Independent Office of Law Enforcement Review and Outreach (IOLERO)
Community Advisory Council (CAC)
Public Meeting Agenda
April 3, 2023 6:00 p.m.
Sonoma County Office of Education
5340 Skylane Boulevard
Redwood A and B rooms
Santa Rosa, CA. 95403

The April 3, 2023 Community Advisory Council meeting will be held as an in-person/online hybrid format.

MEMBERS OF THE PUBLIC MAY ATTEND THIS MEETING IN PERSON AT THE ADDRESS ABOVE, OR MAY JOIN THE MEETING VIRTUALLY THROUGH ZOOM.

Members of the Community Advisors Council will attend the meeting in person, except that they may attend virtually via ZOOM, to the extent allowable by the Brown Act for good cause pursuant to AB-2449.

Join the Zoom meeting application on your computer, tablet or smartphone:
Go to:
https://sonomacounty.zoom.us/j/97325904492?pwd=am5tcXdVTmJHNUVCdmN5RmxmRVljUT09

Please be advised that those participating in the meeting remotely via Zoom do so at their own risk. The CAC's public meetings will not be cancelled if any technical problems occur during the meeting.

Call-in and listen to the meeting:

By telephone: Dial 1-669-900-9128
Webinar ID: 985 0264 5259
Passcode: (IOLERO) 465376

1. Spanish interpretation will be provided as an accommodation if requested in advance. Please contact the CAC Community Engagement Analyst at (707) 565-1477 or by email lizett.camacho@sonoma-county.org by Noon on Friday, March 31, 2023. We will make every effort to provide for an accommodation. Spanish interpretation will be provided within the zoom application, you must use version 5.9.0 or later.

2. **Interpretación al español se proveerá si usted lo pide antes de la junta.** Por favor llame a la secretaria al 707-565-1477 o notifícanos por correo electrónico lizett.camacho@sonoma-county.org antes de las 5:00 p.m., Viernes, 31 de Marzo del 2023. Haremos todo lo posible para complacerlo. Para traducción en español, se tiene que usar la versión de Zoom 5.9.0 o una versión más adelantada.

3. If you have a disability which requires an accommodation or an alternative format to assist you in observing and commenting on this meeting, please contact the CAC Secretary at (707) 565-1477 or by email lizett.camacho@sonoma-county.org by Noon on Friday, March 31, 2023. We will make every effort to provide for an accommodation.

Public Comment at Community Advisory Council Meetings

Members of the public are free to address the CAC. Public comments:

- Should fall under the subject matter jurisdiction of the CAC (as noted in the founding documents).
- Are time-limited. Time limitations are at the discretion of the Director and Chair and may be adjusted to accommodate all speakers.

In addition to oral public comment at the meetings, the community is also invited to communicate with IOLERO staff and CAC members through email. Members of the public who would like to make statements that may exceed the time limits for public comment, suggest topics to be placed on future agendas, or suggest questions to be raised and discussed by CAC members or staff, may send an email addressing these matters to CAC@sonoma-county.org

CAC members may not deliberate or take action on items not on the agenda, and may only listen and respond briefly in limited circumstances. Should CAC members wish to deliberate on an issue raised during public comment, that issue may be placed on a future agenda of the CAC for discussion and possible action. Materials related to an item on this Agenda submitted to the CAC after distribution of the agenda packet are available for public inspection in the IOLERO office at the above address during normal business hours or via email.

Agenda

1. **CALL TO ORDER, ROLL CALL**

2. **APPROVAL OF MARCH 6, 2023 MEETING MINUTES**

3. **OPENINGS AND APPOINTMENTS**

4. **CORRESPONDENCE ITEMS**
   The Chair will report out on correspondence items relevant to CAC business.

5. **SHERIFF'S LIAISON REPORT**

6. BUSINESS ITEMS

A. Stop Data Presentation by Sheriff's Office
Recommendation: Receive presentation, discuss item and if necessary, take action.

B. Report and Recommendation of Ad Hoc Committee on Extremism
Recommendation: Discuss item and take action.

C. Work Plan from CAC 2023 Retreat
Recommendation: Discuss item and take action.

D. New Ad Hoc Committees
Recommendation: Discuss item and take action.

7. DIRECTOR'S REPORT

A. Update on recent Public Employee Relations Board (PERB) Decision

8. CAC AD HOC REPORTS

A. Community Engagement

B. Extremism in Policing

9. OPEN TIME FOR PUBLIC COMMENT

This section is intended for items not appearing on the agenda but within the subject matter jurisdiction of the CAC. Please state your name and who you represent, if applicable. Comments will be limited at the discretion of the chairs based on number of comments and other factors.

10. REQUESTS FOR FUTURE AGENDA ITEMS

11. ADJOURNMENT

The next regular meeting of the Community Advisory Council will be held on Monday May 1, 2023 at 6:00pm. The in-person/hybrid meeting will be at the following location:

Sonoma County Office of Education

5340 Skylane Boulevard
Redwood A and B rooms
Santa Rosa, CA. 95403

Commitment to Civil Engagement

All are encouraged to engage in respectful communication that supports freedom of speech and values diversity of opinion. CAC Members, staff, and the public are encouraged to:

- Create an atmosphere of respect and civility where CAC members, county staff, and the public are free to express their ideas within the time and content parameters established by the Brown Act and the CAC's standard parliamentary procedures;
- Adhere to time limits for each individual speaker, in order to allow as many people as possible the opportunity to be heard on as many agenda items as possible;
- Establish and maintain a cordial and respectful atmosphere during discussions;
- Foster meaningful communication free of attacks of a personal nature and/or attacks based on age, (dis)ability, class, education level, gender, gender identity, occupation, race and/or ethnicity, sexual orientation;
- Listen with an open mind to all information, including dissenting points of view, regarding issues presented to the CAC;
- Recognize it is sometimes difficult to speak at meetings, and out of respect for each person's perspective, allow speakers to have their say without comment or body gestures, including booing, whistling or clapping.

Designed Team Alliance

All are encouraged to engage in respectful, non-disruptive communication that supports freedom of speech and values diversity of opinion. Our Designed Team Alliance is a list of norms, which describe the way CAC wants to show-up and be in community while modeling collaborative behavior. We request that CAC members, staff, and the public follow the CAC's agreed upon Designed Team Alliance.

Our Designed Team Alliance is:

- Be tough on topic not on people
- Respect others
- Respect other's perspective
- Respect time
- Practice active listening
- Be open minded
- Speak to others as you would Like to be spoken to
- Honor freedom of speech
- Call each other "in"

Community Advisory Council Meeting Minutes
Independent Office of Law Enforcement Review and Outreach
March 6, 2023

Members of the public and CAC members attended this meeting in person/online hybrid format. March 6, 2023 Community Advisory Council meeting was held hybrid in person and via zoom.

PRESENT

Council Members:	Tom Rose, Nathan Solomon, Max Pearl, Evan Zelig, Lorez Bailey, Nancy Pemberton
IOLERO Staff:	John Alden, Director; Lizett Camacho, Community Engagement Manager
SCSO:	Lt. Andy Cash
Members of the Public:	9 members of the public attended via ZOOM. 5 members attended in-person.
Absent:	Lorena Barrera, Marcy Flores

Call to Order

The meeting was called to order at 6:00 p.m.

AGENDA

1. **WELCOME AND ROLL CALL**

Facilitated by CAC Vice Chair Pemberton

A. Agenda Review

B. Commitment to Civil Engagement and Team Alliance

2. **APPROVAL OF FEBRUARY 6, 2023 MEETING MINUTES**

A. Motion to approve: Councilmember Pemberton
2nd: Councilmember Pearl
Vote:
Ayes: Zelig, Solomon, Pearl, Rose, Bailey, Pemberton

3. **OPENINGS AND VACANCIES**

A. There are currently 4 vacancies. Please email IOLERO if interested. No need to live in the same district as applying in.

1. Vacancy in District 1
2. Vacancy in District 2
3. Vacancy in District 3
4. Vacancy – At-large appointment

4. CORRESPONDENCE ITEMS

A. No items

5. DIRECTOR'S REPORT

A. IOLERO 2021-2022 Annual Report

Director Alden shared that this annual report is designed to be reporting every fiscal year. This report covers 2021 until July 1, 2022. Next annual report 2022-2023 will be coming in September 2023. This report does not provide any proactive work however it does close the backlog. Thanks to Garrick Byers, Jon Berger, and Melanie Griffin for their hard work on this report during that fiscal year. Now we are able to finish audits more promptly. The annual report will be presented at the BOS on March 21. This will be another opportunity for the public to comment there. The Sheriffs Office will also have a response to the annual report on March 21.

B. Investigative Processes

Director Alden discussed the process it takes to file a complaint at IOLERO, the process that takes place once it is sent to the SCSO for investigation, and IOLERO's audit of that investigation. Timing of the investigations can take some months, up to a year or more. Categories such as "sustained" and "exonerated" were discussed as findings that the Sheriff's Office can make after investigating a complaint against an officer.

The complaint, investigation, and response are confidential. IOLERO and SCSO may not share any of this information per state law. The complainant is required to get a response from IOLERO and the SCSO. Once the complainant receives the response to their complaint from the SCSO and IOLERO, they can do whatever they choose to do with that response.

Exceptions to sharing information regarding complaints are cases that involve law enforcement involved shootings, great bodily injury, sustained excessive force, sustained lying and sustained sexual assault. Those cases can be made public. The Sheriff's Office also has this information on their website. For small number of cases, state law allows us to have some transparency about those, and we look forward to that.

Director Alden shared the process for IOLERO doing direct administrative personnel investigations of officer involved shootings and other fatalities as envisioned in Measure P. First, a criminal investigation is launched by another set of agencies, usually the Santa Rosa Police Department and the Sonoma County District Attorney's Office. That criminal investigation can gather and analyze information IOLERO cannot, like forensic evidence at the crime scene and using search warrants to gather more evidence.

IOLERO and the SCSO both wait to see what information is gathered by these criminal investigative tools before interviewing officers themselves in their administrative investigation. We would like IOLERO and the SCSO to be able to work on the administrative investigation simultaneously.

Clearly if the officer is going to be prosecuted, this is the highest priority. Both IOLERO and the SCSO must be very careful to ensure that their administrative investigations do not affect the criminal investigation of the same officer. Information from the administrative investigation is generally not allowed to be used in the criminal investigation. If information from the IOLERO or SCSO investigations get back into the criminal case file, that criminal case will be dismissed. This happened at the San Francisco Sheriff's Office recently in a case called "Fight Club". We'll work hard to make sure this does not happen in Sonoma County.

Motion to move the remaining agenda items for a future meeting was made by Councilmember Zelig.
2nd: Solomon
Vote:
Ayes: Rose, Zelig, Bailey, Pearl, Pemberton, Solomon

Motion to call a special meeting for Monday March 13, 2023 was made by Councilmember Rose.
2nd: Pearl
Vote:
Ayes: Rose
Nays: Zelig, Solomon, Bailey, Pearl, Pemberton

The Sheriff's Liaison report, Business Items, and CAC Ad Hoc Reports, were thus all continued to a future meeting.

6. OPEN TIME FOR PUBLIC COMMENT

A. 5 Members of the Public addressed the CAC and the Director.

11. ADJOURNMENT

The meeting was adjourned at 8:02 pm.

The next meeting of the CAC is scheduled for Monday, April 3, 2023, at 6:00pm and it will be hybrid (via zoom and in-person).

Location: TBD

DRAFT

SONOMA COUNTY SHERIFF'S OFFICE

Reporting Stop Data

"RIPA"

Racial and Identity Profiling Act of 2015

Sonoma County Sheriff's Office
Implementation February 2021
**DOJ Reporting to begin June 1st, 2021.

What does this mean to each Deputy?

When you contact a person in the course of being a law enforcement Deputy/Detective, you will be required to provide some data regarding that contact if it results in a detention or a search.

YES, there are a lot more details than just that, but in essence that is the rule.

When do I not have to report STOP data?

If you are involved in a “consensual” contact then you don’t have to report the data.

Ex- While on patrol you talk to a community member that you are asking about issues in the neighborhood- NO data is reported.

Ex- You respond to a car accident and conduct an accident investigation, but do not detain anyone and just collect their personal information for the report- NO data is reported.

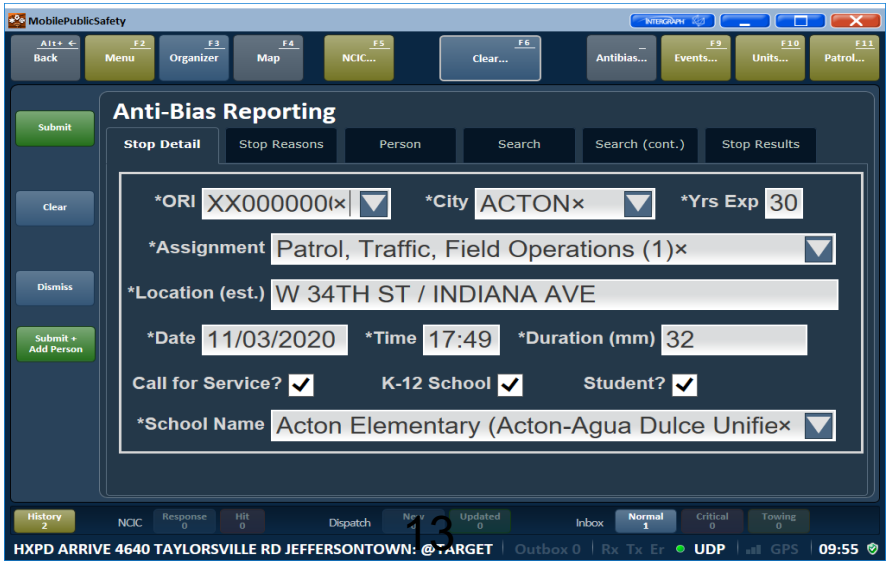
When do I have to report STOP data?

Anytime you are engaged in work activities and you make a lawful detention of a person, you MUST report the STOP data.

- Driver of a car during a traffic stop (for any reason).
- Response to a dispatched call and you detain a person- whether in handcuffs or not.
- Pedestrian contacts where they are detained.
- Probation or Parole Search. (Probation Officers are exempt from completing STOP Data).
- People detained for a search warrant service (unless they are the person named on the search warrant).
- Just like the threshold in court for a detention, if it is reasonable to believe they are detained, then you must report the STOP Data.

How do I report the data?

The company that designed the MDC program in your patrol car (Hexagon), has been working with the Sonoma County Consortium to have an application that will prompt you after set contacts to complete the STOP data before you can clear the call.



How involved is this?

- The average DATA input will take approximately one to two minutes to go through on the MDC.
- Once you have completed the STOP data, and there are no clear errors, you will go through the rest of the normal process of clearing a call on your MDC.
- If you make any errors, the system will prompt you to correct those errors before you can clear the call.

How Specific do you need to be ?

The data that you report CANNOT be specific to the exact location, any info that could identify the person detained, and you or your partners.

Every Deputy that completes this STOP data will be assigned a unique ID that will not have any tie back to you from anyone outside of the Department. This is NOT your Badge number or Payroll ID #. You will be given a user ID number for this process.

The information tracked is about you, the people we detain, the reason for the detention, what was the outcome, and any items taken through the contact.

Once you complete the data, what happens to it?

The Sonoma County Consortium has built the system so that the data will transmit to Cal DOJ once a week. Cal DOJ will then post the data to their website for review by the public.

The Sheriff's Office will receive a data sheet for review of all data sent over to DOJ. This data will be used for training and improvement of data purposes, not for records retention.

The data that we send to Cal DOJ will be posted to this website for public review:

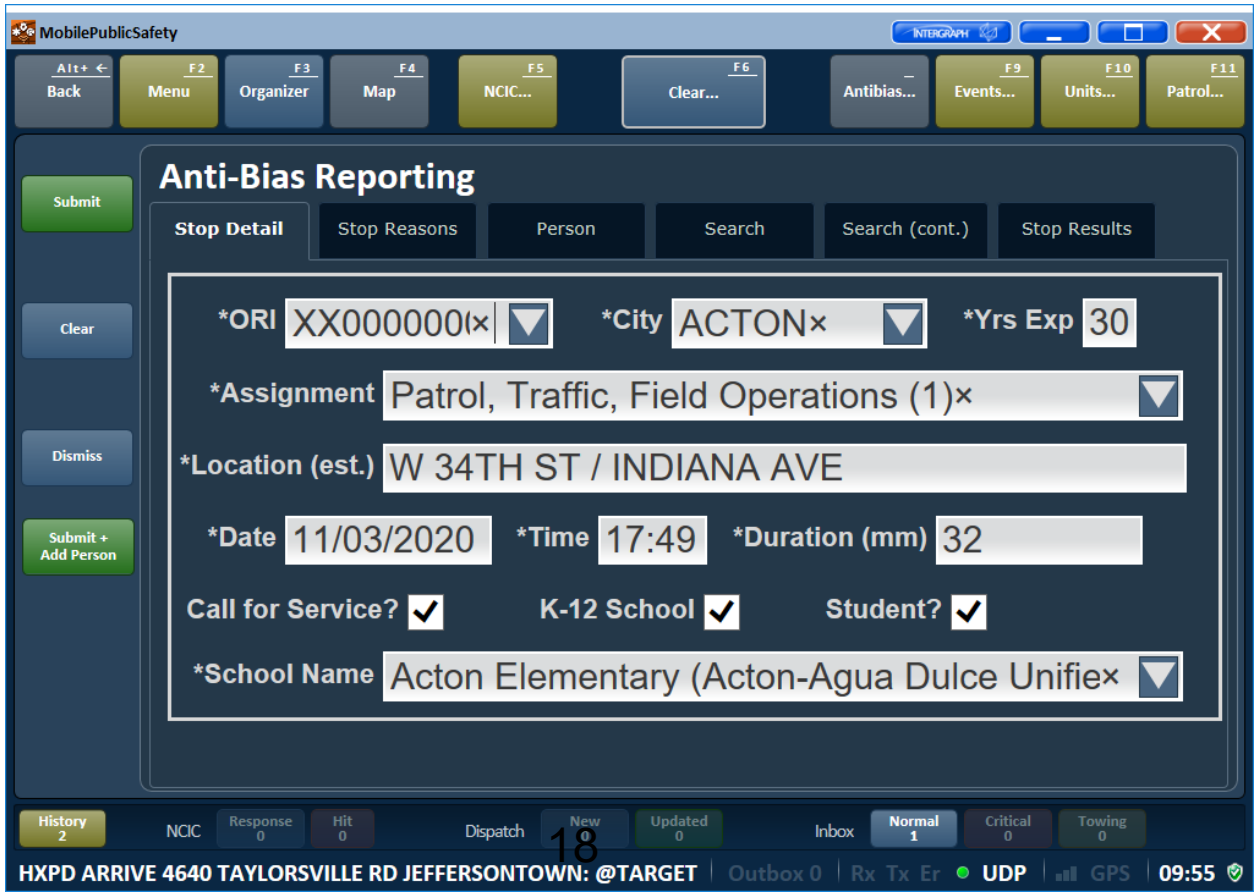
https://openjustice.doj.ca.gov/exploration/stop-data "Open Justice" webpage.

What DATA am I reporting?

- Time, Date and non-specific location of the contact (all of this is automated).
- Assignment and your years of service.
- Perceived Race or Ethnicity of the person contacted.
- Perceived Gender of the person.
- Perceived to be LGBT- Yes/No.
- Perceived Age.
- Limited or No English Fluency- Yes/No
- Perceived or known Disability.
- Reason for the stop/contact- This is fill in and a brief description so you will need the CVC, PC or Reasonable Suspicion information.
- Actions Taken- Selection ranging from “None” to “Arrested”.
- Basis for Search- Selection as well as a brief description area.
- Basis for Property Seizure and Type of Property- Selection only.
- Contraband/Evidence Discovered- Selection only.
- Result of Stop- Selection and Fill-in.

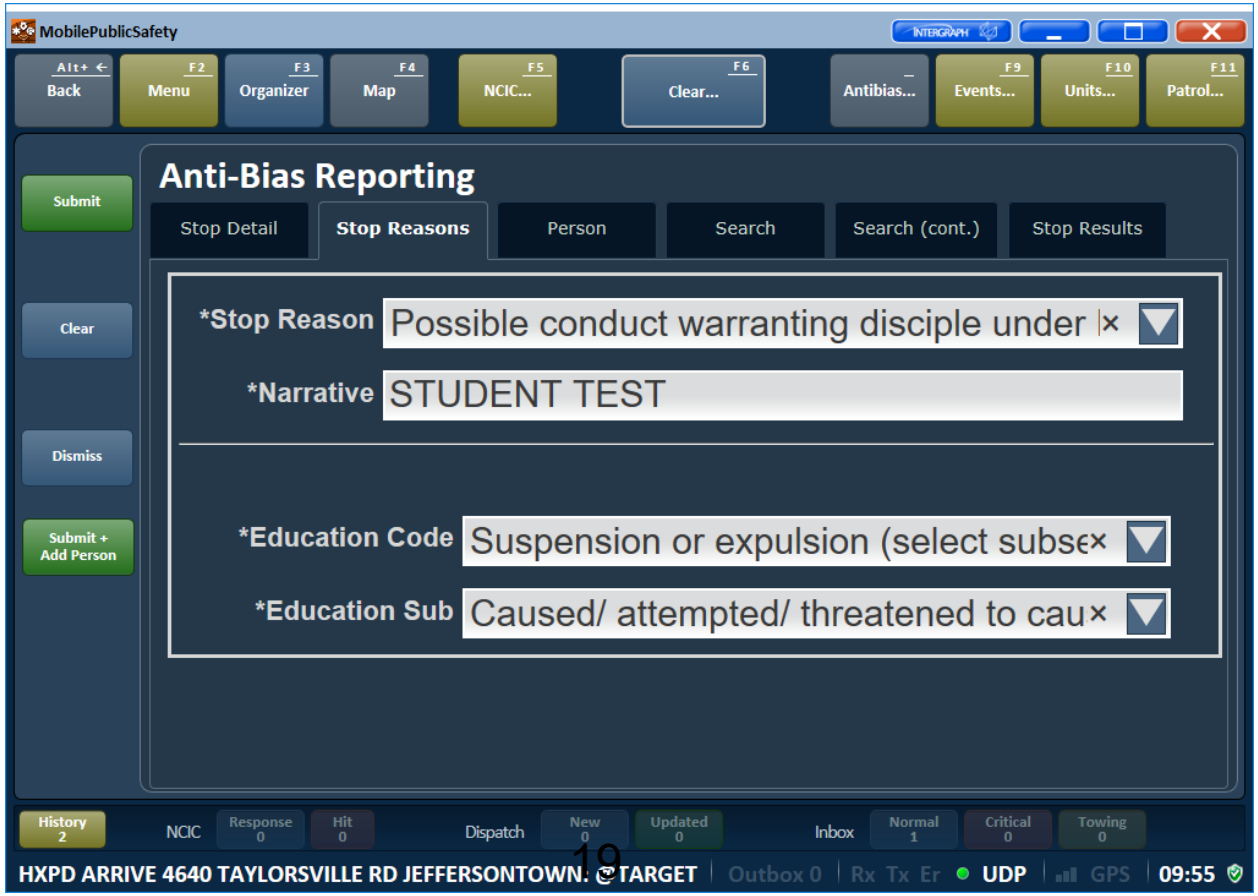
MDC Data pages:

First Screen:



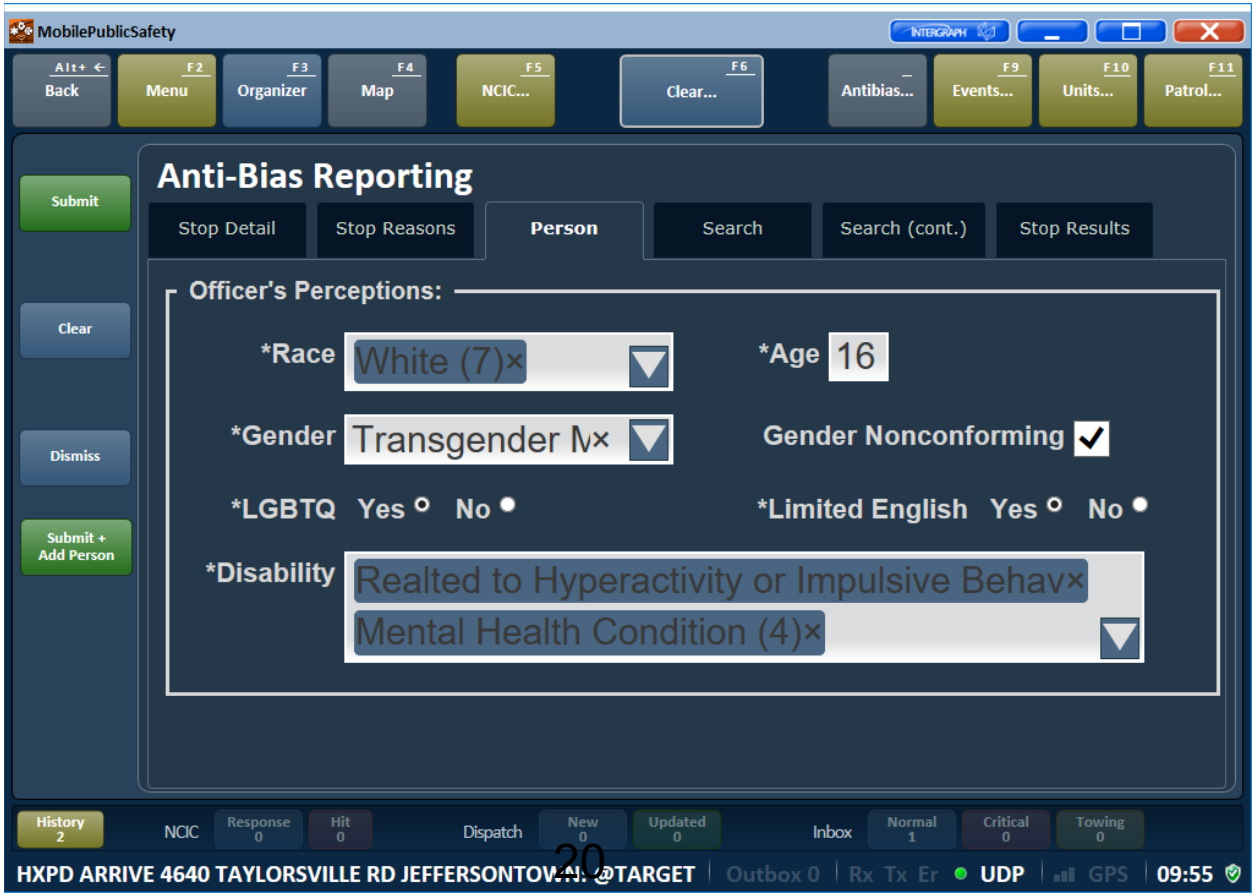
MDC Data pages:

2nd Screen:



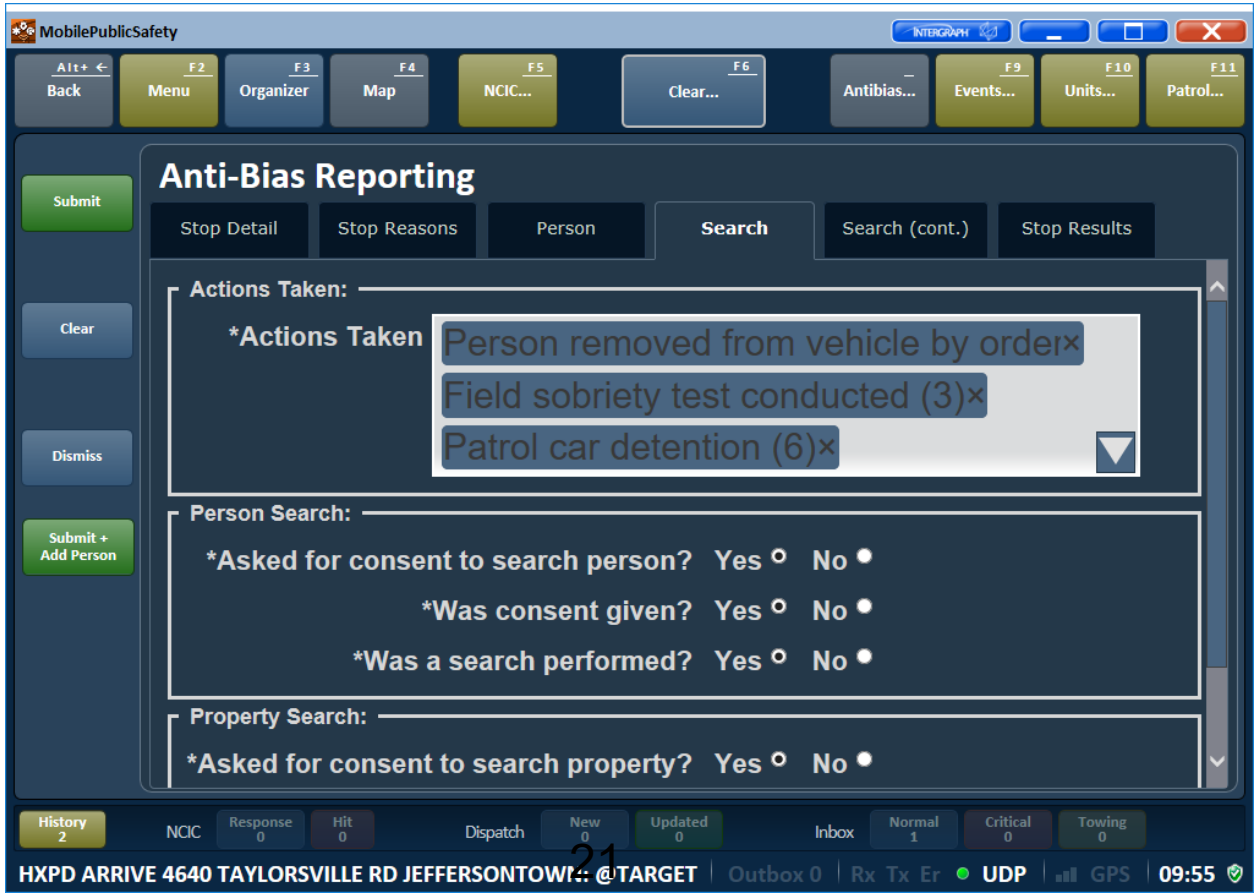
MDC Data pages:

3rd Screen:



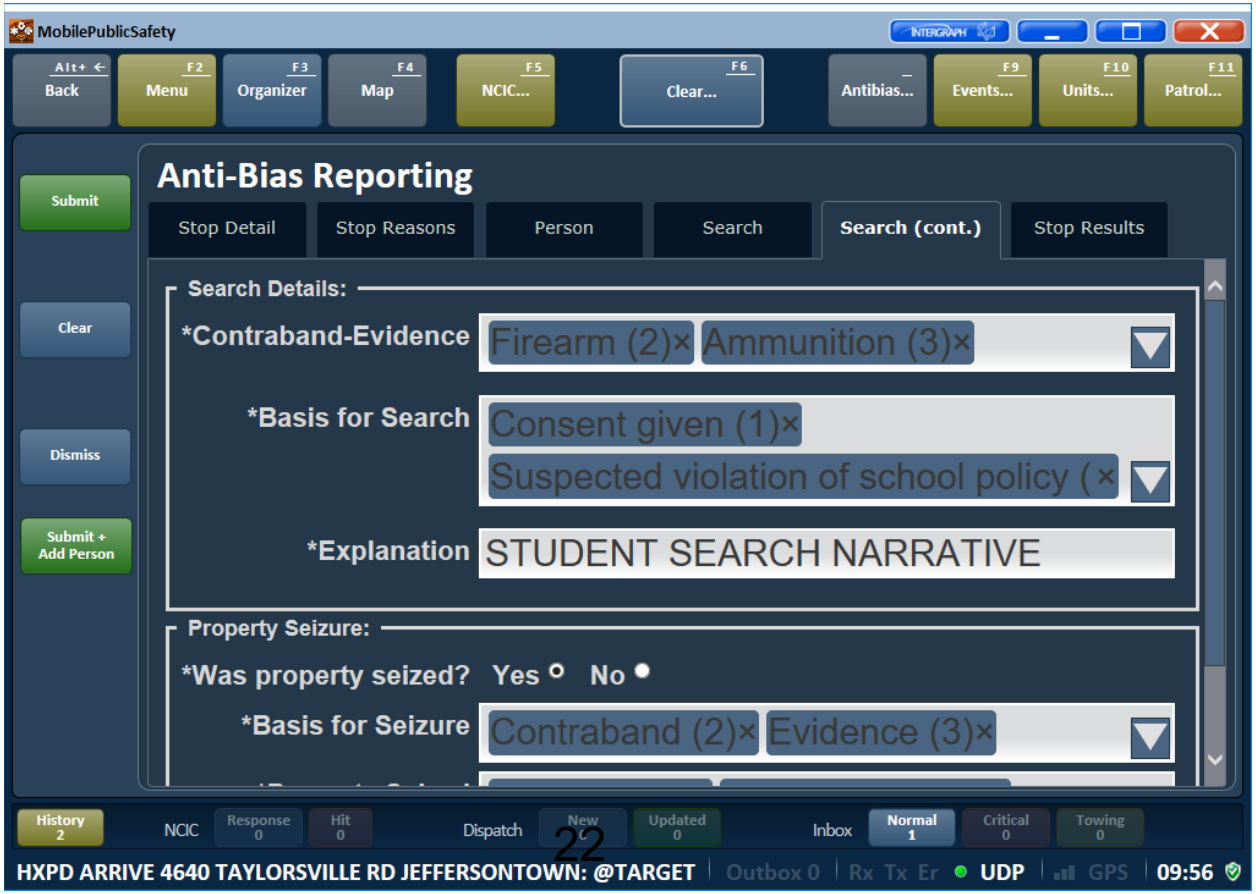
MDC Data pages:

4th Screen:



MDC Data pages:

5th Screen:



MDC Data pages:

6th Screen:

Form Completion Tips:

No personal identification should be able to be made of the person contacted, specific address/location, nor the Deputies involved in the contacts.

- The location should be "nearby" or "closest intersection". You might need to modify the pre-filled sections based on the location of the contact.
- Your location, unique identifier, ORI and if a school is involved, will be auto filled for you.
- Your assignment and years of experience will be remembered on that MDC once you have completed one form. You will need to update this as time goes on and your assignments change or if you are working OT.
- The questions about "Perceived" are supposed to be answered based on what you initially thought the person was, not what you learned from a CDL or them telling you.

- Recorded Demo of MDC program completion:
- https://drive.google.com/file/d/1EmoBjBS6HDa4YUnVwuWhZzdUa5Fnpizb/view?usp=sharing

Legal Requirements for RIPA

- California Assembly Bill 953
- California Assembly Bill 1518
- California Government Code 12525.5
- California Penal Code 13519.4 PC

Appendix I
RIPA Best Practices

RACIAL AND IDENTITY PROFILING ADVISORY BOARD 2020 REPORT – BEST PRACTICES

The 2020 Report contains model language for a written bias-free policing policy; definitions related to bias; the limited circumstances when personal characteristics of an individual may be considered; training; data collection and analysis; encounters with the community; accountability and adherence to the policy; and supervisory review. Agencies are also encouraged to develop policies and training on how to prevent bias by proxy when responding to a call for service. In addition to including model language, the Board conducted a policy review to assist Wave 1 agencies in identifying areas of opportunity to incorporate the best practices and model language presented in this report and the 2019 RIPA Annual Report with respect to civilian complaints and bias free policing policies. For the purposes of this report, Wave 1 agencies refers to the eight largest law enforcement agencies in the state that began collecting stop data on July 1, 2018, and reported it to the California Department of Justice on April 1, 2019.

The Board advises that these best practices are general recommendations –developed with the hope of eliminating racial and identity profiling in policing –but they are by no means exhaustive. These recommendations represent best practices that have appeared in various consent decrees, grand jury reports, and scholarly studies regarding policies related to bias-free policing. Each individual law enforcement agency should review its current policies, procedures, and trainings to determine which of the following recommendations fit best within its organization. These best practices can be found throughout the body of the report as well as in Appendix E for ease of reference.

It is the Board's hope that these best practice resources will assist law enforcement agencies, policymakers, and community members in developing, assessing and implementing bias-free policing policies, procedures, and trainings. The Board understands that there must be sufficient funding in order to implement these recommendations, and further understands that the amount of funding and resources available to implement these recommendations varies depending on the agency; however, agencies are encouraged to seek out grants and funding that will ensure that the stop data collection is utilized to its fullest potential. The Board also encourages law enforcement agencies to partner with local community-based organizations or colleges or universities to help with translations and other implementation of these best practices.

Even without additional resources, there are recommendations that can and should be adopted to enhance the services that law enforcement agencies provide to the community. The Board encourages cities, counties, and policymakers to work with law enforcement agencies under their purview to ensure they are allocated the necessary funding and resources to implement the best practices described in the report.

As the Board continues to carry out its mission, it applauds the efforts of law enforcement agencies and stakeholders to improve law enforcement-community relationships and take steps toward eliminating racial and identity profiling in California. The Board recognizes and

understands that real progress requires both law enforcement and community support. California has been a leader on many fronts and this is yet another opportunity to demonstrate to the nation that real progress is possible when people work together towards a shared goal, in this case, the elimination of racial and identity profiling in California.

Recommendations for Model Bias-Free Policing Policies

A model bias-free policing policy is a stand-alone policy devoted to bias-free policing. It uses clear language, including definitions of relevant terms, and expresses the agency or department's responsibility to identify and eliminate racial and identity profiling. In addition to stating the agency or department's core values and its commitment to bias-free policing, a model policy includes relevant federal and state law. A model policy is based on best practices, well researched, and regularly updated with changes in the law or best practices. A model bias-free policing policy includes cross references to other relevant agency policies on subjects such as civilian complaints, stops, use of force, training, and accountability. It also includes references to relevant training that agency or department personnel receive on subjects such as implicit bias, civilian complaint procedures, human and community relations, etc. A model stand-alone policy is easily accessible to both agency personnel and the public.

All personnel, including dispatchers and non-sworn personnel, should receive training on the bias-free policing policy. Specific examples of behavior that violates the bias-free policing policy should be included in either the training or the policy itself.

Below is model policy language and definitions that law enforcement agencies can consider including in their bias-free policing policies. The Board notes that these recommendations are merely a starting point for the development of best practices that agencies can include in their bias-free policing policies.

A. Model Policy Language for Bias-Free Policing Policy

- The [agency] expressly prohibits racial and identity profiling.
- The [agency] is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair, and equitable manner that keeps both the community and officers safe and protected.
- The [agency] recognizes that explicit and implicit bias can occur at both an individual and an institutional level and is committed to addressing and eradicating both.
- The intent of this policy is to increase the [agency's] effectiveness as a law enforcement agency and to build mutual trust and respect with the [city, county or state's] diverse groups and communities.
- A fundamental right guaranteed by the Constitution of the United States is equal protection under the law guaranteed by the Fourteenth Amendment. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by government agents as guaranteed by the Fourth Amendment.

- The [agency] is charged with protecting these rights. Police action that is biased is unlawful and alienates the public, fosters distrust of police, and undermines legitimate law enforcement efforts.
- All employees of [agency] are prohibited from taking actions based on actual or perceived personal characteristics, including but not limited to race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group.
- [Agency] personnel must not delay or deny policing services based on an individual's actual or perceived personally identifying characteristics.

B. Model Policy Language for Definitions Related to Bias

- **Racial or Identity Profiling:** the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability[1] in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. Such activities include, but are not limited to, traffic or pedestrian stops, or actions taken during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.[2]
- **Bias-Based Policing**: conduct by peace officers motivated, implicitly or explicitly, by the officer's beliefs about someone based on the person's actual or perceived personal characteristics, i.e., race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability.
- **Implicit Bias:** the attitudes or stereotypes that affect a person's understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control. Implicit biases are different from known biases that individuals may choose to conceal.
- **Bias by Proxy**: when an individual calls/contacts the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against based on explicit racial and identity profiling or implicit bias.[3] When the police act on a request for service based in unlawful bias, they risk perpetuating the caller's bias. Sworn and civilian staff should use their critical decision-making skills, drawing upon their training to assess whether there is criminal conduct.
- **Reasonable Suspicion to Detain:** reasonable suspicion is a set of specific facts that would lead a reasonable person to believe that a crime is occurring, had occurred in the past, or is about to occur. Reasonable suspicion to detain is also established whenever

there is any violation of law. Reasonable suspicion cannot be based solely on a hunch or instinct.

- **Detention**: a seizure of a person by an officer that results from physical restraint, unequivocal verbal commands, or words or conduct by an officer that would result in a reasonable person believing that he or she is not free to leave or otherwise disregard the officer.[4]

- **Reasonable Suspicion to Conduct a Pat Search**: officers are justified in conducting a pat search if officers have a factual basis to suspect that a person is carrying a weapon, dangerous instrument, or an object that can be used as a weapon, or if the person poses a danger to the safety of the officer or others. Officers must be able to articulate specific facts that support an objectively reasonable apprehension of danger under the circumstances and not base their decision to conduct a pat search on any perceived individual characteristics. Reasonable suspicion to conduct a pat search is different than reasonable suspicion to detain. The scope of the pat search is limited only to a cursory or pat down search of the outer clothing to locate possible weapons. Once an officer realizes an object is not a weapon, or an object that can be used as a weapon, the officer must move on.

- **Probable Cause to Arrest:** under the Fourth Amendment to the United States Constitution, arrests must be supported by probable cause. Probable cause to arrest is a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by the person to be arrested.

C. Model Policy Language for Limited Circumstances in which Characteristics of an Individual May Be Considered

- [Agency] members may only consider or rely on characteristics listed in a specific description of a suspect, victim, or witness based on trustworthy and relevant information that links a specific person to a particular unlawful incident.

- Except as provided above, [agency] officers shall not consider personal characteristics in establishing either reasonable suspicion or probable cause.

D. Model Policy Language for Encounters with Community

- To cultivate and foster transparency and trust with all communities, each [agency] member shall do the following when conducting pedestrian or vehicle stops or otherwise interacting with members of the public, unless circumstances indicate it would be unsafe to do so:

    - Be courteous, professional, and respectful.

    - Introduce themselves to the community member, providing name, agency affiliation, and badge number. [Agency] members should also provide this information in writing or on a business card.[5]

- State the reason for the stop as soon as practicable, unless providing this information will compromise officer or public safety or a criminal investigation.
- Answer questions that the individual may have about the stop.
- Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and [agency] member convey the purpose of any reasonable delays.

- All [agency] personnel, including dispatchers and non-sworn staff, shall not use harassing, intimidating, derogatory, or prejudiced language, including profanity or slurs, particularly when related to an individual's actual or perceived personal characteristics.
- Dispatchers and sworn personnel shall be aware of and take steps to curb the potential for bias by proxy in a call for service.
- Officers should draw upon their training and use their critical decision-making skills to assess whether there is criminal conduct and to be aware of implicit bias and bias by proxy when carrying out their duties.
- All [agency] personnel, including dispatchers and non-sworn personnel, shall aim to build community trust through all actions they take, especially in response to bias-based reports.

E. Model Policy Language for Training

- The [agency] will ensure that, at a minimum, all officers and employees are compliant with requirements regarding bias-free policing training.
- The [agency] will ensure that management includes a discussion of its bias-free policing policy with its officers and staff on an annual basis.
- [Agency] officers should be mindful of their training on implicit bias and regularly reflect on specific ways their decision-making may be vulnerable to implicit bias.

F. Model Policy Language for Data Collection and Analysis

- As required by the California Racial and Identity Profiling Act of 2015, [agency] is required to collect data on: (a) civilian complaints that allege racial and identity profiling and (b) perceived demographic and other detailed data regarding pedestrian and traffic stops. The data to be collected for stops includes, among other things, perceived race or ethnicity, approximate age, gender, LGBT status, limited or no English fluency, or perceived or known disability, as well as other data such as the reason for the stop, whether a search was conducted, and the results of any such search. All agencies must report this data to the California Department of Justice.
- The [agency] should regularly analyze data, in consultation with [academics, police commissions, civilian review bodies, or advisory boards], to assist in identifying practices that may have a disparate impact on any group relative to the general population.

G. Model Policy Language for Accountability and Adherence to the Policy

- All [agency] personnel, including dispatchers and non-sworn personnel, are responsible for understanding and complying with this policy. Any violation of this policy will subject the member to remedial action.
    - Types of remedial action should be outlined.
- All [agency] personnel, including dispatchers and non-sworn personnel, shall not retaliate against any person who complains of biased policing or expresses negative views about them or law enforcement in general.
- All [agency] personnel, including dispatchers and non-sworn personnel, share the responsibility of preventing bias-based policing. Personnel shall report any violations of this policy they observe or of which they have knowledge.
    - Processes and procedures for reporting violations should be included.

H. Model Policy Language for Supervisory Review

- • Supervisors shall ensure that all personnel under their command, including dispatchers and non-sworn personnel, understand the content of this policy and comply with it at all times.
    - Supervisory processes and procedures for monitoring should be included.
- Any employee who becomes aware of any instance of bias-based policing or any violation of this policy shall report it in accordance with established procedure.
- Supervisors who fail to respond to, document, or review allegations of bias-based policing will be subject to remedial action.
    - Types of remedial action should be outlined.
    - Supervisor processes and procedures for review should be included.

Recommendations Regarding Bias by Proxy

Bias by proxy occurs in a call for service "when an individual calls the police and makes false or ill-informed claims about persons they dislike or are biased against."[6] Because calls for service are a common way in which law enforcement officers make contact with the public, it is critical that law enforcement agencies have policies and training in place about how to prevent bias by proxy when responding to a call for service.

Best Practices for Responding to Biased-Based Calls for Service[7]

The Board reviewed evidence-based best practices for responding to bias-based calls for service and identified the following best practices:

- Agencies should have a policy detailing how sworn personnel and dispatchers should respond to bias-based reports, reports regarding bias, or bias by proxy from the

community. This policy could be a stand-alone policy or integrated into the bias-free policing policy.

- An agency policy covering biased-based calls for service should include:
    - How an officer should identify a biased-based call for service.
        - It should first instruct the officer to determine whether there is evidence of criminal misconduct or if there is a need to engage in a community caretaking function.
        - It should include clear direction on next steps with respect to the caller and subject of the call (see below) if an officer determines that there is no criminal conduct or no need to conduct a well-being check.
        - It should allow officers to respond to the area and independently assess the subject's behavior from a distance. If no suspicious criminal behavior is observed, then the officer can report the call to dispatch as "unfounded."
    - How sworn personnel and dispatchers should interact with the community member who has made a bias-based call for service.
        - It should detail ways personnel can courteously explore if the call is bias-based and concerns an individual's personal characteristics (e.g., call regarding a person of color walking in the "wrong neighborhood") or if there are specific behaviors that warrant a call for police response. If the complainant can offer no further, concrete information, the complainant may be advised that the shift supervisor will be in contact at the first opportunity.
- Specifically, dispatchers could have a series of questions or a flexible script, which enables them to ask questions and explore whether there are concrete, observable behaviors that form the basis of the suspicious activity or crime the caller is reporting. Is the person looking into cars, checking doors, casing homes, etc.? What specific crime or activity does the person claim to be witnessing?[8]
        - If a call turns out to be a bias-based call for service, the shift supervisor may follow up with the caller to let them know that they found no suspicious or criminal activity. This way of "closing the call" may help educate callers about appropriate calls for service and possibly alleviate dispatching calls that have no merit, while serving to build trust between police and the community.
    - How an officer should interact with a community member who is the subject of a bias-based call.

        - It should detail methods on how to approach the subject of a bias-based call in a manner that respects their dignity and does not alarm them, but informs them about the reason that the officer is on scene.
        - It should include methods to account for situations in which the responding officer encounters both the caller and the subject of a potential bias-based call at the scene.

- Such methods should include de-escalation, respectful listening, and procedural justice techniques to ensure the scene is safe, the parties have an opportunity to communicate, and the officer has the opportunity to explain why no violation has occurred.
    - How the shift supervisor should interact with the caller:
        - It should detail how the shift supervisor can explain that the agency does not respond to calls for service based on an individual's personal characteristics and that lawful activities are not more suspicious because of the individual's personal characteristics.
        - It should detail ways the shift supervisor can educate the caller on the agency's bias-free policing policy and philosophy and explain that officers respond to behaviors/actions of individuals that appear suspicious, threatening, illegal, etc., and not to hunches or situations based on an individual's personal characteristics.
        - In the case of a call for service that is based on a caller's suspicion that an individual present in the jurisdiction is an undocumented immigrant, the supervisor could inform the caller that California law enforcement agencies are not responsible for enforcing federal immigration law, as provided for in the California Values Act (Cal. Gov. Code, §§ 7284 et seq.). These interactions should be documented by the supervisor.

- Agencies should have a training for officers and dispatchers that covers responding to bias-based calls for service. It should include:
    - Foundational instruction on how poor or inadequate responses to such calls can impair the agency's legitimacy and undermine other agency efforts to build community trust and communication.
    - How to be mindful of their training on implicit bias and regularly reflect on whether such bias is affecting a caller's decision-making (e.g., assuming a higher or lower threat level presented by an individual based upon his or her race, gender, or other personal characteristics).
    - How to assess a call for bias-based motivations.
    - How information regarding a call for service should be relayed without including biased assumptions.

- How to collect enough information necessary to verify reasonable suspicion of criminal activity.
- How to record and track any bias-based call in the agency's tracking systems.
- How on-scene responses to calls for service may require officers to apply de-escalation, communications, and procedural justice techniques.
- The subject of biased-based calls for service should also be included in supervisor and leadership training as desktop exercises so that attendees grasp the challenge bias-based calls present to the agency's overall mission.

It would be beneficial for dispatchers and officers to jointly attend training on calls for service so that the training can address the intersecting roles and responsibilities of both positions in dealing with bias-based calls for service. The Board also recommends that dispatchers go on a ride-along with a field officer as part of their training, and that field officers do a sit-along in the dispatch center so that each can build a better understanding of what the other job entails. This will open up the lines of communication between the two positions and enable them to better handle not only calls rooted in bias by proxy, but all dispatch calls generally.

Best Practice Recommendations for Civilian Complaint Forms

In its 2019 report, the Board made recommendations for best practices for civilian complaint procedures and policies. In its 2020 report, the Board makes recommendations regarding the civilian complaint forms. After reviewing literature regarding best practices for civilian complaint procedures and forms and conducting an initial review of the Wave 1 agency civilian complaint review forms, the Board recommends that agencies consider the following in assessing and, if appropriate, revising their complaint procedures and forms:

Introductory or Background Information

- The agency's complaint form should include an explanation of the policy to provide the complainant with clear direction on complaint procedures.
- The agency's policies, applicable forms, and training materials should communicate a clear, consistent definition of the term "civilian complaint."
- Complaint forms should include specific instructions for how to fill out and submit the complaint, as well as the contact information of specific department personnel who can assist in completing the form.
- The form should include pertinent information from the agency's complaint policy and procedures, such as:
    - A link to the agency's complaint policy.

- A statement on the agency's commitment to the acceptance and prompt, fair, and thorough investigation of all complaints regardless of submission method or source.
- A statement that retaliation for making a complaint or cooperating in a complaint investigation is contrary to agency policy and may also be unlawful. The statement may encourage individuals to report any retaliation they face.
- A statement on the protection of personal information except as necessary to resolve the complaint. This should include a notice that the information is subject to the State's public disclosure laws.
- A definition of racial or identity profiling consistent with RIPA.
- Information about the investigation process, including the potential finding dispositions and the timeline.
- Information on whom to contact regarding updates on the investigation of the complaint.

General Complaint Information

- The form should capture:
  - If the complaint is being submitted anonymously, by a third party, or on behalf of a minor;
  - If a translator has been requested;
  - How the complaint was submitted (e.g., online, mail, in person).
- The form should include the name and contact information for agency personnel who filed or collected the complaint.
- The form should be accessible for people with disabilities.

Complainant Information

- The form should ask for the following relevant information about the complainant (*if* the complainant so chooses):
  - Name
  - Age
  - Gender
  - Race or Ethnicity
  - Sexual Orientation

- Primary Language
- Address
- Home, work, mobile phone numbers.
- E-mail Address

Incident Information

- The form should capture relevant information about the incident, including:
  - The location of the incident
  - Date of incident
  - Time of incident
  - If the incident was the result of a traffic or pedestrian stop
  - If the incident resulted in bodily injury
    - Including a narrative description field
    - If photos or videos of the injury were included with the complaint
  - If the complainant was present at the incident
  - If the incident was based in whole or in part on any factors such as:
    - Actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability[9]
    - Inappropriate use of force
    - Improper detention, search, or arrest
    - Substandard officer performance
  - Witness information, to the extent known
  - The name or a description of the officer(s)/employee(s) involved (potentially including Badge or ID number)
  - If the complaint or a related complaint has been previously submitted
  - A large narrative field for description of the alleged misconduct.

Processing of Complaints

The agency's civilian complaint procedures should clearly explain how various types of complaints will be received, logged, and reviewed. The procedure should require that all complaints – including those that may be reviewed by a civilian review board or different

branch within the department (for example, Internal Affairs) – be logged into a central civilian complaint repository to facilitate systematic analysis of these complaints.

The agency's complaint procedure should also include a time frame within which civilian complaints are to be investigated and a resolution reached.

The Board hopes that agencies will work to implement the Board's best practice recommendations for handling civilian complaints. As with all of its recommendations, the Board notes that these recommendations are merely a starting point and not an exhaustive list of best practice recommendations for civilian complaint procedures. These recommendations will help ensure that complaints submitted to the Department of Justice accurately reflect the number and type of complaints of racial and identity profiling.

Addressing the Lack of Uniformity Regarding What Constitutes a "Civilian Complaint" and How to Quantify Complaints

Law enforcement agencies should evaluate their civilian complaint processes and align their complaint forms with the best practices laid out in the Board's 2019 Report. In examining the civilian complaint data for 2018, the Board found that there were significant disparities in the number of reported civilian complaints by agencies. Disparities in the numbers of complaints documented, investigated, and reported by agencies may arise in part because agencies do not necessarily share a common understanding of what counts as a "complaint." Penal Code section 832.5 does not include a definition of "complaint" for reporting purposes, and there is no professional consensus within California on a definition.

Instead, agencies in California have the discretion to adopt or develop various definitions and systems for handling civilian complaints. One might suspect, then, that an agency with a relatively narrow definition of a civilian complaint — such as submitting a completed civilian complaint form signed under penalty of perjury — would have fewer reported complaints than an agency that has a broader policy that also includes oral complaints that are later memorialized in writing.

The lack of an agreed-upon definition or process for responding to complaints can contribute to wide differences in reported data, even if all agencies examined are acting in the utmost good faith.

Factors to Consider When Defining a "Civilian Complaint"

- Verbal complaints – whether there is a duty to document, investigate, and report.
- Complaints – verbal or written – by arrested individuals.
- Complaints by uninvolved third parties who witness misconduct.

- Multiple complaints by third parties about one incident
- Is every complaint logged or are all associated complaints logged as one incident?
- Is an officer required to self-report when verbally accused of racial profiling or other forms of biased policing?

Even a brief consideration of the many ways community members might express dissatisfaction or allege misconduct will identify potential areas of disagreement. Consider the following:

- Community Member A informs a Sergeant she knows that a patrol officer has regularly been running red lights without any apparent emergency. She adds, "I don't want make out one of those citizen complaints, because I like that officer. But there are lots of children out here, and thought you might speak to him." The allegations, if true, would violate agency policy and possibly traffic laws. Should this communication count as a "complaint" within Penal Code section 832.5?
- Community Member B informs a Sergeant that an officer "roughed up" her neighbor's teenage son. The teenager and his family state they do not wish to become involved "because we have to live in this neighborhood." Should the allegation count as a "complaint" for reporting purposes?
- Community Member C is driving on her way home from work when she is pulled over by an officer. The officer checks Community Member C's driver's license and finds she has an outstanding arrest warrant for failure to appear at a court hearing. Upon arrest, Member C accused the officer of racial profiling. Does this allegation trigger the agency's reporting, investigation, and retention requirements for civilian complaints? Should the accused officer be required to self-report the allegation, even if Community Member C does not take further action, such as completing a complaint form or otherwise making a more formal complaint?
    - Even if Community Member C did later submit a written statement that includes the racial profiling allegations, would all agencies treat the allegations as a civilian complaint, a defense to a criminal charge, an arrestee/prisoner grievance, or something else?
- During an agency's investigation of an excessive force complaint, a neighborhood witness tells the investigator that he witnessed the same officer use excessive force on a different neighbor last week. Should that new allegation of misconduct count as a second "civilian complaint" for reporting purposes, or would the agency treat the new allegation as part of the original investigation?

Another factor related to the core concept of what constitutes a "civilian complaint" is how to accurately log such a complaint. For example, if 10 people witness an altercation between an officer and an individual at an event and submit written complaints about the incident to an agency, does the agency log 10 complaints or just one, because they all have to do with the same incident? Do all agencies accept complaints from third parties regarding interactions they

observe, even though the third parties are not directly involved in interactions with the peace officer?

With the emergence of social media, there is also the opportunity for law enforcement to consider accepting complaints from less formal means. Consider, for example, what might happen if an agency learned that a community member posted a video recording on the Internet that depicted apparent officer misconduct towards another community member. Would the agency consider the original posting a civilian complaint that must be logged, reviewed, and reported to the Department? What about additional comments following the original posting? What if one or more of those comments included separate allegations of misconduct by agency personnel?

The Board raises these examples to illustrate why there may be disparities in reporting and to further urge law enforcement agencies to think about how the term "complaint" should be defined and/or expanded. Clear policies that address these questions will provide officers with direction that will hopefully standardize the civilian complaint processes within each agency as well as across California. The Board's review of the complaint policies of the Wave 1 reporting agencies reveals that the term "civilian complaint" is not defined in any of these policies. The Los Angeles County Grand Jury, in a recent report on the civilian complaint process of several law enforcement agencies in Los Angeles County, suggested the following definition:

> A complaint is an allegation by any person that a sworn officer or custodial employee of an agency, or the agency itself, has behaved inappropriately as defined by the person making the allegation. The person making the allegation is the complainant.[10]

As another example of a possible definition of "complaint," the Los Angeles County Sheriff's Department defines "personnel complaint" as "an external allegation of misconduct, either a violation of law or Department policy, against any member of the Department."

The National Association for Civilian Oversight of Law Enforcement (NACOLE) likewise suggests that the "types of complaints that should be investigated include allegations that, if proven true, would represent misconduct under the police department's policies and procedures."[11]

Even using one of these definitions, however, agencies may still vary regarding how to respond to a complaint, such as how to respond to verbal complaints, third-party complaints, or complaints reported by the officer who is the subject of the complaint.

Lack of Uniformity Regarding How to Process Civilian Complaints

Another factor that could explain an agency's relatively low number of civilian complaints is an agency's system for processing complaints and, in particular, the lack of a centralized repository for civilian complaints. For example, complaints that allege use of force may be reported directly to an Internal Affairs or Professional Standards unit within an agency, or to a Civilian Review Board, and may not be classified as civilian complaints. By contrast, complaints that

allege verbal abuse or racial or gender identity slurs and not use of force may be processed and treated differently, through different investigative channels.

Likewise, some complaints may be classified as "inquiries" or "adverse comments" and not logged as a reportable civilian complaint. Complaints may also be classified according to the level of review they are afforded, which may skew the numbers.[12] And certain complaints, such as complaints of domestic violence involving officers, may be treated differently from complaints about an officer for interactions that occur while on duty.

For example, in 2016, the USDOJ issued a report regarding its investigation of the Baltimore Police Department (Baltimore PD), finding that the Baltimore PD "failed to effectively investigate complaints alleging racial bias—often misclassifying complaints to preclude any meaningful investigation."[13] USDOJ uncovered only one complaint that that Baltimore PD classified as a racial slur in six years of complaint data. Yet a manual review of the complaints from the Baltimore PD revealed 60 additional complaints that alleged that officers used a racial slur; nonetheless, these complaints were misclassified as a lesser offense. [14] Indeed, USDOJ found that a particular racial slur was misclassified 98 percent of the time.[15] As the Baltimore PD exemplifies, how an agency classifies a civilian complaint – whether done intentionally or inadvertently – can skew the numbers of complaints reported, present an obstacle to the transparency that such data collection is designed to further, and make systematic analyses and comparisons across agencies difficult, if not impossible.

In its recent review of the Sacramento Police Department (Sacramento PD), the California Department of Justice noted that the Sacramento PD's complaint intake procedure permitted complaints to be referred to either the employee's supervisor or Internal Affairs and found that this system gave too much discretion for how personnel complaints were handled in the first instance. As a result, the Department recommended that all complaints be referred to Internal Affairs for processing, and that Internal Affairs should serve as the repository for all complaints, regardless of origin or level of severity.[16] The lack of a centralized information source for complaints, which is not unusual based on our review of complaint practices, could lead to underreporting of civilian complaints, which may in turn explain disparities in reporting.

Another recommendation the Department made in its review of the Sacramento PD was to establish a complaint classification system that would categorize complaints according to the severity of the offense. In reviewing the Sacramento PD complaint policies and procedures, the Department noted that Sacramento PD identified four types of complaint classifications: (1) inquiries; (2) Office of Public Safety Accountability (OPSA) complaints; (3) civilian complaints; and (4) Department complaints. Inquiries or OPSA complaints were investigated informally, and did not trigger the same tracking and documentation requirements as civilian or Department complaints, which required documentation on a specified form, forwarding via the chain of command, a formal investigation, and tracking via an electronic database. Accordingly, the Department recommended that personnel complaints be tracked uniformly and classified by type of alleged misconduct, such as excessive use of force or racial bias.[17]

Likewise, the Los Angeles County Sheriff's Department classifies complaints from members of the public as "service complaints" ("external communication of dissatisfaction with Department service, procedure or practice, not involving employee misconduct") or "personnel complaints" ("an external allegation of misconduct, either a violation of law or Department policy, against any member of the Department"),[18] which are governed by different procedures.[19]

These examples illustrate how agencies have differed in how they track complaints they receive; consequently, certain complaints alleging racial bias may not be processed as civilian complaints that are reported to the California Department of Justice.

Without a uniform system to accept, document, investigate, and report complaints, agencies may not only provide inaccurate or incomplete reporting data, but also blind themselves and limit their ability to respond to personnel or operational problems identified by the communities they serve. An agency's ability to audit its complaint system to account for complaints received by a variety of means (e.g., complaints logged in separate, unconnected databases) may also affect whether, or to what extent, it meets its legal obligations under Penal Code Section 832.5 to report civilian complaints. Because agencies may silo the various sources of misconduct allegations (e.g., civilian complaints, use of force incidents, domestic violence complaints, complaints by peer officers or supervisors, etc.), failure to integrate this information among various databases may impair or entirely defeat an agency's early intervention system that seeks to identify and remedy at-risk behavior as soon as possible.[20]

Without a uniform understanding of (1) what a complaint is under this section, and (2) how such complaints are handled internally, it is difficult to compare and contrast civilian complaints reported by agencies pursuant to Penal Code section 832.5. Because one of the goals of RIPA was to require agencies to provide more granular data regarding civilian complaints that allege racial or identity profiling, in order to better analyze these complaints, it is crucial that agencies use similar methods to define and track civilian complaints.

Accessibility and Knowledge of an Agency's Complaint Process

Another factor that may explain the disparities in numbers of complaints between agencies is different levels of community access to agency complaint processes.[21] Barriers to accessing civilian complaint forms or processes could also explain the disparities in the number of reported complaints among agencies. In other words, one agency may report what seems like a disproportionately high number of civilian complaints, not because of inherent problems in how they interact with the community, but because their complaint system is widely publicized and individuals can easily submit complaints through the Internet, over the phone, or in their native language. By contrast, a different agency may have low numbers of reported complaints, not because they provide exceptional service, but because individuals cannot readily access a complaint form, or are required to mail or bring in complaints in person.

Agencies should increase public access by developing an easily understandable and usable form, available in multiple languages and multiple formats that individuals may use to make

complaints. A best practice would be to refrain from using any language in the form —such as requiring the complainant to sign under penalty of perjury — that could be reasonably construed as discouraging the filing of a complaint.[22]

Possible Barriers to Reporting of Civilian Complaints

- *Lack of knowledge of complaint process*: complaint processes may not be prominently featured on an agency's website or literature.
- *Inadequate explanation of process*: complainants may be confused or have misconceptions about the complaint process.
- *Language barriers:* complaint processes may not be available in languages other than English.
- *Difficulty of complaint process*: complaints may not be easily downloaded from a website or submitted online and may have to be filed in person. [23]
- *Inaccessibility of forms*: forms may not be available on an agency's website, in the complainant's language, or physically available or easy to obtain at the agency's public waiting area; if forms are not displayed in public waiting area, an individual may have to specifically state "I want to file a complaint" in order to initiate the process.

Best Practices to Increase Access to Civilian Complaints for People with Disabilities

A potential reason behind the disparities in the numbers of complaints among agencies is the varying degree of accessibility of the complaint process for people with disabilities. The Board seeks to ensure that individuals with disabilities have access to complaint forms. To that end, the Board reached out to Disability Rights California and other advocates to identify best practices to make complaint processes and forms more easily available and usable for individuals with disabilities. [24]

Given these discussions with stakeholders, the Board encourages law enforcement agencies to accept complaints filed in person, in writing, over the telephone, by Internet, by fax, anonymously, or on behalf of someone else, so that individuals with disabilities have multiple options to choose from based on what would be most assistive given their particular disability.[25] A phone-in option, for instance, may be more accessible for individuals with low vision or who are blind. Agencies should also develop and use a language assistance plan and policy that includes protocols for interpretation (including Braille and American Sign Language). For example, the World Wide Web Consortium (W3C) has a well-established set of programming standards and resource materials to assist web page designers in making content accessible to persons with a variety of disabilities — such as blind persons using text-to-speech software.[26]

An agency can also increase accessibility by offering a trained staff member to assist with completing a complaint form. When creating form and policy documents for the public,

agencies can use the following guidelines to make documents more accessible to individuals with disabilities in the following ways:

1. Documents should be easy to read. There are private vendors that have built-in accessibility check features that can identify solutions for accessibility errors in documents. There are also commercially available spelling and grammar checks that can score a document with a "Reading Ease Number" and a "Grade Level" for the readability of text. For the reading ease number, a score above 60 percent is recommended. For the reading level, a score between 7th and 9th grade reflects accessible text.[27]

2. The minimum font size should be 14 point.

3. Always use high contrast colors on text. Some people cannot see the text if the background color does not have enough contrast.

4. Text should be flush left. This makes it easier for people with disabilities to read the content.[28]

5. Numbered lists are more easily read than bullet points.

6. Correct formatting of the electronic document can make titles and headers, pictures, tables, footnotes, and endnotes accessible for assistive technology software/screen readers.[29]

Ensuring that individuals with disabilities have equal access to civilian complaint forms and processes not only fulfills agencies' duties in complying with state and federal disability access laws, but will help agencies obtain valuable input from members of the disabled community.

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[1] Some agencies include other personal characteristics in their racial or identity profiling policies, such as socioeconomic status or immigration status.

[2] Cal. Pen. Code, § 13519.4, subd. (e).

[3] Fridell, A. (2017). Comprehensive Program to Produce Fair and Impartial Policing. In *Producing Bias-Free Policing*. USA: Springer International Publishing, p. 90.

[4] 11 CCR § 999.224(a)(7).

[5] President's Task Force on 21st Century Policing. (2015). Final Report of the President's Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services, p. 27. Available at http://elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf

(identified as recommendation 2.11, with accompanying Action Item 2.11.1 for promoting effective crime reduction while building public trust).

[6] Fridell, A. (2017). A Comprehensive Program to Produce Fair and Impartial Policing. In Producing Bias-Free Policing. Springer, p. 90.

[7] We are aware that the San Francisco Police Department is in the process of incorporating bias by proxy into the new draft of its anti-bias policing policy. If adopted, we believe this would be the first policy in California, certainly of a major police department, to incorporate concepts of bias by proxy into its department general orders.

[8] One illustrative example is what Nextdoor, a neighborhood communication platform, has developed in collaboration with community groups, local law enforcement, academic experts, and neighbors to try to prevent racial profiling and make crime reporting more useful to neighbors and law enforcement. Nextdoor has the following tips: "1) Focus on behavior. What was the person doing that concerned you, and how does it relate to a possible crime?; 2) Give a full description, including clothing, to distinguish between similar people. Consider unintended consequences if the description is so vague that an innocent person can be targeted.; and 3) Don't assume criminality based on someone's race or ethnicity. Racial profiling is expressly prohibited." See Nextdoor. (2017). Preventing Racial Profiling on Nextdoor. Available at http://us.nextdoor.com/safety/preventing-profiling-approach.

[9] Agencies may consider including language similar to the following: If you believe that the misconduct is based in whole or in part on your race, color, national origin, sex, gender identity, religion, or disability, please identify the basis and explain what led you to believe that you were treated differently from others.

[10] Los Angeles Grand Jury Report, 2017-2018, p. 86. Available at http://www.grandjury.co.la.ca.us/pdf/2017-2018%20los%20angeles%20county%20civil%20grand%20jury%20final%20report.pdf

[11] National Association for Civilian Oversight of Law Enforcement. (2016). What Types of Complaints Should Be Accepted? Available at https://www.nacole.org/complaints.

[12] See, e.g., USDOJ, Civil Rights Division. (2016). *Investigation of the Baltimore City Police Department*, pp. 139, 141. Available at https://www.justice.gov/opa/file/883366/download (holding that "[a]ppropriately categorizing a complaint is critical because it affects which internal affairs component will investigate, the level of investigation undertaken, and the possible discipline imposed"; describing the Baltimore PD's failure to consistently review how complaints are categorized in its internal affairs database, thereby vesting considerable discretion in supervisors; and finding that "supervisors frequently use this discretion to classify allegations of misconduct that result in minimal investigation").

[13] *Ibid*, p. 47.

[14] *Ibid*, p. 62. See also p. 66 ("Even when individuals successfully make a complaint alleging racial bias, BPD supervisors almost universally misclassify the complaint as minor misconduct—such as discourtesy—that does not reflect its racial elements."), and p. 68 (As a result of misclassification, "[Baltimore] PD does not investigate the frequent allegations of race-related misconduct made against its officers and has no mechanism to track allegations to correct discriminatory policing where it occurs).

[15] *Ibid*, p. 69 ("Failing to recognize the potential for racial discrimination in the use of a racial epithet is difficult to attribute to a lack of training, policy guidance, or other systemic deficiency. This systemic misclassification of complaints, particularly when the classification is not difficult, indicates that the misclassification is because of the racial nature of the complaints."), pp. 141-142 (finding that complaints were misclassified and sent to different track for review, for example, as "supervisor complaints," which are not required to be investigated and that "[Baltimore] PD administratively closed 67 percent of supervisor complaints and sustained just 0.27 percent of them . . . . By administratively closing complaints, [Baltimore] PD investigators evade [Baltimore] PD policy that requires all complaints to be labeled as sustained, not sustained, exonerated or unfounded . . . . These administrative closures, combined with [Baltimore] PD's failure to ensure that complaints are appropriately classified, undermine [Baltimore] PD's system of accountability and contribute to the perception shared by officers and community members alike that discipline is inconsistent and arbitrary.").

[16] California Department of Justice. (2019). *Sacramento Police Department Report and Recommendations*. California: Office of the Attorney General, p. 69. Available at https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf.

[17] *Ibid*, p. 70. In August 2019, the Sacramento Police Department revised its complaint intake and investigation procedure in Internal Reference Manual 220.01, and in doing so appears to have eliminated the "inquiry" classification.

[18] Los Angeles County Sheriff's Department. (n.d.). 3-04/10.00, Department Service Reviews. In *Manual of Policies and Procedures*. Available at http://www.lasd.org/pdfjs/web/PublicComplaintPolicies.pdf.

[19] *Ibid*, Sections 3-04/010.20 (Service Complaints) and 3-04/010.25 (Personnel Complaints).

[20] See, e.g., USDOJ, Civil Rights Division. (2016). *Investigation of the Baltimore City Police Department*, p. 134. (Baltimore Police Department's failure to use integrated systems to maintain information blunts the usefulness of this data; data is maintained in 232 separate databases, most of which cannot be linked to each other); California Department of Justice. (2019). *Sacramento Police Department: Report & Recommendations*, pp. 71-72 (recommending an early intervention program that collects and maintains, in a computerized database, various subsets of information, including civilian complaint data and disposition, as well as use of force allegations, disciplinary actions, awards and commendations, and training).

[21] See, e.g., 2012-2013 Santa Clara County Civil Grand Jury. (2013). Report: Law Enforcement Public Complaint Procedures. Available at http://www.scscourt.org/court_divisions/civil/cgj/2013/LawEnforcementPublicComplaintProcedures.pdf; 2015/2016 Marin County Civil Grand Jury. (2016). Law Enforcement Citizen Complaint Procedures: The Grand Jury has a few complaints. Available at https://www.marincounty.org/-/media/files/departments/gj/reports-responses/2015/law-enforcement-citizen-complaint-procedures.pdf?la=en; 2018 Los Angeles County Grand Jury Report. Available at http://www.grandjury.co.la.ca.us/pdf/2017-2018%20los%20angeles%20county%20civil%20grand%20jury%20final%20report.pdf.

[22] See, e.g., *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB (mandating that the written notice of receipt sent to non-anonymous complainants should "not contain language that could be reasonably construed as discouraging participation in the

investigation, such as a warning against providing false statements or a deadline by which the complainant must contact the investigator.")

[23] The USDOJ found, for example, that the Baltimore PD placed unnecessary conditions on the filing of complaints, including requiring many types of complaints to be signed, notarized, and filed in person at only a few locations. USDOJ, Civil Rights Division. (2016). *Investigation of the Baltimore City Police Department*, p. 140.

[24] Accessibility to the complaint process is required by both state and federal law. USDOJ, Civil Rights Division. (n.d.). Information and Technical Assistance on the Americans with Disabilities Act: ADA enforcement in criminal justice settings. Available at https://www.ada.gov/criminaljustice/cj_enforcement.html.

[25] See, e.g., Police Executive Research Forum. (2015). *Critical Response Technical Assessment Review: Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department.* Washington, DC: Office of Community Oriented Policing Services. Available at https://cops.usdoj.gov/RIC/Publications/cops-w0756-pub.pdf ("Consistent with accepted best practice, the SDPD has a multifaceted system for receiving complaints; community members in San Diego may file a complaint in person, by phone, by mail, or by e-mail"); *U.S. v. Police Department of Baltimore City, et. al.* (2017) 1:17-cv-00099-JKB (describing how Baltimore PD will ensure widespread and easy access to its complaint system: "BPD will ensure individuals may make complaints in multiple ways, including in person or anonymously, by telephone, online, and through third parties"). See also recommendations in reports issued by the Los Angeles County Grand Jury, Santa Clara County Grand Jury, and Marin County Grand Jury.

[26] See World Wide Web Consortium (W3C). (n.d.). Web Accessibility Initiative. Available at https://www.w3.org/standards/webdesign/accessibility.

[27] Disability Rights California. *Guide to Accessibility.* AC 01; AC 08 – v.01.

[28] Disability Rights California. *Guide to Accessibility.* AC 01; AC 09 – v.01.

[29] Disability Rights California. *Guide to Accessibility.* AC 03; AC 06; AC 07; AC 09 – v.01.

Appendix C
RIPA Questions & Answers

RACIAL AND IDENTITY PROFILING ACT QUESTIONS AND ANSWERS

(December 2018)

The California Department of Justice is providing the following materials to assist with the reporting requirements of the Racial and Identity Profiling Act of 2015 (RIPA) and its implementing regulations (collectively AB 953). The questions provided below were the result of numerous meetings and communications with law enforcement agencies, in which agencies raised these and other questions regarding the stop data reporting requirements of AB 953.

Importantly, these materials do not supplement, replace or supersede the law and do not create any enforceable rights. It is not a set of regulations, mandates, legal opinions, or legal advice. We hope it will be a useful tool for your agency, so that agencies can benefit from the questions asked by other agencies, but it is not a substitute for AB 953. Anyone with questions regarding whether an agency or officer is subject to the law, or how an agency or officer should complete the stop data collection, should refer to RIPA, the implementing regulations, or consult legal counsel. The regulations are available for review at https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-final-text-110717.pdf?)

a. Vehicle impounds

When should interactions in which a vehicle is impounded be reported as a stop?

Response: If no person is detained or searched, the interaction is not a stop and is not reported. By contrast, if an officer impounds a vehicle as an action that is taken during a stop, the impound should be reported as part of the officer's reporting of the stop. Specifically, the officer should mark "vehicle impounded" as a data value for "Actions Taken by Officer During Stop." (See Regulations (Regs), pp. 10-11 [§ 999.226, subd. (a)(12)(22)].)

b. Community caretaking

How should stops (i.e., detentions or searches) be reported if the stop began as a community caretaking activity, such as a welfare check, Welfare & Inst. Code, § 5150 or other similar incident)?

Response: "Community Caretaking" is not a listed data value for "Reason for Stop." Instead, it is an entry in the CJIS Offense Table, entitled "Community Caretaking" (CJIS Code 99990). Accordingly, in community caretaking situations where none of the other data values for Reason for Stop would be applicable, officers may select the following:

> Reason for Stop: Reasonable Suspicion That Person Was Engaged in Criminal Activity
> Offense Code: Community caretaking (assigned to CJIS Code 99990)
> Basis: Other reasonable suspicion of a crime

Please note that not all community caretaking interactions will result in a stop, and there may be other data values for "Reason for Stop" that are appropriate; this will be determined by the

specific facts for each interaction. For example, if an officer engages in a community caretaking contact and then the consensual encounter evolves into a search because the officer observes a weapon, the officer could mark "Consensual encounter resulting in a search" as the reason for stop.

c. Stops at a Residence

If a search warrant is served at a residence to search for stolen property and there are people in the house, must the officer report a stop of a person who is not identified or described in the warrant?

Response: If the search warrant is issued only for the search of a residence (for example, to search for stolen property) and does not include authority to search persons referenced in the warrant, all persons within the residence are subject to the limited reporting set forth at § 999.227, subd. (d)(2). (Regs, p. 18.)

Under this limited reporting, a stop of a person at a residence, (1) who is not a resident and (2) who is not referenced in the search warrant (by name or other descriptors authorizing the search of that person and/or his or her property) is only to be reported if the officer takes the following actions towards the person: handcuffs or flex cuffs the person; arrests the person; points a firearm at the person; discharges or uses a firearm, electronic control device, impact projectile, baton or other impact weapon, or chemical spray on the person; or if a canine bit/held the person. (Regs, p. 18 [§ 999.227 (d)(2)].)

By contrast, if the person in the residence is subject to the search warrant or a qualifying search condition, interactions with those persons are not subject to reporting at all. (Regs, p. 18 [§ 999.227, subd. (d)(2)].)

During the service of a search warrant, when officers enter a residence and point their guns at anyone other than the subject of a search warrant, including small children, does a stop data form need to be completed for those person?

Response: Unless the subject of the search warrant was one of the children, each child will be subject to the limited reporting referenced above if the officer does any of the listed actions toward the child. (Regs, p. 18 [§ 999.227, subd. (d)(2)].) It should be noted, however, that there is a distinction between pointing a firearm directly at a person and simply unholstering the weapon, which is not considered pointing a firearm at the person under AB 953.

Specific Data Elements

a. Location

How do you determine Location of Stop if the stop takes place in more than one location (e.g., a foot or vehicle pursuit)?

Response: The reporting requirements for every stop will depend on the specific factual circumstances of the stop. Also, please keep in mind that every interaction with a person that

results in a detention or search must be reported as a separate stop, even if the officer stopped multiple people during one incident.

In instances where a stop begins at one location (e.g., a car is pulled over), but then the person in the car runs to a different location before the officer ultimately detains and/or searches the person, the officer should indicate the location as the place where the greatest interaction with the person took place. In the scenario above, if where the person was detained/searched was where most of the actions taken by officer took place, that secondary location should be listed as location of stop, and not the location where the car was initially pulled over.

An officer should also look to his/her agency's policies regarding reporting location in other contexts, such as arrest records, citation records, or use of force incidents, and conform the reporting of location for stops to the reporting of location for these other reporting requirements.

b. **Perception**

An officer may perceive the data elements regarding perception differently at different points during a stop; when should that perception be recorded and by whom, if there are multiple officers involved in a stop?

Response: For those data elements that require an officer to record his or her perception, the officer's selection must be based upon the officer's personal observation at whatever point in the encounter the officer is able to make such an observation.

The law requires that the officer record his or her perception of the characteristic (e.g., age, race/ethnicity, gender, etc.), and that an officer cannot ask the person stopped for the information. (Gov. Code, § 12525.5, subd. (a)(6).) This is because the purpose of collecting the information is to obtain an understanding of the officer's perceptions about race/ethnicity, gender etc., and then analyze the entire interaction based upon those perceptions.

An officer cannot use the information contained in a person's driver's license or other identification to complete the data elements that seek the officer's perception. An officer may still request identification or registration from a person stopped; however, the officer should not use the information on the identification as a proxy, or substitute, for his or her perception when completing the stop data form. If the officer's perception is different from the "actual" characteristic listed on the driver's license or other identification, the officer should record his or her perception and not the data from the identification. For a review of the requirements regarding the recording of "perceived" data elements, please see Regs, pp. 6-8 [§ 999.226, subd. (a)(4)-(9)].

How should data be reported if responding officers have different perceptions with respect to the person stopped?

Response: One officer is to submit stop information regarding the person stopped. If more than one officer is involved in the stop of a person, the officer with the highest level of engagement, even if he or she did not perform all of the actions taken towards the person during the stop, should complete the stop data report. (Regs, p. 16 [§ 999.227, subd. (a)(5)].)

What if an officer's perception about a person's demographic information is "wrong"?

Response: Misperception, which is a mistake of fact regarding a person's perceived demographic information, is different from knowingly providing false information. An officer's reported perception is only "wrong" if it does not accurately reflect the officer's actual perception.

c. Limited/No English Fluency

Is a person who is temporarily unable to use English fluently (for example, because he or she is intoxicated, high, or injured) considered to be a person within limited/no English fluency within the meaning of the data element for Limited/No English fluency?

Response: No. This data element should be used to indicate whether the person stopped has limited or no fluency in English as a spoken language. The example provided regarding intoxication does not speak to fluency in English, but rather an incapacity to speak due to inebriation.

d. Narrative Fields

What kind of information should I include in my narrative text? Are the narrative fields expected to be "in plain language" or can departmental abbreviations and codes be used?

Response: The narrative field is up to 250 characters. It should provide additional context beyond the information provided in the provided data elements and should not repeat information that has already been conveyed. (Regs, p. 10 [§ 999.226, subd. (a)(10)(B)]; Regs, p. 12 [§ 999.226, subd. (a)(12)(B)(2)].)

Plain language should be used because these records are intended to be accessible to the public. Some abbreviations may be obvious to your agency but may not be obvious to others. While the regulations do not specifically prohibit abbreviations, it is best to avoid them for clarity. For the same reason, departmental codes should not be used at all.

What information should NOT be included in the open narrative field?

Response: Names, residential address, and other personal information of the person stopped or any persons should never be included in any narrative fields. Nor should the names, badge numbers, or other unique identifying information about any officers be included. (Regs, p. 10 [§ 999.226, subd. (a)(10)(B)]; Regs, p. 12 [§ 999.226, subd. (a)(12)(B)(2)].)

e. **Body Worn Cameras**

19. Does the routine use of body worn cameras or patrol unit cameras amount to "Person Photographed," such that the data value "Person Photographed" must be selected for the data element "Actions Taken During Stop"? And is a video derived from a body worn camera considered "other contraband or evidence" that must be selected for the data element "Contraband or Evidence Discovered, if Any"?

Response: No to both questions. Government Code section 12525.5, subdivision (b)(7), requires the reporting of "Actions Taken by Officer During Stop," which is defined as "an officer's actions toward the person stopped," and includes the choice, or data value, of "person photographed." (Regs. p. 11 [§ 999.226, subd. (a)(12)(A)(16)].) The fact that a picture can be extracted from a body worn camera recording is not the equivalent an officer "taking" an action toward the person stopped and should not be considered that the officer photographed a person.

Although video derived from a body worn camera may become "evidence," the statute and regulations require the officer to report only evidence that is discovered during the stop. (Regs, p. 12 [§ 999.226, subd. (a)(12)(C)].)

f. **Crowd Control (Protests, etc.)**

20. Is an officer required to report stops made during a protest?

Response: If an officer is engaging solely in crowd control (i.e., any situation in which individuals are made to remain in a location or routed to a different location for public safety purposes), then the officer does not need to report that interaction. (See Regs, p. 18 [§ 999.227, subd. (d)(1)(B)].) However, if an officer stops (i.e., detains or searches) an individual based upon individualized suspicion, personal characteristics, or engages in any of the actions described in "Actions Taken by Officer During Stop," excluding the data value "None," listed under § 999.226, subd. (a)(12)(A) of the regulations, then the officer must report the stop. (Regs, pp. 17-18 [§ 999.227, subd. (d)(1)].)

21. If an officer asks a person/people to leave a public area, for example people loitering in a train station, are those interactions reportable as a stop?

Response: Depending on the circumstance, this may or may not be a reportable interaction. If an officer asks a person to leave and the person leaves voluntarily, that is not a detention and does not need to be reported. By contrast, if an officer asks a person to leave, the person refuses to do so, and the officer then detains or searches the person, that stop is reportable.

g. **Stops that Take Place at a K-12 Public School Setting**

22. Are stops of students off campus on field trips subject to this special reporting? Are stops that take place in the parking lots of K-12 schools, or on the sidewalk in front of the school, subject to this special reporting?

Response: Stops of students who are off campus on field trips would be subject to the general reporting requirements outlined in the regulations. Reporting requirements specifically for "students" apply only to interactions between officers and students that take place in a K-12 school. A K-12 school includes any school property, including any parking lots, fields, etc. that are part of the school, and not just physical buildings. However, a K-12 school does not include bus stops on the way to school or public sidewalks in front of schools. Accordingly, stops that take place on school property are subject to this special reporting, while stops that take place at bus stops or public sidewalks are subject to regular reporting. (For the reporting requirements for stops of students at a K-12 public school, see Regs, pp. 19-20 [§ 999.227, subd. (e)].)

23. Why is questioning a student to investigate whether the student violated a law or is truant considered a stop in a K-12 Setting, when a consensual contact or questioning a person who is not otherwise not detained is not a reportable stop in the non-K-12 setting?

Response: There are different reporting requirements for law enforcement/student interactions at K-12 public schools because students on campus are in a restricted environment where school safety rules and state law already curtail their movements and place limits on their conduct. For example, students must attend school; they cannot bring certain otherwise lawful items onto campus; their conduct cannot be disruptive. Contacts that would otherwise be consensual encounters outside the K-12 school setting are reported under RIPA if a student is stopped to investigate a violation of law or truancy. These are special reporting requirements unique to public K-12 schools. By contrast, stops of school-age children are subject to general reporting requirements when made outside the K-12 public school setting.

Reporting Requirements When Multiple Law Enforcement Agencies Involved

a. Joint Task Forces

24. What if the officer with the primary contact with the person stopped is a member of an out-of-state task force or a federal task force?

Response: If a stop is done in conjunction with a reporting agency and another agency that is not subject to the reporting requirements of this chapter, the reporting agency is required to submit data on the stop, even if it is not the primary agency responsible for the stop. (Regs, pp. 15-16 [§ 999.227, subd. (a)(4)].) However, an officer only needs to report a stop in which he or she participated. For example, an officer of a reporting agency may be part of a task force working in multiple locations. The officer of an LEA with a reporting obligation detains and arrests 2 people at Location A, but the federal agency on the task force arrests 10 people at Location B, and there are no other officers from the reporting agency at Location B. The officer would only need to report on those arrests at Location A.

25. I am on a federal task force that claims that any activities of the task force are classified and cannot be revealed. Am I required to report stops made as part of that task force?

Response: As noted above, if the officer of the reporting agency makes the stop, the officer must report the stop. The Department of Justice, however, will designate all stop data for "Type of Assignment," including, for example, working on a task force, to be Unique Identifying Information and will assert that this information should not be disclosed to the public, as provided by Government Code section 12525.5, subdivision (d). Therefore, the fact that a particular stop occurred during a task force operation will not be disclosed by the Department of Justice. Officers should ensure that, if task force operations are confidential, that confidential information regarding task force activity is not revealed in the narrative fields for Reason for Stop and Basis for Search (if there is a search).

Stops by Off-Duty Officers in Uniform Pursuant to a Memorandum of Understanding or Other Contractual Relationship

26. Our agency has a memorandum of understanding or similar contractual agreement with private entities and/or other government agencies, in which our officers work at sports venues or other settings for those third parties, while in uniform but "off-duty." Will those officers be required to report stops in those settings?

Response: Officers working for other agencies or entities pursuant to a memorandum of understanding or other contractual relationship must report stops they make during that assignment:

> (3) Example: A peace officer of a reporting agency hired pursuant to a memorandum of understanding or other contractual relationship between the reporting agency and a private entity to work at a private university or college, or sporting event, is subject to this chapter when stopping a person while working on that assignment." (Regs, pp. 4-5 [§ 999.225, subd. (d)(3)].)

Accordingly, off-duty officers in these circumstances are subject to the same reporting requirements as other officers, and must report stops in these settings, unless there is an applicable exception.

In reporting stops in these settings, as with any other setting, officers should remember that not all interactions with individuals will meet the definition of a stop that must be reported. For example, if a person is asked to leave a sports venue because he or she has violated the venue's private code of conduct, and the person leaves voluntarily, that is not a detention that must be reported.

By contrast, if an officer asks a person to leave and the person refuses, and the officer detains the person in the stadium's security office, that is a reportable stop. In that circumstance, the officer should select "Other" for Type of Assignment and should manually insert "Off-duty in Uniform" or analogous text in the open text field.

For Reason for Stop in that circumstance, the officer could select "Reasonable Suspicion of Criminal Activity" and the drop down for "Local Ordinances" if there is no specific violation of the Penal Code that is appropriate. For Basis of Reasonable Suspicion, the officer should select "Other Reasonable Suspicion of Criminal Activity" and explain the context of the stop in the narrative.

In other circumstances where the interaction is a detention or search, there may be other appropriate values to select for Reason for Stop, such as "consensual encounter resulting in a search," or other data values within the value for "reasonable suspicion that the person was engaged in criminal activity."

Unique Identifying Information

27. What is Unique Identifying Information (UII)? What stop data will the Department of Justice consider to be UII, and what effect will designating stop data as UII have on the public disclosure of this data?

Response: The regulations define "Unique Identifying Information" as follows:

> "Unique Identifying Information" means personally identifying information, the release of which, either alone or in combination with other data reported, is reasonably likely to reveal the identity of the individual officer who collected the stop data information. It does not include the minimum information that is specified in Government Code section 12525.5, subdivision (b). (Regs, p. 4 [§ 999.224, subd. (a)(17)].)

DOJ considers all stop data for the Data Elements for "Years of Experience" and "Type of Assignment" to be Unique Identifying Information. It will not post this data on OpenJustice and will claim that it is exempt from production under the Public Records Act. However, the DOJ may provide this information to bona fide researchers, subject to the security protocols established by the Department.

The stop data regulations provide that the Officer's Identification Number is Unique Identifying Information. (Regs, p. 14 [§ 999.226, subd. (a)(14)].) An agency should ensure that the narrative fields of stop data records not contain Unique Identifying Information or other unique personal identifying information of individuals stopped or any other person. (Gov. Code, § 12525.5, subd. (d); Regs, p. 21 [§ 999.228, subd. (d)].)

28. Can LEAs correct data it has submitted to DOJ, before the data is posted to OpenJustice? What is that error-resolution process?

Response: All data submitted to DOJ will go through a comprehensive data validation process to determine if the data contain any errors. If the data submitted contain errors, for DOJ Web application users, they cannot proceed to the next step until the current error is resolved. For data submitted through Web Services or SFTP, an error file that contains error records, along

with the field-level error messages, will be returned to LEAs via an automated process. The LEAs can then reference the file content and correct the associated data fields in the local systems and resubmit to DOJ. DOJ will retain an audit trail of any corrections.

29. Will DOJ review the narrative fields in Reason for Stop and Basis for Search (if there was a search) when it receives this information from agencies, to ensure no UII or personally identifiable information of the person stopped?

Response: No. Law enforcement agencies are solely responsible for making sure that personally identifiable information of the person stopped and Unique Identifying Information (UII) of officers, such as officer badge numbers or names are not included in the explanatory fields. This is mandated in Government Code section 12525.5, subdivision (d), and in the regulations. (See Regs, p. 21, § 999.228, subd. (d).) Under no circumstance should law enforcement agencies submit in any narrative field any personal information including a person's address, social security number, driver's license number, name, or other identifying information, nor should any UII of any officer on the scene be included.

(Amended) Report of Ad Hoc Committee on Extremism

The Community Advisory Council established the ad hoc committee on extremism in 2021 to look at whether the Sonoma County Sheriff's Office (SCSO) had adequate policies and procedures to prevent extremists from joining its force and ferreting out extremism within its existing personnel.

Our concern arose from the national conversation about the infiltration into law enforcement agencies nationwide by right wing extremists that began with the release of a 2006 assessment by FBI Counterterrorism Division[1] and continues to this day.[2] We are aware that all too often adherents of white supremacy and racism are found within police departments and their numbers often go undiscovered. "While it is widely acknowledged that racist officers subsist within police departments around the country, federal, state, and local governments are doing far too little to proactively identify them, report their behavior to prosecutors who might unwittingly rely on their testimony in criminal cases, or protect the diverse communities they are sworn to serve."[3]

Our concern is shared with other Sonoma County community members. In March 2021, the Sonoma County Commission on Human Rights (SCCHR) sent an email to law enforcement personnel throughout the County, including to then-Sheriff Mark Essick, asking the agencies to undertake routine investigations to ensure that their personnel do not harbor extremist affiliations.

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[1] White Supremacist Infiltration of Law Enforcement, FBI Counterterrorism Division, October 17, 2006, available at: https://www.justsecurity.org/wp-content/uploads/2021/06/Jan-6-Clearinghouse-FBI-Intelligence-Assessment-White-Supremacist-Infiltration-of-Law-Enforcement-Oct-17-2006-UNREDACTED.pdf; *see also*, Counterterrorism Policy Directive and Policy Guide, FBI Counterterrorism Division, published April 1, 2015, reviewed April 1, 2018.

[2] *See, e.g.,* Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement, Brennan Center for Justice, August 27, 2020, available at:https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law; Let's Not Forget the FBI Found Law Enforcement Has a White Supremacist Problem, Esquire, September 30, 2020, available at: https://www.esquire.com/news-politics/politics/a34224305/fbi-report-white-supremacists-infiltrate-law-enforcement/; White supremacists 'seek affiliation' with law enforcement to further their goals, internal FBI report warns, ABC News, March 8, 2021, available at: https://abcnews.go.com/US/white-supremacists-seek-affiliation-law-enforcement-goals-internal/story?id=76309051

[3] Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement, Brennan Center for Justice, August 27, 2020, available at: https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law

> For this reason, the Commission recently passed unanimously a resolution calling upon the leaders of all local law enforcement agencies to investigate its employees for any evidence of such extremist affiliations. We again call on you to initiate such action immediately. Such investigations are not complicated, requiring only basic investigative techniques. These include regular audits of texts between employees, searches of employee social media postings, the cataloging of employee tattoos, and a requirement that employees declare in writing whether they have any membership or affiliation with any such extremist or hate groups.[4]

The private political action organization, Committee for Law Enforcement Accountability Now (CLEAN), followed with a letter sent by email in June 2021 to all Sonoma County law enforcement heads, County Supervisors and City Council members, the County Administrator and Counsel, and City Mayors, Managers, and Attorneys, also asking that such investigations take place.[5]

IOLERO's 2020-2021 annual report, issued November 25, 2021, discusses a specific, reported incident of a deputy using social media to post "racist, anti-Semitic and extreme" remarks.[6] SCSO received three complaints about two different listings. IOLERO found SCSO's response to these complaints inadequate. Although SCSO "determined that the deputy violated policy for posting content that had 'strong racial undertones,' SCSO concluded that the deputy "may not have intended it as racist content."[7]

IOLERO "did not find the deputy's explanations for his/her posting to be credible, concluded that the deputy was dishonest during his/her interview with the SCSO," and urged the SCSO to take further steps.[8] The SCSO has not apparently taken additional steps since the IOLERO audit was completed and the annual report published.

We reviewed SCSO's existing policies and reviewed with the lieutenant then liaising with the CAC, Brandon Cutting, about how the policies are implemented. Specifically, we looked at Policy 320, Standards of Conduct (Rules and Regulations) and Policy 1000.7, Employment

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[4] Text of email sent from Sonoma County Human Rights Commission on March 3, 2021, available in agenda packet at: https://sonomacounty.ca.gov/commission-on-human-rights-meeting-may-25-2021

[5] Copy of letter sent to Sheriff Mark Essick attached to this report as Exhibit B. The identical letter was sent to the others identified in the body of the report.

[6] IOLERO Annual Report 2020-2021 at 23 (Sustained Complaint No. 3).

[7] *Id.*

[8] *Id.*

Standards.[9] In our view, the policies as written, can prevent extremists from joining its force and ferreting out extremism within its existing personnel. We agree, however, that SCSO should, as recommended in IOLERO's audit, adopt a policy specifically disavowing white supremacy and extremism and prohibiting speech and association that promotes racist or extreme ideology.

Our larger concern is that, once an individual is hired by SCSO, SCSO takes no affirmative steps to ensure that its personnel continue to follow the standards set out in Policy 1000.7 and 320. Although the SCCHR and CLEAN recommended several investigative steps which would constitute a robust effort to ferret out extremism, we are only recommending two steps. First, we recommend that SCSCO require each employee to sign an attestation annually affirming that they have and are abiding by the existing standards addressing extremism, white supremacy, and bias.[10] The proposed attestation, drafted directly from the SCSO policies, is attached to this report as Exhibit A. Second, we recommend that SCSO require each employee to open their social media to an SCSO audit biannually.

Three obvious benefits accrue from the annual use of the attestation: (1) it underscores the SCSO's commitment to maintaining a bias-free, hate-free, workforce; (2) it keeps these particular standards front and center in the minds of the employees who must sign the attestation annually; and (3) it gives SCSO another tool in its belt for discipline if an employee is found to have lied on the attestation. A fourth benefit, less important but nonetheless compelling, is the ease with which this recommendation can be adopted.

The audit recommendation offers similar benefits, but it also gives SCSO a relatively easy way to verify the employees' attestations are true. We recommend this be adopted biannually to reduce the increased workload annual audits would require.

We urge the Community Advisory Council to approve our recommendations and forward them to the SCSO.

[9] We also reviewed Policy 319 regarding investigations of hate crimes although it is not used for internal investigations into allegations of hate-related crimes or misconduct.

[10] Lt. Andy Cash, the current liaison to the CAC, has not found the use of an attestation by any neighboring law enforcement agency but that should not deter the SCSO from adopting such a procedure.

EXHIBIT A

DRAFT ATTESTATION FOR SONOMA COUNTY SHERIFF EMPLOYEES (to be administered annually on (1) beginning of calendar year, (2) beginning of fiscal year, or (3) on anniversary of date of hire)

I, (employee name), do solemnly swear (or affirm) that in the past year I:

(a) Have continued to meet the standard for duty that requires me to be free from any bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which might adversely affect the exercise of police powers;[11]
(b) Have not joined or been a member of any extremist group;[12]
(c) Have not, unless required by law or policy, discriminated against, oppressed, or provided favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, or any other classification or status protected by law;[13]
(d) Have not intentionally denied or impeded another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful;[14]
(e) Have not associated with or joined a criminal gang, organized crime, and/or criminal syndicate, knowing or with reason to have known, the criminal nature of the organization;[15]
(f) Have not, on a personal basis, associated with any person who demonstrated recurring involvement in serious violations of state or federal laws, knowing or with reason to have known of such criminal activities, except as specifically directed and authorized by the SCSO.[16]

I (employee name) do further solemnly swear (affirm) that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

[11] SCSO Standards of Conduct (Rules & Regulations) §1000.7.1(g)
[12] SCSO Standards of Conduct (Rules & Regulations) §1000.7(h)
[13] SCSO Standards of Conduct (Rules & Regulations) §320.5.3
[14] SCSO Standards of Conduct (Rules & Regulations) §320.5.3
[15] SCSO Standards of Conduct (Rules & Regulations) §320.5.4
[16] SCSO Standards of Conduct (Rules & Regulations) §320.5.4

EXHIBIT B

COMMITTEE FOR LAW ENFORCEMENT ACCOUNTABILITY NOW

June 17, 2021

Sheriff Mark Essick
County of Sonoma, CA
mark.essick@sonoma-county.org

Dear Sheriff Essick,

The Committee for Law Enforcement Accountability Now (CLEAN) has become aware that the Sonoma County Commission on Human Rights recently sent a letter to your agency requesting an investigation into possible affiliation of your employees with extremist organizations that call for: the denial of civil rights, the commission of hate crimes, domestic terrorist activity, or the violent overthrow of democratic government in the U.S. We write to support the CHR request and to strongly suggest that your agency follow up on this matter by immediately initiating such investigations.

There are a number of options available to your agency that can be completed in a legal and constitutional manner that respects the right of your employees to due process under the law. These include regular audits of texts between employees, review of employees' public social media postings, a requirement that employees disclose any tattoos indicative of such affiliations, and a requirement that employees declare in writing whether they have any membership or affiliation with any such extremist or hate groups. Prior to hiring new employees, your agency has even greater legal freedom to look for such evidence during the screening process. Your agency also should immediately adopt clear policies making such membership or affiliation or expressed beliefs grounds for termination of employment. Model policies for these purposes already exist and can be easily found.[88]

[88] Focus: Guiding Principles for the Total Force DoD Policy on Extremist Activities, DoDI 1325.06, "Handling Dissident and Protest Activities Among Members of the Armed Forces" (Department of Defense Instruction 1325.06, November 27, 2009 incorporating change 1, February 22, 2012 USD(P&R); SUBJECT: ***Handling Dissident and Protest Activities Among Members of the Armed Forces***).

- Dignity and Respect: The Department of Defense places the highest importance on treating all personnel with dignity and respect, in an inclusive environment, free from impermissible discrimination, harassment, and hate. And as such, DoD policy expressly prohibits Service members from actively advocating supremacist, extremist, or criminal gang doctrine, ideology and causes. The Department of Defense also holds its civilian workforce to the highest standards of character and conduct required to protect and promote the public trust.
- Service members must reject active participation in organizations that advance supremacist or extremist ideology, which includes those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin, or those that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights. (DoDI 1325.06, Encl. 3, para 8.b.)

As previously mentioned, efforts to root out extremism from your agency need not run afoul of the constitutional protections afforded public employees.[89] Court have allowed law enforcement agencies considerable latitude in restricting the speech or associational interests of their employees, given their "heightened need for order, loyalty, morale and harmony."[90]

- Recruitment: Extremist organizations and individuals often target current or former military members or DoD civilian employees for recruitment because of their unique military skills, knowledge, and abilities, as well as to gain legitimacy for their cause. Service members and DoD civilian employees must be vigilant of these efforts.
- Active Participation: Active participation includes, but is not limited to: "Fundraising, demonstrating, rallying, recruiting, training, organizing, leading members, distributing material (including posting online), or knowingly wearing gang colors or clothing, having tattoos or body markings associated with such gangs or organizations; or otherwise engaging in activities in furtherance of objectives of such gangs or organizations that are detrimental to good order, discipline, or mission accomplishment or are incompatible with military service." (DoDI 1325.06, Encl. 3, para 8.b.) Active participation in such activities may also affect determinations of suitability or fitness for civilian employment or continued employment in the DoD and eligibility for National Security positions and/or access to classified information.
- Indicators: Participation may lead to violence. Some indicators of individual escalation toward extremism include clear identification with or support for extremist or hate-based ideology; making or attempting to make contact with extremist groups; the possession and/or distribution of extremist literature or paraphernalia; and threatening, intimidating, harassing, or harming of others consistent with extremism or hate-based ideology. While such conduct may not constitute "active participation," such signs offer an indicator for commands, prompting action and intervention that can avoid active participation down the road.
- Duty to Reject: Service members and DoD civilian employees must reject participation in such activities. With regard to Service members, Department policy makes clear that commanders have the authority to employ the full range of administrative and disciplinary actions, including involuntary separation, dismissal, or even appropriate criminal prosecution against those who actively engage in such activity. Supervisors and leaders of all ranks must also take action to maintain good order and discipline and root out extremism.

[89] "Although the First Amendment's Freedom of Association provision protects an individual's right to join white supremacist groups for purposes of lawful activity, the government can limit the employment opportunities of group members who hold sensitive public sector jobs, including jobs within law enforcement, when their memberships would interfere with their duties." ("White Supremacist Infiltration of Law Enforcement," FBI Intelligence Assessment, 2006, pg. 6).

[90] See, e.g., *Garcetti v. Ceballos, 547 U.S. 410, 417 (2006), citing Pickering v. Board of Education, 391 U.S. 563 (1968)*; *Oladeinde v. City of Birmingham*, 230 F.3d 1275, 1293 (11th Cir. 2000); *Doggrell v. City of Anniston*, 277 F. Supp. 3d 1239 (N.D. Ala. 2017), https://casetext.com/case/doggrell-v-city-of-anniston-1; and *State v. Henderson*, 277 Neb. 240. *See also* Robin D. Barnes, "Blue by Day and White by (K)night: Regulating the Political Affiliations of Law Enforcement and Military Personnel," *Iowa Law Review* 81 (1996): 1085.

> In considering these factors in a § 1983 action brought by police officers against their public employer, we are required to consider the fact that members of a law enforcement agency are part of a quasi-military organization. *See Hansen v. Soldenwagner*, 19 F.3d 573, 577 (11th Cir.1994) ("The Pickering balance is also affected … by the special concerns of quasi-military organizations such as police departments."). In a law enforcement agency, there is a heightened need for order, loyalty, morale and harmony, which affords a police department more latitude in responding to the speech of its officers than other government employers. *See Rogers v. Miller,* 57 F.3d 986, 991 (11th Cir.1995) (citing *Hansen*, 19 F.3d at 577); *see also O'Donnell v. Barry*, 331 U.S. App. D.C. 272, 148 F.3d 1126, 1135 (D.C.Cir.1998) ("Because of the special degree of trust and discipline required in a police force there may be a stronger governmental interest in regulating the speech of police officers than in regulating the speech of other governmental employees."); *Dill*, 155 F.3d at 1203 (recognizing that the government's interest is "particularly acute in the context of law enforcement, where there is a heightened interest … in maintaining discipline and harmony among employees") (quoting *Moore v. City of Wynnewood*, 57 F.3d 924, 934 (10th Cir.1995)); *Campbell v. Towse*, 99 F.3d 820, 829-30 (7th Cir.1996) ("It surely cannot be doubted that individuals who work in the highest echelons of the command of a police department must be assured of the loyalty of their immediate subordinates, as these subordinates are entrusted with carrying out their orders, at times under the most trying conditions.").

(*Oladeinde v. City of Birmingham* (11th Cir. 2000) 230 F.3d 1275, 1293.)

While the January 6 insurrection brought these issues to greater public awareness, that event was consistent with at least 15 years of reports from the FBI, other federal agencies, and investigative journalists, that identified “domestic terrorism” organizations (including “military extremists, white supremacists, and sovereign citizen extremists”) that have “active links to law enforcement.” These connections fundamentally undermine community trust in law enforcement, the foundation on which effective policing must rest. Without such trust, community members will not cooperate with police in investigating crimes, nor will they report crimes against themselves.

Michael German, a former FBI Special Agent on Domestic Terror and Covert Operations, has stated:

> “Explicit racism in law enforcement takes many forms, from membership or affiliation with violent white supremacist or far-right militant groups, to engaging in racially discriminatory behavior toward the public or law enforcement colleagues, to making racist remarks and sharing them on social media. While it is widely acknowledged that racist officers subsist within police departments around the country, *federal, state, and local governments are doing far too little* to

> proactively identify them, report their behavior to prosecutors who might unwittingly rely on their testimony in criminal cases, or protect the diverse communities they are sworn to protect. *The most effective way for law enforcement agencies to restore public trust and prevent racism from influencing law enforcement actions is to prohibit individuals who are members of white supremacist groups or who have a history of explicitly racist conduct from becoming law enforcement officers in the first place, or from remaining officers once demonstrated*."

The infiltration of law enforcement agencies by "hate groups" undermines law enforcement legitimacy in several ways:

- It threatens the integrity of criminal investigations and the 'legitimate authority' of law enforcement in the eyes of the community;
- It increases threats to those targeted by such organizations; and
- It all but guarantees the discriminatory application of laws and provision of services in violation of the U.S. (14th Amendment) and California (Article 1, Sec. 7) constitutions.

Given the long and persistent history of disparate impacts by law enforcement against BIPOC people in our communities, including in Sonoma County, local law enforcement agencies must look into these issues. Every community deserves to have confidence that no extremists work within its local law enforcement agencies. Recent police violence against BIPOC protesters during the BLM protests in the Summer of 2020 (a police response that included officers from every local agency through mutual aid agreements) and the excessive force recently used against two Black men, Lamarcus MacDonald and Jayson Anglero-Wyrick, engendered continued distrust in local law enforcement. These events took place against a backdrop of historical distrust from past impacts of police violence on BIPOC community members. Given this distrust, our community needs fact-based assurances that county police agencies are free of extremist employees.

Thank you very much for your anticipated cooperation in ensuring that our communities are safe and that your agency will be a trusted partner in building relationships of mutual respect that honor the inherent dignity of all people.

Sincerely,

The Clean Committee
cleancommittee@gmail.com

DATE: March 22, 2023

TO: Members of the Community Advisory Council (CAC)

FROM: John Alden, IOLERO Director

RE: Work Plan from CAC 2023 Retreat

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

A. PRIORITY POLICY ISSUES

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

1. Traffic Stops / RIPA Report Follow-Up (9 votes)

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

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

Some agencies have begun exploring ways to address these disparities. As noted in the 2023 RIPA Report, some Bay Area cities have considered whether local law enforcement should create local policies changing their traffic enforcement priorities. To date, these ideas have been

met with some debate, including varying responses from different BIPOC communities in San Francisco, Los Angeles and other communities to such proposals.

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

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

2. Recruitment and Hiring Best Practices / Law Enforcement Culture (9 Votes)

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

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

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

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

3. Mental Health (6 Votes)

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

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

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

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

The CAC will consider these distinct issues:

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

4. Evictions and Unlawful Detainers (5 Votes)

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

https://www.sfsheriff.com/services/civil-processes/evictions/get-help-if-youre-being-evicted

https://dcba.lacounty.gov/portfolio/eviction/

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

5. De-Escalation (4 Votes)

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

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

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

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

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

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

6. Follow-Up on IOLERO 2017-2019 Recommendations on Improvements to SCSO Internal Affairs Division Investigative Procedures and Practices.

7. Treatment of Transgender Inmates

B. COMMITTEES

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

a. Wind down the Extremism in Policing Ad Hoc once its recommendations are finalized by the full CAC;
b. Create a Standing Committee for Community Engagement, since this is an ongoing responsibility of the CAC;
c. Create two new Ad Hocs on specific policies, as noted above:
    a. Traffic Stops / RIPA Report Follow-Up;
    b. Recruitment and Hiring Best Practices / Law Enforcement Culture

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

C. CALENDAR

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

March 2023:

IOLERO Annual Report 2021-2022

Investigative Process presentation from IOLERO to CAC

April 2023:

SCSO Presentation on Traffic Stops / RIPA Report

Extremism In Policing Report and Ad Hoc Close-Out

May 2023:

IOLERO Update on Measure P Letters of Agreement

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

Consideration of Community Engagement Standing Committee

June 2023:

SCSO Presentation on De-Escalation Presentation

De-Escalation Ad Hoc Launch

July 2023:

No Meeting; Summer Break

August 2023:

SCSO Presentation on Eviction Processes

September 2023:

Mental Health First Response and Alternatives to Jail / ER

October 2023:

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

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SONOMA COUNTY DEPUTY SHERIFFS' ASSOCIATION, Charging Party, v. COUNTY OF SONOMA, Respondent.	Case No. SF-CE-1816-M
SONOMA COUNTY LAW ENFORCEMENT ASSOCIATION, Charging Party, v. COUNTY OF SONOMA, Respondent.	Case No. SF-CE-1817-M PERB Decision No. 2772a-M February 28, 2023

Appearances: Rains Lucia Stern St. Phalle & Silver by Timothy K. Talbot and Zachery A. Lopes, Attorneys, for Sonoma County Deputy Sheriffs' Association; Mastagni Holstedt by Kathleen N. Mastagni Storm, Taylor Davies-Mahaffey, and Spencer M. Shure, Attorneys, for Sonoma County Law Enforcement Association; Liebert Cassidy Whitmore by Richard C. Bolanos and Marek Pienkos, Attorneys, for County of Sonoma.

Before Banks, Chair; Shiners, Krantz, and Paulson, Members.

DECISION

SHINERS, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on remand from the California Court of Appeal, First Appellate District, Division 3. In *County of Sonoma* (2021) PERB

Decision No. 2772-M (*Sonoma I*), we held that the County of Sonoma violated the Meyers-Milias-Brown Act (MMBA) and PERB Regulations by placing Measure P on the November 2020 ballot without providing the exclusive representatives of its non-managerial peace officers, Charging Parties Sonoma County Deputy Sheriffs' Association (DSA) and Sonoma County Law Enforcement Association (SCLEA) (collectively Associations), notice or an opportunity to meet and confer over Measure P and its effects.[1] As a remedy, we issued cease-and-desist and notice posting orders, and declared the offending Measure P provisions void and unenforceable as to Association-represented employees.

After the County appealed, the Court of Appeal affirmed the Board's conclusion that the County violated the MMBA by failing to meet and confer over the effects of certain Measure P provisions on Association-represented employees' terms and conditions of employment. (*County of Sonoma v. Public Employment Relations Board* (2022) 80 Cal.App.5th 167, 186-189 (*Sonoma II*).) The court also affirmed PERB's jurisdiction over unfair practice charges filed by employee organizations representing "peace officers" as defined in Penal Code section 830.1. (*Id*. at p. 192.)

The court, however, annulled the Board's conclusion that the County violated the MMBA and PERB Regulations by failing to afford the Associations notice and failing to meet and confer upon their request over the decision to place certain Measure P provisions on the ballot. (*Sonoma II*, *supra*, 80 Cal.App.5th at pp. 174, 192.) Specifically, the court held that PERB erred by failing to apply the test from

[1] The MMBA is codified at Government Code section 3500 et seq. All further undesignated statutory references are to the Government Code. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Claremont Police Officers Assn. v. City of Claremont (2006) 39 Cal.4th 623 (*Claremont*) to determine whether the provisions had "a significant and adverse effect on the wages, hours, or working conditions" of Association-represented employees.[2] (*Sonoma II*, *supra*, 80 Cal.App.5th at p. 174.) The court also annulled the Board's order declaring certain Measure P provisions void and unenforceable, finding the order exceeded PERB's remedial authority. (*Id*. at pp. 189-192.)[3] Nevertheless, the court upheld PERB's authority to declare the County Board of Supervisors' (BOS) resolution that placed Measure P on the ballot void and unenforceable. (*Id*. p. 192.)

The court remanded this matter to the Board to reconsider these two issues in light of the court's decision. (*Sonoma II*, *supra*, 80 Cal.App.5th at pp. 191-193.) Soon after receiving the court's remittitur, the Board asked the parties to provide supplemental briefing on the remanded issues. The parties filed simultaneous supplemental briefs on December 2, 2022.

In accord with the court's remand order, we have reviewed the entire administrative record in light of the court's opinion and the parties' supplemental briefing. As explained below, we conclude that the County violated the MMBA and PERB Regulations by not giving the Associations notice and an opportunity to meet and confer over certain Measure P amendments before placing the measure on the

[2] Notably, in litigating this matter before the ALJ and the Board, the County did not urge PERB to apply *Claremont*. Instead, it argued that matters of police-community relations are categorically outside the MMBA's scope of representation. After the Board rejected that argument, the County pivoted to arguing to the Court of Appeal that the Board erred by not applying *Claremont*.

[3] We accordingly vacate sections I.B.i. and II.B. of *Sonoma I*, *supra*, PERB Decision No. 2772-M, as well as the decision's remedial order.

November 2020 ballot. As a remedy, we order the County to cease and desist from such conduct in the future and to post a notice of its violations.

FACTUAL BACKGROUND[4]

The County Board of Supervisors Places Measure P on the November 2020 Ballot

In September 2016, the BOS adopted Ordinance No. 6174 establishing the Independent Office of Law Enforcement Review and Outreach (IOLERO) under the Sonoma County Code (SCC). IOLERO's general duties under Ordinance No. 6174 were to audit Sheriff's Office administrative investigations, accept allegations of Sheriff's Office employee misconduct from the public, provide policy recommendations to the Sheriff's Office, increase transparency of Sheriff's Office policies, procedures, and operations, and conduct outreach and engage the community to strengthen the relationship between the community and law enforcement. Ordinance No. 6174 specifically prohibited IOLERO from: (1) conducting its own investigations of alleged misconduct; (2) interfering with the powers and duties of the Sheriff; (3) compelling by subpoena testimony or the production of documents; (4) disclosing confidential personnel file information; and (5) deciding Sheriff's Office policy, directing activities, or imposing discipline.

On June 23, 2020,[5] the BOS authorized an ad hoc committee "to explore possible amendments to the IOLERO ordinance" "within the limitations imposed by the California Constitution and the Government Code," with the goal of allowing the BOS

[4] We recount here only the facts pertinent to the issues on remand. For a full recitation of the facts, see *Sonoma I*, *supra*, PERB Decision No. 2772-M, pp. 3-22.

[5] All further dates are in 2020, unless otherwise indicated.

“to adopt amendments to the IOLERO Ordinance by mid to late October.” In furtherance of this goal, the committee would solicit input from various “stakeholders” in three “phases” lasting through November or December of 2020.

An ad hoc committee charter was presented to the BOS on July 14, but the BOS postponed considering the charter to its August 4 meeting. During the August 4 meeting, the County Administrator’s Office and County Counsel presented the BOS with a proposed “Evelyn Cheatham IOLERO Initiative.” The Summary Report accompanying the proposed initiative gave the BOS three options: (1) place the proposed initiative on the November 3, 2020 election ballot, (2) introduce the proposed changes as amendments to the existing IOLERO ordinance for direct adoption by the BOS, or (3) approve the ad hoc committee charter. The BOS did not act on the proposed initiative but instead called a special meeting for August 6 to consider what action to take.

At the August 6 special meeting, the BOS voted to call a special election to submit the proposed initiative to voters and to consolidate the special election with the statewide general election on November 3, 2020. The County did not provide the Associations written notice or an opportunity to meet and confer over Measure P before the BOS voted on August 6. Despite not receiving formal notice, shortly before the August 6 meeting, both DSA and SCLEA sent the BOS letters demanding to meet and confer over Measure P prior to the BOS making a final decision. DSA and SCLEA subsequently renewed their requests after the August 6 vote. In response to DSA’s and SCLEA’s post-August 6 demands to bargain, the County asserted a management right to place Measure P on the ballot but offered to meet and confer over any effects of the measure within the scope of representation.

The County Registrar of Voters subsequently designated the proposed initiative as Measure P and placed it on the November 3, 2020 general election ballot, where it passed by a majority vote.

The Disputed Measure P Amendments

The court's remand order directed PERB to consider whether the following nine provisions of Measure P fall within the MMBA's scope of representation:

> SCC, § 2-392(d)(2): "[P]rovide independent investigations of employees of the sheriff-coroner where an investigation by that office is found by IOLERO to be incomplete or deficient in some way."
>
> SCC, § 2-394(b)(3): "Act as a receiving and investigative agency for whistleblower complaints involving the sheriff-coroner . . . any whistleblower complaints received or investigated by IOLERO shall not need to be reported by IOLERO to the sheriff-coroner, including the Internal Affairs Division."
>
> SCC, § 2-394(b)(4): "Make discipline recommendations, as appropriate, for officers subject to IOLERO investigations."
>
> SCC, § 2-394(b)(5): "As part of the process of review, audit and analysis, IOLERO may, among other things:
>
> "[¶] . . . [¶]
>
> "ii. Directly receive all prior complaints for the involved deputy, previous investigation files (including *Brady* investigations) and the record of discipline for each complaint;
>
> "[¶] . . . [¶]
>
> "vii. Where in the opinion of the director, the investigation of a complaint or incident by the sheriff-coroner is incomplete or otherwise deficient, conduct an independent investigation of the matter, to the extent deemed necessary by the director;
>
> "viii. Where the investigation involves an incident resulting in the death of a person in custody of the sheriff-coroner or results

from the actions of an employee, conduct an independent investigation of the matter; and

"ix. Independently subpoena records or testimony, as the director deems appropriate, to complete an adequate investigation. Among other sources of legal authority, such subpoena power is delegated from that held by the board of supervisors, to be used at the discretion of the director."

SCC, § 2-394(e): "The sheriff-coroner shall cooperate fully with IOLERO by providing direct, unfettered access to information of the Sheriff's Office, in order to facilitate IOLERO's receipt, review and audit of complaints and investigations; IOLERO's independent investigation of incidents; as well as IOLERO's review of policies, practices, and training. Among the sources of information to which the sheriff-coroner shall provide such access to IOLERO are the following:

"[¶] . . . [¶]

"2) Any database or other computer application, or physical files, containing employee personnel records, investigations of complaints against employees, investigations of claims filed against the Sheriff's Office under the California Claims Act, including *Brady* investigations and the record of discipline with each complaint file or audit or investigations related to lawsuits filed against the County because of any action or inaction of an employee of the Sheriff's Office;"

SCC, § 2-394(f): "The director shall be provided access by the sheriff-coroner to personally sit in and observe the investigative interviews of any complainant or witness in, or deputy who is a subject of, an administrative investigation, upon request by the director."

The Parties' Letters of Agreement

On June 23, 2022, the same day the Court of Appeal issued *Sonoma II*, the County, DSA, and SCLEA issued a jointly-drafted written statement entitled, "County of Sonoma, labor groups reach agreement of law enforcement oversight measures."

The joint statement recounted that the parties had bargained for over a year "to implement the voters' will, ensure that IOLERO's expanded authority represented smart and effective law enforcement oversight, and treat the associations' members fairly." The joint statement further recounted that the parties had reached an agreement that "meets all of these goals," and that "IOLERO now has the authority to conduct independent investigations of serious instances of alleged misconduct, with greater access to and cooperation with Sheriff's Office internal investigations." The joint statement linked to a County website containing nearly identical Letters of Agreement (LOAs) that the County reached with DSA and SCLEA earlier in June 2022.

Each of the LOAs included, among other terms, the following relevant provisions, with only non-material differences in numbering:

> **"IV. IOLERO REVIEW, AUDIT AND ANALYSIS OF SHERIFF'S OFFICE ADMINISTRATIVE INVESTIGATIONS**
>
> "[¶] . . . [¶]
>
> "**(A) Audit Process and Procedures**
>
> "[¶] . . . [¶]
>
> "(vi) In reviewing the Sheriff's Office investigation, IOLERO Staff who have successfully completed the required background check for employment with IOLERO, will have the ability to search all completed Sheriff's Office citizen complaint investigations and all Sheriff's Office completed administrative investigations in [the Sheriff's Office Investigations Management database] AIM . . .
>
> "[¶] . . . [¶]
>
> "(viii) Unit members may be directly contacted by IOLERO as part of IOLERO's efforts to ensure the completeness and

fairness of the Sheriff-Coroner's investigation, to include any supervisor of an employee who is the subject of the investigation under review . . .

"At the conclusion of IOLERO's review, audit and analysis of the investigation, the IOLERO Director may provide advice and/or recommendations to the Sheriff's Office in an individual case-specific report . . .

"[¶] . . . [¶]

"**(C) Case-Specific Reports**

"(i) Case-specific reports are confidential communications among the IOLERO Director and the Sheriff's Office, and will be maintained by IOLERO as confidential peace officer records in accordance with Penal Code sections 832.5, 832.7 and 832.8.

"(ii) Should the IOLERO Director conclude that a Sheriff's Office investigation was incomplete, biased or otherwise deficient, the case-specific report shall identify the bases and reasons for that conclusion. If IOLERO intends to independently investigate the facts of the subject investigation it deems incomplete or otherwise deficient, IOLERO will notify the Sheriff of its intention as part of the case-specific report.

"**(D) Independent Investigations**

"(i) IOLERO may initiate an independent investigation under either of the following circumstances:

"a. The case-specific report concludes that the Sheriff's Office investigation was incomplete or otherwise deficient;

"b. The investigation involves an incident resulting in the death of a person in custody of Sheriff's Office personnel or results from the actions of Sheriff's Office personnel.

"(ii) IOLERO's independent investigation shall not take place until the Sheriff's Office investigation is referred to IOLERO as described under section IV (A) (v) above. IOLERO's independent investigation will not in any way

interfere with the Sheriff's Office investigation or any criminal investigation into the matter.

"(iii) In furtherance of conducting an independent investigation, IOLERO may:

"a. Contact complainants, witnesses, and/or custodians of evidence to elicit relevant information. Such contact of bargaining unit members will take place during regular business hours whenever possible. IOLERO does not have the authority to direct any unit member's activities that may be requested by IOLERO under this sub-part.

"b. Subpoena testimony and/or documents as deemed necessary pursuant to Ordinance 6333 and Government Code section 25303.7.

"(iv) Following the completion of an independent investigation, the IOLERO Director may provide a supplemental case-specific report to the Sheriff's Office, which may include discipline recommendations, as appropriate, for unit members subject to IOLERO's investigation. The supplemental case-specific report will be maintained by IOLERO as a confidential peace officer personnel record. IOLERO will not retain, nor disclose, any physical or digital copies of the underlying investigative file that it accessed through the Sheriff's Office that IOLERO relied on in preparing the supplemental case-specific report.

"[¶] . . . [¶]

"VI. EFFECT AND FULL UNDERSTANDING

"The provisions of this Letter of Agreement are subject to and to be read with County Ordinance 6333 and the Operational Agreement executed by and between IOLERO and the Sheriff's Office pursuant to Section 2-394(d) of Ordinance No. 6333. To the extent the provisions of this Agreement conflict with provisions in Ordinance No. 6333

> or the Operational Agreement, the provisions of this Letter of Agreement will control as permitted by applicable law.
>
> "Any alteration, variation, waiver or modification of any terms or provisions contained in this Letter of Agreement shall be effectuated as authorized by and in accordance with California Government Code section 3500 et. seq., and the County's Employee Relations Policy and Procedure."

DISCUSSION

I. Mootness

Our request for supplemental briefing asked the parties to brief the impact, if any, of the June 2022 LOAs on the issues on remand. The County argues that the LOAs render this entire matter moot, while the Associations contend the matter is not moot because the County has initiated bargaining over revisions to the LOAs. For the following reasons, we find this matter is not moot.

"A case in controversy becomes moot when the essential nature of the complaint is lost because of some superseding act or acts of the parties." (*Amador Valley Joint Union High School District* (1978) PERB Decision No. 74, p. 5 (*Amador*).) "A charge that an employer's unilateral change to a particular term or condition of employment was unlawful does not become moot merely because the parties reach agreement on that term or condition in subsequent negotiations. [Citation.] Only when the agreement clearly settles the issue of whether the respondent's conduct was unlawful or explicitly waives the charging party's right to pursue the charge will PERB find a case moot under these circumstances." (*County of Riverside* (2010) PERB Decision No. 2132-M, p. 7.) An actual dispute remains between the parties even if their subsequent agreement narrows the available relief. (*Salinas Valley Memorial Healthcare System* (2017) PERB Decision No. 2524-M, pp. 13-14.)

As discussed in Part III, *post*, the LOAs do substantially impact the appropriate remedy. But they did not resolve the parties' dispute over whether the Measure P amendments were within the scope of representation or whether the County had a duty to meet and confer with the Associations before placing the amendments on the November 2020 ballot. Because there remains a live controversy over these issues, and because the public interest is served by clarifying the parties' rights and obligations (*Amador*, *supra*, PERB Decision No. 74, p. 5), this matter is not moot and we will proceed to decide the merits of the parties' dispute.

II. Obligation to Meet and Confer over the Disputed Measure P Amendments

MMBA section 3505 requires a public agency to meet and confer in good faith with representatives of recognized employee organizations concerning matters within the scope of representation. It is an unfair practice for a public agency to refuse or fail to comply with this obligation. (§ 3506.5, subd. (c).) Of particular relevance here, public agencies must comply with the MMBA's meet-and-confer requirements before submitting to voters an initiative affecting matters within the scope of representation. (*Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898, 915 (*Boling*); *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 597-601 (*Seal Beach*).)

A unilateral change to a matter within the scope of representation is a per se violation of the duty to meet and confer in good faith. (*County of Merced* (2020) PERB Decision No. 2740-M, pp. 8-9.) To prove a prima facie case of an unlawful unilateral change, a charging party must show that: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing

impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*County of Santa Clara* (2021) PERB Decision No. 2799-M, pp. 15-16.)

In the Court of Appeal, the County challenged only the second element of the unilateral change test—whether the change in policy concerns a matter within the scope of representation. After finding the Board erred in its scope of representation analysis, the court declined to address whether the County failed to give the Associations adequate notice and opportunity to meet and confer before deciding to place Measure P on the ballot. We address each issue in turn.[6]

A. Scope of Representation

The MMBA defines "scope of representation" as "all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order." (§ 3504.) The "merits, necessity, or organization" language of MMBA section 3504 recognizes "the right of employers to make unconstrained decisions when fundamental

[6] The County did not challenge on appeal our conclusions that the other two elements of the unilateral change test were satisfied, i.e., that the disputed Measure P amendments changed policy and had a generalized effect or continuing impact on bargaining unit members' terms or conditions of employment. Consequently, those conclusions are binding under the law of the case doctrine. (See *Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1518, fn. 18 [findings not challenged on appeal are binding on remand under law of the case principles].)

management or policy choices are involved." (*Building Material & Construction Teamsters' Union v. Farrell* (1986) 41 Cal.3d 651, 663 (*Building Material*).)

As we recently clarified in *City and County of San Francisco* (2022) PERB Decision No. 2846-M:

> "In determining whether an employer's decision is within the scope of representation under MMBA section 3504, we first determine into which of three categories of managerial decisions the decision falls: (1) 'decisions that "have only an indirect and attenuated impact on the employment relationship" and thus are not mandatory subjects of bargaining,' such as advertising, product design, and financing; (2) 'decisions directly defining the employment relationship, such as wages, workplace rules, and the order of succession of layoffs and recalls,' which are 'always mandatory subjects of bargaining'; and (3) 'decisions that directly affect employment, such as eliminating jobs, but nonetheless may not be mandatory subjects of bargaining because they involve "a change in the scope and direction of the enterprise" or, in other words, the employer's "retained freedom to manage its affairs unrelated to employment." (*County of Orange* (2018) PERB Decision No. 2594-M, p. 18 (*Orange*), quoting *International Assn. of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd.* (2011) 51 Cal.4th 259, 272-273 (*Richmond Firefighters*).)
>
> "When a decision falls into the third category, we first determine whether the decision has 'a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees' that 'arises from the implementation of a fundamental managerial or policy decision.' (*Claremont*, *supra*, 39 Cal.4th at p. 638; *Orange*, *supra*, PERB Decision No. 2594-M, pp. 19-20.) If both requirements are met, we determine whether 'the employer's need for unencumbered decisionmaking in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question.' (*Claremont*, *supra*, 39 Cal.4th at p. 638;

> *Orange*, *supra*, PERB Decision No. 2594-M, pp. 17, 19-20.)"

(*City and County of San Francisco*, *supra*, PERB Decision No. 2846-M, pp. 17-18.)

The Court of Appeal affirmed the Board's determination that the disputed Measure P amendments fall into the third category under this framework because the County has a substantial interest in increasing transparency and fostering community trust in policing and correctional services. (*Sonoma II*, *supra*, 80 Cal.App.5th at pp. 181-182.) We therefore must determine whether the decision to place the disputed Measure P amendments on the ballot had "a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees." (*City and County of San Francisco*, *supra*, PERB Decision No. 2846-M, p. 18.)

As an initial matter, we reject the County's contention that the Court of Appeal effectively determined that the disputed Measure P amendments did not significantly and adversely affect employment terms. The court's discussion did not amount, as the County implies, to a conclusion that the disputed amendments were outside the scope of representation. Rather, the court left that question open: "We cannot say the Measure P provisions 'invariably raises [*sic*] disciplinary issues' for which mandatory decision bargaining is required. (*Claremont*, *supra*, 39 Cal.4th at p. 634, 47 Cal.Rptr.3d 69, 139 P.3d 532.) Application of the first prong of the *Claremont* test here was necessary to determine whether the decision to place Measure P on the ballot was within the scope of representation." (*Sonoma II*, *supra*, 80 Cal.App.5th at p. 185.) The court's remand order also shows the court made no legal conclusions on scope of representation that are binding on PERB: "On remand, PERB must determine whether the decision to place [the disputed Measure P amendments] on the ballot was within the

scope of representation under the MMBA as analyzed under *Claremont*, *supra*, 39 Cal.4th at page 638, 47 Cal.Rptr.3d 69, 139 P.3d 532." (*Id*. at pp. 192-193.) The Court of Appeal thus explicitly did not resolve whether the disputed Measure P amendments significantly and adversely affected employment conditions and thus whether the County had an obligation to meet and confer.[7]

1. Significant and Adverse Effect Analysis

Neither *Claremont* nor any other decision announces a uniform standard for determining whether an effect on employment conditions is "significant and adverse." Indeed, this critical determination is necessarily context-specific. But there is one overarching consideration applicable irrespective of context: we must review all relevant circumstances from the perspective of a reasonable employee. (See *Long Beach Police Officer Assn. v. City of Long Beach* (1984) 156 Cal.App.3d 996, 1011 [finding change in investigatory practice to be within the scope of representation because police officers "may well have a fear, albeit a phantom fear," of punitive action] (*Long Beach*); *County of Santa Clara* (2022) PERB Decision No. 2820-M, p. 8

[7] In a similar vein, the County argues that under the law of the case doctrine, PERB is bound by the Court of Appeal's "findings and conclusions regarding the record evidence." But the court made no factual findings on the two issues on remand. On both issues, the court concluded that PERB incorrectly applied existing law to the facts. (*Sonoma II*, *supra*, 80 Cal.App.5th at pp. 185, 191.) We thus are free on remand to make any factual findings that are supported by the record. (See *Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1984) PERB Decision No. 375, p. 5 [on remand from the California Supreme Court's decision approving PERB's test for determining whether subjects not specifically enumerated by the Educational Employment Relations Act (§ 3540 et seq.) are within the scope of representation, the Board applied the test to the facts of the case and made new factual findings].)

[materiality of unilateral change is assessed "through the eyes of a reasonable employee"].)

As to the first term, "significant" means "large or important enough to have an effect or to be noticed." (*Significant*, Oxford Advanced Learner's Dictionary, https://www.oxfordlearnersdictionaries.com/us/definition/english/significant [as of Feb. 27, 2023].) Consistent with that definition, *Claremont* found no significant effect on police officers' working conditions where the amount of time per shift officers took to complete racial profiling study forms "was de minimis." (39 Cal.4th at pp. 638-639.)

As to the second term, *Claremont* provides no guidance for determining whether a significant effect is also "adverse." But long-settled precedent holds that an employer action is adverse whenever a reasonable employee in the same circumstances "would consider the action to have an adverse impact on the employee's employment." (*Newark Unified School District* (1991) PERB Decision No. 864, pp. 11-12.) We find this well-established standard equally applicable to determining adverse effects under *Claremont*.

Under the reasonable employee standard, the effect of a change need only be reasonably foreseeable to be considered "significant and adverse." As the California Supreme Court observed in *Building Material*, *supra*, 41 Cal.3d 651—the decision from which *Claremont* drew the "significant and adverse" standard: "The cases have established that the bargaining unit can be adversely affected without any immediate adverse effect on any particular employee within that unit." (*Id*. at p. 662.) Again, long-standing PERB precedent provides a useful standard here. As we recognized in *Trustees of the California State University* (2012) PERB Decision No. 2287-H:

> "Because bargaining over effects contemplates that negotiations will occur prior to implementation of the non-negotiable decision, the parties must assess the effects of the decision *prospectively*, without the benefit of hindsight. The effects must be reasonably likely to occur, not proven to have already occurred."

(*Id*. at p. 14, italics in original; see *Rio Hondo Community College District* (2013) PERB Decision No. 2313, p. 5 ["When approaching effects bargaining, parties must anticipate changes yet to flow from the employer's decision"].) Consistent with these authorities, in analyzing whether a management decision has "a significant and adverse effect on the wages, hours, or working conditions" of bargaining unit employees, we examine whether such an effect was reasonably foreseeable at the time the decision was made, not whether the effect was certain to occur as a result of the decision. And we consider this issue through the eyes of a reasonable employee in the same circumstances.

Applying these standards, we find that the disputed Measure P provisions significantly and adversely affect Association-represented employees' working conditions by creating a second, independent investigatory path. Before Measure P, IOLERO only had authority to audit Sheriff's Office misconduct investigations after they were complete; it had no authority to conduct its own investigations. Measure P gave IOLERO new authority to: (1) conduct an independent investigation when the Sheriff's Office investigation "is found by IOLERO to be incomplete or deficient in some way" (SCC, §§ 2-392(d)(2), 2-394(b)(5)(vii)); (2) directly receive and investigate whistleblower complaints against Sheriff's Office personnel (SCC, § 2-394(b)(3)); and (3) independently investigate deaths of individuals in Sheriff's Office custody or caused by Sheriff's Office personnel (SCC, § 2-394(b)(5)(viii)). IOLERO may

recommend discipline based on any of these investigations. (SCC, § 2-394(b)(4).) While an independent IOLERO investigation may or may not ultimately lead to an officer's discipline, for the following reasons employees would reasonably view it as significantly and adversely affecting terms and conditions of employment in several ways.

First, new investigative procedures adversely affect employment when they create a potential for discipline that did not previously exist. For instance, in *Murphy Diesel Co.* (1970) 184 NLRB 757, the employer unilaterally changed the process to investigate tardiness and absenteeism by adding a new requirement that employees use a company form to submit a written explanation for being tardy or absent. (*Id*. at p. 759.) Although the form did not alter existing criteria for discipline, the National Labor Relations Board found that "the new requirements, all of which exposed the employees to a jeopardy which had not prevailed under the preexisting rules, vitally affected employee tenure and conditions of employment generally and were therefore matters which were not subject to unilateral employer control."[8] (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 816, quoting *Murphy Diesel Co.*, *supra*, 184 NLRB at p. 763, internal quotations omitted.) California courts have reached similar conclusions with respect to new investigative procedures that exposed employees to greater potential for discipline. (See, e.g., *Holliday v. City of Modesto* (1991) 229 Cal.App.3d 528, 540 [holding that mandatory drug testing policy was within

[8] Although federal judicial and administrative precedent is not binding on PERB, it often provides persuasive guidance in construing California's public sector labor relations statutes. (*County of Santa Clara* (2019) PERB Decision No. 2670-M, p. 19, fn. 20 & p. 28; *Capistrano Unified School District* (2015) PERB Decision No. 2440, p. 15.)

the scope of representation]; *Long Beach*, *supra*, 156 Cal.App.3d 996, 1011 [holding that the city's change to a past practice of allowing police officers to consult with a union representative or attorney before filing an officer-involved shooting report was within the scope of representation].)

By subjecting County peace officers to potential investigation by a second entity, Measure P increases the potential for discipline. Indeed, one of the stated purposes of Measure P was to increase accountability among County law enforcement, implicitly by increasing the threat of discipline for misconduct. Moreover, even if no discipline ultimately issues, when IOLERO completes an independent investigation, it will maintain the supplemental case-specific report as a confidential peace officer personnel record. Reasonable employees would find the existence of such a personnel record to be significant and adverse. (See, e.g., *State of California (Department of Youth Authority)* (2000) PERB Decision No. 1403-S, adopting proposed decision at p. 33 ["[A] reasonable person would consider a performance report that included substandard ratings for 'relationships with people' and 'analyzing situations and materials' to have an adverse impact on his/her employment"]; *California Union of Safety Employees (Coelho)* (1994) PERB Decision No. 1032-S, p. 12 [fact that complaint and investigation did not result in action being taken against employee by his employer does not eliminate adverse impact where "a reasonable person" would "be concerned about the potential adverse effect"].)

Second, by subjecting County peace officers to a potential second investigation even if a first investigation has cleared them, these Measure P amendments adversely affect wages and promotional opportunities. Hearing testimony established that an officer who is under investigation will not be appointed to a specialty assignment or

promoted. In such circumstances, the officer would not receive additional pay that comes with the specialty assignment or promotion. And the loss of the specialty assignment or promotional opportunity could adversely impact the officer's career development.[9]

Measure P also adversely affects Association-represented employees' wages regardless of whether they are the subject of the investigation or only a witness. SCC § 2-394(b)(5)(ix) delegates to IOLERO the BOS' authority to subpoena testimony. But Measure P is silent about whether any employee subpoenaed by IOLERO to testify in an investigation will be paid if the interview takes place outside of the employee's duty hours. Thus, it is foreseeable that an employee called to testify during off-duty hours would not be paid for that time.

Two of the disputed Measure P amendments involve the evidence available to IOLERO. SCC § 2-394(b)(5)(ii) allows IOLERO to "[d]irectly receive all prior complaints for the involved deputy, previous investigation files (including *Brady*[10] investigations) and the record of discipline for each complaint." SCC § 2-394(e)(2) grants IOLERO access to those same materials as well as employee personnel

[9] Indeed, the Public Safety Officers' Procedural Bill of Rights Act (POBR; § 3300 et seq.) requires that an investigation be completed and notice of proposed discipline issued within one year of the start of the investigation "to ensure that an officer will not be faced with the uncertainty of a lingering investigation." (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 322.)

[10] A *Brady* list contains the names of "officers whom [law enforcement] agencies have identified as having potential exculpatory or impeachment information in their personnel files—evidence which may need to be disclosed to the defense under *Brady* [*v. Maryland* (1963) 373 U.S. 83] and its progeny." (*Association for Los Angeles Deputy Sheriffs v. Superior Court* (2019) 8 Cal.5th 28, 36.)

records, “investigations of claims filed against the Sheriff’s Office under the California Claims Act,” and “investigations related to lawsuits filed against the County because of any action or inaction of an employee of the Sheriff’s Office.” These amendments might not significantly and adversely affect terms and conditions of employment if IOLERO was merely reviewing such evidence as part of its pre-existing audit function. However, that is not the case. A reasonable employee would find these provisions significant and adverse because they are part and parcel of the separate, independent investigations that Measure P authorizes IOLERO to conduct even after the Sheriff’s Office has already cleared an officer or otherwise concluded its investigation. Further, although the parties’ June 2022 LOAs provide that IOLERO does not retain these materials after it completes its investigation, that limitation only exists because the County negotiated with the Associations while litigating this matter. A reasonable employee at the time Measure P was placed on the ballot could not assume that management would implement such protections absent collective bargaining.

In contrast, we conclude that the provision allowing the IOLERO Director “to personally sit in and observe” the Sheriff’s Office’s investigative interview of a subject officer (SCC, § 2-394(f)) was not within the scope of representation because a reasonable employee would not find the addition of a single additional qualified observer, on its own, to be significant and adverse.[11] (Cf. *Berkeley Police Assn. v. City*

[11] The Associations argue that SCC § 2-394(f) is adverse because it expands the number of interrogators at the investigative interview from two to three. On its face, SCC § 2-394(f) only allows the IOLERO Director “to personally sit in and observe” the interview; it says nothing about the Director interrogating the subject officer. Since the Associations presented no extrinsic evidence that SCC § 2-394(f) was intended to grant the Director authority to interrogate the subject or that IOLERO intended to

of Berkeley (1977) 76 Cal.App.3d 931, 937-938 [city had no duty to bargain over decision to allow citizen review commission member to observe police department board of review hearings and, conversely, to send a police department representative to citizen review commission meetings].) Accordingly, we dismiss the complaint allegation related to this amendment.

For these reasons, we conclude that all but one of the disputed Measure P amendments had a reasonably foreseeable "significant and adverse effect" on Association-represented employees' working conditions as of August 6 when the BOS decided to place Measure P on the November 2020 ballot.

2. Balancing Management's Interests with the Benefits of Bargaining

Having found the disputed Measure P amendments had "a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees" that "arises from the implementation of a fundamental managerial or policy decision," we must determine whether "the employer's need for unencumbered decisionmaking in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action in question." (*City and County of San Francisco*, *supra*, PERB Decision No. 2846-M, p. 18.) Past decisions have summarized the balancing test as analyzing whether an issue is "amenable to" or "suitable for" bargaining. (*Claremont*, *supra*, 39 Cal.4th at pp. 637-638; *Rialto Police*

implement the provision in that manner, we take the provision's language at face value.

Benevolent Assn. v. City of Rialto (2007) 155 Cal.App.4th 1295, 1306-1307 & 1309.)

Investigation and discipline lie at the core of traditional labor relations and are particularly amenable to collective bargaining—both for peace officers and other employee groups. (*Long Beach*, *supra*, 156 Cal.App.3d at p. 1011; see also *Claremont*, *supra*, 39 Cal.4th at pp. 634 [while drug testing is inherently tied to discipline and therefore subject to bargaining, police department's requirement that officers collect data on racial profiling involved no clear disciplinary aspects].) But in cases involving law enforcement agencies, the countervailing management interest is unique given that peace officers "exercise tremendous power in the name of the public." (Fisk et al., *Reforming Law Enforcement Labor Relations* (Aug. 2020) Cal. L.Rev. Online, p. 3.)

On the continuum of possible measures to enhance police accountability or improve police-community relations, management's need for unencumbered decisionmaking tends to outweigh the benefit of bargaining in relation to measures focused squarely on public safety and community relations, such as revising use-of-force policies, implementing a racial profiling study, or requiring officers to wear body worn cameras. (See, e.g., *Claremont*, *supra*, 39 Cal.4th at pp. 632-634 & fn. 6 [city had no duty to bargain over racial profiling study, as it was not related to discipline, though bargaining could be required if city were to begin disciplining officers for racial profiling]; *San Francisco Police Officers' Assn. v. San Francisco Police Com.* (2018) 27 Cal.App.5th 676, 684-690 [city had no duty to bargain over decision to revise use-of-force policy, but did bargain over the policy's impact on discipline]; *San Jose Peace Officer's Assn. v. City of San Jose* (1978) 78 Cal.App.3d 935 [city had no duty to bargain over decision to adopt a new use-of-force policy].)

Much of Measure P fell within this ambit of management prerogative, and indeed the Associations do not challenge those provisions. The Associations instead focus their claims on amendments involving investigation and discipline. As noted above, such provisions are presumptively subject to decision bargaining for all employee groups, including peace officers. (*Long Beach*, *supra*, 156 Cal.App.3d at p. 1011.) However, because peace officers sometimes use force—a unique aspect of their role in society—the scope of representation balancing test in law enforcement cases can turn on factors that do not matter for other employee groups. Most notably, a law enforcement agency generally has no decision bargaining obligation for an isolated change to an unwritten past practice related to peace officer investigations, where the practice was more protective than POBR. (*Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2008) 166 Cal.App.4th 1625, 1643-1645 [distinguishing *Long Beach*, *supra*, 156 Cal.App.3d 996 and finding no decision bargaining duty for change to practice allowing peace officers present during a deputy-involved shooting to consult collectively prior to being interviewed, where past practice was unwritten and more protective than POBR] (*ALADS*); *Association of Orange County Deputy Sheriffs v. County of Orange* (2013) 217 Cal.App.4th 29, 41-46 [finding no decision bargaining duty for change to unwritten past practice allowing peace officers pre-interview access to their investigative files, because neither POBR nor parties' contract required access at that stage] (*AOCDS*).)[12]

[12] While *ALADS*, *supra*, 166 Cal.App.4th 1625 and *AOCDS*, *supra*, 217 Cal.App.4th 29 found it relevant to assess whether a practice was written or unwritten, that question has little salience when the practice in question does not relate to use of lethal force. (See, e.g., *City of Santa Maria* (2020) PERB Decision No. 2736-M, p. 18 [unwritten past practice was sufficiently longstanding to constitute an established

Here, Measure P was a broad sea change consisting of many interrelated changes, creating an independent investigatory path even after County peace officers have been cleared in a Sheriff's Office's investigation. This is quite different from changes to discrete, unwritten investigatory procedures more protective than POBR.

The several challenged Measure P amendments allowing repeat investigations of the same officers over an extended period—thereby significantly and adversely affecting their career trajectory—are prime examples of changes for which the benefit of collective bargaining outweighs the short delay caused by requiring negotiations. In fact, the LOAs show how bargaining can sensibly protect employees while still meeting important public purposes. The record here therefore provides concrete evidence that Measure P's parallel investigatory track involves multiple significant topics that are "amenable to resolution through the bargaining process." (*Claremont*, *supra*, 39 Cal.4th at p. 637.)

To be sure, the MMBA's bargaining obligation can slow down decision making over law enforcement reforms that are mainly related to investigation and discipline of peace officers. On the other hand, such deliberation has benefits. As demonstrated by the parties' LOAs, agreements that result from such negotiations may feature improved content and foster employee buy-in, leading to more durable reform. (Fisk & Richardson, *Police Unions* (2017) 85 Geo. Wash. L.Rev. 712, 759-775.)

status quo].) Thus, where an alleged change to peace officers' employment conditions involves their pay, there is no cause to consider whether the practice was an unwritten one more protective than POBR. (See, e.g., *Riverside Sheriff's Ass'n v. County of Riverside* (2003) 106 Cal.App.4th 1285, 1291 [approving PERB's standard for deciding whether a past practice is sufficiently consistent to constitute an established status quo].)

Moreover, requiring negotiations does not give a public safety union a means to block reform. As the Supreme Court has noted, in requiring negotiations over certain decisions, the MMBA does not mandate that the parties reach an agreement, as "the employer has 'the ultimate power to refuse to agree on any particular issue.'" (*Claremont*, *supra*, 39 Cal.4th at p. 630, quoting *Building Material*, *supra*, 41 Cal.3d at p. 665.) Thus, if the parties do not reach agreement, the employer may implement its last, best, and final offer. (§ 3505.7.) And while in this case the County did not rely on the MMBA's emergency exception, that exception could curtail a law enforcement agency's bargaining obligation in unusual instances where the need to protect public safety does not allow time for good faith bargaining. (§ 3504.5, subd. (b).)

For these reasons, we conclude that the following Measure P amendments are within the scope of representation: those granting IOLERO authority to conduct independent investigations of Sheriff's Office employees (SCC, §§ 2-392(d)(2), 2-394(b)(3) & (5)(vii)-(viii) and deletion of language from SCC, § 2-394(c)(1)) and recommend discipline of those employees (SCC, § 2-394(b)(4)); and those allowing IOLERO to subpoena records or testimony in investigations (SCC, § 2-394(b)(5)(ix) and deletion of language from SCC, § 2-394(c)(3)) and review an officer's discipline record, including all prior complaints (SCC, § 2-394(b)(5)(ii) & (e)(2)).

B. Notice and Opportunity to Meet and Confer over the Decision to Place the Disputed Measure P Amendments on the November 2020 Ballot

MMBA section 3505 requires a public agency's governing body or its designee to "meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of . . . recognized employee organizations [and] consider fully such presentations as are made by the employee

organization on behalf of its members *prior to arriving at a determination of policy or course of action*." (Italics added.) Public agencies must comply with the MMBA's meet-and-confer requirement before submitting to voters an initiative affecting matters within the scope of representation. (*Boling*, *supra*, 5 Cal.5th at p. 915; *Seal Beach*, *supra*, 36 Cal.3d at pp. 597-601.)

As the Court of Appeal found, the BOS made a firm decision to place Measure P on the November 2020 ballot when it took that very action on August 6. (*Sonoma II*, *supra*, 80 Cal.App.5th at pp. 187.) The County did not give the Associations advance written notice that the BOS was considering taking this action on August 6. And although DSA and SCLEA learned immediately before the August 6 meeting of the BOS' decision and demanded to meet and confer before the BOS took action, the County ignored the Associations' requests. On these facts, the Court of Appeal affirmed our conclusion that the County did not provide the Associations notice or an opportunity to meet and confer over the negotiable effects of the BOS' decision before implementation. (*Id*. at pp. 187-188.)

Having found PERB erred by not applying *Claremont* in its decision bargaining analysis, the Court of Appeal did not address whether the County provided adequate notice and opportunity to meet and confer over the decision to place Measure P on the ballot. (*Sonoma II*, *supra*, 80 Cal.App.5th at p. 185.) An employer's obligation to provide adequate notice and opportunity to meet and confer is identical for both "a decision involving a negotiable subject [and] a negotiable effect of a non-negotiable decision." (*County of Santa Clara* (2019) PERB Decision No. 2680-M, p. 12.) We thus conclude that the same facts establishing a failure to give notice and an opportunity to bargain over the negotiable effects of certain Measure P amendments also establish the

same failure with regard to the decision to place the disputed Measure P amendments on the November 2020 ballot.

III. Remedy

MMBA section 3509, subdivision (b) authorizes PERB to order "the appropriate remedy necessary to effectuate the purposes of this chapter." (*Omnitrans* (2010) PERB Decision No. 2143-M, p. 8.) This includes the authority to order an offending party to take affirmative actions designed to effectuate the purposes of the MMBA. (*Id*. at p. 10.) A "properly designed remedial order seeks a restoration of the situation as nearly as possible to that which would have obtained but for the unfair labor practice." (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68.)

PERB's standard remedy for an employer's unlawful unilateral change is a cease-and-desist order, notice posting, restoration of the status quo ante, and appropriate make-whole relief including back pay and benefits with interest. (*Pasadena Area Community College District* (2015) PERB Decision No. 2444, pp. 23-24.) "Restoring the parties and affected employees to their respective positions before the unlawful conduct occurred is critical to remedying unilateral change violations" to prevent the employer from gaining an unfair advantage in future negotiations. (*City of San Diego* (2015) PERB Decision No. 2464-M, p. 40.)

On remand, the Associations urge us to restore the parties to the position they were in prior to August 6 by invalidating the portions of the August 6 BOS resolution placing the disputed Measure P amendments on the November 2020 ballot. While the Court of Appeal confirmed PERB's authority to declare a local governing body's resolution void and unenforceable (*Sonoma II*, *supra*, 80 Cal.App.5th at p. 192), we find no reason to order such a remedy here in light of developments since our

Sonoma I decision. As the parties concede, the June 2022 LOAs resolved all meet-and-confer issues arising out of the Measure P amendments we have found could not be adopted or implemented without bargaining. While the LOAs contain numerous relevant provisions, none are more important that those allowing IOLERO to conduct independent investigations, thereby permitting the parallel investigatory path at the core of the reasons multiple Measure P provisions fell within the scope of representation. It would not effectuate the MMBA's purposes to disturb that agreement. (See *City of Culver City* (2020) PERB Decision No. 2731-M, p. 25 [declining to order restoration of the status quo ante where the parties had subsequently agreed to the unlawfully changed policy in successor contract]; *Region 2 Court Interpreter Employment Relations Committee* (2020) PERB Decision No. 2701-I, pp. 57-58 [declining to order effects bargaining where the parties had subsequently bargained over effects in successor contract negotiations].)

Significantly, any future changes to the LOAs (as well as new or changed policies related to the topics covered therein) are subject to the MMBA's meet-and-confer obligation, and any failure to satisfy that obligation may be raised in a future unfair practice charge. Furthermore, an order to cease and desist from placing measures on the ballot that affect subjects within the scope of representation without notice and meeting and conferring upon request with the Associations over the decision or its effects prohibits the County from again engaging in the conduct we found unlawful here.

For these reasons, we limit our remedial order to a cease-and-desist order and notice posting.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it has been found that the County of Sonoma (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3505, and Public Employment Relations Board (PERB) Regulation 32603, subdivision (c) (Cal. Code Regs., tit. 8, § 31001 et seq.) when it failed and refused to meet and confer with the Sonoma County Deputy Sheriffs' Association and Sonoma County Law Enforcement Association (collectively, Associations) over the Board of Supervisors' decision to place Measure P on the November 2020 ballot and over the foreseeable negotiable effects of that decision on employment conditions. By this conduct, the County also interfered with the right of County employees to participate in the activities of an employee organization of their own choosing, in violation of Government Code section 3506 and PERB Regulation 32603, subdivision (a), and denied the Associations their right to represent employees in their employment relations with a public agency, in violation of Government Code section 3503 and PERB Regulation 32603, subdivision (b).

Pursuant to Government Code section 3509, subdivision (a), it is hereby ORDERED that the County, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing or failing to meet and confer in good faith with the Associations before placing any matter on the ballot that affects subjects within the scope of representation.

2. Interfering with bargaining unit members' right to participate in the activities of an employee organization of their own choosing.

3. Denying the Associations their right to represent employees in their employment relations with the County.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations in the County where notices to employees represented by the Associations are posted, copies of the Notice attached hereto as an Appendix. In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means used by the County to communicate with employees represented by the Associations. The Notice must be signed by an authorized agent of the County, indicating that the County will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.[13]

[13] In light of the ongoing COVID-19 pandemic, the County shall notify PERB's Office of the General Counsel (OGC) in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The County shall provide reports, in writing, as directed by the General Counsel or designee. All reports regarding compliance with this Order shall be served concurrently on the Associations.

Chair Banks and Members Krantz and Paulson joined in this Decision.

location as of the time the physical posting would otherwise commence. If the County so notifies OGC, or if the Associations requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all parties. OGC shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing the County to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing the County to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing the County to mail the Notice to those employees with whom it does not customarily communicate through electronic means.

After a hearing in Unfair Practice Case No. SF-CE-1816-M, *Sonoma County Deputy Sheriffs' Association v. County of Sonoma*, and Unfair Practice Case No. SF-CE-1817-M, *Sonoma County Law Enforcement Association v. County of Sonoma*, in which all parties had the right to participate, the Public Employment Relations Board found that the County of Sonoma (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq., when it failed and refused to meet and confer with the Sonoma County Deputy Sheriffs' Association and Sonoma County Law Enforcement Association (collectively, Associations) over the Board of Supervisors' decision to place Measure P on the November 2020 ballot and over the foreseeable negotiable effects of that decision on working conditions.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Refusing or failing to meet and confer with the Associations before placing any measure on the ballot that affects subjects within the scope of representation.

2. Interfering with bargaining unit members' right to participate in the activities of an employee organization of their own choosing.

3. Denying the Associations their right to represent employees in their employment relations with the County.

Dated: _____ COUNTY OF SONOMA

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Appeals Office, 1031 18th Street, Suite 207, Sacramento, CA, 95811-4124.

On February 28, 2023, I served PERB Decision No. 2772a-M regarding *Sonoma County Deputy Sheriffs' Association v. County of Sonoma & Sonoma County Law Enforcement Association v. County of Sonoma*, Case Nos. SF-CE-1816-M & SF-CE-1817-M on the parties listed below by

____ I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.
____Personal delivery.
_X_Electronic service (e-mail).

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 28, 2023, at Sacramento, California.

Joseph Seisa
(Type or print name)

[redacted]
(Signature)