



SUMMARY REPORT

Agenda Date: 3/16/2021

To: Board of Supervisors

Department or Agency Name(s): The Independent Office of Law Enforcement Review and Outreach (IOLERO), County Counsel

Staff Name and Phone Number: Karlene Navarro (707) 565-1508, Tambra Curtis (707) 565-2421

Vote Requirement: Informational Only

Supervisorial District(s): All

Title:

8:45 A.M. - IOLERO Implementation of Measure P a.k.a The Evelyn Cheatham Effective IOLERO Ordinance
(Ordinance No. 6333)

Recommended Action:

Receive an update on the implementation plan of Measure P.

Executive Summary:

On November 3, 2020, Sonoma County Measure P passed with approximately 65% of the vote. Measure P expands the oversight authority and independence of IOLERO to review and analyze complaints against the Sonoma County Sheriff's Office and also expands the independence and role of the Community Advisory Council (CAC).

The following is a summary of the new requirements enacted by Measure P:

- Introduces requirement that the Director be qualified as a Certified Practitioner of Oversight by the National Association for Civilian Oversight of Law Enforcement (NACOLE) at the time of employment or within a reasonable amount of time after hiring.
- Prohibits the removal of the Director during his/her appointed term except for cause upon a 4/5 vote by the Board.
- Adds more specificity to and broadens the scope of the complaints that IOLERO reviews, and vests IOLERO with, among other things, the authority to: (1) directly access and independently review any and all sources of investigative evidence; (2) directly contact complainants and witnesses; (3) contact custodians of evidence; and (4) independently subpoena testimony and records.*
- Mandates that the Sheriff cooperate fully with all IOLERO investigations.
- Requires that IOLERO be subject to a performance audit at least triennially.
- Sets the annual budget for IOLERO at a minimum of 1% of the total annual budget for the Sheriff's Office.
- Changes appointment authority for the CAC, providing that each supervisor shall appoint two members to the CAC with the IOLERO director appointing one member for a total of 11 CAC members.
- Provides that the CAC and IOLERO shall function as independent bodies.
- Authorizes IOLERO to audit every incident of force used by a sheriff's deputy regardless of whether a complaint is filed with IOLERO or the Sheriff's Office.

- Provides that IOLERO shall have direct access to all body worn camera videos (BWC's) and be authorized to post every BWC where force was used on IOLERO's website in the interest of transparency.
- Requires that IOLERO receive every case for audit where a civil lawsuit is filed against the Sheriffs' Office related to the use of force regardless of whether a complaint is filed with IOLERO or the Sheriffs' Office.
- Requires that IOLERO receive all prior complaints for the involved deputy, prior investigations (including *Brady* investigations), and the record of discipline with each complaint file for audit.
- Authorizes IOLERO to make discipline recommendations.
- Authorizes IOLERO to audit racial profiling data consistent with AB 953 (The Racial and Identity Profiling Act of 2015).
- Authorizes IOLERO to accept Whistleblower complaints.

*While historically general law counties lacked the authority to delegate subpoena power to independent oversight bodies, this was changed with the passage of Assembly Bill 1185 which was signed by Governor Newsom on September 30, 2020. AB 1185 authorizes a county to establish a sheriff oversight board and inspector general to assist the board of supervisors with those duties as they relate to the sheriff, either by action of the board of supervisors or through a vote of county residents. The bill authorized the chair of the oversight board and the inspector general to issue a subpoena or subpoena duces tecum when deemed necessary to investigate a matter within their jurisdiction.

Discussion:

Measure P was passed by the voters on November 3, 2020. On December 15, 2020, the Board of Supervisors approved a budget adjustment to the IOLERO FY 2020-21 budget, to conform with Measure P's annual budget requirement that sets the funding component for IOLERO to 1% of the Sheriff's Office budget, increasing the budget by approximately 15% (prorated the remainder of 2020-21 fiscal year). The ordinance became effective on December 8, 2020 upon certification of the election results by the Board of Supervisors.

IOLERO and the Sheriff's Office are required by law to create written protocols that further define the scope and process related to the audit of complaints and investigations under Measure P. (Sec. 2-394(d)) A draft of those protocols was submitted to the Sheriff's Office on February 1, 2021. However, at this point, written protocols have not yet been agreed upon between IOLERO and the Sheriff's Office. Many of Measure P's provisions cannot be implemented without satisfying the written protocols requirement, which are currently delayed pending a decision issued by the Public Employees Relations Board (PERB), settling matters asserted in a grievance filed by Sonoma County Law Enforcement Association ("SCLEA") and the Deputy Sheriff's Association ("DSA"). Accordingly, until such time, IOLERO cannot gain access to Sheriff's Office records in order to implement many provisions called for by Measure P.

Nonetheless, IOLERO has been working to implement the Measure P provisions that do not require direct access to Sheriff's records or explication by the written protocols requirement.

IOLERO's First Independent Investigation

One of the authorities granted to IOLERO by Measure P is the ability to conduct independent investigations "[w]here, in the opinion of the director, the investigation of a complaint or incident by the sheriff-coroner is incomplete or otherwise deficient." (Sec. 2-394(b)(5)) IOLERO will use this new authority to investigate the complaints related to the detention of approximately 110 protesters who were arrested on June 2 - 3, 2020. The complaints against the Sheriff's Office related to the treatment of the protesters when they were at the Sonoma County Jail being booked and released. The Sheriff's Office handled the protesters' complaints as a grievance. Generally speaking, complaints from people being held within the jail about jail conditions must go through the grievance process as required by the California Code of Regulations, Title 15. In order to ensure that the protester complaints are thoroughly investigated, including but not limited to, complainant interviews, surveillance and body-worn camera review and an examination of phone logs, IOLERO will independently investigate these complaints. IOLERO contracted with an independent investigator in January and this work is underway. Until such time as a decision is received from the Administrative Law Judge through PERB or the written protocols required to implement Measure P are finalized, subpoenas issued by IOLERO may have to be litigated in court.

Posting of Body Worn Camera Videos (BWC's)

This provision is a tool of transparency that would enable IOLERO to post the BWC video where any instance of force is used by the Sheriff's Office. IOLERO has been researching the logistics and legalities of posting BWC's to IOLERO's website. There are legal considerations and necessary balancing of competing interests when determining how to lawfully implement this type of program - the public has an interest in how its Sheriff's Office is using force; victims and defendants may have legally mandated privacy interests; law enforcement agencies, the district attorney's office, and the courts may have an interest in temporarily delaying publication of BWC's if an investigation or court case is pending. For example, if an officer is interviewing a victim, suspect or witness and that person gives his name, address, and phone number while being recorded, that audio has to be edited out of the BWC video before posting it publicly. Victims have constitutional rights, as do minors, and faces and sometimes body parts must be redacted or blurred out of a BWC video to comply with the law and protect privacy rights. Finally, posting a video of a law enforcement contact can be considered an interference with an active law enforcement investigation or court case, and attorneys may seek and receive orders from the court that would prohibit IOLERO from posting the video until the investigation or case is resolved. All of these considerations and the associated costs must be carefully examined and procedures will be put into place before implementing a BWC posting program at IOLERO.

IOLERO has located only one civilian oversight office in the United States who has this type of authority and has a BWC posting program in place (that office is known as The Civilian Office of Police Accountability (COPA) in Chicago). The CAC hosted representatives from COPA at the November CAC meeting where we were able to learn about their program and ask them questions about their practices during a public CAC meeting.

Subsequently, the IOLERO director met with the administrators of the program and had a more in-depth conversation about what it entails to implement this type of program, which will be discussed during the presentation of this item. However, until a decision is received from the Administrative Law Judge through PERB or the written protocols required to implement Measure P are finalized, IOLERO is not able to access the Sheriff's BWC's to fully implement this provision of Measure P. Nonetheless, while the PERB matter and written protocols are pending, IOLERO will continue to do the work necessary to get this program operational so that the work can start immediately once the PERB decision is final or the written protocols are in place.

Whistleblower Program

Measure P authorizes IOLERO to act as a receiving and investigative agency for whistleblower complaints involving the Sheriff's Office. The intent behind the whistleblower provision in Measure P was to provide a safe port of call for employees of the Sheriff's Office who wish to report a violation of law, internal policy or otherwise problematic behavior occurring within the Sheriff's Office or by a fellow Sheriff's Office employee. Whistleblower complaints received by IOLERO do not need to be reported by IOLERO to the Sheriff's Office or Internal Affairs. (Ord. No. 6333, Sec. 2-394(3))

California's whistleblower statutes prohibit employers from retaliating against an employee who discloses information to a government or law enforcement agency regarding "a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation." (Cal. Labor Sec. 1102.5)

IOLERO is exploring options and models for implementing a "whistleblower hotline" for employees of the Sheriff's Office who wish to make a confidential complaint to IOLERO.

For an example of how whistleblower protections have been implemented at the state level, IOLERO is looking to the authority given to California's Office of the Inspector General. The California Office of the Inspector General is an independent agency that oversees and reports on allegations of misconduct by employees of the Department of Corrections and Rehabilitation. Many city governments have also established whistleblower hotlines via telephone. In order to keep tips received via this hotline anonymous, caller ID has been disabled for the hotline. Additionally, the Auditor-Controller-Treasurer-Tax Collector (ACTTC) is currently in the process of implementing a whistle blower hotline to provide County employees and members of the public a means to report anonymous and confidential complaints. IOLERO has engaged ACTTC to evaluate the feasibility of using the hotline for IOLERO whistle blower complaints.

Staffing the New Duties Authorized by Measure P and Addressing IOLERO's Backlog

In March 2019, a significant backlog of audits was discovered at IOLERO. During the FY 2020-21 budget hearings in September of 2020, the Board approved the director's request for two new attorneys. After traversing the County process, including a job classification study by Human Resources, approval by the Civil Service Commission and Board of Supervisors, a new Law Enforcement Auditor job series was established. A level III attorney is currently in the background check stage and a recruitment for a level I/II attorney started in late January. These attorneys will assist with the backlog, handle current audits, conduct investigations and

issue subpoenas.

Changes to the Director Position

Measure P: (1) directs that the IOLERO director shall be qualified as a Certified Practitioner of Oversight by the National Association for Civilian Oversight of Law Enforcement (NACOLE) at the time of employment or within a reasonable amount of time after hiring, and (2) prohibits the removal of the Director during his/her appointed term except for cause upon a 4/5 vote by the Board. Human Resources reports that it will bring forward any needed edits to the director specification in one of its standard Miscellaneous Class & Comp Items. It is anticipated that this will occur sometime between April and the end of the fiscal year.

The current director will be certified within a reasonable period of time as required by the ordinance which was effective on December 8, 2020.

Changes to the Community Advisory Council (CAC)

Measure P made the CAC an independent body from IOLERO, changed the qualifications for CAC membership, and split appointment authority between the Board of Supervisors and the IOLERO director. (Ordinance No. 2-394(11) and 2-397) Under Measure P, each supervisor shall appoint two members to the CAC, with the IOLERO director appointing one member. Current CAC members were appointed in February 2020 for one-year appointments. All applications and information that were in IOLERO's possession have been forwarded to the Board of Supervisors for appointments to be considered.

In order to qualify for a CAC appointment, candidates shall not have been employed by a law enforcement agency for three years prior to appointment. Appointees must also have demonstrated history of involvement in and engagement with: Serving or empowering disadvantaged communities, protecting or defending constitutional rights of individuals, issues concerning the effectiveness of fairness of the criminal justice system, serving or empowering members of communities that experience behavior or mental health challenges, spiritual, faith or religious institutions. Finally, appointees must have a demonstrated ability to engage in objective decision-making, commitment to transparency, support for civilian oversight and residency in Sonoma County. (Ordinance No. 6333, Sec. 2-397)

While the CAC and IOLERO transition to a more independent relationship, IOLERO will support the CAC and help ensure a smooth transition. Once the CAC is established as an independent body, IOLERO will provide staffing and support by posting CAC agendas, taking minutes and posting minutes, booking rooms for CAC meetings or providing a Zoom link for virtual meetings. The CAC will set their own agendas, procure their own guests and manage their own projects.

Additional forthcoming changes include the CAC Chairs updating the CAC bylaws, and a discussion of whether the CAC will make a request to the Board of Supervisors for a budget to carry out their mission and duties.

Information on County Boards and Commissions Budgets

An overview of boards and commissions with established budgets is provided in Attachment A for informational purposes only.

Prior Board Actions:

December 15, 2020 - Board approved a budgetary adjustment to the IOLERO FY 2020-21 Adopted Budget in the amount of \$215,455 to finance increased resource needs to perform responsibilities prescribed in Measure P Evelyn Cheatham Effective IOLERO Ordinance.

August 6, 2020 - Board adopted a resolution calling a special election to submit the Evelyn Cheatham Effective IOLERO Ordinance, as revised, to the voters of Sonoma County on November 3, 2020.

August 4, 2020 - Board directed staff to make amendments to the proposed Evelyn Cheatham IOLERO Initiative and submit the revised initiative as a ballot measure to the voters at the November 3, 2020 election.

July 14, 2020 - Board directed to continue the IOLERO Ad Hoc Committee Charter item to 8/4/20.

June 23, 2020 - Board approved formation of the IOLERO Ad hoc Committee

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY21-22 Projected	FY 22-23 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

No fiscal impacts resulting from this Board Item.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Agenda Date: 3/16/2021

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment A - Information on Boards/Commissions budgets.

Related Items “On File” with the Clerk of the Board:

N/A