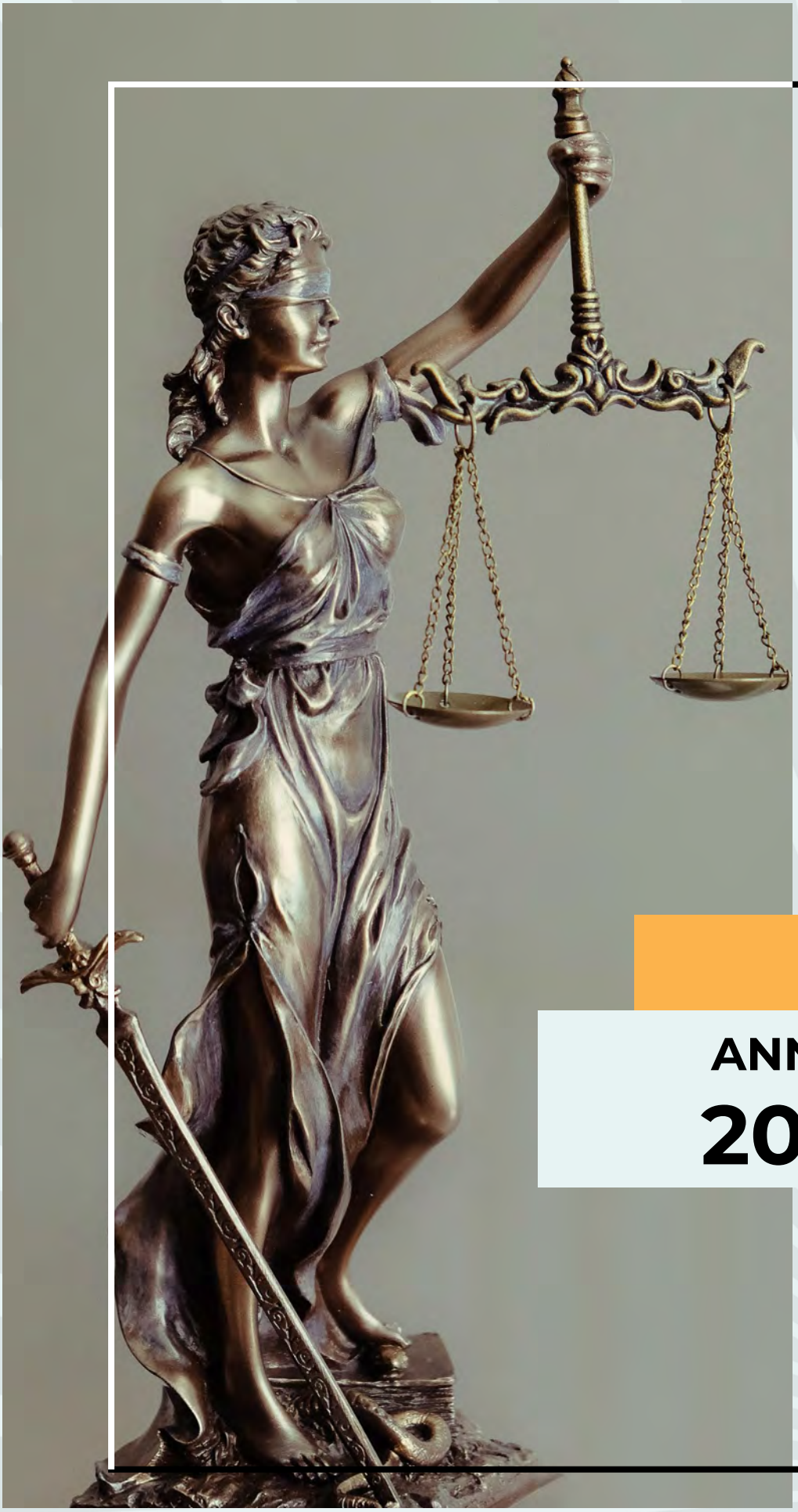

IOLERO

ANNUAL REPORT

2020-2021

INDEPENDENT OFFICE OF LAW ENFORCEMENT REVIEW & OUTREACH

LAW ENFORCEMENT AUDITOR

• SONOMA COUNTY •

The director would like to
extend a heartfelt thank you to

Jon Berger Esq.

for all of his hard work, support,
and contributions to IOLERO
and this Annual Report.

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EXECUTIVE

Summary

The Independent Office of Law Enforcement Review and Outreach (IOLERO) continues to work toward its mission of strengthening the relationship between the Sonoma County Sheriff's Office (SCSO) and the community it serves through outreach and the promotion of greater transparency of law enforcement operations.[1] Over the past year, IOLERO has been hard at work staffing the office and auditing investigations sent to us from the SCSO. Additionally, IOLERO has been applying for funding for its innovative community-oriented policing project and has stayed committed to its outreach mission despite the many challenges posed by the COVID-19 pandemic.

Since the last annual report, IOLERO has continued to accomplish successes in law enforcement reform. IOLERO worked with the Community Advisory Council (CAC) to recommend a new firearms policy that was accepted and implemented by the SCSO in the summer of 2021. The policy requires that any time a deputy points his or her firearm at a person to gain compliance — even if the gun is not fired — it must be documented as a use of force, reported to a supervisor then reviewed by IOLERO. Previously, the SCSO policy did not consider pointing a firearm at a person a use of force and these incidents were not documented or reviewed by anyone. Studies show that law enforcement agencies that require officers to document when they point their guns at civilians, regardless of whether they fire the gun, have significantly lower rates of gun deaths involving police officers. This was the first time the SCSO accepted and implemented a community-driven policy recommendation related to the use of force. This unprecedented policy change makes our community safer.

Last year, the director recommended that the SCSO include more de-escalation practices throughout its policy manual. After discussing it, IOLERO and the SCSO agreed that the SCSO would adopt an "overarching de-escalation policy" that applies to all their operations. The CAC was tasked with drafting a recommended policy. This year, the SCSO implemented a new overarching de-escalation policy.[2] Another positive development occurred as IOLERO submitted audits to the SCSO over the course of this past year. IOLERO opined in a number of cases that the SCSO's investigations were incomplete. The SCSO acknowledged that incomplete audits are a legitimate concern and through discussions with IOLERO, they have expressed a commitment to conducting more thorough and complete investigations.

Sections I-III of this annual report discuss IOLERO's legal authority to do the work of law enforcement oversight, IOLERO's budget and staffing, and IOLERO's work in the community. Sonoma's

1. More information about IOLERO's history and mission including copies of original documents can be viewed on IOLERO's website at: https://sonomacounty.ca.gov/IOLERO/Who-We-Are/

2. The new de-escalation policy is discussed further in the section entitled Community Advisory Council (CAC)

EXECUTIVE

Summary

County's Measure P was passed by nearly 65% of the vote showing the community's desire for increased law enforcement oversight. However, Measure P took a hit from the Public Employment Relations Board's (PERB) ruling in response to labor complaints filed by Sonoma County's law enforcement unions. PERB's decision overturned many of IOLERO's newfound authorities including the authority to issue subpoenas, conduct independent investigations, recommend discipline and establish a whistleblower hotline. However, at the state level, the legislature and Governor Gavin Newsom continued to overhaul police practices in California by enacting a series of law enforcement reform policies.

The majority of this annual report is dedicated to section IV which is a discussion of the complaints against the SCSO, and reviews of significant cases involving the use of force and in-custody deaths. The SCSO investigates these cases and IOLERO reviews those investigations through an auditing process. The audit summaries included in section IV present the cases, IOLERO's audits of those cases, and IOLERO's recommendations for institutional improvement.

-Karlene M. Navarro, Esq., Director

I. IOLERO's Legal Authority

Sonoma County's Measure P

The original ordinance (Ordinance No. 6174) that governed how IOLERO operates was approved by the Board of Supervisors in September of 2016. Ordinance No. 6174 specified that IOLERO is 100% "subject to the Sheriff's collaboration." (Ordinance No. 6174, 2-394(e)). The only power given to IOLERO was the authority to objectively audit the Sheriff's internal affairs investigations and make recommendations that the Sheriff was free to adopt or not adopt.[3] Under state law, IOLERO did not have the legal authority to release the audits to the public except in limited circumstances.

In November 2020, the Board of Supervisors approved placing a measure on the ballot to allow voters to decide whether to amend Ordinance No. 6174 and greatly expand IOLERO's powers and duties. Sonoma County voters showed their overwhelming desire for enhanced law enforcement oversight by passing the measure with nearly 65% of the vote on November 3, 2020.

Measure P granted IOLERO increased authority to do the work of law enforcement oversight including: subpoena power (which was solidified with the passage of AB 1185 in September 2020), direct access to the Sheriff's records including body-worn camera (BWC) videos, posting of BWC videos to IOLERO's website, the ability to issue subpoenas, conduct independent investigations, and make discipline recommendations and the authority to act as a receiving and investigating agency for whistleblower complaints. Measure P also set IOLERO's budget at 1% of the Sheriff's budget.

After Measure P passed, the Sonoma County Law Enforcement Association (SCLEA) and the Deputy Sheriff's Association (DSA) filed labor complaints asserting that Measure P was placed on the ballot in violation of labor laws requiring a "meet and confer" process with them about aspects of the ordinance that might affect their work conditions.

On June 23, 2021, the Public Employment Relations Board (PERB) issued its decision in response to those labor complaints. PERB's ruling declared provisions related to IOLERO's investigatory power, subpoena power, ability to post body-worn camera video and authority to make discipline recommendations "void and unenforceable" and ordered IOLERO to "cease and desist" from engaging in any investigations or other conduct related to the provisions.

The crux of PERB's ruling was that provisions of Measure P affect the labor conditions of Sheriff's Office employees and should have been discussed during a meet and confer process before Measure P was placed on the ballot. PERB wrote, "The County has a substantial interest in increasing transparency and fostering community trust in policing and correctional services. But for those Measure P amendments aimed in material part at investigation and discipline of employees, the benefits of collective bargaining outweigh the County's interest. Indeed, because such issues lie at the core of traditional labor relations, they are particularly amenable to collective bargaining."[4]

PERB's decision to void these provisions was not based on the constitutional or legal merits of the Ordinance's provisions meaning – it has not been deemed unlawful for IOLERO to investigate the SCSO independently, recommend discipline, post body-worn camera videos or issue subpoenas. PERB's decision voided the provisions based exclusively on the lack of a meet and confer process.

3. Ordinance No. 6174 may be viewed in its entirety on IOLERO's website at: https://sonomacounty.ca.gov/IOLERO/Legal-Authority/

4. The PERB decision in its entirety may be read in IOLERO's June newsletter: https://sonomacounty.ca.gov/IOLERO/IOLERO-Newsletter/

On July 13, 2021, the Sonoma County Board of Supervisors voted to appeal the PERB ruling while also moving ahead with the meet and confer process with the two bargaining units that filed the complaints.[5]

The PERB ruling was a disappointing setback but law enforcement reform continues to move forward. On September 30, 2020, Governor Newsom signed AB 1185, which gives general law counties like Sonoma County more options for expanding the authority of agencies like IOLERO by permitting subpoena and investigatory power. Also in 2020, Governor Newsom signed other new laws initiating critical criminal justice, juvenile justice and policing reforms in California, including banning the carotid restraint, requiring the Attorney General to conduct investigations into officer-involved shootings of unarmed individuals that result in death, and legislation that reforms the juvenile justice system to put more emphasis on rehabilitation and education.

On September 30, 2021, Governor Newsom continued to overhaul police practices in California by signing a series of reform bills.

California New Police reform bills signed into law on September 30, 2021

- SB 2 creates a system within the Commission on Peace Officer Standards and Training (POST) to investigate and revoke or suspend peace officer certification for serious misconduct, including excessive force, sexual assault, demonstration of bias and dishonesty. This legislation creates the Peace Officer Standards Accountability Division and the Peace Officer Standards Accountability Advisory Board within POST to review serious misconduct cases.

- SB 16 increases transparency of peace officer misconduct records pertaining to findings of unreasonable or excessive use of force, discriminatory behavior or prejudice, failure to intervene when witnessing excessive use of force by a peace officer, or participation in unlawful searches and arrests.

- AB 26 requires officers to immediately report potential excessive force to a supervisor and prohibits retaliation against officers that report violations of law or regulation of another officer to a supervisor. It also requires that an officer who fails to intercede when he observes excessive force be disciplined up to and including in the same manner as the officer who used excessive force.

- AB 48 prohibits the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration with certain exceptions.

- AB 89 requires the community college system to develop a modern policing degree program, with POST and other stakeholders to serve as advisors and to submit a report on recommendations to the Legislature outlining a plan to implement the program on or before June 1, 2023.

- AB 481 places restrictions on law enforcement agencies' acquisition, or use of military equipment within its jurisdiction.

- AB 490 prohibits a law enforcement agency from using techniques or transport methods that involve a substantial risk of positional asphyxia (suffocation).

- AB 958 defines a "law enforcement gang" as a group of law enforcement officers within an agency that engages in a pattern of specified unlawful or unethical on-duty behavior, and would require law enforcement agencies to have a policy prohibiting law enforcement gangs and making participation, as specified, in a law enforcement gang grounds for termination. The new law requires an agency to disclose an officer's termination for involvement in a law enforcement gang to another law enforcement agency conducting a preemployment background investigation of that officer.

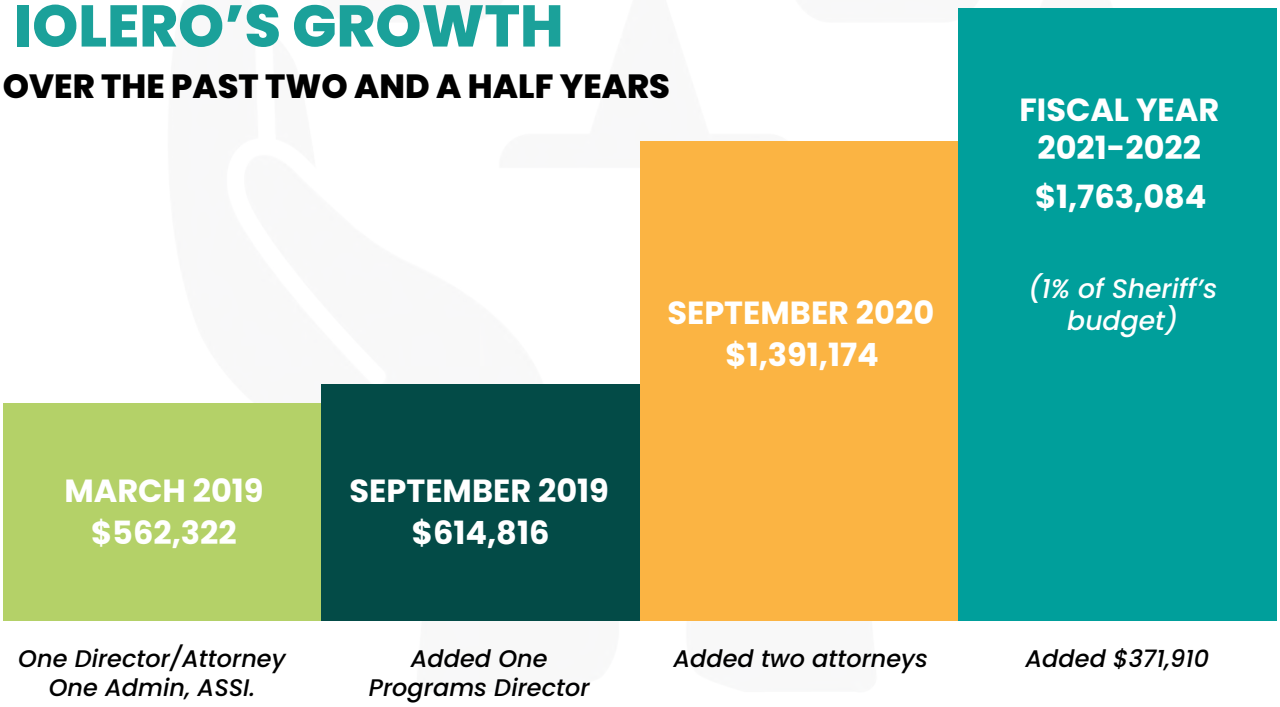
5. County of Sonoma's Press Release:
https://sonomacounty.ca.gov/CAO/Press-Releases/Sonoma-County-Supervisors-to-appeal-decision-concerning-Measure-P-on-November-ballot/

II. IOLERO'S BUDGET AND STAFFING

IOLERO has experienced unprecedented growth over the past two and a half years under Director's Navarro's leadership. In addition to the legal challenges associated with overseeing a Sheriff's Office,[6] IOLERO was woefully understaffed and overtasked since it was established back in 2016. Shortly after her tenure began, Director Navarro started advocating for more staff to sustain the office. Grassroots reform efforts and heightened community interest helped make IOLERO's increased budget permanent with the passage of Measure P in November 2020. The focus on budgetary shortcomings, enhanced IOLERO's capacity to do its work and effectively fulfill its mission. The following is a chart illustrating IOLERO's growth. The budget for the fiscal year 2021-2022 is $1,763,084. This figure represents Measure P's 1% budget requirement which was not overturned by the PERB decision.

IOLERO'S GROWTH

OVER THE PAST TWO AND A HALF YEARS



6. Sheriffs are powerful, constitutionally-mandated, elected officials. Sheriffs cannot be removed or disciplined by the Board of Supervisors. Similar to members of the Board of Supervisors, sheriffs are elected officials. The oversight contemplated for elected officials under present law is through elections. For more information related to the challenges associated with overseeing a Sheriff's Office (versus a Police Department), please see IOLERO's 2019-2020 Annual Report beginning on p.5: https://sonomacounty.ca.gov/IOLERO/Annual-Reports/

III. IOLERO'S FOUR OPERATIONAL BRANCHES

There are four operational branches that continue to be essential to IOLERO's success. Those branches and their significance are described in the chart below.

COMMUNITY ADVISORY COUNCIL (CAC)

The CAC makes community-driven policy recommendations, promotes large-scale, systemic reform and community partnership in law enforcement operations.

AUDITS

IOLERO audits the SCSO's investigations of complaints, incidents where force is used and in-custody deaths to ensure the SCSO is following its policies and to make recommendations for institutional improvement.

COMMUNITY OUTREACH

For IOLERO to be effective, the whole community has to be aware of the department and its services.

PROACTIVE WORK

To truly create a change in culture, increase transparency and improve the relationship between the Sheriff's Office and the community, IOLERO must proactively "relationship-build" with both the community and the Sheriff's Office.

Community Advisory Council (CAC)

The CAC is a group of appointed volunteers who represent the community's interests and serve as a bridge between the community and the SCSO. The CAC members also serve as community representatives to support some of IOLERO's operations. For example, members of the CAC have participated as community panelists during the interview process for IOLERO's attorneys and other staff.

The CAC's primary focus is their monthly public meetings where they explore issues related to police reform and community concerns about law enforcement. A representative from the SCSO attends the meetings and is available to answer questions and provide information. The CAC works in ad hoc committees to research law enforcement policies and practices and make community-driven recommendations to the SCSO. Examples of some of the public meeting topics explored by the CAC in 2020-2021 include: Procedures and Policies for Posting Body Worn Camera Footage Online (Nov. 2020), Lexipol and Law Enforcement Policy Templates (March 2021), and Community-Oriented Policing (May 2021).

CAC meeting reminders are sent out in IOLERO's monthly newsletter and via social media. The topics, agendas, minutes and video links to the CAC meetings can be found in the "Calendar" section of IOLERO's website.[7] During the

pandemic, meetings have been held by videoconferencing. The link to join meetings is also included in IOLERO's newsletter.

On July 12, 2021, the CAC unanimously voted to submit their recommendations on the use of force and de-escalation to the SCSO. Over the past year, the CAC had been doing research and working on formulating evidence-based, community-driven recommendations to the SCSO.

On July 21, 2021, the SCSO accepted and implemented the CAC's firearms policy recommendation. By approaching the recommendations from an evidence-based perspective, the CAC did not simply ask the Sheriff's Office to make changes to its policy because it was "the right thing to do." Rather, the CAC took issues that are important and relevant to the community, such as the firearms policy, and showed the SCSO why making this change to their firearms policy was not only good for the community, but also supported by other law enforcement agencies, social science and the law. In this instance, the CAC wanted the SCSO to require that any time a deputy points his or her firearm at a person to gain compliance — even if the firearm is not fired — it should be documented as a use of force, reported to a supervisor then reviewed by IOLERO.

Previously, the SCSO policy did not consider pointing a firearm at a person a use of force and these incidents were not documented or reviewed by anyone.

To support this recommendation and make it persuasive to the SCSO, the CAC located other law enforcement agencies that have a similar firearms policy (where the pointing of a firearm is considered a use of force) including at least one sheriff's department (a detail that is important to the SCSO). IOLERO attorneys assisted by providing case law where courts have held that when a police officer points a firearm to gain compliance, that act is considered a "show of authority," a seizure under the Fourth Amendment to the United States Constitution, and therefore is a use of force. IOLERO also provided the CAC with use-of-force guidelines from the Commission on Peace Officers Standards and Training (POST) to support this recommendation, and a summary of several studies related to the relationship between police agency policies and rates of officer-involved deaths.

Studies show that law enforcement agencies that require officers to file a report or document when they point their guns but do not shoot at civilians had significantly lower rates of gun deaths involving police officers. The research suggested that the paperwork requirement may act as a deterrent to unnecessary use of force because of the added demand on officers' time, the implicit recommendation from leadership of avoiding unnecessary gun draws, and a general commitment to best practices among agencies that have this type of policy. One study found that over a 15-year period, at least 40 fewer people would have died from officer-involved shootings if the agency had this policy. One of the researchers' conclusions was that this policy change – requiring officers to document when they point their firearm to gain compliance – has the potential to save lives without putting officers at further risk.[8]

This policy change by the SCSO is a huge accomplishment for the CAC, IOLERO and the SCSO. This was the first time the SCSO accepted and implemented a community-driven policy recommendation related to the use of force.

In October of 2020, Director Navarro recommended that the SCSO include more de-escalation practices throughout its policy manual. After discussing it, IOLERO and the SCSO agreed that the SCSO would adopt an "overarching de-escalation policy" that applies to all of their operations. The CAC was tasked with drafting a recommended policy. It was submitted to the SCSO with the July CAC recommendations. In October of 2021, a new de-escalation policy was implemented at the SCSO. While the SCSO accepted the concept of an "overarching de-escalation" policy and some of the themes from the CAC's draft were incorporated, the SCSO did not adopt the de-escalation policy as it was written by the CAC.

The CAC also recommended other use-of-force policies related to the prone restraint (applying pressure to a person's backside while he or she is restrained, face-down on the ground, which is known to cause suffocation referred to as "positional asphyxia"), protests, and the use of police dogs. These additional policy recommendations are still under review by the SCSO. You may read the CAC recommendations in their entirety by visiting IOLERO's website at: *https://sonomacounty.ca.gov/Community-Advisory-Council/Policy-Recommendations/*

7. https://sonomacounty.ca.gov/IOLERO/Calendar/

8. (Jennings, Jay and Meghan Rubado. Preventing the Use of Deadly Force: The Relationship between Police Agency Policies and Rates of Officer-Involved Gun Deaths. Public Administration Review, Volume 77, Issue 2. 2017. Pp. 217-226).

Outreach

In order to make sure that the entire community is aware of how to access IOLERO's services, IOLERO is constantly conducting outreach in different ways. IOLERO is present at large and small gatherings, CAC meetings, and one-on-one meetings with community members. During the pandemic, outreach opportunities were limited which made IOLERO's outreach mission challenging. CAC meetings were held virtually in a Zoom webinar format recommended by the County of Sonoma. However, despite the limitations posed by the pandemic, IOLERO continued to be present in the community as much as possible.

Some examples of IOLERO's outreach work in 2021 included: presentations made by Director Navarro at Shomrei Torah's Bagel Club, Black United, Valley of the Moon Rotary Club, The Oakmont SIRS, Leadership Santa Rosa (LSR), Sonoma County Police Academy, Kiwanis Club, Santa Rosa Junior College's Black Student Union, The Community Child Care Council (4Cs), and Sonoma State University's Humanities Dept. and Dept. of Criminology and Criminal Justice. Director Navarro also participated in Santa Rosa Police Department's (SRPD's) sergeant's interview panel and an SRPD focus group on community perspectives about law enforcement. IOLERO had a table offering information at The Cesar Chavez Day Health Fair, Indigenous People's Day, Neighborfest in Glen Ellen, Mercadito de Windsor, Sonoma Plaza Farmer's Market, Via Esperanza Open House, and the Wright School Vaccine Event.

As informational outreach, IOLERO has continued to publish its bilingual e-newsletter which provides updates on the work on the office, cases of significant interest to the community, legal updates from the courts and legislative developments on criminal justice and police reform.

One new feature of IOLERO's newsletter that received a lot of positive feedback was IOLERO's "Spotlight" section where community members or organizations were interviewed about their work or projects that are connected to IOLERO's work and mission. In 2021, IOLERO featured Spotlight pieces on Friends Outside, a resource for the incarcerated and their families (Feb. 2021) and Santa Rosa's inResponse Mental Health Support Team (March 2021).

IOLERO also invites community members to write pieces for the newsletter. In June, community leader, Faith Ross wrote a piece about Juneteenth, and in July, Mary-Frances Walsh, the director of the National Association on Mental Illness (NAMI) Sonoma County, wrote a Spotlight feature on local resources for those affected by mental illness.

Justice for Georgia Leah Moses

IOLERO also works directly with community members who need help communicating with the SCSO. For example, IOLERO worked with Georgia Leah Moses' sister, Angel Turner, as her liaison to the SCSO. Georgia Leah Moses was murdered in Sonoma County in 1997 when she was 12 years old. The person who killed her was never brought to justice.

Many people have asserted that Georgia Leah's case was not given the attention it deserved because Georgia Leah was a Black girl from a family without resources and social support. A study by the Murder Accountability Project analyzed FBI data and found that the percentage of homicides where someone is charged in criminal court has steadily declined since 1965. Notably, this decline in homicide arrests is most glaring when the victim is Black, like Georgia Leah Moses.

Ms. Turner, Georgia Leah's younger sister, who remembers Georgia Leah as her caretaker, has been pushing for answers in Georgia Leah's case, including trying to trace and rebuild a reward money fund that was offered back in 1997, as well as correcting Georgia Leah's name on the death certificate (it was erroneously reported as "Georgia Lee"). However, it has not been easy for Ms. Turner to get answers about Georgia Leah's case because even though the case it is considered a "cold case" (at 24 years old), it is technically still an open investigation. Generally speaking, police agencies will not discuss details of any open investigation even with family members.

Ms. Turner contacted IOLERO about various issues that had arisen in Georgia Leah's case over the years. IOLERO worked with Ms. Turner and the SCSO to address those issues and also to bring attention to Georgia Leah's case. During this process, IOLERO learned about the Homicide Victims' Families Rights Act of 2021. IOLERO put Ms. Turner in contact with the sponsors of the bill, Congressman Swalwell (D-Calif.) and Congressman McCaul (R-Texas) with the hope that Ms. Turner could lend her story and advocate for the bill while bringing attention to Georgia Leah's case.

On May 19, 2021, Newsweek featured a story about Ms. Turner's fight for justice for Georgia Leah and the Homicide Victims' Families Rights Act. You may read the story here: *https://www.newsweek.com/some-murder-cases-grow-cold-victims-families-pain-remains-hot-opinion-1592989.*

Proactive Work

Community-Oriented Policing Program (COPP)

Community-oriented policing is an approach to law enforcement that encompasses multiple, varied strategies. One of its basic premises is to create law enforcement strategies that maximize both effective crime prevention and public trust in the police. Community-oriented policing philosophy emphasizes the "co-production" of public safety by both the police and the community, meaning the police should work in collaboration with the community to define, prioritize, and address crime and policing issues in the community.

While the concept of community-oriented policing theory has been around for a long time, there aren't any universal criteria for implementing community-oriented policing because the mission of each law enforcement agency is supposed to be guided by the community it serves. This community-driven aspect is the focus of IOLERO's community-oriented policing project (COPP). IOLERO has partnered with the Department of Criminology and Criminal Justice at Sonoma State University (SSU) and Redwood Consulting Collective to conduct a study based on community surveys and focus groups to help inform us in a scientific and objective way what this community's experiences are with the SCSO and what this community would like to see the future of policing look like in Sonoma County. By surveying the community's feelings about the SCSO, the researchers will be able to address issues that have negatively affected relations with the SCSO before and during the pandemic. Through this work, the researchers aim to design a community-oriented policing program focused on repairing existing damage and strengthening the future relationship by enhancing trust, crisis response, cultural sensitivity and de-escalation.

IOLERO applied for funding through Sonoma County's American Rescue Plan Act (ARPA) application process. During the first phase of ARPA funding review, the COPP was recommended to move forward for further consideration. IOLERO is also seeking other grant opportunities for this project. Meanwhile, The researchers have been working on the pre-study development phase of IOLERO's COPP.

On May 2, 2021, the researchers gave an overview of the project at a CAC meeting where the CAC and the community asked questions and participated in a conversation about the project.[9] The researchers also met with Paul Gullixson, the County's Communications Manager and Sylvia Lemus, County Communications Specialist, to discuss partnering with the County during the survey portion of the study in order to reach the broadest section of the community possible (i.e., by accessing County sampling frames, demographic information and the County distribution list). The SCSO has expressed their support for the project.

The goal of this study is to create a criterion for what community-oriented policing should look like in Sonoma County. The overall mission of the COPP is to find an innovative, community-responsive approach to strengthening the relationship between the community and the SCSO.

Through pre-study development discussions with IOLERO, the SCSO, the CAC and the community, the researchers are developing strategic learning questions in order to inform our goal of implementing a community-oriented policing program. For example, one of the broad questions we want to answer through this study is "What is the relationship between the Sonoma County community and the Sonoma County Sheriff's Office?" To get to an answer to this question, a researcher would first ask a lot of different questions.

The strategic learning questions that have been developed thus far by the researchers are:

1. How do members of the community define "Community-Oriented Policing"? While the research literature provides a definition of this concept, we are interested to learn how different members of this community and the SCSO define community policing.
2. Do community members perceive community-oriented policing differently than law enforcement officers? If so, how do these perceptions differ?
3. When community members think of community-oriented policing, what examples come to mind? We're interested in hearing local examples or examples they've heard from other places.
4. What community-oriented policing practices does the SCSO currently engage in? We're interested in learning if these practices are formal or informal, sporadic or consistent, voluntary or required.
5. How does the SCSO communicate its expectations related to community-oriented policing to its deputies? As part of this question, we're interested in learning about the extent to which SCSO training addresses elements of community-oriented policing.
6. How does the SCSO track and evaluate the extent to which their deputies are engaging in community-oriented policing practices and how does this factor into the annual evaluations of deputies?
7. What do community members think results from community-oriented policing practices? We are interested in learning what impact the community expects to see from community-oriented policing. We want to find out if there are examples of this impact in Sonoma County and specifically with the SCSO.
8. What is the nature of the current relationship between community members and the SCSO? And, how - if at all - has this relationship been affected by the COVID-19 pandemic? We are interested in learning about perceptions of the SCSO and relationships with the SCSO among different groups within the community. We also want to learn about the specific practices that SCSO deputies are engaged in to build relationships with community members in their areas or "patrol zones."
9. What are community members' priorities in regards to the SCSO and community-oriented policing? How - if at all -have priorities shifted in light of the COVID-19 pandemic?

9. The video from that meeting may be viewed here:
https://sonomacounty.ca.gov/Community-Advisory-Council/Calendar/Community-Advisory-Council-Meeting-May-3-2021/

Once the strategic learning questions are finalized, they will be used to develop the focus group questions for an in-depth discussion with community members. The data collected during the focus groups will inform the questions for our county-wide survey.

The researchers will target specific communities for focus groups including the Spanish-speaking and undocumented communities, the broader Latinx community, the African American community, schools and educators, other under-represented communities, the business community, the SCSO deputies, the Windsor, Sonoma and Guerneville communities (where the SCSO has satellite offices and the potential for a town-centered approach to community-oriented policing).

Focus groups of SCSO deputies will be conducted to examine how the deputies feel about community-oriented policing, the amount of community-oriented policing that is already happening in the community, and the level of value they feel is placed on it by the SCSO. For example, it will be important to learn whether the deputies feel like their efforts in community-oriented policing are considered and valued when they apply for promotions within the SCSO.

Phase I will begin in January of 2022 with planning, literature review and data collection (surveys and focus groups). Data coding and interpretation will occur in late spring of 2022. In the interest of avoiding issues of bias and in keeping with best practices, methodology, and analysis in the field of community-based research, these phases of the study will be conducted solely by the researchers, completely independent from IOLERO and the SCSO.

IV. THE COMPLAINTS AND AUDITS

Investigating the Complaints

IOLERO is authorized to receive complaints against the SCSO. At this time, the complaints are forwarded to the SCSO internal affairs unit for an administrative investigation.[10] Once the investigation is complete, it is forwarded to IOLERO for review or an "audit." IOLERO issues an independent opinion including recommendations for institutional improvement.

Complaints based on allegations of inappropriate conduct are reviewed to determine whether the deputy /employee violated a SCSO policy or procedure. If the investigation determines that a policy or procedure was violated, the result is personnel action. Administrative investigations are separate from investigations of criminal charges where a deputy is suspected of violating the law. Potential violations of law or criminal investigations are reviewed by the District Attorney's Office.[11] IOLERO also audits the administrative reviews that the SCSO conducts automatically whenever they detect excessive force or a person dies in custody.

Information Sharing with the Public is Limited by Law – Legal Update

There are legal rules governing what information IOLERO can reveal about the complaints, investigations, and audits in an annual report or other public report. These rules are derived from a complex body of law including the California Constitution, statutory and case law. The rules will be discussed briefly to frame the discussion that follows about the audits.

"The people have the right of access to information concerning the conduct of the people's business [such as the business of the Sheriff's Office] and, therefore…the writings of public… agencies shall be open to public scrutiny." (Pasadena Police Officers Assn. v. Superior Court (2015) 240 Cal. App. 4th 268, 282-283 citing Cal. Const., art. I §3 subd. (b)(1).) However, the right to inspect public records is not absolute. (Pasadena Police, 284, citations omitted.) The public's interest in disclosure varies on a case by case basis. For example, "[i]n a situation involving an officer's use of lethal force against an unarmed suspect, the public's interest in disclosure is 'particularly great.'" Id. at 291. "Nevertheless, in enacting [confidentiality statutes], the legislature made a policy determination that the desirability for confidentiality in police personnel matters outweighs the public's interest in openness." (Pasadena Police at 291 citing Copeley Press, Inc. v. Superior Court (2006) 39 Cal. 4th 1272, 1282.) Some confidentiality restrictions on police officer records have been recently modified by SB 1421 (2019) and SB 16 (2021) as discussed in the IOLERO's Legal Authority and Conclusion sections of this report.

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

Some of the audits included in this Annual Report derive from citizen complaints and department-initiated administrative investigations by the SCSO. Accordingly, infor-

10. Conducting independent Investigation was one of the Measure P provisions that PERB determined was "void and unenforceable" and ordered IOLERO to "cease and desist" from engaging in.

11. For more information about the District Attorney's review of law enforcement employees for criminal conduct see: https://sonomacounty.ca.gov/DA/Incident-Reports/

mation resulting from the SCSO investigations will remain confidential as required by law. Generally speaking, the law allows for this section of the annual report to focus on non-confidential information such as critiques and evaluation of the administrative investigation, the manner in which the SCSO procedures and practices may have contributed to the basis of the complaint or incident and IOLERO's recommendations for institutional improvement (Pasadena Police at 289-290) Further information will be shared when the case is one of media interest where factual information has already been shared publicly, or when another exception applies (discussed below). Unless an individual's name has already been made public in relation to one of these incidents, or another exception applies, names and identifying information will be kept confidential.[12]

In 2019, SB 1421 expanded the information that may be shared with the public by creating four exceptions to confidentiality restrictions. Those exceptions include cases involving the discharge of a firearm, the use of force causing "great bodily injury," and cases involving sustained findings of sexual assault or dishonesty. As mentioned, these exceptions will be further expanded with the passage of SB 16. One of the questions that has come up repeatedly since SB 1421 was enacted is what legal definition should be applied to the term "great bodily injury" for the purpose of Public Record Act (PRA) requests from members of the public. Law enforcement agencies across the state have argued that the more restrictive "serious bodily injury" definition should apply. This would limit the types of cases that can be disclosed to the public through PRA requests. Media outlets and members of the public have argued that the broader "great bodily injury" definition should apply which would expand the types of cases that are disclosable. "Serious bodily injury" and "great bodily injury" are legal terms of art that may not be intuitive to the average person. The superior courts have recently weighed in on this issue.

Penal code section 832.7 provides, in pertinent part, that peace officer records "maintained by any state or local agency" are disclosable in response to a PRA request if the records "relat[e] to the report, investigation, or findings of . . . [a]n incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury." (§ 832.7, subd. (b)(1)(A)(ii).) The statute explicitly supersedes "any other law" that might conflict with it. (§ 832.7, subd. (b)(1).)

"Great bodily injury" is defined in California law as "a significant or substantial physical injury." (Pen. Code § 12022.7, subd. (f) see also CALCRIM "Great bodily injury. . . is an injury that is greater than minor or moderate harm.") California courts have interpreted the term broadly. "Some physical pain or damage, such as lacerations, bruises, or abrasions" constitutes great bodily injury. (People v. Washington (2012) 210 Cal.App.4th 1042, 1047-1048; see also People v. Jung (1999) 71 Cal.App.4th 1036, 1042.) Examples include a burning sensation from an insecticide-like substance (People v. Wallace (1993) 14 Cal.App.4th 651, 665-666) and a swollen jaw, bruises to the head, and sore ribs (People v. Bustos (1994) 23 Cal.App.4th 1747, 1755). Even a "pregnancy without medical complications" can qualify. (People v. Cross (2008) 45 Cal.4th 58, 65-66.) Other illustrations of the principle that an injury doesn't have to be all that severe to amount to "great bodily injury" are easily found among California case law.

"Serious bodily injury," is defined more narrowly in California law and can be interpreted as requiring more severe injuries than "great bodily injury." (Penal Code § 243, subd. (f).) This definition, which would significantly restrict the amount of information released to the public, is the meaning law enforcement agencies argue should be used for public requests for information.

However, in drafting SB 1421, the bill that created the current version of section 832.7, the Legislature explicitly rejected the term "serious bodily injury" and instead chose to use the term "great bodily injury." In the version of the bill originally introduced, subdivision (b)(1)(A)(ii) read "An incident in which the use of force by a police officer or custodial officer against a person resulted in death, or in serious bodily injury, as defined in subdivision (f) of Section 243." (Emphasis added) That passage remained unchanged through several readings of the bill. However, in the version introduced on August 23, 2018, it was changed to the language that appears in the current statute.[14]

12. To read more about the rules governing what information may be shared with the public in this report, you may read IOLERO's 2019-2020 Annual Report here: https://sonomacounty.ca.gov/DA/Incident-Reports/

13. SB 1421 amended Penal Code §832.7

14. You may review the final statute and compare it to previous versions here: https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201720180SB1421&cversion=20170SB142198AMD

The phrase "great bodily injury" does not appear in section 832.7 through accident, oversight or typographic error. It was a deliberate legislative choice. The Legislature, after due consideration, rejected the notion of restricting disclosable records to ones involving serious bodily injury inflicted by a police officer, and instead chose to make records involving great bodily injury disclosable. The Legislature is presumed to be aware of appellate court decisions. (Viking Pools v. Maloney (1989) 48 Cal.3d 602, 609; Estate of McDill (1975) 14 Cal.3d 831, 839.) Therefore, it was presumably aware of the many decisions holding that "great bodily injury" is interpreted broadly by California courts.

In Sacramento Bee & Los Angeles Times v. Sacramento County Sheriff's Dept. (2019) Sac. Cty. Sup. Ct. no. 34-2019-80003062, the Sacramento Sheriff's Department argued that the records requested by the petitioner media companies were not disclosable under the PRA because they did not fall within "the more restrictive definition of 'serious bodily injury' found in Government Code section 12525.2." (Sacramento Order at 4.)[15] That statute…defines "serious bodily injury" as "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ." (Govt. Code, § 12525.2, subd. (d).)

The court rejected that argument, pointing out that Government Code section 12525.2 is "not part of the Public Records Act," and holding that "[The Sheriff's] interpretation of 'great bodily injury' . . . is not in accord with various canons of statutory construction." (Sacramento Order at 5.) The court found that "[t]here are no grounds for electing to follow words that are not in the applicable statute," that "the legislative history of SB 1421 explicitly rejected the term 'serious bodily injury'" in order to allow for greater public disclosure of law enforcement records," and that "the purpose of the PRA supports using the broader definition of 'great bodily injury" in Penal Code section 1[2]022.7, rather than a more narrow definition in Government Code section 12525.2 to interpret [] PRA requests." (Sacramento Order at 6.) The court concluded: "Thus, the plain language of [section 832.7], its legislative history, and the text and purpose of the PRA, all show that the Legislature intended agencies to apply a broader definition of "great bodily injury" than the overly-restrictive term "serious bodily injury" when responding to PRA requests. [The Sheriff's] arguments that searches with the former term are too difficult or burdensome, should be addressed to the Legislature, not this Court." (Sacramento Order at 7.)

The Contra Costa County Superior Court recently reached a similar result in Richmond Police v. City of Richmond (2020) Contra Costa Cty. Sup. Ct. no. MSN19-0169. As in the Sacramento case, the respondent, in this case the City of Richmond, argued "that the term 'great bodily injury' in SB 1421 should be read to mean the same as the definition of 'serious bodily injury' as found in Penal Code §423(f) and Government Code § 12525.2(a)." (CCC Order at 25.) The court begins by noting that "SB 1421, of course, uses the specific language 'great bodily injury' rather than the term 'serious bodily injury.' Indeed, as the parties both point out, the Legislature consciously chose the term "great bodily injury" and not "serious bodily injury." On the face of the statutory language, that is all but conclusive as to which of the two terms should be applied under SB 1421." (CCC Order at 25.)

Echoing the Sacramento court's "complain to the Legislature, not to us" comment, the Contra Costa court acknowledged that "It is a stretch, perhaps, to say that the term 'great bodily injury' is clear and unambiguous as applied to any particular set of facts," but noted that that issue did not arise: "The Court is called on only to select between the term of art 'great bodily injury' and the term of art 'serious bodily injury' as to the correct meaning of SB 1421. And on that point of debate, there is simply no ambiguity at all." (CCC Order at 26.)

The court also rejected the city's argument based on a reference to "existing incident tracking already done by law enforcement" that appears in the legislative history of SB 1421. (CCC Order at 26-27.) The court noted that, "This evidently refers to the mandatory reporting of 'serious bodily injury' incidents required by Government Code § 12525.2(a). The City would have the Court infer that the Legislature must have meant for the scope of the disclosure requirements of § 832.7(b)(1)(A)(ii) to mirror the scope of the reporting requirements in § 12525.2(a), thus saving agencies from having to produce or report incidents under two different standards. But if that were the case, there would have been zero reason for the Assembly's

15. Copies of the Sacramento and Contra Costa Court opinions are available upon request.

amendment; that intent would have been captured, unambiguously and directly, in the prior draft reference to serious bodily injury and § 243(f)." (Ibid.) Finally, the court rejected the city's argument, based on People v. Wade (2012) 204 Cal.App.4th 1142, that the terms "great bodily injury" and "serious bodily injury" are "essentially equivalent." (CCC Order at 27.)

These authorities and judicial orders leave no doubt that when section 832.7 says "great bodily injury," it refers to the broad definition found in section 12022.7 and interpreted by Washington and the other cases cited above. Accordingly, the state of the law is that the term "great bodily injury" should be interpreted broadly when considering what information to share with the public.[16]

Audit Summaries by Calendar Year / August 1, 2020 – November 18, 2021

The number of pending audits at IOLERO fluctuates based on our completion of audits and the SCSO sending IOLERO new investigations for audit. For example, on Tuesday, IOLERO may be substantially up-to-date on its audit work with only two investigations in queue waiting to be audited. However, on Thursday, IOLERO might receive four investigations from the SCSO that are ready for audit bringing the number of audits pending to six.

From August 1, 2020 to November 18, 31, 2021 (the cut-off date set for this annual report), IOLERO processed 38 complaints against the SCSO. IOLERO received 31 completed investigations from the SCSO and completed more than 30 audits. Summaries of 25 audits completed by IOLERO are included in this annual report. Audits that were completed during the drafting of this annual report are not included, but will be summarized and published in future public reports from IOLERO.

IOLERO is on track to completely eliminate its backlog which dates back to 2017. We estimate that by early 2022, IOLERO will be able to audit investigations immediately upon their completion by the SCSO without any delay.

Categorizing the Cases

When an administrative investigation of a complaint is completed by the SCSO, there are four general findings that are made about each allegation:

1. "Sustained," means the SCSO found a violation of its policies;
2. "Exonerated," means the SCSO found that the employee did not violate policy;
3. "Not sustained/Inconclusive," means there was not enough evidence to either prove or disprove the complaint; or
4. "Unfounded," means the evidence does not support the complaint.

16. For additional legal analysis regarding what information may be lawfully shared with the public, please see IOLERO's 2019-2020 Annual Report beginning on p.19: https://sonomacounty.ca.gov/IOLERO/Annual-Reports/

Cases Audited by IOLERO

Sustained Cases

In the following cases SCSO found that the employee violated SCSO policy.

Case Nos.	Sustained Complaint No. 1 (also includes a finding of exonerated)
20-C-0028 21-C-0002 21-C-0005	

Type of Complaint	Racial discrimination in classification (all three complainants); COVID-related issues and cost of jail telephone calls (Complainant #3 only) This audit addressed three complaints together because all three of them raised the identical issue regarding racial discrimination related to gang classification. The three complainants were all classified by jail authorities as part of the "Sureño" street gang. The three complainants alleged that jail authorities discriminated against inmates on the basis of race, specifically the "Hispanic race," by making this classification because the term "Sureño" is simply a Spanish word for "Southern Hispanic." The three complaints alleged that inmates who had been classified as "Sureños" were being denied certain privileges, including module worker assignments ("mod-worker jobs") and access to the North County Detention Facility, for no reason other than their classification. Complaint #3 also raised the issues regarding the effects of COVID lockdown on court dates and visitation, and the cost of jail telephone calls.
Race/Ethnicity of Complainant	Latino
Origin of Complaint	SCSO / MADF
SCSO's Conclusion	Mixed **Racial discrimination complaints:** Each complaint was framed in terms of generalized discrimination against a group to which the complainant belonged ("Sureños"). None of the complainants alleged that the complainant himself, or any other specified individual, had actually experienced the discrimination. In all three cases, the complainant had not actually applied for any of the mod-worker jobs they alleged were being denied to inmates with the Sureño classification. Nevertheless, the specific complainants likely would not have qualified for mod-worker jobs for other reasons unrelated to their gang classification such as rule violations involving the use of gang-related graffiti, and fights involving other inmates in the jail. In this case, SCSO **exonerated** the complaints as to the specific inmates, but **sustained** the complaint generally noting that "gang membership alone is not a reason to deny an inmate from applying for an inmate worker position." This message was conveyed by jail management several times after the investigation of this case was completed. **The cost of phone calls:** Jail management had multiple conversations with Director Navarro about options for providing the incarcerated with more opportunities to connect with their

Case Nos. 20-C-0028 21-C-0002 21-C-0005	Sustained Complaint No. 1 (also includes a finding of exonerated)

SCSO's Conclusion

friends and loved-one's while in-person visits are restricted during the pandemic. Various proposals were discussed and we were able to agree on free phone calls. SCSO worked with the jail's phone provider to work out a new contract and jail management made the decision to provide the incarcerated with 10 minutes of free phone calls per day.

COVID-related issues: One of the three complaints raised two additional issues: the postponement of trials due to "COVID excuses" and restrictions on jail visitation due to the COVID outbreak. The scheduling of court appearances is the province of the court and is not within SCSO's control. The limitations on visitation were in line with government regulations and the recommendations from health officials related to the COVID outbreak.

IOLERO's Conclusion

Racial discrimination complaints: Agreed. Complainants argued that the "Sureño" technically means "Southern Hispanic," therefore jail authorities were discriminating against them on the basis of race. However, the term "Sureño" also designates a subset of the California Prison Gang, the Mexican Mafia. The terms "Sureño" and "Norteño" are commonly used by jail authorities and courts to designate gang membership (not race), and these terms are widely accepted in the criminal law arena subject to foundational requirements. Nonetheless, as noted, SCSO should not place a blanket restriction on jobs or housing based solely on jail classification. Inmate applications for work should be considered on a case-by-case basis according to that particular individual's qualifications regardless of classification, including gang affiliation.

The cost of phone calls: Agreed. At the time of this complaint, Director Navarro worked with jail management to find a solution that would give the incarcerated more connection to and contact with the outside world. IOLERO is awaiting a response from SCSO on the current status of the Global Tel Link contract in response to the Civil Grand Jury report.

COVID-related issues: Agreed.

IOLERO's Recommendations

Continue to address the cost of phone calls: On June 20, 2021, the Sonoma County Civil Grand Jury published its final report for the 2020-2021 time period. The report included a chapter entitled County Jail Inmate Telephone and Commissary, Overcharging a Captive Population. The report concluded that SCSO's "commission-based contract with Global Tel Link unreasonably inflates the cost of telephone communication for incarcerated people and their families in the community." The report recommended several changes to the inmate phone system at the jail.[17] An article in the Press Democrat published on July 23, 2021 described the grand jury's report in detail, noting that Global Tel Link "has been accused of predatory practices elsewhere by inmates and their families and, in at least one case, state regulators."[18]

17. *The full civil grand jury report may be accessed at: http://sonoma.courts.ca.gov/info/administration/grand-jury/GJ-2020-2021*

18. *The full article: https://www.pressdemocrat.com/article/news/civil-grand-jury-questions-steep-prices-for-sonoma-county-jail-phone-calls/*

Case Nos. 19-C-0019	Sustained Complaint No. 2
Type of Complaint	Excessive Force Person incarcerated at Main Adult Detention Facility (MADF) became angry when his cell was being searched during out of cell time. He screamed, cursed and threatened the deputies repeatedly. Deputies advised that he would have to end out of cell time and return to his own cell if the threats continued. The inmate opted to return to his cell. As deputies walked him back to his cell, he continued to taunt the deputies at close range and resisted walking back to his cell. Inmate was taken to the ground by two deputies, but continued to resist.
Race/Ethnicity of Complainant	Latino
Origin of Complaint	No complaint filed. Investigation initiated by SCSO /MADF during the use-of-force review
SCSO's Conclusion	Sustained. The inmate, who was known to have been violent with deputies in the past, was actively resisting and reaching for items on the deputies' duty belts that could have been used as weapons. The use of force to take him to the ground and subdue him was justified. However, the two deputies used additional force after the inmate was on the ground and no longer resisting. Both deputies also violated policy by failing to report the post-takedown force in their reports. The force was detected during a routine use-of-force review by a supervisor.
IOLERO's Conclusions	**Agreed:** The force used after the inmate was mostly controlled or when he was no longer resisting at all was unnecessary and excessive. The inmate was already handcuffed, on the ground and no longer resisting when one deputy delivered a "knee drop" to his back. At the same time, the second deputy delivered two elbow strikes to the back of the inmate's head. IOLERO agreed that the deputies violated policy for force used after the inmate was mostly controlled or no longer resisting at all. **Good Practices:** After the two deputies gained control of the inmate on the ground, arriving deputies switched them out from their positions. This was good practice by the deputies involved. It assisted with de-escalating the situation and provided a cool down period for everyone involved. The deputies also alerted the medical unit and had the inmate evaluated immediately after the incident which was also a good practice, especially since force was used while the inmate was in the prone position which is known to restrict oxygen causing injury and death by asphyxiation.
IOLERO's Recommendations	**Eliminate or modify use of the prone restraint:** The SCSO should consider adopting a policy eliminating or limiting the use of the "prone restraint" to prevent the risks associated with positional asphyxia. In this case, the inmate was restrained and held down while lying on his stomach for 5 minutes, 22 seconds. There is ample evidence that placing people in this position is dangerous and can result in injury and death including a report from the U.S. Dept. of Justice dating back to 1995 (National Law Enforcement Technology Center Bulletin, "Positional Asphyxia -- Sudden Death," June 1995, pg. 1) IOLERO provided the SCSO with examples of policies from other law enforcement agencies including sheriff's departments where this type of policy is already in place. IOLERO reiterated this same recommendation in another case (see case no. 20-C-0019). IOLERO also provided this research to the CAC to assist them with their communi-

Case Nos. 19-C-0019	Sustained Complaint No. 2
Type of Complaint	ty-driven recommendations on the same topic. In July 2021, the CAC made a similar recommendation to the SCSO related to the prone restraint and positional asphyxia. As of the writing of this annual report, SCSO has not responded to IOLERO or the CAC's recommendations related to the prone restraint and positional asphyxia. On September 30, 2021, Gov. Newson signed into law AB 490 which states, "A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia."

Case Nos. 20-C-0025	Sustained Complaint No. 3
Type of Complaint	IOLERO received two, separate anonymous complaints about offensive postings on social media made by a SCSO deputy. SCSO received a third complaint about one of the same postings.
Race/Ethnicity of Complainant	Unknown. Deputy's social media comments focused on Jews and African Americans.
Origin of Complaint	IOLERO / SCSO
SCSO's Conclusion	Sustained. SCSO determined that the deputy violated policy for posting content that had "strong racial undertones" but noted that he may not have intended it as racist content.
IOLERO's Conclusion	**Incomplete** IOLERO agreed with the sustained finding, but disagreed with the reasoning, concluding that the deputy's conduct was blatantly racist, anti-Semitic and extreme. IOLERO also opined that the investigation was incomplete because further action is required to hold the deputy accountable for his/her actions.
IOLERO's Recommendations	**The SCSO is legally justified under First Amendment law to take a stronger stand against extremism amongst its employees:** The SCSO has taken a cautious and conservative approach to balancing the First Amendment rights of its employees with public-safety and public-trust needs.[19] SCSO Policy 1030.2, which addresses employee use of social networking sites, states: "Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this office. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this office be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Sonoma County Sheriff's Office will carefully balance the individual employee's rights against the Office's needs and interests when exercising a reasonable degree of control over its employees' speech and expression." SCSO Policy 1030.4 – Prohibited Speech, Expression and Conduct – forbids: "(c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior; (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Sonoma County Sheriff's Office. SCSO should consider taking a closer look at First Amendment law, which actually gives the department more lawful control over their employees' speech and associations than is currently being exercised. Based on the totality of the evidence, IOLERO did not find the deputy's explanations for his/her posting to be credible, and concluded that the deputy was dishonest during his/her interview with the SCSO. First Amendment law acknowledges that government employers need signifi-

19. IOLERO acknowledges that the SCSO usually relies on the advice of County Counsel related to legal analysis and policies.

IOLERO's Recommendations

cant control over their employees' words and actions in order to efficiently provide public services. When a citizen enters public service, he/she necessarily accepts certain limitations on his freedom of speech and association based on a heightened need for order, morale, and harmony and trust in the community. (See: Garcetti v. Ceballos (2006) 547 U.S. 410, 418; Pickering v. Board of Educ. (1968) 391 U.S. 563, 568; Rankin v. McPherson (1987) 483 U.S. 378, 381; Doggrell v. City of Anniston 277 F. Supp. 3d 1239, 1258, quoting Oladeinde v. City of Birmingham (11th Cir. 2000) 230 F. Supp. 3d 1239.) IOLERO conducted a thorough review of SCSO policies, First Amendment and statutory law, and concluded that the SCSO is legally justified under First Amendment case law to take a stronger stand against extremism among its employees. This legal and policy information was provided to the CAC who is interested in further investigating extremism within the SCSO. Based on this case IOLERO recommended the following:

1. SCSO should reopen this investigation to document whether the deputy was on duty when he/she made these posts, to document whether SCSO found his/her comments during his interview believable or whether he/she was dishonest, and also to investigate the deputy's use of a controversial emblem after this investigation concluded (consistent with the decision of the U.S. Equal Employment Opportunity Commission in Shelton D. v. U.S. Postal Service)
2. SCSO should evaluate First Amendment law and take advantage of the latitude granted to government employers and law enforcement agencies when restricting employee speech and association.
3. SCSO should consider adopting a policy disavowing white supremacy and extremism and prohibiting employee speech and association that promotes racist or extremist ideology.
4. SCSO should provide the entire file to the District Attorney's Office as Brady[20] evidence and request a review of all cases, including old convictions, where the deputy in question testified or wrote a report or affidavit.
5. In order to detect potential patterns of bias, excessive force, and/or civil rights violations, SCSO should review the prior arrests made by this deputy and instances where he/she used force. For example, the SCSO may want to look for cases where this deputy recommended resisting arrest charges (Penal Code §148) and focus on the cases rejected by the District Attorney's Office.

20. Brady evidence is evidence that is "both favorable to the defendant and material on either guilt or punishment. Evidence is favorable if it either helps the defendant or hurts the prosecution, as by impeaching one of its witnesses. Evidence is material if there is a reasonable probability that, had it been disclosed to the defense, the result would have been different." (People v. Gutierrez (2013) 214 Cal. App. 343, 348, citations omitted.)

Case No. 20-C-0031	Sustained Complaint No. 4
	Deputy was involved in a car collision with complainant while he/she was on duty
Race/Ethnicity of Complainant	White
Origin of Complaint	IOLERO / SCSO
SCSO's Conclusion	Sustained. The deputy violated departmental policy by failing to engage his/her body-worn camera (BWC) and by not reporting the collision to his/her supervisor.
IOLERO's Conclusion	**Agreed / Incomplete.** IOLERO agreed with the conclusion, but the investigation was incomplete. In this case, the citizen's complaint was essentially a narrative description of her encounter with a deputy after a minor car collision between complainant's car and the patrol car. Other than checking the boxes on the complaint form marked "conduct unbecoming a deputy, neglect of duty and excessive force," the complainant did not specifically say what her complaint was. The SCSO investigator reportedly made several attempts to reach the complainant and a witness without success. To his credit, the investigator expanded the complaint beyond the four corners of the complaint and determined that the deputy had violated policy by not turning on his body-worn camera (BWC) or reporting the accident to his supervisor, both issues that would not have been apparent to the complainant. However, the crux of the written complaint was that the complainant's car had been damaged by an on-duty deputy sheriff who was driving carelessly, that he/she did not take this incident seriously, which may have been frightening to the complainant, and attempted to shift the blame for his/her mistake onto the complainant by suggesting that the real problem was the complainant's driving. It is at least arguable that the deputy's attitude toward the complainant after colliding with her car was inconsistent with his/her duty to "conduct [himself/herself] in a manner that inspires respect for the law (SCSO Policy Manual, Sheriff's Preface.) Moreover, this was not what SCSO expects of its deputies who represent the department and serve the community. It was, to say the least, unprofessional for an on-duty law enforcement officer who has just broken a law himself/herself to take refuge in the fact that a civilian did too.
IOLERO's Recommendations	**Further investigate the deputy's behavior:** In light of the fact that the complainant checked the "conduct unbecoming" box on the complaint, and the strong indications in the complaint that complainant took issue with the deputy's indifference and disdain about what had happened, the investigation should have at least addressed the question of whether the deputy's refusal to take responsibility for the collision, his/her attempts to deflect the blame onto the complainant, and his/her abrupt departure from the scene rose to conduct unbecoming of a deputy.

Case No. 20-C-0035	**Sustained Complaint No. 5** *(includes a finding of unfounded)*
Type of Complaint	Jail conditions, COVID exposure. The specific complaints were: 1. Several inmate workers from complainant's housing module ("mod") were sent to clean another area where inmates were being quarantined because they tested positive for COVID which made the complainant's entire mod exposed to COVID. 2. Complainant was transferred to a cell formerly occupied by a COVID-positive inmate.
Race/Ethnicity of Complainant	Unknown
Origin of Complaint	IOLERO
SCSO's Conclusion	1. Unfounded: The jail contracts with an outside janitorial company to clean areas where COVID-positive inmates have been located. Inmate cleaning crews are utilized to clean other areas. In this case, the inmate workers were non-English speakers and there appeared to have been a language-based misunderstanding conveyed to complainant about the area they were cleaning. 2. Sustained: The SCSO investigator found that it was an error to move the complainant to a cell where a COVID-positive inmate had previously been housed, but noted that the incident was a mistake and not a violation of any specific policy.
IOLERO's Conclusions	1. **Agreed** 2. **Disagreed** that no specific policy was violated. Agreed with the corrective action. In this case, the SCSO deemed the transfer an error and corrective action was taken, making the case effectively "sustained." However, the error was, in fact, a violation of two SCSO policies. The classification error was a violation of the Detention Division's Communicable Diseases – Inmate Handling and Exposure Plan policy which provides "It is the policy of the Detention Division to identify, treat and appropriately house inmates with suspected communicable diseases which threaten the health of staff and other inmates. Procedures will be in place in the event an inmate is exposed to the bodily fluid of another inmate." SCSO Policy Section 320 states that a deputy's failure to observe safe working practices is cause for discipline. (Policy 320.5.10(a))

Exonerated Cases

In the following cases, SCSO found that the employee did not violate policy.

Case No. 19-AR-0001	Exonerated Case No. 1
Type of Complaint	Administrative review following death in custody
Race/Ethnicity of Complainant	White
Origin of Complaint	SCSO
SCSO's Conclusion	SCSO did not find any violations of policy.
IOLERO's Conclusion	**Mixed / Incomplete** IOLERO agreed with the investigation's findings regarding the press release policy and the death notification policy. The lack of a video record showing exactly when the decedent was discovered makes it impossible to determine whether jail staff complied with the policy requiring immediate application of lifesaving measures. We **disagree** with the finding that the Inmate Observation Record was used correctly because the form conflicts with the video record. Due to that inconsistency, and because the investigation's findings regarding safety cell use and facility rounds were based on that record, the investigation into those issues was **incomplete.** The investigation into whether any policies regarding the handling of the medical emergency were violated was also **incomplete** because it did not address the suicide-prevention policy. That policy requires "All inmates identified by a staff member as being 'at risk' for self-harm at any time during their incarceration shall be immediately referred to a mental health clinician for a mental health evaluation. Until this evaluation takes place, a deputy shall maintain a line of sight observation of the inmate until mental health staff can assess the inmate to determine whether or not a safety cell placement, an observation cell placement or any other type of intervention strategy is necessary. (Mental Health – Suicide Prevention policy § 5.6(A); see also §§ 5.4(G) and 5.5(C).) In other words, the decision to place an inmate who is at risk for committing suicide in a safety cell cannot be made by a deputy; it must be made by a mental health clinician. Until it is, the inmate must be continually in a deputy's line of sight. The investigation did not address this policy or whether a clinician recommended use of a safety cell. For this additional reason, the investigation was incomplete.

IOLERO's Recommendations

Modify the Suicide Prevention Policy: We recommend that the following passage, or language substantially similar to it, be appended to SCSO policy manual sections 5.4(G), 5.5(C), and 5.6(A): "If the clinician determines that safety cell or observation cell placement is appropriate, the clinician shall notify the referring staff member of any recommended restrictions on the inmate's access to food or other materials, for example, whether the inmate should be observed continually while eating or should not be given solid foods."

Administrative review should routinely include verification of the completeness of all material set aside for possible litigation: Administrative reviews have multiple purposes, including determination of whether any deputies acted outside of policy, but also preparation for possible litigation. Whatever other steps the department takes in response to this incident, one of them should be to require that future administrative reviews routinely include thorough examinations of all material set aside for possible litigation, with the goal of positively confirming its completeness.

This case is discussed further in the Audit Trends section of this report.

Case No. 19-C-0006	Exonerated Complaint No. 2
Type of Complaint	This complaint centered around three different incidents that occurred over the course of more than a year. The gist of the complaints was that the cases were not thoroughly investigated and/or the involved officers were unprofessional and discourteous toward the complainant.
Race/Ethnicity of Complainant	White
Origin of Complaint	IOLERO
SCSO's Conclusion	Exonerated
IOLERO's Conclusion	**Agreed.** IOLERO reviewed all of the evidence in this case including many hours of body-worn camera (BWC) videos related to the allegations. The complainant called SCSO to report several crimes involving a romantic partner, but when deputies arrived, repeatedly affirmed that she would not cooperate with a prosecution, and would not show up to court if charges were brought against her partner. In this case, the complainant dealt mainly with four deputies. The deputies were exceedingly patient, accommodating and sensitive to the complainant's needs, building a relationship of trust and consistently offering services at the Family Justice Center (FJC) which was appropriate. The issue arose when two new detectives came into the case to attempt to continue the investigation to the next level. The detectives were not as accommodating and delicate as the first four deputies, but their behavior would not be appropriately categorized as "discourteous," or "unprofessional."
IOLERO's Recommendations	**Relationship-building and continuity of services:** In sensitive cases like this one, each officer involved in the case should take special care to take the time to relationship-build with the complainant at every stage of the case. IOLERO recommended that this case be reviewed and used as a learning tool to improve best practices in cases involving sensitive issues. When a deputy spends hours with a complainant/victim helping that person and essentially gaining the complainant/victim's trust by building a relationship, that deputy should remain with the complainant/victim until the end to ensure that he/she is properly introduced to the detectives who may be coming into the case later and that the next steps in the process are explained to the complainant/victim by the first deputy while the new detectives are present. Detectives taking over a case should make sure a deputy, who may have built a prior relationship of trust with the victim, remains with the complainant/victim while the detectives introduce themselves and restart the relationship/trust-building process.

Case No. 19-AR-0007	**Exonerated Case No. 3 (David Ward / Jason Little)** **On December 20, 2019, the facts of this case including personal identifying information was made public by the SCSO in a "Critical Incident Video" that is still accessible on YouTube. Therefore, the case has already been made public by the SCSO and IOLERO is not withholding personal identifying information of the involved parties**
Type of Complaint	Excessive force This case involved the death of David Ward who was put into an improperly applied carotid hold by former Dep. Charles Blount. Mr. Blount is now being criminally prosecuted for his role in this case. This investigation reviewed the actions of his SCSO partner, Dep. Little who also played a role in the encounter.
Race/Ethnicity of Complainant	White
Origin of Complaint	Investigation initiated by SCSO because of in-custody death
SCSO's Conclusion	Exonerated SCSO evaluated various departmental policies and concluded that there was no violation of policy. The policies reviewed included: use of force, TASER use, firearms, major incident notifications, and hostage and barricade incidents.
IOLERO's Conclusion	**Disagreed** IOLERO concluded that the Duty to Intercede policy was violated. This policy is part of the SCSO use-of-force policy and is intended to prevent excessive and unreasonable force. However, the Duty to Intercede policy was not considered as part of the SCSO's investigation. The policy states "Any deputy present and observing another deputy using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so intercede to prevent the use of unreasonable force." (SCSO Policy Manual § 300.2.1.) IOLERO acknowledges that the situation in which Deputy Little found himself was one of the most stressful ones a law enforcement officer could possibly encounter. However, nothing in the SCSO Policy Manual suggests that the policies apply only to non-stressful situations. Indeed, there would be very little point to a law enforcement policy that only applied in non-stressful situations. We proceed on the understanding that SCSO deputies are expected to observe the department's policies at all times, regardless of the surrounding circumstances. Charles Blount is no longer employed with the SCSO as a direct result of this incident, and is currently being criminally prosecuted for it; it is, therefore, beyond question that his actions rose to "force that is clearly beyond that which is objectively reasonable under the circumstances." Therefore, this policy required the other SCSO deputies who were present to intercede, if Charles Blount was observed using unreasonable force. Dep. Little was in the unenviable situation of feeling obligated to protect a colleague who was doing something dangerous and foolish. IOLERO understands that it was Charles Blount, not Dep. Little, who created the situation and who was responsible for Mr. Ward's death. Nevertheless, we cannot overlook the point that Dep. Little appears to have had ample opportunity to intercede in Mr. Blount's egregious

Case No. 19-AR-0007	**Exonerated Case No. 3 (David Ward / Jason Little)** **On December 20, 2019, the facts of this case including personal identifying information was made public by the SCSO in a "Critical Incident Video" that is still accessible on YouTube. Therefore, the case has already been made public by the SCSO and IOLERO is not withholding personal identifying information of the involved parties**
IOLERO's Conclusion	behavior, that a departmental policy required him to do that, and that he made no attempt to comply. The investigation established that Dep. Little observed Charles Blount twice slamming Mr. Ward's head into the window frame. The duty-to-intercede policy is part of section 300 (Use of Force) of the SCSO Policy Manual, and the question of whether Dep. Little violated any policy within that section was one of the focuses of the SCSO's investigation, yet the Duty to Intercede was not evaluated. For the reasons described above, we believe that policy required Dep. Little to make some attempt to persuade Charles Blount to moderate his use of force as of that moment. Since he did not, we disagree with the "no violation noted by Dep. Little" finding with respect to the use-of-force policy.
IOLERO's Recommendations	**Reiterate the importance of the Duty to Intercede:** We feel compelled to point out that if Dep. Little had complied with the duty-to-intercede policy and if he had thereby managed to persuade Charlies Blount to comply with the use-of-force policy, the decedent might still be alive and county taxpayers might have been spared the significant expenditure of the $3.8 million settlement. Both of those outcomes seem important enough to justify a recommendation that deputies be strongly encouraged to comply with the duty-to-intercede policy and found in violation of policy when they do not comply with it.

Case No. 20-C-0017	Exonerated Case No. 4
Type of Complaint	Neglect of Duty The complaint alleged the following: (1) After being struck with another inmate's bodily fluids (commonly referred to as "gassing"), complainant was forced to wait for an unreasonable length of time before being allowed to shower and change his clothing; (2) He did not receive medical treatment after the incident; (3) the deputy turned off his BWC and cut the interview with complainant short; (4) Incident reports were not completed and were not forwarded to the District Attorney for prosecution.
Race/Ethnicity of Complainant	East Indian / Asian
Origin of Complaint	IOLERO
SCSO's Conclusion	Exonerated As to allegation one, SCSO found that there was not a policy violation because the bodily fluids landed on the complainant's clothes and intact skin thus not qualifying as "substantial exposure" as required by the policy manual. The investigation also pointed out that the deputy involved intended to help the complainant. He admonished the gassing inmate for his behavior immediately, inquired as to the well-being of complainant, and told him that he would get him new clothes. Allegations 2-4 were contradicted by the evidence and found to be untrue.
IOLERO's Conclusion	**Mixed** IOLERO **disagreed** with the finding on complaint no. 1 regarding the gassing incident. IOLERO **agreed** that the evidence showed that allegations 2-4 were not true. IOLERO concurred with SCSO's characterization of the deputy's conduct. The BWC evidence indicated that the deputy did not delay the complainant from cleaning himself in order to harm or embarrass him. He admonished the other inmate and tried to console the complainant. Nonetheless, pursuant to the Law Enforcement Code of Ethics and the SCSO Policy Section 320, the deputy had a duty to be mindful of the welfare of others and to observe safe working practices. (Code of Ethics; Policy 320.4-320.5.10(a)) Failing to assist the complainant, who was serving dinner to other inmates at the time this incident occurred, to promptly wash off saliva, feces and urine that had struck him disregarded complainant's welfare and it created an unhygienic and unsafe environment.
IOLERO's Conclusion	IOLERO recommended modifications to SCSO's policy for handling inmate exposures to bodily fluids.

Case No. 19-C-0021	Exonerated Case No. 5
Type of Complaint	Excessive Force Complainant alleged he was physically assaulted and suffered psychological abuse at the main adult detention facility (MADF)
Race/Ethnicity of Complainant	Black
Origin of Complaint	IOLERO
SCSO's Conclusion	**Exonerated** Video footage of the incident clearly showed complainant verbally and physically resisting the correctional deputies' efforts to complete the booking process. All correctional deputies involved remained calm during the incident and used minimal control holds and techniques to gain temporary compliance. Once complainant ceased his efforts to resist, the control techniques were either loosened or abandoned all together.
IOLERO's Conclusion	**Incomplete** SCSO focused on whether the force was excessive because that was the basis of the complaint. However, the evidence showed that before the force was used, complainant was placed in a "sobering cell" when he arrived at the jail because he was screaming, physically resistive, spitting and extremely agitated. SCSO did not investigate the issue of why the complainant, who has a documented history of mental illness in Sonoma County, was left alone in a "sobering cell" for more than 14 hours by himself before jail staff attempted to complete the booking process. Approximately 14 hours after he arrived at the jail, it was determined that complainant's "condition was not getting any better," and staff was gathered to get complainant through the booking intake process and escort him to a bed in the mental health module. The SCSO's decision to exonerate the force was reasonable under the totality of the circumstances. However, this complaint should not have been exonerated without addressing the sobering cell issue. Just because the complaint was focused only on excessive force, does not mean the SCSO should not attempt to detect and investigate other issues apparent from the evidence such as the sobering cell issue in this case
IOLERO's Recommendations	1. SCSO should update its website so that the link to the Detention Division's "Sobering Cell Use Policy" is functional. 2. In investigations where the complainant was kept in a sobering cell, it is recommended that the "sobering cell logs" be reviewed and included with the evidence in internal affairs' investigations.

IOLERO's Recommendations

3. SCSO should modify the Detention Division's policy manual to include a pre-screening process for arrestees who are intoxicated, combative or potentially suffering from mental illness. If a person who fits into any of these categories is placed into a "sobering cell" the policy might include a requirement that jail staff run the arrestee's name through the SCSO's internal system to check for a mental health history. If the inmate has previously been housed in the jail's mental health unit, was found incompetent by the court in the past or has been 5150'd, for example, jail staff should immediately notify mental health staff. Mental health staff should be required to visit the arrestee ASAP to attempt to complete the booking process.

After being arrested and viewing it as unfair, it was likely increasingly agitating to the complainant to be left alone in a sobering cell for more than 14 hours then to have his first interaction with jail staff to be seven uniformed correctional deputies and one mental health clinician in plain clothes. Even in this case where complainant had sat in the sobering cell for far too long becoming more and more agitated, he still managed to answer all of the clinician's mental health-related questions through his screams of frustration. Chances are, a visit from a mental health staff member could have calmed down complainant much earlier in the process. This would have potentially circumvented seven members of jail staff from having to spend their time extracting complainant from the sobering cell and having to subdue him with force which posed a risk of injury to everyone involved. On the other hand, if mental health staff had visited complainant earlier on the process and he refused to answer questions, mental health staff could have documented the effort to complete the booking process at a much earlier stage. This would help to protect not only the arrestee by offering him a chance to complete the booking process earlier, but also the SCSO from liability for leaving mentally ill arrestees alone in a cell, unattended for an extended period of time without a visit from mental health or medical staff. This case is also addressed in the Trends section of this annual report.

Case No. 20-C-0027	Exonerated Case. No. 6
Type of Complaint	Excessive force, violation of Fourth Amendment rights, false arrest/false imprisonment; improper detention of property (re towing of vehicle) The deputy responded to a call for a "welfare check" of complainant who had been reported by a passerby to be sleeping alone in a parked car with the car door open. The purpose of a welfare check is to ensure a person is okay or not in danger (a welfare check does not begin as a criminal investigation although it may evolve into one). The deputy found complainant asleep in the car, light on, and car "door is open" sound repeatedly chiming. The car was legally parked, with the ignition off. The deputy asked complainant to step out of the car, and complainant promptly complied. When the deputy attempted to handcuff complainant, he said complainant, tensed up his body and attempted to pull his right arm out of grasp. The deputy "drove him to the ground" resulting in complainant suffering facial lacerations and broken teeth.
Race/Ethnicity of Complainant	Black
Origin of Complaint	SCSO initiated review triggered by tort claim
SCSO's Conclusion	Exonerated **Use of Force:** After reviewing the evidence, it was apparent complainant was resisting the deputy's efforts to control him. The take down of complainant was an authorized technique that is taught in defensive tactics training at the SCSO. After the deputy took complainant to the ground, his resistive behavior ceased and no further force was used against him. **Tow:** The deputy lawfully towed complainant's vehicle pursuant to CVC 22651(h) as he was uncomfortable leaving it in an area known for auto burglaries. There was no other licensed driver at the scene who could assume responsibility for the vehicle.
IOLERO's Conclusion	**Disagreed / Incomplete.** **Use of Force: Disagreed.** The force used in this case was unreasonable and disproportionate to the "resistance." The deputy needlessly escalated the process of handcuffing the complainant. The deputy asked complainant to exit the car and complainant complied immediately. Before complainant could stand all the way up, the deputy immediately seized both of complainant's arms. The deputy ordered complainant to turn around while grasping both of complainant's arms simultaneously making it difficult, if not impossible for complainant to comply with his order. The relevant SCSO policy states: "Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the Sheriff's Office. Deputies should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, deputies should not conclude that in order to avoid risk every person should be handcuffed, regardless of the circumstances." (SCSO Policy Manual § 302.4.) On this record, there was no evidence that would have supported the deputy's belief complainant had a weapon. Complainant complied quickly with orders, while displaying his hands in a conspicuous "my hands are empty" gesture the moment the deputy asked him about weapons. He kept his hands in plain sight up until he was pulled from the car and repeatedly addressed the deputy as "sir."

IOLERO's Conclusion

With regard to the deputy driving complainant to the ground – the policy states: "It is the policy of this Office that deputies shall use only that force which is objectively reasonable, given the facts and circumstances known at the time of the event to effectively bring an incident under control." (SCSO Policy Manual § 300.2.) "Reasonable force" is defined to be "[t]he force that an objective, trained and competent employee, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order." (SCSO Policy Manual § 300.3.1, citing 15 Cal. Code Reg. § 3268.) The cited regulation defines "excessive force" as "The use of more force than is objectively reasonable to accomplish a lawful purpose." (15 Cal. Code Reg. § 3268(a)(3).)

A number of factors listed in section 300.2 of the SCSO policy manual weigh strongly in favor of the determination that the force used in this case was unreasonable and disproportionate to the resistance. The resistance here was de minimis. Complainant did not raise his voice, assume a fighting stance, display a weapon, attempt to strike, kick or bite the deputy or anyone else, or verbally threaten the deputy or anyone else; he did nothing more than to briefly attempt to prevent the deputy from turning him around after the deputy seized his arms without warning – an understandable enough instinctive reaction to having his arms grabbed when he had no reason to expect a physical confrontation. On this evidence, there was no grounds to suspect that complainant posed any sort of threat to anyone. It is difficult to imagine how much less complainant could have done that could still be reasonably characterized as "resistance."

The towing of the car: Incomplete. Complainant's car was legally parked at all relevant times. The fact that it was towed put complainant to considerable inconvenience and, enormous towing expenses, based on the documents reviewed by IOLERO. Other than the deputy's uncorroborated assertion that the car was in danger of being broken into, there was no good reason complainant could not have been spared this expense. Because the SCSO investigator made no attempt to determine whether the deputy's concerns that this was a high auto-burglary area, had any factual basis, the investigation was incomplete.

De-escalation: Incomplete. The investigation was also incomplete because it failed to consider the question of whether the deputy's failure to employ de-escalation techniques was a violation of policy or training standards. Section 300.8 of the SCSO policy manual provides "Subject to available resources, the Professional Standards bureau Lieutenant should ensure that deputies receive periodic training on de-escalation tactics, including alternatives to force." If the deputy had received such training, it would presumably have included instruction that communication should be the first option, if the situation safely allows the time and distance for communication to occur. Officers should maintain communication throughout any encounter under such circumstances…and that "Officers should communicate and endeavor to persuade, advise, and provide clear instructions and warnings when safe and feasible to do so. Officers should consider the use of non-verbal methods to communicate when verbal directions may not be appropriate. This may include situations involving language barriers, or when people are unable to hear or understand verbal commands." (POST Use of Force Standards and Guidelines (2020), De-escalation and Force Alternatives, p. 12.)

The internal affairs investigation did not inquire into whether the deputy had received such training, whether (if he/she did) the training covered POST's recommendations quoted above, whether in the situation in which the deputy found himself/herself it would have been feasible to persuade, advise, and provide clear instructions and warnings, or whether this was a situation where non-verbal communication was necessary due to factors such as those listed by POST. Based on this record, such an inquiry would have likely determined that the deputy was remiss in neglecting to even attempt any of the de-escalation techniques recommended by POST prior to forcibly driving complainant to the ground. Since the inquiry never occurred, the investigation is incomplete.

Case No. 20-C-0027	Exonerated Case. No 6

IOLERO's Conclusion

The IA interview with the deputy was brief, perfunctory and incomplete. The SCSO investigation included an interview between the deputy and the SCSO internal affairs investigator. The interview, which was recorded, lasted a total of four minutes and 26 seconds. The first 40 seconds were taken up with stating the date, time, case number, and identities of the participants. The following 20 seconds established how long the deputy had worked for the SCSO. The final ten seconds consisted of giving the deputy an opportunity to make a statement, which he/she declined to do. Therefore, the substantive portion of the interview, the part that addresses the events that are the subject of the investigation, is three minutes and 16 seconds in length. Since the investigation did not involve an interview with the deputy that actually investigated whether his/her actions were consistent with SCSO policy, IOLERO considered it to be incomplete.

IOLERO's Recommendations

1. **SCSO needs a welfare check policy:** SCSO should "develop, adopt, and implement written policies and standard protocols pertaining to the best manner to conduct a 'welfare check,'" as required by Penal Code section 11106.4. We further recommend that that policy emphasize that a person who is the subject of a welfare check is not a suspect and should be treated accordingly.
2. **Attempt to solicit cooperation when it is safe to do so:** We recommend that language along the lines of "Where practical, deputies who have decided to check a person for weapons should attempt to solicit the person's voluntary cooperation prior to employing the use of force or restraints" be added to the end of section 300.3.6 of the policy manual. We also recommend that language along the lines of "Deputies who have decided to apply restraints should, where possible, inform the person that they are going to be restrained, and request their cooperation in the process of affixing the restraints" to second paragraph of section 302.4 of the policy manual.

Case No. 20-AR-0002	Exonerated Case. No 7
Type of Complaint	Administrative review following in-custody death
Race/Ethnicity of Complainant	Latino
Origin of Complaint	SCSO
SCSO's Conclusion	No violations of policy noted
IOLERO's Conclusion	**Disagreed** SCSO's policy requires "if the inmate is admitted to the hospital, the medical staff will note the inmate's admission on the inmate's medical chart, and will contact the hospital daily for an update on the inmate's status." There was no evidence that this policy was complied with, thus, IOLERO disagreed with SCSO's conclusion.
IOLERO's Recommendations	**Government agencies have a duty to monitor the patterns and practices of their contracted medical providers:** The decedent's jail medical records revealed several decisions by jail medical staff that raised questions about the quality of medical care he received prior to his hospitalization. IOLERO does not have sufficient medical expertise to determine whether these points rise to medical errors. Neither did the SCSO investigator, which is why he properly did not attempt to make any such determination. However, for a sound legal reason, we feel that someone who does have such expertise should be involved in future administrative reviews that concern primarily medical events. The reason, which is discussed in more detail in the section entitled Audit Trends, is that government agencies may be exposed to considerable liability for failing to monitor the patterns and practices of their contracted medical providers. IOLERO acknowledges being informed by SCSO that there is a process already in place for review/audit of the medical treatment provided by the jail's medical provider, Wellpath/CFMG. This process is reportedly initiated by a form that can be filled out to request review of medical treatment in a given situation. IOLERO requested a copy of this form from the jail, the SCSO, and from Wellpath/CFMG, but has not yet been provided with a copy. A copy of the form does not appear to be available on SCSO's website, Wellpath/CFMG's website, or in the lobby of the jail. Thus, we do not know the details of the Wellpath/CFMG review process, and it is unclear to us whether the review is conducted by medical professionals not employed by Wellpath/CFMG. In any event, the form should be readily available to inmates or their families at the jail, the SCSO's office and through SCSO's website.

IOLERO's Recommendations

SCSO also reports that in situations where inmates require hospitalization, the jail medical records are reviewed by the hospital doctor, who would presumably note questionable medical decisions in the hospital's own records (which are part of SCSO's investigation). And, in cases where an inmate dies after being in jail custody, we are informed that the coroner would note issues with medical treatment in the coroner's report (which is also part of SCSO's investigation). We do not know the details of these mechanisms, and therefore we cannot say whether or not they are sufficient to satisfy SCSO's duty to monitor the customs and practices of Wellpath/CFMG as required by law.

Accordingly, we recommend in future administrative reviews that raise questions about the quality of care provided by jail medical staff, SCSO either utilize the Wellpath/CFMG review system, if it is in fact an independent review conducted by someone who does not work for Wellpath/CFMG, or allocate funding for consultation with independent medical experts regarding the care provided by contracted jail medical staff. Even leaving the liability issue aside, such expert review would provide crucial data when the question arises of whether the medical providers' contracts should be renewed. Again, we acknowledge that such a review process may already exist through Wellpath/CFMG. If IOLERO is provided with additional details about this process, this recommendation will be revisited.

Case No. 20-C-0011	Exonerated Case. No 8
Type of Complaint	Complainant alleged deputy used "unnecessary" force, abused him and lost his property including his prosthetic leg.
Race/Ethnicity of Complainant	Latino
Origin of Complaint	IOLERO
SCSO's Conclusion	**Exonerated** Force was used against the complainant when he physically resisted, failed to obey commands including an order to keep his hands visible, and he destroyed evidence by swallowing a baggie of drugs. The K9 was summoned after other efforts to subdue complainant failed and he continued to resist.
IOLERO's Conclusion	**Use of Force: Agreed.** The use of force in this case including the use of a dog was within policy based on complainant's continued resistance and refusal to comply with orders. **Lost Property: Incomplete.** The investigation did not address complainant's lost property complaint. In addition to his excessive force complaint, the complainant alleged that the deputies lost his backpack and its contents including his prosthetic leg. SCSO's Property and Evidence policy no. 803.3 mandates that "any employee who first comes into possession of any property shall retain such property in his/her possession until it is properly tagged and placed in the designated property locker or storage room along with the property sheet." The complainant filed a tort claim against Sonoma County for the value of his lost personal property including his prosthetic leg. SCSO's tort claim investigation concluded that the deputies erred by not booking the property into evidence or obtaining a signed property release from complainant authorizing the release of the property to others. Despite this conclusion from SCSO, Sonoma County denied complainant's claim. Complainant then filed a complaint with IOLERO. However, even though SCSO's tort claim investigation determined that the deputy erred, SCSO did not evaluate the policy violation in the instant case. Therefore, the investigation was incomplete.

IOLERO's Recommendations

Avoid leading questions: "A 'leading question' is a question that suggests to the witness the answer that the examining party desires." (Evid. Code, § 764.) For example, any question that begins "isn't it true that . . . " is a leading question, because it suggests to the witness that the questioner is expecting the answer "yes, that's true." But there can be other, less blatant forms. For example, "Was the car red or white?" is a leading question because it gives the witness the idea that the car was neither blue nor green. An open-ended question and more appropriate phrasing for an internal affairs investigation would be "what color was the car?" In this case, the SCSO used leading questions during the interviews of the deputies. Questions that appear to be feeding the witness the correct answer do nothing to enhance the reputation of the SCSO internal affairs' investigations as unbiased searches for the truth. For that reason, IOLERO recommends avoiding them in future investigatory interviews. This is an issue that was identified as a trend and discussed in IOLERO's 2019-2020 Annual Report.

Remedial training of the dog and his handler: In this case, complainant was resisting arrest and used his backpack to fend off the deputy's K9 partner. The deputy ordered the dog to release the backpack 11 times, but the dog did not release his grip on the backpack. The dog in this case was reported to be "POST certified in suspect apprehension." However, review of the body-worn camera evidence in this case suggests that this dog could use a refresher course. Fortunately, nothing happened other than the backpack getting bitten. But this should be a wake-up call. If the object this dog refuses to let go of next time is part of a person's body, the department could be exposed to extensive civil liability. Policy section 309.12.1(e) provides "At any time, based on the needs of the office, the canine Lieutenant can direct the canine and handler be evaluated by the master trainer to identify any training concerns, deployment concerns, or order remedial training." IOLERO recommended that the canine team in this case be referred for remedial training in releasing on command.

Case No. 20-C-0012	Exonerated Case. No 9
Type of Complaint	Excessive Force When asked to step out of his car during a routine traffic stop, complainant ran from the deputy and yelled out during a struggle that he had a knife. Complainant alleged that he was never given instructions or commands and that he was punched repeatedly by the deputy. A K9 located complainant hiding in the back yard of a residence. Although it was not mentioned in his written complaint, complainant told the SCSO internal affairs investigator that he was also physically assaulted at the jail during booking. The investigator expanded the investigation accordingly.
Race/Ethnicity of Complainant	White
Origin of Complaint	SCSO / MADF
SCSO's Conclusion	**Exonerated** **Force after complainant fled:** The deputy used a reasonable and appropriate amount of force on complainant who was continually resisting and fleeing. **Force used during booking:** SCSO found that the force used to subdue complainant who attempted to bite a deputy was within policy because complainant was coughing toward deputies as a COVID threat and attempted to bite a deputy.
IOLERO's Conclusion	Mixed. **Force after complainant fled: Agreed.** The evidence including body worn camera video showed that complainant was given multiple commands to stop fleeing and get on the ground, which he ignored. While the deputy used force to try to stop complainant from running, and resisting in order to detain him, the evidence also did not support complainant's claim that he was punched repeatedly by the arresting officer. A dog was used to locate complainant who fled and hid in a backyard, but there was no allegation that the dog ever touched complainant and the video evidence was consistent. The force used to detain complainant was reasonable. **Force used during booking: Disagreed.** From the moment complainant was detained in his car, complainant began to cough. At the time, COVID-19 was spreading through the country amid a global pandemic. The coughing was forceful and appeared exaggerated. During this incident, the COVID-19 disease was relatively new to the United States, but it was well known that the infectious disease was spread by coughing. Community members were being encouraged to wear masks to slow the spread of the disease. The deputy wore a mask throughout the entire incident. Complainant was not wearing a mask and did not have one with him. Complainant continued the intense coughing throughout the entire incident saying "I have COVID and I am going to spread it like wildfire." (In fact he did not have COVID, according to a test he took later that night.) Even when complainant was provided with a mask, he refused to keep it on his face. During booking, complainant continued to cough. When a deputy put his hand on complainant's shoulder, complainant attempted to bite the deputy. The deputy punched complainant in the face and four deputies

IOLERO's Conclusion

took complainant to the ground. Once complainant was on the ground, one deputy applied "knee strikes" to his back and calf, and another delivered an "elbow strike" to his ribs.

There is no question that complainant's resistance and forced coughing toward the deputies was obnoxious and arguably could be classified as an assault. However, the deputies were already wearing protective gowns, face shields, masks, glasses and gloves to mitigate the spread of COVID. Complainant, who was handcuffed, was inside the sally port of the jail and there were four deputies surrounding him. The evidence, including a surveillance video, showed that after complainant attempted to bite a deputy, he was taken to the ground relatively easily and the four deputies were able to hold him down, so it appeared that they were able to achieve the objective of gaining compliance from complainant without the need for the additional strikes. Other options also were possible such as backing away and allowing for a cool down period or the use of a "transport hood" (discussed below). In this case, the totality of the circumstances suggest that the force used in the sally port was greater than "the force that an objective, trained and competent employee, faced with similar facts and circumstances, would consider necessary and reasonable." (SCSO Policy § 300.2.)

The deputies should have taken photos of complainant after using force against him. Incomplete. "Any use of physical force by a member of this Sheriff's Office shall be documented. . . . It is the responsibility of the member using force to ensure that the use of force is documented completely, promptly, and accurately in an appropriate report depending on the nature of the incident. . . . Photographs of all involved parties shall be taken to document both physical injury and/or the lack of physical injury to any party." (SCSO Policy § 300.5.)

After deputies took complainant to the ground, complainant said he was experiencing pain from the incident. To the deputies' credit, medical staff was called immediately and complainant was medically evaluated. However, no pictures were taken of complainant. One deputy reported that photos were not taken due to the risk of exposure of complainant's unknown COVID status. Another deputy reported that photos were not taken due to complainant's assaultive behavior. However, by the time complainant was booked into a cell he was no longer goading the deputies by coughing, and was complying with their instructions. Moreover, the deputies wore medical gowns, face shields and N95 masks, which mitigated the risk of exposure. And finally, the exposure had already occurred: the deputies had been in complainant's presence for more than 12 minutes by the time the pictures would have been taken. It is difficult to understand how taking a few moments more to photograph complainant's injuries, in compliance with policy, would have increased their risk. Because Section 300.5 requires photographing potential injuries after a Use of Force incident, it was a violation of policy not to take photographs of complainant. The investigation did not address this point and therefore was **incomplete.**

Case No. 20-C-0012	Exonerated Case. No 9

IOLERO's Recommendations

Use of a transport hood: The Detention Division's policy for Transport Hood Use states that "A transport hood will be used on an arrestee/inmate to prevent exposure to staff or others from saliva, blood, or nasal fluids." (1.0, Policy Statement, emphasis supplied.) The section on restraint equipment contains a passage that is identical except that the word "will" is changed to "may." (Section 4.0(F).) Thus, it is unclear whether this policy is mandatory or discretionary. In either case, there is no question that the deputies would have been entirely justified in placing a transport hood, or "spitter's mask," on complainant. In light of the deputies' well-justified concerns about complainant's COVID-19 status, it is difficult to understand why the record does not reflect that any deputy at any time during this incident considered doing that. If they had, their concerns about complainant spreading disease to them would have been abated. In fact, had the deputies warned complainant that they would place a spitter's mask on him if he continued his coughing, there may have been no need for the spitter's mask. As a general matter, it is beneficial to the officers and arrestees when officers act proactively to avoid the need to use force in the future, rather than waiting and reacting emotionally and with force to an arrestee's behavior. For these reasons, it is recommended that the SCSO remind deputies to use the transport hood as necessary when dealing with COVID-19 risks.

Case No. 20-C-0014	Exonerated Case No. 10
Type of Complaint	Complainant was arrested for domestic violence. He made various complaints about his arrest including that he was not read his Miranda rights, that the SCSO ignored physical evidence and lied and that the officer was unprofessional, disrespectful and threatening.
Race/Ethnicity of Complainant	White
Origin of Complaint	IOLERO
SCSO's Conclusion	Exonerated
IOLERO's Conclusion	**Agreed.** The evidence including body-worn camera video showed that the complainant was not in custody when he was questioned and therefore did not require a Miranda admonition. The evidence also showed that the officers treated complainant with courtesy and respect, and were never threatening toward him. The investigating officer spent more than an hour and a half talking to witnesses including a third party (sometimes multiple times), and inspecting injuries. Ultimately, the officer made a determination that the injuries he observed were consistent with the victim's version of events and not complainant's. Penal Code section 13701 instructs police officers who respond to domestic violence calls to try to identify a dominant aggressor and to place the offender under arrest. SCSO policy for investigating domestic violence which is based on California law states in part: "It is highly encouraged an arrest be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed (Penal Code § 13701). . . deputies should make the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed. . .deputies shall not cite and release a person for. . . [a violation of] Penal Code Section 273.5 [domestic violence]" (SCSO DV Policy 310.9.1)
IOLERO's Recommendations	To his credit, the deputy was courteous to complainant and spent an ample amount of time investigating before deciding who to arrest. However, while the deputy conducted a thorough investigation, the deputy did not photograph all of the evidence including a scratch and the lack of injuries which may have been relevant to one or both of the parties. IOLERO recommends that documenting every piece of potentially relevant evidence including a lack of injuries which may corroborate or disprove a person's story. Considering the case in its entirety, we did not view this case as incomplete and offer this recommendation just as a consideration of best practices.

Case No. 20-C-0019	Exonerated Case No. 11
Type of Complaint	Excessive Force Complainant was detained because the license plate on his car did not match the car. When he was asked to step out of the car, complainant resisted and force was used to take him into custody.
Race/Ethnicity of Complainant	White
Origin of Complaint	SCSO
SCSO's Conclusion	Exonerated Complainant repeatedly refused to comply with orders to keep his hands visible, physically resisted and was in possession of drug paraphernalia. The force used to subdue him was within policy.
IOLERO's Conclusion	**Agreed.** IOLERO agreed that the force in this case did not violate policy, however the policy as it related to holding this person in a "prone restraint" must be modified.
IOLERO's Recommendations	**Eliminate or modify use of the prone restraint:** Once complainant was taken into custody, the deputies involved in this incident held complainant in a prone restraint position, handcuffed, with his legs crossed at the ankles and knees bent ("figure-4 position"), with a deputy straddling the crossed legs and applying weight to them, for approximately five to seven minutes. In April of 2021, the Court of Appeals for the Fifth Circuit held that officers were not entitled to qualified immunity where they essentially "hog-tied" a suspect who was not resisting, posed no immediate safety threat, and may have been on drugs. (Aguirre v. City of San Antonio (5th Cir. 2021) 995 F.3d 395) In June of 2021, the Supreme Court of the United States held that when this type of restraint is used, the" kind, intensity, duration, or surrounding circumstances" must be considered even if the person is resisting. The Court stated that in an excessive force claim, "Such details could matter. . . Here, for example, record evidence. . . shows that officers placed pressure on [the decedent's] back even though St. Louis instructs its officers that pressing down on the back of a prone subject can cause suffocation. The evidentiary record also includes well-known police guidance recommending that officers get a subject off his stomach as soon as he is handcuffed because of that risk. The guidance further indicates that the struggles of a prone suspect may be due to oxygen deficiency, rather than a desire to disobey officers' commands." (Lombardo v. St. Louis (2021) 141 S.Ct.2239, 2241.) Current SCSO policy on prone restraint depends on a device/no-device dichotomy. SCSO policy section 302.7 is entitled Application of Maximum Restraint Devices. It mentions the uses for "the maximum restraint position," but it clearly uses that phrase to refer to the use of maximum restraint devices, such as a nylon cord. A major take-away from the Aguirre case is that the dichotomy between maximum restraint that involves the use of a device and prone restraint that simply involves officers holding a suspect in what the court calls "the maximal-restraint position" is a distinction without a difference. (Aguirre, supra, 995 F.3d at p. 403-404.) Aguirre equates "maximum prone restraint" with being placed in the maximum-restraint position, irrespective of whether a restraint device such as a nylon cord is used.

Case No. 20-C-0019	Exonerated Case No. 11

IOLERO's Recommendations

Mr. Aguirre's legs were not bound to his handcuffs with a cord. He was held with his feet in a figure-four position with an officer straddling them, and another officer kneeling on one knee and applying the other to his back. (Aguirre, supra, 995 F.3d at p. 403-404 [precise description of Aguirre's position].) Mr. Aguirre died after being held in that position for five and a half minutes, and the court determined that not only the municipality but also the individual officers were potentially liable. In this case, complainant was held in that exact same position for either the same amount of time or slightly longer. Under current SCSO policies, even if he had died from being restrained that way, the deputies involved would not have acted outside departmental policy because no restraint device was used.

The unfortunate events of the Aguirre case demonstrate that what the court calls the "maximal-restraint position" –the prone position with the ankles crossed and held back against the buttocks by an officer's body weight, even without a restraint device – is potentially deadly. And the Fifth Circuit's disposition of the case demonstrates that police officers who employ that form of restraint cannot depend on the principle of qualified immunity to shield them from personal liability. These are both very good reasons to adopt policies that strongly disfavor or eliminate the use of that restraint technique in any situation where an alternative exists. In this case, IOLERO reiterated its earlier recommendation (See case no. 19-C-0019) that SCSO adopt a policy addressing its use of the prone restraint. In July 2021, the Community Advisory Council (CAC) made a similar recommendation.

As of the writing of this annual report, SCSO has not responded to IOLERO or the CAC's recommendations related to the prone restraint and positional asphyxia. On September 30, 2021, Gov. Newson signed into law AB 490 which states, "A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia."

Case No. 20-C-0022	Exonerated Case. No 12
Type of Complaint	Excessive Force Complainant was camping on property that turned out to be private property. The property owner saw him and called SCSO to request his removal. When the deputy approached complainant, he ran. After a little over a minute, the deputy caught up with complainant and deployed his TASER at him.
Race/Ethnicity of Complainant	White
Origin of Complaint	IOLERO
SCSO's Conclusion	Exonerated SCSO policy section 300.3.2(m) lists "[t]he risk and foreseeable consequences of escape" as a consideration that can justify the use of force in general.
IOLERO's Conclusion	**Disagreed** **Taser Deployment:** Section 304.5.1 of the SCSO Policy Manual provides that a TASER may be used when "[t]he subject is violent or is physically resisting," and when "[t]he subject has demonstrated, by words or actions, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm deputies, him/herself or others." Not only does the policy not authorize the use of TASERs to prevent subjects from escaping, it explicitly rules out that justification: "Mere flight from a pursuing deputy, without other known circumstances or factors, is not good cause for the use of the TASER device to apprehend an individual." The evidence including body-worn camera video did not support the deputy's statement that complainant may have had a weapon. Legally, there must be articulable facts supporting the belief complainant had a weapon in order for that belief to stand. The policy is that a TASER may be deployed against a subject who "reasonably appears to present the potential to harm deputies, him/herself or others." (§ 304.5.1(b).) The mere possible possession of a weapon does not, standing alone, support a reasonable inference that the possessor might harm anyone with it. If it did, that would effectively rewrite section 304.5.1(b) to read "The TASER device may be used when . . . the deputy is not 100% sure that the subject is unarmed," which would be vastly broader than the actual wording. **Failure to Warn:** Section 304.4 provides that "A verbal warning of the intended use of the TASER device should precede its application, unless it would otherwise endanger the safety of deputies or when it is not practicable due to the circumstances." It is undisputed that the deputy did not warn complainant of his intention to use the TASER in this case. The deputy said "Stop" either at exactly the same time as he fired the TASER or immediately after it, he did not say anything about a TASER, and there was no suggestion that him staying "stop" constituted a warning that he was going to deploy his TASER. The evidence did not support the deputy's claim that he did not have time to give a warning.

Case No. 20-C-0022	Exonerated Case. No 12

IOLERO's Recommendations

Modify the handcuff policy: After the complainant was detained, he was charged with trespassing and resisting arrest. However, he was first taken to the hospital for medical clearance. Complainant was in a hospital bed for well over an hour and his hands were cuffed behind his back for that entire time. A deputy who remained in the hospital room with him expressed sympathy by acknowledging his obvious discomfort several times and suggesting that he could lay on his back or side. But he could not lean back because then his cuffed hands and the handcuffs would have been pressing into the small of his back, and he could not lie on his side because the back of the hospital bed was raised.

SCSO policy section 302.3.1 provides that "the use of restraints on detainees should continue only for as long as is reasonably necessary to ensure the safety of deputies and others." In view of complainant's attempt to escape, IOLERO agreed that the deputy's decision to keep complainant handcuffed while in the hospital was justified. Policy section 302.4 provides that "In most situations handcuffs should be applied with the hands behind the person's back." The decision to keep complainant's hands cuffed behind his back, despite two separate suggestions by medical personnel that he be cuffed in the front, was compliant with this policy. However, on this record, there did not appear to be any practical reason why either cuffing complainant's hands in front of his body or cuffing him to the bed frame would not have been equally effective at restraining him. It would have been significantly more comfortable for him, which seems to address the spirit, if not the letter, of the above-cited policy that restraints be kept in place only as long as reasonably necessary. If the deputy had repositioned the cuffs while the second deputy was in the room, lingering concerns about escape would have been greatly diminished.

Accordingly, IOLERO recommends that a passage along the lines of the following be added to policy section 302.4, after the passage regarding cuffing behind the back: "Deputies should consider cuffing detainees' hands in front in any situation where the detainee must remain restrained in a seated or supine position for an extended period, and where the handcuffs can be moved to the front without risk to deputies or others. One example of such a situation is where the detainee is lying in a hospital bed."

Unfounded Cases

In the following cases SCSO found that the evidence did not support the complaint.

Case No. 19-C-0009	Unfounded Case No. 1
Type of Complaint	Deputies were dispatched to a school regarding a potential burglary. Complainant was at the school, but was not the subject of the call. Complainant was detained for trespassing. He alleged that during the encounter, the deputy was passive aggressive, hostile and antagonistic toward him.
Race/Ethnicity of Complainant	Black
Origin of Complaint	IOLERO
SCSO's Conclusion	Unfounded
IOLERO's Conclusion	**Agreed.** Review of the BWC showed that during the encounter, the deputy showed complainant model treatment by calmly and patiently listening to and responding to complainant's feelings that he is regularly treated by others with hostility.

Case No. 20-C-0008	Unfounded Complaint No. 2
Type of Complaint	Medical care in the jail Complainant called IOLERO to report that her loved one had not yet been seen by medical staff even though he was exhibiting symptoms of a stroke or cerebral hemorrhage.
Race/Ethnicity of Complainant	Unknown
Origin of Complaint	IOLERO
SCSO's Conclusion	Unfounded Complainant called IOLERO to report that her loved one had not yet been seen by medical staff at the same time as complainant was being examined.
IOLERO's Conclusion	**Agreed.** Complainant was examined and diagnosed reasonably promptly after he complained of his medical symptoms at about the same time as the complaint was made.
IOLERO's Recommendations	**Government agencies have a duty to monitor the patterns and practices of their contracted medical providers:** In this case, the inmate was exhibiting signs of a stroke or cerebral hemorrhage. Jail medical staff determined that complainant was suffering from a relatively benign condition that presents with similar symptoms. Fortunately in this case, the jail medical staff's determination proved to be correct. However, if they had been wrong the treatment that was provided could have been fatal. The IA investigator did not inquire into whether complainant's diagnosis and treatment was in line with applicable medical standards, which is unsurprising since the investigator lacked the expertise to conduct such an inquiry as do the auditors at IOLERO. But, as discussed in more detail in the Audit Trends section of this annual report, the inquiry should have been made because government agencies may be exposed to considerable liability for failing to monitor the patterns and practices of their contracted medical providers.

Case No. 20-C-0013	Unfounded Complaint No. 3
Type of Complaint	Conduct unbecoming, race-based policing, discourtesy, improper procedure, neglect of duty Complainant raised a number of issues regarding the response by SCSO deputies to a fight involving her son and at least one other man. The complaints primarily centered around allegations that the deputies had interfered with her son's medical treatment.
Race/Ethnicity of Complainant	Latino
Origin of Complaint	IOLERO
SCSO's Conclusion	Unfounded
IOLERO's Conclusion	**Agreed.** A review of the evidence including BWC video did not support the complaints. While the deputies at the hospital could have been more sympathetic to worried family members, there was no evidence to suggest that they interfered with complainant's son's medical treatment, or that they prevented complainant from doing anything she had a legal right to do. If complainant's son was released and cleared for incarceration before his medical care was complete, that was a decision made by hospital medical staff, not the deputies. IOLERO provided complainant with information for how to file a complaint with the hospital about this issue. With regard to complainant's concerns that charges were filed against complainant's son and not the other man involved in the fight, that decision was made by the District Attorney's Office. SCSO recommended charges against both parties. However, the decision to file criminal charges is the purview of the District Attorney.

Case No. 20-C-0018	Unfounded Case No. 4
Type of Complaint	Medical treatment at the jail. Complainant filed a complaint on behalf of an acquaintance alleging that after being arrested on an outstanding warrant, the acquaintance was not provided with his medication causing him to suffer medical side effects.
Race/Ethnicity of Complainant	White
Origin of Complaint	IOLERO
SCSO's Conclusion	Unfounded
IOLERO's Conclusion	**Incomplete** The SCSO investigator spoke with two members of the jail medical staff, both presumably employees of Wellpath/CFMG, the healthcare provider for the jail. Both assured the investigator that the inmate had received the appropriate medications. One medical staff member informed the investigator that the inmate had been interviewed when he was booked, that his medications were confirmed with his pharmacy, and that he continued to receive them while in custody. In IOLERO's view, this was an insufficient investigation. While IOLERO knows nothing about either of the Wellpath employees who were interviewed by the investigator, it doesn't seem unreasonable to suspect that both staff members might be reluctant to cause trouble for themselves or their employer by admitting to not providing proper medication to a patient. Jail healthcare providers are required to disclose medical records "to jail authorities" when such records are "necessary for the protection of the welfare of the inmate or others, management of the jail, or maintenance of jail security and order." (15 CCR § 1205(b).) Under that regulation, the investigator, an employee of SCSO which is a "jail authority," had every right to see the inmate's medical records for the protection of other inmates who might subsequently be treated by Wellpath/CFMG employees, and for management of medical care in the jail. The investigation is incomplete because the investigator failed to request and examine the medical records in order to corroborate the claims of the Wellpath/CFMG employees interviewed during the investigation. It is worth noting that several of IOLERO's previous audits have made determinations on the basis of information from medical records that was not apparent from interviews with Wellpath/CFMG personnel. These include case numbers 19-C-0010 (records disclosed mental health condition overlooked by Wellpath employee and inmate was erroneously placed in general population) and 19-C-0008 (SCSO failed to review records that disclosed inadequate medical screening leading to misclassification of inmate and the use of force). These cases were reported in IOLERO's 2019-2020 Annual Report.

Case No. 20-C-0018	Unfounded Case No. 4
IOLERO's Recommendations	**Government agencies have a duty to monitor the patterns and practices of their contracted medical providers:** Obtaining inmate medical records is a simple process for SCSO if the request complies with 15 CCR § 1205(b). It is recommended that SCSO adhere to best practices by double-checking records in cases where a complainant alleges inadequate medical treatment. As discussed in more detail in the Audit Trends section of this annual report, government agencies may be exposed to considerable liability for failing to monitor the patterns and practices of their contracted medical providers.

Case No. 20-C-0021	Unfounded Case No. 5
Type of Complaint	Conduct unbecoming a deputy, profiling based on socioeconomic status, discourtesy, improper procedure, neglect of duty. Complainant alleged that while he was at a park, another person attempted to intimidate him by shouting "get a job" and instructing his dog to defecate near complainant. Complainant threw rocks at the person with the dog and that person called the SCSO. Complainant alleged that the responding deputy used deceptive tactics, and treated him like a suspect.
Race/Ethnicity of Complainant	Black
Origin of Complaint	IOLERO
SCSO's Conclusion	Unfounded
IOLERO's Conclusion	**Agreed.** The evidence did not support complainant's claims. The videos showed that the deputy was polite and professional. The other person in the park with his dog was at least 100 feet away from complainant at the time the dog defecated and the dog's owner barely looked at complainant and did not say anything to complainant.

Case No. 20-C-0021	Unfounded Case No. 5
IOLERO's Recommendations	**Relevant evidence should be reviewed:** Complainant mentioned that he had taken video of the incident at the park with his own cell phone before the deputies arrived. IOLERO requested and reviewed the videos (in addition to the BWC video). IOLERO's conclusion was that complainant's claims were unfounded based on his own videos, but we could not have reached that conclusion without seeing the video, and the same is true of the SCSO investigator. If the clips had shown that the other person at the park was acting inappropriately toward complainant, the investigator might well have concluded that the deputy was remiss in failing to recognize that complainant had been a victim as well as an aggressor. Accordingly, we believe that the investigation would have been more thorough if it had included review of these video clips, and recommend that the SCSO investigators take care to review all potentially relevant evidence that is available and especially if it is easily accessible, as it was in this case.

Case No. 20-C-0023	Unfounded Case No. 6
Type of Complaint	Complainant, an inmate at the jail, complained that SCSO miscalculated his credits and release date.
Race/Ethnicity of Complainant	White
Origin of Complaint	SCSO and IOLERO
SCSO's Conclusion	Unfounded
IOLERO's Conclusion	**Agreed.** Complainant was housed at the county jail even though he was sentenced to prison because of COVID-19 restrictions on transfers from county jail to prison. Thus, the California Department of Corrections and Rehabilitation (CDCR) calculated complainant's credits, not the SCSO. Based on this record, the credits applied by CDCR appeared to be correct. Complainant was repeatedly given this information by correctional deputies and jail management before filing several complaints with the SCSO and IOLERO.

Case No. 20-C-0029	Unfounded Case No. 7
Type of Complaint	Conduct unbecoming, bias, improper procedure, use of force, discourtesy, neglect of duty, dishonesty. Complainant filed an extensive complaint listing 18 allegations about treatment of her fiancé while he was an inmate at the jail. The complaint included allegations that the inmate was beaten and left alone in a room with a bleeding open wound without medical treatment, that the meals were small and contained mostly carbohydrates, that correctional deputies joked about hurting inmates, that out of cell time was reduced for no reason, that correctional deputies used curse words, that the inmate was not provided with a complaint form, and that the inmate's requests for a mental health consultation were ignored.
Race/Ethnicity of Complainant	White
Origin of Complaint	SCSO and IOLERO
SCSO's Conclusion	Unfounded
IOLERO's Conclusion	**Agreed.** The investigation in this case included many interviews with complainant, her incarcerated fiancé and correctional deputies, and review of numerous BWC videos, incident reports and medical records. Many of the allegations were thoroughly discredited and others could not be corroborated. Complainant and her fiancé both alleged that when he was escorted from the observation module to the safety cell, he was suffering from a bloody gash in his forehead resulting from an assault by one or more deputies. This was definitively contradicted by the BWC videos. Some parts of the investigations were inconclusive, such as when complainant accused a correctional deputy of joking about harming inmates, but could not say which deputy made the comment. The allegation that the inmate's requests for a mental health evaluation were ignored was shown to be untrue by medical records.

Case No. 20-C-0030	Unfounded Case No. 8
Type of Complaint	Negligent hiring and retention Complainant saw two public videos of an SCSO deputy using force that resulted in injuries while he was an officer at a different agency before working for SCSO. Complainant was concerned that SCSO knew that a deputy was still being investigated for excessive force by his previous employer, but hired him anyway before the investigation was completed. Complainant also alleged that the deputy's previous employer may have delayed completion of the excessive force investigation to facilitate his transfer to SCSO.
Race/Ethnicity of Complainant	White
Origin of Complaint	IOLERO
SCSO's Conclusion	Unfounded
IOLERO's Conclusion	**Incomplete.** The evidence did not support the allegations in the complaint. To make that determination, information from the deputy's personnel file including his background check was relied upon. Police officer personnel information is confidential and may not be shared in this public report. IOLERO concluded that the investigation was incomplete because it failed to address the County and SCSO's heightened liability resulting from the SCSO being on notice of the public settlements related to a tort claim and lawsuit stemming from the officer's use of force. As a general matter, employers are liable for torts committed by their employees in the course of their employment. For example, if a delivery truck driver hits a pedestrian while making a delivery, the pedestrian can sue not only the driver himself but also his employer, for damages resulting from the collision. This common-law principle is known as "respondeat superior" liability. In this case, the torts did not take place while the deputy worked for SCSO. However, the holdings of several California cases including Fernelius v. Pierce (1943) 22 Cal. 2d 226, Marshall v. County of Los Angeles (1955) 131 Cal. App. 2d 812, Abrahamson v. City of Ceres (1949) 90 Cal. App. 2d 523 compel the conclusion that when a municipality hires a police officer with a history of engaging in conduct that has resulted in successful claims or lawsuits against prior employers, the municipality as a whole, and any employees of that municipality who have hiring/firing authority over that officer, have signed up for substantially heightened exposure to tort liability in the event of a future lawsuit over the officer's actions. Those cases were summarized for the SCSO in the full audit of this case. A law review article by Herbert Greenston, Liability of Police Officers for Misuse of Their Weapons (1967) 16 Cleve. Mar.L.Rev. 397, notes (citing extensive authority) that "A court will examine the supervisor's selection procedure and will find negligence on the part of the supervisor when an officer has caused an injury and his past history should have cast doubt on his responsibility to employ deadly force." (Id. at p. 410.)

Case No. 20-C-0030	Unfounded Case No. 8

IOLERO's Conclusion

In summary, there is no question that the County in general, and individuals with the ability to take corrective action, have dramatically increased liability when they are on notice of a law enforcement officer's history of excessive force – that is, they "knew or should have known" about it, as it is often phrased – and fail to take any action to prevent it. The cases involving this deputy's prior employer settled for large sums, and this fact was reported publicly. It is not open to reasonable question that everyone in a position of authority within SCSO knows, or should know, about the outcome of those legal actions.

IOLERO's Recommendations

Minimize future liability to SCSO and risk to the public: In this situation, the SCSO's options were limited, since the department could not discipline the deputy for something he did while employed by another agency. That raises the question of what could or should have been done to minimize the liability associated with the deputy's employment and to ensure the safety of the community. The department did have some options. For example, the deputy could have been required to attend additional training in de-escalation and crisis-intervention, over and above whatever is generally required of SCSO deputies. That would have been something, at least, to safeguard the safety of the public, and it also could be presented in a potential future lawsuit involving the deputy as evidence that the department did not simply ignore the issue.

Due diligence during hiring: IOLERO acknowledges that tort claims are less significant than lawsuits because municipal entities sometimes choose to pay such claims for reasons that do not amount to an admission of liability. Even a jury verdict or a large settlement in a lawsuit may not rise to notice of an individual defendant's liability where, for example, multiple defendants are sued on a joint and several basis (i.e., as a group with equal liability regardless of fault). However, there are ways the SCSO can learn more about a lawsuit in order to demonstrate caution and due diligence during the hiring process. Virtually all police misconduct cases will be filed in federal court, because the most plaintiff-friendly law regarding police misconduct, 42 U.S.C § 1983, is a federal one. Documents filed in federal courts are, with rare exceptions, public record. They are accessible via an online system called PACER, which stands for Public Access to Court Electronic Records. Anyone who has a PACER account can see them, and anyone who wants a PACER account can sign up for one. IOLERO recommended that SCSO utilize PACER to look closely at the details of federal lawsuits in future cases in which there is a need to determine whether the hiring or continued employment of a particular deputy poses a heightened liability risk.

Consider optics: IOLERO is aware that the SCSO is motivated to operate according to the highest standards of professionalism and accountability. For that reason, it seems that the department has every reason to take into account public perception of videos such as the ones at issue here, as distinct from a technical law-enforcement analysis of them.
YouTube is an enormously popular platform. By one recent estimate, over 2.3 billion people log into it at least once per month. It's ranked as the second-most popular social network, behind only Facebook, and the second-most popular search engine, behind only Google. For better or for worse, it is now a fact of life that anyone with a cell phone and Internet access can publish videos in a manner that makes them instantly accessible to literally billions of people.

Case No. 20-C-0030	Unfounded Case No. 8
IOLERO's Recommendations	The current state of affairs is that there is now an SCSO deputy who participated in a violent encounter that has been seen by close to 7,000 people, and 100% of the people who chose to comment on it strongly disapproved of his actions – despite the fact that, as demonstrated by other use-of-force videos, YouTube users are ordinarily not at all hesitant to post their support for law enforcement in similar contexts. The rate of disapproval by the public is completely independent of how professional law enforcement officers might analyze the same video. However, if public perception is something that contributes at all to the SCSO's standards for professionalism and accountability, it would be worth considering, at a minimum, addressing such videos in internal affairs and background investigations, and explicitly stating why the degree of disapproval expressed by viewers does not disqualify the deputy under investigation from working for the SCSO.

Audit Trends

Analysis of the audits summarized in this report detected certain trends. The main trends identified include incomplete investigations, and issues with medical and mental health treatment at the jail.

Incomplete Investigations

IOLERO concluded that nine of the investigations summarized in this report were incomplete.

Three of those incomplete investigations involved the use of force. In the first case, the SCSO explained that they focused their investigation on the use of force because that was what the community member's complaint was about. However, even though it wasn't mentioned in the complaint, the evidence clearly showed that complainant, who had a history of mental illness in Sonoma County, spent 14 hours in sobering cell screaming, physically resistive, spitting and extremely agitated before deputies and mental health staff attempted to complete the booking process (19-C-0021). In the other cases, SCSO evaluated whether the force used was a violation of policy, but did not consider the secondary complaints – lost property and failure to take pictures of complainant's injuries after the force was used (20-C-0011, 20-C-0012).

The next three incomplete cases involved issues related to credibility and dishonesty. In the first case, the SCSO investigator accepted a deputy's word that he towed complainant's car because he was uncomfortable leaving it in an area known for auto burglaries. IOLERO recognizes that it is possible that the frequency of vehicle break-ins in the area where the car was parked may be a matter of such common knowledge among SCSO deputies that the SCSO investigator was personally familiar with it. However, if that was the case, it is important for the investigator to document his personal knowledge either in his interview with the deputy or in his report, otherwise the investigation will appear incomplete (19-C-0027).

In the next case, the complainant, an incarcerated person, alleged that he did not receive his medication and was suffering from withdrawals. SCSO investigated the allegations by talking with two of the jail's medical staff members. The investigator was assured that the inmate had been interviewed, and received the appropriate medications which were confirmed with his pharmacy. The problem with this course of investigation is that medical staff understandably may be reluctant to cause trouble for themselves or their employer by admitting to not providing proper medication to a patient. Since the law makes it relatively easy for "jail authorities" like the SCSO investigator to obtain medical records, when such records are "necessary for the protection of the welfare of the inmate or others, management of the jail, or maintenance of jail security and order" (15 CCR § 1205(b)), the investigator should have taken that extra step to confirm the statements of medical staff (20-C-0018).

IOLERO mentioned in this audit that IOLERO's 2019-2020 Annual Report identified two cases where policy violations were found based on the errors of the jail's medical staff. The determinations were made on the basis of information from medical records that was not apparent from interviews with Wellpath/CFMG personnel. These include case

numbers 19-C-0010 (records disclosed mental health condition overlooked by Wellpath employee and inmate was erroneously placed in general population) and 19-C-0008 (SCSO did not review records that disclosed inadequate medical screening leading to misclassification of inmate and the use of force).

The last case, involved a deputy who posted racist, anti-Semitic, violent, extreme content on social media. The deputy attempted to give race-neutral explanations for his comments. SCSO concluded that the deputy violated policy, but focused on the deputy's intent and whether the deputy meant the comments in a racist way, ultimately concluding that the posts had "strong racial undertones." After considering the plain meaning of the posted content in combination with all the other evidence, IOLERO concluded that the deputy's explanations were not believable and recommended that the SCSO reopen the case to make a determination on dishonesty, and other unresolved issues necessary to hold him accountable (20-C-0025).

The seventh incomplete investigation, dealt with a minor car collision between a deputy and community member. The complaint was a narrative describing what had happened during the incident, but did not identify a specific complaint. However, the crux of the complaint was that the deputy drove carelessly, side-swiped complainant's car then was flippant about it before he/she drove off abruptly. To his credit, the SCSO investigator evaluated the complaint beyond the four corners of the narrative and found that the deputy violated policy for failing to engage his body-worn camera during the incident, and for not reporting the collision to his supervisor, both acts the complainant would not have been aware of. However, he missed what IOLERO saw as the main issue and did not address the deputy's poor attitude toward complainant (20-C-0031).

The eighth incomplete case, involved a severely mentally ill incarcerated man who died at the jail because they were not adequately equipped or staffed to treat him. IOLERO deemed the case incomplete because the SCSO did not consider the suicide prevention policy in its analysis of the case (19-AR-0001.)

The ninth and final incomplete investigation involved an allegation that the SCSO knew that a deputy was still being investigated for excessive force by his previous employer, but hired him anyway before the investigation was completed. In this case, the SCSO investigator reviewed the deputy's personnel file (a confidential record not subject to discussion in this report) and concluded that there were no violations of policy. However, SCSO did not consider the SCSO's heightened liability resulting from being on notice of the public settlements related to a tort claim and lawsuit stemming from the officer's use of force while he was employed with a different agency. Nor did SCSO evaluate the risks to the public when it hired the deputy, or how it looks to the community when the SCSO hires a deputy who is the subject of two very public videos where he is using force and causing injury to two different people garnering a significant amount of negative criticism. IOLERO recommended that if public perception is something that contributes at all to SCSO's standards for professionalism and accountability, it would be worth considering such videos in internal affairs investigations and pre-employment background investigations, and explicitly stating why the degree of disapproval expressed by viewers does not disqualify the deputy under investigation from working for the SCSO (20-C-0030.)

The issues surrounding incomplete internal affairs investigations have been discussed with SCSO management. They report that they've met with Internal Affairs investigators to discuss the importance of conducting thorough investigations and will continue to convey that importance to future investigators. SCSO management also acknowledged the importance of conducting Internal Affairs investigations with the same attention to detail as criminal investigations. Although this conversation took place several months ago, as of the writing of this report, it was understood by IOLERO and the SCSO that it may take some time to see this new approach materialize. IOLERO has been working through a substantial backlog dating back to 2017, so many of the investigations in IOLERO's queue were completed some time ago and will not have the benefit of this new approach to conducting internal affairs investigations. However, theoretically, if this new approach is implemented, SCSO internal affairs investigations completed after June 2021 forward should be more thorough and complete.

Issues with medical and mental health treatment at the jail

Another trend identified through five of the audits is connected to medical and mental health treatment at the jail.

In two of the cases, jail medical records revealed decisions by jail medical staff that raised questions about the quality of medical care in the Sonoma County Jail (20-AR-0002, 20-C-0008). In the next two cases, the issues were connected to people incarcerated at the jail who were exhibiting signs of a serious mental health crisis. The first inmate was screaming, physically combative, spitting and extremely agitated for more than 14 hours. The second inmate was acutely suicidal and ultimately died in custody (19-C-0021, 19-AR-0001.) The last case involved SCSO investigators taking the word of Wellpath/CFMG medical staff when an inmate complained he was not receiving his medication and suffering from withdrawals. SCSO investigators did not confirm that information by reviewing the medical records (20-C-0018).

This trend is a continuation of issues raised in the 2019-2020 IOLERO annual report. There, two cases involved concerns about the quality of medical and mental health care at the jail. In the first case, mental health staff mislabeled a suicidal inmate's paperwork causing him to be placed in general population when he should have been placed in a mental health unit (19-C-0010). In the second case, medical staff did not conduct a thorough medical screening resulting in the inmate being placed in general population rather than the medical unit. The inmate had a medically-induced seizure resulting in correctional deputies, who were unaware of the medical condition, using force to subdue him (19-C-0008).

In the cases that raise medical and mental health quality of care questions, IOLERO acknowledges that we do not have sufficient expertise to determine whether some of the issues we are raising rise to treatment errors (for example, whether medication was properly prescribed in a case where a person died from a chronic condition a week later). Neither do the SCSO investigators, which is why they properly do not attempt to make such determinations in their investigation, instead focusing only on whether SCSO's policies were followed. However, for sound legal reasons discussed more in the next section, we feel that someone who does have such expertise should be involved in future SCSO administrative reviews that concern primarily medical or mental health events.

Sonoma County has a duty to monitor the customs and practices of its medical contractor

A municipality may be held liable for damages under 42 U.S.C. § 1983, the statute that prohibits the violation of civil rights, where its established policies, customs, or practices violate the plaintiff's constitutional rights. (Monell v. Dept. of Soc. Svcs. (1978) 436 U.S. 658, 690-691.) The policies and customs may be officially adopted ones, as they were in Monell, but liability may also be based on the municipality's "custom and practice"; that is, on practices that are not top-down decisions of policymakers, but rather bottom-up practices, or "the way things are done."

Prisoners have a constitutional right to receive competent medical care: "deliberate indifference to serious medical needs of prisoners" violates the Eighth Amendment's prohibition of cruel and unusual punishment. (Estelle v. Gamble (1976) 429 U.S. 97, 103-104.) The fact that the medical care is provided by an outside contractor does not discharge this duty: "Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody." (West v. Akins (1988) 487 U.S. 42, 55.) Thus, when the County cedes control of prisoner healthcare to an outside contractor, that contractor's policies and customs become the policies and customs of the County for purposes of the Monell analysis. (Ancata v. Prison Health Svcs., Inc. (11th Cir. 1985) 769 F.2d 700, 705.)

For those reasons, the County and the SCSO have a strong interest in assessing whether contracted jail healthcare providers have an established policy, custom, or practice of providing ineffective or incompetent care. The crucial point here is that if such a custom or practice is demonstrated by the treatment of one inmate, it can be the basis of liability in a lawsuit filed by, or on behalf of, a different inmate.

IOLERO has been informed by SCSO that there is a process already in place for review and audit of the medical treatment provided by its contractor Wellpath/CFMG. This process is reportedly initiated by a form that can be filled out to request review of medical treatment in a given situation. IOLERO requested, but has not yet been provided with a copy of this form from the SCSO or Wellpath. The form is not available on the SCSO's website, Wellpath's website, nor is it available to incarcerated people or their families at the jail lobby. Thus, we don't know the details of the Wellpath/ CFMG's review process, and it is unclear to us whether the review is conducted by medical professionals not employed by Wellpath/ CFMG. If the process, is in fact, a medical review by someone independent of and outside the Wellpath/CFMG organization, this may be an adequate review process and IOLERO recommends that SCSO use that process when issues arise related to medical and mental health care. If Wellpath does not, in fact, offer an independent review process, IOLERO recommends that the SCSO and Sonoma County allocate funding for consultation with independent medical experts regarding the care provided by contracted jail medical staff, and that such a consultation be considered an essential component of future administrative reviews that involve medical or mental health issues.

It seems clear to IOLERO that someone outside of the Wellpath/CFMG organization needs to be in a position to review the quality of healthcare they supply. It is not sufficient to dismiss reasonable questions about the correctness of their procedures and treatment choices with "they're doctors and we're not." An adequate investigation into the cases discussed in this section would involve, at a minimum, a consultation with someone with the expertise necessary to provide a meaningful opinion on whether the diagnosis in question was based on appropriate information and made by a competent medical practitioner. Even leaving the liability issue aside, such consultations would provide crucial data when the question arises of whether the medical providers' contracts should be renewed.

IOLERO is also informed by SCSO that in situations where inmates require hospitalization, the jail medical records are reviewed by the hospital doctor, who would presumably note questionable medical decisions in the hospital's own records. And, in cases where an inmate dies after being in jail custody, we are told that the coroner would note issues with medical treatment in the coroner's report. SCSO investigators then review hospital records and coroner records during their investigations. We do not know the details of these mechanisms, and therefore we cannot say whether or not they are sufficient to satisfy the SCSO's duty to monitor the customs and practices of Wellpath/CFMG.

Sonoma County should expedite the funding of its Mobile Support Team (MST) and Behavioral Health Care Unit

The heart-wrenching stories underlying the audits in this report where severely mentally ill people end up in jail time and again demonstrate the value of non-law-enforcement agencies with appropriate training and expertise to handle mental-health calls. Correctional deputies at the Sonoma County Jail do not have such training or experience and should not be put in the position of needing to provide therapeutic mental health services.

There are many examples of such agencies, including CAHOOTS (Crisis Assistance Helping Out On The Streets), a mobile crisis intervention team integrated into the public safety system in Eugene and Springfield, Oregon; Santa Rosa's inRESPONSE program is based on CAHOOTS, and Petaluma has implemented a pilot program called SAFE (Specialized Assistance For Everyone), run by former CAHOOTS personnel, which currently provides 24/7 mental health crisis service. Rohnert Park and Cotati have just announced that they are joining Petaluma's SAFE program.

The County has a similar program, the Mobile Support Team ("MST"), which is operated by the Department of Health Services. MST partners with several law enforcement agencies, including the SCSO, to "provide field-based support to requesting law enforcement officers responding to a behavioral health crisis."[21] However, MST's operating hours and jurisdiction are restricted for budgetary reasons. In November of 2020 Sonoma County voters approved

21. See https://sonomacounty.ca.gov/Health/Behavioral-Health/Community-Response-and-Engagement/Mobile-Support-Team/

Measure O, which will provide an estimated $25 million per year over the next ten years for a variety of behavioral health facilities, including emergency psychiatric/crisis services, mental health and substance use disorder outpatient services, behavioral health care for the homeless, and transitional and permanent supportive housing. One possible use for Measure O funds is increasing MST's hours and territory, including expansion of the mobile support team model. The cases discussed in this annual report ably demonstrate that such expansion would be a beneficial use of the Measure O funds.

These cases make it clear that the jail is not adequately equipped to house psychiatric patients. Even though MADF is effectively the largest mental-health facility in the county, its mental-health wing is not a treatment facility and was never intended to be. The cases IOLERO has reviewed and summarized in this report dramatically illustrate why the County needs an actual treatment facility staffed by personnel with training and experience adequate to treat people suffering from mental health crisis. The County is currently "developing the design and specification package" for a 48-cell, 72-bed Behavioral Health Housing Unit adjacent to the MADF.[22] These cases offer additional justification that should motivate the County to expedite that development.

22. See https://sonomacounty.ca.gov/General-Services/Facilities-Development-and-Management/Groups/Projects-Group/BHU-Housing-Unit/

V. CONCLUSION

"The process of democracy is one of change. Our laws are not frozen into immutable form, they are constantly in the process of revision in response to the needs of a changing society" – Supreme Court Justice Thurgood Marshall.[23]

Ensuring policymakers understand the needs of our society is no small feat. Making sure that policies change to meet the moment is even more challenging. It is also painfully slow. Last summer, when a Minneapolis police officer murdered George Floyd in front of men, women and children, on cell phone video in broad daylight, people across our nation joined together in protest and brought intense scrutiny and attention to excessive force and deadly police practices. However, what happened to Mr. Floyd was not something new. Communities of color have been enduring and protesting the inequitable use of force for hundreds of years in the United States. The lack of an adequate response and unwillingness to change has provided more than enough reason for people to become resentful and angry. While hopelessness and fury alone do not change societies, it can destroy individuals. It is crucial for us to focus on our collective resilience, fresh ideas, and hope to bring about accountability and change while preserving our own wellness.

Ongoing efforts have led us to a slate of momentous new California policies focused on law enforcement reform. At IOLERO, we are particularly pleased about the adoption of SB 2, formally known as the Kenneth Ross Jr.[24] Police Decertification Act of 2021, because it will have major implications for IOLERO when its provisions take effect in 2023. The law contains a wide range of police-accountability measures, but its main thrust is the creation of a statewide commission with the power to decertify police officers for misconduct, stripping them of a license to work in law enforcement and removing them permanently from the profession. Until the passage of SB 2, California was one of only four states in the country without such a law. As a result, there have been too many cases where an officer involved in troubling behavior was allowed to remain on our streets. Officers also have been fired for wrongdoing in one department, then quietly moved on to another agency because there was no statewide oversight.

From IOLERO's perspective, the most significant provision of SB 2 is the requirement that law enforcement agencies, including the SCSO, report to the newly formed commission "any finding or recommendation by a civilian oversight entity . . . that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification by the commission. . ."[25] IOLERO is a civilian oversight entity. SB 2 lists a variety of misconduct that can potentially lead to decertification, including dishonesty in reporting crimes, witness intimidation, excessive force, sexual assault, and a number of others, as well as the more general "acts that violate the law and are sufficiently egregious

23. Richardson v. Ramirez (1974) 418 U.S. 24, 82 (Marshall, T., dissenting)
24 Kenneth Ross, Jr. was a young Black man who was shot and killed by a Gardena police officer in 2018.
25 This provision is codified in the new statute Penal Code section 13510.8 and 13510.9.

or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public." Therefore, the new law requires the SCSO to share IOLERO's audits with the newly formed commission if IOLERO finds that a deputy has engaged in any conduct described in SB 2, even if the SCSO does not agree. The Legislature clearly intended this provision to motivate law enforcement agencies to take the findings of civilian oversight agencies like IOLERO seriously. SB 2 also ends some aspects of "qualified immunity," a legal protection that shields police from civil liability for misconduct and excessive force alleged during their duties.

SB 16 is another significant step toward law enforcement reform. SB 16 will increase transparency of police officer misconduct records pertaining to findings of unreasonable or excessive use of force, discriminatory behavior or prejudice, failure to intervene when an officer witnesses excessive use of force by a fellow officer, or participation in unlawful searches and arrests. This means that IOLERO will be able to share more information with the public when SB 16 becomes effective on January 1, 2022[26]. Increased transparency sheds light on a process that has long been shrouded in confidentiality. This kind of transparency acts as a deterrent to bad behavior and increases opportunities for the accountability that comes from public review.

IOLERO has grown significantly over the past year and is in a position to take advantage of these new police reform policies. In January of 2021, IOLERO was made up of one attorney (the director), an administrative aide and community engagement analyst who, together, had been chipping away at a massive mission with few resources in an office that was just under 600 square feet. Today, the office is comprised of a staff of seven including two additional attorneys, and two interns. IOLERO moved into a bigger office with room for the interns and the CAC to do their work. IOLERO processed 38 complaints from the public, completed more than 30 audits, and is on track to completely eliminate its backlog by early 2022. Going forward, this will enable us to audit investigations immediately upon their completion without any delay.

Based on IOLERO's recommendations, the SCSO implemented a new overarching de-escalation policy that applies to all of their operations and acknowledged the importance of conducting more thorough and complete investigations. IOLERO also worked with the CAC to recommend a new firearms policy which the SCSO accepted. It was the first time the SCSO ever implemented a community-driven policy on the use of force and it makes our community safer. In the face of great challenges and against the odds, IOLERO continues to grow and work toward change on a daily basis. Sonoma County has many reasons to be proud of IOLERO's accomplishments.

As demonstrated by the breadth of new laws enacted this year and the landslide victory of Measure P in Sonoma County, people want law enforcement reform. If law enforcement agencies won't collaborate on the changes, it will happen through the legislature and electorate. Change is coming to law enforcement practices.

26. SB 16 takes effect on Jan. 1, 2022, but public agencies will have a one-year grace period — until Jan. 1, 2023 — to make public the newly disclosable records for incidents that occurred before Jan. 1, 2022: https://sd09.senate.ca.gov/news/20210930-governor-signs-sb-16-expand-and-strengthen-access-police-records

APPENDIX
CAC MEMBERS

Dora Estrada

First District

Ms. Estrada holds a Bachelor of Science in Business Administration-Marketing, with a minor in Sociology from University of the Pacific-Stockton. She is currently the administrative aide for the County of Sonoma Office of Equity. Before joining the Office of Equity Dora worked as a Program Specialist for the General Services Department in their Energy and Sustainability Division, as an Administrative Assistant at Sonoma Clean Power, and as a Public Relations Intern for University of the Pacific's SUCCESS TRiO program, a federally funded program serving first generation low-income students. Ms. Estrada is a member of Hispanic Chamber of Commerce of Sonoma County Young Professionals Board and the Sonoma Valley Community Health Center Board

Ms. Estrada was born and raised in Sonoma Valley. She grew up in the Springs area and now lives in Agua Caliente. Growing up in the Springs, her experiences with Law Enforcement were mostly negative. As an adult, she has built positive relationships with Law Enforcement that have allowed her to recognize both the negative and positive. She is the daughter of immigrants and a former foster youth. At a young age, she learned the importance of community engagement and activism. Ms. Estrada is excited about continuing to contribute to the CAC as a young Latina professional native to the area. She is fluent in English and Spanish.

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

Nathan Solomon

First District

Mr. Solomon holds a Bachelor of Arts in Psychology and a Master of Science in Computer Information Systems. In college he was first introduced to the psychology of policing when taking coursework from Craig Haney who conducted the Stanford Prison experiments. He currently works as a Senior Information Security Analyst for Jackson Family Wines. Nathan has over 25 years of experience in IT working various roles including founding his own software company.

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

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

Lorez Bailey

Second District

Ms. Bailey is the publisher of the North Bay Business Journal. Prior to the business journal she served as the Executive Director of Chop's Teen Club. Ms. Bailey worked at Social Advocates for Youth (SAY) as the Director of College and Career Readiness where she spearheaded the creation and revision of Sonoma County high school college and career centers. In recognition of Women's History Month, in March 2019 she was awarded U.S. Congressman Mike Thompson's Sonoma County "Woman of the Year." She has also worked a large part of her career in media including The Community Voice, Press Democrat, Fremont Argus, ANG Newspaper Group, Youth News and Channel 50. Ms. Bailey earned her Bachelor of Arts in Communication Studies and Telecommunications from Sacramento State University and Master's Degree in Education Technology from Sonoma State University.

Ms. Bailey is a graduate of the Santa Rosa Metro Chamber's Leadership Santa Rosa Program (LSR Class 32). She is also a graduate chapter member of Alpha Kappa Alpha Sorority, Inc. She is a board member of the Bridge to the Future-Rites of Passage program and Charles M. Schulz Museum Program Advisory Board.

Ms. Bailey and her husband are longtime Sonoma County residents and have three daughters.

Ms. Bailey lives in Sonoma County's second district represented by Supervisor David Rabbitt

Lorena Barrera / ViceChair

Third District

Ms. Barrera attended the University of California, Merced where she received a Bachelor's Degree in Political Science. Following her graduation, she moved to Sonoma County to attend Sonoma State University as a graduate student in the field of Public Administration. In 2016, she received her Master's Degree.

While in school, Lorena served as a volunteer in various internships in all levels of government. During this time she became aware of the disconnect between people and their representatives and how this disconnect contributes to a lack of understanding in what government does or should be doing for people. Around this time, Lorena began working as a staffer for a member of Congress where she was exposed to policy analysis and became more aware of the loopholes that exist in policy that affect both the public and the public agencies.

As a minority in society, setting an example in the community is of great importance to Ms. Barrera. She believes in informing and educating people in order to strengthen communities.

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

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

Nzinga Woods

Third District

Nzinga Woods has a Master of Science in Educational Leadership from California State University Fullerton, a Master in Fine Arts from Mills College, and her Bachelor of Arts from California State University Sacramento. Spending most of her formative years between the Bay Area and Sacramento, Ms. Woods considers herself to be a "Nor Cal" native. She is currently the Co-Director of the award winning ArtQuest Program at Santa Rosa High School where she has taught for over ten years. Additionally, Ms. Woods is the second vice president of the Santa Rosa- Sonoma County NAACP branch, and an adjunct instructor for both CSU Sonoma and the Santa Rosa Junior College. Ms. Woods also co-founded the Sonoma County Black Forum, a nonprofit organization.

The mission of the Sonoma County Black Forum is to Lead, Serve, and Thrive!Charged with this mission, they want to help shape intellectual discourse and dialog to consider the African-American experience. Their goal is to support area youth and our community by creating opportunities to train, learn, develop twenty-first century skills, and foster agency within Sonoma County and the surrounding Bay Area. Paired with her community engagement activities, Ms. Woods has over 20 years' experience developing and implementing education and engagement programs with community and youth organizations.

Ms. Woods currently resides in Sonoma County's third district and has made deep connections with the community. She is focused on being a change agent working on social justice, diversity, inclusion, transparency and the development of 21st Century community engagement practices. Ms. Woods is passionate about youth empowerment through the arts and remains an active arts and community engagement facilitator in Sonoma County.

Ms. Woods looks forward to working with members of the community to create necessary change that is both equitable and transparent, change that will affect the daily lives of Sonoma County residents in a positive manner.

Ms. Woods Lives in Sonoma County's third district represented by Supervisor Chris Coursey.

Marcy Flores

Fourth District

Ms. Flores Suazo was raised in Geyserville, California and has been active in the Sonoma County community and school districts for the past 11 years. Her passion for working with the Latinx community came after her active involvement and political activism with Movimiento Estudiantil Chicana/o de Aztlán (M.E.Ch.A.) and through her work with California Migrant Education - Mini-Corps, working with Healdsburg migrant students and their families during her studies at Sonoma State University. Ms. Flores studied Chicano and Latino Studies and Early Childhood Education and worked for Sonoma State University Upward Bound Programs, supporting first-generation high school students on their path to a 4-year university. With her background and passion in education, Ms. Flores returned to her former high school in Geyserville to support parents and students to pursue their post-secondary education and career goals by providing them with opportunities and the tools to succeed.

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

Ms. Flores currently works for Corazón Healdsburg as the Associate Director of Academic Development working to support every young person in need to build a strong foundation to prepare for and complete the highest level of postsecondary education or training to achieve their career goals. Ms. Flores oversees the Education Department programs and services for parents and students starting from prenatal through first year of college.

Ms. Flores lives in Sonoma County's fourth district represented by Supervisor James Gore.

Evan Zelig, Esq. / Chair

Fourth District

Mr. Zelig has been a licensed attorney in the State of California since 2003 and is President of Law Offices of Evan E. Zelig, a professional corporation. His practice focuses solely on criminal defense, representing individuals charged with misdemeanor and felony criminal offenses. He also serves on the indigent criminal defense panel. Mr. Zelig earned a Bachelor of Arts in Political Science at University of California, Irvine and his Juris Doctor from McGeorge School of Law, University of the Pacific.

Mr. Zelig is active both socially and politically in the Town of Windsor where he currently serves as Chair of the Planning Commission. Mr. Zelig is the grandson of Holocaust survivors and is a regular contributor to the Holocaust Museum LA, a museum his grandmother helped establish.

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

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

Maxwell Pearl

Fifth District

Mr. Pearl received his B.A. in Natural Science and Mathematics from Bennington College, and his Ph.D. in Neuroscience from Case Western Reserve University. He was an HIV/AIDS educator and advocate in the early part of the HIV epidemic in Cleveland, OH, and was part of training hotline workers that staffed the first statewide HIV/AIDS Information hotline. Mr. Pearl taught at Hampshire College from 1989 through 1999, as Assistant and Associate Professor of Biology. He conducted studies primarily on the AIDS epidemic, particularly as it affected women and people of color. He was also involved in AIDS education and advocacy during the first half of the 1990s. He was involved in several grant-funded projects to enhance in-service science education for educators in the region, particularly in terms of use of technology in the classroom.

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

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

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

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

Nancy Pemberton

Fifth District

Nancy Pemberton obtained her B.A. degree at San Francisco State University and her J.D. degree at Berkeley Law School (then known as Boalt Hall). For most of her legal career, she specialized in representing defendants charged with capital crimes and facing possible execution, both as an attorney and mitigation specialist. Now retired from legal representation, she works part-time writing and editing content for a website used by capital litigators.

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

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

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

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

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

Jose Landaverde

At-Large Representative

Mr. Landaverde was born in El Salvador and immigrated to the United States as a refugee of war at the age of nine. Mr. Landaverde is now a U.S. citizen and has called Santa Rosa his home since 1984. He grew up in the Southwest Santa Rosa area where he lived for 33 years.

Mr. Landaverde has worked for the County of Sonoma for 20 years. He is currently employed at the Human Services Department as a Program Manager. Mr. Landaverde is a subject matter expert on Medical, Calfresh and General Assistance programs, and he has a strong connection to communities who often interface with law enforcement. Mr. Landaverde also worked as an instructor at the California Human Development Corporation where he helped agricultural workers transition from field work to manufacturing jobs in order to have year-round work to provide for their families.

Mr. Landaverde is active in the Sonoma County community. He served as a mentor at the Gospel Mission and he was a founding member of the Rosa Bloco program. Rosa Bloco utilizes the arts as a tool of empowerment for youth of color, underserved and at-risk youth. The objective is to teach young people how to overcome legal challenges, adopt healthy and active lifestyles, serve as leaders in their communities and to embrace ethnic and cultural diversity.

Mr. Landaverde says that growing up in Santa Rosa, “I was one of two children in the ESL program [and] I have an intimate knowledge of this community. I lived in its ghettos, I ate elotes on Sebastopol Road, I swam in public pools on West Ninth Street, (and) I graduated from Montgomery High School taking two buses every morning.” Mr. Landaverde believes the role of a CAC member is to “serve as a conduit of the community [and] I want to see my community thrive and get over difficult hurdles.”

Mr. Landaverde was appointed by the IOLERO Director as an at-large representative of Sonoma County.

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