

*Response to
IOLERO's Report on Recommendations to
Sonoma County Sheriff's Office*



**Policies & Practices Related to
Administrative Investigations and
Audits of Investigations**

Dated August 27, 2018

*Prepared by
Sonoma County Sheriff's Office*



On July 27, 2018, the Independent Office of Law Enforcement Review and Outreach (**IOLERO**) sent Sheriff Giordano a document titled Report on Recommendations on Policies and Practices Related to Administrative Investigations and Audits of Investigations. This document has been prepared by the Sonoma County Sheriff's Office, in response to the recommendations made by IOLERO Director Jerry Threet.

We believe it is necessary to take several facts into account when reviewing Director Threet's recommendations. Those facts are listed below.

1. As established by the Sonoma County Board of Supervisors, the role of IOLERO in Sheriff's Office Internal Affairs include the following:
 - Accept complaints of misconduct against deputies of the Sonoma County Sheriff's Office;
 - Review administrative investigations conducted by the Sheriff's Office for thoroughness, fairness, and timeliness;
 - Develop recommendations to improve Sheriff's Office policies and procedures;
 - Compile and analyze data on complaints to IOLERO and analyze data on law enforcement encounters, to identify trends and correlation; and
 - Prepare annual reports for the public and the Sonoma County Board of Supervisors.
2. IOLERO's duties do not include the role of investigator. This fact is supported by the Sonoma County Community and Local Law Enforcement Task Force Final Recommendations Report that was the foundation for the establishment of the Independent Office of Law Enforcement Review and Outreach.
3. To date, Director Threet has been auditing internal affairs (IA) investigations that are not completely approved by the Sheriff's Office command chain. This is done at Director Threet's request so that he may make relevant suggestions before the process is complete.
4. Internal Affairs investigations are exclusively for internal consumption by the Sheriff's Office and IOLERO. These investigations are not meant to be released and are to provide information to the Sheriff or his designees to determine if a policy or procedure has been violated and to assist in the determination of discipline.
5. The standard used for adjudication of an allegation in an internal affairs investigation is by a "preponderance of the evidence."¹ A preponderance of the evidence is defined as:

T

¹ Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice U.S. Department of Justice



- a preponderance of evidence over a dozen witnesses with hazy testimony,
6. The documentation of investigations must be thorough, complete, and as comprehensive as reasonably necessary.² The term reasonably necessary does not require the case to be proved to “beyond a reasonable doubt.” The investigator need only obtain a reasonable amount of documentation to prove the case by a preponderance of the evidence.
 7. To achieve the investigative mission, each investigative report should meet these minimum standards:
 - All allegations are clearly stated and clearly answered.
 - All relevant facts bearing on the truth of each allegation are clearly stated.
 - All evidence is included or its means of retrieval specified.
 - Contact and identification information for all persons interviewed and for the investigator(s) is included.
 - The report is impartial, with no bias for or against any party.³

Several of Director Threet's recommendations were made in IOLERO's fiscal year 2016-2017 (FY16-17) Annual report and have been already addressed by the Sheriff's Office. Additionally, most of the cases referenced in IOLERO's Report on Recommendations on Policies and Practices Related to Administrative Investigations and Audits of Investigations are cases that were reviewed by the Sheriff's Office in FY 16-17 and addressed in our response to the IOLERO FY16-17 Annual Report. However, for the purpose of transparency and clarity this document will address all of Director Threet's recommendations outlined in IOLERO's Report on Recommendations on Policies and Practices Related to Administrative Investigations and Audits of Investigations dated July 25, 2018.

1. During a new employee's probationary period, supervisors should regularly review random Body Worn Camera footage of employees under their command.

Supervisors routinely audit Body Worn Camera (BWC) footage of not only probationary employees, but all employees under their command. Director Threet was given this information in November of 2017. Additionally, BWC video of all use of force incidents are reviewed by the immediate supervisor and the Professional Standards Lieutenant.

² Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice U.S. Department of Justice

³ Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice U.S. Department of Justice



2. ***During a new employee's probationary period, supervisors should regularly check in about a probationary employee's performance with their peers, and with community members where they are assigned, and to document the feedback from such sources.***

In the course of their duties as supervisors, sergeants routinely evaluate the performance of all employees. Supervisor's notes in our personnel management database (known as the AIM system) are used to document the employee's performance as part of their performance evaluations. The feedback for employees comes from multiple sources, including members of the public, random BWC audits, peers, and other members of the Sheriff's Office.

3. ***An investigator should make every reasonable effort to interview every complainant, both to ensure that the investigator understands fully the nature of the complaint and the complainant's view of the available evidence, as well as to convey to the complainant that the agency takes seriously all complaints of employee misconduct.***

This recommendation was included in the IOLERO FY 16-17 Annual Report. In response to that recommendation, we now interview all willing complainants regardless of the circumstances. We do not rely exclusively on the written complaint and BWC to close out investigations. This practice has been in effect since 2016.

4. ***Additionally, all subject deputies and employees named in a complaint should be interviewed.***

Investigators routinely interview all subject deputies and employees in most cases. There are exceptions when BWC footage and other testimony (witness or employees) shows the complaint to be false, frivolous, and without merit. In these circumstances additional interviews are not warranted.

5. ***Where possible, the investigator also should interview at least one third party witness outside the Sheriff's Office in any investigation involving serious allegations, such as excessive force, racial bias, etc.***

In most cases and when prudent, investigators make every effort to interview third party witnesses. There are occasions where witnesses are not available, or other evidence exists (BWC), supporting the determination that additional interviews by the investigator are not necessary.

6. ***Regardless of the seriousness of the offense alleged in a complaint, all witnesses with information material to the investigation should be interviewed.***

In investigating a case, investigators make the judgment based on their training and experience which witnesses have evidence material to an investigation. Investigators assigned to Internal Affairs have completed numerous criminal investigations where the



burden of proof is much higher than that of an administrative investigation. Though other witnesses to an event may exist, evaluated on a case by case basis, it may not be necessary to interview all witnesses to determine a finding by a preponderance of the evidence.

Additionally, investigators have no legal authority to order witnesses not employed by the Sheriff's Office to submit to interviews. Therefore, witnesses can and do decline to be interviewed.

7. *When interviews are conducted, the investigator should ensure they are digitally recorded and secured so that there is an exact record of the interview available for review by supervisors and the Auditor.*

It is the Sheriff's Office belief and practice that, when practical, investigators should record and store all their interviews for later review. There have been cases where this has not been done; however this is not the norm, and the majority of interviews are available for review by supervisors and the Auditor. There are times when recording is not possible, such as a witness who refuses to be recorded. There were also times that we failed to meet our best practice standard in this area. Corrective action has been taken to resolve this.

8. *The agency should improve on its documentation of interviews by moving from digital sound recording, which is often currently employed, to digital video recording with both sound and visual information that could be reviewed by the investigator and the Auditor.*

The Sheriff's Office addressed this recommendation in 2016. The industry standard is the audio recording of interviews. The Office believes video recording is cumbersome, interrupts the process, intimidates witnesses, and is significantly more expensive.

9. *Where the investigator is interviewing an employee that is the subject of the investigation, or a complainant, the Sheriff's Office should allow the Auditor to be present during the interviews.*

The Sheriff's Office addressed this recommendation in August 2017. There are several objections to this recommendation. The first objection is the belief of the Office that the Auditor's presence in an interview places him in the role of investigator and not an auditor. As envisioned by the CALLE Task Force, "the OIA⁴ will not become a part of the Sheriff's Office investigation process."⁵ The Auditor's presence in the interview removes the appearance of Auditor's independence and impartiality. The Auditor's

⁴ Office of Independent Auditor

⁵ Sonoma County Community and Local Law Enforcement Task Force Final Recommendations Report Page 26.



presence may also interrupt the flow of the interview and negatively impact the comfort of the deputy or witness being interviewed.

10. All documentary and video evidence that may play a role in any future investigation should be carefully preserved by the agency, with a clear chain of custody showing when and if it has been viewed or in the possession of any agency employee.

Sheriff's Office BWC evidence, as well as interview room recordings, are maintained and preserved on Evidence.com. Evidence.com has an audit trail function that maintains a chain of custody showing every time the video has been accessed/viewed and by whom. Research on the best method and the cost is currently underway with the intent to include any additional funding needs in the FY 19-20 budget request.

Other evidence, such as video maintained in the Detention Division is currently not preserved in Evidence.com; however, the Detention Division is in the process of obtaining body worn Cameras, and their body worn camera video and other digital evidence will be stored on Evidence.com in the near future.

It is the intention of the Sheriff's Office to eventually store all digital evidence on a platform that will maintain a chain of custody and an audit trail.

11. Investigators should make every reasonable effort as soon as possible to identify and secure any third party evidence identified by the complainant or other witnesses, or any evidence that otherwise arises during the course of an investigation.

Investigators routinely make reasonable efforts to identify and obtain third-party evidence. In one of the cases mentioned by the Auditor in his report (16-C-0024), it was not certain that this evidence ever existed. There was third-hand information that there may have been a video. There were several attempts to interview this witness and obtain the video, but the witness refused to be interviewed. Investigators have no legal recourse when this occurs. Additionally, in administrative investigations, investigators do not have the legal authority to seek search warrants to order individuals to turn over cell phone video, phone records, GPS information or any other possible evidence. This specific case was referenced in the IOLERO FY16-17 Annual Report and the Sheriff's Office has responded to the Auditor's comments.

12. Each investigation should include the following information about any employee:

a. previous complaints filed

This information is included in the investigation if the complaint is sustained.

b. administrative investigations and outcomes

This information is included in the investigation if there is a finding of sustained.



c. performance evaluations, commendations awarded and/or discipline imposed and why, and

This information is included in the investigation if the above information is within the records retention period.

d. information related to an employee's inclusion on the agency's Brady list, including any investigative or complaint file associated with that inclusion. This information should be considered and weighed by the investigator in the investigative report, especially where the credibility of witness statements could influence the outcome of investigative findings. This type of evidence also should be provided to the Auditor without the need to specifically request it from the agency.

This information is included in the investigation if it exists. The facts of the case, including the employee's presence on the Brady list, are considered by the investigators, evaluators, and ultimately the command staff upon final adjudication of the case. In addition, the Auditor has access to all completed cases and can search for cases by employee name to determine the facts of other cases. This information was communicated to IOLERO in November 2017.

13. Where documentary evidence is mentioned by witnesses or the investigator but is no longer in the investigative file and cannot be located, the lack of such evidence should be a separate subject of the investigation, and the investigation should explore the reasons for the absence of the evidence in some detail.

The Sheriff's Office agrees the matter should be investigated, but does not believe in most cases that this investigation should be separate from the original investigation.

14. Where video footage is required to be recorded of particular types of incidents, but nevertheless witnesses state that the video was not recorded, in violation of policy, the lack of such evidence should be a separate subject of the investigation, and the investigation should explore the reasons for the absence of the evidence in some detail.

The Sheriff's Office agrees the matter should be investigated but does not believe in most cases that this investigation should be separate from the original investigation.

15. Each investigation should include a thorough investigation and analysis of all allegations made by the complainant.

Investigators currently investigate allegations made by a complainant unless the allegation is proven not to be factual upon initial review of the case, or complainant lists



an allegation on the complaint form, and they do not provide a statement in support of the allegation during the interview.⁶

16. Each investigation should include a thorough investigation and analysis of any other possible violations raised by the alleged facts or evidence that becomes available during the course of the investigation, even if not alleged by the complainant.

The Sheriff's Office agrees. Significant violations should become part of the investigation. Minor offenses are referred to the individual employee's supervisor for follow up and resolution.

17. The Sheriff's Office should adopt a formal written policy forbidding any acts by agency employees to retaliate against community members who file complaints against employees or the agency.

Though there is no formal policy addressing retaliation against community members who file complaints against employees or the agency, the Office believes this behavior is a violation of the following Policies:

RULES AND REGULATIONS REGARDING CONDUCT

5.0 PROCEDURES

B. DUTIES, CONDUCT, AND RESPONSIBILITY

4. **Standard of Conduct:** Members shall conduct their private and professional lives in such a manner so as to avoid bringing discredit upon the Sheriff's Office.

5.0 PROCEDURES

B. DUTIES, CONDUCT, AND RESPONSIBILITY

17. **Conduct Toward the Public:** Members shall foster good public relations by treating the public with courtesy while keeping in mind the necessity of maintaining public respect for the Sheriff's Office. Upon request, all members are required to supply their name in a courteous manner. They shall attend to requests from the public quickly and accurately, avoiding unnecessary referrals to other parts of the Sheriff's Office or other agencies

Additionally, at the suggestion of the Auditor (see below #18), the following was added to the Citizen's Complaint form:

⁶ In case 17-C-0027 the complainant alleges Bias-Based Policing because of her gender and age. In the complainant's account, there were no statements that showed any indication of Bias-Based Policing. Her other allegations were thoroughly investigated.



“Sonoma County Sheriff’s Office will not tolerate any intimidation or retaliatory action against any person who files a complaint against a member of this office.”

18. In addition, the agency should include this non-retaliation policy statement on its formal complaint forms and any agency information material that describe the complaint process.

Under the leadership of retired Sheriff Freitas, this change was made at the suggestion of the Auditor. The Auditor was advised of this in August of 2017.

19. The Sheriff’s Office should adopt a formal Conflict of Interest Policy to forbid involvement of employees in any investigation that involves a person or organization with which the employee has a familial, financial, and/or significant personal relationship.

The Sheriff’s Office is currently working to address this suggestion.

20. IOLERO further recommends that the Conflict of Interest Policy should forbid any employee from involvement in the conduct or management of any investigation in which that employee is implicated as a subject, supervisor, or witness.

The Sheriff’s Office is currently working to address this suggestion.

21. When conducting witness and deputy interviews, investigators typically should utilize open ended questioning (as opposed to leading or hostile questions) and maintain a neutral demeanor, so as to encourage the witness to remember and provide all of the information of which they may be aware.

The Sheriff’s Office agrees investigators should not use leading questions. However, depending on the nature of the investigation and the person being interviewed, questions that challenge the witness (employees, witness and complainants) are not only appropriate but necessary to obtain a truthful answer. These types of questions are not only acceptable in investigations but are also commonly used in civil and criminal courts.

22. Investigators should undertake a full analysis of factual evidence and should consider and weigh all material evidence, both for and against a specific finding, rather than selectively considering only some evidence that supports a conclusion.

The Sheriff’s Office believes its investigators do undertake a full analysis of factual evidence and consider and weigh all material evidence, both for and against a specific finding, rather than selectively considering only some evidence that supports a conclusion. If the Auditor believes this is not the case, it should be addressed in the individual review of the case during the Annual Report.



23. In addition, where investigative findings are made as to violation of or compliance with an agency policy, the analysis should reference any specific criteria of that policy and explain why the evidence meets or does not meet that criteria.

This information is included in the ‘Conclusions and Findings’ section of the investigative report.

24. In order to independently and effectively review the adequacy of an investigation, it is crucial that the Sheriff’s Office provide the Auditor with unfettered, direct access to all of the source material reviewed by the investigator in reaching a conclusion on findings.

The Sheriff’s Office provides access to all source material associated with investigations reviewed by the Auditor. The systems in which some of this material is stored contains not only evidence of cases audited by the Auditor, but other cases as well. For example, Evidence.com may contain video and photographic evidence including interviews with homicide suspects, sexual assault victims, child molestation victims, child pornography and a host of other videos and evidence that are not in the purview of the Auditor. It would not be appropriate to allow the Auditor “unfettered” access to this or systems that contain material outside of the purview of the Auditor.

Additionally, there has been no case in which the Auditor has asked for evidence in possession of the Sheriff’s Office that was not released to him.

25. In addition, it also is important that the Auditor have full, direct access to all information available to and/or used by the investigator.

The Sheriff’s Office provides access to all information associated with audited investigations. In some cases, the Auditor may not be able to legally access or view this information, or systems available to and utilized by investigators.

Additionally, similar to Evidence.com, systems such as I-Leads (the report writing system) the majority of the cases stored there contain written reports and associated photographic evidence of cases the Auditor would not audit and have no legal right to review. These types of cases include domestic violence, homicides, sexual assaults, child molestation, child pornography and other cases that are not in the purview of the Auditor and would never be audited. It would not be appropriate to allow the Auditor full and direct access to the I-Leads system or any other system that maintains information that is not solely for the purposes of auditing Sheriff’s Office internal investigations.

26. The Sheriff’s Office should allow the Auditor direct access to the investigators who prepare the Investigative Reports that serve as the basis of the independent audits.

The Sheriff’s Office will allow access to the investigators when appropriate as has been our practice to date.



27. Timely completion of an investigation audit should be defined for each audit separately, with no overall expectation that each audit will be the same.

Sheriff's Office investigators are required to complete their investigations within 60 calendar days for citizen complaints and policy and procedure investigations and 150 days for internal affairs investigations unless there are extenuating circumstances. The Sheriff's Office believes for the integrity of the process and timeliness, the Auditor should adhere to the timelines he established in Suggestion 28 ("about one-half of the time it took for completion of the investigation being audited").

28. Generally, completion of an audit should take about one-half of the time it took for completion of the investigation being audited, assuming the investigation is complete when referred.

The Sheriff's Office and IOLERO agreed a two week timeline for audits unless more time was requested. This is the current expectation of the Sheriff's Office of the Auditor timelines. It should be noted, for FY 17-18, the average investigative time in days were 58/39 (total days/work days). The FY 17-18 audit days were 93/64 (total days/work days). These audit dates do not meet the timelines requested by the Auditor or agreed to by the Sheriff's Office and IOLERO.

29. An audit should be considered simple if it takes 30 working days or less for the investigator to complete and refer it for audit. Under those circumstances, an audit should be completed in 14 working days or less, assuming that there are no other pending audits preceding it, nor similar unavoidable time conflicts.

The Auditor assumes the length of time it takes an investigator to complete an investigation determines the complexity of the case. Often this is not true. More often than not in Citizen Complaints and Policy and Procedure violation investigations other factors determine the length of the investigation. These factors include but are not limited to, the individual schedule of the investigator (training, vacation, collateral assignments, etc.) caseload of the investigator, prioritizing of cases based on the nature of the allegations, availability of witnesses, and availability of legal representation for the employee. Therefore, the determining factor of the complexity of the case should not be based on the length of time it takes the investigator to complete the investigation.

Additionally, the complexity of the case does not change the amount of time the investigator has to complete the investigation (the exception being cases with possible criminal proceedings and Administrative Reviews where outside agencies are conducting an investigation in accordance with the Sonoma County Critical Incident Protocol). The Sheriff's Office believes the Auditor should be held to the same standards of timeliness as the Sheriff's Office investigators.



30. If an investigation is referred for an audit while another audit is pending, the deadline for the new referral should not begin until the deadline on the audit of the previously referred investigation has run.

Section 3304(d) (1) of POBR allows up to one year for the Office to impose discipline on employees. Section 3304(d) (1) does not make an exception for an audit of an investigation.

IOLERO only receives approximately half of Sheriff's Office investigations, this is by Director Threet's request. Investigators maintain a caseload apart from cases that are audited. Additionally, the realities of law enforcement are that complaints are filed at the will of the complainant, the Sheriff's Office has no control over their timeline. Although the Sheriff's Office is committed to the process of review, audits should be timely for the benefit of employees and complainants. The Sheriff's Office believes the Auditor should be held to the same standards of timeliness as the investigators no matter the caseload.

31. If IOLERO must request from the Sheriff's Office evidence not included in the investigative file or request investigation of issues not explored in the investigation report, the audit deadlines for that investigation should be stayed while these tasks are completed.

The function of IOLERO is to audit the Sheriff's Office investigations, not to act as a second investigator. The request for what the Auditor believes is additional evidence that was not included in the investigation places the Auditor in the position of determining what is evidence. Doing so places him in the role of an investigator.

If the Auditor believes the investigation is incomplete, the Auditor should note this on the case audit and include it in the Annual Report. The Sheriff's Office will respond to the Auditors comments in their response to the Annual Report.

Currently, all information obtained by an investigator is forwarded to the Auditor along with the case. There may have been cases where evidence was not forwarded with the case and was later not available, but that was not and is not the norm and has been addressed.

32. As a general matter, absent unavoidable time pressures such as an approaching statutory deadline to impose discipline for a finding of misconduct, the Sheriff's Office should wait until the audit process has been completed to notify employees or complainants of findings.

Though section 3304(d) (1) of POBR allows up to one year for the Sheriff's Office to impose discipline, the Sheriff's Office believes it is unreasonable for employees and complainants to wait an extended period to learn the outcome of an investigation. It was in the spirit of this belief that in 2016, investigative timelines were imposed on IA investigators requiring them to complete their investigations within 60 calendar days for citizen complaints and policy and procedure investigations and 150 days for internal



affairs investigations. The Sheriff's Office believes the timely resolution of cases benefits complainants and employees.

33. Where an investigation audit results in a different finding by IOLERO on a complaint allegation, the Sheriff's Office should engage in an attempt to resolve that difference between the agencies prior to issuing notifications to the deputy and the complainants of findings.

The Sheriff's Office believes the Auditor uses a different standard to evaluate cases than the established standard for administrative investigations. The Sheriff's Office believes, when its investigations are complete, the appropriate finding has been reached. The IOLERO Annual Report is the proper venue for the Auditor to register his disagreement with the findings of individual cases. The Sheriff's Office will respond to the Auditor's comments when the Annual Report is released.

34. In addition to providing the Sheriff's Office with a confidential Investigative Audit Report that reviews the investigation and its findings, IOLERO also should issue (where appropriate) an accompanying Audit Recommendations Report that will become public. The Audit Recommendations Report would include any recommendations for changes to policy, practice, or training that may have resulted from the audit of the investigation.

The IOLERO's Annual Report is a public report that includes IOLERO's recommendations for changes to policy, practice, or training that may have resulted from the audit of the investigations. A separate report for each investigation would be redundant, unnecessary, and time-consuming. This process would also negatively impact the time frame for audits of each investigation sent to IOLERO.

It is also the belief of the Sheriff's Office that this practice is the primary cause for the delay of the Auditor's Annual Report. This delay does not allow the Sheriff's Office to make timely changes to policy and procedure. On occasion, the Auditor has listed recommendations for policy and procedures that are no longer in place.

35. IOLERO also recommends that the Sheriff's Office respond publicly to the recommendation contained in any Audit Recommendation Report with 30 days of its issuance.

The Sheriff's Office has advised the IOLERO Director that responding to numerous Audit Recommendation Reports is redundant and an unreasonable expectation given the Sheriff's Office public safety mission and the current workload. The agreement between the Sheriff's Office and IOLERO has been that there would be a response to the Annual Report within 30 days. We have agreed to this timeline. We do not have the ability to respond to every individual audit recommendation report issued by the Auditor.



36. The Sheriff's Office should begin to collect and track data on all discipline imposed as a result of sustained findings of employee misconduct and should allow IOLERO unfettered, direct access to that data from within the AIM system viewed by the Auditor.

This data is not located in the AIM system as the AIM system has no mechanism for tracking this type of data. The Sheriff's Office has started tracking data on discipline imposed as a result of sustained findings and will share that with the Auditor.

In closing, the Sheriff's Office believes in the value of an auditor program. It is beneficial to have an outside perspective on our investigations and processes. With that said, what we have experienced in the first two and a half years of this program is that audits have not been timely. These delays prevent us from appropriately responding and implementing suggested improvements, which is a disservice to the community. In addition, the amount of work, over the last year in particular, required by the Auditor and the Sheriff's Office to come to a simple agreement on how to do reports like this one has been burdensome and time consuming. The Sheriff's Office believes the Auditor is re-investigating the complaints, not auditing. This results in late audit reports and detracts from the Auditor's primary role: to audit.

This policy recommendation report is redundant and outdated. It covers items that are quite old and/or have been dealt with in last year's Annual Report. This report is also an example of a flawed process. Instead of this policy recommendation report, the Sheriff's Office and the community at large would have been better served with a timely FY 17/18 Annual Report. The Sheriff's Office core mission, public safety, is very resource intensive and must be balanced against the requests of the auditor program. In the future, the Sheriff's Office would find it beneficial to have succinct, timely case audits and a single yearend report. The release of such a report should allow sufficient time for the Sheriff's Office to prepare a response for the community.