

## COMPARISON OF PRIOR IOLERO ORDINANCE AND MEASURE P

Code Section	Prior County Ordinance	Measure P	Effect of PERB Ruling
2-392	<p>Established Independent Office of Law Enforcement Review and Outreach (IOLERO) and set forth legislative purpose and mission.</p> <p style="text-align: center;">—No comparable provision—</p> <hr style="width: 20%; margin: auto;"/> <p style="text-align: center;">—No comparable provision—</p> <hr style="width: 20%; margin: auto;"/> <p style="text-align: center;">—No comparable provision—</p> <hr style="width: 20%; margin: auto;"/>	<p>Similarly establishes office of IOLERO and sets forth legislative purpose and mission statements, but adds additional findings and expands IOLERO’s mission.</p> <p>Adds new sub. (a): Describes power and authority vested in law enforcement officers and recites consequences of misuse of these authorities.</p> <hr style="width: 20%; margin: auto;"/> <p>Adds new sub. (b): Describes Boards authority and obligation to oversee elected Sheriff-Coroner to ensure the department upholds and respects people’s constitutional rights.</p> <hr style="width: 20%; margin: auto;"/> <p>Adds new sub. (c): Sets forth the benefits of independent oversight and need for oversight to have authority and independence necessary to conduct credible and thorough investigations.</p> <hr style="width: 20%; margin: auto;"/>	<p>N.A.</p> <p>Unaffected by PERB ruling.</p> <hr style="width: 20%; margin: auto;"/> <p>Unaffected by PERB ruling.</p> <hr style="width: 20%; margin: auto;"/> <p>Unaffected by PERB ruling.</p> <hr style="width: 20%; margin: auto;"/>

<p>Sub. (a): Set forth mission statement and legislative purpose. Mission included:</p> <p>1) To provide objective, independent, and appropriate review and audit of law enforcement administrative investigations and provide alternate site for members of the public to file complaints against law enforcement agencies, including the sheriff's office.</p> <hr/> <p>2) To propose policy recommendations.</p> <hr/> <p>3) To increase transparency of law enforcement.</p> <hr/>	<p>Sub. (d): Redesignates former sub. (a) as sub. (d) and effects several:</p> <p>1) Makes non-substantive modifications to ¶1.</p> <hr/> <p>2) Adds new ¶2 authorizing IOLERO to conduct independent investigations of employees of the Sheriff-Coroner where IOLERO finds investigation by the department to be incomplete or deficient in some way.</p> <hr/> <p>3) Redesignates former ¶2 as ¶3, but adopts it unchanged.</p> <hr/> <p>4) Redesignates former ¶3 as ¶4 and adopts it with minor, non-substantive changes.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/> <p><b>PERB RULING RENDERED NEW ¶2 [Sec. 2-392(d)(2)] UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.*</b></p> <hr/> <p>Unaffected by PERB ruling.</p> <hr/> <p>Unaffected by PERB ruling.</p> <hr/>
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4) To conduct outreach and engage the communities of Sonoma County to strengthen the relationship between law enforcement and the community.

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Sub. (b): Provided establishment of IOLERO does not affect constitutionally and statutorily designated independent functions of elected sheriff-coroner.

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5) Redesignates former ¶4 as ¶5 and substantively changes purpose of outreach function to “foster a culture of accountability and communication between the community and Sheriff-Coroner” while improving community relations and enhancing public confidence in the policing services provided by the Sheriff-Coroner.

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Sub. (e): Redesignates former sub. (b) as sub. (e) and revises it as follows: ~~The establishment~~

~~functions of the elected sheriff-coroner.~~ As part of the board of supervisor’s duty to supervise the official conduct of the sheriff under state law, IOLERO was created by the board of supervisors. IOLERO is intended to promote the common interest of the board of supervisors and the sheriff in effective and lawful policing and corrections, and in complete, unbiased administrative investigations, and to facilitate the board of supervisors’ supervisory responsibility without interfering with the sheriff’s criminal investigative functions.

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Unaffected by PERB ruling.

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Unaffected by PERB ruling.

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<p>Provided for appointment and qualifications of Director and staff.</p>		<p>N.A.</p>
<p>Sub. (a): Required director be appointed by the Board.</p> <hr/>	<hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>Sub. (b): Made director employee of the County and required that the terms and conditions of employment be set by the Board and specified in a personal services agreement.</p> <hr/>		<p>Unaffected by PERB ruling.</p> <hr/>
<p>Sub. (c): Required director to be attorney licensed to practice law in California, and required director to enter into a legal services agreement with the County.</p> <hr/>	<p><b>Adds</b> requirement that the director be “qualified</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>

	<p>Sub. (d): Empowered the director to assign personnel (as allocated by the Board) and utilize equipment and supplies as necessary to perform IOLERO’s duties. Required all personnel to be employed by the County of Sonoma.</p> <hr/>		<p>Unaffected by PERB ruling.</p> <hr/>
<p><b>2-394</b></p>	<p>Set forth the powers and duties of IOLERO.</p> <p>Sub. (a): Required IOLERO to perform its duties and exercise its powers in conformance with all applicable statutory and constitutional requirements of confidentiality and privilege.</p> <hr/> <p>Sub. (b): Listed IOLERO’s powers and duties, including:</p> <hr/>	<p>Continues to set forth the powers and duties of IOLERO (with modifications) and adds corresponding duties of the Sheriff-Coroner.</p> <p>Sub. (a): Adopts prior provision without change.</p> <hr/> <p>Sub. (b): Revised introductory language to read: “IOLERO’s powers and duties <u>shall</u> include, consistent with existing law, the following <u>which</u></p> <hr/>	<p>N.A.</p> <p>Unaffected by PERB ruling.</p> <hr/> <p>PERB ruling does not specifically address introductory language.</p> <hr/>

<p>1) Receive and review citizen complaints, and forward to the Sheriff-Coroner for review and investigation, including complaints from members of the public against personnel of the Sheriff-Coroner.</p> <hr/>	<p>1) Adopts subparagraph 1 without modification.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>2) Review, audit, and analyze administrative and public complaint investigations in coordination and cooperation with the Sheriff-Coroner.</p>	<p>2) Makes substantive revisions to prior subparagraph 2. Revised provision adds the following (additions in <u>blue underline</u>):</p> <p>“Review, audit and analyze administrative and public complaint investigations in <u>mutual</u> coordination and cooperation with the sheriff-coroner; <u>the complaint investigations subject to such automatic review, audit, and analysis, shall include:</u></p> <ul style="list-style-type: none"> <li>i. <u>All complaints filed with IOLERO, regardless of the nature of the allegations included in that complaint;</u></li> <li>ii. <u>All complaints or investigations or analyses of incidents that involve issues of whether uses of force violate law or policy;</u></li> <li>iii. <u>All complaints or investigations or analyses of incidents that involve a possible violation of the U.S. or state constitutional rights of individuals;</u></li> </ul>	<p>Unaffected by PERB ruling.</p>

	<p>—No comparable provision—</p>	<ul style="list-style-type: none"> <li>iv. <a href="#">All complaints or investigations or analyses of incidents that involve issues of bias by an employee in policing or corrections;</a></li> <li>v. <a href="#">All complaints or investigations or analyses of incidents that involve issues of sexual harassment or sexual assault by an employee;</a></li> <li>vi. <a href="#">All complaints or investigations or analyses of incidents that involve issues of dishonesty; and</a></li> <li>vii. <a href="#">Any other complaints or investigations or analyses of incidents that become a matter of media interest.</a></li> </ul> <p>3) Adds new subparagraph 3 to read: “Act as a receiving and investigative agency for whistleblower complaints involving the sheriff-coroner. For the purposes of these complaints, all statewide legal protections pursuant to California Labor Code sections 1102.5, 1106 et. seq., including confidentiality of the whistleblower and prohibition against retaliation, shall apply. Further, any whistleblower complaints received or investigated by IOLERO shall not need to be reported by IOLERO to the sheriff-coroner, including the Internal Affairs Division.”</p>	<p>PERB RULING RENDERED NEW SUBPARAGRAPH 3 UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.*</p>
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—No comparable provision—

—No comparable provision—

4) Adds new subparagraph 4 to read: “Make discipline recommendations, as appropriate, for officers subject to IOLERO investigations.”

5) Adds new subparagraph 5 to read:

“As part of the process of review, audit, and analysis, IOLERO may, among other things:

- i. Directly access and independently review any and all sources of investigative evidence to ensure that the investigation is complete and all material evidence has been secured and analyzed by investigators in reaching their investigative findings;
- ii. Directly receive all prior complaints for the involved deputy, previous investigation files (including Brady investigations) and the record of discipline for each complaint;
- iii. Directly access and review all body worn camera videos and be authorized to post everybody worn camera video where force was used on IOLERO's website. Public posting shall be

PERB RULING RENDERED NEW SUBPARAGRAPH 4 [Sec. 2-394(b)(4)] UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.\*

PERB RULING RENDERED MOST OF NEW SUBPARAGRAPH 5 [Sec. 2-394(b)(5)] UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME, ESSENTIALLY INVALIDATING THE FOLLOWING SUB-SUBPARAGRAPHS: (ii), (iii), (iv), (vii), (viii), and (ix).\*

—No comparable provision—

- determined on a case by case basis to the extent allowed by law, in consideration of victim privacy rights and active investigations;
- iv. Where the director deems appropriate, directly contact complainants and witnesses to ensure the completeness and fairness of the investigation;
  - v. Where the director deems appropriate, directly contact custodians of evidence held by third parties to ensure adequate efforts to secure such evidence by investigators;
  - vi. Where the director deems appropriate, request supplemental investigation of matters relevant to the investigation that have not been adequately reviewed or analyzed, in the opinion of the director;
  - vii. Where, in the opinion of the director, the investigation of a complaint or incident by the sheriff-coroner is incomplete or otherwise deficient, conduct an independent investigation of the matter, to the extent deemed necessary by the director;
  - viii. Where an investigation involves an incident resulting in the death of a person in custody of the

	<p>—No comparable provision—</p> <hr/> <p>3) Assess and make recommendations regarding policies, procedures, strategies, training, and practices based on information gathered in the review process and/or data trends.</p> <hr/> <p>4) Advise if investigations appear incomplete or otherwise deficient and recommend further review as deemed necessary; when warranted, propose independent recommendations or determinations regarding investigations.</p> <hr/>	<p>sheriff-coroner or results from the actions of an employee, conduct an independent investigation of the matter; and</p> <p>ix. Independently subpoena records or testimony, as the director deems appropriate, to complete an adequate investigation. Among other sources of legal authority, such subpoena power is delegated from that held by the board of supervisors, to be used at the discretion of the director.”</p> <hr/> <p>6) Redesignates former subparagraph 3 as subparagraph 6 and adopts with minor, non-substantive revisions.</p> <hr/> <p>7) Redesignates former subparagraph 4 as subparagraph 7 and adds bias as a basis for recommending further review.</p> <hr/>	<hr/> <p>Unaffected by PERB ruling.</p> <hr/> <p>Unaffected by PERB ruling.</p> <hr/>
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<p>5) Track, analyze, and advise on legislative actions and law enforcement audit trends; make recommendations to the County for legislative platforms, as appropriate.</p> <hr/>	<p>8) Redesignates former subparagraph 5 as subparagraph 8 and adopts with minor, non-substantive revisions.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>6) Prepare annual report to the Board of Supervisors which includes statistical information, analysis of trends, policy and procedure recommendations; and prepare ad hoc reports as required and requested.</p> <hr/>	<p>9) Redesignates former subparagraph 6 as subparagraph 9 and adopts with minor, non-substantive revisions.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>7) Conduct comprehensive outreach to the community, including promoting and facilitating communications between the community and law enforcement; education the community on law enforcement practices, policies, strategies, incident trends and challenges using appropriate methods; providing feedback from the community back to department leaders and elected officials; handling media relations concerning matters related to IOLERO and its scope of duties.</p> <hr/>	<p>10) Redesignates former subparagraph 7 as subparagraph 10 and adopts without change.</p> <hr/>	<p>Unaffected by PERB ruling</p> <hr/>

<p>8) Established a community advisory council (CAC) and made the director the appointing authority.</p> <hr/>	<p>11) Redesignates former subparagraph 8 as subparagraph 11 and makes several substantive changes—Removes appointing authority for CAC from director. Requires IOLERO to provide staffing and support for CAC, and further provides that IOLERO and CAC shall function as independent bodies working in a cooperative and collaborative manner.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>9) Perform related services as required.</p> <hr/>	<p>12) Redesignates former subparagraph 9 as subparagraph 12 and revises to: “Perform related services as <del>required</del> <u>the director deems appropriate.</u>”</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>Sub. (c): Set forth limitations on IOLERO’s authority, specifically providing that IOLERO was not authorized to:</p> <p>1) Conduct its own investigation of complaints against law enforcement personnel.</p> <hr/>	<p>Sub. (c): Continues to set forth limitations on IOLERO’s authority, makes some substantive revisions as noted below:</p> <p><b>Eliminates former subparagraph 1.</b></p> <hr/>	<p><b>PERB RULING RENDERED THIS AMENDMENT TO Sec. 2-394(c)(1) UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.*</b></p> <hr/>

<p>2) Interfere with the performance of the powers and duties of the Sheriff-Coroner.</p> <hr/>	<p>1) Redesignates former subparagraph 2 as subparagraph 1 and adopts without change.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>3) Compel by subpoena the production of any documents or the attendance and testimony of any witnesses.</p> <hr/>	<p>Eliminates former subparagraph 3.</p> <hr/>	<p>PERB RULING RENDERED THIS AMENDMENT TO Sec. 2-394(c)(3) UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.*</p> <hr/>
<p>4) Disclose any confidential and/or privileged information to anyone not authorized to receive it.</p> <hr/>	<p>2) Redesignates former subparagraph 4 as subparagraph 2 and adopts with minor, non-substantive changes.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>5) Decide policies, direct activities, or impose discipline on other County departments, officers, and employees.</p> <hr/>	<p>3) Redesignates former subparagraph 5 as subparagraph 3 and adopts without change.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>
<p>Sub. (d): Required IOLERO and the Sheriff-Coroner to create written protocols that implement the ordinance in a coordinated and cooperative manner.</p> <hr/>	<p>Sub (d): Adopts subdivision (d) with minor, non-substantive changes.</p> <hr/>	<p>Unaffected by PERB ruling.</p> <hr/>

—No comparable provision—

Sub. (e): Adds new subdivision (e) to read as follows:

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

- 1) Any database or other computer application, or physical files, containing incident reports, dispatch records, or records of responses to law enforcement calls for service;
- 2) Any database or other computer application, or physical files, containing employee personnel records, investigations of complaints against employees, investigations of claims filed against the sheriff's office under the California Claims Act, including Brady investigations and the record of discipline with each complaint file or audit or investigations related to lawsuits filed against the county because of any action or inaction of an employee of the sheriff's office;

Largely unaffected by PERB ruling except as noted below.

**PERB RULING RENDERED SUBPARAGRAPH(2) OF Sec. 2-394(e) UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.\* REMAINDER OF NEW SUBPARAGRAPH (e) REMAINS INTACT AND UNAFFECTED BY PERB'S DECISION.**

—No comparable provision—

- 3) Any database or other computer application, or physical files, containing jail inmate grievances and their investigations;
- 4) Any database or other computer application containing the footage from body worn cameras;
- 5) Any database or other computer application, or physical files, containing racial profiling data collected by the sheriff's office pursuant to the Racial and Identity Profiling Act of 2015 or any successor legislation;
- 6) Any database or other computer application, or physical files, containing video or audio recordings related to: incidents involving employees, investigations by employees, investigations of employees, investigations of claims filed against the sheriff's office under the California Claims Act, or lawsuits filed against the county because of any action or inaction of an employee of the sheriff's office."

	<p>—No comparable provision—</p> <hr/> <p>—No comparable provision—</p>	<p>Sub. (f): Adds new sub. (f) requiring the sheriff-coroner to provide access to the director to personally sit in and observe any investigative interviews of any complainant or witness in, or deputy who is a subject of any administrative investigation, upon request by the director.</p> <hr/> <p>Sub. (g): Adds new sub. (g) providing as follows:</p> <p>“The sheriff-coroner shall cooperate with IOLERO by providing direct, unfettered access to staff of the sheriff’s office, in order to facilitate IOLERO’s ability to develop trusting relationships with such staff, and to informally obtain information related to the receipt, review and audit of complaints and investigations, as well as IOLERO’s review of policies, practices, and training. Among the opportunities to access staff which the sheriff- coroner shall provide to IOLERO, are the following:</p> <ol style="list-style-type: none"> <li>1) Any investigator for a complaint being audited by IOLERO;</li> <li>2) Any employee who is a witness or custodian of relevant records for a complaint or incident being investigated by IOLERO;</li> <li>3) Any supervisor of an employee subject to an investigation being audited or otherwise conducted by IOLERO; and</li> </ol>	<p><b>PERB RULING RENDERED NEW SUB-SECTION 2-394(f) UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.*</b></p> <hr/> <p>Largely unaffected by PERB ruling except as noted below.</p> <hr/> <p><b>PERB RULING RENDERED SUBPARAGRAPH (3) OF Sec. 2-394(g) UNENFORCEABLE AS TO DSA AND SCLEA AT THIS TIME.* THE REMAINDER OF</b></p>
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	<p>Sub. (e): Required that nothing in Sec. 2-394 be construed to interfere with the constitutionally and statutorily designated independent functions of the Sheriff-Coroner, and provided that matters involving any of these functions were subject to the Sheriff-Coroner's collaboration.</p>	<p>4) Any staff gathered for training opportunities, in cooperation with the sheriff-coroner.</p> <p>Sub. (h): Redesignates former sub. (e) as sub (h) and adopts with minor, non-substantive changes.</p>	
<b>2-395</b>	No comparable provision.	Adds provision that prescribes minimum future annual budget for IOLERO, setting the floor at 1% of the total annual budget for the Office of Sheriff-Coroner.	Unaffected by PERB ruling.
<b>2-396</b>	No comparable provision.	Adds new requirement that IOLERO be subject to a performance audit at least every 3 years.	Unaffected by PERB ruling.
<b>2-397</b>	Former Subsection 2-394(b)(8).	Adds provisions to expand independence and role of CAC. (No comparable provisions in prior ordinance)	

	<p>Prior ordinance included a simple provision under the Director’s powers and duties that established the Community Advisory Council (CAC) and made the Director the appointing authority for members of the CAC. (See <i>discussion above under section 2-394.</i>) Prior ordinance did not provide any minimum qualifications for CAC members.</p>		<p>Unaffected by PERB ruling.</p> <hr/> <p>Unaffected by PERB ruling.</p> <hr/> <p>Unaffected by PERB ruling.</p> <hr/>
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\* The County has appealed the PERB Ruling to the Court of Appeal. That appeal is still pending.