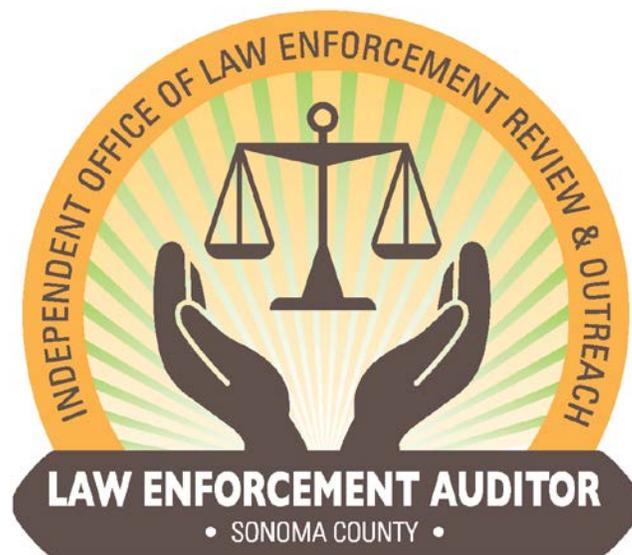


Independent Office of Law Enforcement
Review & Outreach (IOLERO)

FY 2017-18

Annual Report



Jerry Threet, Director
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Chapter 1: Introduction

This marks the second full year of IOLERO's operations in Sonoma County, following its establishment in 2015, and the opening of the office in April 2016. IOLERO's first year saw many successes, and some challenges, which were laid out in the First Annual Report released on August 28, 2017. The year since then has been a very challenging one for Sonoma County generally, and also for the Independent Office of Law Enforcement Review and Outreach ("IOLERO") and the Sheriff's Office. This past year started with significant optimism in the midst of much change, and the changes just kept on coming, for better and for worse. And right in the middle of it all was the biggest challenge of all, the Sonoma County fire disaster. The fires marked every part of the county and county government, in one way or another. This year's report reflects both the outstanding and the imperfect aspects of this year for IOLERO, for the Sheriff's Office, and for the relationship between them. It also includes suggestions for improvements in those areas.

With the early retirement of Sheriff Freitas in July 2017, Assistant Sheriff Rob Giordano became the acting Sheriff. Giordano soon embarked on a robust schedule of direct engagement with many communities who had longed to meet directly with the Sheriff on issues of substance and relationships. He met with immigrant communities and their advocates, committed to implementing changes to the Sheriff's immigration policies, and in August 2017 personally appeared before the IOLERO Community Advisory Council to explain the new policy and his general leadership approach. In early September 2017, the Board of Supervisors appointed Giordano to fill the unexpired term of retired Sheriff Steve Freitas. Sheriff Giordano, who committed to act as a caretaker leader and not run in the election for Sheriff the following year, began his tenure with openness and responsiveness to the community.¹

Sheriff Giordano appeared jointly with the IOLERO Director at the September 19, 2017 hearing on the IOLERO Annual Report and engaged in a positive, cooperative public conversation about how the agencies could work best together. He also committed to provide IOLERO access to the information and agency personnel that it needed to work effectively. The hearing focused on collaboration between the staff of the two agencies being necessary to the success of IOLERO. Both agency leaders committed strongly to continuing this emphasis on collaboration and the Sheriff many times expressed his perspective that his agency was welcoming of feedback from IOLERO on how it could improve its performance, whether through audits, policy recommendations or otherwise.

As the year went on, this dynamic began to shift. Two well qualified candidates to replace retired Sheriff Freitas emerged from within the Sheriff's Office, splitting internal support of the rank and file employees. The internal candidates emphasized the professionalism and public

¹ Assistant Sheriff Giordano took over as Acting Sheriff and was appointed by the Board of Supervisors to fill the position as a caretaker until the next election, after promising he would neither seek election to the office nor endorse a candidate in the election to replace him.

service of agency employees and suggested that the agency was performing well without a need to significantly recalibrate its operations or approaches. At the same time, multiple candidates from outside the agency challenged the internal candidates, running on campaigns that emphasized reforming the Sheriff's Office and reimagining its relationship with the community. This polarizing dynamic was one element within which a shift in relations between the two agencies took place.

Then came the huge fire disaster, seemingly out of nowhere. On October 8, 2017, in the middle of the night, fires that had begun in multiple parts of the county, quickly spread out of control, with devastating results. The disaster took most county departments off-line from their usual duties for multiple weeks. Other than fire fighters, the Sheriff's Office probably had the largest, most impactful, and most impacted, role in responding to the fire disaster. Sheriff Giordano, his management team, and the rank and file of the office, all shone publicly during the fire disaster, as did many other county employees and the public generally.

Had it not been for the quick thinking and action of many Sheriff's deputies, who raced from house to house rousing sleeping residents from their beds, the devastation would have been much more significant. At great personal peril, patrol deputies took personal responsibility to deal with a situation far beyond their ordinary duties, and did so effectively. Correctional deputies prepared for possible evacuation of the entire main adult detention facility as the fire approached the county administration campus and smoke infiltrated the jail. And agency employees performed extra duties for days on end as their own homes were put at risk and many were lost to the fires. Many ordinary functions of the Sheriff's Office, including significant criminal investigations, were put on hold while the office handled locating missing persons, keeping burned areas clear of trespassers, identifying those killed in the fires, and coordinating a huge influx of first responders from other jurisdictions.

As the disaster unfolded, Sheriff Giordano stepped up to be the voice of the county, giving clear and unflinching status reports that provided some level of reassurance and calm during a period of great uncertainty and hunger for information. In addition, as national politicians and media outlets sought to exploit the fire disaster to attack our immigrant community, the Sheriff spoke out and pushed back on this unconscionable effort in a way that reassured immigrants and made us all feel we were pulling together in the same boat. The community responded by rallying around the Sheriff's Office and its staff. At the same time, the stress these events placed on employees, combined with the stressor of their daily jobs, had to take an understandable toll. The significance of the fire disaster, and both its positive and negative impacts on the agency and its employees, cannot be overstated, and continue to this day.

During the disaster and immediate aftermath, IOLERO staff put aside their normal duties and worked at the Local Assistance Center helping provide services to community members suffering from losses from the fire. Assisting scores of individuals suffering immediate and significant trauma for 12 hours a day also had effects on IOLERO staff. In addition, during this period, several complainants came to IOLERO with significant trauma in their recent backgrounds, perhaps further triggered by the fire disaster. One of these complainants even

threatened the safety of IOLERO staff in a credible manner, adding to the secondary stress of events. All of this also affected IOLERO staff in multiple ways. By December, with the immediate fire disaster response receding, events began to move back toward a more “normal” equilibrium, although it would never be exactly the same as before.

As the county shifted from containing to recovering from the fire, the Sheriff’s Office also shifted back toward its normal functions. At the same time, developments in the Sheriff’s election eased internal agency tensions. One internal candidate dropped his bid for office in December 2017, leaving only one candidate from within the ranks of the Sheriff’s Office, Captain Mark Essick. Sheriff Giordano announced his endorsement of Captain Essick within a month, shifting the dynamics of that race significantly. Over the course of the remainder of the election, external candidates became more critical of the agency’s management, while Captain Essick both defended the overall performance of the office, while also stating he was the best candidate to make needed changes. As the election dynamic played out, the Sheriff’s Office also began to react with suspicion and distrust to the regular, ongoing work of IOLERO in pursuing its civilian review missions. These ongoing trust issues have made IOLERO’s work more challenging over the last year.

The election for Sheriff was a remarkable public process, during which the policies, practices, and missions of the Sheriff’s Office received widespread and robust public attention and discussion. There were multiple, well attended public forums in which these matters were debated. Members of the public had many opportunities to question the candidates on their experience, positions on issues, and values. The candidates had many substantive conversations on issues of great importance, including the role of civilian oversight in connection to the Sheriff’s Office. As the campaign went on, the candidates agreed on many issues, differed on some, with the most important difference being which candidate would be best positioned to deliver the promises on which they all agreed. At the end of that process on June 4, 2018, Sheriff’s Captain Mark Essick won the election with 56% of the vote, a solid victory that avoided what promised to be costly and divisive run-off election in November. While the election contest itself was definitively resolved in June, the public debate raised by the election lingers on in many quarters.

One area that has continued to be a challenge this year, has been the aftermath of the Andy Lopez shooting, It has now been over 5 years since Sonoma County Sheriff’s Deputy Erick Gelhaus shot and killed 13-year-old Andy Lopez in the Moorland neighborhood of southwest Santa Rosa on October 22, 2013. Yet, the issues surrounding that shooting remain far from final resolution. During this past year alone, the issues surrounding the shooting came to renewed public attention in multiple ways, including through the court process² and through the

² On January 20, 2016, the federal trial judge in the Lopez civil rights case against Sonoma County denied a motion by the county to find that, as a matter of law, Gelhaus and the county could not be held liable for Gelhaus’ shooting of Lopez. Citing conflicts in the evidence that could allow a jury to reasonably conclude the shooting was not justified, the judge held that the lawsuit must go to trial before a jury. The County appealed this decision first to the Ninth Circuit U.S. Court of Appeals, losing there; and then to the U.S. Supreme Court, which denied review of the Ninth Circuit decision on June 25, 2018. The case was

vigorously contested election for Sheriff. It seems likely that these issues will remain active and a focus of public attention, at least until the lawsuit brought by Lopez' family is finally resolved, whether by jury trial or settlement.

Over the last year, Sonoma County Regional Parks has worked diligently to fulfill a key promise that came out of the public process that led to the creation of the Independent Office of Law Enforcement Review and Outreach. Andy's Unity Park was completed and opened in the Moorland neighborhood southwest of Santa Rosa on June 2, 2018, at the site of the shooting of Andy Lopez. The beautiful and moving community ceremony and celebration of the park's opening renewed the calls for community healing and change that arose from the shooting itself. Emotional wounds from the shooting still were present among many at the celebration. Yet, the event also seemed to mark a potential shift toward further healing of damaged relationships between the Sheriff's Office and some parts of the community in the future.

Adding to these dynamics have been two results of the fire disaster. That event strained all county fiscal resources, and also resulted in trauma that reverberated through county staff of all agencies. The strain on county resources resulted in all county departments, including IOLERO, facing budget cuts, and being taken away for a significant period of time from performing their regular duties. As a result, the promise of increased staffing in the next year's budget for IOLERO disappeared. Perhaps related to these dynamics, the quality of some investigations performed during this time suffered, resulting in audits requiring more time to complete. Starting last fall, investigations referred for auditing became more complex and suffered from more deficiencies, from the perspective of IOLERO.

Since that time, the Sheriff's Office referred multiple investigations that required significantly more resources to audit, including investigations related to: 1) the jail "yard counseling" incidents that led to a federal lawsuit; 2) an incident involving many hours of body worn camera video that included potential violations of policies that had never been investigated because not alleged by the complainant; 3) a sexual assault investigation that involved a very traumatized and perhaps mentally ill individual that raised significant issues about how such victims are treated during the pendency of a sexual assault investigation; and 4) a complex officer involved shooting involving scores of witnesses and much BWC video footage. Multiple complaints lacked adequate investigation and/or analysis of potential violations of law and/or policy, which increased the time needed to audit. And complaints were filed at a quicker rate in FY 17/18 than they were in the last reporting period.³ Despite a primary focus on audits, IOLERO audits took longer and a backlog developed.

then returned to the federal district where a September 20 status conference will set a trial date. Should the case go to trial, it likely will receive extensive media coverage, further lengthening period of the public scrutiny on the deadly force used in the Lopez shooting.

³ During FY 16/17, there were 18 complaints filed subject to IOLERO audits, at a rate of approximately 1.5 per month. During FY 17/18, there were 29 complaints filed that were subject to IOLERO audits, at a rate of approximately 2.4 per month.

The additional focus on audits within the constraints of IOLERO's limited staffing made it necessary to cut back time spent on community engagement and policy recommendations. Although IOLERO made efforts to organize for a community engagement circle in the Moorland neighborhood Southwest of Santa Rosa, community feedback suggested that it was not yet the best time to move forward with this effort. IOLERO did hold a focus group with unhoused residents of the Guerneville area this year, and regularly presented to civic groups, but robust engagement was limited. In addition, this year IOLERO made only one formal public policy recommendation outside of this annual report, and that was a collection of recommendations previously issued in individual and confidential audits.⁴

As a result of all these dynamics, the professional relationships between the management of the Sheriff's Office and IOLERO staff have become increasingly strained since Fall 2017. These relationships started fraying during the aftermath of the fire disaster. Multiple personal meetings between the Sheriff and the IOLERO Director would reset those relationships temporarily, but they soon worsened again when differences arose over IOLERO suggestions, advice, or feedback, and whether it should be public or confidential. While these tensions and differences have been present since the beginning of the professional relationship between the agencies, this year saw less success in working through them productively.

IOLERO operates within a local and national environment of intense public scrutiny on how law enforcement operates. This scrutiny includes issues such as when and how use of force is justified, how enforcement efforts are focused on certain communities, and how to make policing best serve the communities being policed. Issues that previously were the focus of attention only of law enforcement insiders and small groups of local activists, have become the subject of frequent media reports, social media postings, and personal discussions among the general public. Law enforcement policies once considered the purview of law enforcement experts are now debated openly by the public. These can be polarizing issues and the work of civilian review of law enforcement is inherently a position of tension among competing interests. It is inherently stressful, but unnecessary stressors may make such work unsustainable

On the local and national level, turmoil over these issues persists. President Trump has radically reordered federal priorities around the practices of policing (from funding to transparency to community engagement to oversight), while activist movements continue to focus attention on law enforcement shootings of people of color. And civilian review itself has recently come under fire by law enforcement interests in several jurisdictions. The San Jose Independent Police Auditor recently was forced to resign under pressure from the police officer's union. The Orange County Board of Supervisors suddenly zeroed out the budget of the Office of Independent Review just weeks after hiring a new director for the office. The Sacramento Sheriff recently locked out the county law enforcement auditor after he issued a report about an officer involved shooting that was critical of the agency. These are concerning developments.

⁴ Additional recommendations from those audits are included elsewhere in this report.

At the local level, the last year included much tension, including continued tension over the killing of Andy Lopez in 2013 and the lawsuit around that incident that continues. In the midst of these controversies, IOLERO must balance all these interests and tensions while also reaching objective conclusions about the adequacy of complaint investigations and the advisability of changes to Sheriff's policies. Doing so requires that both the IOLERO Director and the Sheriff actively cultivate a relationship of trust and cooperation, including providing access to the staff and information necessary to transparency and independent civilian review. Absent such mutual cooperation, it is very difficult if not impossible to achieve these goals.

IOLERO is charged with bridging differences between often bitterly opposing viewpoints on policing and detention issues, as they relate to the Sonoma County Sheriff's Office. As the President's Task Force on 21st Century Policing said in its Final Report: "[P]eople are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to tell them what to do. But the public confers legitimacy only on those they believe are acting in procedurally just ways." One of the ways such legitimacy can be earned is through demonstrable accountability from the Sheriff's Office to the public. Civilian review is one mechanism through which that accountability can be facilitated. This Annual Report is one way to provide some measure of transparency for that accountability.

The responsibilities and mission of IOLERO make it unique. While there are many other civilian review agencies in California, and hundreds across the nation, there are relatively few charged with working with an elected county sheriff. Both Orange and Los Angeles counties have oversight agencies working with their Sheriff's Offices, each based on a more limited model. San Jose has a model similar to IOLERO, but works with an appointed police chief whose employment can be terminated by the elected City Council.⁵

The Board of Supervisors charged IOLERO with accomplishing many of the functions common to robust, effective, and independent civilian oversight agencies. In this sense, the Office has embraced best practices for such agencies. However, the Office must accomplish these tasks while working with an independently elected county official, who is answerable primarily to the

⁵ The Orange County Office of Independent Review (OIR) audits investigations conducted by the Orange County Sheriff's Office and reports directly to the Board of Supervisors. OIR does not take complaints, conduct robust outreach to the community, make recommendations for changes to policies of the Sheriff's Office, or work with the equivalent of a Community Advisory Council.

The Los Angeles County Office of Inspector General (OIG) conducts systemic reviews of the Los Angeles County Sheriff's Office, making recommendations to changes in policies and practices to improve operations and responsiveness to the community. OIG does not take complaints against officers, conduct audits of individual administrative investigations, conduct robust outreach to the community, or work with the equivalent of a Community Advisory Council.

The San Jose Independent Police Auditor (IPA) performs multiple functions in common with IOLERO: intake of complaints; audits of administrative investigations of complaints filed with IPA; recommendations for changes in policies of the San Jose Police Department; robust community outreach; and working with a community advisory committee. IPA works with a police chief appointed by and answerable to the City Manager, it audits only complaints filed with IPA, and its advisory council does not hold public Brown Act meetings.

voters through the electoral process. There is no express requirement in the Ordinance establishing IOLERO that the Sheriff cooperate with the Office. In this context, IOLERO currently must achieve its missions through a cooperative approach that attempts to bring together distrusting community members and law enforcement officials and employees to discuss difficult topics and perhaps reach some better resolution of differences. The task is challenging but can succeed when all parties participate in good faith and with good intentions.

Without question, policing and corrections are challenging and dangerous professions. American society, including Sonoma County, historically has delegated to law enforcement the difficult tasks of keeping communities safe through policing and detention. Never has the difficulty of that task been more evident than in this year of the fires. Over the years, with the collapse of mental health services, law enforcement also has been forced to handle increasing incidents involving addiction and the mentally ill. In many respects, the community at large has not wanted to know what is involved in achieving these tasks. Some level of force and violence is inherent to preventing certain individuals from harming other members of the public or law enforcement officers. As social media sharing of video of such incidents has become common, the public has confronted a reality from which they previously were shielded. Viewing such violence on video as it unfolds is not pleasant and many react viscerally. Understandably, this has resulted in an unease and increased questioning by the public of the proper role of law enforcement. Correspondingly, it has caused law enforcement members to sometimes feel unfairly criticized for performing the difficult and often unpleasant tasks they have been delegated by community members who may criticize them. This feeling may even have intensified for law enforcement in light of the significant heroic efforts and sacrifices made by many during the fire disaster. These are very challenging dynamics.

Most experts agree that success in restoring trust that has been lost between communities and a law enforcement agency depends on active leadership at the top of the law enforcement agency committed to that task. No civilian review agency is capable of resolving these challenges, but we can help to make a difference. This year, IOLERO has sought with some success to make a difference in these dynamics, in collaboration with the Sheriff's Office. IOLERO has also experienced greater challenges with these dynamics during this year, as compared to the last year. Change, whether in practices or in perceptions, takes time, but with dedicated effort and commitment by all involved, it can happen.

This report will discuss these efforts in greater detail.

Chapter 2: Executive Summary

In April 2016, IOLERO opened its doors. During the last 2.5 years, IOLERO has set up a brand new county department; taken complaints against Sheriff's Deputies from 35 community members; audited 42 investigations of alleged deputy misconduct, undertaken significant outreach and education targeted to vulnerable communities, including undocumented immigrants and homeless residents; hosted a very successful community healing circle that brought undocumented immigrants together with deputy sheriffs; recommended improvements to the Sheriff's Office investigations of employees and IOLERO audits of those investigations; recommended that the Sheriff significantly limit cooperation with federal immigration enforcement to enhance public safety and begin to regain the trust of the immigrant community; appointed a diverse Community Advisory Council and supported its monthly public meetings to review Sheriff's Office policies; supported the Community Advisory Council in co-hosting a very successful community forum with candidates for Sheriff for the June 2018 election; and spent countless hours publicizing IOLERO and its functions through public appearances, the IOLERO website, and traditional media.

By any measure, these are significant accomplishments for a relatively new civilian review agency. IOLERO has been successful and deserves to be supported and strengthened as it moves forward. Yet, IOLERO is at an inflection point. Absent sufficient support for strengthening the office, and building upon its initial successes, it is questionable whether it will be able to fulfill its promise. With appropriate support, IOLERO will be a tremendous asset for both the public and the Sheriff's Office

IOLERO's successes during this time could not have taken place without significant cooperation from the leadership and staff of the Sonoma County Sheriff's Office. During IOLERO's first year, the Sheriff, senior management, line deputies, administrative assistants and volunteers, all responded to the creation and operation of IOLERO with a cooperative, open, and helpful attitude. There also have been moments of tension between the two agencies, as should be expected with the introduction of civilian review into a well-established law enforcement culture. During the first year of operations, those tensions were largely handled effectively in an environment of mutual respect and cooperation. Over the last year, however, the tension has continued to percolate and build, despite IOLERO's best efforts to bridge differences while still performing its functions. Moving forward, resolving those tensions may require changes, whether in the IOLERO Ordinance or in the personnel involved, or otherwise. Given the upcoming retirement of the IOERO Director, now is a good time to consider what is needed to ensure continued success, without the distraction of personality issues.

The challenges for each office were significant as IOLERO began to set up its operations. Staff of each office had to establish protocols that worked for both agencies, while simultaneously forging productive working relationships. The Sheriff's Office had a backlog of administrative investigations after years of understaffing of the Internal Affairs division. That section quickly began to staff up and work through its backlog of investigations, some of which were pressing

up against statutory deadlines for possible employee discipline. Newly promoted investigators had to be trained in internal affairs investigations, and the agency had to adapt to new protocols that included IOLERO review of investigations and policies.

Simultaneously, the IOLERO Director set up IOLERO's office and infrastructure and began significant efforts to become familiar with the organization, polices, culture, training, and personalities of the Sheriff's Office. The Director also met with community members and activists from every part of the County to begin learning their perspectives and concerns. The Director held all of these perspective in mind, while creating a First Year Work Plan that attempted to incorporate the expressed desires of the Board of Supervisors, the CALLE Task Force, and community members, while also consulting Sheriff's staff. The Board embraced this work plan in a public hearing. In addition, the Director proposed, and the Board of Supervisors unanimously passed, an IOLERO Ordinance that was supported by the Sheriff and set out the authority and missions of the office. Once approved, work began in earnest under these plans, which guided the development of IOLERO.

During its first year of operations, IOLERO fell behind in audits as it attempted to balance the auditing function with the important mission of robust community engagement. With the Director responsible for most aspects of delivering on audits, community engagement, and policy recommendations, balancing these missions proved very challenging. Following a period of several months in which IOLERO had a backlog of audits of completed investigations, that backlog was cleared completely by July 2017. Under direction from the Board of Supervisors, IOLERO thereafter prioritized audits as the first of its several missions, shifting office resources from community engagement and policy reviews.

Despite this rebalancing of priorities, IOLERO this year again fell behind the ideal of completing audits in 30-60 days. There were many reasons for this, which are explored in more depth in this annual report. Among them were missed time available for audits as a result of the October fire disaster, the impacts of the fires on IOLERO staff productivity after the fires, an increase in complexity of investigations, a higher pace of investigations referred for audit, multiple audits referred during the same time periods, more incomplete investigations, and ongoing health issues of the Director. What is clear, however, is that even taking away circumstantial explanations, IOLERO lacks sufficient staffing to address audits in a quick time frame and also perform its other basic missions in a satisfactory manner. Absent additional staffing, it will continue to be challenging for IOLERO to complete audits within a time frame of 30-60 days.

In the meantime, IOLERO's community engagement mission has suffered from the rebalancing of priorities. IOLERO was unable to conduct a community engagement circle this year, despite its value to the community and the Sheriff's Office. Without more resources, it will be challenging to put on circles. While IOLERO sought to partner with the Sheriff's Office to seek grant resources to support this function, that effort received no support.

I. Audits of Administrative Investigations

Auditing administrative investigations of potential misconduct by Sheriff's Office employees is a primary function of IOLERO. Of IOLERO's 19 audits completed during the reporting period, IOLERO agreed with the findings of the Sheriff's Office investigation in 9. For 1 of the agreements, there was a sustained finding of misconduct and the employee no longer works for the agency. In 10 audits, IOLERO disagreed with an investigation's findings on one of more allegations of the complaint, a significant increase in disagreements from the last reporting period. Of those disagreements, 7 involved IOLERO making a finding of sustained; 2 involved an IOLERO finding of inconclusive/not sustained; and 2 involved IOLERO exonerating an employee where the investigation reached no finding. In 7 of the 10 complaints on which IOLERO disagreed with findings, the audit also found that the investigation was incomplete. In 3 audits, IOLERO concluded that the investigation was conducted in such a way that it could be reasonably perceived as showing a **bias** in favor of the deputies or agency. IOLERO took 16 complaints from the public during this time, with 12 investigations originating at the Sheriff's Office.

Audits of Sheriff's Office investigations have resulted in more mixed results this year than last year. There were more audits that disagreed with investigative findings. Multiple audits revealed that investigations continued to lack analysis of all allegations and of all potential violations of policy, despite IOLERO's past recommendation to correct such deficiencies. In addition, some investigations involved a clear conflict of interest, either in the original investigation of an incident, or in the administrative investigation of a complaint. Such deficiencies, especially among certain investigators, are of concern and should be addressed by the agency, as recommended by IOLERO in its stand-alone report, "Policies and Practices Related to Administrative Investigations and Audits of Investigations."

Despite such concerns, audits of investigations overall show that patrol deputies typically act in a manner consistent with the requirements of agency policies and the law. Due to a lack of access to information, IOLERO was unable to evaluate whether deputies who violate policy receive appropriate and meaningful discipline commensurate with the nature of the violation. This year also saw Administrative Captain Mark Essick, who is Sheriff-elect, testify in a criminal trial against a former deputy, who had been charged with illegally assaulting a community member during a response to a call for a domestic disturbance. Captain Essick testified clearly and convincingly that the deputy violated agency policy, although the jury failed to convict the deputy of the charge. Nevertheless, this public testimony from the Sheriff-elect demonstrates a commitment by the agency to accountability.

On the jail side of the Sheriff's Office, the audits this year have increased the concerns that were noted in last year's report. Fortunately, there is evidence that the Sheriff's Office's leadership team recognizes the need for change and that it is acting to correct deficiencies. Yet, concerns remain. Of particular concern are issues revealed by IOLERO's audit of investigations into incidents that were the subject of a federal lawsuit alleging excessive use of force against multiple inmates in the jail. The audit concluded that it was likely that some correctional

deputies used excessive force during these incidents, among other issues, whereas the investigation found no policy violations took place during these incidents. The audit also revealed significant deficiencies in the investigative process itself, which is a key factor in ensuring that employees are held accountable for violations of law and policy. This is doubly significant because this investigation was conducted by the Internal Affairs Division of the Sheriff's Office, rather than by investigators from the Detention Division who lack specialized training in investigations. The fact that the investigation findings received approvals through several layers of the agency's management is a cause for concern. Further, investigative deficiencies of this kind can expose the county to liability for the employee actions that might not otherwise result in county liability.

In multiple investigations performed within the detention division, audits revealed deficiencies in investigative best practices that resulted in an inability to effectively audit the investigation and reach conclusions with strong confidence. Multiple investigation files did not contain the source information, such as recorded interviews of witnesses or complainants, which would allow an independent audit of the conclusory statements of the investigator. In some cases, there were no interviews of complainants or deputies who were involved. These deficiencies were noted in last year's report, yet persisted this year. In addition, it appears that jail grievances filed by inmates are routinely investigated by employees who had some role in the incident being grieved, a clear conflict of interest that should not be allowed to continue. These continuing deficiencies in the investigative process should be addressed by the leadership of the Sheriff's Office and deserve greater attention.

II. Policy Reviews and Recommendations

IOLERO also reviewed and recommended changes to Sheriff's Office policies and practices in several areas during the report period, including most prominently in the area of investigations and audits. All IOLERO policy reviews in FY 17/18 took place as a part of and were incidental to investigation audits, although some related recommendations came from robust reviews by the Community advisory Council that included community input. A key part of IOLERO's civilian review function is this focus on policies and whether they best serve the valid law enforcement goals of the Sheriff's Office, while also considering the needs and desires of the community that office is charged to serve and protect. Input from the community about law enforcement policies is considered a best practice in achieving legitimacy with the community.

Among IOLERO's recommendations have been those designed to improve the integrity and process of administrative investigations and subsequent audits by IOLERO, as well as discrete recommendations concerning sexual assault investigations, uses of force, and video camera use. The Sheriff's Office generally has not informed IOLERO of its response to policy recommendations included within audits. Therefore, IOLERO has included in this report policy recommendations related to audits to allow the Sheriff an opportunity to inform the public of the agency's positions on these recommendations.

III. Community Outreach and Engagement

IOLERO continued its efforts at community engagement in FY 17/18, but at a less robust level than in the previous year. Our efforts included general outreach through scores of meetings that reached over 1,400 community members in different venues. They also included distribution of over one thousand brochures, an advertising campaign in county buses, a robust website that offers multiple ways to engage with IOLERO, and a Facebook presence on social media to reach populations who rely on that source. And they included the meetings of the IOLERO CAC, including a well-attended and well-received forum with Sheriff's candidates that drew over 250 attendees.

IOLERO's engagement efforts with the immigrant community of the County also continued, but at a reduced level from last year. IOLERO also conducted its first community focus groups with the unhoused community residing near Guerneville, informing them of our services and gathering information from them first-hand to better understand the challenges and opportunities in their relationship with Sheriff's Deputies. IOLERO continues to strongly recommend robust community engagement as a key component to improving relationships between underprivileged communities and county government, including law enforcement. However, without greater resources, it is likely that IOLERO's community engagement effort will remain limited.

IOLERO did make attempts to organize another community engagement circle this year, between law enforcement and the community residing in the Moorland neighborhood. However, resource limits, timing issues, and hesitation among neighbors and their partners prevented that effort from coming to fruition this last year.

IV. IOLERO's Community Advisory Council

During FY 17/18, IOLERO had great success bringing the voices of the community into a more direct relationship with law enforcement through the IOLERO Community Advisory Council ("CAC"). IOLERO established its CAC in October 2016. Over the last year, the CAC has been very active through its monthly, public meetings that include active participation by the Sheriff's Office. Although not without challenges and tensions, these meetings have provided a productive venue through which the community may express its desires on policies and practices and hear responses from the Sheriff's Office. The CAC has been instrumental in providing robust public feedback concerning the Sheriff's Office policies, practices, and training on drone use, conflicts of interest, video cameras, and homelessness. In several areas, the CAC hearings and recommendations have influenced the formation of Sheriff Office policies, including on drones and homelessness.

As an advisory body, the CAC faces a challenge inherent to such bodies – namely, that the public agencies it advises may or may not accept its advice for a variety of reasons. In addition, as a public body that also helps to bridge the gap between the Sheriff's Office and the public,

the CAC sometimes is put in an awkward place when there is disagreement among members of the public, or between members of the public and the Sheriff's Office. At times, these tensions spill over into vocal public dissent. In addition, there is a tension between the goal of CAC members acting as a voice for the community, while they also are appointed by and serve at the pleasure of the IOLERO Director. Despite these tensions, the CAC has provided an invaluable service in giving voice to public views and sentiments concerning policies and practices of the Sheriff's Office and of IOLERO. Its role in serving the missions of IOLERO should be seen as a great success.

V. Looking Toward the Future

IOLERO has had a very successful 2.5 years and made significant progress in meeting its missions, despite its many challenges. During this time, the office has laid a solid foundation for more progress moving forward. Looking toward the future, there is reason for optimism, although it will depend on keeping the faith and continuing the hard work that made the first 2.5 years successful. As the Director ends this year with retirement, the information presented here should be viewed as an assessment of where we are and recommendations for the future, hopefully to a new director of a reinvigorated IOLERO.

In particular, the Director invites a frank public discussion on what is advisable and necessary to support IOLERO in meeting its full potential. For the last 2.5 years, IOLERO has operated under an authorizing ordinance that requires IOLERO to cooperate with the Sheriff's Office, but contains no corresponding requirements that the Sheriff's Office cooperate with IOLERO in any way in meeting its missions. From the Director's perspective, this is a key flaw in the way the Office has been established, which should be rectified through an amendment to the IOLERO Ordinance. Many of the challenging dynamics between the Director and the Sheriff since IOLERO opened can be traced back to the fact that, under the current set-up, the Sheriff's participation in civilian review of the Sheriff's Office is entirely voluntary. In the view of the Director, that dynamic has colored much of the professional relationship dynamics between the departments. Requiring the Sheriff's Office to cooperate with IOLERO's missions would help rebalance those dynamics in a productive way to the benefit of both agencies.

As the Director has communicated to the Sheriff over the last year, IOLERO believes the greatest utility to both the Sheriff's Office and the public would come from more systemic audits. For example, a systemic audit by IOLERO of all uses of force during the year, whether or not subject to an investigation, would provide very useful information about trends in this area and the sufficiency of the accountability system around use of force. Also, an audit of the agency's response to 5150 calls, including both utilization of mental health professionals (such as the Mobile Support Team) and outcomes (such as the level of force used during the calls), likewise would provide information invaluable to determining whether the system is effective as designed, or should be improved. Thus far, the Sheriff's Office has resisted any suggestion of systemic audits, calling them "mission creep", but IOLERO continues to recommend this approach.

In addition, the Director has recommended that IOLERO be provided broader access to information in employee personnel files, such as past complaints against deputies involved in a current audit, training history, and disciplinary history. IOLERO also has recommended that it have direct access to the underlying information that is considered in an investigative file, such as incident reports, as well as access to investigators to discuss their approach to the case. Without such access, IOLERO is unable to assure the public that it has independently reviewed all information relevant to an investigation and that the investigation is complete. The most that an audit can communicate is that the audit is based on the information in the file provided by the Sheriff. The Director recommends that IOLERO continue to work with the Sheriff's Office to improve the quality and consistency of its administrative investigations.

In the area of policy reviews and recommendations, IOLERO has begun with its Community Advisory Council a review of the policies, practices, and training of the Sheriff's Office related to Use of Force. This is a complex area that involves both significant technical expertise, as well as polarized views that bear on basic safety of the public and deputies. It is expected that the review process in this area will take more than a year, moving through each of the relevant use of force policies, starting with the General Use of Force policy.

Given the continued lack of significant progress in increasing the diversity of the Sheriff's rank and file deputy workforce, IOLERO also should try to find the resources to review hiring practices of agencies that have met success in this area. Lessons learned by other agencies may have direct applicability to the Sheriff's recruitment efforts. The Director also recommends that IOLERO continue to work with the Sheriff's Office in seeking ways to support an increased focus on community oriented policing, especially in denser areas of the County populated by Latinx immigrants. Of primary importance are efforts to include deputies who speak the language and understand and value the culture of the communities being policed.

The Director supports continued focus by IOLERO on robust community education, outreach and engagement. Nevertheless, it likely is not possible to undertake the type of significant community engagement with disadvantaged communities by IOLERO staff that was undertaken in early 2017, absent additional staffing or funding to create community partnerships. Hopefully, under a new Director, the Sheriff's Office will work together with IOLERO to secure the funding necessary to support this important function, which can help the Sheriff's Office bridge the gaps with distrusting communities.

IOLERO supports continued utilization of its Community Advisory Council to provide a community voice in the review and recommendation of the policies, practices, and trainings of the Sheriff's Office. IOLERO hopes for continued and increased engagement with the CAC from the Sheriff in the coming years, as the collaboration has proven beneficial for both the agency and the public. In addition, the IOLERO Director recommends that in the future, CAC meetings be brought to different parts of the County to the extent that proves logistically feasible.

Chapter 3: The Sonoma County Sheriff's Office

I. History of the Sheriff's Office

While IOLERO began operations in 2016, the Sonoma County Sheriff's Office had been in existence for 170 years. As one of the oldest public institutions in the County, it has its own history and culture that are very well established. Into this established history and culture, a new element, IOLERO, was added. This section provides a brief sketch of the formation and growth of the Sheriff's Office. The Sheriff's Office predates the existence of the State of California, originating with the creation of the U.S. territory of California in 1847. At that time, the Sonoma District of the territory was established and a Sheriff was named. California became a state in 1850, and Sonoma County was one of the original counties formed at that time, with the county seat in the Town of Sonoma, where the Sheriff housed his operations. After statehood, the county's area of jurisdiction went through changes, eventually arriving at the current boundaries in 1859, with the County seat in Santa Rosa.

Like today, the first sheriffs were responsible both for policing the county and for operation of the county jail. Over the decades, the Sheriff's staff grew from a handful of temporarily appointed deputies beginning in 1852. The following years saw steady growth in the population of the County, as well as the staff needed for the jail and patrol operations. The first growth occurred during the Civil War, when a large segment of the county supported the Confederate States, causing significant tension that led to the Sheriff hiring 23 temporary sworn deputies to maintain order. Another growth spurt occurred during Prohibition in the 1920s, with deputies regularly shutting down alcohol distillers and speakeasies. More growth came during the Great Depression, as Sheriff Deputies worked to suppress unions organizing workers in the fields and packing plants of the county. Other growth spurts included the two World Wars, when servicemen would entertain themselves raucously at venues along the Russian River.

The 1960s brought the hiring of the first women and the first African-American by the Sheriff. Staffing continued to grow. Beginning in 1972, the jail began to be staffed not by deputies but by correctional officers with specialized training. The 1970s also saw the start of more specialized units, including the Special Weapons and Tactics Team (SWAT) in 1976. The trend toward modernization and specialized training continues through today.

II. Missions of Sheriff's Office

The current mission statement of the Sheriff's Office provides: "In partnership with our communities, we commit to provide professional, firm, fair and compassionate public safety services with integrity and respect." The Office provides law enforcement, court security services, and detention services to the communities of Sonoma County.

III. Organization, Staffing, & Budget of the Sheriff's Office

Under the California Constitution and Government Code, the Sheriff is an elected official, one of a handful elected county-wide. As such, the Sheriff is accountable primarily to the voters of the County. California Government Code section 26602 provides that the Sheriff has authority to investigate crimes that occur within his or her geographic jurisdiction. Government Code section 26606 provides that the Sheriff has authority to keep the county jail and the prisoners in it.

Despite such relative independence, the Sheriff's operations are not left unsupervised by other officials. Government Code section 25303 provides that the county Board of Supervisors has authority to supervise the official conduct of the Sheriff, so long the Board's actions do not interfere with the Sheriff's independent authority to conduct investigations of crimes.⁶ In addition, section 23013 specifically authorizes the Board of Supervisors to transfer control of the county jail to a county created board of corrections, should it so desire.

The Sonoma County Sheriff's Office consists primarily of two divisions that deliver distinct services to Sonoma County: a Law Enforcement Division, which provides policing services to the unincorporated areas of the county and to the two contract cities of Windsor and Sonoma; and the Detention Division, which operates the county detention facilities and associated programs. The Office also has an Administrative Services Division, which supports the entire Office, and a Telecommunications Bureau, which provides county-wide radio services.

The FY 2018-19 budget of the Sheriff's Office includes funding in the amount of approximately \$177 Million. The Office is funded for a staff totaling approximately 634 positions, including approximately 200 sworn officers in the Law Enforcement Division, 204 sworn officers in the Detention Division, 12 sworn officers in the Administrative Division, and approximately 218 positions that constitute administrative or other types of support staff.

The Sheriff's budget also contains three positions originally funded by the Board of Supervisors in connection with the recommendations of the CALLE Task Force and the creation of IOLERO. During that process, the Sheriff informed the Board that his office needed three additional positions to fulfill responsibilities to act as a liaison with IOLERO and to provide the enhanced community engagement that was recommended. These three positions were an Internal Affairs Lieutenant, an Administrative Assistant, and a Community Engagement Liaison. At the time of their establishment, the total costs for establishing and supporting these positions was estimated to be \$620,000. The current costs of these positions is approximately \$540,652.⁷

⁶ In *Brewster v. Shasta County* (2001) 275 F.3d 803, 810, the court stated that while Govt. Code section 25303 prohibits a Board of Supervisors from obstructing the sheriff's investigation of crime, a county Board nonetheless maintains a substantial interest in the performance of the Sheriff's Department, including investigations into the conduct of its deputies, and thus may legislate in those areas. See also *Dibbs v. County of San Diego* (1994) 8 Cal. 4th 1200, 1210.

⁷ IOLERO requested details on these position costs from the Sheriff's Office but was told by the Sheriff's Liaison to IOLERO that there was insufficient staff capacity to provide this information. IOLERO staff used SCLabor (a County of Sonoma budgeting tool) to calculate base position costs, which exclude pay such

The Internal Affairs Lieutenant and Administrative Assistant are part of the Internal Affairs Division, which also includes 2 Administrative Sergeants, plus a retired, extra-help Administrative Sergeant, who act as investigators for all administrative investigations of potential employee misconduct.

Since August 1, 2017, the Office has been led by former Assistant Sheriff Robert Giordano, who will continue as Sheriff until Sheriff-elect and current Administrative Captain Mark Essick takes the post in January 2019. Former Sheriff Freitas led the Office from 2011-2017, during the period that included significant budget cuts, public unrest following the shooting of Andy Lopez, and the Board of Supervisors establishment of IOLERO. Sheriff Freitas supported IOLERO's creation and establishment, and the cooperation of he and his staff were instrumental to getting the office up and running. Sheriff Freitas retired in the summer of 2017.

IV. Demographic Make-up of the Sheriff's Office Workforce

One of the significant issues facing every law enforcement agency is fostering a workforce of sworn officers who reflect the communities that they are charged with policing. Reflecting its importance, the *Final Report of the President's Task Force on 21st Century Policing* ("President's Report") spent a good deal of space discussing this issue, summarizing it this way:

Law enforcement agencies should strive to create a workforce that contains a broad range of diversity including race, gender, language, life experience, and cultural background, to improve understanding and effectiveness in dealing with all communities.⁸

The importance of this issue also was recognized by the Community and Local Law Enforcement ("CALLE") Task Force, in its Final Report to the Board of Supervisors:

The County of Sonoma's Workforce Diversity Report on law enforcement employees demonstrates that the current sworn law enforcement (patrol deputy) workforce does not reflect the communities they serve. The report indicated a significant underutilization of Latinos and women. For example, the percentage of Latinos in other law enforcement job classifications in the County is between 16.7% and 23.1%, but the Deputy Sheriff (patrol) has a Latino percentage of 9.5%. Latinos in the County are estimated at 30%, and in some communities the percentage is higher. It is recommended that all levels of law enforcement staff should be more representative of the current demographics in Sonoma County.⁹

as bilingual & P.O.S.T premiums; therefore, the estimated costs for these positions are conservative in nature.

⁸ *Final Report of the President's Task Force on 21st Century Policing* ("President's Report"), Washington, DC: U.S. D.O.J., Office of Community Oriented Policing Services, May 2015, p. 2, 16.

⁹ Sonoma County Community and Local Law Enforcement Task Force, *Final Recommendations Report, Volume 1* ("CALLE Report"), May 12, 2015, p. 59.

Last year, IOLERO’s Annual Report identified ongoing challenges in improving the diversity of the workforce of the Sheriff’s Office, two years after issuance of the *CALLE Report*. What has happened in the intervening year? Among the rank and file sworn officers working in the Law Enforcement Division, the situation has worsened slightly in the area of ethnicity/race, while improving slightly in the area of gender. For purposes of comparison, 2017 demographic census data for the population of Sonoma County are first provided as a reference point. For the total county population, 63.5% are White, while 27.0% are Latinx/Hispanic, 2.0% are Black/African-American, 4.5% are Asian, 2.2% are American Indian/Alaskan Native, 3.9% are 2 or more races, and 0.4% are Native Hawaiian/Pacific Islander. (These categories do not total to 100% as the US Census notes that “Hispanics may be of any race, so [they] also are included in applicable race categories.”) Among the same group, 48.9% are male and 51.1% are female.¹⁰

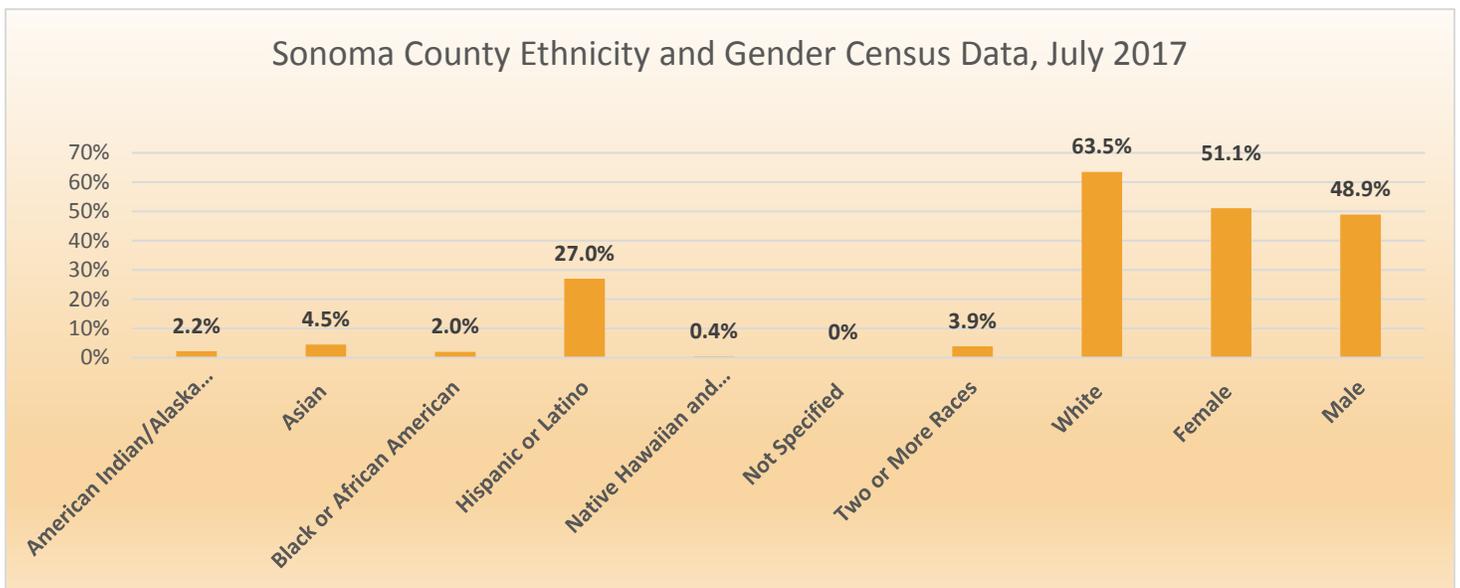


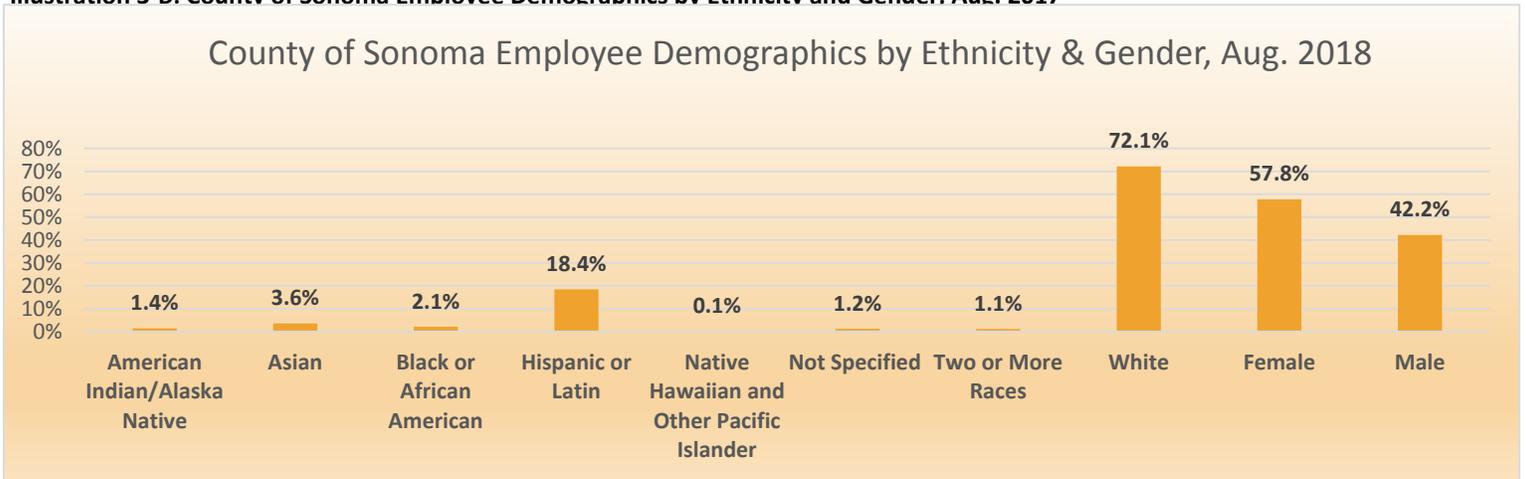
Illustration 3-A: Sonoma County Ethnicity and Gender Census Data, 2017

Another comparison point is the workforce of Sonoma County government. In August 2018, the Sonoma County government employee workforce was 72.1% White, 18.4% Latinx/Hispanic, 2.1% Black/African-American, 3.6% Asian, 1.4% American Indian/Alaskan Native, 0.1% Native Hawaiian/Pacific Islanders, and 1.2% declined to state. Among the same group, 42.2% were male and 57.8% were female.¹¹

¹⁰ See <https://www.census.gov/quickfacts/fact/table/sonomacountycalifornia/PST045217>

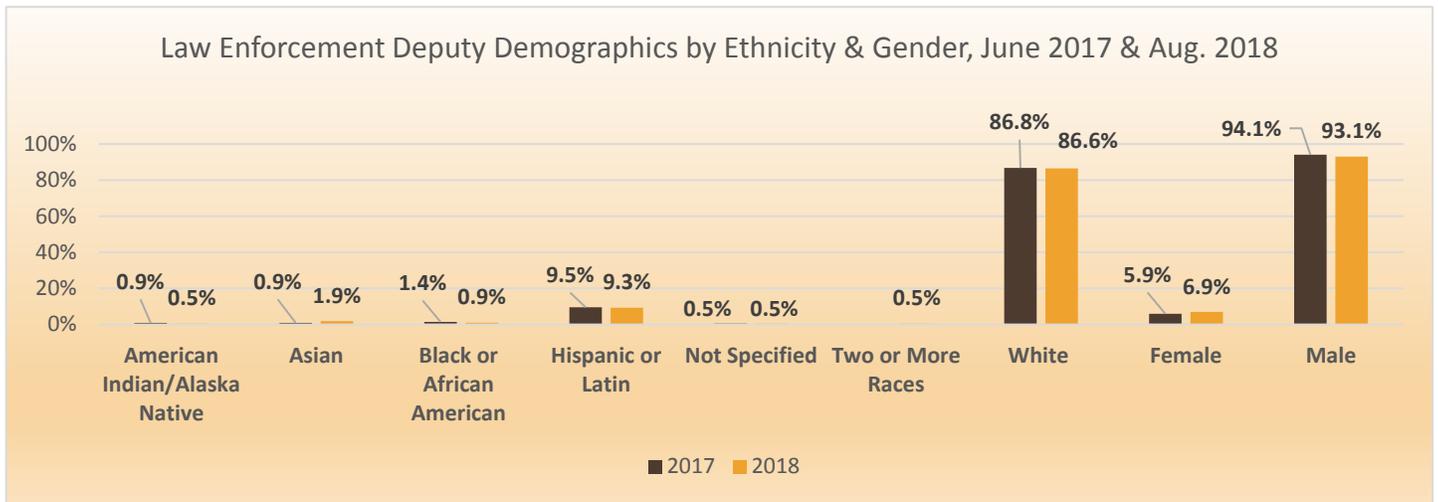
¹¹ These numbers come from Sonoma County Human Resources Department tracking of historical employee data and do not include Extra Help or Temporary employees.

Illustration 3-B: County of Sonoma Employee Demographics by Ethnicity and Gender. Aug. 2017



The **Law Enforcement Division** of the Sheriff’s Office currently employs 216 Deputy Sheriffs and Sergeants, 10 Lieutenants, 2 Captains, and one Assistant Sheriff. Among the 216 Deputy Sheriffs and their supervising Sergeants, those primarily responsible for patrolling the streets of Sonoma County, the workforce remains overwhelmingly male and White. For this group, 86.6% are White, while 9.3% are Latinx/Hispanic, 1.9% are Asian, 0.9% are Black/African-American and 0.5% are American Indian/Alaskan Native. Among the same group, 93.1% are male and 6.9% are female.

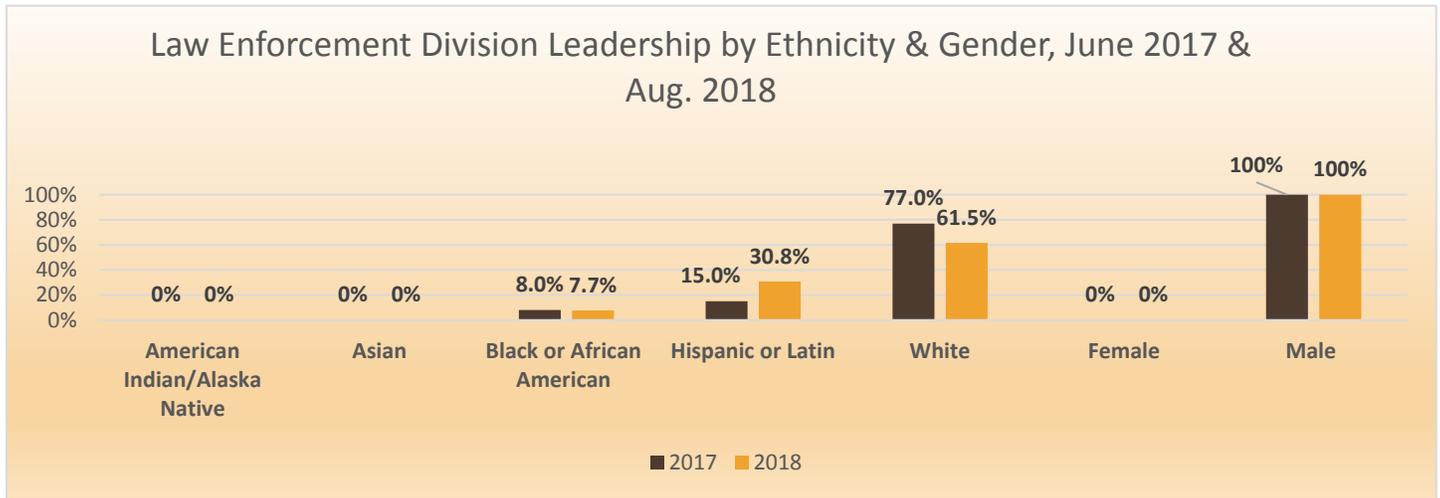
Illustration 3-C: Law Enforcement Deputy Demographics by Ethnicity and Gender, June 2017 & Aug. 2018



Among the 13 leadership positions within the Law Enforcement Division, including Lieutenants, Captains, and the Assistant Sheriff, all are male. Of the 10 Lieutenants, 5 or 50% are White, 4 or 40% are Latino/Hispanic, and 1 or 10% is Black/African-American. The two Captains and the Assistant Sheriff are all White. The 4 Latino/Hispanic Lieutenants include the Police Chiefs of the contract cities of Sonoma and Windsor, high profile positions that give them even more importance. In the area of ethnicity/race, these improvements to the diversity of the leadership of the Law Enforcement Division are significant and should be acknowledged as such. When

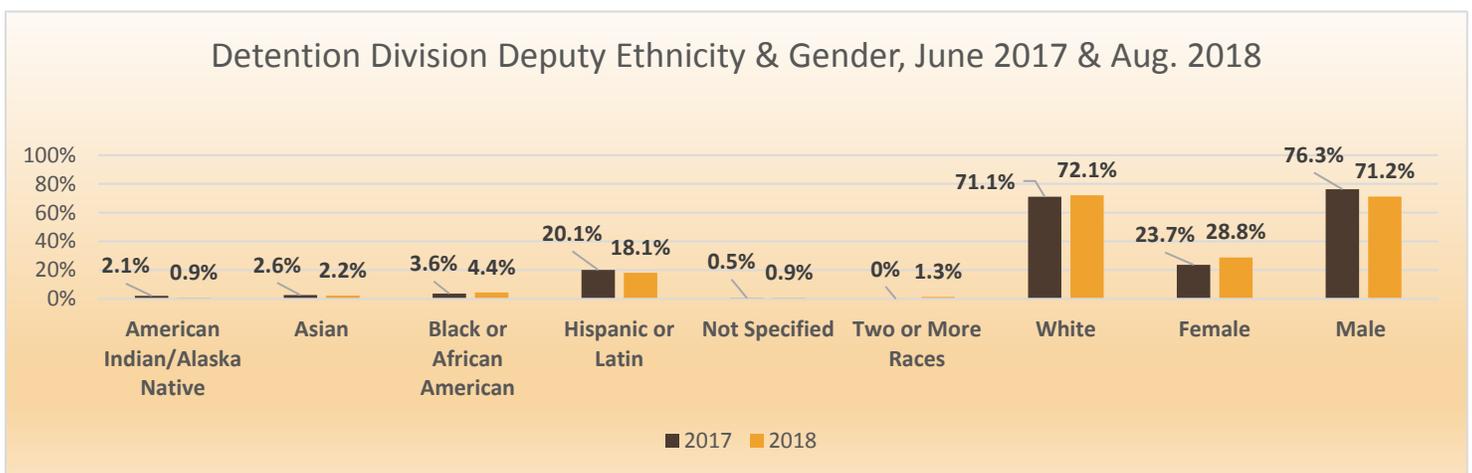
recruiting for rank and file officers, diversity of leadership is a very helpful component to appeal to potential applicants who may have questions about their potential for advancement in an organization. When applicants see leaders who look like them, they feel more comfortable believing that they may fit within the organization and have an opportunity one day to advance to similar leadership positions. Similarly, the lack of female leadership in the Law Enforcement Division may make recruitment of women for rank and file patrol positions more challenging.

Illustration 3-D: Law Enforcement Leadership Demographics by Ethnicity and Gender, June 2017 & Aug. 2018



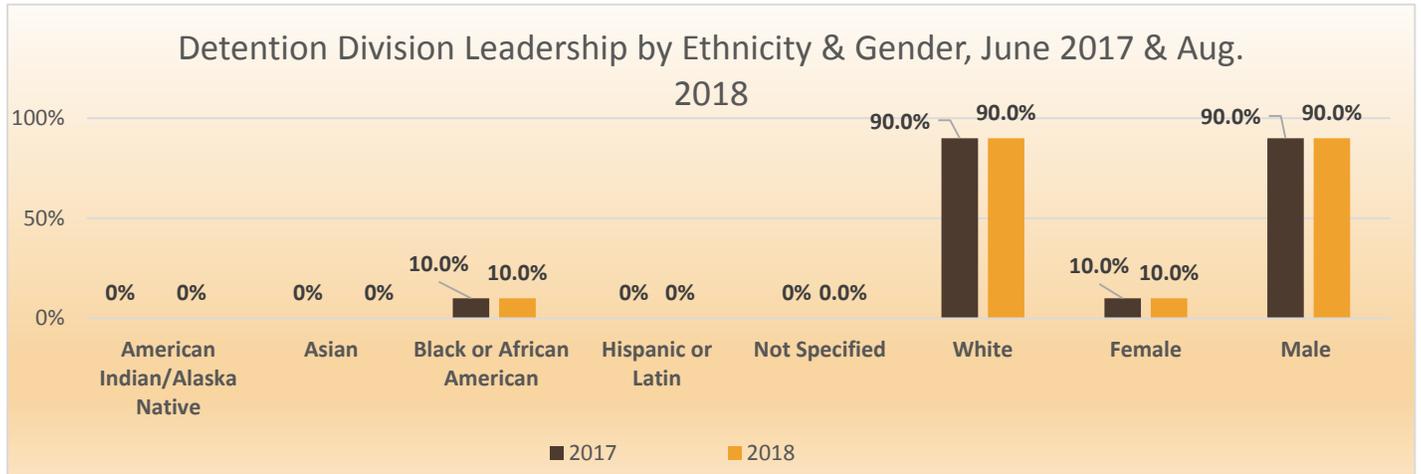
The **Detention Division** of the Sheriff’s Office currently employs 226 Correctional Deputies and Correctional Sergeants, 7 Correctional Lieutenants, 2 Correctional Captains, and one Assistant Sheriff. Among the 226 Correctional Deputies and their supervising Sergeants, those primarily responsible for keeping the jail safe and secure, the workforce is noticeably more diverse when compared to the Law Enforcement Division. For this group, 72.1% are White, while 18.1% are Latinx/Hispanic, 4.4% are Black/African-American, 2.2% are Asian and 0.9% are American Indian/Alaskan Native. Among the same group, 71.2% are male and 28.8% are female.¹²

Illustration 3-E: Detention Division Deputy Demographics by Ethnicity and Gender, June 2017 & Aug. 2018



¹² An important factor to note is that both federal and state law require a minimum number of female correctional officers to be employed in a facility where women inmates are housed.

Illustration 3-E: Detention Division Deputy Demographics by Ethnicity and Gender, June 2017 & Aug. 2018



The remaining employees of the Sheriff’s Office perform a number of different tasks that can be considered management and/or support functions for the law enforcement and detention functions of the office. These positions range from the Sheriff, to communication dispatchers, to department analysts, to legal process servers, to administrative assistants. For purposes of demographic reporting, these supporting positions have been lumped together. The number of staff employed in such positions totals 150. Among these 150 employees, 70.7% are White, while 17.3% are Latinx/Hispanic, 4.7% are Asian, 4.0% are Black/African-American, and 1.3% are American Indian/Alaskan Native. Among the same group, 34.7% are male and 65.3% are female. The Sheriff is a White male (along with the Sheriff-elect), the Director of the Administrative Services Division of the office is a White female, while the manager of the communications dispatchers is a White male.

Illustration 3-G: Administrative Support Demographics by Ethnicity and Gender, June 2017 & Aug. 2018

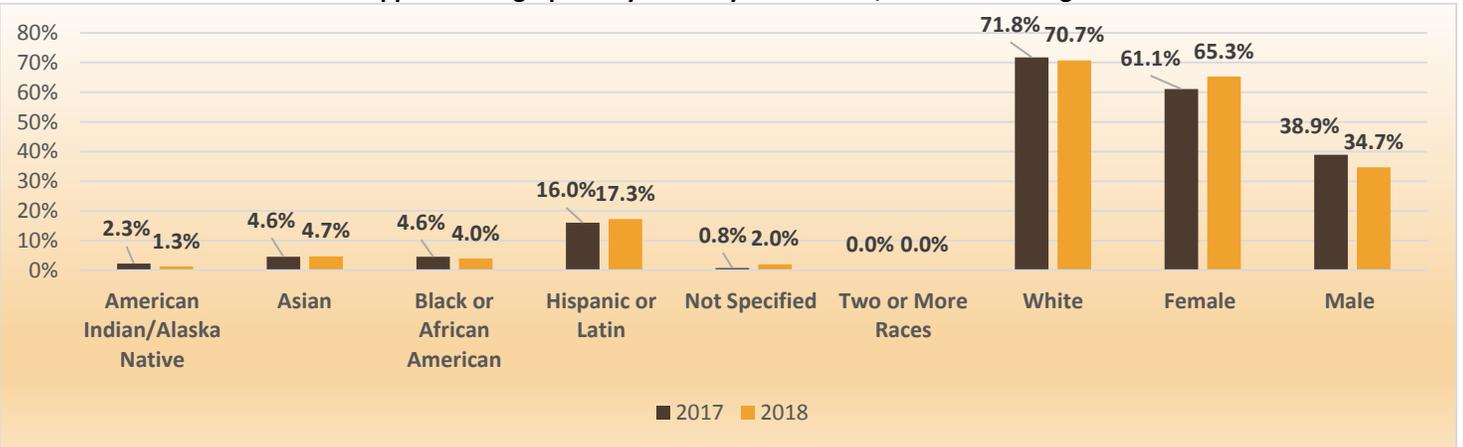
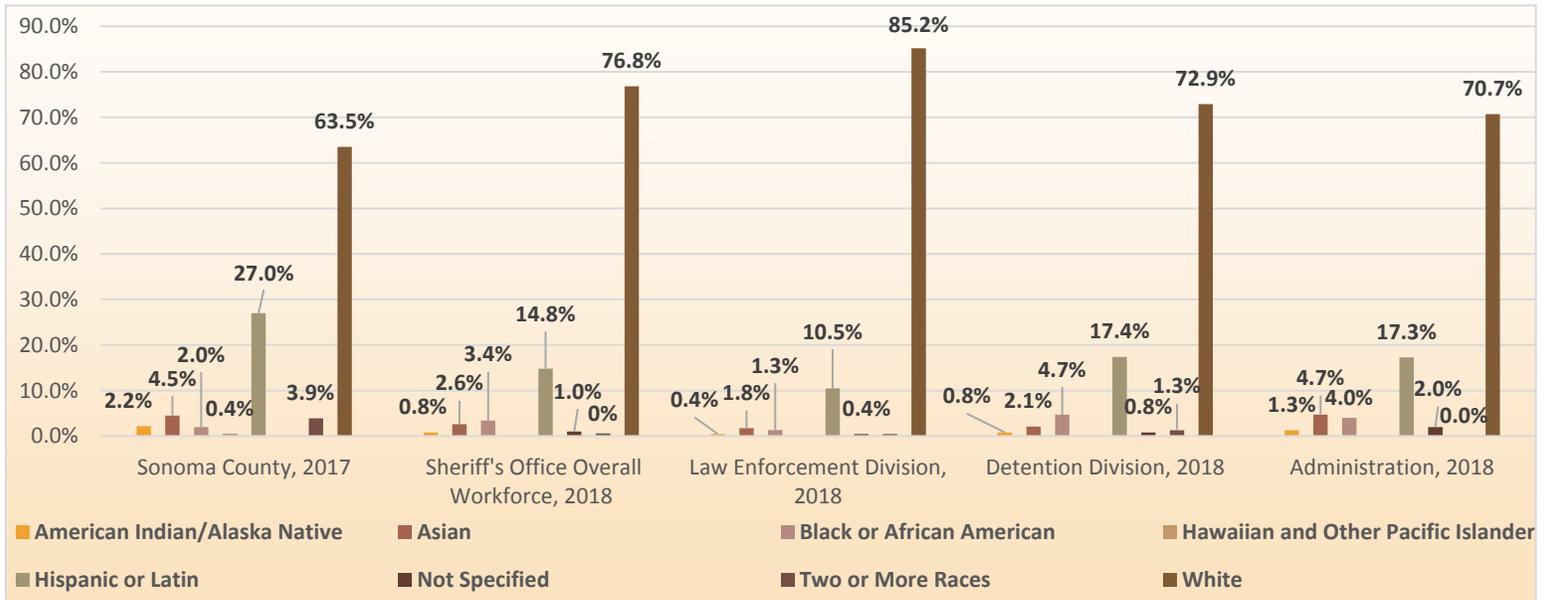


Illustration 3-H: County of Sonoma Ethnicity Demographics 2017, Sheriff’s Office Overall Workforce by Ethnicity Aug. 2018, Detention Division by Ethnicity Aug. 2018, Law Enforcement Division by Ethnicity Aug. 2018, and Administration by Ethnicity Aug. 2018



Although progress was made this year in some areas, there remains work to be done in order for the Sheriff’s Office to begin truly reflecting the diversity of the communities that it serves. For the Law Enforcement Division, in particular, there is a steep hill to climb in order to meet the laudable diversity goals of the *President’s Report*.¹³ This is not to disparage the professionalism of the men and some women who patrol the streets of Sonoma County as Deputy Sheriffs. Patrol deputies receive training in Racial and Cultural Diversity and Racial Profiling on a regular basis as part of their training required by the California Commission on Police Officer Standards and Training. Nevertheless, one key component to improving and maintaining trust between communities of color and a police agency, is for members of those communities to encounter deputies that look like them, speak their language, and are familiar with the cultures of their communities.

The peace officer hiring process inherently includes barriers to applicant success that are not present in most recruitment efforts, as applicants are required by law to meet rigorous background requirements and guidelines. These rigorous standards apply to recruitments of both Correctional and Sheriff’s Deputies in Sonoma County. These minimum legal requirements are not only reasonable, but considered a best practice when hiring employees who are authorized to use force against members of the public and have access to highly sensitive information. The background screening is extensive and looks at an applicant’s personal history, social patterns, affiliations, etc., to assess what is referred to as “moral character.” The process also includes psychological screening and lie detector tests both before and after the

¹³ The CALLE Task Force made multiple well-reasoned recommendations for improvement in this area that should be further considered for implementation by the Sheriff’s Office. See *CALLE Report*, pp. 59-63.

background process. The intent is to robustly evaluate whether an applicant has the temperament and psychology suitable to work in a law enforcement environment. As a result of this extensive screening process, the number of candidates hired is much lower than the number of applicants. Therefore, many applicants are necessary to fill a few vacant positions.

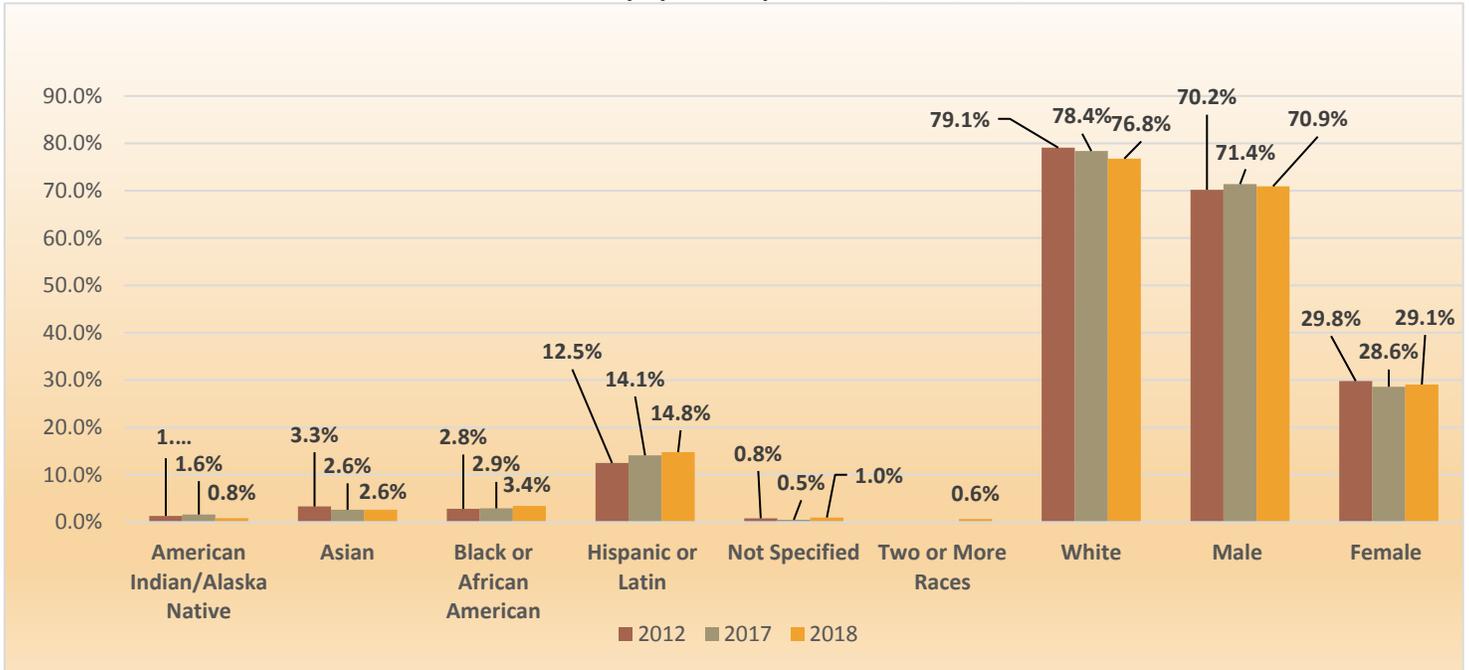
The Sheriff's Office regularly seeks to diversify its workforce through diversity recruitment.¹⁴ It works with the County's Human Resources Department to place hiring advertisements in media that appeal to a diverse target audience. Sheriff's Office recruitments are regularly advertised in English and Spanish serving organizations and media such as the Hispanic Chamber of Commerce, KBBF radio, Exitos radio, La Voz Newspaper, Latino Service Providers online newsletter, along with the International Association of Women Police website. The Office also has a contract with Los Saludos, which places ads on behalf of the office in 2 online periodicals, Saludos (targeting a Latinx audience) and Cause (targeting an African-American audience). In addition, the Office has several programs geared toward youth, such as its Explorer Program and Youth Academy, that seek to interest minority and other youth in careers with the Sheriff's Office. In addition, the Sheriff's Office has been working with an outside recruitment consultant to assist the office in rebranding itself to facilitate more successful recruitment efforts, including diversity recruitment.

Despite these efforts, gains in workforce diversity at the Sheriff's Office were relatively flat from the period of December 2012 to June 2017. Over the last year, the agency saw modest increases in diversity. For example, Hispanic or Latin representation increased by 1.7%, while women increased by 0.5%. Overall it is a fair characterization to say that the Sheriff's Office workforce continues to be less diverse than Sonoma County as a whole, and employees are much more likely to be white and male, although less so in the Detention Division.

In last year's Annual Report, IOLERO stated a goal of reviewing the Sheriff's Office's efforts to increase the diversity of its work force. Unfortunately, staffing limits made such an effort impossible, given the other tasks that were undertaken by IOLERO. Should such a review become possible next year, there are several areas of possible focus: 1) the adequacy of recruitment efforts in securing a diverse applicant pool; 2) the discretion currently involved in the screening and selection process used to advance applicants through the hiring process; 3) the agency's efforts to retain non-White and female peace officer employees; and 4) a comparison to other law enforcement agencies that have more success with diversifying their work force.

¹⁴ In 2014, the Human Resources Department issued a Workforce Diversity Report in response to a request from the Board of Supervisors, which examined the recruitment efforts and demographic trends of the Sheriff's Office. The following were findings of that report: "the percentage of Latino applicants for Deputy Sheriff is approximately 18%, which is slightly above the County's recent trend for all job applicants; the percentage of Latino candidates referred to the department for consideration is approximately 17%, which indicates the examination process is not disparately impacting the Latino applicant pool; and the Sheriff's Office has hired a proportionately higher percentage of Latino employees in these recent recruitments than White when considering the demographics of the initial applicants and all of those who were interviewed by the Office." These findings suggest that the Sheriff's Office is trying to rectify these concerns with regard to diversity recruiting, although there is more that could be done.

Illustration 3-I: Sheriff's Office Overall Workforce Diversity by Ethnicity & Gender, 2012, 2017, and 2018



V. Navigating Significant Challenges During 2017-18

It would be hard to imagine a more challenging year for the Sheriff’s Office than FY 17/18. Given these many challenges, the agency, its rank and file staff, and its management have done a good job, managing in the process to improve public perceptions of the agency and its employees. This is a signal achievement and should be acknowledged, while also noting those areas where challenges remain.

As the Fiscal Year began in July 2017, Sheriff Freitas had announced his retirement on the eve of an election year, throwing the agency into uncertainty about its future. Assistant Sheriff Giordano took over as Acting Sheriff and was appointed by the Board of Supervisors to fill the position until the next election. Sheriff Giordano immediately undertook a robust effort to make himself fully available to the press and the community, efforts that drew immediate and continued praise. He visited the IOLERO Community Advisory Council to discuss the response of the Sheriff’s Office to the IOLERO recommendations for limiting agency cooperation with immigration enforcement, drawing praise from immigrant advocates. He met widely with civic, community, and advocacy groups throughout the last fiscal year.

While this effort was ongoing, an election for Sheriff was also affecting the agency. First, there was competition within the agency between two well qualified candidates, splitting internal support of the rank and file employees. Eventually, that division was resolved when one internal candidate withdrew from the race. At the same time, credible outside candidates ran on campaigns that emphasized a need to reform the Sheriff’s Office and reimagine its relationship with the community. These developments represented stressors on the agency and

the morale of its employees. Over the course of the remainder of the election, external candidates became more critical of the office's management, while the internal candidate defended the performance of the office while also stating he was the best agent to make needed changes. The election was stressful for the department in many ways

The election for Sheriff also was a remarkable public process, during which the policies, practices, and missions of the Sheriff's Office received widespread and robust public attention and discussion. There were multiple, well attended public forums in which these matters were debated by the candidates. Members of the public had many opportunities to question the candidates on their experience, positions on issues, and values. The candidates had many substantive conversations on issues of great importance, including the role of civilian oversight in connection to the Sheriff's Office. As the campaign went on, the candidates agreed on many issues, differed on some, with the most important difference being which candidate would be best positioned to deliver the promises on which they all agreed. At the end of that process on June 4, 2018, Sheriff's Captain Mark Essick won the election with 56% of the vote, a solid victory avoiding what promised to be costly and divisive run-off election in November.

Also, over the last year came the huge fire disaster seemingly out of nowhere. On October 8, 2017, in the middle of the night, fires that had begun in multiple parts of the county, quickly spread out of control, with devastating results. Had it not been for the quick thinking and action of many Sheriff's deputies, who raced from house to house rousing sleeping residents from their beds, the devastation would have been much more significant. At great personal peril, patrol deputies took personal responsibility to deal with a situation far beyond their ordinary duties, and did so effectively. Correctional deputies prepared for possible evacuation of the entire main adult detention facility as the fire approached the county administration campus and smoke infiltrated the jail. And employees performed extra duties for many hours per day, days on end, as their own homes were put at risk and many were lost to the fires. Many ordinary functions of the Sheriff's Office, including criminal investigations, were put on hold while the office handled such tasks as locating missing persons, keeping burned areas clear of trespassers, identifying those killed in the fires, and coordinating a huge influx of first responders from other jurisdictions.

As the disaster unfolded, Sheriff Giordano stepped up to be the voice of the county, giving clear and unflinching status reports that provided some level of reassurance and calm during a period of great uncertainty and hunger for information. In addition, as national politicians and media outlets sought to exploit the fire disaster to attack our immigrant community, the Sheriff spoke out and pushed back on this unconscionable effort in a way that reassured this community and made us all feel we were pulling together in the same boat. The community responded by rallying around the Sheriff's Office and its staff. At the same time, the stress these events placed on employees, combined with the stressors of their daily jobs, had to take an understandable toll. The significance of the fire disaster, and both its positive and negative impacts on the agency and its employees, cannot be overstated, and continue to this day.

This past year also saw the Sheriff's management settle two significant lawsuits that revealed challenges faced by the agency. The jail "yard counseling" lawsuit was settled for \$1.7 Million, while a lawsuit involving a SWAT raid that ended in a suicide of a suspect was settled for \$1.9 Million. In both cases, the Sheriff publicly acknowledged mistakes were made, an important step in transparency and accountability. Over this period, the Supreme Court also denied an appeal of the Andy Lopez case, sending it back down for a trial by jury.

Captain Essick becomes Sheriff in January 2019, backed by a majority of voters, with support of the rank and file and management of the agency, promising to emphasize community policing, transparency, accountability, and cooperation with IOLERO. In the meantime, the agency remains in the hands of Sheriff Rob Giordano, who remains a popular leader.

Chapter 4: Creation, Establishment, Mission and Operating Philosophy of IOLERO

I. Creation of IOLERO

IOLERO was created by the Sonoma County Board of Supervisors in 2015, and its authority and mission fully set out by ordinance in 2016.¹⁵ IOLERO was borne out of the shooting death of a 13-year-old Latino boy by a Sheriff's Deputy in 2013. This tragic event led to significant public unrest and ruptured relations between some parts of the Sonoma County community and Sonoma County law enforcement. Sonoma County government responded by establishing a Task Force to study options for healing community rifts through community policing, community engagement and law enforcement accountability models. One proposal that resulted was to establish a new, independent county office charged both with civilian review of law enforcement, and outreach to and education of the community.

With the support of Sheriff Freitas, IOLERO was created to conduct independent reviews of investigations alleging misconduct against employees of the Sheriff's Office, including excessive use of force, and to engage the community in the review and possible recommendation of policy changes to the Sheriff's Office. The Office is intended to assist in increasing transparency and accountability by law enforcement for the community. Over time, with increased transparency and greater community engagement, it is expected that the Office will contribute to the community's healing through renewed trust and stronger relationships between county law enforcement and the public they serve.

Following a nationwide recruitment process, the Board of Supervisors appointed Jerry Threet as the first Director of IOLERO in March, 2016.¹⁶ Mr. Threet began work as the new IOLERO Director on April 11, 2016. The Office became fully operational four months later, in August, 2016, following agreement with the Sheriff's Office on the audit protocols that would guide the reviews of administrative investigations and with the hire of IOLERO's sole staff member. The office has now been fully operational for more than two years, and has made significant progress in fulfilling its missions.

II. Missions of the Office

The missions of IOLERO include providing independent, objective review of investigations of alleged misconduct by Sheriff's Office employees; reviewing, recommending, and advocating for changes to Sheriff's Office policies that seek to bring them into better alignment with best practices and community desires; providing forums for community input and feedback on the mission, policies, and practices of the Sheriff's Office; increasing the transparency of decision

¹⁵ See Appendix for the ordinance in its entirety.

¹⁶ See Appendix for full biographical statement of Director Threet.

making and policies of the Sheriff's Office; facilitating opportunities for better engagement between the community and the Sheriff's Office, including IOLERO sponsored Community Engagement Circles; and conducting robust community outreach to the communities of Sonoma County, especially disadvantaged communities who experience more contacts with law enforcement. Also noteworthy, is that IOLERO takes complaints and audits investigations that involve both members of the public who interact with patrol deputies, as well as inmates who interact with correctional deputies and staff of the county jail.

The missions of IOLERO were developed by the CALLE Task Force during its countless meetings and discussions with community members and experts in law enforcement and civilian review. The core missions of IOLERO were derived by the CALLE Task Force in part from the influential *Final Report of the President's Task Force on 21st Century Policing ("President's Report")*, itself a product of countless meetings by national experts, including significant input from law enforcement leaders. IOLERO's missions were set out clearly in the CALLE Task Force Report and carried forward largely intact by the Board of Supervisors, as evidenced by their hearings on establishment of the office.¹⁷

As part of the hiring process, the Board entrusted to the Director the discretion to implement these missions more fully in establishing the Office. The Director presented detailed plans for implementation to the Board in August 2016 during a public hearing in which the Board unanimously accepted the IOLERO Work Plan.¹⁸ In addition, the missions were further enshrined in the ordinance formally establishing the office, passed unanimously by the Board.

Each of these missions is further explained in separate sections, below.

a. [Independent Civilian Audit of Sheriff's Office Administrative Investigations](#)

When trust breaks down between law enforcement and the community, one of the key questions among distrusting communities becomes, "How can we trust them to investigate their own?" At its core, this question reflects a community belief that trust is facilitated, and investigation results are seen as more valid, when investigations are conducted or reviewed by a civilian who is independent of the law enforcement agency. While there are a variety of possible models that respond to this community concern, IOLERO was established on the basis of an "auditor model" of civilian review.

As the CALLE Task Force stated in its Final Report,

[IOLERO] will audit the investigations as well as the conclusions reached [by the Sheriff's Office] to ensure they are complete, thorough, objective and fair, and will provide feedback to the Sheriff's Office on each audited investigation.

¹⁷ See, for example, the August 18, 2015 hearing of the Board, during which some of these issues were discussed. (http://sonoma-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=521&meta_id=168318)

¹⁸ See Appendix for IOLERO First Year Work Plan.

Collaboration is required in order to successfully navigate the complex legal landscape which sets the parameters and authority of an independent auditor function. Given the fact the Office of Sheriff is an elected officer as set forth in the California Constitution, implementation of an audit system can only be successful with the cooperation of the Sheriff.¹⁹

These principles have been carried forward by IOLERO in establishing the independent, civilian auditor system for reviewing Sheriff's Office investigations of its employees. Under this model, the investigation of misconduct allegations continues to reside with the law enforcement agency, and those investigations are independently audited to ensure that they were conducted in a **complete, fair, unbiased, and timely manner**. Ideally, this model creates a feedback system where auditor feedback on the investigation process and/or results are internalized by the law enforcement agency and can positively influence the practices and culture of a department. This feedback system is significantly enhanced by public reporting of the auditor's findings on investigations and on recommendations for improvement.²⁰ By keeping investigations internal with outside review, a culture of positive improvement may then be facilitated within the agency.

In addition, civilian review of investigations requires increased transparency in order to improve community trust. For most civilian review agencies, and particularly in states like California where officer personnel records receive the strictest confidentiality protections in the nation, transparency is provided through annual, summary level reporting on audit outcomes, as well as of recommendations for changes to policies and practices. Given the statutory restrictions on releasing identifying information from individual investigation files, IOLERO was set up to provide transparency about Sheriff's Office investigations at an aggregate level through this Annual Report. IOLERO seeks to share information about these confidential reviews sufficient to allow the public to understand the nature and kind of any challenges the Sheriff's Office may be facing, in the independent judgment of the Director.

b. Reviewing Policy and Recommending Changes to Reflect Community Input

One of the first pillars of the *President's Report* focuses on how a law enforcement agency can most effectively build trust and legitimacy with the public. It states, "In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures."²¹ In describing the intended mission of IOLERO and its Community Advisory Council ("CAC"), the CALLE Task Force stated:

¹⁹ CALLE Report, May 12, 2015, p. 29.

²⁰ De Anglis, Rosenthal, & Buchner, *Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models*, September 2016, pp. 12-13.

²¹ *President's Report*, p. 15.

A significant measure of transparency is whether a community has the opportunity to comment on policies, practices and other law enforcement strategies.

[. . .]

[IOLERO] will be headed up by the Chief Auditor who will receive advice from an [IOLERO CAC]. Under direction of the Auditor, the [IOLERO CAC] will convene from time to time to conduct public meetings and hearings to facilitate communication and understanding between the community and law enforcement. As the result of direct public testimony at these public hearings the Auditor's Office and the [IOLERO CAC] would provide advice to law enforcement on policies and procedures, training methods and subject areas, trends and needs within the community, as well as trends in complaints and performance of law enforcement.²²

This principle has been carried forward in IOLERO's practice of incorporating input from the community in making recommendations to the Sheriff's Office on changes to its policies and practices, both through the IOLERO CAC and through direct engagement of affected community members. Inclusion of such community feedback in policy recommendations is critical. As the *President's Report* noted, "If police are to carry out their responsibilities according to established policies, these policies must be reflective of community values and not lead to practices that result in disparate impacts on various segments of the community. They also need to be clearly articulated to the community and implemented transparently so police will have credibility with residents and the people can have faith that their guardians are always acting in their best interests."

c. Engaging the Community to Rebuild Trust and Improve Relationships

Experts agree that the practice of effective policing cannot hope to be successful unless there is a basic fabric of trust between a law enforcement agency and the communities it is charged to protect and serve. Both nationally and locally, that fabric of trust recently appears to have frayed, and historically there has been little trust between law enforcement and disenfranchised communities. In Sonoma County, there is a long history of distrust between law enforcement and local immigrant communities. In the recent past, the strains of that relationship spilled over into the view of the general public, in connection both to the Andy Lopez shooting and to recent focus on local law enforcement cooperation with immigration enforcement. There also is some distrust between mentally and cognitively challenged individuals and their families, and law enforcement based on multiple incidents.

As the *President's Report* recommended, "In communities that have high numbers of interactions with authorities for a variety of reasons, police should actively create opportunities for interactions that are positive and not related to investigation or enforcement action."²³

²² CALLE Report, pp. 28-29.

²³ *President's Report*, p. 14.

While there are many opportunities that may fit within this recommendation, they all involve robust engagement with the communities policed by a law enforcement agency. IOLERO cannot supplant the need for direct community engagement by the Sheriff's Office, but it can provide a crucial **bridging** function between the Sheriff's Office and those same communities.

The CALLE Task Force spent considerable time discussing the importance of this mission in its Final Report. It summed up its view this way: "The LEA Subcommittee expects [IOLERO] to be **deeply involved in community outreach and engagement**. While the audit aspect of the [IOLERO] is of critical importance, the **community outreach and engagement aspect will provide the greatest benefit over time.**"²⁴ In addition, the CALLE Task Force separately discussed the need for robust community engagement in its two sections discussing Community Policing and Community Healing. In each section, the need for facilitated community engagement forums in all parts of the county was emphasized as a way to bridge the trust gap.

IOLERO has sought to carry forward this emphasis on community engagement in multiple ways. One key way has been through the appointment of the IOLERO CAC and in supporting its monthly public meetings. The meetings have been robustly attended and directly engaged the public concerning policies of the Sheriff's Office. These meetings also have received significant media coverage through multiple forums that further engaged the community. In addition, IOLERO has made a concerted effort to *directly* engage disadvantaged communities in two main ways. First, the Director has met with these communities in multiple small forums at times and places that were convenient for community members, with the assistance of service organizations trusted by the community. Second, IOLERO sponsors Community Engagement Circles that facilitate direct discussions between the community and law enforcement. These circles provide small, structured group settings designed to provide a safe environment for frank discussions between the community and employees of the Sheriff's Office. Unfortunately, as will be discussed in other parts of the report, IOLERO has been hobbled by a lack of sufficient resources from fulfilling this mission to the extent envisioned.

d. [The Overarching Role of IOLERO and its CAC in These Missions](#)

As mentioned above, IOLERO and its CAC are intended to act as a bridge between communities and law enforcement in seeking to repair ruptures in relationships that have been decades in the making. As mediating and bridge-building actors in this process, the role of IOLERO and the CAC may seem perplexing or even counter-productive to those who have spent years in polarized opposition to one another. Yet, this role can be critical to the process of rebuilding trust. As the president of the National Association for Civilian Oversight of Law Enforcement noted in the *President's Report*, civilian review must be impartial in order to be effective.

Citizen review is not an advocate for the community or for the police. This impartiality allows oversight to bring stakeholders together to work collaboratively and proactively to help make policing more effective and

²⁴ CALLE Report, p. 28.

responsive to the community. Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public's trust.²⁵

For some community activists, who may perceive the law enforcement-community relationship through the lens of historical injustice and who have long called for greater oversight of police agencies, these principles can ring hollow. It is not surprising, then, that some may characterize the practice of impartiality by a civilian review agency as akin to complicity with injustice. And for law enforcement leaders and staff who believe they are painted by activists with a broad brush that ignores the good they do and the challenges they face, the opposite suspicions may arise. From this perspective, a civilian review agency can seem like a few amateur outsiders coming into an organization of experts to pursue an agenda dictated by activists and politicians, under the cover of the concept of impartiality.

Yet, it is precisely such polarization that necessitates the impartiality with which civilian review must operate. Audits of misconduct investigations must favor neither the community nor the police, but seek the truth based on the facts. Policy reviews and recommendations must be based on an objective review of the interests of the communities affected, as well as the operational concerns and interests of law enforcement management and employees. Community engagement opportunities must be facilitated in such a way that all participants can feel respected, heard, and emotionally safe. If IOLERO were seen by either the community or law enforcement as their advocate, then the other side would lose trust in IOLERO's ability to facilitate this crucial process. These concerns are even more important in a legal and political environment where the ability of IOLERO to operate effectively is dependent upon the cooperation of the Sheriff's Office. IOLERO therefore has as a basic operational and philosophical mission to conduct its operations in a fair and impartial manner, with loyalty to truth and transparency.

III. Organization, Staffing, and Budget of IOLERO

IOLERO is the County's newest and smallest department consisting of 2 staff members, the Director and an Administrative Coordinator. In addition, the Office is assisted by the 9 volunteers who currently serve on the IOLERO CAC, many of whom generously donate their time to volunteer at community events and meetings to educate the public about IOLERO. IOLERO's approved budget for FY 2018-19 was \$564,348, \$34,000 less than last year's budget. This budget included funding for staff salaries and benefits, as well as miscellaneous expenses related to consultants for translation and other services, support of the IOLERO Community Advisory Counsel, and materials and supplies. The budget also includes \$66,000 in pass-through funding for an outside contract for restorative justice services that IOLERO continues to administer. Subtracting that \$66,000, IOLERO's funding to support direct services was \$498,348.

²⁵ *President's Report*, p. 26.

Despite requesting additional staff, IOLERO continues to be staffed by two employees, with the volunteer assistance of members of the IOLERO CAC. During the 2015 hearing on the creation of IOLERO by the Board of Supervisors, it became clear that the CALLE Task Force recommended that IOLERO open its doors with a staff of 4 full time employees. The County Administrator, however, recommended that the office open with a staff of 2, allowing the Director to work on establishing the office before Board consideration of full staffing of the office. This original CALLE Task Force vision for full staffing of IOLERO at the level of 4 full time employees remains unfulfilled. During the budget process for FY 2017-18, the IOLERO Director requested additional funding for a new staff member to assist with the Office's missions, but the request was not approved. Feedback from the Board of Supervisors during that budget hearing suggested there would be support to add a staff position during this last fiscal year, but the fiscal impacts of the fire disaster prevented IOLERO from seeking an increase.

IOLERO's two-person staff is responsible for all of the missions of IOLERO, including community engagement throughout the county, keeping the office open to the public during business hours, and civilian review of a department that includes over 415 sworn officers. Over two years of experience has verified that the current staffing of the office is insufficient to sustain the missions of the office. In addition, an independent assessment of the staffing needs of the office, conducted by a well-respected independent auditor, also concluded that additional staffing would be required to fulfill the functions of the office in a satisfactory manner. These issues are more fully described elsewhere in this report.

IOLERO continues to recommend funding for additional staff members in order to effectively accomplish the missions with which the office has been charged. Without such funding, the office is set up to fail in multiple respects. While funding is constrained currently, IOLERO recommends the adoption of a long-term staffing plan for the office to be fulfilled as county revenues recover from the effects of the fires disaster.

Chapter 5: Overview of the Complaint and Audit Process

IOLERO understands that an individual's decision to file a complaint against a sworn peace officer can be a difficult one, but only through the filing and investigation of such complaints can improper employee behavior be appropriately discovered and addressed. Thus, the complainant is a key and valuable part of any agency's system of employee accountability.

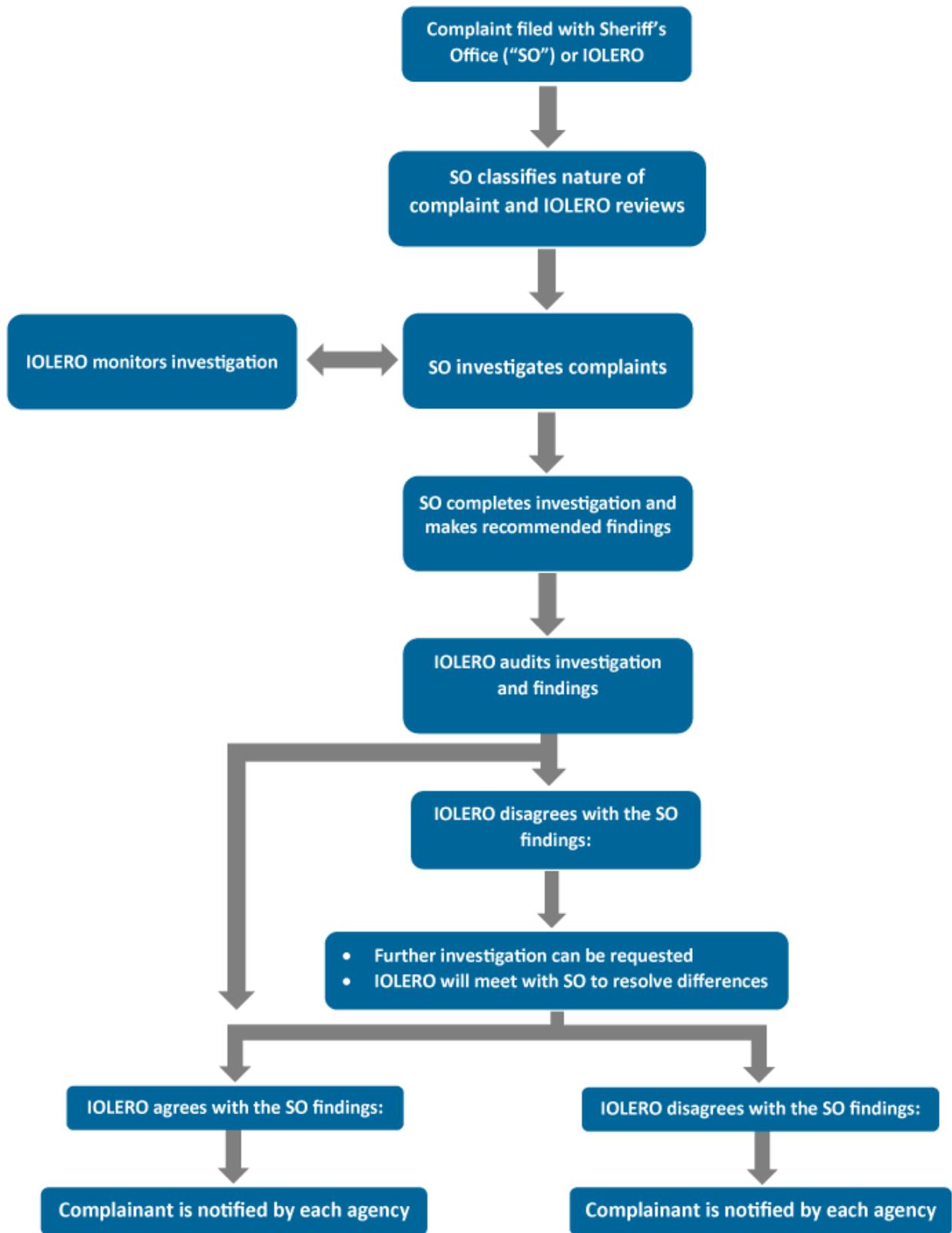
One of the primary functions of IOLERO is to serve as a neutral, independent location where a member of the public may file a complaint against the Sheriff's Office, without concern or fear that they may experience discomfort or intimidation during that process. Each complaint filed with IOLERO automatically results in IOLERO auditing the investigation of that complaint, regardless of the type of complaint it may be. Alternatively, any person may file a complaint directly with the Sheriff's Office, but for complaints originating at the Sheriff's Office, IOLERO currently audits only those allegations involving use of force, biased policing, or a violation of constitutional rights.

The administrative complaint process involves investigation of Sheriff's employees by the Internal Affairs Division of that office to determine whether the employee violated agency policy or the law. Should an investigation result in a sustained finding of employee misconduct, it may result in disciplinary action against an employee. Discipline can range from a letter of reprimand in the employees' permanent file, to termination of employment. The Sheriff's Office, like many public entities, employs a system of "progressive discipline" for its employees. Progressive discipline means that a first offense usually will result in lower level discipline of the employee, with more severe discipline occurring for commission of a subsequent violation. Sheriff's deputies who have completed their probationary employment period are civil servants who can be dismissed only for good cause after an investigation finding they violated policies governing their employment. Deputies also have the benefit of additional employment protections set out in the Peace Officers' Bill of Rights ("POBR"), Govt. Code Sections 3300, *et seq.*, and any peace officer personnel record, including a record of investigation, is strictly confidential under Penal Code Section 832.7.²⁶

A member of the public filing an administrative complaint with IOLERO or the Sheriff's Office also has available to them other legal remedies that are distinct from filing a complaint. For example, should a community member wish to file a civil lawsuit against the county due to the actions of a Deputy Sheriff, they would need to use a legal process separate from this one. Filing an administrative complaint with IOLERO does not satisfy the legal prerequisites for suing the County. IOLERO staff make these distinctions clear to complainants during complaint intake.

²⁶ See Appendix for Penal Code Sections §832.5 and §832.7. At the time of writing this report, the California Legislature was on the brink of passing a bill that would allow disclosure of such records under certain circumstances for certain types of violations. It is unclear whether the bill will be enacted.

The process from administrative complaint intake to completion of an audit is set out below in



I. Step One: Complaint Intake

The goal of IOLERO is to make the process of filing a complaint as comfortable for the public as possible, while gathering complete information from the complainant. Complaint information intake helps ensure that the complaint is within the purview of the office and that the investigation of the complaint can be effective. A member of the public may file a complaint in person, by telephone, in writing, or online from the IOLERO website. IOLERO strongly recommends that a complainant complete a complaint form, available in English or Spanish. Ordinarily, IOLERO staff will schedule an intake interview to assist in identifying and capturing all information that may be relevant to the investigation of a complaint. The intake interview also allows IOLERO staff to clearly explain the administrative complaint and investigation process and what to expect from it. Once the intake process is completed, the complaint will then be referred by IOLERO to the Sheriff's Office for investigation. IOLERO has no authority to conduct its own investigations of complaints.

II. Step Two: The Sheriff's Office Investigation

Once the complaint is referred to the Sheriff's Office, that agency's Internal Affairs Division typically assigns a specially trained deputy to fully investigate the allegations of the complaint. During the investigation, IOLERO staff can monitor the progress of the investigation, but do not have access to the investigative file. For most investigations, the goal of the Sheriff's Office is to complete their investigation in 30-60 days, depending on the complexity of the allegations and the incident. The investigator will contact the complainant to conduct a thorough interview and gather all facts the complainant believes will help determine the outcome of the complaint. Body worn camera video often is key evidence related to a complaint that involves patrol deputies, although most correctional deputies are not outfitted with such cameras at this time. The investigator typically will interview any deputies involved, and other relevant witnesses willing to cooperate. The success of an investigation may depend in significant part of the complainant's willingness to provide information relevant to the complaint.

III. Step Three: The Department Makes Findings

Once the Sheriff's investigator completes the factual investigation, she or he then analyzes the facts to reach findings on the allegations of the complaint. Body worn camera video often is the most key evidence in analyzing the allegations of a complaint, as all persons involved in a stressful law enforcement encounter can experience imperfect memory of the facts involved in those events. Nevertheless, video alone is seldom determinative of an investigation outcome, as videos can be jerky and fast moving, involve poor lighting conditions, and may not reveal much about the state of mind of the individuals involved. For certain types of allegations, such as unreasonable use of force, the perceptions and intentions of the individual deputy can be important factors in analyzing whether there is a policy violation, under current agency policy criteria. Thus, an investigator often must consider evidence outside of the video footage in making a finding on an allegation.

The standard used to determine whether an allegation is sustained or not is “preponderance of the evidence.” This standard means that the balance of the evidence supports the finding in question. The investigator endeavors to determine what conclusions the evidence most likely supports, on balance. Where evidence is conflicting, the investigator must determine which evidence is most credible and which narrative is most consistent with the available evidence.

Among the available findings for an allegation are the following four:

- **Sustained** - meaning that the employee violated agency policies or the law, based on the preponderance of the evidence,
- **Exonerated** - meaning the allegations of the complaint are supported by the evidence, but the actions of an employee were nevertheless compliant with Sheriff’s Office policies or the law,
- **Not sustained/inconclusive** - meaning there was not enough evidence to either prove or disprove the complaint allegations, or
- **Unfounded** - meaning the preponderance of the evidence does not support the allegations of the complaint.

Once the investigator makes a finding on the allegations of the complaint, and his or her findings are approved by Lieutenant in charge of the Internal Affairs Division of the Sheriff’s Office, the completed investigation report is referred to IOLERO and the audit begins.

IV. Step Four: IOLERO Audits the Investigation

IOLERO then conducts an audit of the investigation to ensure that it has been performed in a complete, unbiased, and timely manner, and it has reached valid findings supported by the evidence. In doing so, the Auditor reviews the entirety of the investigative evidence, including any video recordings, audio recordings of all interviews, incident reports, computer aided dispatch documentation, medical reports, and any other documentation in the investigative file. If it appears from the evidence of the investigation that some relevant evidence has not been obtained or analyzed by the investigator, the Auditor may request that the investigator do so prior to completing the audit. The Auditor then seeks to independently determine what conclusions the evidence most likely supports, based on the preponderance of the evidence. Where evidence is conflicting, the Auditor must determine which evidence is most credible and which narrative is most consistent with the available evidence.²⁷

At the conclusion of the audit, IOLERO informs the Sheriff’s Office if it agrees or disagrees with the findings of the investigation report and/or has concerns about the investigation process. The Office also will inform the Sheriff’s Office of its determination whether the investigation was complete, unbiased, and timely. IOLERO will attempt to resolve differences with the

²⁷ The Auditor is a licensed attorney with over 20 years of experience in investigations, depositions, and independent analysis of evidence, including courtroom proceedings trying issues under the “preponderance of the evidence” standard of proof used in administrative investigations.

Sheriff's Office over these issues, such as through additional investigation or a reconsideration of the findings of the investigation or audit. IOLERO's audit report to the Sheriff's Office is advisory, however, and the Sheriff's Office is not required either to supplement its investigation or to change its findings. Over the last fiscal year, the Sheriff's Office has conducted supplemental investigations or analysis upon request in several complaints. However, the agency has chosen not to engage IOLERO when the Auditor has reached findings that differ from those of the Sheriff's Office.

Another aspect of the audit occurs where the investigation and audit reveal that a change in policy or practice of the agency may be advisable. Under such circumstances, the Auditor also includes a section in the Audit Report explaining the circumstances that suggest the advisability of such a change, and recommends that the agency consider making the change moving forward. Over the last fiscal year, the Sheriff's Office has seldom responded to those recommendations.

V. Step Five: Notice to Complainants

At the conclusion of the investigation and audit process, both the Sheriff's Office and IOLERO will issue findings to the complainant. The Sheriff's Office will send its standard letter to a complainant informing them that the Office has issued a particular finding on the allegations of the complaint. IOLERO will subsequently send out a notification letter to any complainant where the complaint was filed with IOLERO, informing them whether IOLERO agrees with the findings of the Sheriff's Office following its independent review.²⁸ If IOLERO disagrees with any findings, it will provide the complainant notice of its own findings on each allegation of the complaint. Neither letter will detail any particular evidence reviewed by the investigation or detail the reasons for any finding of the investigation, due to the current confidentiality requirements of state statute.

VI. Sheriff's Office Generated Investigations

The above description outlines the process for complaints against Sheriff's Office employees filed with IOLERO. In addition, IOLERO audits administrative investigations that originate at the Sheriff's Office, whether through a complaint filed directly with that agency or through an investigation initiated by a supervising employee of that agency. For these types of investigations, IOLERO will conduct an audit if they involve use of force, biased policing, or a possible violation of the U.S. Constitution. The process of investigation and audits is the same as above for this set of investigations that originate in the Sheriff's Office, except that IOLERO does not issue a notice letter to a complainant.

²⁸ See Appendix for a sample IOLERO Audit Closure Letter.

VII. Annual Reporting

IOLERO each year publishes this Annual Report, released to the public and presented during a hearing at the Board of Supervisors, wherein the Office discusses progress in meeting its missions. It is within the Annual Report that IOLERO will identify for the public, at a summary level, any differences between findings of IOLERO and the Sheriff's Office that result from audits of investigations. Here, IOLERO publicizes the nature of investigations in which findings differ, as well as the general reasons for differences. Such summary level reporting is allowed under Penal Code Section 832.7(c), so long as it does not identify specific complainants or deputies. In addition, IOLERO may identify in the Annual Report any recommendations for changes in policies and practices that were identified as a result of the audits that were not otherwise publicized by the office in a separate, stand-alone report during the year.²⁹

²⁹ E.g., in March 2017, IOLERO published a stand-alone set of policy recommendations and report on the Sheriff's Office immigration policies. In September 2018, IOLERO published a stand-alone set of policy recommendations and report addressing ways to improve administrative investigations and audits. These stand-alone recommendations and reports are authorized by the IOLERO Ordinance.

Chapter 6. Complaint Investigation and Audit Data and Trends

I. Overview of Complaint, Investigation, and Audit Data

a. Complaints Processed During FY 17/18

Last year's Annual Report had a fixed start date for all work done on investigation and audits for both the Sheriff's Office and for IOLERO. The time period for reporting on complaint investigations and audits was January 1, 2017 through July 31, 2017. In last year's report, there remained complaints for which the complaint/audit process was not complete, at varying stages in that process. Some complaints had been referred for investigations that were not yet complete. Other complaints had been investigated but had not yet been audited. Each of those categories carried over into this year's workload and reporting, in addition to complaints that were filed this year.

This year's Annual Report covers complaints that were processed in some way during the last fiscal year, from July 1, 2017 through June 30, 2018. This includes complaints filed before FY 17/18 that were investigated in this fiscal year. It includes complaints that were investigate in FY 16/17 that were audited in FY 17/18. It also includes all complaints filed in FY 17/18 that meet the IOLERO protocols, regardless of whether they have been investigated or audited. In addition, last year's Annual Report included data for the month July 2017. Because IOLERO seeks to standardize the Annual Report moving forward to cover a single fiscal, this year's report also includes those same complaints from July 2017 (causing some overlap with last year's report).

What follows is a description of the complaints processed during FY 17/18, viewed through different lenses that may help understand the general experience of the past fiscal year.

1. All Complaints Filed During FY 17/18

Illustration 6-A: Count of investigations received by Sonoma County Sheriff's Office for audit by month, July 2017 to June 2018



Between July 1, 2017 and June 30, 2018, IOLERO logged 29 new complaints to be investigated and audited. This reflects an increase from FY 16/17. During FY 16/17, there were 18 complaints filed subject to IOLERO audits, at a rate of approximately 1.5 per month. During FY 17/18, there were 29 complaints filed that were subject to IOLERO audits, at a rate of approximately 2.4 per month

- Of those 29 complaints, 16 were filed by complainants with IOLERO, 9 were filed by complainants with the Sheriff's Office, 1 was filed by complainants with both offices, and 3 were initiated within the Sheriff's Office by supervising staff.
- 18 of the complaints involved the Patrol Division, 2 involved the Sonoma Police Department, 1 involved both the Detention & Patrol Divisions, and 8 involved the Detention Division.
- Of the 29 complaints, the Sheriff's Office has completed investigations on 25 and referred them to IOLERO for auditing, with 4 still being investigated.
- Of the 25 referred investigations, IOLERO had completed audits of 8, leaving 17 to be audited. Of those 17, 5 are currently being audited but have been paused during drafting of this annual report.
- Also, IOLERO received 10 complaints or concerns that involved and were referred to law enforcement agencies other than the Sheriff's Office.

Illustration 6-B: Location where complaints filed, July 1, 2017, to June 31, 2018.

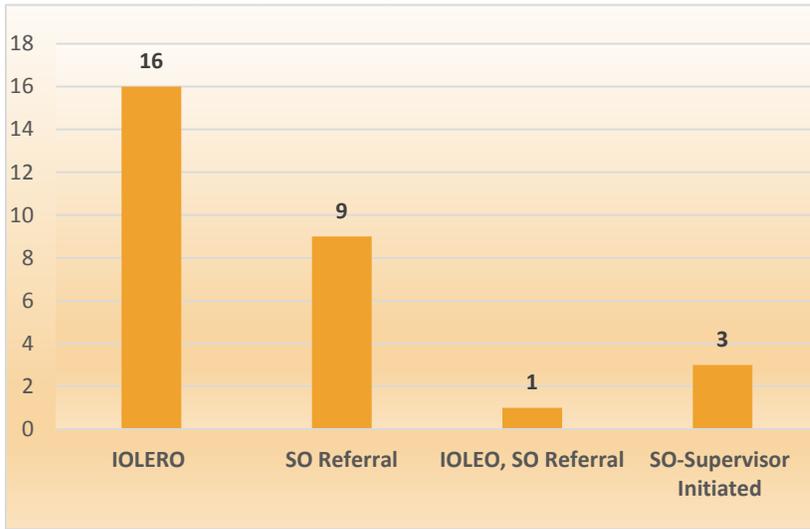
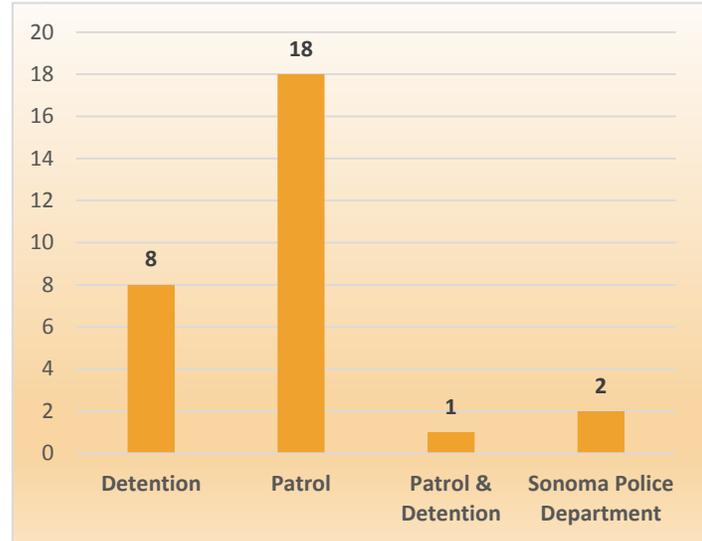


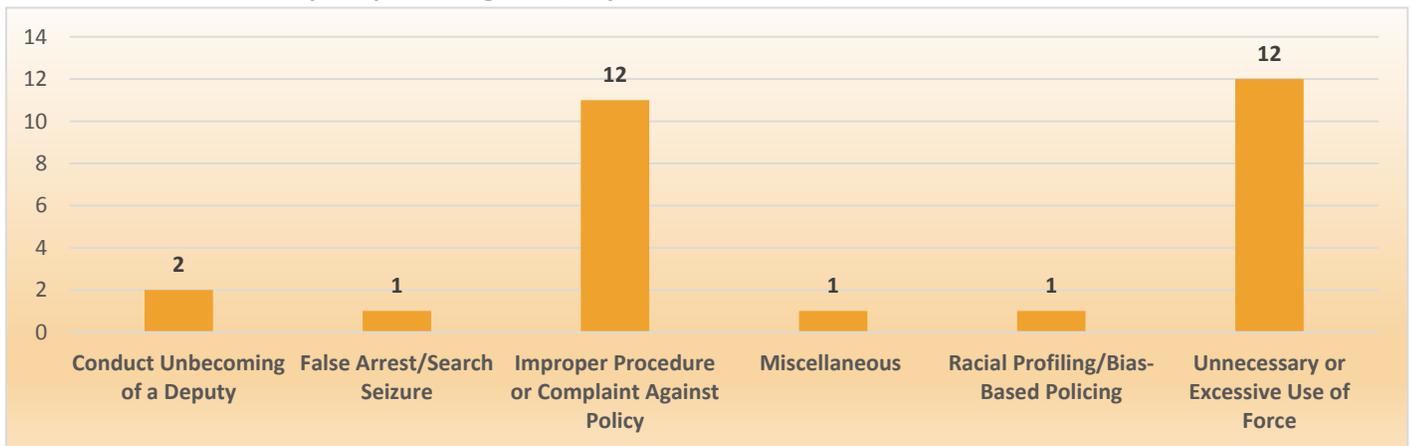
Illustration 6-C: Complaints filed by division July 1, 2017, to June 31, 2018.



The 29 complaints filed during FY 17/18 can be broken down in multiple ways. Each investigation may involve more than one type of alleged policy violation. Therefore, they can be broken down by allegations investigated, or broken down by the main allegation of misconduct investigated for that incident. Breaking it down by the main allegation of misconduct investigated for each complaint, the numbers are as follows:

- 2 alleged conduct unbecoming,
- 1 alleged primarily a violation of the Fourth Amendment in a search/seizure or arrest,
- 12 alleged primarily a violation of miscellaneous policies or practices
- 1 could not be properly categorized,
- 1 alleged primarily racial bias or bias-based policing,
- 12 alleged unnecessary or excessive use of force.

Illustration 6-D: Primary complaint allegations, July 1, 2017 to June 31, 2018



The 29 complaints filed during FY 17/18 also can be broken down by the individual types of allegations investigated. Because a single investigation can involve multiple allegations, these total 63 types of allegations investigated, which is more than the 29 investigations. From this perspective the numbers are:

- 14 alleged improper or excessive use of force,³⁰
- 1 alleged violation of the Fourth Amendment in a search/seizure or false arrest,
- 4 alleged racial bias,
- 10 alleged conduct unbecoming a deputy,³¹
- 5 alleged neglect of duty,
- 11 alleged discourtesy
- 16 alleged a violation of miscellaneous policies or practices,
- 1 could not be properly categorized, and
- 1 a violation of the Detention Division's direct supervision/standards of conduct principles.

2. All Complaints Processed During FY 17/18

Between July 1, 2017 and June 31, 2018, 44 complaints were processed in some way by either the Sheriff's Office, IOLERO, or both.³² This universe is larger than the universe of complaints filed, because some complaints that had investigations or audits completed this year were filed prior to FY 17/18.

- Of those 44 complaints, 19 were filed by complainants with IOLERO, 17 were filed by complainants with the Sheriff's Office, 2 were filed by complainants with both offices, and 6 were initiated within the Sheriff's Office by supervising staff.
- 22 of the complaints involved the Patrol Division, 4 involved the Sonoma Police Department, 4 involved the Windsor Police Department, 13 involved the Detention Division, and 1 involved both the Patrol and Detention Divisions.
- Of the 44 complaints, the Sheriff's Office has completed investigations of 39 and referred them to IOLERO for auditing, with 5 still being investigated.
- Of the 39 referred investigations, IOLERO had completed audits of 21.

³⁰ 1 of these allegations was lodged by an inmate against a civilian employee of the jail.

³¹ 1 of these allegations was lodged by an inmate against a civilian employee of the jail.

³² This total also includes an investigation of an officer involved shooting that began on January 30, 2017 and remains incomplete as of the date this report was drafted. While the investigation has been ongoing during the entirety of this fiscal year, there has been no action that would trigger it being included in any of the timeline calculations, as it was not filed, nor did it result in a completed investigation or audit, during FY 17/18. This investigation, which remains open at this time, is over 580 days old. Similarly, there are referred investigations not included in IOLERO's timelines because their audits have not yet been completed, some of which have been pending for some time.

Illustration 6-E: Location where complaints filed for all complaints processed July 1, 2017 to June 31, 2017.

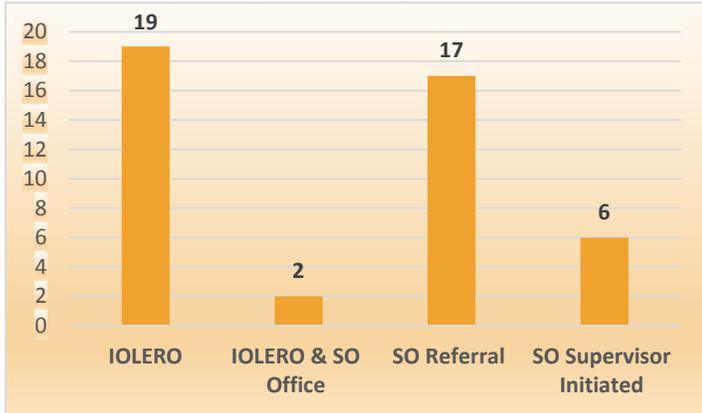
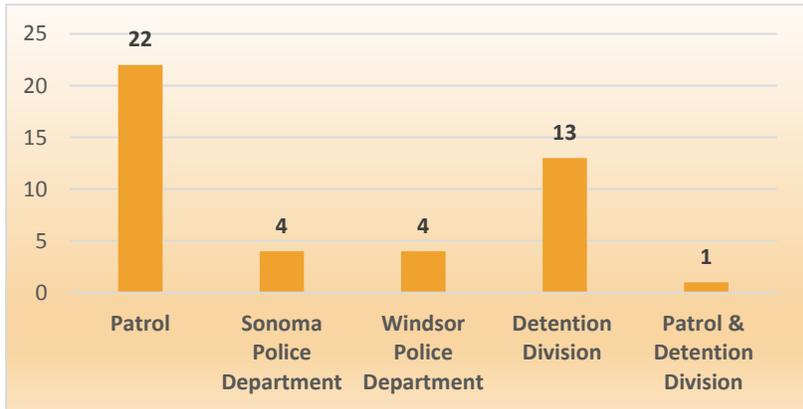


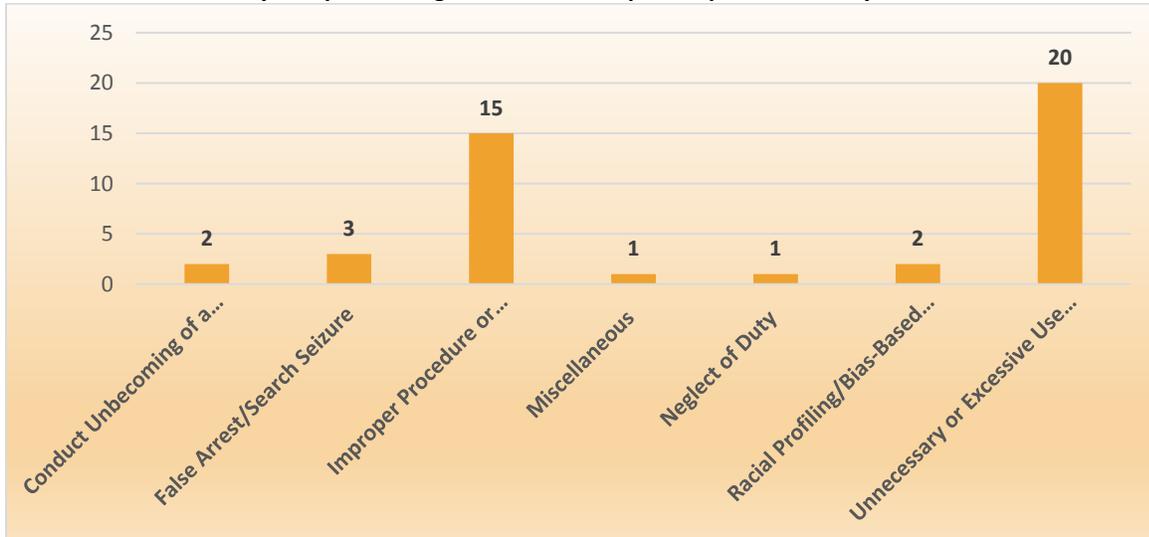
Illustration 6-F: Complaints filed by division for all complaints processed July 1, 2017 to June 31, 2018.



The 44 processed during FY 17/18 can be broken down in multiple ways. Each investigation may involve more than one type of policy violation. Therefore, they can be broken down by allegations investigated, or broken down by the main allegation of misconduct investigated for that incident. Breaking it down by the main allegation of misconduct investigated for each complaint, the numbers are as follows:

- 2 alleged primarily conduct unbecoming,³³
- 3 alleged primarily a violation of the Fourth Amendment in a search/seizure or arrest,
- 2 alleged primarily racial bias,
- 15 alleged primarily a violation of miscellaneous policies or practices,
- 20 alleged primary unnecessary or excessive use of force,³⁴
- 1 could not be properly categorized, and
- 1 alleged primarily neglect of duty.

Illustration 6-G: Primary complaint allegations of all complaints processed, July 1, 2017 to June 31, 2018.



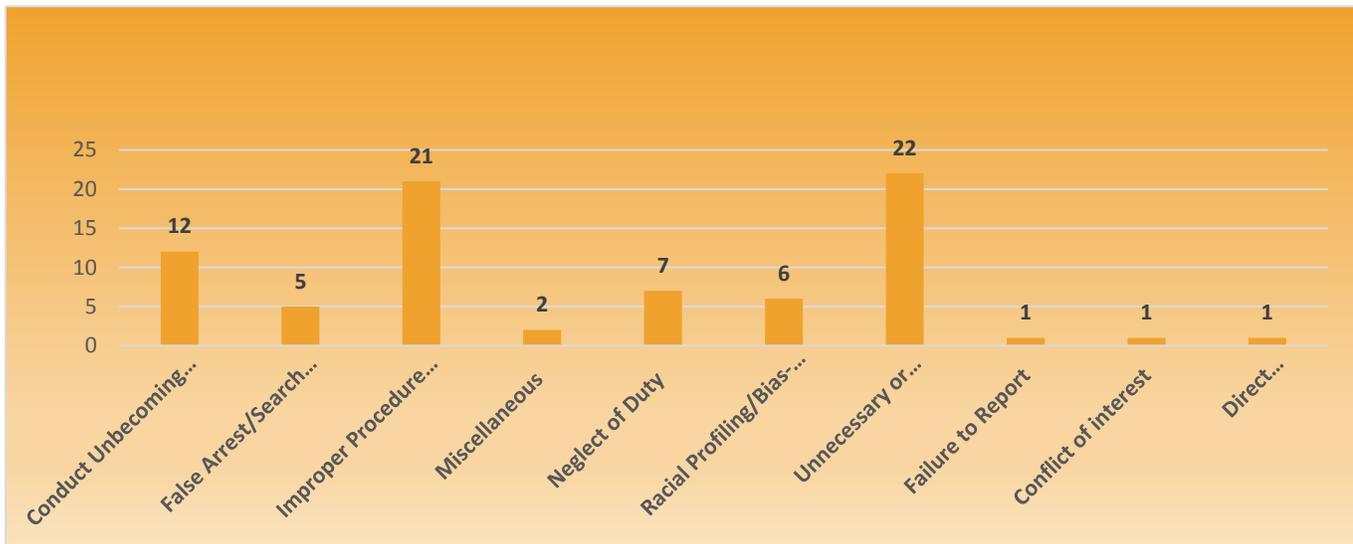
³³ 1 involved an allegation by an inmate against a civilian employee of the jail.

³⁴ 1 involved an allegation by an inmate against a civilian employee of the jail and therefore does not trigger the use of force policies of the agency.

The 44 complaints processed in some way during FY 17/18 also can be broken down by the individual types of allegations investigated. Because a single investigation can involve multiple allegations, these total 78 types of allegations investigated,³⁵ which is more than the 44 investigations. From this perspective the numbers are:

- 12 alleged conduct unbecoming,
- 5 alleged false arrest/search & seizure,
- 21 alleged improper procedure or complaint against policy,
- 2 could not be properly categorized
- 7 alleged neglect of duty
- 6 alleged racial profiling/bias based policing,
- 22 alleged unnecessary or excessive force,
- 1 alleged failure to report,
- 1 alleged conflict of interest, and
- 1 involved violations of direct supervision/standards of conduct Principles

Illustration 6-H: Count of Allegations Investigated in all Complaints Processed, July 1, 2017 to June 31, 2018.



IOLERO completed 19 audits during FY 17/18. These include complaints that were initiated both before and during FY 17/18.³⁶ Of the 19 audits completed during FY 17/18, IOLERO completely agreed with the findings of the Sheriff’s investigators in 9.

- In 1 of the 9 agreed findings, the Sheriff’s Office sustained allegations of conduct unbecoming, but was unable to reach a conclusion on allegations of excessive force. The deputy directly involved in this incident no longer works for the Sheriff’s Office.³⁷

³⁵ These numbers must be considered tentative, as IOLERO has not yet had an opportunity to verify every allegation lodged in those complaints that have not yet had an initial review. Therefore, this set of numbers could increase somewhat in some categories as IOLERO works through these audits.

³⁶ This also includes audits that were completed in July 2017 and included in the last Annual Report, and are again reported here to standardize the reporting period.

³⁷ This complaint is one that was included in the last Annual Report, and is reported here again to standardize the reporting period.

- In 3 of the 9 agreed findings, IOLERO found that the investigations were **incomplete** in various aspects, but nevertheless concluded that the findings were correct.
 - In one investigation involving a jail incident alleging excessive force, there was no primary evidence provided to the Auditor, so the Auditor relied only on summaries of the evidence by the investigator. This inherently limits the ability of the audit to independently verify the evidence reviewed by the Investigator. Nevertheless, the evidence was consistent and supported the finding of unfounded, with no credible evidence supporting the allegation.
 - In one investigation involving a patrol incident alleging failure to investigate a crime, the complainant was not interviewed to discuss her allegations more fully. In addition, there were multiple conversations with witnesses not documented by recordings and only summarized in writing by the investigator. This inherently limits the ability of the audit to independently verify the evidence. Nevertheless, the evidence was consistent and supported the findings of unfounded, with little evidence supporting the allegation.
 - In another investigation involving a jail incident alleging excessive force, there were no recordings of interviews with witnesses, so the Auditor relied solely on summaries of the interviews by the investigator. This inherently limits the ability of the audit to independently verify the evidence reviewed by the Investigator. In addition, it appears that the investigator did not interview material witnesses, such as retired jail employees and jail medical staff. Nevertheless, the evidence was consistent and supported the finding of exonerated, with no evidence supporting the allegation.
- In none of the instances of agreed findings did IOLERO conclude that the investigation was conducted in such a way that it could be reasonably perceived as showing a **bias** in favor of the deputies or agency.

In 10 of the 19 audits completed, IOLERO disagreed with the investigation’s findings in some way.³⁸ This is a significant increase in disagreements on findings from the prior Annual Report. Those 10 complaint disagreements are set out below for each audit. This section presents overall statistics for those audit disagreements.

- In 7 of the 10 complaints for which IOLERO disagreed with investigative findings, IOLERO reached a finding of **sustained** on 1 or more allegations where the investigation did not.
 - In 4 of those 7 complaints including findings of sustained by IOLERO, the allegation involved a violation of the agency’s Use of Force policy
 - In 2 of those 7 complaints including findings of sustained by IOLERO, the allegation involved a failure to properly investigate a sexual assault.
 - In 1 of those 7 complaints including findings of sustained by IOLERO, the allegation involved a failure to follow agency procedure on documenting evidence.
 - In 1 of those 7 complaints including findings of sustained by IOLERO, the allegation involved bias in policing.³⁹

³⁸ The Auditor independently reviewed all of the available evidence provided in the investigative file, weighing both the credibility and persuasiveness of that evidence, and based this conclusion on whether the evidence considered as a whole, made the finding more likely than not. This standard of proof is typically referred to as the “preponderance of the evidence” standard.

³⁹ This complaint is one that was previously reported in last year’s Annual Report, and is included again in

- In 2 of the 10 complaints for which IOLERO disagreed with investigative findings, IOLERO reached a finding of ***inconclusive/not sustained*** on 1 or more allegations where the investigation made a finding of unfounded or exonerated.
 - In 1 of those 2 findings of inconclusive/not sustained by IOLERO, the allegation involved lying by a deputy to California Highway Patrol officer investigating an automobile accident with the complainant. IOLERO’s finding was a very close call and would have been “sustained” but for the Auditor’s inability to exclude an alternative explanation for why the statements of several witnesses disagreed with the testimony of the subject deputy. The investigation also was found to be incomplete.
 - In the other finding of inconclusive/not sustained by IOLERO, the allegation involved unlawful arrest and violation of rights to freedom of association. In this finding, there was insufficient evidence to reach a conclusion for certain incidents out of several that were not adequately investigated. On other incidents that were adequately investigated, IOLERO agreed with the findings of exonerated.
- In 2 of the 10 complaints for which IOLERO disagreed with investigative findings, IOLERO concluded that there should have been a finding of ***exonerated*** on 1 or more allegations where the investigation failed to make a finding on the allegation.
- In 7 of the 10 complaints for which IOLERO disagreed with investigative findings, IOLERO also concluded that the investigation was ***incomplete***.
- In 3 of the 10 complaints for which IOLERO disagreed with investigative findings, IOLERO also concluded that the investigation was conducted in such a way that it could be reasonably perceived as showing a ***bias*** in favor of the deputies or agency.

In several audits, questions arose concerning the completeness of an investigation and/or the credibility of witnesses. These experiences have renewed the concerns of IOLERO with the Auditor’s lack of direct access to information available to the investigator to arrive at findings on allegations of complaints. Therefore, IOLERO again recommended in its recent set of Investigation and Audit Recommendations that the Auditor have direct access to these sources of information. The Sheriff’s Office continues to reject many of these recommendations, despite these ongoing issues.

While the overarching issues of completeness and fairness of audited investigations were covered above, IOLERO also audits investigations for **timeliness**. In 10 of these 19 audits, the Sheriff’s Office failed to complete the investigation within 60 **calendar** days.⁴⁰ In 5 of these 19 audits, the Sheriff’s Office failed to complete the investigation within 60 **working** days.

- In 8, the investigation took from 0-60 calendar days.
- In 5, the investigation took from 61-100 calendar days.
- In 3, the investigation took from 101-200 calendar days.⁴¹

this report for purposes of standardizing the reporting period moving forward.

⁴⁰ Calendar days are important because the Peace Officer Bill of Rights in California limits the time in which discipline can be imposed on an employee for violating a policy to 365 calendar days from when the agency learned of the alleged violation, with limited exceptions.

⁴¹ In 1 of the investigations in this category, the investigation took 134 calendar days to complete from the date it was begun. However, it should be noted that this was a supplemental investigation that was

- In 1, the investigation took from 201-300 calendar days.
- In 0, the investigation took from 301-365 calendar days.
- In 1, the investigation took more than the 365 calendar days, meaning it exceeded the state statute of limitations for imposing discipline against an employee for a sustained finding.

Another way to look at timeliness is to view it through the lens of the 31 investigations completed and referred for audit by the Sheriff's Office during FY 17/18, rather than the 19 audited by IOLERO in that period. In 15 of these 31 investigations, the Sheriff's Office failed to complete the investigation within 60 **calendar** days. In 7 of these 31 investigations, the Sheriff's Office failed to complete the investigation within 60 **working** days.

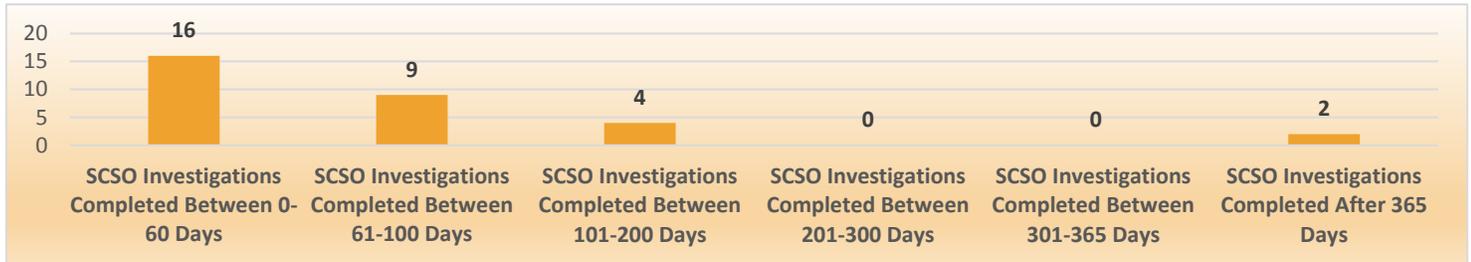
- In 16, the investigation took from 0-60 calendar days.
- In 9, the investigation took from 61-100 calendar days.
- In 4, the investigation took from 101-200 calendar days.⁴²

related to a set of allegations previously investigated in 2016. Those original allegations took 469 calendar days to investigate and make findings, following the filing of a grievance in the jail over the incidents. The original internal affairs investigation was initiated only after the filing of a federal lawsuit on October 5, 2015 by a group of inmates alleging multiple allegations related to uses of force and "behavioral counseling" in the Main Adult Detention Center, although grievances about the incident were filed by inmates on or around May 28, 2015 when the incidents occurred. If instead the time to complete the original investigation is calculated from the time the lawsuit was filed on October 5, 2015, the investigation took 339 calendar days to complete. The 134 calendar day figure for the completion of the supplemental investigation is calculated from the time that it was initiated by the Sheriff's Office on September 5, 2017 until it was completed on January 17, 2018. There are other possible ways to calculate the time it took to complete this supplemental investigation, given its origins. One way would be to start from the time when grievances were filed in June 2015 over the violations alleged to occur that day. Under this view, the investigation was completed over 900 days after the agency received notice of potential violations. The timeline also can be calculated from the filing of the lawsuit on October 5, 2015. Under this view, the investigation took 835 days to complete. The Sheriff's Office calculated the timeline for this supplemental investigation by using September 5, 2017 as the starting date. Yet, the agency also appears to have decided that it could not consider potential discipline for any employees involved in the incidents investigated because it had notice of the potential violations at the time it got notice of the lawsuit. These positions are not consistent.

⁴² In 1 of the investigations in this category, the investigation took 134 calendar days to complete from the date it was begun. However, it should be noted that this was a supplemental investigation that was related to a set of allegations previously investigated in 2016. Those original allegations took 469 calendar days to investigate and make findings, following the filing of a grievance in the jail over the incidents. The original internal affairs investigation was initiated only after the filing of a federal lawsuit on October 5, 2015 by a group of inmates alleging multiple allegations related to uses of force and "behavioral counseling" in the Main Adult Detention Center, although grievances about the incident were filed by inmates on or around May 28, 2015 when the incidents occurred. If instead the time to complete the original investigation is calculated from the time the lawsuit was filed on October 5, 2015, the investigation took 339 calendar days to complete. The 134 calendar day figure for the completion of the supplemental investigation is calculated from the time that it was initiated by the Sheriff's Office on September 5, 2017 until it was completed on January 17, 2018. There are other possible ways to calculate the time it took to complete this supplemental investigation, given its origins. One way would be to start from the time when grievances were filed in June 2015 over the violations alleged to occur that day. Under this view, the investigation was completed over 900 days after the agency received notice of potential violations. The timeline also can be calculated from the filing of the lawsuit on October 5, 2015. Under this view, the investigation took 835 days to complete. The Sheriff's Office calculated the timeline for this supplemental investigation by using September 5, 2017 as the starting date, for the purpose of

- In 0, the investigation took from 201-300 calendar days.
- In 0, the investigation took from 301-365 calendar days.
- In 2, the investigation took more than the 365 calendar days, meaning it exceeded the state statute of limitations for imposing discipline against an employee for a sustained finding of misconduct.⁴³

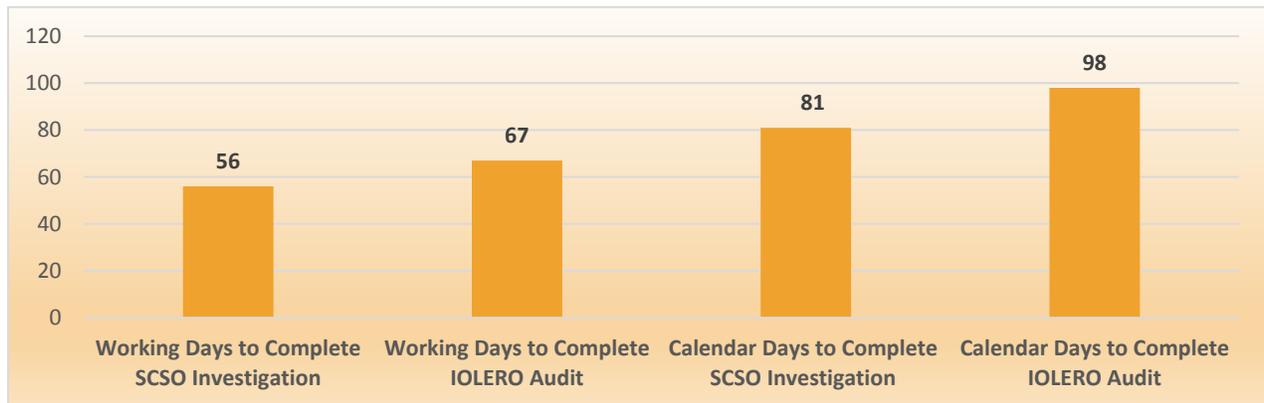
Illustration 6-E: Timeliness of Sheriff’s Office investigations for complaints forwarded to IOLERO for review



For both the Sheriff’s Office and IOLERO, there were challenges in completing their parts of the process within the ideal timelines of 30-60 days. Given multiple issues identified in other parts of this report and in the Investigation and Audit Recommendations, IOLERO faced some of the same and some different challenges and was less timely than the Sheriff’s Office.

- The Sheriff’s Office average time to complete an investigation during FY 17/18 was 56 working days or 67 calendar days.⁴⁴
- IOLERO’s average time to complete an audit of investigations was 81 working days or 98 calendar days.

Illustration 6-F: Working days and calendar days to complete SCSO investigation and IOLERO audit, July 2017-June 2018



notice of the potential violations at the time it got notice of the lawsuit. These 2 positions are inconsistent.
⁴³ These numbers do not include an investigation of an office involved shooting that began on January 30, 2017 and remains incomplete as of the date this report was drafted. This investigation, which remains open at this time, is over 580 days old.

⁴⁴ These averages accept the Sheriff’s Office calculations of the timeline for one investigation that was a supplemental investigation of jail “behavioral counseling” incidents that were related to an earlier investigation, referred to in Footnote 8. If instead one uses the 835 day completion calculation, the Sheriff’s average goes up to 106 calendar days. If one also includes in these averages the other investigation that remains open after more than 580 days, the average goes up to 121 calendar days. To be fair, there also remain at this time 16 completed investigations for which audits are not yet completed. If these were added to IOLERO’s data, average audit completion times likely would increase significantly.

The consistent goal of both IOLERO and the Sheriff's Office has been to complete the investigation and audit of each incident of potential employee misconduct within 30-60 days, absent unusual circumstances. However, given the realities of IOLERO staffing and conflicting duties, IOLERO recently informed the Sheriff's Office that this expectation is unrealistic and that the failure to meet this ideal should not be considered to make an audit untimely. IOLERO made a detailed recommendation for timelines for audits in its stand-alone recommendations on Improving Investigation and Audits, based on current staffing. Increasing IOLERO staffing also would bring down audit times.⁴⁵

4. Audit Disagreements During FY 17/18

Set out below, in chronological order by date the complaint was opened, are summaries of all 10 of the audited investigations during FY 17/18 for which IOLERO disagreed with some aspect of the findings of the investigation. California Penal Code Section 832.7 prohibits sharing personnel information of a peace officer, including information from a complaint investigation. However, Section 832.7, subsection (c) allows the sharing of information about the type or disposition of complaints if that information does not identify the individuals involved. In addition, where such confidential information has been revealed publicly in some other venue, such as in a lawsuit, the details thus disclosed no longer are considered confidential.

Complaint 16-C-0039 ⁴⁶

- This complaint alleged that deputies failed to appropriately investigate several alleged crimes against 2 Latinx complainants, in part because of racial bias. The complainants alleged that the responding deputy 1) tried to dissuade them from pressing charges against a White suspect; 2) included only the automobile crash but not the assault and battery in the incident report; and 3) exhibited racial bias during the investigation of the incident. The investigation made findings of exonerated for allegation 1, and unfounded for allegation 2, but failed to analyze or make a finding on allegation 3.
- The Auditor agreed with the finding of exonerated for allegation 1.
- The Auditor agreed with the finding of unfounded for the assault on 1 complainant because the incident report included investigation of the assault on him; however the report failed to investigate the alleged assault on the other complainant. The Auditor therefore found that with regard to this part of the allegation, the finding should have been **sustained**.
- The Auditor reviewed the investigative evidence and concluded by a preponderance of the evidence that the allegation of racial bias during the incident should be **sustained**. The deputy told the complainant that the suspect's threats of gang retaliation were not credible because the suspect was White and he claimed Norteno affiliations.
- Because the investigation on this issue was **incomplete**, the auditor also recommended that investigations address every allegation and any violation fairly raised by the allegations or evidence.

⁴⁵ See discussion of staffing issues elsewhere in this report.

⁴⁶ This complaint was previously reported on in IOLERO's first Annual Report, but is included here to standardize the reporting period moving forward.

Complaint 16-C-0040

- This complaint was filed by an apparently homeless inmate at the Main Adult Detention Facility and alleged that 1) a correctional deputy used excessive force against her. During the investigation, additional evidence raised the issue of whether 2) the subject deputy also violated the use of force policy requiring a written report of certain incidents; and 3) a second deputy witnessing the incident violated the use of force policy requiring a written report of certain incidents. The investigation made no finding for allegation 1, made a finding of sustained for allegation 2 and made no finding on allegation 3.
- On allegation 1, the Auditor concluded that the first allegation was not fully investigated, nor was a finding made on the allegation. Unfortunately, there was insufficient evidence in the investigative file from which the Auditor could draw a conclusion as to whether the force used against the inmate was excessive under the circumstances.
- On allegation 2, the Auditor agreed with the finding of sustained.
- On allegation 3, the Auditor reviewed the investigative evidence and concluded by a preponderance of the evidence that the witnessing deputy should have filed a use of force report but did not, and thus the allegation should be **sustained**.
- In addition, the Auditor suggested that there was sufficient evidence in the investigation to warrant further investigation of whether some deputies were being **truthful** during the investigation.
- In addition, the Auditor noted in the audit that one of the witnessing deputies was allowed to represent another employee during the investigation, creating a **conflict of interest** that should not have been allowed.
- The Auditor also noted that the Investigator should have made a greater effort to contact the complainant, who no longer was an inmate during the time of the investigation and was not interviewed.

Complaint 17-C-0009

- This complaint alleged that patrol deputies 1) illegally searched complainant's residence on several occasions; 2) illegally seized property from the residence; 3) on several occasions violated complainant's First and Fourth Amendment rights; and 4) exhibited a pattern of unlawful harassment and discrimination based on membership in a group. The investigator made the following findings: unfounded for allegation 1; exonerated for allegation 2; exonerated for allegation 3; and unfounded for allegation 4.
- On allegation 1, the Auditor agreed with the finding of unfounded.
- On allegation 2, the Auditor agreed with the finding of exonerated.
- On allegation 3, the Auditor agreed with the finding of exonerated for incidents on one date, but other incident dates were not investigated and thus the Auditor disagreed with a finding for those dates. Because there was no investigative evidence for those dates, the Auditor could not offer a finding for them.
- On allegation 4, the Auditor disagreed with the finding of unfounded, suggesting instead **inconclusive/not sustained**. This difference was based on the lack of investigation of other possible incidents where deputies may have been involved with the complainant beyond a limited few that were investigated.

- The Auditor concluded the investigation was **incomplete**.
- In addition, this investigation was assigned to a deputy who was named in the complaint, creating an unnecessary **conflict of interest** that should be avoided as a matter of policy. The Auditor therefore recommended adoption of a conflict of interest policy for such investigations.

Complaint 17-C-0020

- This complaint alleged that patrol deputies responding to a call for service at a residence 1) failed to provide a receipt for confiscated firearms, as required by statute and policy; 2) stole valuable property; 3) failed to log into the Sheriff's property room several firearms taken from the residence; 4) failed to release the confiscated firearms to the complainant as required by law; and 5) damaged two of the firearms during the process. The investigator made a finding of unfounded on each of the allegations of the complaint.
- The Auditor disagreed with the finding of unfounded on allegation 1, finding instead that the allegation should be **sustained**. The investigation found that the deputies failed to provide a receipt for firearms at the time they were confiscated, as required under the statute and agency policy. The investigator nevertheless concluded there was no violation because the deputies had followed their training, rather than the policy and law. After discussion between IOLERO and the Sheriff's Office, the Sheriff's finding was changed to sustained. IOLERO and the Sheriff's Office agreed that this violation did not justify discipline, in light of deputies receiving training contrary to the policy.
- The Auditor agreed with the findings of unfounded on allegations 2 and 3.
- The Auditor disagreed with the finding of unfounded on allegation 4, concluding instead that the finding should be **inconclusive/not sustained**. This conclusion resulted from the investigator referring to documentary evidence relied upon by the investigator in his analysis that could no longer be located by the investigator or reviewed by the Auditor.
- The Auditor recommended that **investigations be complete** and include all primary source evidence in the file so that it can be independently reviewed by the Auditor.
- The Auditor also recommended **updated training** on property receipt procedures so that it is consistent with the requirements of law and agency policy.

Complaint 17-C-0024

- This complaint alleged that, during an arrest of a suspect for driving without a license, patrol deputies 1) used excessive force; 2) failed to provide a medical examination of the suspect after claiming injury as a result of force, and requesting one; 3) conducted an illegal search of the vehicle; and 4) acted in such a way as to bring disrepute upon the Sheriff's Office. The investigator made a finding of exonerated for allegation 1 made no finding on allegation 2; eventually made a finding of exonerated on allegation 3; and made no finding on allegation 4.
- On allegation 1, the Auditor agreed with the finding of exonerated.
- On allegation 2, although the use of force policy requires a medical examination when a suspect claims an injury as a result of force, the Auditor was **unable to make a finding** due to the lack of investigative evidence upon which to base a finding. The Auditor strongly suggested that a supplemental investigation of this issue be conducted so that this

allegation could result in a finding that could be audited. This does not appear to have happened.

- On allegation 3, the Auditor at first was unable to conduct an audit because the investigation lacked any analysis of this allegation. The Auditor therefore recommended that an analysis be conducted and a finding made. Once that happened, the Auditor agreed with the finding of exonerated.
- On allegation 4, the Auditor found sufficient evidence in the investigative file to reach a finding of exonerated, even though no finding was made by the investigator.
- The Auditor concluded the investigation was **incomplete**.
- The Auditor noted that the subject deputy in the excessive force allegation was never interviewed by the investigator. The Auditor recommended that the investigator always **interview the deputy who is the subject** of a complaint, especially where findings on allegations such as excessive force depend in significant part on the deputy's perceptions.

Complaint 17-C-0027

- This complaint alleged that, during an arrest of a very intoxicated suspect, deputies 1) used excessive force; 2) stole the suspect's property; 3) engaged in biased policing; 4) sexually assaulted the suspect; and 5) engaged in conduct that otherwise brought disrepute upon the department. In addition, the evidence in the investigative file raised additional possible violations, including: 6) a deputy was discourteous to a bystander; 7) deputies misrepresented events in their incident reports; 8) a deputy intentionally covered his body worn camera during the incident to prevent recording; and 9) a deputy violated the Maximum Restraint Policy. The investigator made a finding of exonerated for allegation 1, unfounded for allegation 2 and 3, and exonerated for allegation 4. The remaining possible violations raised by the evidence were neither investigated nor analyzed by the investigator.
- On allegation 1, the Auditor agreed with the finding of exonerated for all uses of force by all deputies, except for 1 instance of force used by 1 deputy. In that instance, the Auditor concluded from a preponderance of the evidence that the finding should be **sustained**.
- On allegation 2, the Auditor agreed with the finding of exonerated.
- On allegation 3, the Auditor agreed with the finding of unfounded.
- On allegation 4, the Auditor agreed with the finding of unfounded.
- On allegation 5, the Auditor agreed with the finding of exonerated for all instances alleged by complainant.
- 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**.
- On allegation 7, the Auditor found there was insufficient evidence to reach a conclusion as to whether deputies misrepresented events in their incident reports, and it was not fully investigated. The Auditor therefore was unable to reach a finding.
- On allegation 8, the Auditor found that the covering of the camera was intentional, but it was unclear under the policy whether this constituted a violation under the circumstances. Because this was not fully investigated, the Auditor **offered no finding** on these facts.
- On allegation 9, the Auditor found that the deputies placed the suspect prone in maximum

restraint cords while being transported in the squad car in a very intoxicated state. The Auditor concluded that these actions violated the Maximum Restraint Policy, as written. However, because the Sheriff's Office insisted that the policy is now out of date and not in line with current practice and training, the Auditor **offered no finding** on this allegation.

- Instead, the Auditor recommended that the agency review its Maximum Restrain policy, practices, and training, with careful attention to the scientific and medical literature and to the consensus best practices in this area among law enforcement agencies. The Auditor advised that there continue to be significant concerns, both in law enforcement and medicine, about the risks of "positional asphyxiation" for suspects who are intoxicated, on drugs, or mentally ill, experience uses of force, and are placed prone in maximum restraints.
- Due to the lack of analysis of multiple issues raised by the evidence, and the extensive amount of video to review, this audit took over 50 hours to complete.

Complaint 17-C-0037

- This complaint alleged that, over the course of multiple incidents, the complainant was harassed and treated inappropriately by Sheriff's deputies. Among the allegations complaints was that deputies 1) inappropriately investigated complainant for driving while intoxicated; 2) treated complainant rudely during the investigation of the DUI; 3) intimidated complainant by showing up at her residence unannounced; 4) threatened complainant with a harassment charge for abusing the 911 call system; 5) threatened complainant with arrest for abusing the 911 call system; and 6) put complainant in jail for 12 hours without food or water. The investigator made findings of unfounded for allegations 1, 2, 4, and 5, and made no findings on allegations 3 and 6.
- The Auditor agreed with the finding of unfounded for allegations 1, 2, and 4.
- The Auditor could **offer no finding** on allegation 3 and 6, as the investigator failed to investigate or analyze them, and there was insufficient investigative evidence from which to draw a conclusion.
- The Auditor concluded that the finding should be **exonerated** for allegation 5, rather than unfounded, as the alleged events happened but did not violate policy.
- The Auditor concluded that the **investigation was not complete**, in that multiple allegations were not investigated or analyzed, especially allegation 6. In addition, some allegations were not investigated until the Auditor urged that they be looked into, at which point the investigation was reassigned to another investigator and more was done.
- The Auditor also expressed concern that complainant's previous interactions with the Sheriff's Office made investigators reluctant to treat her allegations seriously without further urging by the Auditor.
- This audit took longer than it would have, had the investigation had been completed without the need for further involvement and urging of the Auditor.

Complaint 17-C-0038

- This complaint alleged that, during an investigation of a vehicle accident between complainant and a deputy, the deputy 1) lied to the investigating CHP officer and responding medical personnel, thereby bringing disrepute upon the agency; 2) used his

male privilege to influence the situation to his advantage, resulting in biased policing; 3) was discourteous because of his lying, to complainant's disadvantage; 4) was negligent in the performance of his duties due to his lying; and 5) violated policy by lying. The complainant alleged that the deputy lied both about how fast he was going and whether he was using his cell phone, at the time of the collision. The investigator made the following findings: exonerated on all allegations.

- The Auditor disagreed with the finding of exonerated for allegations 1, 3, 4, and 5, concluding instead that the finding should be ***inconclusive/not sustained***. This was a very close decision, and almost resulted in a finding of sustained. The Auditor did not find the allegations sustained only because one possible explanation for the discrepancy in accounts between witnesses and the subject deputy could not be eliminated, based on the incomplete evidence in the investigative file.
- The Auditor agreed with the finding of exonerated for allegation 2.
- The Auditor concluded that the ***investigation was incomplete*** in multiple significant ways.
 - First, it never analyzed the evidence for whether the deputy was using his cell phone at the time of the collision and therefore lied to the CHP investigator in saying that he did not.
 - Several independent witnesses to the vehicle collision were identified by the complainant and another witness, but were not contacted by the investigator.
 - Another witness whose statement to the CHP investigating officer supported complainant's allegations, was never interviewed by the investigator, who made minimal effort to contact him. The witness' previous statements thereafter were not considered in the analysis of the allegations.
 - The investigative file did not include recordings or notes of interviews with ambulance staff, but only the investigator's summary of their statements, which did not cover several relevant areas of inquiry in dispute.
 - In addition, detailed cell phone records, which would help show whether the deputy was using his cell phone at the time of the collision, were not requested by the investigator until after the time when they no longer were available.
 - Finally, there was no review by the investigator of investigations of multiple, previous vehicle accidents by the deputy, which could reveal if there was a pattern of behavior consistent with the allegations of complainant in this instance.
- The Auditor concluded that the investigation exhibited ***bias*** in favor of the subject deputy. Among the reasons for this conclusion were the lack of investigation into multiple areas, the lack of analysis of whether the deputy lied about using his cell phone, the failure to contact witnesses material to resolving issues in dispute, the failure to seek cell phone records until it was too late to obtain them, and the failure by the investigator to accept the conclusions of the CHP report that the deputy was going 25 MPH at the time of the collision.
- The Auditor recommended that all investigations record all witness interviews to allow independent review and analysis of the statements of witnesses by the Auditor.
- The Auditor also recommended that every investigation identify key, perishable evidence at the beginning of the investigation so that it can be prioritized and secured prior to its loss.
- Due to the complexity of this investigation, the need for the Auditor to analyze issues left

unexamined by the investigator, and the deficiencies in the investigation, this audit took over 70 hours to complete over the course of 6 weeks.

Complaint 17-C-0049

- This complaint alleged that, during an investigation of an alleged sexual assault against complainant, multiple Sheriff's employees acted inappropriately by 1) failing to conduct a complete and timely investigation; 2) treating her discourteously when investigating allegations of cyber stalking made against her while her sexual assault investigation was pending; 3) treating her discourteously when she called to complain to supervisors about the behavior of deputies investigating charges of cyber stalking made against her; 4) treating her discourteously when she called to make a criminal complaint of cyber staking against others while her sexual assault investigation was pending; 5) treating her discourteously when she called to complain to supervisors about the behavior of deputies investigating charges of cyber stalking she made against others; 6) treating her discourteously when she called to obtain an update on her sexual assault investigation from the detective; and 7) failing to appropriately and adequately handle her sexual assault investigation. The Investigator made findings of exonerated for allegations 1-4, and 6, but failed to analyze or make a finding on allegations 5 and 7.
- The Auditor agreed with the finding of exonerated on allegations 1-4, and 6.
- The Auditor found that a preponderance of the investigative evidence supported a finding of **exonerated** on allegation 5.
- The Auditor found that the preponderance of the evidence supported a finding of **sustained** for allegation 7, alleging that the sexual assault investigation was not handled in an appropriate and adequate manner. The Auditor approached this allegation from a systemic vantage point in evaluating the evidence, as that is how it was alleged by the complainant.
 - From the vantage point of the sexual assault victim, the evidence showed that some members of the Sheriff's staff treated complainant's trauma-influenced behaviors as reasons to doubt her veracity, question her mental health, and cut off access to information and/or staff.
 - While investigating charges of cyber stalking leveled by complainant against others and by others against complainant, Sheriff's staff treated these allegations as unrelated to the main investigation into sexual assault, even though they involved friends and colleagues of the alleged perpetrator of the sexual assault.
 - Also, deputies immediately investigated the criminal allegations against complainant, but delayed investigation of her sexual assault complaint for many weeks, and then would not provide her with clear information on the status of the investigation for several additional weeks.
 - Detectives first promised complainant that her sexual assault investigation would be referred to the District Attorney for charging, even though the detective had significant questions about whether there was probable cause to charge the suspect with a crime. Sheriff's staff subsequently told complainant that the investigation had been referred to the District Attorney, even though it had not, causing her great distress and frustration when she contacted the District Attorney for more information.
 - All of these aspects appear contrary to best practices for how to interact with sexual

assault victims, as set out in Guidelines issued by the California Commission on Peace Officer Standards and Training.

- The Auditor also noted that many of these identified issues took place at a time when the Sheriff's staff was still dealing with issues related to the fire disaster, which may explain some of the noted deficiencies.
- The Auditor found that the **investigation was not complete**, as it did not fully investigate each allegation with regard to each employee that was the subject of the allegation. Nor was any employee interviewed on the allegations, although several provided a brief written statement about them. One deputy who received notice to provide a written statement failed to do so, but no explanation was offered in the investigation for this failure.
- The Auditor recommended that the agency **adopt clear guidelines and training for properly interacting with sexual assault victims**, consistent with POST Guidelines.
- The Auditor further recommended that every investigation analyze and make a finding on each allegation of the complainant.
- Due to the complexity of this complaint and investigation, and deficiencies in the investigation, this audit took over 90 hours to complete over the course of 6 weeks.

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

- This complaint alleged that multiple correctional deputies used excessive force against multiple inmates during a series of incidents involving “behavioral counseling” at the Main Adult Detention Facility in May and June 2015. The investigation originated with the filing of a federal lawsuit in October 2015, although the incidents in question occurred in May and June of 2015 and grievances related to the incidents were filed by inmates at that time. The allegations of the lawsuit included that deputies used excessive force; used corporal punishment in violation of the Constitution; violated the “Safety Cell” policies treated inmates in dehumanizing and demeaning ways; deliberately failed to document incidents as required ; and lied about incidents in their reports.
- The first investigation (15-AR-0006) began in October 2015, and was completed in September 2016. It focused on the May 28, 2015 incidents. The investigation took the form of an Administrative Review, which is designed to determine if there are ways that the agency could improve its operations, rather than to determine if individual deputies should be disciplined for violations of specific policies. The investigation did not focus on specific deputies' actions in specific incidents and analyze them for possible policy violations. Nor did it focus on the specific allegations of the federal lawsuit. The investigation encompassed over 300 pages of factual review and analysis and concluded that all of the reviewed incidents were “within policy.” The supporting documentation was contained in more than 4 large binders containing over 100 separate documents, as well as multiple video recordings. The investigation was referred for audit approximately 30 days prior to the statutory deadline for imposing any discipline on any involved deputies. During this period, IOLERO staff had several other significant, conflicting time commitments. It therefore was not possible to audit this very complex investigation within the 30 days available before the expiration of the statute of limitations for discipline. The Auditor therefore informed the

Sheriff that the audit would be converted into a policy and practice review of the incidents. Due to the press of competing audits with deadlines, the Auditor returned to this matter only upon the referral the subsequent, related investigation.

- The second investigation (17-IA-0009) began in September 2017, and was completed in January 2018. It focused on the June 7, 2015 incidents. It was related to the same federal litigation as the first investigation. This subsequent investigation was based in significant part on the factual findings of the first investigation, and built upon them. The same investigator conducted both investigations. The investigation took the form of an Internal Affairs investigation, which usually seeks to determine if individual deputies should be disciplined for violations of specific policies that could result in serious discipline. Nevertheless, the investigation did not focus on specific deputies' actions in specific incidents and analyze them for possible policy violations. Nor did it focus on the specific allegations of the federal lawsuit. Instead, it took an approach similar to the first investigation. The investigation encompassed over 80 pages of factual review and analysis and concluded that all of the reviewed incidents were "within policy."
- Soon after the referral of the supplemental investigation for audit, the Auditor notified the Sheriff's Office that, due to the complex nature of the investigation, as well as its interwoven relationship with the previous investigation and reliance on that investigation's factual findings, it would be necessary to review both investigations to reach audit conclusions. The Auditor sought an extension of time to review the investigation beyond normal expectations for an audit. The Sheriff's Office agreed to extend the time period for audit from 30 to 60 days, only. Due to other pending audits that were in process, it was another month before the auditor was able to focus on this audit.
- From February through May 2018, the Auditor spent more than 180 hours completing the audit of these related investigations, including reviewing reams of documents, repeatedly viewing video recordings of the incidents in question (including in slow motion and stop action), reviewing depositions of witnesses from the related federal litigation and comparing those statements to statements made to the investigator. The resulting audit report numbered 75 pages. The audit focused mainly on incidents involving one inmate, as that was the primary focus of the second investigation conducted by the Sheriff's Office.
- The audit was structured to analyze whether involved deputies committed the following violations against the specific inmate who was the primary focus of the supplemental investigation: 1) used excessive force against inmates during "yard counseling" incidents on May 28, 2015; 2) used excessive force against inmates during "yard counseling" incidents on June 7, 2015; 3) used corporal punishment against inmates during "yard counseling" incidents on May 28, 2015 in response to perceived violations of jail rules; 4) used corporal punishment against inmates during "yard counseling" incidents on June 7, 2015 in response to perceived violations of jail rules; 5) violated the "Safety Cell" policy on May 28, 2015; 6) treated an inmate in a dehumanizing and demeaning way during "yard counseling incidents on May 28 and June 7, 2015; 7) failed to appropriately document with video recordings the "yard counseling" incidents on May 28 and June 7, 2015; and 8) failed to appropriately document the "yard counseling" incidents on May 28 and June 7, 2015 through the use of timely, complete, and otherwise appropriate reports required under several agency policies. These allegations were derived from the federal lawsuit's pleadings.

- By finding that all incidents on May 28 and June 7, 2015 were “within policy“, the investigator had impliedly found that all of these 8 allegations were without merit and that all involved deputies should be exonerated.
- The Auditor found, based on a very thorough review of all investigative evidence, as well as evidence from the federal lawsuit that was equally available to the investigator but not considered by him, that the preponderance of the evidence supported a finding for each of the 8 allegations of ***sustained***. The video evidence, which was key to most audit findings, was made public during the lawsuit and posted on Youtube.com.
- The Auditor also recommended that the agency investigate and reach findings on the treatment of the other inmates affected by these incidents on May 28 and June 7, 2015, and possibly on other days.
- The Auditor further recommended that the agency ***conduct a more comprehensive investigation*** of other important issues raised by the audit. Among those issues should be whether agency supervisors and management fully and objectively reviewed and analyzed the issues raised by the "yard counseling" incidents on May 28 and June 7, 2015, to determine whether deputies violated agency policies and the law.
 - As part of this investigation, the agency should determine what happened during the ***review of grievances*** filed by inmates related to the yard counseling incidents at issue, and whether the investigation of those grievances conformed to best practices that require they be reviewed by an employee not involved in the incident.
 - In addition, the investigation should review why ***reports and videos related to these incidents went missing or were never created*** as required.
 - Further, the review should examine the reasons for the ***significant delay in investigating*** these incidents fully.
 - Finally, the agency should examine the ***adequacy of its Internal Affairs systems*** in light of the fact that the two IA investigations declared that all the incidents were within policy, and these conclusions were approved through multiple layers of administrative review before the new Sheriff refused to sign off on them.
- The Auditor further recommended that the agency review these issues in an effort to determine whether the incidents in question, and the deficiencies in how they were investigated, are reflective of more systemic issues in the detention division.
- The Auditor concluded that the investigation was ***very incomplete***.
 - First, it focused on the response of the agency as a whole and what lessons were to be learned, rather than investigating and analyzing specific instances of alleged misconduct by specific employees against specific inmates.
 - Based on the information provided to the Auditor by the agency, it appears that there have been no additional investigations focused on specific actions of specific employees that may have violated agency policies or laws. Therefore, it appears no employee was held accountable for any violation of policy or law related to these incidents.
 - The investigative interviews of employees focused primarily on a set of ***very leading questions*** that appeared designed to elicit specific responses, rather than seeking to gather objectively as much information as the witness might have personally observed.
 - In addition, the investigation almost completely ignored that there was a significant

amount of material evidence available in the litigation that bore significantly on the issues being reviewed in the investigations.

- The Auditor also concluded that the investigation exhibited **clear bias** in favor of the agency and its employees.
 - The investigation gave **inordinate weight to statements made by agency employees**, while almost entirely discounting statements by inmates (except for when an inmate's statement supported the statements of deputies).
 - The investigator **failed to analyze or question deputies about discrepancies** between their statements and incident reports they authored, on the one hand, and the facts evident from a review of videos, on the other. The investigation accepted employee versions of events despite such unexplained discrepancies.
 - In addition, the investigator **questioned agency employees in such a leading manner that it appeared to influence the statements of multiple deputies**. It is no small matter that an Internal Affairs investigator and long-time veteran of the agency, who would naturally be seen as a leader and representative of Sheriff's Office's management, would suggest through questioning that certain answers to questions were desired. Such signaling to witnesses inherently represents bias in such an investigation, especially when those same employees were potential witnesses in a federal lawsuit that could result in significant liability for the county.

b. All Sheriff's Office Internal Affairs and Complaint Investigations in FY 17/18
(including those not audited by IOLERO)

The above discussions focused on investigations that are audited by IOLERO. This section focuses on Sheriff's Office Internal Affairs investigations or investigations of Citizens' Complaints during the reporting period, regardless of whether they are types audited by IOLERO.

The Sheriff's Office investigates employee issues in these two categories that are not routinely audited by IOLERO, including less serious complaints like discourtesy, failure to investigate, negligent driving, worker's compensation fraud, etc. IOLERO requested and received from the Sheriff's Office summary data on all investigations conducted for FY 17/18 in these 2 categories. For Internal Affairs and Citizen Complaint investigations, this summary data covers all investigations, findings, and whether discipline was imposed by the Sheriff's Office for a sustained finding in a use of force. The Sheriff's Office does not routinely track summary data on whether discipline is imposed for a sustained finding. Nevertheless, the agency provided discipline information for sustained findings on use of force and biased policing cases, but not for investigations of bias in policing and corrections.

IOLERO last year recommended that the Sheriff's Office begin to collect and track data on all discipline imposed as a result of sustained findings of employee misconduct, and to allow IOLERO access to that data from within the AIM investigative files viewed by the Auditor. This recommendation was repeated in IOLERO's stand-alone recommendations on Improving investigations and Audits. The Sheriff's Office responded by stating it cannot track this

information within their AIM personnel database, but plans to track it in another format and provide it in the future to IOLERO.

For FY 17/18, the Sheriff's Office logged 51 Citizen's Complaints, of which 17 were still under investigation and 34 were completed. 9 of those 34 completed complaints involved use of force allegations and 5 involved biased policing allegations. For the 34 complaints investigated, 2 resulted in sustained findings, with 20 resulting in exonerated, 11 resulting in unfounded, and 1 resulting in inconclusive/not sustained. For these complaints, discipline was imposed in both of the 2 investigations with findings of sustained.

For FY 17/18, the Sheriff's Office logged 10 Internal Affairs investigations, of which 4 were still under investigation and 6 were completed. 1 of those 6 completed complaints involved use of force allegations and 0 involved biased policing allegations. For the 6 completed Internal Affairs investigations, 3 resulted in sustained findings, with 1 resulting in exonerated, 2 resulting in unfounded, and 0 resulting in inconclusive/not sustained. For these complaints, discipline was imposed in all 3 of the investigations with findings of sustained.

In understanding this data, it is important to understand what actions are included in the definition of "discipline," as well as how discipline is handled in a civil service context. First, the category of discipline includes negative actions ranging from a letter of reprimand in an employee's file through termination as a result of an investigative finding of sustained. Other potential actions as a result of a sustained finding include additional training, or a letter of counsel, neither of which are classified as discipline. In addition, if an employee is within the 1-year probationary period, he or she has no civil service protections and can be dismissed for any lawful reason or no reason at all. Therefore, if an employee investigation resulted in a finding of sustained, and the employee was released from probationary employment, that would not be classified as discipline in this data.

The Sheriff's Office, like most public employers, uses progressive discipline in responding to employee misconduct. Under this approach, a first offense of misconduct typically will result in minor discipline, or even a result not considered discipline, such as additional training or a letter of counsel. Obviously, whether and what discipline is imposed also depends on the significance of the misconduct and the surrounding circumstances. Subsequent sustained findings of misconduct by the same employee typically will result in progressively more significant discipline.

II. Use of Force Investigations and Audits

a. Basis for IOLERO Audits of Use of Force

A law enforcement agency's use of force, and particularly deadly force, is likely the most significant community concern that leads to civilian review of an agency. The *President's Report* stated this concern very clearly:

Paramount among the policies of law enforcement organizations are those controlling use of force. Not only should there be policies for deadly and non-deadly uses of force but a clearly stated “sanctity of life” philosophy must also be in the forefront of every officer’s mind. This way of thinking should be accompanied by rigorous practical ongoing training in an atmosphere of nonjudgmental and safe sharing of views with fellow officers about how they behaved in use of force situations.⁴⁷

This concern also appears to have been very significant in connection with the establishment of IOLERO. The *CALLE Report* states “The use of deadly force by law enforcement agencies in Sonoma County is of deep concern to many of the communities they serve.”⁴⁸ The *CALLE Report* goes on to dedicate 4 pages to discuss 15 separate recommendations regarding the appropriate use of force.

b. Sheriff’s Office Use of Force Policies

The Sheriff’s Office revised its overall use of force policy as of March 2, 2017 under Policy 300. This policy addresses criteria for what constitutes a reasonable use of force generally, and also more specifically addresses use of deadly force, as well as use of carotid holds, pain compliance techniques, and shooting at or from an automobile. Other uses of force such as Taser use, use of canines, maximum restraint use, and use of “less lethal devices” (tear gas, pepper spray, impacts weapons, etc.) are specifically addressed in separate policies. The use of force general policy also covers deputy responsibilities for reporting use of force, as well as supervisor responsibilities in reviewing deputy use of force.⁴⁹

IOLERO and its Community Advisory Council are in the beginning stages of a comprehensive use of force policy review of the Sheriff’s Office. This review is likely to be concluded in the next fiscal year.

In addition, following both discussions between Sheriff’s Office staff and IOLERO, and internal discussions among Sheriff’s staff, as well as a use of force incident that resulted in a deputy who was a probationary employee no longer working for the department, the Sheriff’s Office reformed its internal process for review of uses of force. Previously, Sheriff’s deputies were required to document any use of force in a written report and their supervisors were required to review the report for compliance with agency policy. In September of 2016, the Sheriff’s Office changed its procedures to require that a supervisor review any body worn camera video footage associated with any use of force prior to approving a use of force report. That change has been documented in the new use of force policy adopted in March 2017.

⁴⁷ *President’s Report*, p. 19.

⁴⁸ *CALLE Report*, p. 18.

⁴⁹ See Appendix for policies related to use of force.

IOLERO continues to recommend that the Auditor be granted full access to all use of force reports, as well as related body worn camera and jail video recordings, in order to conduct random use of force audits. This would provide enhanced assurance of compliance with agency use of force policies and help ensure that use of force reviews are sufficient. Over the last fiscal year, IOLERO also made two additional recommendations on use of force policies related to audits. First, IOLERO recommended that the Sheriff's Office classify pointing a weapon, such as a Taser or a firearm, at another person as a reportable use of force.⁵⁰ Second, IOLERO recommended placing greater emphasis on a deputy attempting to verbally calm a situation, where reasonable, before moving to consideration of using or threatening force.

c. IOLERO Audits of Use of Force Investigations

Given the importance of use of force policies in community trust of any law enforcement agency, a use of force investigation triggers an automatic audit by IOLERO under the audit protocols between IOLERO and the Sheriff's Office. During FY 17/18, there were 22 complaints processed in some way that involved allegations of excessive or improper use of force. The use of force allegations that were processed during this period included the following types: shooting a fire-arm; Taser use; pain compliance holds; maximum restraints; take-downs; hand strikes, hair pulling, and kicking.

The Sheriff's Office completed 18 of those 22 use of force investigations and referred them for an IOLERO audit. Of those 18, IOLERO completed audits on 9. There are 3 additional referred and completed investigations currently being audited, leaving 6 referred investigations in this category awaiting audits. That leaves 4 use of force investigations yet to be completed by the Sheriff's Office and audited by IOLERO, at the time of this report.⁵¹

Of the 9 use of force investigation for which IOLERO completed audits, IOLERO agreed with the Sheriff's Offices' findings on 6. In 1 of those completed investigations for which there is agreement, the Sheriff's Office was unable to find the deputy had used excessive force because the deputy refused an interview, but there was a finding of conduct unbecoming a deputy, and that deputy is no longer working for the agency.⁵² In another of those investigations, IOLERO agreed that there was no excessive force, but the investigator made no finding on the allegation that the agency failed to provide a medical examination of the suspect after a claim of injury, as required by the Use of Force policy. There was insufficient evidence in the investigative file from which IOLERO could make a finding on this allegation.

⁵⁰ Current case law treats pointing a firearm at a person as a use of force, See *Bryan v. MacPherson*, 630 F. 3d 805 (9th Cir. 2010).

⁵¹ 1 of those pending investigations involves an officer involved shooting and has been open for over 1 year, meaning that it has exceeded the statute of limitations to impose any discipline as a result of any finding of misconduct.

⁵² This audit also was reported in last year's Annual Report, but is included again here in order to standardize the reporting period moving forward.

In a third investigation, the Auditor agreed that the force used was not excessive. However, the incident also involved the failure to report brandishing of a Taser weapon in the related use of force report, and a failure by the deputy to try to calm the situation before escalation. The Auditor therefore recommended the agency consider making brandishing of weapons a reportable use of force. In addition, the Auditor recommended that the deputy consider whether it may have been reasonably possible during this incident to verbally calm the situation before escalating to force. The other three agreements with the findings of exonerated were relatively straightforward.

The 3 completed use of force audits for which there is **not** agreement with the investigator's finding are more fully discussed in the section on audit disagreements elsewhere in this report.

d. Sheriff's Office Historical Data on Use of Force

The data above on investigations and audits of use of force does not capture the entire universe of uses of force by Sheriff's deputies. It captures only those instances where a use of force resulted in an investigation, because either a community member filed a complaint or a supervisor initiated an investigation. For this reason, IOLERO requested and received data from the Sheriff's Office on all uses of force by both the patrol division and the detention division of the office. That information is provided here for greater transparency on this important issue.

i. Patrol Deputy Uses of Force

This reported data covers uses of force by Deputy Sheriff's assigned to patrol over the last 9 years, from 2009 until present (2018 data for the first 9 months are extrapolated to an entire year for comparison purposes). As the table below reveals, annual uses of force by Sheriff's patrol deputies have varied significantly from 2009 until present. The peak year for uses of force during the last 9 years was 2013, whether one considers absolute numbers of uses of force, or considers uses of force as a percentage of contacts or percentage of arrests. Since 2013, uses of force appears to have steadily declined, reaching a 9-year low for calendar years 2016 and 2017. This is true whether one considers absolute numbers of uses of force, or considers uses of force as a percentage of contacts or percentage of arrests. ***This past calendar year saw a slight uptick in uses of force on patrol, after several years of decline.*** Over the period from 2013 to 2017, the number of contacts between patrol deputies and the public, and the number of arrests, increased, reaching a 9-year high during calendar years 2016- 2017. Therefore, during this period of time, uses of force generally declined at the same time that contacts and arrests increased. It is unclear what accounts this calendar year either for the rise in uses of force, the decline in contact, or the rise in arrests, or whether the rises will continue.

Illustration 6-G: Sheriff's Office data on contacts, arrests, and use of force incidents from 2009-2017

Year	Contacts	Contacts per Month	Arrests	Arrests per Month	Use of Force Count	UOF Incidents per Month	% of Contacts Resulting in Arrest	% of Arrests Resulting in Use of Force	% of Contacts Resulting in Use of Force
2018*	106,360	8,863	7,344	612	271	22.63	6.90%	3.70%	0.26
2017	102,912	10,291	6,458	538	242	20.17	6.28%	3.75%	0.24
2016	106,859	10,686	7,145	595	242	20.17	6.69%	3.39%	0.23
2015	77,889	6,491	4,443	370	246	20.50	5.70%	5.54%	0.32
2014	84,701	7,058	5,347	446	264	22.00	6.31%	4.94%	0.31
2013	88,938	7,412	5,700	475	316	26.33	6.41%	5.54%	0.36
2012	86,171	7,181	5,751	479	299	24.92	6.67%	5.20%	0.35
2011	89,742	7,479	6,349	529	299	24.92	7.07%	4.71%	0.33
2010	98,335	8,195	7,574	631	303	25.25	7.70%	4.00%	0.31
2009	103,684	8,640	7,912	659	312	26.00	7.63%	3.94%	0.30

*Estimate based on first 9 months of 2018

There are many possible explanations for this striking general trend from 2013 until recently. The period from 2013 to present is the same period that saw the shooting of Andy Lopez, intense community activism around police accountability issues, the ongoing work of the CALLE Task Force (including on use of force issues), Board of Supervisors' hearings on the CALLE Task Force recommendations, the creation of IOLERO, and finally operation of IOLERO, including audits of use of force investigations. During this same period there was repeated public exposure to these issues through traditional media and social media news. This period represents a time of intense public interest in uses of force, as well as the establishment of civilian review in Sonoma County.

Correspondingly, this period also has seen focused attention by the Sheriff's Office on improvements to use of force training. During this time, the Sheriff's Office has shifted its training programs toward greater use of scenario-based training in uses of force, while also emphasizing the need for deputies to slow down their reactions to any incident to the extent the situation allows. In addition, the office has looked at its use of force reviews and culled from them specific "real life" examples to employ in its scenario training. The usefulness of these examples has been heightened by the agency's ability to use Body Worn Camera video footage from actual incidents for training purposes. These two shifts in emphasis – scenario based training and an emphasis on de-escalation – represent a systemic shift in how the Sheriff's Office approaches use of force. This shift also communicates that the office has different expectations of its deputies in their use of force.

ii. Correctional Deputy Uses of Force

This section of reported data covers uses of force by Correctional Deputies over the last 4 years, from FY 14/15 through FY 17/18. As the data shows, there has been a general decline in both the overall rate of uses of force, as well as in use of Tasers, during this time period. The decline in Taser use is particularly striking and significant, holding steady at about a 30% decrease per year over the last 3 years. While overall uses of force in detention have also seen a decreasing trend, there was a slight uptick recently in FY 17/18 in overall uses of force. Detention Division management attributes these overall trends to changes in policy and training over that time period, as well as greater attention to this issue from detention division supervisors. Also, the agency has been subject to lawsuits over that period of time that alleged excessive force in the detention environment, two of which settled before trial for amounts exceeding \$1 Million.

Illustration 6-H: Sheriff’s Office data on Detention Division use of force incidents from FY 14/15 – FY 17/18

Year	Taser Use	Annual % Change	Overall UOF	Annual % Change
FY 17/18	16	- 30.4%	236	+ 2.1%
FY 16/17	23	- 34.3%	231	- 12.2%
FY 15/16	35	- 31.4%	263	- 16.3%
FY 14/15	51	N/A	314	N/A

b. Critical Incidents, Including Deputy Involved Shootings

The Sheriff’s Office participates with all other county law enforcement agencies in a protocol agreed to by the Sonoma County Law Enforcement Chiefs Association for investigations of any fatal incident.⁵³ This protocol is invoked for “[a] specific incident occurring in Sonoma County involving one or more persons, in which a law enforcement employee is involved as an actor or injured person; when a fatal injury occurs.” When an employee of the Sheriff’s Office is involved in a fatal incident, the criminal investigation is handled by another local law enforcement agency, in consultation with the District Attorney’s Office. The protocol is intended to separate the agency employing the involved officer from the officers investigating the incident. This type of independent investigation is specifically recommended by the *President’s Report*.

Due to the significant resources required to conduct such an investigation, fatal incidents involving other local law enforcement agency employees usually are investigated by the Sheriff’s Office. However, an investigation of a Deputy Sheriff usually will be handled by investigators from either the Santa Rosa Police Department or the Petaluma Police Department. Once the criminal investigation of a Fatal Incident has been completed, the results

⁵³ See Appendix for the Protocol in its entirety.

are forwarded to the District Attorney for review and analysis in order to determine whether the officer involved will be criminally charged for the fatal incident. In addition, the criminal investigation file is forwarded to the agency employing the officer to assist its administrative investigation into whether the employee's actions violated agency policies.

For Deputy Sheriffs, the Internal Affairs division then will review the investigative file, conduct any additional investigation thought necessary, and make findings on potential policy violations. At this point, the investigation will be forwarded to IOLERO for an audit in the same manner as any other investigation. Given the precedence of the criminal investigation by a sister agency and the charging decision by the District Attorney, administrative investigations of fatal incidents involving Deputy Sheriffs may take longer to complete than other types of investigations.

During the period covered by the last Annual Report, Sonoma County was fortunate that no fatal incidents involving a Sheriff's Office employee took place. While there were two shootings by deputies working with Windsor Police Department in December 2016 and January 2017, neither of those shootings resulted in a death.⁵⁴ Unfortunately, this year saw two additional, significant incidents involving Sheriff's deputies, both in Sonoma Valley, one of which resulted in the death of a suspect suffering a mental health crisis. Both of these incidents remain under investigation at the time of this report.

III. [Biased Policing Investigations and Audits](#)

One of the more significant areas of community concern about law enforcement agencies is the possibility that agency employees may harbor implicit or explicit biases against members of some communities. As the *President's Report* states, "Common sense shows that explicit bias is incredibly damaging to police-community relations, and there is a growing body of research evidence that shows that implicit bias—the biases people are not even aware they have—is harmful as well." It is for this reason that both the *President's Report* and the *CALLE Report* repeatedly emphasize that patrol officers should receive specialized training designed to overcome unconscious biases that may interfere with procedurally just policing.

Sheriff's Office Policy 402, entitled "Bias Based Policing" recognizes these concerns, and forbids "discrimination toward any individual(s) or group because of their race, ethnicity or nationality." It further states that "[a]ll law enforcement members must treat every member of the community fairly without regard to race, ethnicity, age, gender, sexual orientation or nationality." In addition, Sheriff's Office Policy 428 requires the agency's employees to "equally enforce the laws and serve the public without regard to immigration status. No person shall be held solely on the basis of their immigration status. The immigration status of a person, and the lack of immigration documentation, should have no bearing on the manner in which Sheriff's

⁵⁴ The investigations of one of the two Windsor Police Department shootings was completed during the reporting period of this annual report and the audit of that investigation is ongoing at this time. The other Windsor OIS is still ongoing and has not yet been completed.

Office personnel execute their duties.”⁵⁵ The Homeless Person’s Policy recently adopted by the Sheriff’s Office also attempts to remove bias against this group of people from the policing function.

Given the significance of these concerns, IOLERO’s auditing protocols require audits of this these types of investigation, and IOLERO audits every Sheriff’s Office investigation that involves an issue of bias in policing or corrections. For FY 17/18, there was 5 complaints processed alleging bias against Sheriff’s deputies. 3 of those audits resulted in agreement with the investigation’s findings clearing the deputy of a violation. 1 was investigated and referred for an audit on June 20, 2018, but falls outside of this reporting period.

There also was another complaint involving bias in policing that was filed during the previous reporting period and for which the audit was completed in FY 17/18. In that investigation, the issue of biased policing was not investigated and thus no finding was offered on this issue by the Sheriff’s Office. The Auditor found that the allegation should have been sustained.⁵⁶ This complaint was previously reported on in the last Annual Report.⁵⁷

[IV. Constitutional Violation Investigations and Audits](#)

While perhaps not as significant to community members as the above types of potential employee misconduct, alleged violations of the Fourth Amendment to the U.S. Constitution nevertheless remain of significant concern and impact perceptions that a law enforcement agency is procedurally just. Search and seizures, including unlawful arrest, can be incredibly invasive to privacy interests and personal integrity, so alleged violations of these interests must be treated seriously. For these reasons, IOLERO’s auditing protocols require audits of these types of investigation, and IOLERO has audited every Sheriff’s Office investigation since January 2016 that involved an issue of a possible violation of the Fourth Amendment.

For FY 17/18, there were 2 complaints filed alleging an illegal arrest or search and seizure, which were both investigated by the Sheriff’s Office and audited by IOLERO. In 1 case, IOLERO concluded that the search and seizure and arrest in 1 incident was lawful, but that multiple other incidents were not sufficiently investigated to determine whether arrests were lawful. In the other case, IOLERO agreed with the investigation’s finding of exonerated for this allegation. During this same period, there also were 2 other complaints in this category filed prior to FY 17/18, which were processed in some way during FY 17/18. In both, IOLERO agreed with the

⁵⁵ See Appendix for the full text of the Sheriff’s Office current Immigration Policies.

⁵⁶ After fully reviewing the evidence of the investigation, the Auditor concluded that the preponderance of the evidence clearly showed that the statements and actions of the deputy in question exhibited unconscious bias. The Auditor therefore concluded that the finding on the biased policing issue should have been “sustained.” The Sheriff’s Office disagreed with the Auditor’s conclusion but did not reopen the investigation to further analyze and/or investigate this issue raised by the complaint. Due to the nature of the facts of this complaint, the Auditor recommended that this finding was one that did not justify discipline but was more appropriately the subject of additional training for the deputy involved

⁵⁷ Again, the investigation is included in this annual report in order to standardize the reporting period for annual reports, moving forward.

finding of exonerated. In 1 of the 2, however, IOLERO first concluded that the allegations were not sufficiently analyzed to determine whether the search were lawful. Following additional analysis by the investigator, the Auditor reached agreement with the investigative finding.

V. Other Types of Investigations and Audits

As explained above, IOLERO audits the investigation of any type of complaint that is filed with IOLERO. This includes complaints about conduct such as discourtesy that may not rise to as serious a level as the above types of complaints. Ordinarily, lower level complaints against Sheriff's Office employees are investigated by their supervising officer. However, the audit protocols call for the Sheriff's Office Internal Affairs division to investigate even these types of complaints when they are filed with IOLERO.

The investigation of these types of complaints by the Internal Affairs division, when filed with IOLERO, has two distinct positive effects on the process. First, members of the public can file a complaint in which they may have felt disrespected, but were not otherwise harmed, with IOLERO, confident that the complaint will be treated seriously by investigators and will be fully audited by IOLERO. Second, the investigation of lower level complaints by specially trained investigators in the Internal Affairs division of the Sheriff's Office can provide a benchmark within that department for how these types of complaints should be investigated when handled by employee supervisors.

For FY 17/18, there were 14 complaints **filed** that did not fall under the three primary types listed above. Breaking these same complaints down by the individual types of allegation:

- 2 alleged conduct unbecoming a deputy,
- 11 alleged a violation of miscellaneous policies or practices, or practices or procedures that were improper (these allegations covered a range of matters, from retaliation for filing a jail grievance, to lying by a deputy)
- 1 could not be properly categorized

For FY 17/18, there were 19 complaints **processed** in some way that did not fall under the three primary types listed above. Breaking these same complaints down by the individual types of allegation:

- 2 alleged conduct unbecoming a deputy,
- 16 alleged a violation of miscellaneous policies or practices, or practices or procedures that were improper (these allegations covered a range of matters, from retaliation for filing a jail grievance, to lying by a deputy)
- 1 could not be properly categorized

For FY 17/18, there were 8 complaints **audited** that did not fall under the three primary types listed above. Breaking these same complaints down by the individual types of allegation:

- 2 alleged conduct unbecoming a deputy,
- 6 alleged a violation of miscellaneous policies or practices, or practices or procedures that

were improper (these allegations covered a range of matters, from retaliation for filing a jail grievance, to lying by a deputy)

A couple of aspects of this category of complaints are noteworthy. Again this year, IOLERO has received complaints from individuals who appear to suffer from significant paranoid delusions. Such complaints can be difficult to properly categorize. It can be very challenging to gather factual information from a complainant who has difficulty discerning reality from paranoid delusion, as IOLERO staff have experienced first-hand. Other complainants have exhibited such extreme oppositional tendencies that hours can be spent just attempting to gain their cooperation with the process of obtaining factual information.

In multiple cases this year, complainants with mental health challenges filed complaints with IOLERO, quickly became frustrated with some aspect of the process while it was ongoing, then proceeded to significantly harass staff in an abusive way while we still were attempting to complete the audit process. In two cases, a complainant even threatened staff with apparent violence. While staff treated the complainants and their allegations in the same manner as all complainants, such dynamics complicate the work of complaint intake, investigation and audits.

IOLERO staff have spent many hours working with such individuals, who may express their intent to file a complaint, convinced they have been wronged, but also resist cooperating in the collection of information necessary to file that complaint. These same challenges also are present for the investigator of the complaint. Nevertheless, such complaints must be investigated, as it is likely that such individuals will have difficult and complex interactions with law enforcement. For example, mentally ill individuals are more likely to react to deputy commands in ways that are or may appear to be resistant, which may lead to use of force.

IOLERO's audit protocols also call for random audits of a sample of other types of investigations completed by the Sheriff's Office during the reporting period, in order to provide some level of accountability and transparency to the public that these types of investigations also are completed in a complete, fair, unbiased and timely manner. Due to the ongoing challenges experienced with audit timeliness, and a lack of additional staffing resources, it has not been possible to perform these additional random audits this year. Nevertheless, one random audit is currently in process and will be complete in the weeks following the completion of this annual report.

Chapter 7. IOLERO Community Outreach & Engagement

I. Overview of General Outreach Efforts

In its second full year of operations, IOLERO was forced by competing workloads and limited resources to lessen the extent of its robust community outreach and engagement program, laid out in the IOLERO First Year Work Plan. Even so, IOLERO and its Community Advisory Council accomplished significant outreach during the past year. These efforts consisted of meeting hundreds of community members in a variety of settings, including established meetings of community groups, tabling at community events, sponsoring or cosponsoring community meetings, meetings with non-profit service provider staff and clients, and meetings with hundreds of interested individual stakeholders. **The office also conducted a successful focus groups with unhoused individuals residing in the Guerneville area.** This year did not include two important components that were present last year: robust engagement with the undocumented community and community engagement circles.

IOLERO previously developed basic brochures about our role in the administrative complaint process in both English and Spanish, and we have been distributing these brochures through various venues, including community events and placement at the Public Defender, Sheriff's Office, County Jail, La Luz, Vidas Legal, Graton Labor Center, Legal Aid, Rural Legal Assistance, etc. IOLERO has distributed over 1,000 brochures during the last year, 500 each in Spanish and English. Complaint filing information also is distributed through our website, along with complaint forms, in both Spanish and English. In addition, IOLERO has placed over 50 bilingual signs in Sonoma County Transit buses advertising the opportunity for community members to file complaints concerning the Sheriff's Office with IOLERO. The IOLERO website also hosts comprehensive information about how the community can take advantage of the programs offered by the Office.

Illustration 7-A: IOLERO English Brochure

IOLERO OUTREACH
We would like to let you know what we do and how to utilize our complaint process. For more information on the agency or to arrange a staff presentation please contact us at 707-595-1534.

YOUR COMPLAINT MAKES A DIFFERENCE
You are the starting point for civilian review of law enforcement. We rely upon you to bring attention to problems with deputies and department policies. We understand that you may feel strongly about your experience with the Sheriff's Office as a member of their staff, or you would not have taken the trouble to register a complaint.
Your complaint will be kept confidential, help guide policy recommendations and identify trends in the Sheriff's Office.

WHO WE ARE
The Independent Office of Law Enforcement Review & Outreach (IOLERO) accepts, investigates, and acts on complaints against the Sonoma County Sheriff's Office for alleged misconduct.
The office was established by the Sonoma County Board of Supervisors on September 15, 2015, began operating on April 11, 2016, and reports directly to the Board. IOLERO is an independent agency, separate from the Sheriff's Office.

OUR MISSION
To provide independent review of and instill confidence in the complaint process through objective review of administrative misconduct investigations; to conduct outreach to Sonoma County communities; to propose thoughtful policy recommendations to the Sheriff's Office; and to strengthen the relationship between the Sonoma County Sheriff's Office and the communities it serves.

THE INDEPENDENT OFFICE OF LAW ENFORCEMENT REVIEW & OUTREACH
LAW ENFORCEMENT AUDITOR
SONOMA COUNTY
The Independent Office of Law Enforcement Review and Outreach (IOLERO)
707-595-1534 707-595-5716 (toll free)
2300 A County Center Drive, Suite 4211
Santa Rosa, CA 95403
Office Hours: 9am-5pm, Monday-Friday
www.sonomacounty.ca.gov/IOLERO
Law Enforcement.Auditor@sonoma-county.org
www.facebook.com/IOLERO

Text IOLERO to 22828
if you would like to join our email list.

HOW TO FILE A COMPLAINT
The most effective way to file a complaint is to schedule an appointment and come into the IOLERO office. This will allow staff to personally interview you and to document relevant evidence. Other ways to file a complaint are:

- **Call IOLERO.** Complaints may be filed over the phone.
- **Complete and return the complaint form by mail or email.** Complaint forms can be downloaded from our website or IOLERO will mail a form upon request.
- **Send us a letter detailing the incident.** Please be sure to include your address and phone numbers so we may contact you for additional information, if necessary.
- **Contact the Sheriff's Office.** Depending on the nature of your complaint, a copy may automatically be sent to IOLERO. However, if you want to ensure that IOLERO receives the investigation please submit your complaint by one of the methods described above.
- **At the Sonoma and Windsor Police Departments.** The Sheriff's Office contracts with the cities of Sonoma & Windsor for police services, and our office can help if you have a complaint against either of these departments.

When you file your complaint you should receive a copy regardless of how or where it is filed.

Why should you file a complaint with IOLERO?
IOLERO is independent of the Sonoma Sheriff's Office and is staffed by civilian auditors who work to ensure that all complaints receive a fair, objective, and timely investigation. If sustained, a complaint may result in discipline against a deputy, including possibly dismissal in serious cases. Filing a complaint **DOES NOT SATISFY** statutory requirements for initiating a lawsuit against the county. That is a separate process.

Who can file a complaint?
A complaint may be filed by any individual directly affected by alleged misconduct (including witnesses). You do not need to be a resident of Sonoma County nor a U.S. citizen to file a complaint. The Sheriff's Office does not tolerate retaliation against complainants.

Important Information When You File
When you file your complaint please include the following information in your description of the event:

- The day, time and exact location of the incident;
- The officer's name, badge number, description and vehicle or license number (if available);
- Witnesses' names, addresses, and telephone numbers;
- License number for any vehicles involved in the incident;
- Any other evidence you feel may be important such as copies of citations, photographs, hospital records, etc.

If a criminal case is pending against you, you should speak with your attorney before filing a complaint.

The Complaint Process
Once the complaint has been filed, the investigation will be conducted by the Sheriff's Office, with review and input by IOLERO. Our office will monitor and audit the investigation to ensure it is timely, unbiased and complete.
After the Sheriff's Office concludes its investigation, it will forward its report to IOLERO for its review. IOLERO will then conduct an audit to ensure that the investigation and the resulting report are thorough and unbiased. At the conclusion of its audit, IOLERO will inform the Sheriff's Office if it disagrees with the findings of the Sheriff's Office and/or has concerns about the investigation process. IOLERO will attempt to resolve differences with the Sheriff's Office over these issues, such as by requesting additional investigation or a reconsideration of the findings of the investigation.
Should no agreement be reached, the Sheriff's Office will notify the complainant of its findings. IOLERO will notify the complainant whether it agrees with the findings of the Sheriff's Office's investigation, as well as whether IOLERO believes that the investigation was conducted in a thorough, unbiased, and timely manner.

When should you file?
A complaint should be filed when you feel a member of the Sheriff's Office has acted improperly in the course of their work. Whether the complaint is related to discourteous treatment, excessive force, or any other action you feel to be wrong, we want to know about it. While IOLERO encourages you to sign your complaint to assist with investigations, we will take anonymous complaints if necessary.

IOLERO staff currently are in the process or redesigning the IOLERO brochure to more fully encompass the various missions of the office, rather than focusing solely on complaints. We hope to have that effort complete by the end of this calendar year.

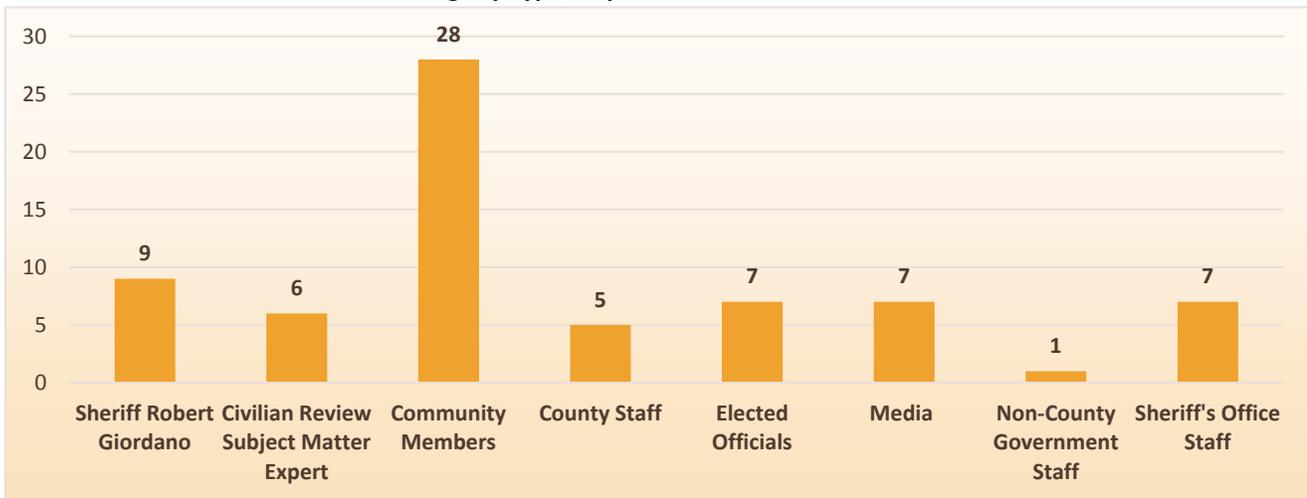
Illustration 7-B: IOLERO Bus Advertisements



This year, the IOLERO Director held over 71 individual meetings with around 100 individuals, ranging from community members, to county government staff and officials, to civilian oversight experts, to media employees. In addition, IOLERO has participated in over 53 separate community meetings/events, reaching over 1,400 individuals who learned about IOLERO and its mission and programs.⁵⁸

Since IOLERO began operating the IOLERO Director has held over 253 individual meetings with around 416 individuals. During that same period, IOLERO has participated in over 120 separate community meetings/events, reaching over 3050 community members who learned about IOLERO and its mission and programs

Illustration 7-C: IOLERO Director Meetings by Type, July 2017 to June 2018



⁵⁸ See Appendix for a detailed list of the Director's meetings during the reporting period covered by the Annual Report.

Illustration 7-D: IOLERO Participation in Community Events and Meetings by Type, July 2017 to June 2018

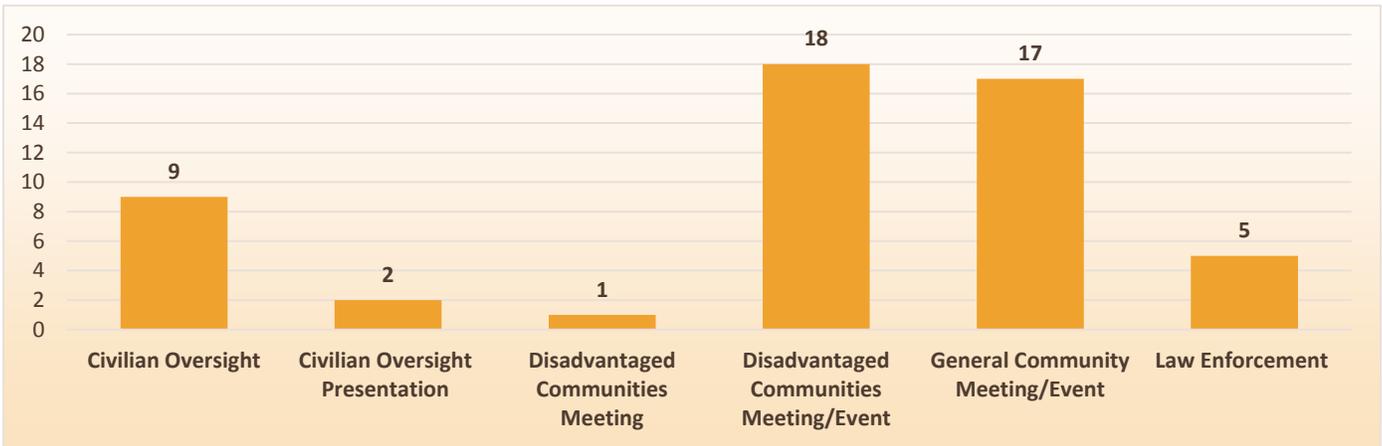
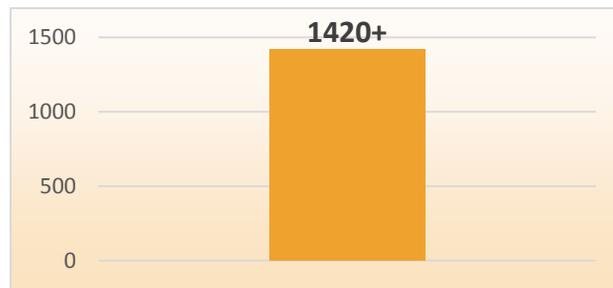


Illustration 7-E: Total individuals Reached Through Outreach Activities, July 2017 to June 2018



II. Outreach Targeted to Disadvantaged Communities

Over the period covered by this report, IOLERO participated in 19 individual community events focused on the county’s disadvantaged communities, reaching over 587 individuals through those efforts. Of those 19 community events, 14 focused on the Latinx/immigrant communities, while 3 focused on the Black/African-American community, 1 focused on the LGBT community, and 1 focused on the homeless community.

Since IOLERO began operating, IOLERO has participated in 47 individual community events focused on the county’s disadvantaged communities, reaching over 1,240 individuals through those efforts. Of those 47 community events, 37 focused on the Latinx/immigrant communities, while 7 focused on the Black/African-American community, 2 focused on the LGBT community, and 1 focused on the homeless community.

This past year did not see the intense focus on the undocumented immigrant community that was described in last year’s report, although the office continued to target that population. The Director participated in meetings in each supervisorial district on the County’s Immigration Initiative, explaining to attendees the role of IOLERO in the process of ensuring that deputies

comply with policies forbidding the targeting of immigrants, as well as our work on recommending changes to the immigration policies of the Sheriff's Office. In addition, IOLERO participated in serving victims of the fire disaster, including advocating for improved services to the undocumented immigrant community, which was most vulnerable to the fires' impacts.

In addition, this year the Director worked closely with a respected and skilled Peer Advocate, Kalia Mussetter, to organize a facilitated focus group with unhoused residents of the Guerneville area of the Russian River in Supervisorial District 5. The meeting with around 15 local residents proved to be very valuable in several areas, including educating this community about IOLERO and its mission; explaining law enforcement procedures, including the rights of community members in that process; and establishing more trust in county government, including IOLERO. We also gathered information directly from community members about their concerns and experiences with law enforcement and how their status as a homeless individual affects both their perceptions of law enforcement and law enforcement perceptions of them. As a result of this meeting, at least two substantive complaints came to the attention of IOLERO and the Sheriff's Office that otherwise may never have been shared.

III. IOLERO's Community Advisory Council

In October 2016, IOLERO's Director appointed a very diverse group of 11 members to IOLERO's CAC and the body began holding monthly Brown Act meetings in December 2016. During the last fiscal year, the CAC lost two members, who the Director has yet to replace through appointment. CAC membership consistently has included predominately people of color and women. Currently, there are members in the following demographic categories⁵⁹: 4 White, 4 Latinx/ Hispanic, and 1 Black/African-American. In addition, there are 3 male and 6 female members. Members represent every area of the county and a rich diversity of experiences and backgrounds. 5 of the members speak Spanish.⁶⁰

Each of the CAC meetings has been attended by about 20- 50 community members of diverse ideological, geographic, and demographic backgrounds, many of whom do not regularly interact with County government. With support from IOLERO staff, the full participation and cooperation of the Sheriff's Office, presentations from subject matter experts, and robust public input, the CAC meetings have been informative, meaningful, and impactful.

Over the last fiscal year, the CAC has examined multiple policies and practices of the Sheriff's Office, carefully reviewing information provided by their staff, input from the public and outside subject matter experts, and relevant studies and reports provided by IOLERO staff that discuss how other jurisdictions may handle the matter. Among the policy and practice areas in which the CAC has made recommendations over the past year have been: 1) body worn camera and other video recording policies; 2) perceived and actual conflicts of interest of agency

⁵⁹ There currently are 2 vacancies on the CAC due to the resignation of a Black/African American female member who relocated to Los Angeles for employment, and the Director's decision not to reappoint a Black/African American male who was unwilling to commit to regular attendance at meetings.

⁶⁰ See Appendix for biographies of the current CAC members.

employees; 3) drone use by the agency; and 4) Sheriff's Office interactions with homeless individuals.

The process of reviewing these areas of policy and practice has been a collaborative one between IOLERO, the CAC, and the Sheriff's Office. For example, IOLERO and the CAC initiated a conversation with the Sheriff's Office over their **drone policies** after the Press Democrat revealed that the office owned several drones but had not yet adopted a policy to guide their use. This led to the Sheriff's Office requesting that the CAC hold meetings to collect public input to assist the agency with adopting a drone policy. Several meetings of the CAC have provided such input to the Sheriff's draft drone policy.

In addition, the CAC also initiated a discussion with the Sheriff's office on the policies guiding the interactions of agency employees with the **homeless**. These public hearings of the CAC lasted several months and resulted in multiple recommendations to the Sheriff's Office from the CAC. The Sheriff's Office recently adopted its first policy to guide its interactions with the homeless, and it is evident that the public input and feedback through the CAC process was given significant consideration in the adoption of the new policy.⁶¹

Since May 2018, the CAC has been engaged in a review of the **Use of Force** policies of the Sheriff's Office. This area of policy is the most impactful on all parties involved in incidents that involve force, whether they are Sheriff's employees, Sheriff's management, members of the public, or bystanders, or the families of those individuals. Policies and practices around use of force also tend to be the most polarizing of any area of focus involving law enforcement. At the same time, many members of the public lack a solid understanding of the actual policies and practices of law enforcement agencies and why they may be in place, either legally or practically.

Given all these considerations, IOLERO has designed the CAC review process in this area to be a considered and deliberate one. CAC members and IOLERO staff have undertaken specialized training in this area from Sheriff's staff, and will continue to do so as the need arises. The CAC is hearing presentations from many perspectives in this area in order to best understand the impacts on those involved of these policies and practices, as well as the different interests underlying them. The process is likely to last more than a year.

CAC members also have played a key role in IOLERO's ability to conduct adequate outreach this fiscal year. Several of the members have gone the extra mile to help IOLERO staff tabling at key outreach opportunities, such as the Roseland and Sonoma Cinco de Mayo celebrations and the Andy's Unity Park Grand Opening. In addition, some members have held informal community meetings of their own outside of the formal CAC meetings to gather input from the community about particular policies, such as use of force.

⁶¹ See Appendix for the Sheriff's Office's new Homeless Policy.

This year, the CAC also co-sponsored an invaluable public forum designed to educate the public on the positions, visions, and experience of the various candidates for Sheriff. In April 2018, this public forum was well attended and received significant coverage in the Press Democrat. Participants universally praised the innovative and informative format designed and implemented by the CAC and its community partners. This forum served well the education mission of the CAC. It also was a valuable opportunity for the Community Advisory Council to partner with community and civic groups and interest them further in the missions of IOLERO.

What is clear from this year's efforts by the CAC is that the body has performed a significant service in successfully bridging the gap between the Sheriff's Office and the communities of the county, just as envisioned by the CALLE Task Force. This role has been of considerable value both for the communities reached through these efforts, and for the Sheriff's Office in receiving key public input on its policies and operations. These efforts were the result of many hours of volunteer time by CAC members outside of their own commitments to jobs and family, as well as IOLERO staff support for this process. The CAC members have demonstrated a remarkable commitment to public service during a year of intense challenges and change and their service deserves all of our thanks.

While this report elsewhere considers the possibility of changes to the current model under which the CAC operates, the county would be ill advised to consider stepping back from the key role that the Community Advisory Council serves in this new process. It is truly invaluable.

Illustration 7-F: Director Threet with current CAC Members (from left to right: Alma Roman Diaz, Maria Pacheco, Jim Duffy, Ramon Meraz, Vice-Chair Rick Brown, Emilia Carbajal, Jerry Threet, Chair Evelyn Cheatham, Joanne Brown, and Elizabeth Cozine.



IV. IOLERO's Website and Social Media Presence

The IOLERO website has been up since August 2016, providing a great deal of complex information in a clear and simple manner. The website provides multiple paths for members of the public to interact with IOLERO and the CAC, and clearly explains the various programs and initiatives sponsored by IOLERO. IOLERO also has a Facebook presence that has proven a productive outlet for further dissemination of messages and information, as well as contact from the public interested in filing a complaint.

Illustration 7-G: IOLERO website example



Illustration 7-H: IOLERO Facebook page



V. IOLERO Youth Video Project

This year IOLERO is sponsoring a project to develop educational videos targeted to youth that will explore their rights in law enforcement encounters, the lawful authority of peace officers in such encounters, and also the best way to handle situations where youth are interacting with a peace officer during an incident. IOLERO has partnered with Sonoma State University professor and local filmmaker and videographer, Malinalli Lopez, to develop the videos and distribute them through social media. Ms. Lopez is developing the scripts, filming the videos, and developing social media distribution strategies with students in her Chicano and Latino Studies classes at Sonoma State. The project includes bringing in speakers from the local law enforcement community to talk with the classes about these and other issues. The project should prove very interesting and a significant opportunity for outreach to and engagement with Latino youth in the County.

County.⁶³ As previously discussed, IOLERO was unable to organize and put on a Community Engagement Circle during this last fiscal year. The Office was aiming to hold such a circle in the Moorland neighborhood, first in the winter of 2018, then in the early summer of 2018, but related events and community feedback both counseled against it. Developments in the Andy Lopez lawsuit and the opening of Andy's Unity Park heightened tensions among some, so this effort was postponed for now.

The best use of Community Engagement Circles is to help bridge difference between the Sheriff's Office and communities that may have a distrusting relationship with that agency. The circle process allows all parties to speak their piece in a manner that is safe for everyone but also honors each person's truth. The process breaks down barriers and stereotypes that tend to cause individuals to dehumanize members of other groups from which they may feel alienated. Getting to the point of conducting a successful circle itself takes a fair amount of preparatory work, especially with members of a distrusting community. This preparatory work is resource intensive and typically occurs in multiple, small meetings over several weeks or months.

IOLERO did not have sufficient resources to attempt to organize more than one circle this year, but did seek additional resources to help organize these efforts without success. First, IOLERO applied for and was approved to hire a member of the VISTA program to assist with community engagement projects such as the circles. Unfortunately, the preliminary approvals by local VISTA program managers were later vetoed by VISTA upper management due to IOLERO being a government agency. This set back IOLERO's community engagement efforts. IOLERO also sought to find grant money to support these efforts, but was unsuccessful.

The Sheriff's Office continues to express its support for IOLERO's mission to conduct Community Engagement Circles to bridge the gaps between the Sheriff's Office and distrusting communities. Despite this vocal support, the Sheriff's Office has not responded to IOLERO's requests to discuss and jointly apply for community engagement grant funding, including funds available at the state level during the past year. Santa Rosa did apply for such grant funding this last year and was awarded a grant in the amount of \$500,000 to support its youth engagement programs. Grant applications that involve cooperative approaches between government agencies and possibly non-profit partners are favored in such grant processes.

IOLERO hopes in the future to be able to apply for and obtain such grant funding. IOLERO recently proposed to the Sheriff discussing a proposal that would involve the Sheriff's Office,

⁶³ IOLERO's efforts in organizing and sponsoring these circles were recently recognized for their innovation and contribution to community engagement in civilian review in a review of the City of Davis' civilian review system and how it might be improved. Citing the success of IOLERO with circles in Sonoma County, respected civilian review consultants Barbara Attard and Kathryn Olson recommended that Davis adopt a similar approach in a newly designed civilian review department that moved away from the "audit only" model. See "Stakeholder Engagement on Police Oversight for the City of Davis, California," April 10, 2018, Kathryn Olson, Change Integration; Barbara Attard, Accountability Associates. <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CityCouncil/CouncilMeetings/Agendas/20180410/08-Police-Oversight-Recommendation.pdf>

IOLERO, and Restorative Resources, in creating Community Engagement Circles in several areas of the county.⁶⁴ The proposal also would consider a circle process in the Main Adult Detention Center that would include current and/or former jail inmates (and their families) and jail staff. The Sheriff's Office, as yet, has not responded to this proposal. The circle process has proved successful in many jurisdictions, as well as here in Sonoma County, and it holds much promise if sufficiently supported with adequate resources.

b. Community Focus Groups

Although IOLERO conducted no Community Engagement Circles last year, the Office did consider organizing a circle that involved unhoused individuals living in the Guerneville area of the Russian River. After discussing the needs and challenges of this population with those most familiar with them, IOLERO shifted from the concept of holding circles between law enforcement and homeless community members, to an alternative approach more attuned to community needs. In part, this shift was based on reports by those who understand the community best that members of this very vulnerable community were unlikely to feel safe attending a circle process with deputies, even if facilitated. As a result of these discussions, IOLERO instead chose to organize a focus group with members of this community.

The community focus group with homeless residents took place in March 2018 at the Russian River Empowerment Center in Guerneville.⁶⁵ The meeting involved about 15 area residents without stable housing, most of whom live outdoors. The organizing and facilitation of this meeting was greatly assisted by a compassionate, creative, and talented Peer Counselor named Kalia Musseter. Ms. Musseter was invaluable in helping "translate" concerns and concepts across some of the cultural and knowledge gaps involved in a meeting between a government official and individuals who have lived without stable housing for many years. It likely would not have been a success without the able assistance of Ms. Musseter.

The focus group was very helpful to IOLERO in learning homeless individuals' perceptions of the challenges and concerns they experience in their interactions with the Sheriff's Office, particularly in the Russian River area. This information was carried forward into the process of the IOLERO Community Advisory Council's review of homeless policies for the Sheriff's Office, as well as recommendations in that area made elsewhere in this annual report. The focus group meeting also resulted in two substantive complaints filed by individuals who attended that meeting, which are working their way through the investigation and audit process.

⁶⁴ This proposal is based on the various project components that made the IOLERO sponsored circles successful in Sonoma Valley in early 2017, and estimates a budget of \$50,000 per circle for the non-profit organization to do the same. This provides yet another independent benchmark for the resources necessary for community engagement of this kind to be successful.

⁶⁵ The Empowerment Center, a program of West County Community Services is open to membership to anyone, and focuses on folks who are interested in working on their own mental or behavioral health issues or working with others who face such challenges. It is a peer based model where those who work there also identify as working on their own mental and behavioral health recovery.

Chapter 8: Law Enforcement Training & Outreach

I. Overview

The relationship between any civilian review office and the law enforcement agency it is charged with reviewing is inherently a complicated one. IOLERO was established to provide civilian review of the Sheriff's Office following a very divisive period, during which some members of the local law enforcement community felt unfairly vilified by the press and some members of the public. Almost 3 years after being established, some Sheriff's Office employees and their supporters continue to look with some skepticism at this new office and its staff. Are they "out to get" deputies? Do they have "an agenda"? In addition, the Director of IOLERO is as a civilian "outsider" in relation to the Sheriff's Office, lacking the intimacy with the organization and culture of the Sheriff's Office that comes with a career within the agency. How could anyone who was not from law enforcement, much less the Sheriff's Office, ever understand their world sufficiently to review allegations of employee misconduct in an "objective" manner?

Such reactions are common ones that often accompany the operation of a civilian review agency. They are not unique to Sonoma County but are reported by civilian review professionals throughout the nation. Given the function of civilian review, it may be unrealistic to expect that the law enforcement management or rank and file will ever feel completely at ease with civilian review agencies, except perhaps for those employees who are assigned to work most closely with them. Nevertheless, such concerns deserve to be addressed. Because questions like these persist, spoken and unspoken, the IOLERO Director continues efforts to undergo training offered by the Sheriff's Office, to meet staff of the Sheriff's Office, and to do outreach to the local law enforcement community. These efforts have been ongoing and productive, with feedback indicating that many in the Sheriff's Office have reached a level of relative comfort with the civilian review process.

II. Participation in Training

In the first year of operation, IOLERO staff received comprehensive training by the Sheriff's staff in the practices and policies of the agency. During the last fiscal year, the IOLERO Director requested from the Sheriff's Office 4 separate, multi-hour trainings designed to educate both the Director and the members of the IOLERO Community Advisory Council about the policies, practices, and training of the Sheriff's Office around Use of Force. The trainings included information about the agency's use of force policies and practices in both the jail and patrol divisions, its accountability system for employee violations of policy and practice, and its recruitment and background investigation process for new employees. The training also included a session for each participant in the agency's use of force simulator, which is designed to simulate an unfolding scenario that may or may not involve use of force. Such training is especially important in light of the Community Advisory Council taking up a review of the Sheriff's Office's use of force policies this last year, which is ongoing at this time. More recently, the Director participate in an updated Ethical Use of Force training offered by jail management for detention division staff in light of ongoing issues around use of force in the jails.

Since April 2016, the Director has taken part in over 22 training events that involved training specific to the Sheriff's Office, including multiple general orientation sessions, internal affairs investigations training, use of force training, firearms training, multiple field officer trainings for new hires (including high risk stops, building searches and SWAT), crisis negotiation, jail booking, mentally ill inmates, "ride-alongs", etc.⁶⁶ These more formal trainings have been supplemented with many hours of discussion with staff of the Sheriff's Office and review of that agency's formal policies during audits. Prior to announcing his intention to retire, the Director had been arranging refresher training in all of the areas previously undertaken in the first year of IOLERO operation.

Early in the audit process in 2016, this training was supplemented by an active give and take process that was included in the IOLERO audit protocols, which provide for discussion between IOLERO and the Sheriff's Office when the agencies reach different findings for a particular investigation. The frank exchange of views over these difference was a rich source of learning for IOLERO staff about how the agency viewed its policies and practices. Not only was this process valuable for the Director, Sheriff's staff have shared that it was valuable for their office. Unfortunately, after initially embracing this process, the Sheriff's Office has not engaged in this type of discussion over differences in the last year of audits.

In addition, IOLERO this year invited the Sheriff's Office to send its new liaison to IOLERO, Lt. Eddie Engram, to the 2018 annual conference of the National Association for Civilian Oversight of Law Enforcement ("NACOLE"), which offers 5 days of training in civilian oversight topics. The conference offers a unique opportunity to gain insight into the practices and philosophies underlying civilian review of law enforcement. It also helps resolve common misunderstandings of the role of civilian review. Unfortunately, Lt. Engram was unable to attend.

IOLERO requested in last year's Annual Report opportunities to present training to Sheriff's Office staff on the function and operations of IOLERO, to further increase understanding and comfort with the Office. Unfortunately, no such opportunities were provided during the last fiscal year. In addition, IOLERO requested in last year's Annual Report and on multiple subsequent occasions an opportunity to participate in regularly scheduled monthly "ride-alongs" and "walk-alongs" with individual deputies from both the patrol and detention sides of the agency. These opportunities also were not made available during the last fiscal year, although the agency did allow some members of the IOLERO Community Advisory Council to go on a ride-along. These types of opportunities are key to overcoming misconceptions and distrust of civilian review, and IOLERO again recommends such access.

⁶⁶ While the Director has requested on more than one occasion to be allowed to sit in on the Crisis Intervention Training sponsored by County Behavioral Health and offered to local law enforcement officers, this access has not been granted. IOLERO has continued to advocate for an opportunity to participate in this important training opportunity, but the agency believes the presence of the Director would inhibit full participation in the training by those it is designed to educate.

III. Outreach to Law Enforcement Groups

In addition to formal training, and informal discussions with Sheriff's Office staff, the Director has continued over the last year to participate in opportunities for outreach to members of local law enforcement agencies and related groups. The Director has met and been in regular contact with the leadership of the Deputy Sheriffs' Association, which represents patrol deputies, as well as with the Sonoma County Law Enforcement Association, which represents correctional deputies. The Deputy Sheriff's Association President, Mike Vail, and its lead attorney, Mike Raines, were both invited by the Director to make presentations to the IOLERO Community Advisory Council on use of force. They are currently scheduled to appear at the CAC meeting in October 2018.

Also, the Director has presented on multiple occasions to classes of cadets at the Santa Rosa Junior College Police Academy located in Windsor, many of whom are sponsored by the Sonoma County Sheriff's Office. These presentations have presented rich opportunities for complex, frank discussions with cadets (who are very bright, curious, and well-informed) about the challenges, tensions, and value involved in civilian review of law enforcement. These valuable exchanges help future law enforcement leaders become familiar with the role of civilian review of law enforcement. Former Sebastopol Police Chief Jeff Weaver has been a wonderful partner in facilitating this opportunity.

Chapter 9: IOLERO Policy Recommendations

I. Overview

One of IOLERO's key missions is to review the policies and practices of the Sheriff's Office and make well-founded recommendations on any changes that would improve them. One source of such recommendations is the information gathered from audits of investigations that reveals how policies and practices are actually working in the field. Other sources of recommendations include a review of best practices employed by other law enforcement agencies across the country, as well as input from the public.

As both the President's Report and the CALLE Report make clear, one advisable improvement to policies and practices for every law enforcement agency is community input into their content. IOLERO therefore has incorporated its Community Advisory Council into this process in order to provide a ready vehicle to gather public input into the policies and practices of the Sheriff's Office. In addition to public input through CAC meetings, IOLERO directly engages with communities that may be most affected by particular policies and practices.

Over the past year, IOLERO has focused its policy recommendations mainly on efforts to clarify and publicize responses of the Sheriff's Office to recommendations made by IOLERO in individual audits. This is important because policy recommendations in confidential audits, and the Sheriff's responses, otherwise will not come to the attention of the public. A key mission of IOLERO is to increase transparency of the operations of the Sheriff's Office, as transparency is considered an inherent value necessary to increase trust among communities that historically have distrusted the agency. In addition, in FY 16/17 the Board of Supervisors indicated their desire that IOLERO prioritize audits, with some supervisors suggesting that policy recommendations should flow only from the audit process.

The Sheriff's Office generally has been open to IOLERO's recommendations, cooperated in providing information necessary for policy reviews, and in several cases has implemented policy changes as a result. The collaboration in this area has been largely successful, thus far. However, the agency's reception to more recent IOERO policy and practice recommendations has been mixed.

II. IOLERO's Policy Recommendations on Investigations and Audits

In March 2018, IOLERO sent to the Sheriff a list summarizing policy recommendations previously made in audits, as well as IOLERO's belief about the agency's response to each recommendation. The list included audit recommendations dating from summer 2016 up to February 2018. The Director requested that the Sheriff's Office clarify the accuracy of the information in the list, and communicated that IOLERO intended to publicize the list in the future. The Sheriff objected to this proposal, arguing that publicizing the list would undermine

IOLERO's mission to improve relationships between the Sheriff's Office and the public. The Sheriff also asserted that the proposal seriously undermined relationships that had been built between the two agencies over the course of the previous two years. Although IOLERO disagrees strongly with this perspective, the Director agreed to a series of meetings with the Sheriff to discuss how to move forward to achieve transparency in this area. These multiple meetings took place over a period of several weeks from mid-April until June 2018.

As a result of these meetings, the Director agreed to the Sheriff's proposal that IOLERO package related recommendations into a series of documents containing clearly articulated policy recommendations. For example, all recommendations that relate to video camera policies would be in one document and all recommendations related to investigations would be in another document. The Director informed the Sheriff that the first set of recommendations likely would address improvements in investigation practices, as certain deficiencies identified in previous audits had persisted in subsequent audits. In addition, a recent audit of the investigations of the "yard counseling" incidents in the jail had revealed additional serious issues with those investigations. Under this agreement, IOLERO was to send the recommendations to the Sheriff and the Sheriff would respond yes or no to each proposed policy change. The recommendations and the Sheriff's response would then be published.

In late July, IOLERO sent the Sheriff this first set of recommendations on policies and practices related to investigation and audits, requesting that the agency notify IOLERO of any inaccuracies or concerns, and indicating that IOLERO would like to publish the recommendations and responses of the Sheriff in the near future. The Sheriff this time absolutely objected to publishing the recommendations, insisting that the only method appropriate to publish such recommendations was through the Annual Report. The Director rejected this assertion, as it was inconsistent with the prior practice of the two agencies, with the authority of IOLERO as set out in the IOLERO Ordinance, and it interfered with IOLERO's independence. The Sheriff eventually agreed to provide written responses to each recommendation within 30 days from receipt of the IOLERO recommendations.

In September 2018, the IOLERO recommendations, the Sheriff's responses, and IOLERO's comments on those responses, were published on the IOLERO webpage for public review. A copy of those documents also are attached to this annual report for reference. The 36 individual recommendations include multiple suggestions for improving the quality of administrative investigations, some of which continue to suffer from deficiencies identified in past audits. There are multiple recommendations for providing IOLERO unfettered, direct access to specific sources of evidence used by the internal affairs investigators of the Sheriff's Office, so that IOLERO can provide the public independent assurance that investigations are complete. And there are policy recommendations to prohibit involvement of agency employees in any investigation that may present an actual or perceived conflict of interest, so as to avoid erosion of public trust.

III. Homeless Policies

Starting in November 2017, and continuing until May 2018, IOLERO's Community Advisory Council held hearings on the policies and practices of the Sheriff's Office that apply during the agency's interactions with homeless individuals. These hearings were thorough and included consideration of how agency employees interact with homeless community members in the field, in the courthouse (where deputies provide security), and in the detention environment. The CAC heard from Sheriff's Office representatives in multiple meetings, as well as from advocates and services providers that work with unhoused individuals. Sheriff-elect Mark Essick represented the office in much of this process, and indicated the openness of the agency to adopting a policy to guide employee interactions with the homeless.

Presentations were made by Homeless Action, an advocacy group of and for homeless individuals and their allies; and by the owner of the Palms Inn, a supportive housing facility for formerly homeless individuals. One meeting was dedicated to hearing directly from those who had experienced or were experiencing homelessness. There was much public comment during the CAC meetings from those with experience of homelessness. In addition to the CAC meetings, the CAC Homeless Working Group met outside of the meetings with Sheriff's Office representatives with knowledge of the areas in which they had questions or needed additional information. Also, the Director met with homeless advocates, service providers, and Sheriff's representatives, as well as conducting a facilitated focus group with homeless residents of the Guerneville area.

As a result of the CAC hearings, the CAC adopted a set of recommendations for the Sheriff's homeless policies.⁶⁷ In August 2018, the Sheriff's Office adopted a new Homeless Policy that incorporates many of the concepts articulated in the CAC recommendations.⁶⁸ The new policy clearly evidences that the Sheriff's Office seriously considered the public input during the CAC meetings on this topic area, and sought to incorporate this feedback to the extent logistically possible.

While the new policy may not satisfy everyone, this policy represents a significant step by the Sheriff's Office in interacting with the homeless communities of the county, in a manner that promises to better honor their inherent dignity and humanity. It demonstrates that the Sheriff's Office is open to community input and is responsive to the recommendations of IOLERO and its Community Advisory Council.

The new Homeless Persons policy contains several helpful provisions. It begins with this overall policy to guide interactions with this population

It is the policy of the Sonoma County Sheriff's Office to provide law enforcement services to all members of the community, while ***protecting the rights, dignity***

⁶⁷ The CAC homeless policy recommendations are included in the Appendix.

⁶⁸ The Sheriff's Homeless Persons policy is included in the Appendix.

and private property of the homeless. Homelessness is not a crime and members of the Sheriff's Office ***will not use homelessness solely as a basis for detention or law enforcement action.*** However, sometimes homeless encampments can impact the ecology and natural resources of the community and may involve criminal offenses beyond mere littering. We must also take into consideration our commitment to protect the best interests of the public, ensuring public areas remain accessible and available to the public at large for their intended uses. In some cases, Deputies may have to notify other appropriate agencies or departments when a significant impact to the environment has or is likely to occur. Significant impacts to the environment may warrant a crime report, investigation, supporting photographs and supervisor notification. [Emphasis added]

The new policy designates a Homeless Liaison Coordinator for the agency with responsibility for coordinating Homeless Liaison Deputies in each patrol district. The Coordinator will be the point person for the office to keep and distribute lists of resources for homeless persons, meet with organizations that provide services for the homeless, keep abreast of laws governing removal and destruction of property of the homeless, ensure that the rights of homeless people are honored during clean-up or enforcement actions, and spearhead specialized training for deputies in this area. This will be a key agency position for these purposes.

Importantly, the new policy de-emphasizes arresting and booking homeless persons into jail, and emphasizes instead connecting the homeless with services. The policy also includes very helpful direction to employees on providing homeless crime victims with the same level of service as other victims, and offers guidance for how to do so in light of their special circumstances. It also provides a helpful framework for how to deal with property if a homeless person has been removed by deputies or is not present when the property is found. The framework includes a list of important items that should be collected and stored unless sanitation issues prevent it.

IOLERO commends the Sheriff's Office for a very admirable effort to address the special needs and considerations of homeless persons during police encounters. IOLERO also recommends that the Sheriff's Office consider further developing its policies as they relate to interactions with homeless persons in the jail.

For example, the jail's booking policy generally considers criteria such as an individual holding a job, living in stable housing, and having a family, when considering whether they are at risk for not attending their arraignment. However, for a homeless person, many of those criteria may be absent, which could make it likely they would be booked rather than released. The Detention Division therefore should consider and assess possible alternative criteria to decide whether to book a homeless person or release them pending arraignment. Similarly, the jail should have in place an assessment process designed to determine whether a person booked into jail is homeless, and whether there may be government benefits and services for which they qualify that may be helpful for them. This process also could begin an effort to connect

appropriate individuals with housing and other services that might assist them in moving out of homelessness, and thus lessening their likelihood to be booked for additional stays in the jail. The jail could then begin the process of offering “re-entry” services to such homeless persons upon their release from custody.

Finally, the Sheriff’s Office might consider the advisability of utilizing the expanding Mobile Support Team to respond to certain calls for service known to involve homeless encampments and that may involve persons facing mental or behavioral health challenges. The IOLERO Community Advisory Council hearings on homelessness and the IOLERO Homeless Focus Group both revealed that many homeless persons carry with them trauma related to interactions with law enforcement. Homeless people generally expressed a desire to avoid interactions with law enforcement, where possible. These factors can cause enforcement actions to have a potential for escalation in unexpected ways. The involvement of mental health professionals in such incidents may increase the efficacy of the interactions and reduce the trauma that homeless persons may otherwise experience.

The collaborative work of IOLERO, it’s Community Advisory Council and its Homeless Working Group, community members and homeless advocates and service providers, and the Sheriff’s staff, have produced a new policy that has great potential to assist the Sheriff’s Office in effectively and compassionately serving the needs of the homeless community and balancing such service with the needs of the greater community. This effort has demonstrated clearly the value of the CAC process in bringing public input to the Sheriff’s Office on policy issues, as well as the value of the IOLERO mission of policy review and recommendations.

IV. IOLERO’s Video Camera Policy Recommendations to the Sheriff’s Office

IOLERO previously made some recommendations regarding body worn cameras in connection with its audits of investigations.⁶⁹ Among these were the following:

1. deputy discretion be further limited regarding initiating and terminating body worn camera videos, perhaps by keeping them running at all times as a default;
2. require body worn camera video operation for transport and booking of a suspect, as well as for transport to a medical facility for 5150 commitment;
3. consider ways to share body worn camera video with the public in deputy uses of force that are of significant public interest.; and
4. explore ways to share body worn camera video with complainants, either through the investigative process or in a mediation setting.

a. Continuous Operation of Body Worn Cameras Once Initiated

The Sheriff’s Office informed IOLERO in March 2018 that the agency changed its policies to require that body worn cameras be continuously operated once initiated until a law

⁶⁹ See Appendix for the Sheriff’s Office current Body Worn Camera policy.

enforcement encounter concludes with the deputy turning over custody of a suspect to another and exiting the encounter or the release of the suspect. This notification suggested that the agency was accepting recommendations 1 and 2 from the last Annual Report. However, a review of the text of that policy revealed that the agency actually had not changed the policy. While the Sheriff's Office may have changed deputy training to reflect these recommendations (and the agency should clarify if training has changed on this issue), holding deputies truly accountable for compliance with the changes requires that they be included in written policy. Unless changes are enshrined in written policy requirements, the agency will face significant challenges to finding that a deputy has committed misconduct and imposing discipline for such a breach of policy. A failure to change the policy communicates to deputies that the change in behavior is not truly a priority for the agency.

b. Body Worn Camera Compliance Audits

Over a year ago, IOLERO recommended to the Sheriff's Office that the agency audit compliance with their body worn camera policies, as there had been a sufficient period of training and experience by deputies with the cameras to expect such compliance. IOLERO was informed by the Sheriff's Office over the past year that it was undertaking an audit of deputy compliance with body worn camera policy requirements. IOLERO requested information about this audit from the Sheriff's liaison to IOLERO in order to share the audit results with the public in this report. Unfortunately, the only information that was returned from this request was a simple statement: "Sheriff's Office deputies are complying with the BWC policies."

Unfortunately, IOLERO has seen examples of non-compliance with these policies in audited investigations over the last year, so this conclusory statement that deputies are complying with the policy is at best incomplete.⁷⁰ IOLERO recommends that the agency share details of its audit in this area so that the public can understand the exact level of compliance and what challenges, if any, may remain in the area of compliance with body worn camera policy requirements. This is even more important in light of the agency's stated intentions to outfit all correctional deputies with body worn cameras. IOLERO also recommends that there be regular audits of compliance with these policies as a measure to help ensure ongoing compliance. When complaint investigations reveal violations of the policy, there should be meaningful discipline as a result, to ensure that employees clearly understand that the agency is serious about compliance with these policies.

⁷⁰ A violation of video policies ordinarily would not come to IOLERO, either as a complaint (a complainant usually would not know whether a camera was operating or not during an incident) or as an automatic referral by the Sheriff's Office. Therefore, compliance with body worn camera policies would be an incidental issue raised by review of the camera video during an investigation or audit. Thus, the Auditor has no ability to assess independently the frequency of such issues. Nevertheless, the fact that non-compliance showed up in audits anyway, yet was not analyzed by Internal Affairs investigators, is concerning.

c. Sharing Body Worn Camera Video with the Public

Last year, IOLERO recommended that the Sheriff's office consider ways to share body worn camera video with the public where a deputy's use of force is likely to be of significant public interest. This year, IOLERO renews this recommendation. ***Specifically, IOLERO recommends that the agency's policy provide for release of video or audio recordings depicting a critical incident as soon as practicable, and within 30 days of the incident, unless the investigation into the matter is still pending and there remain known material witnesses that have yet to give statements despite the best efforts of the investigating agency.*** The agency's current practices around redaction to protect the privacy of members of the public should continue.

Several jurisdictions share such video more freely, with the benefit that the public is confident that information will be forthcoming, whether it reflects well or poorly on the agency. In one recent example, the San Francisco Police Department shared both body worn camera video and third party security video, just after an incident where an officer shot a suspect fleeing on foot through a crowded neighborhood. The officer claimed he fired when the fleeing suspect reached for a gun in his pocket. Bystander witnesses disputed this account and a viral, social media controversy quickly unfolded, calling into question the officer's account.

The San Francisco department quickly released first the officer's body worn camera video, and then the third party security camera video, each of which showed the chase and shooting from different vantage points. Taken together, the two videos supported the officer's statement that the suspect pulled a gun from his pocket while he was fleeing from the officer. While the video did not calm all dispute about the reasonableness of the shooting, it did lessen the impact of a quickly developing social media narrative alleging that the officer shot an unarmed, non-threatening suspect on a crowded neighborhood street. It also is helpful to long-term trust to share video footage that may raise questions about an employee's compliance with policy or the law. This practice assures the public that the agency is trustworthy even when responding to challenging incidents that may involve employee fault, with long-term benefits during potentially controversial events.

The California Public Records Act⁷¹ generally provides that any public record be available for inspection and made promptly available to any person that requests them. A body worn camera or other camera video of a law enforcement incident is a public record, as defined by the Act. That law currently provides that any record of an investigation by a police agency is exempt from disclosure to the public, but does require certain specified information regarding an investigation to be made available.⁷² Under existing law, this exemption from disclosure is not mandatory but rather is at the discretion of the police agency whether it wants to invoke it or instead provide the video. Thus, local police agencies can adopt a policy that allows disclosure of videos under certain defined circumstances.

⁷¹ California Government Code §§ 6250, *et seq.*

⁷² *Id.*, at § 6253(f).

At the time this report was written, AB 748 by Assembly Member Ting had just been enacted by the California Legislature, and was awaiting a decision by Governor Brown on whether he will approve it. If approved by the governor, this bill would, commencing July 1, 2019, require a video or audio recording that relates to a critical incident to be disclosed unless disclosure would substantially interfere with an active investigation. If disclosure interfered with an investigation, the recording could then be withheld for 45 calendar days, subject to extensions, as specified.

The bill also would allow the recording to be withheld if the public interest in withholding video or audio recording “*clearly outweighs*” the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, in which case the bill would allow the recording to be redacted to protect that interest. If the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction, the bill would require that the recording be promptly disclosed to a subject of the recording, his or her parent, guardian, or representative, as applicable, or his or her estate, heir, beneficiary, immediate family member, or authorized legal representative, if deceased. Should this bill be enacted, it would impose a statewide minimum standard for disclosure of such recordings on all local police agencies.

d. Sharing Body Worn Camera Video with Complainants

Last year, IOLERO also recommended that the Sheriff’s office explore ways to share body worn camera video with complainants, either through the investigative process or in a mediation setting. Over the past year, the Sheriff’s Office agreed to test the practice of sharing video with a complainant during the investigation process, under the appropriate circumstances. With the approval of the Sheriff’s Office, the Auditor currently is viewing with a complainant multiple body worn camera videos of multiple incidents involving the complainant and deputies of the Sheriff’s Office.

The decision to allow the complainant to view the videos was made because the complainant had a very different memory of the incidents than what was reflected in the incident reports. The complainant’s memory of the incidents also differed significantly from the perspective of the complaint investigator after viewing the videos, a fact that became evident during the investigator’s interview of the complainant. In light of these differences, the investigator offered to show the videos to the complainant to refresh her memory of the incidents. While not willing to watch the videos with the investigator, the complainant was willing to watch them with the Auditor. Because this viewing remains a part of the investigative process, and seeks to refresh the memory of the complainant for purposes of her complaint interview, the investigation remains open. Thus, sharing the videos within the envelope of the investigation does not constitute sharing them with the public.

There can be good reasons to share video with a complainant or witness who’s recall does not match video footage. It communicates to the complainant that the agency is transparent and

has nothing to hide. It also communicates that the agency takes seriously the complainant's perspective. And it challenges the complainant to test their story against a video record that may support the employee. This could discourage frivolous complaints against employees if the practice is continued and becomes more widely known. Also, as a matter of investigative technique, it may spur recall of additional or different details that makes the witness' investigative statement more accurate.

Witness recall of incidents is notoriously unreliable, and memory formation is significantly distorted by emotion and physical stress. Many people nevertheless insist on the accuracy of their memories, believing that their own recall must be more accurate than that of others, and even superior to objective evidence. It remains to be seen whether the viewing of the videos will change the perspective of the complainant in this experiment, who suffered a great deal of emotional trauma as a result of the incidents in question. At times, it appears the video footage causes the complainant to question her memory of the incident. At most other times thus far, however, the complainant has resolved the cognitive dissonance between her memory and the video footage by suggesting that the video evidence has been altered. Nevertheless, this experiment is a worthy collaboration and the Sheriff's Office should be commended for its willingness to try it and see if it might have benefits.

e. Video Policies in the Detention Environment

It in its review of the Sheriff's Office video policies, the IOLERO Community Advisory Council recommended that the Sheriff's Office adopt a policy for all correctional deputies to use body worn cameras while working in the jail. The CAC also recommended that the jail fully outfit its facility with fixed cameras. While not yet making any formal written recommendation in this area, the IOLERO Director supported those recommendations when discussing these issues with the Sheriff's Office. This support was premised on multiple audits where the lack of video evidence made it difficult to assess fairly and independently the allegations against correctional deputies. The Director has been informed by the Sheriff's Office that the office has decided to purchase body worn cameras for all correctional deputies in the near future using one-time funds that are available. Ongoing support for the video cameras may depend on future additional funding from the Board of Supervisors.

IOLERO now formally memorializes its recommendations that the Detention Division adopt body worn cameras policies requiring all correctional deputies to use such cameras while on duty in the detention facilities, unless an assignment does not put them in contact with inmates. Building on lessons from the patrol side of the office, these cameras should remain in operation except for periods where there is no likelihood of contact with inmates. IOLERO also supports agency requests for ongoing funding to support these cameras.

In addition, the Auditor reviewed investigations where handheld video cameras were required to record incidents under policies involving Forced Cell Extraction, Safety Cell Placement, and Behavioral Counseling. There were repeated examples of the videographer in those instances failing to adequately record the incident in question. Examples included the videographer

pointing the camera away from the incident just as it appeared that force was being used and the inmate began screaming. In other examples, video either was not recorded when a policy required it, or the video went missing during the review process. In some instances, the lack of adequate recording made it very challenging to reach conclusions about allegations of misconduct by corrections deputies in the use of force.

IOLERO therefore recommends that all video policies be clarified to ensure that the videographer use every effort to record incidents as completely and accurately as possible.

In addition, IOLERO recommends that in any instance where the video recording is inadequate due to the actions or inactions of the videographer, or is missing when it should be present, that the agency fully investigate these deficiencies as a possible example of misconduct by the responsible employees.

V. [IOLERO's Recommendations to the Sheriff's Office Concerning Policies and Practices on Behavioral Counseling and Use of Force in the Detention Environment](#)

Over the past year, IOLERO spent a considerable amount of time reviewing investigations involving use of force and behavioral counseling in the detention environment of the agency. The Auditor reviewed two extensive agency investigations related to a federal lawsuit against the county brought by a group of jail inmates, which was settled by the county in June 2018 for a monetary payment of \$1.7 Million. The audit took more than 180 hours to complete and involved the review of scores of documents and many hours of video review. The Auditor also reviewed expert and witness testimony from the federal lawsuit, and reviewed the policies and practices of other detention facilities related to counseling and use of force. These recommendations are a result of that process. These recommendations are conceptual level suggestions to the agency designed to guide reconsideration of the policies, rather than detailed recommended changes to the policies.

As context, it is important to understand certain legal parameters that apply in the detention setting. Of significant importance to this understanding is that it is illegal and unconstitutional to use force on an inmate for the purpose of punishment.⁷³ Thus, if force is used to punish inmates for a violation of jail rules, it likely violates the law. Similarly, if force is used in response to an inmate's failure to comply with an order, it could violate the law, depending on the facts. However, as is the case in the patrol setting, force may be used where its use is reasonable to stop a threat to the safety and security of inmates and correctional officers.⁷⁴ In analyzing whether the force used was necessary in the detention setting, however, some factors differ

⁷³ See, e.g., *Hope v. Pfelzer* (2002) 536 U.S. 730, 738 (use of hitching post as punishment violates 8th Amendment); *Estelle v. Gamble* (1976) 429 U.S. 97, 102, in which Justice Blackburn decries the use of punishments that "involve the unnecessary and wanton infliction of pain", and cites with approval to *Jackson v. Bishop* (8th Cir. 1968) 404 F.2d 571 (where the use of a strap to punish prisoners was held to violate the 8th Amendment).

⁷⁴ See *Whitley v. Albers* (1986) 475 U.S. 312, 319; *Hudson v. McMillian* (1992) 503 U.S. 1, 5; *Wilkins v. Gaddy* (2010) 559 U.S. 34.

from the patrol setting. For example, unlike patrol, the jail is a controlled environment where escape is difficult, inmates usually have no access to weapons, and there are many deputies nearby with access to weapons who are well trained in defensive techniques. In such a setting, especially in a module where inmates are typically in a cell, there are often more options involving no use of force than there may be in a patrol setting.

In order to analyze the totality of the circumstances involved with a use of force against an inmate, it is necessary to consider actions by agency employees that may have preceded the use of force and made it more likely. While the U.S. Supreme court recently held that the “provocation doctrine” cannot be considered by a federal court in evaluating the reasonableness of a use of force in the field,⁷⁵ that ruling does not prevent consideration of an officer’s prior behavior as part of the totality of the circumstances governing the reasonableness of force.⁷⁶ In detention, where the law enforcement agency exerts control over most aspects of the environment, this consideration can play a significant role in analyzing whether a use of force was reasonable.

In addition, when analyzing use of force under state tort law, a separate source of an agency’s potential liability for harm suffered by an inmate, additional considerations may come into play.

“Law enforcement personnel's tactical conduct and decisions preceding the use of deadly force are relevant considerations under California law in determining whether the use of deadly force gives rise to negligence liability. Such liability can arise, for example, if the tactical conduct and decisions show, as part of the totality of circumstances, that the use of deadly force was unreasonable.”⁷⁷

Thus, it is clear that actions preceding a use of force must be considered in analyzing the reasonableness of force under state law and thus in the jail. Again, in a controlled environment, uses of force that were not necessary may receive legal scrutiny not as common as in the relatively less predictable environment of patrol.

Given this context, recent uses of force during behavioral counseling incidents in the jail suggest that policy changes in these areas may be advisable.

⁷⁵ *Cty. of Los Angeles v. Mendez* (2017) ___ U.S. ___ [137 S.Ct. 1539].

⁷⁶ See, *Mendez v. Cty. of L.A.* (9th Cir. 2018) 897 F.3d 1067 [where the City was found liable for Fourth Amendment search violations, it also is liable for damages arising from the shooting proximately caused by the unconstitutional entry, although the shooting itself would not separately have been “unreasonable” under the 4th Amendment].

⁷⁷ *Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 639.

1. Limits on “Behavioral Counseling”

According to management of the Sheriff’s Office, the Behavioral Counseling⁷⁸ policy is intended to be useful in situations where an inmate is not cooperating with jail staff or not following jail rules, and jail staff believe that taking an inmate outside of contact with other inmates may be helpful in communicating with the inmate in a more cooperative manner. Underlying this belief is the assumption that an inmate may need to perform behaviors of “toughness” or resistance in the jail so that other inmates will respect them. Thus, removing the inmate from this environment for a private discussion about staff expectations and why the inmate is not meeting them, is expected to be more productive. It may allow the inmate to “save face” with other inmates while also committing to staff to following the rules. Some form of counseling as a practice appears to be common in detention facilities. A “behavioral counseling” policy such as the Sheriff has employed is relatively uncommon.

As written, the Behavioral Counseling policy contains no limits on the situations under which it is appropriate to be used. Because the policy provides for removing the inmate to a part of the jail where other inmates cannot observe him, it also allows correctional staff to avoid observation by other inmates of interactions with the inmate being counseled. The policy also contains no guidelines for when or if use of force would be appropriate during a behavioral counseling session. The “yard counseling” incidents revealed that correctional deputies believed that employing behavioral counseling to use force to punish inmates was an appropriate action, compliant with agency policies and training. Thus, setting clear and appropriate limits on the use of yard counseling may be in order at this time.

As employed during the incidents at issue in the “yard counseling” lawsuits, the policy provided a framework in which fearful and agitated correctional deputies removed angry and disruptive inmates and took them to the exercise yard for counseling. It is unclear how agency employees expected the inmates to respond to attempts to counsel them in this environment. Agency employees immediately pruned most inmates being counseled, and began to use control holds on them while they were prone. Control holds are acknowledged to cause some level of pain, which is why they can be effective. A deputy’s ability to detect whether an inmate’s resistance to a hold is a normal reaction to pain or an attempt to escape is a tricky proposition, made even more challenging when the hold is applied in an environment where all parties are highly agitated and stressed. As inmates apparently twisted away from the holds in pain, deputies became more agitated, screamed obscenities at the inmates, and demanded that they “stop resisting.” In some incidents, this cycle escalated considerably with apparent physical injuries to some inmates.

⁷⁸ The agency’s current Behavioral Counseling policy is included in the Appendix. According to Sheriff’s Office staff and management, the provisions of this policy are essentially the same as those in place at the time of the “yard counseling” incidents that were the subject of the federal litigation recently settled by the County. One exception is that this policy restricts the ability of employees to place an inmate prone during the counseling, whereas the previous policy apparently did not contain such restrictions.

Given this context, IOLERO recommends that, if the Behavioral Counseling policy is to be continued in use, there be additional restrictions added to it. As currently employed, IOLERO concludes that the policy provides an opportunity to use counseling sessions to punish inmates. Advisable restrictions may include the following.

- Behavioral counseling should be considered a technique to be used to de-escalate a situation and avoid the use of force, and its appropriateness for use in an incident should be analyzed on that basis.
- If a forced cell removal is necessary to initiate a behavioral counseling session, then such counseling is not an appropriate response to the situation.
- If the behavioral counseling session results in resistance by an inmate, then such counseling is not an appropriate response to the situation.
- Use of force is not ordinarily appropriate during a behavioral counseling session, and if force is used, the session should be ended as soon as possible.

2. Limits on Use of Force in Detention

The “yard counseling” incidents also revealed that correctional deputies believed it was appropriate to use force against inmates in situations where the only real justification for the force was to punish inmates for their behaviors. During these incidents, deputies also repeatedly threatened future significant force against inmates unless they followed orders, including threatening to use Tasers. Audits of other investigations likewise have revealed that correctional deputies appear to believe that it is appropriate to threaten an inmate with future force, including Taser use, if they fail to follow deputy orders. These incidents suggest that it may be advisable to adopt more detailed guidance on the use of force specific to the detention environment, such as has been adopted by the California Department of Corrections.⁷⁹

Several limitations may be useful to include in such guidance specific to the detention environment, including the following.

1. It is unlawful to use force to punish an inmate for failure to follow facility rules or follow an order from a correctional employee.
2. It is inappropriate to threaten a future use of force that would not be lawful under the circumstances.
3. Force used against an inmate should be proportionate to the threat the individual inmate is causing to the correctional employee, or other inmates.
4. Force contemplated against an inmate who is in a cell should be considered only when necessary to achieve a lawful objective, should be planned in consultation with a supervisor where reasonably possible, and should involve the minimum force necessary to achieve the lawful objective.
5. Where removal of an inmate to another area of the detention facility can achieve a lawful objective without the use of force, and is reasonably achievable under the circumstances, that option is preferable to continued escalation of force to achieve the same objective.

⁷⁹ See Appendix for CDC Use of Force policies.

Vi. IOLERO's Previous Policy Recommendations to the Sheriff's Office

Last year, IOLERO made several additional policy recommendations to the Sheriff's Office. In this section, the Sheriff's responses to these recommendations are highlighted.

a. Implicit bias training

IOLERO recommended to the Sheriff's Office that they consider regular, robust training focused specifically on recognizing and correcting for implicit or unconscious bias. The rationale for this recommendation is that implicit bias is scientifically recognized as prevalent in all people, and it affects an individual's decision making and responses, including most significantly while under stressful, fast moving situations, such as officer involved shootings. In addition, established studies demonstrate that unconscious bias must be addressed consciously in order to be corrected. The commitment to such training can go a long way in addressing concerns or distrust of members of the public.

To the knowledge of IOLERO staff, the Sheriff's Office has not directly responded to this recommendation in a public setting, other than to note that the agency does offer training on Diversity and Racial Profiling as part of the optional training required for patrol deputies by the California Commission on Peace Officer Standards and Training. The agency has not addressed training offered to or required for correctional deputies in connection to this recommendation. Sheriff's staff have noted that any additional training would take deputies out of regular duties for a period of time and increase agency staffing needs, which already are acute due to hiring challenges.

IOLERO continues to recommend this training for the reasons noted above. Planning for such training would require that the agency adopt a staffing plan that accounts for the time necessary for deputies to be out of regular duties and participating in this training. This obviously would increase costs to the agency and require additional funding to support the effort. And IOLERO acknowledges that this also may increase the hiring challenges already faced by the agency.

b. Community Oriented Policing

IOLERO also recommended to the Sheriff's Office a program of robust Community Oriented Policing in areas of greater density in the unincorporated parts of the county, such as the Moorland/ Roseland area of SW Santa Rosa and the Springs area of Sonoma Valley. IOLERO uses the term Community Oriented Policing to include many components necessary to make such a project successful. For these areas, it includes staffing by deputies who can speak Spanish and who understand the culture of the community. Cultural competency training of deputies could include local elders familiar with the history of the community and of the local relationship with law enforcement.

Although these specific recommendations were not accepted by the Sheriff's office last year, the agency did move to strengthen its community policing approach in a different manner. Beginning in November 2017, deputies bid on shifts that remain constant for approximately a full year. This change allows the agency to have its employees dedicated to the same geographic area for an extended period of time. This allows residents of the area to get to know the deputies who patrol their neighborhoods and to be able to call the same person for any problems they may encounter.

This approach is the core element of any community policing program and the Sheriff's implementation of this change is to be commended. IOLERO also continues to recommend that deputies assigned to patrol areas include those who speak the language and understand and appreciate the culture of those who live there.

c. [Increasing Transparency of Peace Officer Investigative Records](#)

Last year, IOLERO recommended increases in the transparency of peace officer investigative records under certain circumstances. One of the four key missions of IOLERO is "to help increase transparency of law enforcement operations, policies and procedures[.]" Currently, any peace officer personnel record, including a record of investigation, is strictly confidential under Penal Code Section 832.7. This statute prohibits release of any details of an investigation or audit, including where there is a sustained finding of misconduct, or where there is an exoneration of misconduct for a use of force that is a subject of great public interest. Following an IOLERO audit of a Sheriff's Office investigation, IOLERO is limited to informing a complainant of whether it agrees with the findings of the Sheriff's investigation or believes another finding is more appropriate. IOLERO cannot provide a complainant with substantive reasons for the agreement or difference. Therefore, existing state law creates a significant barrier to IOLERO's ability to increase the transparency of law enforcement operations, policies, and procedures with respect to audits of investigations.

While California statutes and case law prevent the disclosure of most peace officer records, other states such as Texas, release information to the public when an allegation of misconduct has been confirmed. Some states make these records public regardless of whether the incident has been confirmed. California is among a minority of states that make all disciplinary records confidential. The inability of law enforcement and oversight agencies in California to release public information about whether an officer has been disciplined when found to have committed misconduct leaves the public without a way to fully assess the employee accountability process. Among some members of the public, it contributes to a belief that law enforcement agencies are hiding something, which makes trust more difficult to maintain.

During the 2018 California legislative session, Senator Nancy Skinner sponsored and passed a bill that would amend state law to allow greater transparency for records of peace officer investigations and discipline where certain allegations of misconduct are sustained after investigation. The bill passed on the last day of legislature and, as of the time this report is written, awaits a decision by Governor Brown on whether he will sign it. Both Sheriff Giordano

and Sheriff-elect Essick both indicated during the period of the Sheriff's election that they supported the legislation if protections were offered to protect whistle-blowers. The bill as passed includes such protections.

IOLERO believes there would be substantial benefit both to the public and to law enforcement agencies from changing state law to increase the transparency associated with these records. The IOLERO Director has discussed with both the leadership of the Sheriff's Office and the Deputy Sheriff's Association the possibility of releasing more information about the reasons for findings in administrative investigations, and both agree that greater transparency in this area could be beneficial to employees and to the department. Certainly, the public desires increased transparency, especially in this area. And greater transparency would greatly enhance IOLERO's ability to facilitate trust between the public and the Sheriff's Office.

Given these considerations, IOLERO continues to recommend that state law be changed to increase transparency in regard to findings in administrative investigations of alleged serious misconduct by employees of law enforcement agencies.

d. [State-Wide Rules Limiting Cooperation Between Local Law Enforcement Agencies and Federal Immigration Agencies](#)

As explained in IOLERO's report supporting its recommendation to the Sheriff's Office on immigration policies, IOLERO last year recommended both changes to local Sheriff's policies to limit cooperation with civil immigration enforcement, and well as support for SB 54 ("the California Values Act") by Senator DeLeon. The IOLERO recommendation was premised on that bill being amended to allow cooperation if an immigrant had been convicted of a designated "serious felony" as defined by state law. The bill was so amended and enacted into law.

Since IOLERO's recommendations, the Sheriff's Office first changed its policy to limit cooperation with ICE in September 2017. Subsequently, the Sheriff's Office has changed its policies to comply with the requirements of the California Values Act. The agency is reputed to be the local agency in the state most compliant with the requirements of the state law limiting cooperation with ICE.

DETENTION STATISTICS

DETENTION DATA ELEMENTS		2018											YTD	
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1	Notifications Received from ICE	31	35	37	48	58	52	27						288
2	Notifications returned to ICE regarding impending releases	9	8	10	5	14	7	6						59
3	ICE United States District Court Warrants received	0	0	0	0	0	0	0						0
*3a	Transfers/Releases to ICE	0	0	0	0	0	0	0						0
4	ICE Requests for interview	0	1	2	0	0	0	0						3
5	ICE Requests for information	3	8	11	24	16	12	10						84
6	Arrests by ICE in Detention Facility	1	3	2	2	5	3	2						18

**3a. Transfers to ICE are only done if they are here on a Federal Warrant signed by a US Magistrate. This is a new mandate from the DOJ to track transfers.*

As is evident from reviewing these statistics, the change in law and policy has resulted in many fewer examples of the jail notifying ICE that an individual immigrant is being released from jail. In the first 6 months of 2018 alone, more than 200 individuals in the jail were not the subject of ICE notifications who would have been under the previous policy. That means many local families did not lose a family member to deportation, avoiding disruptions to their lives and to the larger community. This also means that immigrant community members have less reason to fear interactions with the Sheriff’s Office, and therefore are more likely to feel comfortable reporting crimes and cooperating in investigations of crimes.

IOLERO commends the Sheriff’s Office for its collaborative work with the community, and with IOLERO and its Community Advisory Council, to review and change its policies in this important area, and for its exemplary implementation of these changes in policy.

Chapter 10: IOLERO Lessons Learned

For every endeavor, there are lessons learned, and the creation of IOLERO has been no different. This chapter explores some of these lessons in greater detail.

I. Working Collaboratively in the Midst of Differences

In the last Annual Report, IOLERO identified challenges faced by the office in working with community members and activists who may hold expectations of IOLERO's role that are unlikely to be fulfilled under the current model. Over the last fiscal year, IOLERO experienced more success in serving both the public's needs and expectations, while also serving the needs of the Sheriff's Office, especially in the areas where IOLERO is most central to bridging the gaps between law enforcement and the community. These successes can be seen by reviewing the chapters of this report describing Community Outreach and Engagement.

A bigger challenge over FY 17/18 instead has involved professional relationships and interactions with the Sheriff's Office. This relationship has always included a tension inherent in the function of civilian oversight of law enforcement. Until this past fiscal year, however, those tensions remained in a relatively manageable range. The overall environment in which the two agencies interacted, as well as multiple specific interactions, accentuated tensions in these professional relationships during the last fiscal year. At the time of this report, those professional relationships would best be described as significantly strained.

a. Environmental Factors Affecting Professional Relationships

The factors in the overall environment that have made collaboration between the Sheriff's Office and IOLERO challenging over the past year included a contested election for Sheriff that accentuated insider-outsider dynamics between the agencies. It included multiple effects on each agency related to the fire disaster. And, it included cumulative effects of an institutional imbalance that requires IOLERO to cooperate with the Sheriff's office, while not requiring any reciprocal cooperation with IOLERO.

i. Contested Sheriff's Election

The contested election for Sheriff began with two internal candidates competing for support of the rank and file employees. This dynamic created tensions within the Sheriff's Office and anxiety about the prospect of an outside candidate taking over the leadership role. After one internal candidate dropped out of the election, agency employees coalesced around the remaining internal candidate. But anxiety about the external candidates continued and was fueled by the natural tribalism associated with elections with no perceived front-runner. Law enforcement cultures are characterized by their relatively insular nature, including an insider-outsider dynamic. The relationship between IOLERO and the Sheriff's Office has always included

contending with this dynamic, but that dynamic appears to have increased this year as a result of the election.

ii. Sonoma County Fire Disaster

In addition, the Sheriff's Office, like many county agencies, was significantly affected in multiple complex ways by the Sonoma County fire disaster. Many employees lost their homes to the fires and experienced all the challenges of dealing with that reality. At the same time, employees were called upon to work above and beyond the normal demands of their jobs to deal with the fires and their aftermaths. These two realities added to the stressors long experienced by a work force that is short staffed, many of whom regularly face overtime requirements. On the other hand, both Sheriff's employees and management performed well and earned a great deal of renewed respect from both the community generally, as well as from communities that have been relatively distrusting of the agency. The combination of pride in performance during the fires, with the reality of the sacrifices the fires caused, in some ways may also have accentuated the insider-outsider dynamic of the agency. It would be challenging for anyone to be lauded as a hero, while also being critiqued by an "outsider" agency.

iii. Institutional Relationship Between the Agencies

Also, the institutional relationship between the Sheriff's Office and IOLERO has been characterized from the beginning by an imbalance that affects the character of those relationships. When IOLERO was established by the Board of Supervisors, the public discussion was premised on the idea that civilian oversight of the Sheriff's Office could be established only with the agreement of the Sheriff's Office. As a result, IOLERO was created with the expectation that the office must seek the Sheriff's agreement for such fundamentals as the protocols for audits of investigations, including which investigations are audited, what information is provided by the Sheriff for each audit, what timelines will guide IOLERO's audits of investigations, and what information about those audits is shared with the public. The IOLERO Ordinance includes an explicit requirement that IOLERO cooperate and coordinate with the Sheriff's Office, but no reciprocal requirements are required of the Sheriff-Coroner.

While certainly it was preferable to establish such a new agency on the basis of agreement with the agency subject to civilian review, this underlying premise was erroneous. Government Code section 25303 provides that the Board of Supervisors has authority to supervise the Sheriff's Office, so long as the Board's actions do not interfere with the Sheriff's independent authority to conduct investigations of crimes.⁸⁰ Because all of IOLERO's review functions with the Sheriff's Office are advisory, they could not possibly interfere with the Sheriff's authority in the

⁸⁰ In *Brewster v. Shasta County* (2001) 275 F.3d 803, 810, the court stated that while Govt. Code section 25303 prohibits a Board of Supervisors from obstructing the sheriff's investigation of crime, a county Board nonetheless maintains a substantial interest in the performance of the Sheriff's Department, including investigations into the conduct of its deputies, and thus may legislate in those areas. See also *Dibbs v. County of San Diego* (1994) 8 Cal. 4th 1200, 1210; *Penrod v. County of San Bernardino* (2005) 126 Cal.App.4th 185.

way prohibited by statute. Thus, the Board is and always was able to mandate civilian review of the Sheriff's Office. Similarly, the Board has authority to mandate cooperation with IOLERO's missions, so long as they do not interfere with the Sheriff's authority over criminal investigations.

In addition to these aspects, the Sheriff-Coroner is one of only a few county-wide elected offices. As an elected official, Sheriffs in California historically have seen themselves as answerable either primarily or exclusively to the voters, and not to the Board of Supervisors. Certainly, there is some natural resistance by any Sheriff to an appointed director of a civilian review agency making suggestions concerning how the Sheriff is running his or her agency. **And yet, that is the primary function of any civilian review agency.** It is worth noting in connection to this factor that, under the law, the Sheriff's status as an elected official does not affect the authority of a Board of Supervisors to regulate the agency through an ordinance.⁸¹

This institutional imbalance has been the backdrop for repeated interactions between the IOLERO Director and the Sheriff that strongly suggest that the management of the Sheriff's Office believes IOLERO must not operate in any way not approved by the Sheriff. These interactions date back to the hiring of the Director. At that time, Sheriff Freitas initially indicated his unwillingness to work with the Director, should he be hired. The Sheriff needed the Director to sit down with him and his management team on several occasions before finally agreeing that he would work with the Director, and then only after securing an agreement that he could review the Director's confidential background report.

On multiple occasions, Sheriff Freitas fired off combative and confrontational emails to the Director in response to relatively tame press comments by the Director on topics of public interest involving the Sheriff's Office. On one occasion, the Sheriff stated he would refuse to provide the Director with information about employee incidents of public interest unless the Director agreed to the Sheriff's suggested protocol on statements to the press about such incidents. On other occasions, the Sheriff indicated he would refuse to work with certain members of the Community Advisory Council appointed by the Director.

In addition, IOLERO has several times recommended that it approach audits in certain ways within its authority, only to have the Sheriff's Office respond that such an action would violate protocols and affect the agency's ability to cooperate with IOLERO. For example, in one audit, IOLERO wanted to telephone a witness to ask if the investigator had sought to interview them and/or obtain their evidence about the incident. The Sheriff's Office "absolutely objected" to this proposal as an attempt by IOLERO to investigate the complaint, even though from IOLERO's perspective it constitutes an audit of the completeness of the investigation. There were several such examples during the first year of IOLERO's operations.

Despite such interactions, the IOLERO Director always made great efforts to repair the insults to the professional relationship perceived by the Sheriff, and get things back on track. In fact, the

⁸¹ *Penrod v. County of San Bernardino* (2005) 126 Cal.App.4th 185.

Director was told on several occasions by agency staff that the Sheriff had stated that, had it not been for the character traits of the Director, it was unlikely that the collaboration between the two agencies would have worked. These efforts at relationship repair were largely successful until FY 17/18.

iv. FY 17/18 Deteriorating Professional Relationships

In FY 17/18, things changed for the worse. Within these overall environmental factors, multiple, specific incidents increasingly challenged professional relationships between staff of IOLERO and the Sheriff's Office. The fiscal year started off with great promise, as the newly appointed Sheriff and the Director collaborated both on finalizing the Sheriff's new immigration policy, and preparing for the hearing on IOLERO's Annual Report at the Board of Supervisors in mid-September 2017. During that hearing, the Sheriff promised greater access for and collaboration with IOLERO during the coming year. Also, the performance of both the Sheriff and his staff during the fire disaster increased community trust and respect for the agency and bode well for the coming year. Unfortunately, relational dynamics developed differently than hoped.

After the fires calmed down, the Director warmly congratulated the Sheriff's management team for the agency's performance during the fires and suggested that the agency could make even greater inroads with the immigrant community by doing disaster fundraising for them. This suggestion was rejected in a defensive manner. Within a few weeks, the Director sent the Sheriff's staff a list of requests for additional access that was requested from the Assistant Sheriff in light of the Sheriff's promise to grant IOLERO greater access to staff and information of the Sheriff's Office. In January 2018, the Director met with the Sheriff's management team to discuss these access issues. The Sheriff stated unequivocally that the agency would not grant any of IOLERO's access requests, despite earlier promising increased access at a public hearing.

In March 2018, the IOLERO Director sent the Sheriff a list of recommendations from confidential audits to which the agency had never provided clear responses, asked for clarity on the response, and informed the Sheriff that IOLERO planned to publish the list and responses once the list was correct. The Director also provided the Sheriff with the written list of access requests and the Sheriff's responses and indicated that this too would be published once verified. The Sheriff accused the IOLERO Director of damaging relationships with his agency and undermining the IOLERO mission to improve relationships between the agency and the community. The Director disagreed strongly with this characterization, but agreed to a series of regular, personal meetings with the Sheriff to better understand his concerns, improve relationships, and resolve the dispute over the list of recommendations.

The first date the Sheriff offered for the meetings was 6 weeks out from the dispute, in April 2018. In the interim, a Public Records Act request resulted in IOLERO releasing these and other email communications to a candidate for Sheriff, after consulting with County Counsel about what should be produced. At the next meeting between the Director and the Sheriff, the Sheriff accused the IOLERO Director of having "set up" the agency with the list of recommendations and emails so that the emails produced could be used by the candidate in the campaign for

Sheriff. This was a difficult accusation to receive and still maintain good professional relationships, but the Director simply made clear the Sheriff was incorrect and moved on to address the issues that were the reason for the meetings.

The Director continued to meet and engage the Sheriff on a good faith basis, ultimately resolving the issue of the list of recommendations after a series of meetings that continued past the June election for Sheriff. The meetings also involved discussions of IOLERO's audit of the investigations of the "yard counseling" incidents in the jail. In order to meet the Sheriff's concerns, IOLERO agreed to package related recommendations from past audits into a consolidated document, with brief context to explain their origins. For example recommendations on video policies would be packaged into one document, as would recommendation on improving investigations. These documents then would be issued publicly. The Sheriff also would respond publicly so that the public would understand their position on the recommendations. This approach provided clarity while also providing the transparency that is a key mission of IOLERO.

In late July, the Director notified the Sheriff that IOLERO would soon issue the first package of recommendations on improving investigations of misconduct and audits of those investigations. The notice included a copy of the draft document setting out the 36 recommendations, as well as a brief explanation of why each was warranted. It also stated that the Sheriff's Office would have an opportunity to raise any questions or concerns about the report and recommendations prior to its issuance as a public report. Despite previous conversations, the Sheriff absolutely opposed the issuance of the report, again accusing the IOLERO Director of eroding professional relationships and public trust. The Sheriff insisted that all policy recommendations must be issued only once a year in an Annual Report, and that this had always been the expectation of the public and of the Sheriff's Office. The Director pushed back, explaining that the previous practice allowed significant policy recommendations to be issued separately, as happened with the IOLERO recommendations to change immigration policies. The Director also pointed at that this was the product of the agreement reached with the Sheriff during their recent meetings.

The Sheriff agreed to respond to the recommendations 30 days from when they were sent to him. The Director clarified that this meant that the Sheriff expected IOLERO to issue the report publicly and that the Sheriff would then respond publicly in 30 days. The Sheriff agreed. The Director therefore informed the Sheriff that, in light of this agreement, IOLERO would publish the report on its website at the end of the week, and would publish the Sheriff's response there when it was received. The Sheriff then replied that at no time did he confirm that IOLERO could publish without the Sheriff's response, and accused the Director of working hard to undermine professional relationships. The Director quickly responded that there was a misunderstanding and that he was happy to await the Sheriff's written response and to publish both the recommendations and response at the same time.

That same morning, the Sheriff told members of the Board of Supervisors that the Director intended the next day to publish to the press a series of recommendations without providing the Sheriff or his staff an opportunity to review or respond to them. Yet, the Director had

sought input from the Sheriff on the recommendations on multiple occasions, and had repeatedly sought clarity and agreement on when that input would come, This caused considerable upset among some Board members, who expressed their upset with the Director. One Supervisor called for a performance review of the Director based on this erroneous account of communications. This interaction significantly harmed professional relationships.

Also in late July 2018, the Director shared with the Sheriff and Sheriff-elect a news story about a survey of new CEO's from hundreds of companies across the globe. The study found that CEO's promoted from within an organization often face challenges that those hired from outside do not. Among those challenges are 1) supervising those who formerly were peers; 2) changing any aspect of an organizational culture within which one was trained and promoted; and 3) learning to prioritize interactions with external stakeholder who were not as important for a new CEO to interact with in their previous position. The email sharing the item was neutral and respectful and said the Director hoped it might be of interest in some way. The Sheriff-elect took great offense at the email, said if he wanted management advice he would request it, and accused the Director of a thinly veiled, passive/aggressive attempt to suggest the agency is in need of deep cultural change and that he will be ineffective as Sheriff.

Working on IOLERO's Annual Report, which requires cooperation with the Sheriff's Office to obtain information, has been challenging in this environment. Nevertheless, IOLERO staff have done so and have been able to put together a robust report that addresses many issues of significant public interest.

Yet, what these specific interactions reveal, one again, is an institutional imbalance that should be addressed in order to enable IOLERO, and its next Director, to fulfill its promise in each of its missions.

v. [Correcting the Institutional Imbalance](#)

As several county staff insiders have joked, perhaps the Sheriff and the Director need to engage in family counseling. While a joke, it certainly could be helpful for additional talks to be held between staff of the agencies, perhaps in a facilitated environment. From the perspective of the Director, however, after almost 3 years of experience with these professional relationships, the dynamic has its roots in an institutional imbalance between the agencies. Unless that is addressed in some way, these dynamics are likely to recur and continue to erode professional relationships between the agencies.

The only way to effectively address the basic issues in this imbalance is through reforms to IOLERO and its legal relationship to the Sheriff's Office. One set of issues in that imbalance is the lack of adequate resources by IOLERO to fully meet its missions. Without sufficient resources, IOLERO will always be chasing timelines for audits and sandwiching community outreach into irregular gaps in the workload. Currently, IOLERO is unable to complete audits on the Sheriff's preferred timelines, despite heavily prioritizing them, and is unable to organize community engagement circles, despite the Sheriff's continued strong support for them. Both

of these missions are priorities of the Sheriff's Office, and IOLERO's deficiencies in these areas affect the professional relationships between the agencies. This factor is addressed separately below in the section on "Right-Sizing IOLERO."

Another part of the institutional imbalance concerns the legal relationship between IOLERO and the Sheriff's Office. While not a perfect solution, the IOLERO Ordinance could and should be amended to address this issue by mandating that the Sheriff-Coroner cooperate with IOLERO in meeting its missions. The Director is separately putting forward amendments to the IOLERO Ordinance to be considered by the Board of Supervisors. The best time to consider those amendments likely is during the Board meeting that includes this Annual Report. The changes suggested by IOLERO to address these issues include:

- A provision legally mandating that the Sheriff's Office cooperate with IOLERO in order to enable IOLERO to do its work effectively;
- A requirement that the Sheriff's Office provide IOLERO staff with unrestricted access to sources of information necessary for IOLERO to perform independent audit and review of investigations;
- A requirement that the Sheriff's Office provide IOLERO staff with access to sources of information necessary for IOLERO to perform independent review of policies, training, and practices of the agency;
- A requirement that IOLERO staff have sufficient access to staff of the Sheriff's Office to perform its missions.

One aspect of the institutional tensions between the two agencies that is not separately addressed elsewhere is the appointment process for members of the IOLERO Community Advisory Council. The current framework creates tensions that affect not only IOLERO's relationships with the Sheriff's Office, but also IOLERO's relationships with the community. Because CAC members are appointed and serve at the pleasure of the Director, the Sheriff's Office tends to view them as extensions of IOLERO, at least when they are critical of policies, practices, or training by the Sheriff's Office. This dynamic has led to tension between IOLERO and the Sheriff's Office on multiple occasions. In addition, some community members believe that CAC members must restrict their speech, and cannot fully represent the view of distrusting communities, because they serve at the pleasure of the Director. The Director believes these tensions are not productive ones, and perhaps reforms in who appoints the CAC members and how they are appointed, should be enacted. IOLERO will bring such a proposal to the Board for discussion with the IOLERO Ordinance amendments.

These two sets of reforms will not completely resolve the issues inherent in the institutional tensions between the Sheriff's Office and IOLERO. A certain amount of tension is inherent to the civilian review relationship, especially when it involves an elected sheriff. Nevertheless, the Director believes these reforms can help reset that relationship on a more equal and productive footing that will assist both agencies in collaborating on the missions assigned to IOLERO.

II. Right-Sizing IOLERO

As discussed above, one of the chief weakness of IOLERO has been its limited staffing. While last year's Annual Report identified how this staffing issue affects community engagement, the issue also is relevant more broadly to the ability of IOLERO to provide effective civilian review. Unlike many oversight agencies, IOLERO is charged with civilian review of both the patrol function of the Sheriff's Office, as well as the detention functions. Essentially, IOLERO is charged with providing two distinct types of civilian review, each with its own unique environment and standards to guide employee conduct, and each with its own developing body of best practices and policies. As mentioned last year, the more significant work of IOLERO audits has involved investigations and policy reviews within the Detention Division of the Sheriff's Office. Yet, this year also saw significant auditing time necessary for complex investigations on the patrol side of the agency. Unfortunately, insufficient staffing has made it near impossible to keep up with the demands of auditing over the past year, given the nature of the investigations being audited. Given continued struggles with jail understaffing and significant forced overtime for correctional deputies, it is likely that the Detention Division will continue to experience challenges over the coming years. And these challenges are likely to cause corresponding work for IOLERO in reviewing jail incidents, polices, and practices.

Meanwhile, this past fiscal year saw IOLERO's community engagement mission take a significant back seat to auditing. Without additional staffing, IOLERO needed to limit its community outreach and engagement in order to work on its other obligations. The office focused primarily on audits, while continuing to support the CAC as the primary conduit for outreach and engagement. This necessarily means that community feedback comes primarily from those who are able to show up at CAC meetings, thus empowering those voices over other community members whose work and family lives make participation in such meetings difficult. During IOLERO's past engagement efforts, IOLERO discovered that the views of community members sometimes differ from those who purport to represent them. Therefore, IOLERO's inability to conduct robust community engagement limits the community views that inform IOLERO's work. This also can lead supporters of the Sheriff's positions to criticize IOLERO as representing only a small slice of community views, to the detriment of its credibility.

Obviously, funding for additional IOLERO staff will always depend on the availability of county funding and involves competition for such funds with the significant needs of other departments' programs. The prospect of additional funding during the next budget cycle, in light of fire disaster fiscal effects, may be challenging. Nevertheless, the Director's duty at this time is to identify the true needs of the department in meeting its missions. Unless those needs are identified and discussed, and a plan adopted to meet those needs in the future, IOLERO's fate will be to forever fall short in achieving its missions. Therefore, this section seeks to clarify these issues for the Board of Supervisors for action, should they choose.

This discussion starts with the fact that the CALLE Task Force members recommended to the Board that IOLERO be created with funding for 4 full time employees to meet the missions that their report envisioned for the new department. While the County Administrator's staff put

forward the multiple missions recommended by the Task Force for consideration by the Board, they recommended funding for only 2 full time positions in creating IOLERO. During the Board's consideration of these issues at its hearing establishing IOLERO, Supervisor Efen Carrillo called out the difference between these two positions. Supervisor Carrillo advocated for funding full staffing of 4 positions for IOLERO. The County Administrator argued that it would take the County some time to hire a director and then the director would take some time to fully complete the start-up tasks of the office. After the first year, it was suggested, the Director could inform the Board what staffing was necessary. Supervisor Carrillo expressed concern that waiting to fully staff the department could mean it was never fully staffed and would be set up for failure. Supervisor Carrillo's position did not prevail that day, and IOLERO was established with funding for 2 positions, the Director and an Administrative Aide.

After the Director's experience with the first year of operations, the Director requested funding for one additional staff member, although the Director saw a need for more staffing than requested. The Director identified that other civilian review agencies had begun to use a best practices benchmark to set the budget of their agencies. That benchmark was 1% of the budget of the law enforcement agency being reviewed. This information was not persuasive enough to supervisors to gain their support for the additional funding request. During that budget cycle, IOLERO's request was not approved, but a majority of supervisors indicated they would look favorably upon it in the future. Unfortunately, the future included the fire disaster, and its effects on the county's budget. Due to these effects, IOLERO requested no additional funding last budget cycle and experienced a budget cut.

This year, IOLERO retained a respected consultant, Harvey Rose Associates, to conduct a staffing analysis of the needs of IOLERO in meeting its assigned missions.⁸² The firm surveyed other agencies performing comparable missions, set comparative benchmarks to normalize the workload of agencies of different sizes, and arrived at conclusions as to how IOLERO's staffing compared to what is typical in the field for each of its functions. As a result of this analysis, Harvey Rose Associates determined that IOLERO needs approximately **3 additional full time employees** to effectively complete the various tasks associated with its missions. Looking at the specific functions where deficiencies in staffing were identified, IOLERO is short in the areas of 1) community outreach and engagement; 2) Community Advisory Council support; 3) Policy analysis and recommendations; and 4) public reporting. The survey also showed that IOLERO spends slightly more time on auditing than is typical. However, it is important to note that what constitutes auditing varies greatly among agencies, with some surveyed agencies including minor tasks such as verifying classifications of each complaint, as separate audits.

In addition, if one accepts that it has become a best practice in the field that the budget of civilian review agency should be at least 1% of the budget of the law enforcement agency it reviews, that also provides a benchmark relevant to this discussion. The National Association for Civilian Oversight of Law Enforcement recently stated that civilian oversight agencies should have a budget benchmark based on a fixed percentage of the law enforcement agency in order

⁸² See Appendix for complete staffing analysis.

to ensure stability and continuity in unpredictable political winds. Several agencies that have gone through recent reforms have used the 1% benchmark. Given that the Sheriff's current budget exceeds \$177 Million, the budget of IOLERO under such benchmarking would be \$1.77 Million. Even at a .5% benchmark, IOLERO's budget would be at \$885,000, almost twice its current budget for direct services. This budget level also likely would be sufficient to fund the additional staff discussed in this section.

Based both upon the original recommendations of the CALLE Task Force, as well as these objective benchmarks, IOLERO recommends an increase in staffing for IOLERO in the future of 3 full time employees. In the view of the Director, 2 of these 3 employees would work on community engagement projects of IOLERO, while the third employee would assist with audits and work on policy and data analysis. Because it may not be possible to increase staffing to this degree in a single funding cycle, the plan to fund increased staffing should include priorities for the order in which staffing should be funded. Committing to such a plan would help ensure both potential future directors, as well as the community, that county leaders continue to be committed to the success of civilian review of the Sheriff's Office, as envisioned by the CALLE Task Force and the Board of Supervisors.

V. Public Perceptions

Over the last 2.5 years of interacting with many hundreds of members of the public in multiple settings, the Director has a perspective on public perceptions of the Sheriff's Office and of civilian review that does not fit easily into polarized viewpoints. Community members who strongly support the Sheriff's Office have often shared with the Director that they are glad IOLERO was created and is there doing its work. Community members who are significantly distrustful of the Sheriff's Office have expressed that they strongly support police services that will keep their communities safe. From the Director's perspective, a significant majority of community members encountered through the work of IOLERO have generally been supportive both of the good work of the Sheriff's Office, and of the value of IOLERO and its various missions.

This apparent majority view stands in contrast to the polarized views of smaller groups on each side of a significant divide. On one side of this divide, some view law enforcement as akin to an organized gang immune from accountability; they see civilian review as a toothless tiger providing no real means to reign in lawless officers. On the other side of this divide, some view law enforcement as the last bastion of civility, necessarily wielding force to save the lambs from the wolves that would otherwise terrorize society; they see civilian review as an unnecessary and politicized effort to curb these law enforcement functions.

The Director believes the majority has it right. The Sheriff's Office's staff perform necessary, difficult work that most of us could not perform, often-times selflessly and at great sacrifice to themselves and their families. The performance of the agency during the Sonoma fires disasters made that plain for everyone to see, but such work by agency employees happens across the county on a daily basis. And like all public agencies and public employees, the Sheriff's Office

and its staff should expect to receive regular, ongoing public scrutiny of their operations, including policies, training and practices. This is a basic tenet of the American system of democratic government - that checks and balances are in place to help ensure that we all get things right, and are fully accountable for actions taken in the name of the public.

Civilian review is one piece of that process, a valuable piece for both the public and law enforcement. The county's commitment to civilian review was the right choice during a difficult time, and it remains the right choice today.