



**INTERNAL AFFAIRS INVESTIGATION
AUDIT**

CASE DETAILS	
Complainant Name	Roberto Perez-Hildebrand
Case No.	21-C-0019
Type of Investigation	Use of Force; Canine Deployment; Officer Conduct
Incident Date	February 25, 2021
Date/Origin of Complaint	August 27, 2021 (IOLERO)
Date IA Sent to IOLERO	October 24, 2022
Date Preliminary Audit Returned to SCSO	March 14, 2023
Date Audit Becomes Final if SCSO Provides No Response	April 4, 2023

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SUMMARY

This Audit reviews an internal investigation and findings made by the Sonoma County Sheriff's Office (SCSO) in connection with the apprehension and arrest of Roberto Perez-Hildebrand on February 25, 2021 with the use of a canine bite.

As discussed below, we **AGREE** with the IA Investigation that the record clearly establishes that various allegations of misconduct while the arrest and search were being conducted are **UNFOUNDED** as to all officers involved. The record shows SCSO officers performed their duties in a respectful and professional manner.

However, we **DISAGREE** with the IA Investigation that the officers can be **EXONERATED** under law and SCSO Policy on the present record in connection with the decision to deploy the canine to apprehend Mr. Perez. Use of canine force must adhere to Use of Force law and policy, which includes reasonable "proportionality" and "de-escalation" considerations. Deployment must also adhere to Canine-specific policies which focus on (among other things) the seriousness of the suspected crime for which the person is being apprehended and reducing the risk of canine bites when less serious crimes are involved. As discussed below, the IA Investigation was **INCOMPLETE** in that it did not address many of the salient factors relevant to Use of Force and Canine Policy compliance.

We also make **RECOMMENDATIONS** to clarify definitions in Policy 309 and to review Policy 309 and Policy 300 to determine whether they are sufficiently reflective of the public's perceptions of canine use and the risks inherent in canine deployment.

MATERIALS REVIEWED

All materials provided by SCSO in the AIM system were reviewed in connection with this Audit. A full list of this material is attached as **APPENDIX A**.

FACTUAL BACKGROUND

I. MR. PEREZ'S OUTSTANDING WARRANTS AND PROBATION STATUS

On February 25, 2021, SCSO deputies arrived at 185 W. Barham Ave. in Santa Rosa to arrest Roberto Perez-Hildebrand (herein referred to as Mr. Perez) on outstanding arrest warrants and to conduct a probation search.¹

Court records show that prior to this incident, Mr. Perez had been convicted in several criminal matters: possession of a prohibited weapon (*e.g.*, leaded cane, billy, blackjack, sandbag, sandclub, sap, or slungshot) (P.C. § 22210 misdemeanor), presenting false

¹ Court records refer to Mr. Perez as "Roberto Perez-Hildebrand" but Mr. Perez referred to himself as "Perez". Accordingly, we refer to him as Mr. Perez.

identification to a police officer (P.C. § 148.9(a) misdemeanor), possession of controlled substance paraphernalia (H&S § 11364(a) misdemeanor), evading a peace officer (Vehicle Code § 2800.1(a) misdemeanor), and infliction of corporal injury on a spouse (P.C. § 273.5(a) misdemeanor).²

Court records also show various arrest warrants issued by the Sonoma County Superior Court for Mr. Perez over time, several of which remained outstanding at the time of the February 25, 2021 arrest.³

Mr. Perez was also on formal probation for the domestic violence conviction (SCR-730188-1) and under conditional sentences in SCR-726748-1 (controlled substance paraphernalia) and SCR-727781-1 (evading officer).⁴

II. PROBATION SEARCH AND ARREST OF MR. PEREZ

Deputy Jeannine Yebra attempted to serve the outstanding arrest warrants on Mr. Perez on February 17, 2021 but he fled from the shed in which he was living.⁵

On February 25, 2021, Dep. Yebra requested additional deputies accompany her in another attempt to serve the warrants and conduct a probation search. (IA Report at 4; Incident Report at 2). At around 9:00 p.m. Deputy Shawn Forghani and his K-9 partner assembled with Deputy Rosendo Castro beyond a fence at the rear of the property in case Mr. Perez fled. Sergeant Eric Salkin, Deputy Nicholas Maikranz, Deputy Joel Auerbach, Deputy Alan Collier with his K-9 partner “Duke”, and Dep. Yebra arrived at the front of the residence. A total of seven officers were deployed.

² See SCR-716857-1, SCR-719758-1, SCR-725364-1, SCR-726748-1, SCR-727781-1, and SCR-741900-1. Press articles described Mr. Perez’s domestic violence as having punched a woman in the face and dragging her away from her home. According to press reports, the woman broke free and Mr. Perez fled. Santa Rosa Police searched using a drone and canine and eventually found Mr. Perez hiding in a tree. See *Press Democrat* “Using a Dog and a Drone, Santa Rosa Police Catch a Suspect Hiding in a Tree” (Aug 8, 2019). [REDACTED], who was with Mr. Perez during the incident under review here, confirmed that [REDACTED] was the domestic violence victim in that case. Violation of P.C. § 273.5 is listed in the court records as a misdemeanor but the statute identifies it as a felony.

³ See Warrant Nos. 2012933, 2012943, 2012945, 2012949, 2007250, 1915043, 1910050, 1905645, 1905225, 1905227, 1905229, 1903301, 1903303, 1903315, 1902558, 1817108, 1817111, 1814442, 1814443, 1811660. Three warrants outstanding as of February 25, 2021 were in SCR-730188-1 (hearing on violation of formal probation, domestic violence), SCR-727781-1 (hearing on violation of conditional sentence, evading officer), and SCR-741900-1 (hearing on evading police from October 2020). The SCSO Incident Report identified a fourth warrant in SCR-726748-1 but the court record did not reveal this.

⁴ The IA Investigator and deputies indicated the probation terms included warrantless searches during day or night, but documentation concerning the probation terms was not included in the investigatory record. For purposes of this Audit we assume the formal probation terms included warrantless day/night search provisions, as these would be consistent with nearly all probation grants.

⁵ Dep. Yebra cited SD210480172 as the criminal matter related to Mr. Perez’s February 17, 2021 officer evasion. (Incident Report at 2; IA Report at 4). Dep. Joel Auerbach stated that although Mr. Perez previously fled, a probation search was conducted on February 17 during which Dep. Auerbach “noted several instruments within the shed that could be used as potential weapons.” (Incident Report at 2). Dep. Auerbach does not state what these “instruments” were.

A. Deputy Perimeter Around the Shed

Dep. Yebra, Dep. Maikranz, Dep. Auerbach and Dep. Collier with his canine entered the yard through a gate and proceeded to a shed in the backyard. (Sgt. Salkin remained out front). A blue tarp covered the area in front of the shed. (Auerbach BWC 0:01–1:21; Collier BWC 0:01–1:25). Dep. Collier estimated the shed to be 10 feet by 12 feet which is consistent with BWC footage. (Incident Report at 3).

Dep. Collier announced in a loud voice “Sheriff’s office.” (Collier BWC 1:37; Auerbach BWC 1:31). Shortly after he again announced in a loud voice “Sheriff’s office canine. Come out with your hands up or you’re going to get bit.” (Collier BWC 1:45–1:48; Auerbach BWC 1:38–1:41). A few seconds later Dep. Collier again stated in a loud voice “Sheriff’s office canine, come out now or you’re going to get bit.” (Collier BWC 2:07–2:10; Auerbach BWC 2:00–2:03).

Up to this point the door to the shed (which opened outward to the left toward Dep. Collier’s position) remained closed. Dep. Auerbach opened the shed door and stated loudly “Come out now.” Dep. Collier then stated loudly “Show me your hands or you’re going to get bit.” (Collier BWC 2:14–2:17; Auerbach BWC 2:05–2:10).

Dep. Auerbach informed Dep. Collier that Mr. Perez was behind a “thing” referring to a cabinet visible inside the shed just to the left of the entrance. (Auerbach BWC 2:05–2:10). The cabinet is visible in Dep. Auerbach’s BWC footage but not from Dep. Collier’s position. Dep. Collier then again announced loudly into the open door “Sheriff’s canine. Come out here, you’ll get bit. Come out here. Come out.” [REDACTED] ([REDACTED]) then exited the shed. (Collier BWC 2:19–2:26; Auerbach BWC 2:11–2:20).

B. Canine Deployment, Bite and Release

After [REDACTED] walked out of the shed Dep. Collier again stated “Sheriff’s office canine. Come out here or you are going to get bit.” Dep. Auerbach stated “I see you behind there” referring to the cabinet, and Dep. Collier again stated “You’re going to get bit.” (Collier BWC 2:28–2:34; Auerbach BWC 2:20–2:26).

Mr. Perez made no verbal response up to this point. Dep. Collier then sent the canine into the shed. The elapsed time between [REDACTED] exiting the shed and release of the canine was 7 seconds. Immediately upon releasing the canine Dep. Collier stated “hear”. The canine ran in and turned to its left towards Mr. Perez and Dep. Collier yelled out “hear” a second time and a moment later a third time. The canine’s tail was visible in Dep. Collier’s BWC but Mr. Perez remained behind the cabinet and the canine’s interaction with him is not visible.⁶

When the canine ran in Mr. Perez stated “alright, alright.” (Collier BWC 2:35–2:36; Auerbach BWC 2:27–2:29). When the canine got to Mr. Perez he again said “alright, alright.” (Collier BWC 2:36–2:37; Auerbach BWC 2:30–2:34). Mr. Perez was still behind the cabinet and the canine’s interaction with him is not visible, but Mr. Perez cried out “ow” several times indicating he was physically struggling with the canine. Dep. Collier yelled to Mr. Perez “come out, show me your hands.” During this struggle the canine and Mr. Perez were not visible. (Collier BWC 2:37–2:42). At this point the struggle caused the cabinet to topple

⁶ Dep. Collier stated in the Incident Report that the “hear” command was to direct the canine’s attention back to the deputy.

forward blocking the entrance into the shed. (Collier BWC 2:42–2:45; Auerbach BWC 2:35–2:38).

Dep. Collier pulled the cabinet through the entrance and Mr. Perez can be seen face down on the ground with the canine biting his left upper arm / lower shoulder. (Collier BWC 2:45–2:52). Dep. Collier entered the shed, took the canine by his harness and attempted to release the bite but the canine held it for an additional 18 seconds. During this time Mr. Perez stated “get it off me.” (Collier BWC 2:55–3:13). Sgt. Salkin (who had come from the front of the home and now stood just outside the shed entrance) informed Dispatch that the canine had been deployed and requested medical assistance. (Salkin BWC 3:20–3:24). Mr. Perez was then handcuffed; blood was visible on his left hand and wrist. (Collier BWC 3:13–3:36; Auerbach BWC 3:12–3:29). Mr. Perez was escorted to the front of the property.⁷

[REDACTED]

D. Search of Shed

Dep. Yebra searched the shed and found two glass items on the ground where Mr. Perez had been laying which appear to be smoking pipes. (Yebra BWC 17:10–25:05). Dep.

⁷ As he tried to release the bite Dep. Collier used the term “light” several times as a command. Dep. Collier did not explain in the Incident Report what this command meant, but based on the context it appears “light” is the command for the canine to disengage from Mr. Perez.

[REDACTED]

Forghani concluded they were drug paraphernalia in violation of Mr. Perez's probation. (Yebra BWC 26:10–26:31, 26:55–27:08; Forghani BWC 20:12–20:33).

III. POST-BITE ON-SCENE INTERVIEW OF MR. PEREZ

After the canine released the bite and handcuffs were secured, Mr. Perez was helped to his feet and walked with deputies to the front of the property. (Collier BWC 3:43–3:57; Auerbach BWC 3:37–4:55). While waiting for medics Dep. Collier cut Mr. Perez's shirt revealing a wound on his upper left arm/shoulder. (Auerbach BWC 7:28–7:31, 8:04–8:12; Collier BWC 7:32–7:55). Medics arrived and treated Mr. Perez for his injuries. (Auerbach BWC 9:00–12:05).

While being treated, Sgt. Salkin asked Mr. Perez "can you tell me why you didn't give up and why the dog had to bite you?" Mr. Perez replied "Because I was behind the furniture, bro." Sgt. Salkin then asked "Why were you behind the furniture, bro?" and Mr. Perez replied "Because I always hear shit at night, and I fucking randomly start hearing somebody fucking ransacking my house." Sgt. Salkin stated "It's a very small space. You didn't see that they were deputies?" Mr. Perez said "No", Sgt. Salkin repeated "You didn't see they're deputies" and Mr. Perez again said "no." Sgt. Salkin asked "Did you hear them say 'Sheriff's Office, probation search'?" Mr. Perez stated "No, I didn't hear nothing bro. I was doing something." Sgt. Salkin asked "Do you have hearing problem, are you hard of hearing?" Mr. Perez said "Yeah" and Sgt. Salkin stated "You are? You have a hearing problem" and Mr. Perez stated "I got [run] over as a kid, bro. This ear [pointing to his right ear] tore and it's messed up. At six years old I got [run] over." Sgt. Salkin then stated "[REDACTED] was in there and [REDACTED] said that [REDACTED] heard it." (Auerbach BWC 12:17–13:03; Collier BWC 12:12–13:08; Salkin BWC 12:20–13:20).

Dep. Collier then approached and called to Mr. Perez from behind his right side "Hey Mr. Perez. Mr. Perez." Mr. Perez turned his head toward Dep. Collier and said "What's up." Dep. Collier asked "You heard me say that?" Mr. Perez said "Mr. Perez?", Dep. Collier stated "yeah" and Mr. Perez said "yeah" nodding his head. Dep. Collier then said "Ok. I was yelling probably six times that loud 'Sheriff's canine. Come out or you will get bit by my dog.' And you did not come out." Mr. Perez replied "There's kids yelling all over there." Dep. Collier asked "They yell 'Sheriff's canine, you're going to get bit by a dog?'" Mr. Perez replied "I panicked bro. I panicked." Dep. Collier replied "I get it if you got scared and you were hiding." Mr. Perez said "I got scared" and Dep. Collier stated "That makes sense, that makes sense." Mr. Perez stated "Shit, if I would have had a gun or something don't you think I would have shot you guys or something?" Sgt. Salkin replied "I hope not" and Dep. Collier stated "I'm glad that didn't happen." (Collier BWC 13:22–14:01; Auerbach BWC 13:15–13:54; Salkin BWC 13:35–14:15).

IV. POST-BITE HOSPITAL INTERVIEW OF MR. PEREZ

Later at the hospital Dep. Collier discussed the canine deployment with Mr. Perez.

Dep. Collier asked Mr. Perez what he meant by his earlier comment at the scene that he got scare when he heard the deputies. Mr. Perez stated that people were "messaging" with him every night and that he had a "torch" on when the deputies came but he did not elaborate. Dep. Collier noted that he announced the deputies' presence loudly and [REDACTED] heard it, and Mr. Perez responded that he "panicked out." He explained that he understood the deputies also got "panicked out" dealing with people every day and they had to be careful, and that he did not want to get shot. (Collier BWC # 2 0:45–1:56).

Dep. Collier explained to Mr. Perez that he sent in the canine because of the possible danger to the deputies, he did not know Mr. Perez, and he did not know if he had a weapon. Mr. Perez explained that the canine first bit his hands as he tried to block the canine, and that the canine repeatedly bit. (Collier BWC # 2 1:56–4:17).

Dep. Collier stated that he did not send the canine in to hurt Mr. Perez but it was only for the officers' safety. The deputy told Mr. Perez that if a similar situation arose he should surrender peacefully so that a canine would not be used. Again, Dep. Collier explained that the deputies do not know whether Mr. Perez was hiding out of fear or because he was out to hurt the deputies. (Collier BWC # 2 5:19–6:15).

Mr. Perez explained that he did not punch the canine but was trying to get it away from his hand, and Dep. Collier responded that the canine is trained to not let go until the deputy tells him to. (Collier BWC # 2 7:40–8:04).

[REDACTED]

VI. SCSO INCIDENT / INVESTIGATION REPORT

Dep. Yebra prepared an Incident / Investigation Report (SD210225020) of the arrest and search which was supplemented by Dep. Collier, Dep. Auerbach and Dep. Forghani. The deputies' reports are consistent with what the BWC footage shows. Items of specific relevance are identified below.

Dep. Auerbach: When he opened the shed door Dep. Auerbach saw Mr. Perez hide behind the cabinet fully concealing himself. After [REDACTED] exited, “[i]n an attempt to deescalate the situation”, Dep. Auerbach “yelled out that I could see where he was hiding and he was ordered to come out”. (Incident Report at 2).

Dep. Collier: The deputy wrote that “[b]ased on [Mr.] Perez’ history of running from law enforcement, his history of weapon possession, his gang affiliation, his history of violence (domestic violence) and the [outstanding arrest] warrants I elected to utilize my canine partner ‘Duke’ in case Perez resisted deputies.” (Incident Report, Collier Supplement at 1).

Dep. Collier stated that after deputies arrived on scene Mr. Perez concealed himself, the deputy did not know if Mr. Perez was armed, and entry into the small shed where numerous items could be used as weapons posed a threat to the deputies' safety. Based on these factors, and Mr. Perez's criminal history and gang involvement, Dep. Collier deployed the canine. (*Id.*)

Dep. Collier stated that he commanded Duke to "search" for Mr. Perez and twice yelled the command "hear" to redirect the canine's direction to the deputy so he could guide the canine. After the cabinet fell Dep. Collier still did not know if Mr. Perez was armed so "I continued to allow Duke to engage Perez." (*Id.*) Dep. Collier continued:

I pulled the shelf out of the way and entered the structure. As I was pulling the shelf I observed [Mr.] Perez go to the middle of the room and lay down onto his stomach as if he was giving up. Once he was on the ground he yelled get it off of me. I observed Duke had made contact to [Mr.] Perez' left shoulder area by biting him. I observed that [Mr.] Perez did not have any obvious weapons in his hands so I took control of Duke and removed him from [Mr.] Perez. As I removed Duke from [Mr.] Perez part of his shirt got caught on Duke's teeth which caused his shirt to rip. The length of time from when Duke made first contact with [Mr.] Perez until I removed him was approximately 34 seconds.

(*Id.*)

VII. MR. PEREZ'S INJURIES FROM THE CANINE

Dep. Collier described Mr. Perez's injuries caused by Duke as "a small cut to his right pointer finger, puncture to the top of his left hand, a small tear to the palm of his left hand, a puncture and small [scrapes] to the top of his left forearm, [scrapes] and an approximate ¼ inch tear to the underside of his left forearm, [and] approximately six punctures to his left shoulder." (*Id.*)

BWC footage shows Mr. Perez's left hand and wrist bleeding, and several puncture wounds to his left shoulder. The medical records state "2 of [Mr. Perez's] wounds on his left arm were large enough that they required loose surgical closure with surgical staples." (Medical Report 2/26/21 at 5). Mr. Perez was treated at the hospital and medically cleared to be booked into the Main Adult Detention Facility that same night.

COMPLAINT ALLEGATIONS

I. JULY 10, 2021 LETTER

While incarcerated at the Main Adult Detention Facility, Mr. Perez sent a letter to IOLERO dated July 10, 2021 (approximately 5 months after his arrest).

Mr. Perez alleged that when the deputies arrived on February 25 he "complied peacefully" and the deputies "[sicced] and forced" the canine onto him after he complied and was proned out on the ground. Mr. Perez further alleged that he heard deputies "laugh" while the canine was biting him and while he was screaming for his life, and that he cried out that the dog was getting near his neck before the canine was removed.

Mr. Perez also alleged that the deputies "out of spite . . . intentionally destroyed the job/work I did on the property", and that as a result of the canine deployment he has scars, nerve damage and increased Post Traumatic Stress Disorder.

[REDACTED]

Mr. Perez stated that the deputies “treated us so disrespectfully horrible with verbal and physical abuse that’s detrimental to our well-being” and accused deputies and their supervisors of being “instruments of systemic racism”.

II. AUGUST 27, 2021 COMPLAINT

On August 27, 2021, Mr. Perez submitted to IOLERO a Complaint Form. The Complaint identifies the incident date as March 28, 2021 at 5:30 p.m., rather than February 25, 2021 at 9:00 p.m. when his arrest actually occurred. However, the substance of the allegations address the February 25 arrest.

Citing his July 10, 2021 letter, Mr. Perez claimed that he “complied and put my hands up and walked towards the door where all the [deputies] were and they tossed the K-9 at me”. Mr. Perez also stated that deputies were “laughing at me” the whole time the canine was deployed.

Based on his allegations Mr. Perez accused the deputies of (i) Conduct Unbecoming (ii) Unnecessary / Excessive Use of Force (iii) Racial Profiling / Bias-Based Policing (iv) Discourtesy (v) Improper Procedure (vi) Neglect of Duty and (vii) Dishonesty.

THE IA INVESTIGATION

I. THE INVESTIGATIVE RECORD

The IA Investigator was assigned to investigate Mr. Perez’s claims as to Dep. Collier. However, as the IA Investigator noted, Mr. Perez’s accusations were not specific to any particular officer and appeared to address them as a group. (IA Report at 4).

The IA Investigator reviewed BWC footage from Dep. Collier, Dep. Auerbach, Dep. Yebra, Dep. Maikranz, Dep. Castro, Dep. Forghani and Sgt. Salkin, along with the Incident / Investigative Report prepared by Dep. Yebra and supplemented by other deputies. Also included in AIM was Mr. Perez’s medical record regarding the canine-caused injuries.

The IA Investigator called Mr. Perez on June 12, 2022 to schedule an interview and Mr. Perez asked him to call back on June 21, 2022. (IA Report at 12).

The IA Investigator called Mr. Perez on June 21 but he did not answer and no voicemail box was available. The IA Investigator called Mr. Perez back four additional times that day with no answer. The same day the IA Investigator called [REDACTED] but her phone was no longer in service. (IA Report at 12).

On October 6, 2022, the IA Investigator reviewed and confirmed Mr. Perez’s prior criminal history and [REDACTED]

[REDACTED] (IA Report at 12–13).

The IA Investigator did not separately interview any of the officers involved in the arrest and search.

II. INVESTIGATOR'S ANALYSIS AND CONCLUSIONS

The IA Investigator broke Mr. Perez's allegations into components and addressed each separately. (IA Report at 14–18).

1. Deputies surrounded Mr. Perez in the shed. The IA Investigator found that deputies set up a perimeter around the shed which was consistent with SCSO Policy, and concluded the deputies should be “exonerated”.

2. Mr. Perez complied with deputies' commands, put his hands up and walked toward the door. The IA Investigator found that these actions did not occur and that the allegation was “unfounded”.

3. Deputies “tossed” the canine at Mr. Perez while he was complying and in a prone position. The IA Investigator found this allegation was false and was therefore “unfounded”.

4. Deputies were laughing the entire time the canine was biting Mr. Perez. The IA Investigator concluded that this did not occur and the claim was “unfounded”.

5. Deputies most likely falsified their reports. The IA Investigator concluded this did not occur and the claim was “unfounded”.

6. Deputies “broke and abandoned” policy and procedure. The IA Investigator stated that after reviewing all BWC footage and reports, he “did not observe any violation of Sheriff's Office policy and/or procedure.” Accordingly the IA Investigator concluded the claim was “unfounded”.

7. Deputies intentionally destroyed work he did on the property. The IA Investigator found that a blue tarp was removed and torn by Dep. Auerbach, but that this was reasonable to address safety concerns of the officers and prevent concealment, and there was no indication Dep. Auerbach did so with any malice. The IA Investigator also found that Mr. Perez knocked over the cabinet as a result of struggling with the canine and Dep. Collier pulled the cabinet through the door, but there was no evidence this was done with any malice. Accordingly, the IA Investigator concluded that property damage was incidental to law enforcement and was reasonable, that Mr. Perez could make a claim for damage if he desired, and that the deputies should be “exonerated”.

[REDACTED]

11. Deputies were verbally and physically abusive throughout the incident. The IA Investigator concluded that this did not occur and the claim was “unfounded”.

12. Deputies and supervisors were instruments of systemic racism. The IA Investigator concluded that this did not occur and the claim was “unfounded”.

13. The canine bit Mr. Perez’s forearm and shoulder resulting in injuries. The IA Investigator found that this did occur, but the canine deployment complied with SCSO Policy 300 Use of Force and Policy 309 Canine Deployment.

Policy 300 – Use of Force. For Policy 300 Use of Force, the IA Investigator found that facts known to Dep. Collier at the time were that SCSO canine warnings were repeatedly and loudly made, Mr. Perez refused to comply with commands and instead concealed himself in a small shed, he had a history of possessing weapons and resisting law enforcement, he had an “outstanding domestic violence charge”, and entry into the shed would jeopardize deputy safety. When Mr. Perez responded to the canine by saying “alright”, he still did not comply with commands. When Mr. Perez fell to the ground along with the cabinet, the canine released its bite on his forearm and bit him on his left shoulder. When Mr. Perez placed his hands behind his back Dep. Collier gave a command to release the bite which the canine subsequently did. Medical care was promptly provided to Mr. Perez.

Based on this record, the IA Investigator concluded that with respect to SCSO Policy 300 Use of Force, “Deputy Collier’s decision to deploy his canine partner and the force which resulted from the deployment was reasonable, was within policy and was lawful; therefore the finding should be “Exonerated.”

Policy 309 – Canine Deployment. With respect to SCSO Policy 309 Canine Deployment, the IA Investigator concluded that Dep. Collier “reasonably believed [Mr.] Perez was wanted for multiple outstanding warrants, at least one of which was pertaining to a serious crime (domestic violence), [Mr.] Perez was concealed inside his shed, he was non-compliant, he previously fled and previously resisted law enforcement officers and he was believed to be affiliated with a criminal street gang.” Dep. Collier also reported that he believed entry into the shed by other than a canine would pose a threat to the safety of deputies.

The IA Investigator also found that “as soon as Deputy Collier determined [Mr.] Perez was no longer a threat, which was before [Mr.] Perez was secured in handcuffs, he ordered the canine to release from the bite. The canine subsequently released [Mr.] Perez after the first command.”

On this record, the IA Investigator concluded that Dep. Collier’s deployment of the canine was within SCSO Policy and he should be “exonerated.”

APPLICABLE LAW AND POLICIES

I. INVESTIGATIVE STANDARDS

A. Burden of Proof—“Preponderance of the Evidence”

In an employee investigation, a claim of misconduct may be “sustained” and discipline imposed if a preponderance of the evidence shows the employee violated law or agency policy. *See* Sonoma County Civil Service Commission Rule 10.5(I)(2). “Preponderance” is defined as evidence that “has more convincing force and the greater probability of truth” than the opposing evidence. (*Id.*). “Sustained” claims may be retained in the employee’s general personnel records and could be (in some circumstances) subject to public records requests. *See* Penal Code §§ 832.5, 832.7, 832.8.

B. Complete Investigative Record—“Clearly Establish”

Where a preponderance of the evidence shows that the allegations are untrue or that the employee complied with law or policy, punitive action may not be imposed.

In addition, California Penal Code §§ 832.5, 832.7 and 832.8 segregate unsustainable claims from the employee’s personnel file and/or exempt them from public records requests. These are claims found to be (i) “frivolous” because they are “totally and completely without merit or for the sole purpose of harassing”, (ii) “unfounded” because the allegation was determined to be “not true”, and (iii) claims in which the employee was “exonerated” because the actions were “not violations of law or department policy”. (Penal Code § 832.5(c), (d); Code of Civ. Proc. § 128.5(b)(2)).

To qualify as “unfounded” or “exonerated”, Penal Code § 832.5 requires that the “investigation *clearly establish*” that the allegations are “not true” or that the actions “are not violations of law or department policy”. (Italics added). To find a claim to be frivolous, the investigation must establish that any reasonable person would agree it is “*totally and completely* without merit” or was made for the “*sole purpose of harassing*”. (Code Civ. Proc. § 128.5) (italics added).

We interpret “clearly establish” as used in Penal Code §§ 832.5, 832.7 and 832.8 to mean the investigation was sufficiently thorough to establish a *complete* factual and analytic record. Only when the investigation is “complete” can determinations properly be made as to whether the claim is or is not supported by a preponderance of the gathered evidence.

In compliance with Penal Code §§ 832.5, 832.7 and 832.8, SCSO Policy § 1010.6.4 requires that all personnel complaints be classified as “unfounded”, “exonerated”, “not sustained”, or “sustained”. The definition of “unfounded” and “exonerated” in SCSO Policy 1010.6.4 differs in some respects from Penal Code §§ 832.5 and 832.7 (*e.g.*, investigation “discloses” rather than “clearly establishes”). We assume SCSO intends its definition to match the statutory criteria and therefore apply the statutory standard here.⁹

II. APPLICABLE LAW

California empowers peace officers to arrest a person in obedience to a warrant or if the officer has “reasonable cause to believe” that a person has committed a public offense. (Pen. Code § 835a(b), § 836(a)). The peace officer may use “objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.” (Pen. Code § 835a(b)).

A peace officer’s legal privilege to employ force is a potent authority. At the federal level, the Fourth Amendment erects minimal safeguards by prohibiting use of force that is “unreasonable”. *Graham v. Connor*, 490 U.S. 386, 396 (1989). The “reasonableness” standard is necessarily a fact-specific inquiry made on a case-by-case basis balancing governmental interests against the nature and quality of intrusion on the individual. This balancing includes the severity of the crime, whether the suspect posed an immediate threat to officers or others, and whether the suspect was actively resisting or evading. (*Id.*).

This minimal constitutional “reasonableness” evaluation is overtly deferential to the peace officer, requiring that use of force be judged “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”. This officer-centric

⁹ SCSO Policy 1010.6.4 defines “not sustained” as “the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member”. “Not sustained” is not a category referenced or defined in Penal Code §§ 832.5, 832.7 or 832.8. The U.S. Dep’t of Justice defines “not sustained” as “the allegations cannot be proven true or untrue by a preponderance of the evidence”. See U.S. Dep’t of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* at 50.

review makes “allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” (*Id.*).

While the focus is officer-centric, the peace officer’s “perspective” must nevertheless be “objectively” reasonable in light of the “totality” of the “facts and circumstances” that actually confronted them. *Id.*; *Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1006–07 (9th Cir. 2017), citing *Saucier v. Katz*, 533 U.S. 194, 207 (2001) (excessive force claims evaluated for objective reasonableness based on information officer had when conduct occurred); *Glenn v. Washington County*, 673 F.3d 864, 873 n.8 (9th Cir. 2011) (because reasonableness of force must be judged from perspective of reasonable officer on scene, cannot consider evidence of which officer was unaware at the time force was used). Accordingly identifying what the officer actually knew and what they were actually faced with is critical to assessing whether their perceptions, and their actions, were “objectively reasonable”.

In addition to these minimal Fourth Amendment safeguards, the California Legislature provides a more detailed and limited statutory grant of authority to peace officers to use force. Thus, under California law an officer’s decision to use force is evaluated for objective reasonableness “from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight”, and shall account for occasions when an officer must make a quick judgment, as is the case under the Fourth Amendment. (Pen. Code § 835a(a)(4)).

At the same time, the California Legislature acknowledged that a grant of authority to use force is a “serious responsibility that shall be exercised judiciously and with respect for human rights and dignity”. (Pen. Code § 835a(a)(1)). Accordingly, while evaluated from the perspective of a reasonable officer, use of force shall also be reviewed “in a manner that reflects the gravity of that authority and the serious consequences of the use of force” in order to “ensure that officers use force consistent with law and agency policies.” (Pen. Code § 835a(a)(3)). *See also* SCSO Policy 300.2 (“Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.”).

In addition, the California Legislature through AB 26 (now codified at Government Code § 7286) amended the use-of-force evaluation by requiring California law enforcement agencies to adopt more specific standards governing its officers’ use of force and to make those standards publicly available. These include (i) a requirement that officers use de-escalation techniques when feasible; (ii) a requirement that officers may only use a level of force “that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance”; and (iii) adoption of comprehensive guidelines regarding “methods and devises” for the application of force. (Gov’t Code § 7286(b)). These new standards set a higher bar for use of force than that set in the Fourth Amendment of the United States Constitution. Specifically, officers must now limit their force to that *proportional* to the situation, and consider *de-escalation* techniques when feasible, not just meet the Fourth Amendment reasonableness standard.

III. SCSO POLICIES

SCSO incorporated the requirements of AB 26 into its policies in place as of December 2020.¹⁰

A. Use of Force—Policy 300

SCSO Policy 300 defines “*force*” as the “application of physical techniques or tactics, chemical agents or weapons to another person.” (§ 300.1.1). “*Deadly force*” is force that “creates a substantial risk of causing death or serious bodily injury”, and “*serious bodily injury*” is defined as “[a] serious impairment of physical condition, including but not limited to” “loss of consciousness”, “concussion”, “bone fracture”, “protracted loss or impairment of function of any bodily member or organ”, “a wound requiring extensive suturing” and “serious disfigurement”. (§ 300.1.1). “*Less lethal weapon*” is defined as an “authorized weapon used to launch, fire, or propel less-lethal munitions to engage a subject with the intent to gain their compliance and overcome a subject’s active resistance or assaultive behavior.” (§ 300.1.1).¹¹

Consistent with the minimal Fourth Amendment and Penal Code § 835a requirements, SCSO Policy 300 provides broadly that “Deputies shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the deputy at the time of the event to accomplish a *legitimate law enforcement purpose*.” (§300.3) (italics added). “Reasonableness” is to be judged from the perspective of a reasonable deputy at the scene at the time of the incident and must account for the fact that deputies are often required to make split-second decisions under tense, uncertain or rapidly evolving circumstances. (*Id.*).

Having generally adopted the minimal constitutional standards for reviewing use of force, SCSO Policy sets out some limiters. “Deputies shall use only that force which is objectively reasonable . . . *to effectively bring an incident under control*.” (§ 300.2) (italics added). By these terms, once an incident has been brought “under control” use of force is to terminate.¹²

Moreover, consistent with AB 26, “[d]eputies may only use a level of force that they reasonably believe is *proportional* to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.” (§ 300.3; Gov’t Code § 7286(b)(2)).

SCSO Policy also provides that, when reasonable, deputies “should consider actions that may increase deputy safety and may decrease the need for using force” by summoning additional resources, formulating a plan to handle an unstable situation that does not appear to require immediate intervention, or employing other tactics that do not increase deputy jeopardy. (§ 300.3.6). Deputies “should” also, when feasible, consider and use “reasonably available alternative tactics and techniques that may persuade an individual to voluntarily

¹⁰ This Audit references SCSO Policies dated December 23, 2020. The arrest in this case occurred two months later on February 25, 2021. We are not aware of any revised policies released by SCSO between December 2020 and February 25, 2021.

¹¹ Specific examples given of less-lethal munitions are Taser, foam/rubber batons and chemical agents. (§ 300.1.1).

¹² Facially, bringing an incident “under control” is not the same as achieving a “legitimate law enforcement purpose.” The latter addresses the officer’s legal authority to address an incident while the former speaks to the more practical issue of controlling the parties and the scene.

comply or may mitigate the need to use a higher level of force”. (§ 300.3.6.; Gov’t Code § 7286(b)(1)).¹³

Policy § 300.3.2 further identifies factors to “consider” both when “determining whether to apply force” and later when “evaluating whether a deputy has used reasonable force”. These include:

- immediacy and severity of the threat
- the individual’s conduct as reasonably perceived by the deputy
- proximity of weapons
- the availability of other reasonable options
- seriousness of the suspected offense or reason for contact with the person
- training and experience of the deputy
- potential for injury to the deputies or suspect
- whether the person is resisting or attacking the deputy
- the risk of escape
- apparent need for “immediate” control of the person
- prior contacts with the person or awareness of propensity of violence
- “any other exigent circumstances”

(See Gov’t Code § 7286(b)(21) (requiring policies to identify “factors for evaluating and reviewing all use of force incidents”).

SCSO Policy requires the deputy who used “any” force to document it completely, promptly, and accurately in an appropriate report, to store any BWC footage, and to photograph physical injuries (or lack of injury). (§ 300.5). The deputy’s supervisor must be notified as soon as “practicable” after force is used in which there was visible injury (among other things). (§ 300.5.1; Gov’t Code § 7286(b)(13) (requiring policies to contain “comprehensive and detailed requirements” for “prompt” internal reporting of a use of force incident).

Deputies shall procure medical assistance for any person injured by use of force. (§ 300.6; Gov’t Code § 7286(b)(15) (requiring policy that deputy promptly provide or procure medical assistance for persons injured in use of force incident). The deputy or supervisor on scene shall inform the medical provider that the person was subjected to force and describe the force used. (§ 300.6).

SCSO Policy also requires a supervisor to respond to any reported use of force (if reasonably available) to obtain basic facts from deputies, ensure injured parties are treated, and to obtain a separate “recorded interview” with the subject against whom force was used. The

¹³ Government Code 7286(b)(1) requires SCSO to maintain a policy that “shall include” “a requirement that officers utilize de-escalation techniques . . . when feasible”. By its terms, however, SCSO Policy § 300.3.6 and § 300.1.1 provide only that deputies “should consider” de-escalation techniques or “should consider” slowing down the incident. Thus SCSO Policy appears to impose a more discretionary standard for assessing de-escalation alternatives than the mandatory terms of Government Code § 7286(b)(1). For present purposes, and unless informed otherwise by SCSO, we assume that SCSO Policy intends to follow the mandatory requirements of Government Code § 7286(b)(1) notwithstanding SCSO’s use of the term “should”.

supervisor must further ensure photos of the injuries (or lack of injuries) are taken and retained, identify witnesses not included in the deputies' reports, review and approve the reports, and determine any potential for civil litigation. (§ 300.7; Gov't Code § 7286(b)(14) (requiring policies outlining supervisor's role in reviewing use of force applications).¹⁴

The supervisor shall inform the Watch Commander and Risk Management if he or she believes the incident may give rise to civil litigation. The supervisor is also required to evaluate the circumstances and initiate an "administrative investigation" if there is a question of "policy non-compliance or if for any reason further investigation may be appropriate". (§ 300.7).

The supervisor must also complete the "use of force report" in AIM and forward it to the Use of Force Lieutenant who must review it to "ensure compliance" with SCSO policy and address any training issues. If use of force is found to be outside of policy it will be referred to Internal Affairs for additional investigation. (§300.7.1).

Deputies, investigator and supervisors are to receive periodic training on use of force policies and demonstrate their knowledge and understanding of policy. The Professional Standards Bureau Lieutenant should further ensure deputies receive training on de-escalation tactics. (§ 300.8; Gov't Code § 7286(b)(16), (17), (22)) (requiring policies to implement training standards regarding use of force).

At least annually the Law Enforcement Division Administration Captain and the Detention Division Captain should prepare a "report" identifying trends in the use of force, and recommendations concerning training, equipment and policy revision. (§ 300.9).

B. Use of Force Control Devices and Techniques

Government Code § 7286(b)(10) requires law enforcement policies to provide "[c]omprehensive and specific guidelines regarding approved methods and devices available for application of force".

Policy 300 identifies firearms, "less-lethal weapons", and "pain compliance techniques" as methods and devices for application of force. (§ 300.1.1, § 300.3.3). Pain compliance techniques are not defined other than by reference to techniques in which the deputy has completed "Office-approved training". "[A]ny pain compliance technique" must discontinue once a deputy determines that compliance has been achieved or the technique is ineffective. (§ 300.3.3).

SCSO Policy 303 also authorizes deputies to use certain "control devices" to "control subjects who are violent or who demonstrate the intent to be violent" in accordance with the Use of Force Policy. (§ 303.2). Specific devices referenced are batons, tear gas, oleoresin capsicum ("pepper spray"), and "kinetic energy projectiles".

SCSO Policy 304 authorizes deputies to use a Taser [brand name for a "conducted energy weapon"] to control a violent or potentially violent individual", and sets out guidelines for its use. A Taser is specifically identified as a "less-lethal weapon" authorized for use of force under Policy 300.

¹⁴ Unless there is an allegation of misconduct or excessive force the supervisor's discussions with deputies are considered a routine contact in the normal course of duties. (§ 300.7). *See also* Public Safety Officer's Procedural Bill of Rights, Gov't Code § 3303(i) (excluding routine contacts in normal course of duty from certain procedural requirements). The "recorded interview" with the subject shall be retained until all potential for civil litigation has expired. If the subject did not waive their *Miranda* rights, the interview is not to be used in connection with any criminal charges. (§ 300.7).

C. Use of Canine—Policy 309

Using canines to physically apprehend a person is a “use of force”. *See, e.g., Chew v. Gates*, 27 F.3d 1432 (9th Cir. 1994) (canine use to apprehend through bite is use of force). However, canines are not specifically identified by SCSO Policy 300 or Policy 303 as a use of force “technique” or “control device”.

Instead, SCSO Policy 309 provides that canines are to be used for three general purposes to “augment police services to the community”, only one of which involves force: (i) locate individuals (ii) locate contraband and (iii) “apprehending criminal offenders.” (§ 309.1).

SCSO canine teams, led by a canine supervisor, assist the Patrol Bureau “primarily in assist or cover assignments”. (§ 309.3, § 309.4). Patrol Bureau members “are encouraged to request the use of a canine.” (§ 309.5).

Policy 309 allows canines to “locate and apprehend a suspect” if the handler “reasonably believes that the individual has either committed, is committing or threatening to commit any *serious offense* and if any of the following conditions exist:

- (a) There is a reasonable belief the suspect poses an imminent threat of violence or serious harm to the public, any deputy or the handler.
- (b) The suspect is physically resisting or threatening to resist and the use of a canine reasonably appears necessary to overcome such resistance.
- (c) The suspect is believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of deputies or the public.

(§ 309.6) (*italics added*). Use of a canine to search and apprehend in other circumstances is to comply with the “objectively reasonable” minimal constitutional standard. (*Id.*).

Using a canine to “locate and apprehend a suspect wanted for a *lesser criminal offense*” (*e.g.*, not constituting a “serious offense”) requires approval from the Watch Commander. Unless circumstances change that present an *imminent threat* to deputies, the canine or the public, canine use involving lesser offenses “should be conducted on leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual.” (§ 309.6) (*Italics added*).

Prior to using a canine to “search for or apprehend” a person, the handler or supervisor on scene “should carefully consider all pertinent information reasonably available at the time” including:

- the nature and seriousness of the suspected offense
- whether violence or weapons were used or anticipated
- the degree of resistance or threatened resistance the suspect has shown
- the suspect’s known or perceived age
- potential for injury to deputies or the public if the canine is not used
- potential danger to the public or deputies if the canine is released
- potential for the suspect to escape or flee if the canine is not utilized.

“It is the canine handler’s responsibility to evaluate each situation and determine whether the use of a canine is appropriate and reasonable.” (§ 309.6.1).

Unless it would increase the risk of injury or escape, “a clearly audible warning announcing that a canine will be used if the suspect does not surrender should be made prior to

releasing a canine. The handler should allow a reasonable time for a suspect to surrender and should quiet the canine momentarily to listen for any verbal response to the warning.” (§ 309.6.2).

In “all applications”, once a suspect has been *located* and no longer “reasonably appears to present a threat or risk of escape” the handler should “secure the canine” as soon as “reasonably practicable.” (§ 309.6) (*italics added*).

If the canine has “apprehended” a person with a bite and the handler believes the suspect no longer poses a threat, he or she should “promptly command the canine to release the suspect.” (§ 309.6).

When a canine deployment results in a bite or causes injury, a supervisor should be promptly notified, the injuries documented in both a “canine use report” and the incident report, and the injured suspect provided medical care. Photographs shall be made of the injuries and retained. (§ 309.6.3).

D. Warrant Service—Policies 607 and 608

SCSO Policy 607 and Policy 608 sets guidelines for the planning and serving of arrest and search warrants which directly interplay with the Use of Force and Canine Policies.

If a deputy “reasonably believes” serving an arrest warrant “may pose a higher risk than commonly faced on a daily basis” the deputy should complete a risk assessment form and submit it to the appropriate supervisor and the operations director for review and risk classification. (§ 607.5, § 608.3, § 608.4). The Special Operations Unit (SOU) Lieutenant shall review all risk assessment forms with the involved supervisor to determine the risk level of the warrant service. (§ 607.3, § 608.3).

If service of the arrest warrant is *not* classified as high risk, the supervisor “should weigh the risk of entry into a residence to make an arrest against other alternatives, such as arresting the person outside of the residence where circumstances may pose a lower risk.” (§ 607.5).

If the warrant is classified as “high risk” service will be coordinated by the SOU Lieutenant who has sole authority to determine the manner of service including the number of deputies involved. This includes determining the resources needed, including SWAT, canine, and additional personnel. (§ 608.4.3).¹⁵

The deputy responsible for effecting service should ensure that, among other things, “persons who are detained as part of the warrant service are handled appropriately under the circumstances” and the property condition is documented with photos or video. (§ 607.7(e)).

“Deputies must be sensitive to the safety risks of all persons involved with the service of a warrant. Depending on the circumstances and facts present, it may be appropriate to control movements of any and all persons present at a warrant service, including those who may not be the subject of a warrant or suspected in the case. However, deputies must be

¹⁵ A “high risk operation” is defined as “Operations, including service of search and arrest warrants and sting operations, that are likely to present higher risks than are commonly faced by deputies on a daily basis, including suspected fortified locations, reasonable risk of violence or confrontation with multiple persons, or reason to suspect that persons anticipate the operation.” (§ 608.1.1).

mindful that *only reasonable force may be used* and weapons should be displayed no longer than the deputy reasonably believes is necessary (see the Use of Force Policy).” (§ 607.8) (italics added).

DISCUSSION AND CONCLUSIONS

Mr. Perez’s allegations fall into two general categories: (i) specific claims about the officers’ conduct during the arrest, and (ii) whether canine deployment complied with law and SCSO policy.

As discussed below we **AGREE** with the IA Investigator that Mr. Perez’s allegations of officer misconduct during the arrest are **UNFOUNDED**.

However, we **DISAGREE** with the finding of **EXONERATION** regarding the canine deployment because the investigation does not clearly establish compliance with law or policy.

I. THE RECORD ESTABLISHES THAT CLAIMS OF OFFICER MISCONDUCT DURING THE ARREST ARE UNFOUNDED

We begin first with Mr. Perez’s claims about officers’ actions during the arrest operations.

Mr. Perez claims that during the arrest he “complied peacefully”, put his hands up and walked towards the door when the canine was deployed; deputies “[sicced] and forced” the canine onto him after he was proned out on the ground; deputies “laughed” while the canine was biting him; “out of spite” deputies “intentionally” destroyed work he did on the property;

deputies treated Mr. Perez and “disrespectfully horrible with verbal and physical abuse”; and deputies and their supervisors were “instruments of systemic racism”.

The IA Investigator reviewed the BWC footage and other record material and concluded that these allegations were “Unfounded.”

We concur that the record clearly establishes that *none* of these alleged actions occurred. To the contrary, the record shows all officers conducted themselves professionally and respectfully.

- Mr. Perez did *not* comply with demands to come out of the shed or come to the door with his hands in the air; after deputies announced themselves he hid behind a cabinet and stayed there until the canine engaged him. The canine was *not* deployed when Mr. Perez was already prone on the ground; the canine was deployed while Mr. Perez hid behind the cabinet, and after Mr. Perez knocked down the cabinet and laid on the ground the canine repositioned its bite from the lower left arm to the upper left arm.

- Deputies did *not* laugh while the canine had its bite on Mr. Perez. Deputies entered the shed and Dep. Collier worked to release the bite. There was no laughter while the canine bite was applied, and no laughter was found during *any* part of the arrest that could reasonably be viewed as inappropriate.

[REDACTED]

- Deputies did *not* treat Mr. Perez or [REDACTED] “disrespectfully”, “horribl[y]”, or with verbal or physical abuse. Mr. Perez’s [REDACTED] was firmly but respectfully told to stay back from the shed and from [REDACTED] while he was being arrested. Sgt. Salkin and other deputies explained to her that Mr. Perez was being treated by medics and was under arrest. This interaction was entirely respectful and there is no evidence of verbal or physical abuse to Mr. Perez.

Sgt. Salkin separately spoke with [REDACTED] and assured [REDACTED] that Mr. Perez was safe. The sergeant’s interaction with [REDACTED] was calm, respectful and empathetic. Sgt. Salkin also spoke with [REDACTED] who arrived after he was arrested. The sergeant explained why Mr. Perez was being arrested and what had occurred, he listened to the [REDACTED]’ concerns about Mr. Perez’s mental health and offered to arrange for them to speak with the doctor at the hospital. Sgt. Salkin also provided his name and rank and told the [REDACTED] to ask for him at SCSO if they had any questions. Sgt. Salkin’s interaction with the [REDACTED] was at all times courteous and respectful.

- Upon arrival at the shed both Dep. Auerbach and Dep. Collier pulled down a blue tarp covering the front area. The record clearly shows this was done to gain access to the shed. There is no evidence that either deputy pulled the tarp down “out of spite” and with the “intent” to destroy property. Dep. Collier also pulled the cabinet from the doorway after Mr. Perez knocked it over in his struggle with the canine. Again, the record clearly shows Dep. Collier did this to gain access to the shed, and there is no evidence that the deputy pulled the cabinet “out of spite” and with the “intent” to destroy property.¹⁶

- With respect to claimed racism, SCSO Policy 401 categorically forbids bias-based policing and Policy § 320.5.3 prohibits racial discrimination. Mr. Perez was on formal probation, was subject to search, had outstanding warrants issued by the court for his arrest, and SCSO effected Mr. Perez’s arrest pursuant to these warrants and probation terms. There is no evidence that race or ethnicity played any role in SCSO’s service of this arrest warrant and probation search.

Accordingly we agree with the IA Investigator that the record clearly establishes that Mr. Perez’s claims of Conduct Unbecoming, Racial Profiling / Bias-Based Policing, Discourtesy, Neglect of Duty and Dishonesty are **UNFOUNDED**.¹⁷

¹⁶ The IA Investigator concluded that while officer actions may have damaged property, Mr. Perez never submitted a claim for damage and the deputies’ actions were legitimate law enforcement tactics permitted by SCSO Policy, thus requiring a finding of “EXONERATED.” We generally agree with this assessment as it relates to a possible monetary claim for damage to the property. However, Mr. Perez’s claim specifically was that deputies *intentionally* destroyed property *out of spite*. The record clearly shows this did not occur and therefore the appropriate finding is “UNFOUNDED”.

¹⁷ As noted earlier, Mr. Perez’s accusations are not directed against any deputy by name but appears to target them as a group. The UNFOUNDED finding applies to all officers involved in the incident.

II. THE RECORD DOES NOT CLEARLY ESTABLISH THAT CANINE DEPLOYMENT COMPLIED WITH SCSO POLICY 309

Mr. Perez also alleged that the officers “broke and abandoned” policy and procedure and used excessive force by deploying the canine.

The IA Investigator concluded that when Dep. Collier deployed the canine he knew or reasonably believed that Mr. Perez was “wanted for a serious offense (domestic violence)”, Mr. Perez was concealing himself and was non-compliant with deputies’ commands, Dep. Collier believed Mr. Perez may be armed given his prior convictions for possessing a weapon, and Dep. Collier believed entry into the shed by other than a canine would threaten the deputies’ safety. (IA Report at 19). Accordingly, the IA Investigator concluded that Dep. Collier’s canine deployment was lawful and complied with SCSO Policies 300 and 309.

As discussed below, the question of whether canine deployment complies with federal and state use of force rules, and with SCSO’s Use of Force and Canine Policies, is complex. The IA investigation’s analysis did not address the salient issues arising under these laws and policies.

Accordingly, we conclude the investigation was **INCOMPLETE** and does not establish that canine deployment complied with law and SCSO Policy. We first address canine-specific Policy 309.

A. Not Clear Mr. Perez Was Being Arrested for a “Serious Offense”

Policy 309 provides that canines may be used to apprehend a person the handler “reasonably believes” has “committed, is committing or threatening to commit any *serious offense*”. (§ 309.6) (*italics added*).

Conversely, Policy 309 provides that using a canine to “locate and apprehend” a suspect “wanted for a *lesser criminal offense*” requires approval of the Watch Commander and that absent changes resulting in an “imminent threat to deputies”, canine deployment is to be conducted “on-leash or under conditions that minimize the likelihood the canine will bite or otherwise injure the individual”. (§ 309.6) (*italics added*).

Thus, whether there is a reasonable belief of a “serious offense” or a “lesser criminal offense” is a threshold requirement to apprehend a suspect using a canine bite.

SCSO Policy does not define “serious offense” or “lesser criminal offense” and the Investigative Report does not indicate how SCSO interprets these phrases. Without some operative definition, these phrases are open to a wide range of applications to support canine deployment, and may not be sufficiently specific to establish an “objectively reasonable” decision by an officer to employ force as required by federal and state standards.

Aside from the lack of definition, the context of Policy 309 indicates that “serious offense” and “lesser criminal offense” refers to the offense for which the person is being arrested at that moment, and not for crimes for which they had previously been convicted. This is consistent with § 309.6 and § 309.6.1(a), both of which require deputies to consider the seriousness of the “suspected” offense rather than previously adjudicated convictions.¹⁸

¹⁸ This interpretation not only adheres to the text of Policy 309, it also prevents questionable outcomes. If “serious offense” or “lesser criminal offense” meant any offense for which the party had been convicted in the past (rather than the suspected crime for which they were being arrested), Policy

The investigative record on the question of Mr. Perez’s “offense” is incomplete and as such, it raises more questions than it answers. For example, while the IA Investigator concluded Dep. Collier knew when he deployed the canine that Mr. Perez was wanted for a “serious offense (domestic violence)”, the record shows Mr. Perez was being arrested on bench warrants for failing to appear in court, and not for committing domestic violence. Dep. Collier himself acknowledged this in the Incident Report where he understood Mr. Perez was “on probation” for a domestic violence conviction.¹⁹

In addition, absent reasonable belief that Mr. Perez had committed or was committing a “serious offense”, Policy 309 requires canine deployment be made “on-leash” or under other conditions that minimize the likelihood the canine would bite Mr. Perez. The record does not show that sending the canine off-leash into the shed was under conditions minimizing the likelihood that Mr. Perez would be bit. As soon as the canine entered the shed Mr. Perez stated several times “alright”, indicating he was ready to comply. Mr. Perez’s position behind the cabinet and the canine’s initial interaction with Mr. Perez was not visible from Dep. Collier’s angle outside the shed, preventing any visual assessment by Dep. Collier of when the canine should be called off prior to inflicting a bite. Dep. Collier issued the “hear” command to the canine to refocus its attention and the canine bit Mr. Perez almost immediately after it made physical contact with him. Absent further development and elaboration, this record as it presently stands suggests that instead of minimizing the likelihood of a bite, canine deployment in this case *increased* the likelihood that a bite would occur.²⁰

The IA Report did not address the threshold issue of whether the offense for which Mr. Perez was being arrested permitted apprehension through canine bite under Policy 309. It is an open question on this record whether Mr. Perez’s “offense” met the requirement for an off-

309 would allow use of canine bites to apprehend a person for *any* suspected crime as long as the person had prior convictions for “serious offenses” (however defined). Use of canine force in this way would raise significant issues under Fourth Amendment and California statutory limitations. Such a reading would also have the practical effect of preventing deputies from using canines to apprehend a person reasonably suspected of committing a “serious offense” at the time of arrest (*i.e.*, armed robbery) if the deputies were required by Policy 309 to rely on the person’s previous conviction for the “lesser criminal offense” of shoplifting.

¹⁹ In his Incident Report Dep. Collier also based his decision to deploy the canine on Mr. Perez “being wanted for a serious offense . . . resisting arrest and a vehicle pursuit” (internal parentheses omitted). Mr. Perez was charged with hit and run and evading a police officer in 2019 but convicted only on evading a peace officer. *See* SCR-727781-1. Mr. Perez was also charged with misdemeanor obstructing a peace officer under P.C. § 148(a)(1), apparently in connection with fleeing Dep. Yebra when she tried to arrest him on warrants in October 2020. *See* SCR-741900-1. Thus, of the offenses identified by Dep. Collier, only the § 148(a)(1) misdemeanor was an open charge; the remaining offenses had previously been adjudicated.

²⁰ The IA investigation also does not address whether a Watch Commander approved canine use in this case or whether circumstances had changed so as to present an “imminent threat” to the deputies. Moreover, there is no indication in the record that the warrant service was deemed to be “high risk” or that the service was executed based on a high risk plan. (*See* Policy § 607, § 608) (risk assessment for warrant service). Seven officers and two canines were deployed to arrest Mr. Perez, but the record suggests this was in response to Mr. Perez’s flight from deputies the week prior when the warrants were being served, and not because there was suspicion of a serious offense being committed. *See* Incident Report.

leash, canine bite apprehension. This lack of analysis is one reason for IOLERO's **INCOMPLETE** finding in this audit.

Another reason for IOLERO's **INCOMPLETE** finding in this audit is the lack of evidence gathering on this issue. At a minimum, Dep. Collier should have been interviewed as to his understanding of this policy and how he applied that policy here. Likewise, Sgt. Salkin should have been interviewed as to his understanding of this issue, since he was the supervisor on scene. Neither were interviewed in this case on any topic.

In evaluating this issue, we **RECOMMEND** that SCSO revisit Policy 309 to clarify what a "serious offense" is. We also **RECOMMEND** that such a clarification should confirm that the relevant offense is the one for which the person is being arrested at that time, rather than prior convictions. Alternatively, if the SCSO believes that all prior offenses should be considered regardless of the offense at issue at the time of apprehension, then the policy should so state and provide guidance for consideration of prior offenses, such as the age of the prior offense.

B. Record Is Unclear Whether Mr. Perez Was Provided Reasonable Time to Comply

Policy 309 requires that a person be allowed "a reasonable time . . . to surrender" after a warning of possible canine use has been provided. (§ 309.6.2).

The record shows that Dep. Collier provided multiple and clear warnings to Mr. Perez and [REDACTED] that a canine would be used and they could be bit if they did not come out of the shed. Neither of them complied with the directive for 51 seconds after the first warning was issued. (Collier BWC 1:45–2:28). The canine was not deployed during this time.

After the door was opened by Dep. Auerbach, [REDACTED] walked out and the canine was released seven seconds later.

The record does not identify why Mr. Perez was given only seven seconds to comply after [REDACTED] came out. In fact, the IA Report does not discuss the decision-making involved in assessing how much time was reasonable before a canine is deployed in the circumstances that the deputies faced here. The issue is complicated here because *both* Mr. Perez and [REDACTED] failed to comply with clear directives for 51 seconds, but the canine was deployed only against Mr. Perez and after his location had already been identified. See SCSO Policy § 309.6 (In "all applications", once a suspect has been *located* and no longer "reasonably appears to present a threat or risk of escape" the handler should "secure the canine" as soon as "reasonably practicable") (italics added).²¹

Neither Dep. Collier nor any other officer was interviewed as part of the IA Investigation and the IA Report does not address this issue. Accordingly, it remains an open question on this record whether Mr. Perez was provided a reasonable time to surrender under the specific facts in this incident. This lack of analysis is one reason for IOLERO's **INCOMPLETE** finding in this audit.

²¹ In his Incident Report Dep. Collier stated he commanded the canine to "search for [Mr.] Perez inside the structure" but that he also knew at that point that Mr. Perez was hiding "directly to the right of the door" and it would be "difficult for multiple deputies to go inside and safely take [Mr.] Perez into custody". Dep. Collier's statements, on the whole, suggest that the canine was deployed for the purpose of apprehending Mr. Perez rather than to "search" for him.

Another reason for IOLERO's **INCOMPLETE** finding in this audit is the lack of evidence gathering on this issue. At a minimum, Dep. Collier should have been interviewed as to his understanding of this policy and how he applied that policy here. Likewise, Sgt. Salkin should have been interviewed as to his understanding of this issue, since he was the supervisor on scene. Neither were interviewed in this case on any topic.

C. Delay in Releasing the Canine Bite

Policy § 309.6 provides that once a handler believes a suspect no longer poses a threat, the handler should “promptly command the canine to release the suspect”.

Dep. Collier stated in the Incident Report that after entering the shed and observing that Mr. Perez “did not have any obvious weapons in his hand” he took control of the canine and removed it from the bite. The IA Report further states that Dep. Collier directed the canine to release the bite as soon as he determined Mr. Perez was no longer a threat and when Mr. Perez “began to comply” by placing his hands behind his back (and before handcuffs were applied) and that the canine “subsequently released” the bite. (IA Report at 19, 21).

The BWC footage confirms that Dep. Collier took control of the canine almost immediately after entering the shed. As he entered Dep. Collier stated the command “light”. (Collier BWC # 1 2:51–2:52). As he stepped over Mr. Perez, Dep. Collier again commanded “light, light, light”, took physical hold of the canine’s harness and directed Mr. Perez to stop moving. (Collier BWC 2:53–2:57).

However, the record also shows that Dep. Collier continued pulling on the canine by the harness for a total of 18 seconds before it released the bite. (Collier BWC 2:55–3:13). Dep. Yebra’s BWC shows that while Dep. Collier attempted to release the bite, Dep. Auerbach held Mr. Perez’s right wrist behind his back. (Yebra BWC 3:17–3:24).²²

The IA Report did not address the 18 seconds it took to disengage the canine. As Dep. Collier accurately noted, the elapsed time from when the canine was deployed to when it was retrieved was around 34 seconds, which means that more than half of this canine deployment consisted of the canine’s active bite. The record provides no explanation for the delay in releasing the bite or whether it complied with SCSO policy. Section 309.6’s requirement that the canine be “promptly” commanded to release the bite may reasonably be interpreted as meaning that the canine’s bite is *actually* released promptly.

Dep. Collier was not interviewed as part of the IA Investigation and the IA Report does not address this issue. Accordingly, it remains an open question on this record whether release of the canine’s bite complied with § 309.6’s requirement of “promptness”. This lack of analysis is one reason for IOLERO’s **INCOMPLETE** finding in this audit.

Another reason for IOLERO’s **INCOMPLETE** finding in this audit is the lack of evidence gathering on this issue. At a minimum, Dep. Collier should have been interviewed as to his understanding of this policy and how he applied that policy here. He also should have been interviewed as to why it took 18 seconds to disengage the canine. Likewise, Sgt. Salkin should have been interviewed as to his understanding of this issue, since he was the supervisor on scene. Neither were interviewed in this case on any topic.

²² Dep. Collier’s BWC shows that Mr. Perez’s left hand was placed behind his back after the canine released the bite.

III. THE RECORD DOES NOT CLEARLY ESTABLISH THAT CANINE DEPLOYMENT COMPLIED WITH USE OF FORCE LAW OR SCSO POLICY 300

The only force used against Mr. Perez during the arrest was the canine deployment.

It is well-documented (and perhaps self-evident) that canines can and often do inflict serious physical injury to persons apprehended through their bite. *See Chew v. Gates*, 27 F.3d 1432 (9th Cir. 1994) (reviewing canine bites); *Lowry v. City of San Diego*, 858 F.3d 1248, 1256–57 (9th Cir. 2017) (*en banc*) (same). Moreover, unlike use of force devices and techniques that remain under the direct decisional and physical control of the deputy (*i.e.*, firearm, Taser, pepper spray), canines are autonomous animals that despite their training may not always respond to human commands, or do so timely, particularly when the canine is off-leash and beyond the deputy’s immediate *physical* control. Canine bites are also distinguished from other “less than lethal” use of force techniques and devices in that a bite almost invariably inflicts puncture and other lacerative wounds to a person’s body, and often seriously injures underlying muscle, tendons, nerves and bone. Even a moderate bite may leave lifetime scarring and more serious injuries may result in permanent functional damage.²³

Moreover, public perceptions regarding canine use to apprehend persons is significantly affected and informed by well-established historical abuses. Canines were used in the United States to apprehend slaves, by state government authorities during the Civil Rights movement to disperse activists, and by other nations to persecute religious and ethnic groups. To this day photos of canine use in Birmingham, Alabama and other southern U.S. cities in the 1950s remain some of the more infamous documentations of canine use and abuse.

Canine force thus carries inherent risks and consequences, as well as a deeply rooted historical stigma, not present with other use of force techniques or control devices. Accordingly, use of canines to apprehend a person should be *carefully* evaluated and considered. *See* SCSO Policy 309.

A. Minimal Fourth Amendment Requirement

Assessing the objective reasonableness of canine deployment looks at (i) the severity of intrusion on the person and amount of force inflicted (ii) the government interest in using force, and (iii) the balance between the gravity of intrusion and the government’s need for intrusion. *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017) (*en banc*).

While it addressed some of these factors, the IA Report did not conduct a complete analysis.

On the first factor, the severity (or quantum) of force used by Dep. Collier’s canine deployment in this case—34-second deployment, bites on the arm and wrists requiring some staples, immediate efforts taken to disengage bite—*could* be viewed as “moderate” under 9th Circuit law. *See Lowry v. City of San Diego*, 858 F.3d at 1257 (reviewing quantum findings in canine deployment cases). However, the IA Report provided no analysis of the quantum of force used in this particular case. Other factors could elevate the severity of force finding (*e.g.*, deployment off-leash, 18 seconds to actually disengage bite).

²³ The 9th Circuit has not deemed canine bites to be “deadly force” *per se*. However, canine force can constitute “deadly force” depending on how and under what circumstances it is deployed. *See* SCSO Policy § 300.1.1 (defining “deadly force” and “serious bodily injury”).

For the second factor, SCSO's interest in using canine force to apprehend Mr. Perez depends on (a) the severity of the crime at issue (b) whether Mr. Perez posed an immediate threat to the safety of officers or others, and (c) whether Mr. Perez was actively resisting or attempting to evade by flight. *See Lowry v. City of San Diego*, 858 F.3d at 1257.

As noted above, the record indicates the crime for which Mr. Perez was being arrested was for failure to appear in court, and not for open charges of domestic violence. The IA Report did not address this discrepancy or its impact on the "reasonableness" analysis.

The IA Report also concluded (based on Dep. Collier's assessments) that the officers faced danger if they entered the shed. We readily agree with that specific assessment—Mr. Perez could have assailed deputies within the close quarters of the shed with or without a weapon. However, the IA Report did not address whether Mr. Perez presented an immediate threat at the time the canine deployment was made—while deputies remained *outside* the shed and Mr. Perez remained contained within the shed. Mr. Perez had a history of non-firearm weapons possession, but there was no evidence Mr. Perez had a firearm or other weapon with which he could assault the deputies from inside the shed. This does *not* mean Dep. Collier should have assumed Mr. Perez did *not* have a firearm. But the IA Report should have addressed the issue of whether Mr. Perez could reasonably be perceived as presenting an immediate threat to deputies, based on what the deputies actually knew at that time, while he remained confined within the structure and the deputies remained stationed outside. An interview of Dep. Collier was therefore clearly required to complete the analysis of this case.

With regard to Mr. Perez's resistance and risk of flight, the record clearly shows Mr. Perez actively concealed himself within the shed. However, Mr. Perez's location behind the cabinet was known to deputies; the canine was therefore unnecessary to locate him. Mr. Perez was also surrounded by a perimeter of several officers reducing the risk that Mr. Perez could successfully flee from the property and avoid apprehension (as he apparently had the previous week). The IA Report did not address this.

Finally, on the third factor the IA Report did not conduct a balance of interests taking into account the foregoing issues including the seriousness of the offense, quantum of force, and level of resistance and likelihood of flight, based on the factual circumstances actually presented. Whether this balancing would yield the same conclusion reached initially in the IA Report that force was "objectively reasonable" is not clear.

While this lack of analysis is one reason for IOLERO's **INCOMPLETE** finding in this audit, another reason for IOLERO's **INCOMPLETE** finding in this audit is the lack of evidence gathering on this issue. Interviewing Dep. Collier as to what dangers he actually believed were present is essential in analyzing his use of force under the Fourth Amendment.

B. California Law and SCSO Policy

• *Proportionality Requirement*

In addition to the minimal Fourth Amendment "reasonableness" standard, SCSO Policy (in accordance with California law) provides that "[d]eputies may only use a level of force that they reasonably believe is *proportional* to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance." (§ 300.3; Gov't Code § 7286(b)(2)).

As noted above, the investigative record indicates Mr. Perez's suspected offense was failing to appear in court on probation issues, rather than open charges of domestic violence or evading an officer for which Mr. Perez had previously been convicted. Dep. Yebra's Incident

Report suggests the additional deputies were brought because Mr. Perez had fled when service was attempted the week prior, and there is no indication that the warrant service was evaluated beforehand to determine whether it was “high risk” due to the “seriousness” of the offense. Accordingly, on this record it is an open question whether the deputies could “reasonably believe” (based on information they actually possessed) that use of canine force to apprehend Mr. Perez was “proportional” to the “seriousness” of the suspected offense.

The IA Report also does not address whether the deputies could reasonably believe (based on the information they actually had) that use of canine force was “proportional” to the “reasonably perceived level of actual or threatened resistance.” The deputies certainly could reasonably perceive that Mr. Perez was actively resisting by concealing himself within the shed. But whether the “level” of this resistance was sufficient for a deputy to reasonably believe deployment of a canine bite was “proportional” is not clear from the IA Report. Moreover, proportionality of canine force must be assessed at the time force is used. Dep. Collier stated, however, that based on Mr. Perez’s history, “I elected to utilize my canine partner ‘Duke’ in case [Mr.] Perez resisted deputies.” (*See* Incident Report). This suggests that Dep. Collier had pre-determined to use canine force before the warrant service commenced.

- ***De-Escalation Requirement***

SCSO Policy also provides that, when reasonable, deputies “should consider actions that may increase deputy safety and may decrease the need for using force” by summoning additional resources, formulating a plan to handle an unstable situation that does not appear to require immediate intervention, or employing other tactics that do not increase deputy jeopardy. (§ 300.3.6). Deputies “should” also, when feasible, consider and use “reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force”. (§ 300.3.6.; Gov’t Code § 7286(b)(1)).

The investigative record does not reveal any steps taken to de-escalate or to use alternative tactics that may reduce the need for use of canine force. The canine was deployed seven seconds after [REDACTED] exited the shed, and there is no indication that alternatives (including providing Mr. Perez more time while maintaining the perimeter, and/or explaining to Mr. Perez that he would not be hurt if he came out) were discussed or considered at that time.

Post-apprehension statements indicate de-escalation could have avoided use of force. Mr. Perez told Dep. Collier in the on-scene and hospital interviews that he “panicked” and “got scared” when he heard the deputies because he knew deputies also “panicked out” when dealing with people and he did not want to get shot. (Collier BWC 13:22–14:01; Collier BWC # 2 0:45–1:56; Auerbach BWC 13:15–13:54; Salkin BWC 13:35–14:15). Dep. Collier told Mr. Perez “I get it if you got scared and you were hiding” and “[t]hat makes sense, that makes sense.” The IA Report also noted that “the fact that [REDACTED] was taken into custody without force being used on her suggested deputies would not have used force on [Mr.] Perez if he would have complied.” (IA Report at 19).

The only reference to de-escalation was by Dep. Auerbach who stated in the Incident Report that he told Mr. Perez he could see him and ordered him again to come out “[i]n an attempt to deescalate the situation”. (*See* Incident Report). The BWC footage shows, however, that Dep. Auerbach’s command to Mr. Perez was no different from the other

commands made by him and Dep. Collier to Mr. Perez, and does not reflect an alternative method intended to de-escalate the situation and avoid the use of force.

Finally, as noted above, there is a suggestion that Dep. Collier had already concluded that canine force would be used in the event Mr. Perez resisted before the officers arrived on scene. But Government Code § 7286(b)(1) (and SCSO Policy § 300.3.6 as we interpret it here) requires de-escalation be considered when feasible, thereby generally foreclosing such pre-determinations.

The IA Report did not address the de-escalation requirement under SCSO Policy or Government Code § 7286.

- ***Use of Force Factors***

In accordance with Gov't Code § 7286, SCSO Policy § 300.3.2 identifies factors to “consider” both when “determining whether to apply force” and later when “evaluating whether a deputy has used reasonable force”.

Factors most germane in this incident include immediacy and severity of the threat, the individual’s conduct as reasonably perceived by the deputy, proximity of weapons, availability of other reasonable options, seriousness of the suspected offense or reason for contact with the person, training and experience of the deputy, potential for injury to the deputies or suspect, whether the person is resisting or attacking the deputy, risk of escape, apparent need for “immediate” control of the person, and prior contacts with the person or awareness of propensity of violence.

As discussed above, the IA Report addressed some of these factors but omitted others, and those it did address raised additional issues that were not evaluated (*e.g.*, “serious of the offense”, risk of escape, availability of other options, level of resistance). While they overlap Fourth Amendment use of force considerations in some respects, these factors are statutory criteria that should be substantively addressed in each use of force occurrence in which they reasonably apply.²⁴

Again, this lack of analysis under California law is another reason for IOLERO’s **INCOMPLETE** finding in this audit. Here, too, interviewing Dep. Collier as to his thoughts on proportionality and de-escalation was essential, but not completed.

RECOMMENDATIONS

Based on our review of the record and investigative process in this matter, as set forth above, we make the following recommendations:

²⁴ Mr. Perez did not allege that officers failed to follow post-use-of-force requirements to document the incident or perform a supervisory-level use of force review, and the IA Report did not address that question. While that issue is not presented or analyzed in detail here, we note that the record shows that deputies’ follow up actions were generally consistent with SCSO Policy. Mr. Perez was promptly treated on scene for his injuries, he was transported to the hospital for follow-up care, and he was interviewed on scene and at the hospital concerning the canine deployment. Sgt. Salkin also conducted a Use of Force review of the incident (*see* 21-UOF-0058). While the investigative record does not contain photos of Mr. Perez’s wound, they were visible on BWC footage and documented in medical records, and Sgt. Salkin is heard in the BWC footage giving instructions for photos to be taken.

1. **Provide Definition to the Term “Serious Offense” in Policy 309:** A threshold requirement for using a canine bite for apprehending a suspect under Policy 309 is whether the person is reasonably believed to have committed, or is committing, a “serious offense”. This term is not defined and, as written, is subject to such wide ranging applications that it may be insufficient to serve as a basis to determine whether a deputy’s actions at the time of the incident were “objectively reasonable” from the deputy’s perspective.

2. **Clarify Whether the “Serious Offense” Referred to in Policy 309 is the Offense which the Person is Suspected of Currently Committing, Rather than Crimes for which the Person had been Previously Convicted:** Basing the use of canine bites on whether the suspect had been previously convicted of a “Serious Offense” (however defined) rather than the crime which the person is suspected to be committing at the time of apprehension, raises significant constitutional and statutory issues. It would also lead to undesired and unsupported outcomes that could hamper deputies’ ability to respond to dangerous suspects.

3. **Review Canine Policy Regarding Apprehending Suspects in Light of Public Perceptions of Canine Use Based on Long History of Abuse:** Canines involve tactical risks not presented by other use of force techniques and control devices. They also carry high risk of inflicting lacerative or puncture damage to the body in almost every instance, and often causes serious bodily injuries. Such injuries carry tremendous consequences for those so bitten, and can also expose the County to significant financial liability. Canines also have a public stigma flowing from a long and documented history of abuse and misuse to persecute persons which affects the public’s perceptions of canine use. In light of these factors, we recommend SCSO review Policy 309 and Policy 300 as they relate to use of canines to apprehend persons to determine whether the policies appropriately reflect a narrowness of permitted canine use.

In addition, we recommend that the SCSO review and respond to the Community Advisory Council’s 2021 recommended amendments to Policy 309.²⁵ Among the recommendations listed in that policy was the recommendation to prohibit canines from biting, and to instead only have them find and bark, in situations like this case. The California Attorney General has recommended the same policy change to other jurisdictions.²⁶ To date, the SCSO had not yet issued a response to this recommendation.

NOTES

Finally, we **NOTE** that this matter was not returned to IOLERO in a timely manner. This case was the subject of a complaint made to IOLERO on August 27, 2021. Complaints of this sort must normally be investigated, and disciplinary action against accused officers (if any) must be taken, within one year of the complaint. (Gov’t Code § 3304.) That said, this IAD investigation was still in progress in October 2022, well after that deadline had passed. This prevented the Sheriff from imposing discipline in this case, or even effectively considering whether discipline should have been imposed in this case.

The IAD report was sent to IOLERO on October 24, 2022, roughly a year and two months after the complaint was made. For this reason, the statute of limitations for discipline of

²⁵https://sonomacounty.ca.gov/Main%20County%20Site/General/Sonoma/BCCs/Department%20Information/_Documents/7-12-2021-Use-of-Force-Policy-Recommendation-Canines-Final.pdf

²⁶ California Department of Justice, *Sacramento Police Department Report & Recommendations*, 2019, <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>

any officers in this case appears to have already expired by the time the case was delivered to IOLERO. This prevents IOLERO's audit from assisting the Sheriff in considering whether discipline should be imposed.

In the future, we ask that IAD reports be delivered to IOLERO well before the Government Code § 3304 time limit expires.

Date: March 14, 2023

Respectfully Submitted:

BY:

Matthew Chavez, Esq.
Law Enforcement Auditor III

APPENDIX A

MATERIALS REVIEWED

- Letter dated July 10, 2021 from Roberto Perez to IOLERO
- Complaint to IOLERO dated August 27, 2021 from Roberto Perez-Hildebrand
- Letter from SCSO to Roberto Perez-Hildebrand dated Sept. 8, 2021 re receipt of Complaint
- Medical Records for Roberto Perez dated Feb. 26, 2021
- SCSO Notice to Dep. Alan Collier dated Sept. 22, 2021 re investigation of Complaint
- SCSO Internal Affairs Investigative Narrative 21-C-0019
- SCSO Email to Dep. Alan Collier dated Oct. 28, 2022 re outcome of Internal Affairs Investigation 21-C-0019
- Incident / Investigation Report Case No. SD 210225020.0 (Feb. 25, 2021)
- Body Worn Camera video of Dep. Shawn Forghani (Feb. 25, 2021) (4:00)
- Body Worn Camera video of Dep. Shawn Forghani (Feb. 25, 2021) (31:07)
- Body Worn Camera video of Dep. Nicholas Maikranz (Feb. 25, 2021) (32:29)
- Body Worn Camera video of Dep. Nicholas Maikranz (Feb. 25, 2021) (13:26)
- Body Worn Camera video of Dep. Jeannie Yebra (Feb. 25, 2021) (27:57)
- Body Worn Camera video of Sgt. Eric Salkin (Feb. 25, 2021) (37:03)
- Body Worn Camera video of Dep. Allen Collier (Feb. 25, 2021) (14:30)
- Body Worn Camera video of Dep. Allen Collier (Feb. 25, 2021) (8:57)
- Body Worn Camera video of Dep. Joel Auerbach (Feb. 25, 2021) (15:10)
- Body Worn Camera video of Dep. Rosendo Castro (Feb. 25, 2021) (26:18)
- Sonoma County Superior Court Odyssey records for Case Nos. SCR 716857-1, SCR 719758-1, SCR 725364-1, SCR 726748-1, SCR 727781-1, SCR 730188-1, SCR 741900-1, SCR 745309-1
- Press Democrat “Using a dog and drone, Santa Rosa police catch suspect hiding in a tree”, August 8, 2019.