



County of Sonoma's Measure P FAQs

May 24, 2023

Frequently Asked Questions, Letters of Agreement of 2023

This FAQ is offered by the County of Sonoma regarding the County's 2023 agreements with its labor organizations over IOLERO'S authority.

Q: How do these new Letters of Agreement effect IOLERO's ability to investigate?

Measure P allows IOLERO to directly investigate incidents in which either a person dies in custody or a death is caused by the actions of Sheriff's Office personnel. Under these new Letters of Agreement, IOLERO and the Sheriff's Office will conduct their investigations concurrently. These letters therefore reaffirm that IOLERO can do a fully independent investigation as described in Measure P.

Q: How is this change different from the prior Letters of Agreement?

Under the previous Letters of Agreement, IOLERO was required to wait for the Sheriff's Office to complete its investigations into deaths in custody and deaths caused by the actions of Sheriff's Office personnel. Now IOLERO will start those investigations at the same time as the Sheriff's Office. So IOLERO can start sooner and is not limited by the scope of the work of the Sheriff's Office.

Q: How is this different for the public?

Because IOLERO and the Sheriff's Office will be doing their investigations concurrently, the public will hear the results of both

investigations sooner.

Also, concurrent investigations by IOLERO and the Sheriff's Office means that neither agency will be out ahead of the other. Neither agency will have an advantage over the other or have more or different information than the other. As a result, the public can have more confidence in the independence of both investigations.

Q: How is this different for Sheriff's Office personnel?

Because IOLERO and the Sheriff's Office will be doing their investigations concurrently, sheriff's personnel will be interviewed sooner about the facts of the case when their memories are fresher. They will also know the conclusions of the investigation sooner. This makes the investigative process easier to understand and reduces the stress of uncertainty for employees.

Q: Will IOLERO or the Sheriff's Office gather evidence at the scene of deputy-involved shootings?

No. The crime scene is investigated by agencies other than IOLERO or the Sheriff's Office. Under the county's Critical Incident Protocol, the crime scenes in deputy-involved shootings are investigated by an outside law enforcement agency to ensure an independent criminal investigation to see if the deputy committed a crime by using force. Plus, IOLERO does not have the legal authority or tools to investigate criminal cases against anyone, not even Sheriff's personnel.

Rather, IOLERO and the Sheriff's Office complete an administrative personnel investigation of the involved deputy to see if the deputy followed policy and training. Both IOELRO and the Sheriff's Office use the information gathered by the criminal investigators as the foundation of their administrative investigations.

Q: If neither IOLERO nor the Sheriff's Office are investigating whether a deputy committed a crime, who does?

Criminal investigations of this kind are conducted by other law enforcement agencies, so there's no perceived conflict of interest. Often the investigation is done by the Santa Rosa Police Department,

and the decision to file criminal charges against a deputy are made by the Sonoma County District Attorney. In some cases, the State Attorney General will investigate and/or make the criminal charging decision instead of local agencies.

Q: If IOLERO and the Sheriff's Office investigate at the same time, when exactly do they do that?

Both IOLERO and the Sheriff's Office will start their administrative personnel investigations following the completion of the criminal investigation and referral to the District Attorney's Office. This way, both IOLERO and the Sheriff's Office have the benefit of seeing that work.

Q: Why can't IOLERO work on the criminal case, or get involved at the same time as the criminal case?

Both IOLERO and the Sheriff's Office have to be careful not to let their work on the administrative case affect the criminal case. This is because deputies can be compelled to talk about the case in the administrative investigation. The criminal investigators, however, are prohibited by the Fifth Amendment from compelling deputies to talk about the case. So federal constitutional law prohibits mixing the evidence from the administrative case into the criminal case. See, for example, Garrity v. New Jersey (1967) 385 U.S. 493.

If material from the administrative case is mixed into the criminal case, the criminal case will be dismissed by the courts. This is not a merely hypothetical risk, but rather, has proved to be an issue in other California counties. Therefore, it is vitally important to ensure that the administrative investigation does not interfere with the criminal case.

This happened recently in San Francisco when an investigation of sheriff's deputies improperly mixed evidence from the administrative case into the criminal case.

(<https://www.sfchronicle.com/crime/article/DA-drops-charges-in-SF-jail-fight-club-case-13580636.php>)

It's acceptable for information to move in the other direction, from the criminal investigation into the administrative investigation. And getting that information from the criminal investigation makes IOLERO and the

Sheriff's Office better prepared in the administrative investigation.

Here in Sonoma County, both IOLERO and the Sheriff's Office want to be sure that the legitimacy and independence of the criminal investigation is maintained. This ensures there is no miscarriage of justice.

Q: How does this Letter of Agreement make sure the criminal case is not tainted by the IOLERO / Sheriff's Office administrative investigation?

The new Letters of Agreement separate the criminal investigation and the administrative investigation using time. By waiting for the completion of the criminal investigation, we insulate that criminal investigation from being affected by the work of either of our two agencies.

Waiting for referral of the criminal investigation to the District Attorney's Office gives IOLERO and the Sheriff's Office the advantage of seeing the work completed in the criminal investigation. Those investigators have tools IOLERO and the Sheriff's Office do not in the administrative investigation – like search warrants, access to personal cell phones, and crime lab analyses. Also, this allows IOLERO and the Sheriff's Office to collect some evidence that takes time to gather, like autopsy reports, before interviews of deputies or other personnel.