation from the officer's perspective and the officer may receive the benefit of the doubt where the record otherwise would objectively support the officer's decision. But the analysis must take into account *all* relevant facts showing what the officer knew at the time. In this case, the report that the carjacker was armed with a handgun would reasonably support a belief that the *carjacker*

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<sup>11</sup> Still photos of Mr. Gabriel's vehicle taken during the incident and released by SCSO as part of its SB 1421 disclosure show the Subaru to be silver. With one exception, all deputies who physically saw Mr. Gabriel's vehicle at the time of the incident—including Dep. Forghani—referred to it as silver. (The victim later positively identified Mr. Gabriel's vehicle as the suspect's, but he did so based on physical profile (roof rack, emblem) and not the color). Later in the Incident Report and again at the AR interview Dep. Forghani identified the vehicle as "light grey or green" and "greenish-grey", but (i) this change in description occurred after the fact and was not contemporaneous with the incident (ii) the deputy never explained this change in terminology, and (iii) the AR Investigator never explored this issue.

presented an immediate threat. As developed here, those facts do not support a belief that *Mr. Gabriel*—who the deputy knew at the time was not the suspect and was not driving the same color vehicle—presented an immediate threat.

That Mr. Gabriel was on his knees with hands raised when the canine deployed is an additional key factor in assessing whether Mr. Gabriel objectively presented an immediate threat. The record shows Mr. Gabriel exited the vehicle—albeit reluctantly and only after a good amount of arguing—walked towards the deputies with hands raised, and went to his knees with hands still raised, as directed by Dep. Forghani. When he was ordered to crawl, Mr. Gabriel started to bend forward and then yelled (with hands still raised) “What crime have I committed” and repeated this while Dep. Forghani repeatedly told him to crawl.

Generally, using canine force to apprehend a person who is kneeling with hands raised is facially unreasonable and requires additional and convincing explanation. Dep. Forghani explained in his interview that he believed Mr. Gabriel presented an immediate threat when he was on his knees because up to that point Mr. Gabriel had been non-compliant, he was a muscular individual, he repeatedly asked questions, and nothing the deputy had tried in order to gain cooperation was working. Accordingly the deputy concluded “[e]ither he was going to reach for his waistband for a weapon . . . [o]r he was going to get up and run at that point and a physical confrontation with him at that point was going to be a mess.”

However, this explanation continues to explicitly rely and build upon the original foundational “premise” used by the deputy—that Mr. Gabriel was an accomplice in the carjacking who may be armed. In fact, Dep. Forghani stated that by this point he was “100%” certain Mr. Gabriel was involved in the crime. As discussed above, this premise was not objectively reasonable based on the facts presented at the time. In other words, it showed Dep. Forghani did not adequately take into account the behavior of Mr. Gabriel from the time of the stop until the time he deployed the canine.

Moreover, Mr. Gabriel’s kneeling position with his hands raised presents the *least* threatening position he was in up until that point in this incident. Mr. Gabriel started out in his vehicle where his hands could not be monitored. After exiting his vehicle, Mr. Gabriel had substantial room in which to flee, but he instead walked with hands raised and knelt as directed to within a few feet of deputies who had weapons and a canine trained on him. Dep. Forghani’s description of Mr. Gabriel as non-compliant is therefore objectively unreasonable. The only objective facts Dep. Forghani could describe at this point were that Mr. Gabriel repeatedly asked why he was being detained – a reasonable question any person is entitled to ask – and that he was looking from side to side. Dep. Forghani did not explain why he could not have simply resolved this moment by answering Mr. Gabriel’s question.

Based on these factors, Mr. Gabriel did not objectively present an immediate threat to deputies when he was kneeling with hands raised.<sup>12</sup>

**(c) Whether Mr. Gabriel was Actively Resisting or Attempting to Evade by Flight.**

Mr. Gabriel from the outset was non-compliant with Dep. Forghani’s lawful orders. However, he eventually did comply after arguing and demanding he first be placed under

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<sup>12</sup> In evaluating use of force, the subjective understandings and intentions of the deputy are not the only consideration. Whether the deputy’s decision is objectively reasonable based on the facts presented to them at the time of the incident is also part of the analysis.

arrest. Mr. Gabriel resumed arguing when he was kneeling with raised hands and told to crawl. Based on Mr. Gabriel's conduct to that point, there is a basis to conclude that he would eventually comply as he had done before. This does *not* mean that a deputy should simply ignore the possibility that an angry, muscular person such as Mr. Gabriel could attempt to flee, or just hope that he does not. But the deputy's actions and perceptions must be assessed on *all* facts presented at the time of the incident.

Dep. Forghani explained in his interview that he felt Mr. Gabriel was engaged in "pre-assault" conduct such as looking around at deputies and he believed Mr. Gabriel was about to reach a point of either fleeing or attacking the deputies. The BWC video does show Mr. Gabriel looking around at the deputies while on his knees. However, the deputy's explanation of how he perceived Mr. Gabriel's glances continues to rely and build upon his "premise" that Mr. Gabriel was "100%" involved in the carjacking to provide context to this observation. As noted above, this was not an objectively reasonable assumption. Absent the context provided by that "premise", it difficult to conclude that the act of Mr. Gabriel looking around at deputies objectively demonstrated he was about the attack or flee.

- ***Balance Between Gravity of Intrusion and Government Need for Intrusion***

Under the Fourth Amendment, the force used must balance against the need for intrusion. SCSO Policy § 300.3.2 and Gov't Code § 7286 attempt to explain this balancing test by identifying factors to "consider" both when "determining whether to apply force" and later when "evaluating whether a deputy has used reasonable force". Factors most germane to this incident include immediacy and severity of the threat, the individual's conduct as reasonably perceived by the deputy, proximity of weapons, availability of other reasonable options, seriousness of the suspected offense or reason for contact with the person, training and experience of the deputy, potential for injury to the deputies or suspect, whether the person is resisting or attacking the deputy, and risk of escape, apparent need for "immediate" control of the person.

As discussed above, it was not objectively reasonable to conclude Mr. Gabriel presented an immediate threat or was preparing to flee when the canine was deployed. At that moment, he was out of his vehicle, reducing his ability to access weapons or to flee. He was on his knees, and had his hands raised as instructed. He made no threats. There were no visible weapons, only the possibility of weapons as is true of any person who is not in custody. There was no need for him to immediately be under further control, just a need to eventually handcuff and search him.

Deputy Forghani had ordered Mr. Gabriel to this position in order to place Mr. Gabriel at a disadvantage, and was successful in creating that position of disadvantage. So long as Mr. Gabriel remained in that position, time was on Deputy Forghani's side. He could have answered Mr. Gabriel's questions, or further improved his own position of advantage if he felt he needed to do so. He thus had options other than deploying a canine, one of the more dramatic and consequential levels of force a law enforcement officer can impose.

Accordingly, we **DISAGREE** with the AR Report insofar as it suggests that canine deployment in this case definitively complied with law and SCSO Policy. The record shows the deployment of the canine at that moment was not objectively reasonable.

#### **B. Proportionality Requirement**

SCSO Policy (in accordance with California law) provides that "[d]eputies may only use a level of force that they reasonably believe is *proportional* to the seriousness of the

suspected offense or the reasonably perceived level of actual or threatened resistance.” (§ 300.3; Gov’t Code § 7286(b)(2)).

Both factors are discussed at length above and apply equally here. For those same reasons, the use of “moderate” canine force was not reasonable under these circumstances because the reasonably perceived level of threat was minimal, and the level of resistance likewise minimal at the moment the dog was deployed. Thus the canine use was necessarily disproportionate and violated Gov’t Code § 7286(b)(2) and SCSO Policy 300.3.

We additionally note that canine force raises a separate “proportionality” consideration not generally associated with other “force” techniques. Evaluating the level of canine force looks to what the canine actually did, not to what the canine could have done. *Lowry v. City of San Diego*, 858 F.3d at 1257. But because canines are autonomous animals whose actions are never entirely predictable, there is an inherent risk of canine force escalating once off-leash. Thus, a deputy’s use of an off-leash canine with the initial intention of using no bite to apprehend a low-risk suspect (where such force might be proportionate) could quickly escalate and result in a serious bite injury (making the force disproportionate). This inherent uncertainty as to how a canine will act once deployed strongly militates in favor of using off-leash canines in only the most carefully delimited settings.

This case clearly illustrates the inherent risk. The canine was deployed off-leash in a 2 to 3 second encounter with immediate disengagement. Despite the very short interaction (and the lack of any intent by the deputy to inflict substantial injury), the canine nevertheless inflicted three punctures and a fourth cut to Mr. Gabriel’s bicep. The impact these wounds have had on Mr. Gabriel’s body was not documented. Had the canine’s actions been different—*i.e.*, additional biting, retaining the bite longer or delaying compliance with commands to release the bite, inflicting more serious or multiple wounds, or engaging in “bite-and-hold”—it could quickly have escalated into more devastating injuries.<sup>13</sup>

### C. De-Escalation Requirement

SCSO Policy also provides that, when reasonable, deputies “should consider actions that may increase deputy safety and may decrease the need for using force” by summoning additional resources, formulating a plan to handle an unstable situation that does not appear to require immediate intervention, or employing other tactics that do not increase deputy jeopardy. (§ 300.3.6). Deputies “should” also, when feasible, consider and use “reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force”. (§ 300.3.6.; Gov’t Code § 7286(b)(1)).

The record shows that Dep. Forghani employed de-escalation techniques at the beginning of the incident, but not throughout the encounter. Mr. Gabriel resisted compliance with Dep. Forghani’s directives from the outset by refusing to exit the vehicle, arguing that his rights were being violated, demanding to know what crime he committed, and ultimately insisting on being placed under arrest before exiting the vehicle.

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<sup>13</sup> Notably, SCSO Policy 309 requires a deputy to consider risk of injury to the *public* and to the *deputies* from canine deployment. It does *not* require consideration of risk of injury to the *suspect* against whom the canine is deployed, even though the actual injury inflicted on a suspect is a factor under the Fourth Amendment use of force analysis. This is a policy failure, in that SCSO policy does not adequately instruct deputies on the applicable Fourth Amendment standard.

In response, Dep. Forghani explained to Mr. Gabriel that he was being investigated for a carjacking and that Mr. Gabriel needed to exit the vehicle so they could get to a safe place to discuss the matter. The deputy did not use profanity and spoke in a calm voice. The deputy further explained that if Mr. Gabriel did not exit the vehicle the matter could escalate and that arguing the merits of the detention at that moment was not appropriate. The deputy asked for Mr. Gabriel's first name and then addressed him accordingly; when Mr. Gabriel stated he had a dog in the vehicle the deputy acknowledged that and when Mr. Gabriel's dog jumped from the vehicle the deputy allowed Mr. Gabriel to place the dog back into the vehicle. These de-escalation techniques were admirable.

The record thus shows that Dep. Forghani used techniques to "persuade" Mr. Gabriel to "voluntarily comply" and that may "mitigate the need to use a higher level of force", at least at first. (Gov't Code § 7286(b)(1); SCSO Policy § 300.3.6). However, this analysis changes significantly once Mr. Gabriel refused to crawl as directed by the deputy.<sup>14</sup>

Dep. Forghani's decision to not provide Mr. Gabriel additional time to comply with the order to "crawl" is inconsistent with his obligation to attempt de-escalation. As discussed above, the deputy's belief that Mr. Gabriel was preparing to flee or fight was not objectively reasonable. In addition, based on the sequence of events, the deputy's decision to deploy the canine when he did appears to have been due to frustration and/or a loss of patience with Mr. Gabriel. De-escalation techniques are intended, in part, to prevent use of force when it may be triggered by rising frustration with recalcitrant persons. Here, the de-escalation techniques used so far had calmed Mr. Gabriel, secured his dog (which is a potential weapon), gotten him out of his car, and placed him on his knees with his hands up. While it may have been frustrating and time consuming for the deputy to continue using these techniques, there was every reason to believe that their use was leading towards a non-violent and successful outcome, and would continue to do so. Based on the record, Deputy Forghani's decision to deploy the canine when he did rather than give Mr. Gabriel more time to comply or answer his questions was not in compliance with the SCSO De-Escalation Policy nor with state law.<sup>15</sup>

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<sup>14</sup> Following his arrest, Mr. Gabriel insisted that he did comply with the deputy's orders. There is a clear disconnect between how Mr. Gabriel (and the public generally) interprets "resist" or "comply" and how those concepts are used in Penal Code § 148. California law requires persons to comply with lawful peace officer orders (even if the officer is making a mistake), and failure to comply may be "obstruction" or "resistance" under Penal Code § 148. Public perceptions of "resistance" and "obstruction" generally do not align with this legal definition.

<sup>15</sup> Dep. Forghani agreed with the Investigator's suggestion that his de-escalation efforts included using the canine to bite Mr. Gabriel in order to prevent Mr. Gabriel from either fleeing or assaulting the deputies, which could have resulted in far greater harm to everyone involved. It was improper for the Investigator to make suggestions of any sort in such an interview, and also an incorrect explanation of de-escalation principles. In this case, canine force represented the very escalation that Dep. Forghani was seeking to avoid by conversing with Mr. Gabriel throughout the incident. Thus, using the canine is not at all a "de-escalation" technique when viewed in this context.

## II. THE FORCE HERE DID NOT COMPLY WITH SCSO CANINE POLICY

Policy 309 allows use of canines to “locate and apprehend a suspect” if the handler “reasonably believes that the individual has either committed, is committing or threatening to commit any *serious offense* and if any of the following conditions exist:

- (a) There is a reasonable belief the suspect poses an imminent threat of violence or serious harm to the public, any deputy or the handler.
- (b) The suspect is physically resisting or threatening to resist and the use of a canine reasonably appears necessary to overcome such resistance.
- (c) The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of deputies or the public.

(§ 309.6) (*italics added*).<sup>16</sup>

Prior to using a canine to apprehend a person, the handler “should carefully consider all pertinent information reasonably available at the time” including the nature and seriousness of the suspected offense, whether violence or weapons were used or anticipated, and the degree of resistance or threatened resistance, potential for injury to deputies if the canine is not used, potential danger to the public or deputies if the canine is released, and potential for the suspect to escape or flee if the canine is not utilized. (§ 309.6.1).

SCSO Policy 309 largely reiterates the use of force factors from Policy 300 in slightly modified formulation. It does not specifically set out restrictions which, on their face, work to curtail canine use of force beyond what the Fourth Amendment analysis provides. Accordingly, it appears that if canine force meets the minimal Fourth Amendment requirements for use of force, it would meet SCSO Policy 309’s requirements. And conversely, force that does not meet Fourth Amendment standards would not be consistent with Policy 309.<sup>17</sup>

Applying the use of force analysis set out above, the canine force here was not objectively reasonable. Dep. Forghani articulated a process by which he evaluated whether and when to deploy a canine to apprehend. Certainly having specific factors in mind when making the decision to deploy a canine is a good start, but use of force is not as simple as a mere checklist. A deputy still has to analyze all of the information in front of them such that they can explain to a reasonable person why force was objectively reasonable. Here, Dep. Forghani’s analysis was based on the unsupported “premise” that Mr. Gabriel was an accomplice in the carjacking, ignored the substantial compliance that Mr. Gabriel had already demonstrated, and failed to take into account the disproportionate level of force imposed by a canine when compared with the very modest threat of flight or violence at the moment the dog was deployed. Simply noting that Mr. Gabriel asked why he was detained rather than

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<sup>16</sup> Using a canine to apprehend a suspect wanted for a “lesser criminal offense” usually requires approval from the Watch Commander and should generally be conducted on-leash to “minimize the likelihood the canine will bite or otherwise injure the individual.” (§ 309.6).

<sup>17</sup> SCSO Policy 309 does provide additional requirements concerning pre-deployment warnings and disengagement of the bite. Deputy Forghani complied with these two requirements. But at its core, Policy 309 is largely a restatement of the same factors applicable to the Fourth Amendment use of force reasonableness analysis **before** the pre-deployment warning, and of course the disengagement of the bite.



continuing to crawl is not by itself sufficient to justify this use of force, even if Dep. Forghani perceived that failure to comply with a directive as one of several factors to consider.

### **III. IMPACT OF POLICIES AND/OR TRAINING**

A core purpose of an Administrative Review is to evaluate whether policies or training were adequate to the situation or should be amended. The AR Report concluded that use of force was reasonable and that no policy violations were noted. It did not review the adequacy of SCSO Policies or training.

A common feature of the use of force and canine analysis is whether a deputy, based on facts presented to them during the incident, could reasonably perceive the person as presenting an immediate threat to officers or was attempting to flee.

In this case, the reasonableness of that perception is fundamental to the use of force evaluation. Dep. Forghani knew Mr. Gabriel was not the suspect, that the vehicle was a different color than the suspect's vehicle, and he had been informed that there was no information concerning a second suspect. Nevertheless, Dep. Forghani proceeded on the belief that Mr. Gabriel was involved in the carjacking and could be armed, a perception that directly underpins his ultimate decision to use canine force.

Dep. Forghani spoke at length in his interview of the heightened stakes presented by the high risk stop process. Based on 16 years' experience, Dep. Forghani also detailed considerations he and other canine handlers make when "building the case" for the use of a canine, including various "red-flags" that he has learned to recognize through training and experience. Dep. Forghani made clear that these factors lay at the core of his decision-making process in determining whether canine force should be used.

However, Dep. Forghani was not asked about, and he did not address, the *cumulative* impact the discrepancy in vehicle color and suspect description, and lack of second suspect information, had—or should have had—on his decision-making process. These facts are critical elements in making preliminary identifications of a potential suspect and they set the foundation for subsequent law enforcement steps. Evaluating the reasonableness and proportionality of force may be different when applied to a bystander rather than to a person reasonably believed to be a suspect.

It is also notable that after kneeling with hands raised as directed, Mr. Gabriel objected again when told to "crawl". Dep. Forghani explained that having a person crawl was designed to place them in a position where they could not make innocent movements that could be mistaken as reaching for a weapon (a furtive movement). It was also intended to prevent deputies from exposing themselves to possible harm from third parties by having the suspect come to them.

The benefit of these tactical considerations, however, should be weighed against the public's likely perceptions and likely reaction to such a directive. Raising hands into the air or clasping them behind one's head, kneeling, or even lying prone on the ground, are positions that the public understands they may have to assume during a law enforcement encounter. However, "crawling" may be viewed by the public as particularly degrading and humiliating, and the public may view this as simply a gratuitous way for law enforcement to exert their dominance over citizens in an abuse of their authority. It may be that Mr. Gabriel would have been less angry and more compliant had he been directed to lay on the ground instead of crawling in which case use of a canine would have been obviated. This also presented a

missed opportunity for de-escalation – explaining to Mr. Gabriel may have led to his compliance, as was the case in several other prior key moments in the encounter.

In the end, using the canine brought about the very circumstance that directing Mr. Gabriel to crawl was ostensibly intended to prevent: the need for deputies to come out from behind their cover vehicles to place him in handcuffs. Canine use ultimately introduced more chaos into the situation requiring deputies to approach Mr. Gabriel in the open while he wrestled with the dog.

In sum, the record suggests that once activated the inertia of the high risk and red-flag thought process may have prevented the deputy from reassessing, as events unfolded, the basic factual premise upon which he was operating. This lack of reassessment, and failure to understand the situation from Mr. Gabriel's position, led to the situation where canine force that would be reasonable when used against an armed carjacking suspect who refuses to exit their vehicle, was not reasonable when used against a merely argumentative suspect kneeling, with hands raised, who had already secured his dog and complied with numerous other commands.

Further training for Deputy Forghani and other dog handlers on de-escalation, reassessing situations as they evolve, and assessing proportionality, would help ensure compliance with law and policy in future encounters.

#### **IV. PUBLIC PERCEPTIONS**

The use of force *legal* standard looks at the circumstances from the perspective of the *deputy* on the scene. SCSO policy and training should, among other things, convey this legal standard to deputies so that they can comply with the law when executing their duties in the field. SCSO's Internal Affairs Division and IOLERO then compare the behavior of deputies against these legal standards, policies, and training. The findings made by Internal Affairs (Sustained, Exonerated, Unfounded, etc...) explain whether duties did or did not perform in compliance with law, policy, and training.

In addition, IOLERO and the Community Advisory Committee also convey to the SCSO whether policies, training, and performance comply with public expectations, which may differ from law and policy. This *public* standard requires looking at the circumstances from the *public's* perspective. In this case, the BWC video shows deployment of a canine against a man kneeling with hands raised. A member of the public, viewing this video through everyday experience, could reasonably conclude that setting a canine on Mr. Gabriel in this circumstance was excessive and unnecessary, regardless of whether it was technically lawful or within policy. Those members of the public with an additional pre-disposed distrust of law enforcement (regardless of whether such distrust was justified) might go further and believe it reflects law enforcement abuse of power. While none of those perceptions would serve as lawful reasons to discipline a deputy, they are nonetheless important for SCSO leadership to understand in order to maintain their moral authority in the community. Ways in which the community might demand a higher standard of performance than merely complying with the law should at least be considered as SCSO writes policy and develops training for deputies.

Moreover, canine force carries inherent risks and consequences, as well as a deeply rooted historical stigma, not presented by other use of force techniques or control devices. Canines were used in the United States to apprehend slaves, to disperse activists in the Civil Rights Movement, and by other nations to persecute religious and ethnic groups. Canines often inflict serious physical injury. *See Chew v. Gates*, 27 F.3d 1432 (9th Cir. 1994) (reviewing

canine bites); *Lowry v. City of San Diego*, 858 F.3d 1248, 1256–57 (9th Cir. 2017) (*en banc*) (same). Canines are also autonomous animals that may not always respond to human commands, or do so timely. Canine bites inflict puncture and other lacerative wounds and often seriously injure underlying muscle, tendons, nerves and bone. Even a moderate bite may leave lifetime scarring. The Ninth Circuit has not deemed canine bites to be “deadly force” *per se*, but canine force can constitute “deadly force” depending on how and under what circumstances it is deployed. *See* SCSO Policy § 300.1.1 (defining “deadly force” and “serious bodily injury”).

Accordingly, while use of canine force may technically be *lawful* under prevailing law, it may *not be acceptable* under prevailing public expectations. Using a canine to apprehend Mr. Gabriel while he is kneeling with hands raised presents substantial questions in the public’s mind that law enforcement, including SCSO, must be prepared to answer in clear, non-technical language. Going forward, SCSO Policy concerning use of canines should carefully consider and align with the public’s expectations.

In this regard, the public has already spoken in Sonoma County. In 2021, close in time to this incident, the Community Advisory Council (CAC) recommended that SCSO move to a no-bite policy for canines, attached here as **Appendix B**. We again recommend that the SCSO review and respond to the CAC’s recommendations in this regard, even if it goes beyond merely asking for SCSO deputies to comply with the law.

V. [REDACTED]

[REDACTED]

## RECOMMENDATIONS

Based on the foregoing, we recommend that SCSO review its use of canine force practices and SCSO Policies to ensure (i) that they are in alignment with prevailing use of force law and (ii) that they are in alignment with public expectations as to when canine force is appropriate. The Community Advisory Council previously recommended that SCSO change canine policy, and SCSO should review that recommendation along with other community input in connection with this review.

We further recommend that SCSO identify as part of its future investigative reports whether the Government Code § 3304 disciplinary period had expired and/or whether the disciplinary period has been tolled.

Date: June 27, 2023

Respectfully Submitted:

BY:

[REDACTED]  
Matthew Chavez, Esq.  
Law Enforcement Auditor III

## APPENDIX A

### MATERIALS REVIEWED

- SCSO Letter dated July 19, 2021 to Dep. Shawn Forghani re opening of internal affairs investigation (21-AR-0001)
- Dispatch Event Chronology, SD211530182 (June 2, 2021)
- Incident / Investigation Report (SD210602022) (June 2, 2021)
- Audio of Interview with Dep. Shawn Forghani (Aug. 16, 2021)
- SCSO Dispatch Audio (redacted) (June 2, 2021)
- Body Worn Camera for Dep. Pike
- Body Worn Camera for Dep. Fomasi
- Body Worn Camera for Dep. Holton
- Body Worn Camera for Dep. McCracken
- Body Worn Camera for Dep. Crivello
- SCSO Internal Affairs Investigation Report (21-AR-0001)

**APPENDIX B**

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,

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<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 recertification before being allowed to continue as a canine handler.”

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