



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: August 25, 2022

Approved

Date

8/31/2022

**SUBJECT: SAN JOSÉ POLICE DEPARTMENT INTERNAL AFFAIRS UNIT
2021 DEPARTMENT INITIATED INVESTIGATIONS REPORT**

RECOMMENDATION

Accept the San José Police Department's (Department) Internal Affairs Unit (IA) report on Department Initiated Investigations (DIIs) for calendar year 2021.

OUTCOME

Under the revised IA complaint process instituted in July 2008, the Department provides DII information to City Council on an annual basis. This information is provided in conjunction with the release of the Independent Police Auditor's (IPA's) Annual Report. Acceptance of this report provides the City Council and the community with statistics related to DIIs for calendar year 2021.

BACKGROUND

This memorandum is the fourteenth DII report issued by the Department. The Department initiates and conducts administrative investigations regarding potential misconduct by sworn and non-sworn Department members at the direction of the Office of the Chief of Police. For the purpose of this report, a DII involves either a sworn or non-sworn Department member. This differs from the IPA's reporting, which only reflects sworn Department members.

There is a distinction between a Conduct Complaint (which is generated by a member of the public) and a DII. A complaint will be classified as a Conduct Complaint when a member of the public files a complaint against a Department member and it is determined that there is potential misconduct. The initial investigation must determine whether the facts stated in the complaint are such that, if sustained, would amount to a potential violation of the law or Department policies or procedures. A Conduct Complaint is synonymous with a public complaint. The distinction between a Conduct Complaint and a DII is that a DII is an internal investigation initiated by the Office of the Chief of Police. A DII is often based on an allegation which comes directly from a

member of the Department who initiates an investigation based on a specific awareness of, or a belief that, a potential Department policy or procedure violation has occurred. Potential misconduct may be brought to the attention of the Chief of Police by a Department member, another police agency, or a judicial entity. DIIs can be investigated by IA or the Department member's chain of command. IA is responsible for tracking and maintaining DII statistical data, including tracking the date the DII was received and completed.

While the Department draws a distinction between a conduct complaint and a DII, a review of both categories gives the Department the ability to identify trends and patterns to improve Department training and supervision.

If at any time a community member makes a complaint against a Department member, and the complaint is associated to an existing DII investigation, the DII will be reclassified as a Conduct Complaint. As with the case of any Conduct Complaint, the IPA will be notified and may audit the investigation.

In November 2020, Measure G expanded the role of the IPA's office with DIIs. Effective January 1, 2021, the IPA role in DIIs is now similar to that of Conduct Complaints. The IPA is now able to take part in both the investigation and review.

On June 1, 2022, Mayor Liccardo submitted a memorandum to the City Council regarding [protecting the public from predatory criminal behavior pending investigations of employee misconduct \(link\)](#). This memorandum directed the City Manager to "return to the City Council with what citywide policies have been implemented—or will be implemented—to address the risk of exposing the public to harmful behavior pending investigations of City employees' criminal conduct, such as by establishing that credible allegations of predatory criminal conduct constitute a clear 'trigger' for mandatory leave until an investigation has concluded."

In response to the direction from the City Council, the City Manager implemented changes to City Policy Manual sections [2.1.4 Investigation Principles \(link\)](#) and [4.2.3 Administrative Leave \(link\)](#). In addition, the Police Department issued [Memorandum #2022-026 regarding Duty Manual revisions to affect credible criminal allegations with a potential to impact the safety or financial health of the community and/or other City employees \(link\)](#). Similar aligning changes were made in the IA Unit Guidelines.

ANALYSIS

The Department views DIIs as a priority and strives to complete them as soon as practicable. DIIs are prioritized by the date the Department is made aware of the allegation and the nature of the misconduct. A DII is considered complete when "Findings" are determined for each allegation and discipline has been imposed, if appropriate.

A DII may include investigations of more than one Department member and may contain multiple allegations of potential misconduct for each involved member. The Department utilizes a list of ten allegation categories (defined below) for all Conduct Complaints and DIIs.

Summary Points

The following points summarize data for DIIs from calendar year 2017 through calendar year 2021. Comprehensive data tables for this period may be found in Attachment A.

- In 2021, the Department initiated 32 sworn DIIs, compared to 41 in 2020. The total number of DIIs between 2017 and 2021 fluctuated, with the high of 50 in 2019 and a low of 32 in 2021. *(See Table 1)*
- In 2021, the Department initiated nine non-sworn DIIs, compared to six in 2020. *(See Table 1)*
- Of the 32 sworn DIIs initiated in 2021, there were a total of 72 misconduct allegations against sworn Department members, compared to 210¹ received in 2020. The total number of allegations received against sworn staff between these years fluctuated, with the high of 210 in 2020 and a low of 72 in 2021. *(See Table 1 and Table 2)*
- In 2021, the Department initiated 17 allegations against non-sworn members, while the Department initiated 18 allegations against non-sworn members in 2020. The total number of allegations against non-sworn members between these years fluctuated, with a high of 22 in 2018 and a low of 16 in 2017. *(See Table 1 and Table 2)*
- Between 2017 and 2021, the most common misconduct allegations received for sworn and non-sworn Department members were, “Procedure” and “Conduct Unbecoming an Officer/Employee.” The definitions for each type of allegation are listed below. *(See Table 2)*
- In 2021, the Department completed investigations of 77 allegations against sworn officers, 50 of which (65%) were sustained. Between 2017 and 2021, the Department completed investigations of 483 allegations against sworn officers, 317 of which (66%) were sustained. It should be noted that investigations may not be completed within the same calendar year in which the allegations were received. *(See Table 5)*
- In 2021, the Department completed investigations of 12 allegations against non-sworn members, nine of which (75%) were sustained. Between 2017 and 2021, the Department completed investigations of 136 allegations against non-sworn members, 95 of which (69%) were sustained. *(See Table 5)*
- Between 2017 and 2021, Documented Oral Counseling was the most common form of discipline imposed for both sworn and non-sworn Department members. Documented Oral Counseling was imposed on a total of 70 occasions (55 for sworn and 15 for non-sworn staff) during this time frame. *(See Table 7)*

¹ One DII from 2020 accounted for 148 of the 210 allegations, excluding this investigation there were a total of 62 misconduct allegations. *(See Table 1 and Table 2)*

Note that several additional data tables are included in Attachment A to provide supplementary information and context for this report.

Response to Trends and Patterns

The Department took several steps in response to the trends and patterns in behavior observed over the last year. The following solutions were developed in coordination with the Research and Development Unit:

- In June 2022, IA published its first monthly newsletter to help message current trends and remind Department members of the policies and procedures governing the agency. Topics discussed to date in the newsletters include courtesy, inventory searches of vehicles, towing of vehicles, body worn camera best practices, search and seizure limitations, and exercising discretionary judgment. As an example, the June 2022 Internal Affairs Newsletter is included as Attachment B.
- IA personnel routinely attend patrol briefings to highlight trends and patterns.
- IA initiated several [Duty Manual \(link\)](#) changes to align Department policies and procedures with best practices, including:
 - A 1104 Employee Responsibility
 - C 1101 Exercising Discretionary Judgement
 - L 3304 Use of Handcuffs During Reasonable Suspicion Detentions²
 - L 3817 Supervision Required at the Scene of a Search Warrant
 - L 5210 Seizure of Vehicles³
 - L 5403 Procedures to Follow in Order to Store/Impound a Vehicle⁴
- IA made updates to the [Internal Affairs Unit Procedural Manual \(link\)](#) regarding the Department's response to employees accused of credible criminal allegations.

Allegation Definitions

The following is a list of allegation definitions from Duty Manual section C 1710.

² The online Duty Manual is updated twice annually. The current revision (v2 080322) does not contain the updated version of this section. Details regarding the change may be found in [Department Memorandum #2022-038 \(link\)](#).

³ The online Duty Manual is updated twice annually. The current revision (v2 080322) does not contain the updated version of this section. Details regarding the change may be found in [Department Memorandum #2022-039 \(link\)](#).

⁴ The online Duty Manual is updated twice annually. The current revision (v2 080322) does not contain the updated version of this section. Details regarding the change may be found in [Department Memorandum #2022-039 \(link\)](#).

- **Procedure** is an allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures, or guidelines.
- **Search or Seizure** is an allegation that a search or seizure was conducted by a Department member in violation of the 4th Amendment.
- **Arrest or Detention** is an allegation that an arrest lacked probable cause or a detention lacked reasonable suspicion.
- **Bias-Based Policing** is an allegation that a Department member engaged in conduct based on a person's race, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.
- **Courtesy** is an allegation that a Department member was not courteous or professional as specified within Duty Manual section C 1308:
 - *Department members will be courteous and professional to the public. Department members will be tactful in the performance of their duties, control their tempers and exercise the utmost patience and discretion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use course, profane or derogatory language. The Department recognizes that there are an extremely limited number of investigative situations where profane or derogatory language may be a reasonable tactic or tool (i.e., undercover assignments). In these specific situations, the use of profanity or derogatory language must be justified by the Department member based on the totality of the circumstances.*
 - *Members are reminded that their conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Refer to DM Section C 1404 (Conduct Unbecoming an Officer).*
- **Conduct Unbecoming an Officer** is an allegation that a Department member's conduct was unbecoming as specified in Duty Manual section C 1404:
 - *An officer's conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming an officer.*
 - It should be noted that Conduct Unbecoming an Officer is not intended to be applied when another provision of the Duty Manual is applicable.
- **Force** is an allegation that the amount of force used by a Department member was not objectively reasonable as defined by the Duty Manual section L 2602:
 - *Objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same*

information and faced with the same circumstances as the officer who has actually used force. Objectively reasonable force is not judged with hindsight, and will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain and rapidly evolving situations. Important factors to be considered when deciding how much force can be used to apprehend or subdue a subject include, but are not limited to, the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers or others and whether the subject is actively resisting arrest or attempting to evade arrest by flight. This policy guideline applies to all uses of force, including deadly force.

- **Neglect of Duty** is an allegation that a Department member neglected their duties and failed to take action as required by Department and/or City policies or procedures and/or state or federal law.
- **Discrimination** is an allegation that refers to [City Policy Manual section 1.1.1 \(link\)](#) and Duty Manual sections C 1311 – C 1316.
- **Harassment** is an allegation that refers to City Policy Manual section 1.1.1 and Duty Manual sections C 1311 – C 1316.

The definitions of Discrimination and Harassment only apply to workplace interactions between City employees and to DIIs that arise from allegations of workplace discrimination and harassment. Discrimination or harassment by Department members toward members of the public are characterized as an allegation of Biased Based Policing.

Case Summaries

Attachment C provides case summaries of the sworn DIIs completed in 2021 that resulted in a sustained finding.

Sustained Rate Comparison

Attachment D provides four figures demonstrating the comparison between the sustained rates of DIIs versus those of Conduct Complaints. In short, DIIs were sustained at a rate of 63% over the last five years, while Conduct Complaints were sustained at 16%.

CONCLUSION

In reviewing the experience of DII-involved Department members, those with 1-3 years of experience are most likely to be subjected to a DII, followed by those with 21-30 years of experience. Procedure remains the most common allegation when investigating alleged misconduct. Documented Oral Counseling is most often the discipline imposed. DIIs continue to sustain at a higher rate compared to that of Conduct Complaints submitted by the public, which is to be expected based on Department Members' greater familiarity with governing rules.

PUBLIC OUTREACH

This report will be posted on the City's Agenda webpage for the August 30, 2022 City Council meeting.

EVALUATION AND FOLLOW-UP

As always, the Department uses information obtained through the analysis of DIIs to identify trends and patterns, thereby providing an opportunity to implement best practices. For instance, the IA now publishes weekly newsletters to remind personnel of policy violations consistently observed in investigations to reinforce the rules governing the Department. An updated report will be issued next year assessing the success of the measures taken to improve adherence to policies and procedures.

CLIMATE SMART SAN JOSÉ

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
ANTHONY MATA
Chief of Police

For questions, please contact Lieutenant Jaime Jimenez, Internal Affairs Unit, San José Police Department at (408) 277-4094.

ATTACHMENTS:

A: Data Tables

- *Table 1: Summary of **Received** DIIs*
- *Table 2: Classification of **Received** Allegations*
- *Table 3: Department Member Experience for **Received** DIIs*
- *Table 4: Summary of **Completed** DIIs*
- *Table 5: Classification of **Completed** Allegations Received vs. Sustained*
- *Table 6: Department Member Experience for **Completed** DIIs*
- *Table 7: Primary Discipline Imposed*
- *Table 8: Alternative DII Outcomes*

B: June 2022 Internal Affairs Newsletter

C: Case Summaries

- *Table 9: Summaries of **Completed** Sworn DIIs Resulting in a Sustained Finding*

D: DII and Conduct Complaint Disposition Figures

- *Figure 1: Dispositions of DIIs*
- *Figure 2: Dispositions of DIIs Sustained vs. All Others (2017-2021)*
- *Figure 3: Dispositions of Conduct Complaints*
- *Figure 4: Dispositions of Conduct Complaints Sustained vs. All Others (2017-2021)*

ATTACHMENT A: DATA TABLES

Table 1: Summary of *Received DII*s

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|--|-------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|-----------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| <i>DII</i> s | 35 | 10 | 43 | 10 | 50 | 11 | 41 | 6 | 32 | 9 | 201 | 46 |
| <i>Allegations within the DII</i> s | 100 | 16 | 83 | 22 | 102 | 18 | 210 | 18 | 72 | 17 | 567 | 91 |
| <i>Involved Department Members</i> | 44 | 10 | 52 | 13 | 54 | 12 | 102 | 7 | 33 | 9 | 285 | 51 |
| <i>Investigations with Multiple Department Members</i> | 10 | 0 | 8 | 1 | 6 | 1 | 2 | 0 | 1 | 0 | 27 | 2 |
| <i>Department Members with More Than One DII</i> | 5 | 0 | 0 | 0 | 3 | 0 | 6 | 0 | 0 | 1 | 14 | 1 |

Table 2: Classification of *Received Allegations*

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|--------------------------------------|-----------|-----------|-----------|-----------|------------|-----------|------------|-----------|-----------|-----------|------------|-----------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| <i>Procedure</i> | 84 | 15 | 63 | 10 | 71 | 7 | 190 | 16 | 49 | 16 | 457 | 64 |
| <i>Courtesy</i> | 2 | 0 | 1 | 1 | 4 | 3 | 2 | 0 | 2 | 0 | 11 | 4 |
| <i>Conduct Unbecoming an Officer</i> | 10 | 1 | 12 | 1 | 20 | 2 | 15 | 2 | 14 | 1 | 71 | 7 |
| <i>Neglect of Duty</i> | 0 | 0 | 3 | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 8 | 0 |
| <i>Discrimination</i> | 0 | 0 | 0 | 4 | 0 | 2 | 0 | 0 | 1 | 0 | 1 | 6 |
| <i>Harassment</i> | 0 | 0 | 2 | 6 | 1 | 4 | 0 | 0 | 1 | 0 | 4 | 10 |
| <i>Search or Seizure</i> | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| <i>Force</i> | 3 | 0 | 1 | 0 | 1 | 0 | 3 | 0 | 2 | 0 | 10 | 0 |
| <i>Arrest or Detention</i> | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Bias-Based Policing</i> | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 3 | 0 |
| Total | 99 | 16 | 83 | 22 | 102 | 18 | 210 | 18 | 72 | 17 | 566 | 91 |

Table 3: Department Member Experience for *Received DIIs*

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|---------------|-----------|-----------|-----------|-----------|-----------|-----------|------------|-----------|-----------|-----------|------------|-----------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| 0 – 3 Years | 15 | 2 | 21 | 3 | 17 | 8 | 64 | 5 | 10 | 5 | 127 | 23 |
| 4 – 6 Years | 5 | 2 | 3 | 5 | 9 | 2 | 8 | 0 | 6 | 0 | 31 | 9 |
| 7 – 10 Years | 1 | 1 | 3 | 2 | 2 | 0 | 6 | 1 | 4 | 2 | 16 | 6 |
| 11 – 15 Years | 4 | 2 | 5 | 0 | 4 | 2 | 4 | 0 | 6 | 1 | 23 | 5 |
| 16 – 20 Years | 9 | 1 | 9 | 1 | 7 | 0 | 4 | 0 | 2 | 0 | 31 | 2 |
| 21 – 30 Years | 10 | 2 | 13 | 2 | 15 | 0 | 14 | 0 | 4 | 0 | 59 | 4 |
| Unknown* | 0 | 0 | 0 | 0 | 1 | 0 | 2 | 1 | 1 | 0 | 4 | 1 |
| Total | 44 | 10 | 54 | 13 | 55 | 12 | 102 | 7 | 33 | 8 | 291 | 50 |

* Reflects an investigation where the Department member had an unknown number of years of experience due to the complaint being withdrawn

Table 4: Summary of *Completed DIIs*

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|---|-------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|-----------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| Completed DIIs | 38 | 13 | 45 | 8 | 52 | 11 | 35 | 8 | 33 | 8 | 203 | 48 |
| Department Members Investigated | 43 | 14 | 54 | 7 | 57 | 13 | 39 | 8 | 32 | 8 | 225 | 50 |
| Investigations with Multiple Department Members | 5 | 2 | 9 | 0 | 4 | 3 | 3 | 0 | 0 | 0 | 21 | 5 |
| Department Members with More Than One DII | 3 | 1 | 3 | 1 | 2 | 0 | 3 | 0 | 1 | 0 | 12 | 2 |
| Department Members Who Received Discipline | 27 | 12 | 37 | 5 | 43 | 10 | 32 | 5 | 20 | 6 | 159 | 38 |

Table 5: Classification of **Completed** Allegations Received vs. Sustained

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|--------------------------------------|--------------|--------------|---------------|--------------|---------------|-------------|--------------|--------------|--------------|-------------|----------------|---------------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| <i>Procedure</i> | 62/39 | 30/28 | 95/74 | 31/27 | 80/55 | 11/5 | 64/47 | 29/19 | 56/42 | 11/9 | 357/257 | 112/88 |
| <i>Courtesy</i> | 0/0 | 0/0 | 3/1 | 1/1 | 2/2 | 6/0 | 3/2 | 0/0 | 2/1 | 0/0 | 10/6 | 7/1 |
| <i>Conduct Unbecoming an Officer</i> | 12/6 | 1/0 | 15/10 | 2/2 | 25/14 | 2/1 | 17/9 | 2/0 | 16/7 | 1/0 | 85/46 | 8/3 |
| <i>Neglect of Duty</i> | 2/1 | 0/0 | 2/0 | 0/0 | 7/0 | 0/0 | 5/1 | 1/1 | 0/0 | 0/0 | 16/2 | 1/1 |
| <i>Discrimination</i> | 1/0 | 0/0 | 0/0 | 0/0 | 0/0 | 1/0 | 0/0 | 1/0 | 0/0 | 0/0 | 1/0 | 2/0 |
| <i>Harassment</i> | 0/0 | 0/0 | 2/1 | 1/0 | 1/0 | 4/2 | 0/0 | 1/0 | 0/0 | 0/0 | 3/1 | 6/2 |
| <i>Search or Seizure</i> | 0/0 | 0/0 | 0/0 | 0/0 | 1/1 | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 1/1 | 0/0 |
| <i>Force</i> | 1/1 | 0/0 | 3/1 | 0/0 | 1/0 | 0/0 | 2/1 | 0/0 | 0/0 | 0/0 | 7/3 | 0/0 |
| <i>Arrest or Detention</i> | 0/0 | 0/0 | 1/1 | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 0/1 | 0/0 |
| <i>Bias-Based Policing</i> | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 0/0 | 3/0 | 0/0 | 3/0 | 0/0 |
| Total | 78/47 | 31/28 | 121/88 | 35/30 | 117/72 | 24/8 | 91/60 | 34/20 | 77/50 | 12/9 | 483/317 | 136/95 |

Table 6: Department Member Experience for **Completed** DIIs

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|----------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|-----------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| <i>0 – 3 Years</i> | 11 | 1 | 21 | 4 | 16 | 6 | 18 | 5 | 13 | 6 | 79 | 22 |
| <i>4 – 6 Years</i> | 3 | 1 | 4 | 1 | 7 | 5 | 5 | 1 | 2 | 0 | 21 | 8 |
| <i>7 – 10 Years</i> | 4 | 6 | 1 | 1 | 3 | 1 | 2 | 0 | 1 | 1 | 11 | 9 |
| <i>11 – 15 Years</i> | 3 | 2 | 6 | 1 | 7 | 1 | 1 | 2 | 5 | 0 | 23 | 6 |
| <i>16 – 20 Years</i> | 8 | 2 | 9 | 0 | 9 | 1 | 4 | 0 | 2 | 1 | 32 | 4 |
| <i>21 – 30 Years</i> | 12 | 2 | 13 | 0 | 14 | 2 | 7 | 0 | 7 | 0 | 53 | 4 |
| <i>31+ Years</i> | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 2 | 0 |
| <i>Unknown*</i> | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 2 | 0 | 5 | 0 |
| Total | 43 | 14 | 54 | 7 | 57 | 16 | 39 | 8 | 32 | 8 | 226 | 53 |

* Reflects an investigation where the Department member had an unknown number of years of experience due to the complaint being withdrawn

Table 7: Primary Discipline Imposed

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|-----------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| <i>Training or Counseling</i> | 8 | 1 | 15 | 0 | 10 | 2 | 7 | 1 | 9 | 1 | 49 | 5 |
| <i>Cease Secondary Employment Activities</i> | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 2 | 0 |
| <i>Documented Oral Counseling</i> | 15 | 6 | 16 | 1 | 10 | 2 | 10 | 4 | 4 | 2 | 55 | 15 |
| <i>Letter of Reprimand</i> | 4 | 3 | 8 | 1 | 11 | 2 | 2 | 0 | 3 | 0 | 28 | 6 |
| <i>Disciplinary Transfer</i> | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 3 | 0 |
| <i>10-hour Suspension</i> | 1 | 0 | 0 | 0 | 2 | 0 | 1 | 0 | 1 | 0 | 5 | 0 |
| <i>20-hour Suspension</i> | 1 | 0 | 0 | 0 | 3 | 1 | 2 | 0 | 0 | 0 | 6 | 1 |
| <i>30-hour Suspension</i> | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>40-hour Suspension</i> | 0 | 0 | 2 | 1 | 0 | 0 | 4 | 0 | 2 | 0 | 8 | 1 |
| <i>Greater than 40-hour Suspension</i> | 0 | 0 | 5 | 1 | 5 | 0 | 7 | 0 | 1 | 1 | 18 | 2 |
| <i>Demotion</i> | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| <i>Dismissal</i> | 2 | 0 | 1 | 1 | 2 | 2 | 5 | 0 | 3 | 1 | 13 | 4 |
| Total | 33 | 11 | 47 | 5 | 44 | 9 | 39 | 5 | 24 | 5 | 187 | 35 |

Table 8: Alternative DII Outcomes

| | 2017 | | 2018 | | 2019 | | 2020 | | 2021 | | Total | |
|--|----------|-----------|-----------|-----------|----------|-----------|----------|-----------|----------|-----------|-----------|-----------|
| | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn | Sworn | Non Sworn |
| <i>Retired Before the Investigation Concluded</i> | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 1 |
| <i>Resigned in Lieu of Discipline</i> | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | | 1 | 1 |
| <i>Received More Than One Discipline</i> | 2 | 1 | 6 | 1 | 4 | 0 | 3 | 0 | 4 | 0 | 19 | 2 |
| <i>Retired Prior to Discipline, but Case Was Sustained</i> | 1 | 0 | 1 | 0 | 2 | 1 | 1 | 1 | 0 | 1 | 5 | 3 |
| <i>Settlement Agreement</i> | 0 | 0 | 4 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 7 | 0 |
| Total | 3 | 2 | 12 | 1 | 7 | 1 | 7 | 2 | 4 | 1 | 33 | 7 |

JUNE 2022 - ISSUE 2

INTERNAL AFFAIRS

777 N. 1st Street #666 / Officer Line: (408) 277-4050



PROCEDURE ALLEGATIONS

DISCUSSION TOPICS:

1) Tows:

- 22651(o)(1) CVC
- 22651(d) CVC

2) Q & A - Common Complaints:

- Incident Card
- BWC
 - When to Deactivate
 - "Tactical Debrief"
- Vehicle Searches (Marijuana)

22651(o)(1) CVC: Vehicles Lacking Registration for More than Six Months

When can you tow a vehicle lacking registration for more than six months?

Per DM Section L 5412, "Such vehicles, when found unattended upon a highway, public land, or an offstreet parking facility may be towed under authority of CVC 22651(o)(1)."

22651(d) CVC: Blocking a Driveway

When can you tow a vehicle blocking a driveway?

Per DM Section L 2416, "Vehicles parked in front of driveways are not cited or towed unless a complaint is filed by the property owner or property user."

Any suggestions, questions, or comments:
email 4308@sanjoseca.gov or 4346@sanjoseca.gov

Q & A: Common Complaints

1. Q: When a person requests your name and badge, what will you provide to identify yourself?

A: C 1409: Consistent with your officer safety and protection of the public, officers will identify themselves, when requested, by using an **INCIDENT CARD** (Form 200-45a) or a **Department approved business card**. Telling a citizen your name/badge is on a citation, booking sheet, or report is not sufficient.

2. Q: When may you deactivate your Body Worn Camera while still assigned to a call or investigation?

A: L 4436: Officers may deactivate while still assigned to a call or investigation as long as he/she has:

- (1) cleared the scene;
- (2) is no longer involved in the care and/or custody of a prisoner or another person or;
- (3) is no longer actively involved in an investigation, including collecting physical evidence.

****When terminating prior to the end of the encounter, the reason(s) shall be documented on the BWC recording before deactivation or in a police report. If not, the reason(s) shall be recorded on the citation, CAD event, or Street Check.**

3. Q: Can you deactivate your BWC for a "tactical debrief" while conducting an investigation?

A: This is limited for tactical **briefings** or the discussion of safety/security procedures occurring **away from the scene of an investigation/enforcement encounter** (Refer to L 4438 for circumstances to not activate BWC).

4. Q: Why is it important to have your BWC activated continuously throughout an incident?

A: For the purposes of IA, deactivations during an investigation/incident can lead to questions about what occurred during that part of incident. This may lead to IA needing the officer(s) to be interviewed to answer those questions.

Example: If a complainant alleges an officer was rude/discourteous and an IA review of BWC video revealed there was a BWC deactivation during the investigation, an officer may need to be asked what occurred during the time there was no BWC video available due to deactivation.

This applies to other allegations including, but not limited to, whether officers conducted thorough investigations, used force, or conducted lawful searches.

5. Q: Can you lawfully search a vehicle without consent based only on a plain view of "sprinkled" marijuana?

A: No. Officers should have more than just a mere "smell of marijuana" in a vehicle or observation of marijuana in plain view to develop PC to conduct a vehicle search. PC to search a place/thing for marijuana can exist only if an officer has PC to believe marijuana is possessed for the following: 1) possession for sales, and 2) possession of more than 28.5 grams. One should not operate solely on the assumption, "where there's some, there's more" as the PC to search. Officers need to provide specific, articulable facts describing the PC it is for sales or there is more than 28.5 grams. (Refer to Training Bulletin # 2022-005 for additional information).

ATTACHMENT C: CASE SUMMARIES

This section was added in 2016 to comply with recommendations from the Independent Police Auditor's 2014 Annual Report:

Recommendation #2: Require written reports describing the DIIs be annually submitted to the Mayor, City Council, and posted online for the public; and

Recommendation #3: Include in the annual DII Report descriptions of the misconduct that gave rise to each of the sustained findings.

Table 9: Summaries of Completed Sworn DIIs Resulting in a Sustained Finding

| | Allegations | Incident Summary |
|-----|--|---|
| 1. | Procedure Conduct Unbecoming an Officer | Officer failed to properly conduct a strip search and did not properly control evidence. |
| 2. | Procedure | Officer failed to secure his Department-issued digital camera and it was lost. |
| 3. | Procedure | Officer failed to properly handle a firearm while off duty. |
| 4. | Procedure | Officer failed to use sound tactics after locating a vehicle used in a homicide. |
| 5. | Procedure | Officer engaged in an unauthorized vehicle pursuit. |
| 6. | Procedure | Officer failed to properly document time off on his timecard |
| 7. | Procedure Conduct Unbecoming an Officer | Officer submitted a memorandum to the chain of command which contained offensive material. |
| 8. | Procedure | Officer failed to properly supervise a pursuit and a subsequent use of force investigation. |
| 9. | Procedure | Officer lost personal property belonging to an arrestee. |
| 10. | Procedure | Officer failed to secure a Department-issued cellular phone and it was lost. |
| 11. | Procedure | Officer accidentally fired a Taser device into a "clearing barrel" while performing a function test. |
| 12. | Conduct Unbecoming an Officer Procedure | Officer acted inappropriately to a prisoner which resulted in the prisoner attacking another officer. |
| 13. | Procedure | Lieutenant failed to receive proper approval prior to using a procurement card. |
| 14. | Procedure | Officer accidentally discharged a Taser device while trying to perform a function test in the field. |
| 15. | Procedure | Officer failed to properly secure a Preliminary Alcohol Screening Device (PAS) in an unmarked police vehicle. The vehicle was burglarized and the PAS was stolen from within the cab. |
| 16. | Procedure | Officer accidentally discharged a Taser device while trying to perform a function test in the field. |
| 17. | Procedure | Officer failed to properly control evidence. |
| 18. | Procedure | Officer accidentally discharged a Taser device during an arrest. No one was hit. |
| 19. | Procedure | Officer failed to obtain a mandatory COVID-19 vaccination. |
| 20. | Procedure | Officer failed to obtain a mandatory COVID-19 vaccination. |

ATTACHMENT D: DII AND CONDUCT COMPLAINT DISPOSITION FIGURES

Figure 1: Dispositions of DIIs

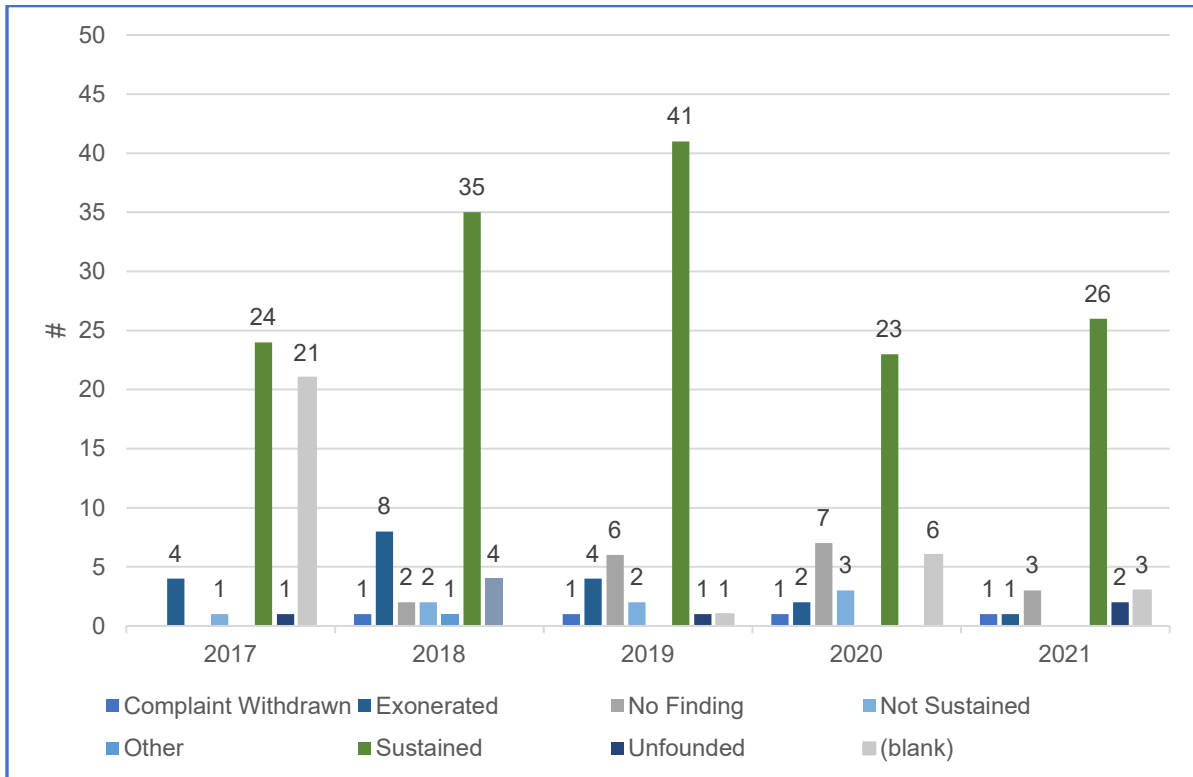


Figure 2: Dispositions of DIIs Sustained vs. All Others (2017-2021)

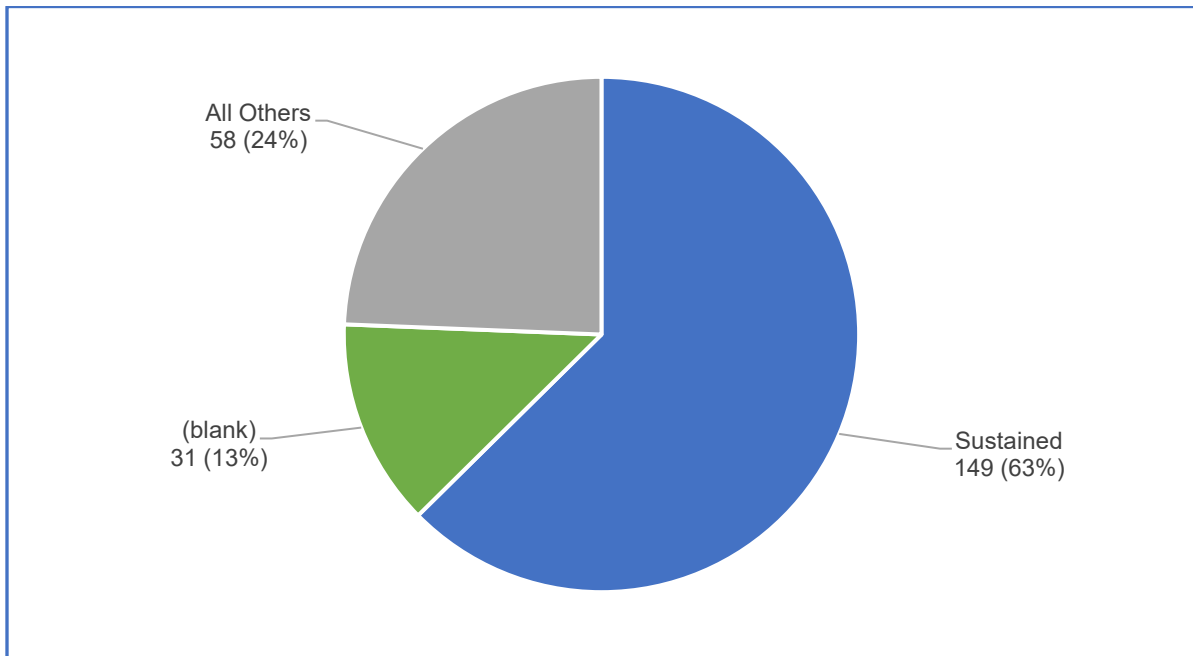


Figure 3: Dispositions of Conduct Complaints

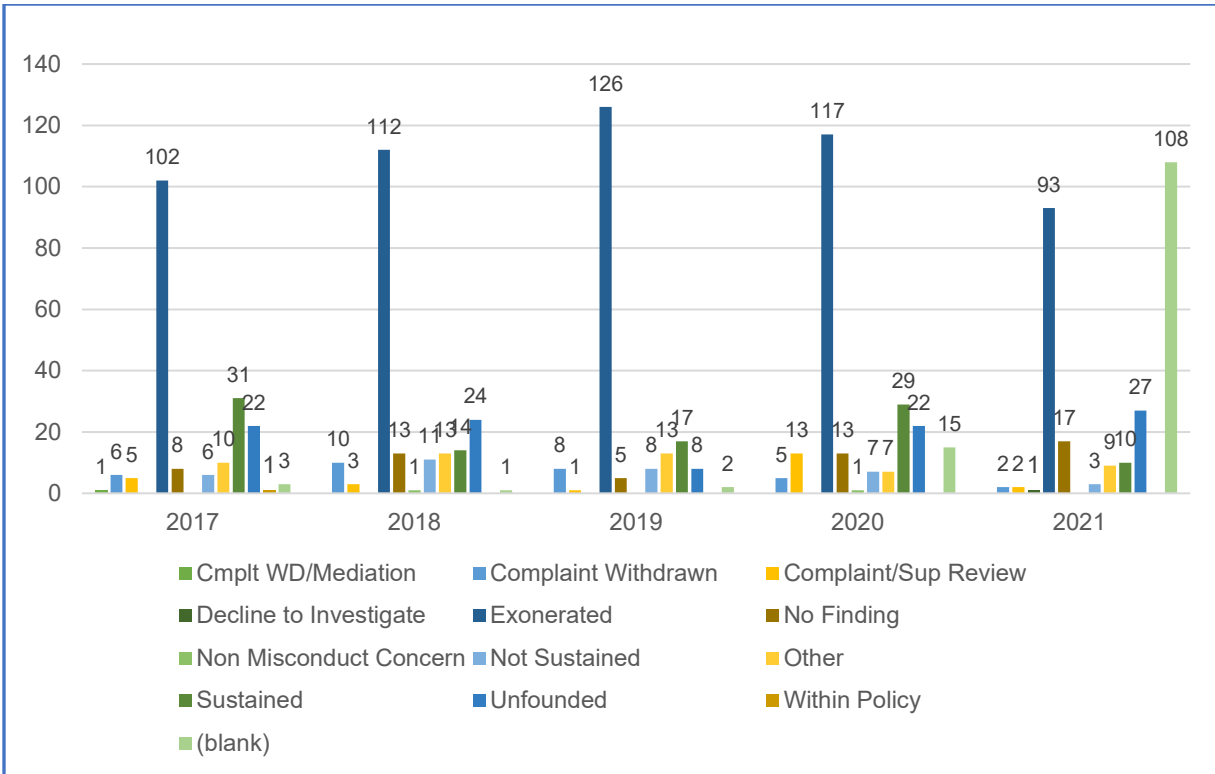


Figure 4: Dispositions of Conduct Complaints Sustained vs. All Others (2017-2021)

