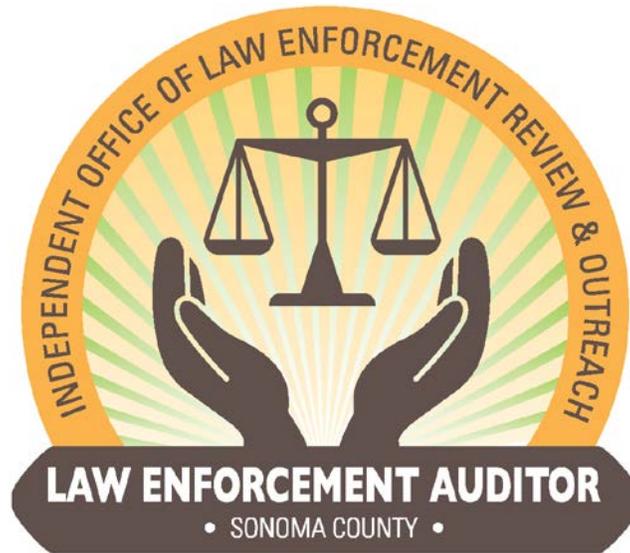


Independent Office of Law Enforcement Review and Outreach



IOLERO Comments on Sheriff's Responses to IOLERO's FY 2017-18 Annual Report

Jerry Threet, Director
November 14, 2018

I. Introduction

Following last year's public hearing on IOLERO's first Annual Report, the IOLERO Director and the Sheriff agreed that this year's Annual Report would be presented differently. The agreement was that IOLERO would provide the draft report to the Sheriff prior to publication, and that the Sheriff would have 30 days in which to review the report and provide a written response, similar to the process for department responses to Civil Grand Jury reports. IOLERO would then have an opportunity to review the Sheriff's response and provide written comments on that response. IOLERO would then publish all of these documents on its webpage for the public and press to review ahead of the December 4, 2018 hearing on the report at the Board of Supervisors.

In accord with that agreement, IOLERO on September 18, 2018 provided the Sheriff with its draft Annual Report for FY 17/18, which numbered 108 pages. On November 1, 2018, 44 days later, the Sheriff provided IOLERO with its written response, numbering 8 pages. On November 8, 2018, the Sheriff provide an updated version of this response, correcting some data about community engagement. In this document, IOLERO comments on the Sheriff's responses.

II. IOLERO Recommendations on Policies and Practices

The IOLERO Annual Report includes multiple recommendations on the policies and practices of the Sheriff's Office in areas of significant public interest. The areas in which recommendations were made include: 1) Interactions with homeless persons; 2) employee operation of body worn and jail cameras; 3) sharing camera video with complainants and the public; and 4) behavioral counseling and use of force in the detention environment. The Sheriff's response includes no clear responses to these recommendations. In addition, the Annual Report gave a brief description of the fuller set of recommendations set out in IOLERO's stand-alone recommendations to improve administrative investigation and audits. As noted in IOLERO's comments on the Sheriff's response to those recommendations, it remains unclear whether the Sheriff has accepted or rejected many of those recommendations.

As envisioned by the CALLE Task Force in recommending the creation of IOLERO, the Sheriff was expected to respond publicly to policy recommendations made by IOLERO. In addition, in June 2018, the Sheriff objected to IOLERO's publication of its stand-alone policy recommendations to improve investigations and audits, arguing that his agency needed an opportunity to respond to those recommendations. Indeed, the sheriff argued at that time that the recommendations should have been included in the Annual Report, because that is where his office expected to respond to policy recommendations, Yet, the Sheriff's response to the Annual Report does not include responses to IOLERO's recommendations on policies and practices. The public deserves to understand where the Sheriff stands on these recommendations and the reasons for his decisions.

III. Complaint Investigations and Audits

a. Sheriff's Response Concerning the Audit Process

The Sheriff's response includes a section that characterizes IOLERO's audit efforts over the past fiscal year as deficient. Much of this section includes misrepresentations and misleading information. IOLERO's Annual Report includes very detailed information on IOLERO's audit effort over the last fiscal year. As explained in that section, IOLERO completed 19 audits during FY 17-18, not the 14 suggested by the Sheriff's response. In addition, several of those audits involved a review of lengthy and complex investigations that included voluminous evidence. The most time consuming audit, involving the "yard counseling" incidents in the jail, is illustrative.

The Sheriff personally requested that the IOLERO Director prioritize the audit of the "yard counseling" investigations, specifically seeking IOLERO's input on this matter. Although the investigations involved an incident was over 2 years old, as the Sheriff's response correctly notes, the incident was still of intense interest due to an active federal lawsuit against the Sheriff's Office. That investigation was referred to IOLERO for audit in January 2018. In response to the Sheriff's request, IOLERO prioritized this audit over other, simpler investigations that had been referred for audit previously. Due to the complexity of the two related investigations into these incidents, the volume of evidence, and the serious deficiencies in the investigations themselves, this audit took over 180 hours to complete over the course of more than 6 weeks. During that time, IOLERO was unable to work on any other audits. There also were other audits that took more time due to their complexity last fiscal year, for similar reasons. The Sheriff's response ignores these facts.

In the 3 audits where the Sheriff says he agrees with IOLERO that improvements could be made, the Sheriff's response asserts that the agency had already made the necessary corrections to policy and practice prior to receiving the audit. IOLERO agrees this was the case with regard to Complaint # 16-C-0020. However, with regard to the other 2 audits, Complaints #16-C-0040 and 17-IA-0009/ 15-AR-0006, the Sheriff fails to clearly identify which recommended changes in policy and practice he believes were warranted and implemented prior to receiving the audits. In the specific response to Complaint #16-C-0040, the Sheriff states that the agency "has been working on corrective action to ensure we do not repeat the same issues again." It is unclear what this means due to the vague nature of the statement. While stating that improvements can be made in response to an audit is an important aspect of transparency and accountability, such statements should actually include some detail about what identified deficiencies the agency agrees with and what exact improvements are being made as a result. IOLERO disagrees with the accuracy of the Sheriff's response to Complaint #17-IA-0009/ 15-AR-0006, as explained more fully below in the section addressing that audit.

The Sheriff's response also states that "one case with potential issues does not necessarily indicate systemic problems in need of correction." IOLERO agrees with this general statement and IOLERO audits do not generally conclude that deficiencies identified in an individual audit

indicate systemic issues. However, an audit of an investigation may raise issues that were seen in other audits, and therefore raise the question of whether there may be systemic issues that should be investigated and analyzed by the Sheriff's management team. For example, the audit of the "yard counseling" investigations revealed a cluster of multiple deficiencies that were present in other, separate investigations. Therefore, the audit suggested that the Sheriff should consider investigating whether these investigative deficiencies are systemic.

b. Sheriff's Comparison of Audits to Administrative Lieutenant Review

The Sheriff's response also refers to the function of the Sheriff's Professional Standard's Lieutenant as very similar in nature to that of the IOLERO Director when auditing investigations. The Sheriff offers this comparison to argue that IOLERO is not completing audits in as efficient or effective manner as the Lieutenant, to the detriment of the public. This comparison is faulty in at least two ways. First, it is not an "apples to apples" comparison. Second, it cherry picks the data to focus only on the investigations referred by the Sheriff, leaving out investigations that were delayed for extended periods and not yet referred at the close of FY 17/18.

i. Apples to Apples Comparison

IOLERO first addresses the issue of whether the comparison is an appropriate one. 22 of the 49 investigations given a supervisory review by the Lieutenant were not investigations of the more significant types of alleged violations that are subject to automatic audit by IOLERO, but rather other types of matters. In addition, these investigations have no prospect under the current system of being discussed in a public manner, unlike those audited by IOLERO. Therefore, one can reasonably expect that these audits generally do not receive as extensive a review from the Lieutenant as do investigations that involve allegations of excessive force, bias in policing/corrections, or constitutional violations.

The 295 use of force reports that the Sheriff mentioned currently constitute a short written form completed by a deputy and reviewed by their supervisor, which lists the force used and whether the force was effective. The deputy's supervisor reviews the report and the associated body worn camera video before referring it to the Lieutenant. The use of force policy requires the Lieutenant to review each reported use of force for compliance with the use of force policy, and refer any found to potentially be outside of policy for further investigation. If done properly, this is a significant undertaking, involving reviewing both the incident and use of force reports and comparing them to the body worn camera video. For jail use of force reports, there currently usually is no video to review, so the task is more difficult. More information would be necessary to determine whether these reviews were done in a complete and effective manner. IOLERO has recommended to the Sheriff that it audit such reviews, but the Sheriff has consistently rejected that proposal.

IOLERO notes that none of the use of force investigations that were audited by IOLERO in FY 17/18 were initiated by the Lieutenant after a use of force review. In two of those audits, IOLERO found at least one incident of use of force to be excessive. In a third audit, IOLERO

found that the deputies failed to provide the suspect a medical exam after he complained of pain following use of force, as required by the use of force policy. And in a fourth audit, IOLERO was unable to reach a conclusion because the allegation of excessive force was not investigated and there was no video to review (as it was in the jail). These examples suggest the use of force reviews may not always be as thorough as would be desired.

The amount of time spent by the Professional Standard's Lieutenant reviewing investigations that were audited by IOLERO may be a more appropriate point of comparison, but even this is of limited utility. The Administrative Investigation Management ("AIM") database tracks when an investigation is referred from one member of the Sheriff's staff to another. It does not track the amount of time each staff member actually spends working on an aspect of the investigation. The Lieutenant refers each investigation to an Internal Affairs Sergeant for investigation. It then is referred back to the Lieutenant once the Sergeant believes the investigation is complete. The Lieutenant then reviews the investigation before referring it to IOLERO for audit and eventually to upper management for review. These time periods ignore, however, that the Lieutenant also supervises the Internal Affairs investigators, who can and do check in with the Lieutenant when they have questions about how to handle an issue in the investigation. Many issues are likely resolved through this type of ongoing consultation between Sheriff's staff prior to referring the completed audit to the Lieutenant.

A review of the 10 audits where there was a disagreement between IOLERO and the Sheriff's Office can give us some sense of the how comparable the Lieutenant's review is to the IOLERO audit. There was a great deal of variation, and the amount of time spent by the Lieutenant did not seem to correlate to the complexity of the investigation or to the type of disagreements that resulted from an audit.

In Complaint 16-C-0039, IOLERO consulted repeatedly with the Lieutenant about the lack of interview with the complainant and the lack of investigation or analysis about the allegation of bias in policing. This suggests that the Lieutenant's final review of this investigation was not equivalent to the audit.

In Complaint 16-C-0040, IOLERO found several significant deficiencies in the investigation, including disagreeing with findings. In the Sheriff's response, he acknowledges that "there were issues with this investigation" and states that the agency has been working on "corrective action to ensure that we do not repeat the same issues." This suggests that the Lieutenant's 1-day review of this investigation was not equivalent to the audit.

In Complaint 17-C-0009, IOLERO found the investigation incomplete in several ways, and noted that there was an apparent conflict of interest in that the investigator was named in the complaint. This suggests that the Lieutenant's final review of this investigation was not equivalent to the audit.

In Complaint 17-C-0020, IOLERO disagreed with the finding of unfounded, as there was a violation of agency policy and law, despite the deputies acting in accord with their training. In the Sheriff's response, he acknowledges that "there were issues with this investigation" and states that the agency has been working on "corrective action to ensure that we do not repeat the same issues."

In Complaint 17-C-0024, IOLERO identified multiple deficiencies with the investigation, including not investigating or analyzing issues raised by the evidence. This suggests that the Lieutenant's final review of this investigation was not equivalent to the audit.

In Complaint 17-C-0027, IOLERO identified multiple deficiencies with the investigation, including differences in findings. This suggests that the Lieutenant's final review of this investigation missed multiple issues not addressed by the investigation and was not equivalent to the audit.

In Complaint 17-C-0037, IOLERO's audit resulted in the Sheriff completed supplemental investigations of issue not previously addressed by the investigators. Even at the conclusion of the audit and supplemental investigations, there remained allegations never addressed by the investigation. This suggests that the Lieutenant's final review of this investigation missed multiple issues not addressed by the investigation and was not equivalent to the audit.

In Complaint 17-C-0038, IOLERO found significant deficiencies in the investigation, including failing to interview material witnesses and to obtain material evidence, as well as bias in the investigation. Even at the conclusion of the audit and supplemental investigations, there remained allegations never addressed by the investigation. This suggests that the Lieutenant's final review of this investigation missed multiple issues not addressed by the investigation and was not equivalent to the audit.

In Complaint 17-C-0049, IOLERO's audit resulted in the Sheriff completed supplemental investigations of issue not previously addressed by the investigators. Even at the conclusion of the audit and supplemental investigations, the audit found significant deficiencies in the investigation, including failing to interview material witnesses and to obtain material evidence, as well as failures to treat a victim of sexual assault in accord with best practices in this area. Even at the conclusion of the audit and supplemental investigations, there remained allegations never addressed by the investigation. This suggests that the Lieutenant's final review of this investigation missed multiple issues not addressed by the investigation and was not equivalent to the audit.

In Complaints 17-IA-0009/15-AR-0006, IOLERO found very significant deficiencies in the investigation, including difference on all findings and significant bias in the investigation. This suggests that the Lieutenant's final review of this investigation missed multiple issues and was not equivalent to the audit.

The Sheriff also notes that the Lieutenant has many other duties he handles while reviewing the investigations. The IOLERO Directors also has many other duties in addition to auditing investigations, including those inherent to running a separate county department.

ii. Cherry Picking the Data

The other issue that affects the Sheriff's argument that IOLERO's audits are inefficient and ineffective is the cherry picking of data. IOLERO does not control the timing of the referral of any investigation for audit. That decision rests solely with the Sheriff. This affects this issue in two significant ways. First, investigations are referred for an audit while other investigations are in the process of being audited. This necessarily extends the time during which an investigation is considered "in process" of being audited. After all, due to its limited staffing and only 1 auditor, IOLERO can only do 1 audit at a time. Second, the Sheriff's Office has investigations in process that have been pending for an extended amount of time, but were not referred for an audit in FY 17/18. This necessarily affects the average investigation times of the Sheriff's Office, which includes the time spent by the Lieutenant in reviewing each investigation prior to referral. For example, there remains an open investigation of an office involved shooting that began on January 30, 2017. This investigation is over 580 days old. When IOLERO inquired about the status of this investigation in October 2018, the Sheriff's Office indicated that it was complete but in review by the Lieutenant.

c. Sheriff's Responses Concerning Audit Differences With Investigations

The Sheriff's Response included specific comments on each of the 10 audits for which IOLERO identified issues with the administrative investigation conducted by the Sheriff's Office. Because of the importance of these differences, IOLERO now specifically comments on each of the Sheriff's responses.

Complaint 16-C-0039

- As clearly articulated in the Annual Report, this investigation was included again in this report in order to standardize the reporting period for each annual report to be each fiscal year, moving forward. While the original audit report was provided to the Sheriff in June 2017, there were additional discussions between the Sheriff's Office and IOLERO on this audit that resulted in IOLERO providing an edited version to the Sheriff on July 7, 2017.
- The Sheriff asserts that this complaint was mischaracterized by IOLERO because it did not include an initial allegation of racial bias. The Sheriff is mistaken.
 - The complainants in this case clearly articulated during their intake interview with IOLERO that they believed that the deputy who responded to their call for service was racially biased when he interacted with the complainants. Unfortunately, the digital recorder malfunctioned and there was no recording of this interview to provide to the Sheriff's Office. Instead, IOLERO summarized the complaint in an email to the Sheriff's staff, omitting the specific allegation of racial bias. In a follow up discussion with Sheriff's staff the IOLERO Director identified this additional issue to the Sheriff's staff.
 - The audit again identified this issue in reviewing the complaint investigation and

suggested that the racial bias allegation be investigated and analyzed by the Sheriff's Office. Nevertheless, the agency declined to investigate or analyze the issue further.

- While the deputy in question appeared to have good intentions, he nevertheless made statements to complainants that indicated a clear bias. The deputy expressed to complainants that a young man who threatened them with retaliation and said he was Norteno, could not be a member of the Norteno street gang because he was White. Even with the best intentions, such statements communicate to community members that deputies employ racial stereotypes while policing their community. IOLERO did not take the statements out of context, but rather analyzed them in the context in which they occurred. In that context, the statements constituted an expression of bias.
- Once an investigation is complete and includes all material evidence relevant to reaching a finding on each allegation, at that point the evidentiary standard is applied to the evidence and a finding is made. Prior to obtaining and analyzing all relevant, material evidence, it is premature for an investigator to apply any evidentiary standard and reach a finding on an allegation.
 - IOLERO found that the investigation in this case was incomplete for several reasons, including: 1) the investigator made minimal attempts to contact the complainants, who were undocumented immigrants; 2) the investigator failed to question the deputy at all; and 3) the investigator did not investigate the allegation of racial bias.
 - IOLERO's finding that an investigation is incomplete does not involve applying an incorrect evidentiary standard. Instead, this is a conclusion that the evidentiary file is not yet ready to move to the next step of making a finding on the allegations.
 - IOLERO did not base the conclusion that the investigation was incomplete on any evidentiary standard, much less on the "beyond a reasonable doubt" standard. The Sheriff misunderstands or misrepresents how the evidentiary standard of "preponderance of the evidence" applies in these cases.

Complaint 16-C-0040

- While the Sheriff acknowledges that there were "issues with this investigation", the agency nevertheless did not conduct further investigation or analysis following this audit to correct those issues in this investigation.
- IOLERO continues to advise that greater efforts should have been made to contact the apparently homeless former inmate who filed this complaint. The investigator tried only to contact the complainant by telephone at the number she provided at booking. Yet, telephone contact is an unreliable method for individuals experiencing homelessness, who often have only intermittent telephone service.
 - Any serious effort to contact a homeless complainant must also consider speaking with homeless advocates and service providers who may know the homeless individual and visiting physical locations they may be known to frequent. This reality actually is acknowledged in Section 431.3.1 of the new policy adopted by the Sheriff's Office governing "Interactions with Homeless Individuals". While this section discusses follow-up procedures when a homeless person reports a crime, these suggestions should be equally applicable when a homeless person files a complaint against an employee.
 - In addition, the complainant was on probation after her release from jail, yet the

investigator made no effort to contact the complainant by seeking the assistance of her probation officer.

- The issue of compelling a complainant to talk with an investigator is irrelevant in this case. The investigator never even made contact with the complainant to speak with her, so the complainant had no opportunity to voluntarily provide information about her complaint.

Complaint 17-C-0009

- IOLERO has no record of the Sheriff's staff communicating to IOLERO that the investigator was named in error by the complainant, nor was that issue addressed in the investigation. The IOLERO Director also has no recollection of that notification ever happening.
- The complaint alleged wrongful behavior by deputies on multiple occasions during a period of several months. It also alleged wrongful behavior on several specific dates. The investigator focused solely on the specific dates named in the complaint and apparently ignored any investigation into whether deputies were involved in other incidents with the complaint during the date range provided by the complainant.
- Even on the specific dates investigated, the investigator failed to obtain or analyze the Santa Rosa Police Department incident reports or camera video footage that would have more fully laid out the facts of that incident. That evidence would have been helpful in more fully analyzing the actions of the deputies named for that date, during which they provided assistance to SRPD. Therefore, the investigation was incomplete.
- Once an investigation is complete and includes all material evidence relevant to reaching a finding on each allegation, at that point the evidentiary standard is applied to the evidence and a finding is made. Prior to obtaining and analyzing all relevant, material evidence, it is premature for an investigator to apply any evidentiary standard and reach a finding on an allegation. IOLERO's finding that an investigation is incomplete does not involve applying an incorrect evidentiary standard. Instead, this is a conclusion that the evidentiary file is not yet ready to move to the next step of making a finding on the allegations. IOLERO did not base the conclusion that the investigation was incomplete on any evidentiary standard, much less on the "beyond a reasonable doubt" standard. The Sheriff misunderstands or misrepresents how the evidentiary standard of "preponderance of the evidence" applies in these cases.
- In addition, the Sheriff responds to IOLERO's conclusion that the investigation was incomplete by asserting that there was enough evidence in the investigation to satisfy the standard of "preponderance of the evidence." This potentially is a dangerous position. If an investigator's practice is to cut off the investigation of a complaint once they assemble sufficient evidence to clear an employee, while ignoring other material, unexamined evidence that could change the findings of the investigation, this undermines the credibility and integrity of such investigations.

Complaint 17-C-0020 - IOLERO agrees with the Sheriff's response on this case.

Complaint 17-C-0024

- IOLERO continues to disagree with the Sheriff on this investigation, as set out in the Annual Report.
- The Sheriff asserts that the investigation was complete, even though two allegations were not analyzed by investigator, and the investigator failed to interview the deputy accused of violating the use of force policy. In another, unrelated investigation of alleged excessive force, the Sheriff's Office concluded that, despite other evidence supporting a conclusion of excessive force, no finding to that effect was possible due to employee not being interviewed. The reasoning behind that conclusion was that the investigator needed to understand the deputy's perceptions at the time force was used in order to evaluate his actions against the criteria for whether force was reasonable. The same reasoning would apply here to evaluate the reasonableness of this deputy's use of force.
- Once an investigation is complete and includes all material evidence relevant to reaching a finding on each allegation, at that point the evidentiary standard is applied to the evidence and a finding is made. Prior to obtaining and analyzing all relevant, material evidence, it is premature for an investigator to apply any evidentiary standard and reach a finding on an allegation. IOLERO's finding that an investigation is incomplete does not involve applying an incorrect evidentiary standard. Instead, this is a conclusion that the evidentiary file is not yet ready to move to the next step of making a finding on the allegations. IOLERO did not base the conclusion that the investigation was incomplete on any evidentiary standard, much less on the "beyond a reasonable doubt" standard. The Sheriff misunderstands or misrepresents how the evidentiary standard of "preponderance of the evidence" applies in these cases.
- In addition, the Sheriff responds to IOLERO's conclusion that the investigation was incomplete by asserting that there was enough evidence in the investigation to satisfy the standard of "preponderance of the evidence." This potentially is a dangerous position. If an investigator's practice is to cut off the investigation of a complaint once they assemble sufficient evidence to clear an employee, while ignoring other material, unexamined evidence that could change the findings of the investigation, this undermines the credibility and integrity of such investigations.

Complaint 17-C-0027

- IOLERO concluded in this case that one out of several uses of force by the deputy in this incident was not reasonable under the agency's policy. This conclusion was not based in any way on the Director's personal feelings about the force used. Instead, this conclusion followed a careful, written analysis, included in the audit report provided to the Sheriff, which concluded that the force was not reasonable under the multiple criteria set out in the agency's use of force policy.
 - IOLERO's conclusion that one instance of force was not reasonable under the agency's policy criteria did not involve a technically difficult evaluation of force that might depend on significant expertise, training, or experience. The force involved the deputy pulling the hair of a suspect while her limbs were restrained to a hospital bed. The reason the deputy articulated for this use of force was that the suspect was trying to manipulate a hospital tube with her mouth in order to wrap it around her neck and

strangle herself. The suspect had previously tried to do the same and failed, and the camera video made plain that it was unlikely she could succeed with her hands restrained. Instead, the video showed that the deputy had previously ordered the suspect to stop doing this, and that when she continued he became frustrated with her lack of compliance with his order. He then jerked her head back by the hair forcefully. This was not reasonable under the criteria of the use of force policy.

- The audit carefully analyzed the force used, and the circumstances surrounding its use, against the criteria of the Use of Force policy that determines whether the force was reasonable. In contrast, the investigator simply concluded that, ***based on his training and experience***, the force used was reasonable under the policy.
- IOLERO continues to believe that this use of force was not reasonable under the criteria of the agency's use of force policy, as carefully explained in the audit report. Credible opinions on this or any other allegation of an administrative investigation depend on careful, objective analysis of the evidence.
- On allegation 6, the Auditor found by a preponderance of the evidence in the investigation that a deputy was discourteous to a bystander to the incident and thus it should be ***sustained***.
 - The Sheriff's response suggests that it is inappropriate for IOLERO to reach a finding on an issue not raised by a complainant. In contrast, the Sheriff has previously agreed with the IOLERO Director that each investigation should review and analyze potential violations of policy that are raised by the evidence of an investigation, even if they were not alleged by a complainant. This approach is sound for multiple reasons. Any law enforcement agency should attempt to correct policy violations of their employees whenever they come to light. In fact, agency supervisors do exactly this when they initiate investigations of employees they supervise. Likewise, when evidence collected and reviewed by an investigator shows a potential violation of a policy by an employee, it also should be analyzed, regardless of whether it was formally raised by an allegation of the complainant.
 - To ignore such issues is to allow agency employees to violate policy without accountability, simply because a complainant did not raise the issue in a formal allegation. This obviously would not be a best practice for employee accountability.
 - IOLERO's finding on this issue was based on the evidence of the video, which made it obvious that discourtesy was displayed by the deputy toward another patient in the hospital. The patient was there for a potential psychiatric commitment and was shouting in a way that was annoying to hospital staff and patients. The deputy at first engaged the patient politely, asking that he stop yelling. However, when the deputy did not receive agreement from the patient, he relatively quickly escalated to forcefully telling him to close his mouth, using expletives and vaguely threatening language. Any objective review of this interaction would conclude that the deputy's behavior toward this patient was discourteous and did not reflect well on the agency.

Complaint 17-C-0037

- The original discussion of this audit in the Annual Report describes in detail the allegations that the investigator failed to address, including wholly ignoring an allegation that the

complainant was left without food and water in the jail for 12 hours, IOLERO therefore continues to believe that the investigator failed to fully investigate the allegations of this complaint.

- In responding to the auditor's conclusion that the ***investigation was not complete***, the Sheriff again asserts that IOLERO uses the wrong standard of proof to reach this conclusion. Again, this is wrong.
 - Once an investigation is complete and includes all material evidence relevant to reaching a finding on each allegation, at that point the evidentiary standard is applied to the evidence and a finding is made. Prior to obtaining and analyzing all relevant, material evidence, it is premature for an investigator to apply any evidentiary standard and reach a finding on an allegation. IOLERO's finding that an investigation is incomplete does not involve applying an incorrect evidentiary standard. Instead, this is a conclusion that the evidentiary file is not yet ready to move to the next step of making a finding on the allegations. IOLERO did not base the conclusion that the investigation was incomplete on any evidentiary standard, much less on the "beyond a reasonable doubt" standard. The Sheriff misunderstands or misrepresents how the evidentiary standard of "preponderance of the evidence" applies in these cases.
- In addition, the Sheriff responds to IOLERO's conclusion that the investigation was incomplete by asserting that there was enough evidence in the investigation to satisfy the standard of "preponderance of the evidence." This potentially is a dangerous position. If an investigator's practice is to cut off the investigation of a complaint once they assemble sufficient evidence to clear an employee, while ignoring other material, unexamined evidence that could change the findings of the investigation, this undermines the credibility and integrity of such investigations. And where an allegation is completely ignored, and there is no evidence even considered by the investigator, it is puzzling how the Sheriff could conclude that the evidence is sufficient to make a finding.

Complaint 17-C-0038

- In this audit, involving allegations that a deputy lied to the investigating CHP officer about his vehicle accident with complainant, IOLERO very carefully reviewed the evidence in the investigative file. The Director concluded, based on that careful review and analysis of the evidence, all of which is included in the audit report to the Sheriff, that the investigation was deficient in several respects. This is laid out more fully in the Annual Report.
- In contrast, the Sheriff's staff informed the Director during discussions of this investigation that they knew the deputy in question and were confident based on that relationship that the deputy could not have lied about the accident. The Director responded that, while he did not know the deputy well enough to form an opinion about his general honesty, the audit would be based only on a careful review of the evidence, and that he hoped the investigation was based on evidence rather than on personal opinions or relationships.
- The Auditor concluded that the ***investigation was incomplete*** in multiple significant ways identified in the Annual Report. Rather than addressing these identified deficiencies, the Sheriff again asserts that IOLERO uses the wrong standard of proof to reach this conclusion. Again, this is wrong.

- Once an investigation is complete and includes all material evidence relevant to reaching a finding on each allegation, at that point the evidentiary standard is applied to the evidence and a finding is made. Prior to obtaining and analyzing all relevant, material evidence, it is premature for an investigator to apply any evidentiary standard and reach a finding on an allegation. IOLERO's finding that an investigation is incomplete does not involve applying an incorrect evidentiary standard. Instead, this is a conclusion that the evidentiary file is not yet ready to move to the next step of making a finding on the allegations. IOLERO did not base the conclusion that the investigation was incomplete on any evidentiary standard, much less on the "beyond a reasonable doubt" standard. The Sheriff misunderstands or misrepresents how the evidentiary standard of "preponderance of the evidence" applies in these cases.
- In addition, the Sheriff responds to IOLERO's conclusion that the investigation was incomplete by asserting that there was enough evidence in the investigation to satisfy the standard of "preponderance of the evidence." This potentially is a dangerous position. If an investigator's practice is to cut off the investigation of a complaint once they assemble sufficient evidence to clear an employee, while ignoring other material, unexamined evidence that could change the findings of the investigation, this undermines the credibility and integrity of such investigations.

Complaint 17-C-0044

- This audit identified deficiencies in a sexual assault investigation. The Sheriff's response does not appear to disagree that there were deficiencies in this investigation, but rather seeks to explain them due to the competing demands placed on detectives who had to respond to needs created by the county fire disaster.
- The audit report to the Sheriff, and the description of this audit in the Annual Report, both noted that the competing demands of the fire disaster may explain some of the deficiencies of this investigation.
- In addition, there were other deficiencies that involved a failure to treat a sexual assault victim in an appropriate manner during the investigation of her criminal complaints. These particular issues cannot readily be explained by the competing demands of the fire disaster.
- The audit did not conclude that the sexual assault investigation process of the Sheriff's Office suffers systemic deficiencies that affect all such investigations. It concluded that the system's treatment of this particular alleged victim failed her and did not live up to best practices for such investigations. IOLERO would not reach a conclusion about systemic deficiencies in sexual assault investigations system of the Sheriff's Office without first conducting an audit of that system across multiple investigations. To date, the Sheriff's Office has rejected such systemic audits as "mission creep" by IOLERO, although IOLERO's position is that systemic audits are more useful for the public and the agency.
- The Auditor found that the ***investigation was not complete***, for multiple specific reasons outlined in the Annual Report. Rather than addressing these identified deficiencies, the Sheriff again asserts that IOLERO uses the wrong standard of proof to reach this conclusion. Again, this is wrong.
 - Once an investigation is complete and includes all material evidence relevant to reaching a finding on each allegation, at that point the evidentiary standard is applied to

the evidence and a finding is made. Prior to obtaining and analyzing all relevant, material evidence, it is premature for an investigator to apply any evidentiary standard and reach a finding on an allegation. IOLERO's finding that an investigation is incomplete does not involve applying an incorrect evidentiary standard. Instead, this is a conclusion that the evidentiary file is not yet ready to move to the next step of making a finding on the allegations. IOLERO did not base the conclusion that the investigation was incomplete on any evidentiary standard, much less on the "beyond a reasonable doubt" standard. The Sheriff misunderstands or misrepresents how the evidentiary standard of "preponderance of the evidence" applies in these cases.

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Complaint 17-IA-0009/ 15-AR-0006 – The "Yard Counseling" Lawsuit

- IOLERO provided the Sheriff with the written report of this audit on May 30, 2018. In the weeks prior to finalizing the written audit report, the IOLERO Director had several conversations with the Sheriff in which the issues raised by this audit were discussed. During those discussions, the Sheriff and the Director discussed whether and how the Detention Division's Behavioral Counseling Policy should be amended or revoked. That discussion was premised on the policy still being in place at that time. In fact, the policy was at that time still included in the Policy Manual for the Detention Division, where the IOLERO Director was able to review it while completing the audit report. Therefore, it is inaccurate to say that the Director was told that the policy had been revoked. In fact, the Director has never been notified by the Sheriff's Office that they revoked the Behavioral Counseling Policy.
- During the discussions with the Sheriff noted above, the Sheriff did share with the Director that the Detention Division is working with a nationally recognized training program to improve inmate management and get back to the "Direct Supervision" model of corrections that is supposed to underlie the facility's inmate management philosophy. In connection to the jail, the Annual Report mentions that "the Sheriff's Office's leadership team recognizes the need for change and that it is acting to correct deficiencies." ***However, this glancing mention did not give appropriate recognition to the Sheriff's efforts to address issues with the Detention Division.*** IOLERO would like to give better recognition to this process of retraining in the detention environment. Unfortunately, although the IOLERO Director requested that the Sheriff connect the Director with the expert training team being used by the Detention Division, the Sheriff never followed up on that request. Therefore, the Director has only the most basic information about that program, the issues it has been charged with addressing, and the progress it is making in addressing issues in the jail.
- The Sheriff's response ignores several significant aspects of this audit, including the conclusion that the two Internal Affairs investigations of the "yard counseling" incidents,

although very lengthy, were neither complete nor objective. This issue, in particular, gives reason for concern about the consistency and integrity of the administrative investigations conducted by the agency.

- In addition, the Sheriff does not respond to IOLERO recommendations that the use of force policies of the jail be reconsidered in light of the agency's experiences with these incidents, and others.

IV. IOLERO Support for Sheriff's Office

In the conclusion of the Sheriff's response to the IOLERO Annual Report, the Sheriff seeks to characterize the Annual Report as a personal and political attack on the agency and the people who work there. Unfortunately, this response is characteristic of the defensive approach of the Sheriff's senior management during the last fiscal year. It also distorts both the content and intent of the Annual Report. A few responses are appropriate here. First, IOLERO is charged with reviewing the investigations, policies and practices of the Sheriff's Office, to identify areas that fall short of best practices and thus can be improved, and to provide transparency around those issues. It is the nature of this type of review that it tends to identify areas for critical feedback. Far from reflecting a personal or political animus, such feedback is designed to assist the agency with identifying ways that it can become better. Every agency, especially large agencies, have areas where improvement is advisable and necessary. A mature and professional response to such feedback is to recognize the value of such information and seek ways to use the opportunity it provides. In short, critical feedback is a way to provide **support** to the agency and its staff.

In addition, civilian review of law enforcement generally approaches the task by first seeking a collaborative approach, identifying and advocating for needed changes behind the scenes. This is an effective approach where feedback is received in a receptive and cooperative manner. IOLERO has striven to approach areas of needed improvement by identifying them first in private conversations with Sheriff's staff, and seeking confirmation that they are being addressed by the agency. IOLERO would prefer to report to the public on identified concerns by stating that the Sheriff acknowledges the areas needing improvements and is addressing them productively. Unfortunately, this approach has not worked this past fiscal year. When feedback is rejected, or problems persist without correction despite promises to address them, other approaches become necessary for IOLERO to meet its missions. IOLERO's mission of increasing transparency around the Sheriff's operations obliges our office to report to the public the issues that we observe and what obstacles prevent them from being addressed effectively.

It is within this context that the Annual Report laid out the ongoing professional relationship issues that have persisted between the agencies and have increased during this last fiscal year. Providing transparency about these issues is not a personal or political attack on either the agency or its management. It is an effort to explore honestly what is and is not working within the institutional and professional relationships between the Sheriff's Office and IOLERO. The IOLERO Director, who has serious health issues that are significantly aggravated by stress, has no interest in unnecessary drama. The facts reported in the Annual Report about this area of

challenges are published in service of examining how to make these professional dynamics work better moving forward, to benefit the next IOLERO Director, the Sheriff's Office, and the public.

One final note on this area. The Sheriff's response also claims that the Annual Report includes "little to no coverage [] regarding the positive things the Sheriff's Office has accomplished over the past year." The Annual Report acknowledges *many* positive accomplishments of the Sheriff's Office, including improving community policing; adopting a significant new policy for interacting with homeless persons; collaborating effectively with the IOLERO Community Advisory Council to include community input into agency policies; performing heroically and effectively during the fire disasters; increasing the accessibility of the Sheriff to the public, and many other examples. A fair and careful reading of the Annual Report could hardly fail to notice these efforts to acknowledge the positive accomplishments during the last fiscal year, while facing very challenging circumstances not of the agency's making.

V. IOLERO Response to Sheriff's Conclusion and Recommendation

The Sheriff also suggests in his response that IOLERO's design has a fatal flaw. The Sheriff asserts that IOLERO's existence depends on finding fault with the Sheriff's Office, implying that when IOLERO identifies areas where the agency could improve, it does so not on the evidence but based on perverse incentives. In fact, IOLERO has approached the task of publicly identifying significant issues with caution, seeking to verify such challenges through close evaluation of the evidence. The Sheriff generally has been open to having these issues identified in private meetings and has acknowledged the validity of such concerns in that setting. However, when IOLERO has sought to publicize such issues because they persist or need greater attention, the Sheriff's response has changed, seeking to prevent transparency, or attacking the messenger rather than addressing the evidence in the message. This dynamic has characterized many interactions over the last year. And it has culminated in this assertion that IOLERO exists to find fault. Again, IOLERO is charged with identifying areas where improvements are warranted and making recommendations in those areas, which is a means of supporting the agency's improvement.

The Sheriff moves from this criticism of IOLERO's existence to recommend replacing IOLERO with a contract auditor hired for discrete projects. The audit model proposed by the Sheriff is one that is used by some police agencies across the nation. While Santa Rosa has a contract auditor model, it differs from that proposed by the Sheriff. The Santa Rosa Independent Auditor has a contract that provides for ongoing, continuous auditing throughout the contract term of 3 years. The Sheriff's proposal seeks to limit the contract period and scope, which inherently will make any contract auditor's future employment in that capacity dependent on whether the Sheriff was pleased with the outcome of the audit. Thus, the model proposed by the Sheriff contains exactly the opposite incentives to those the Sheriff asserts distort the IOLERO audit process. No large public agency enjoys public scrutiny for perceived shortcomings, and that dynamic is even stronger within a law enforcement agency. It's difficult to see how this proposal would satisfy any objective criteria for effective civilian review of law enforcement.

More than 3 years ago, the Board of Supervisors responded to public desire for greater civilian review of the Sheriff's Office by approving the recommendations of the CALLE Task Force and establishing IOLERO. IOLERO has gone a long way to fulfilling the missions it was charged with, including the key mission of transparency. During last year's election for Sheriff, the Sheriff-elect committed to voters that he supported IOLERO and would work closely with the agency in achieving its missions. Now, on the eve of the Sheriff-elect taking office, the agency seeks to eliminate IOLERO and move to a contract auditor dependent on the agency's good graces for continued work.

IOLERO continues to recommend that the Sheriff and the Board of Supervisors keep faith with the communities of this county and continue to support and strengthen IOLERO.