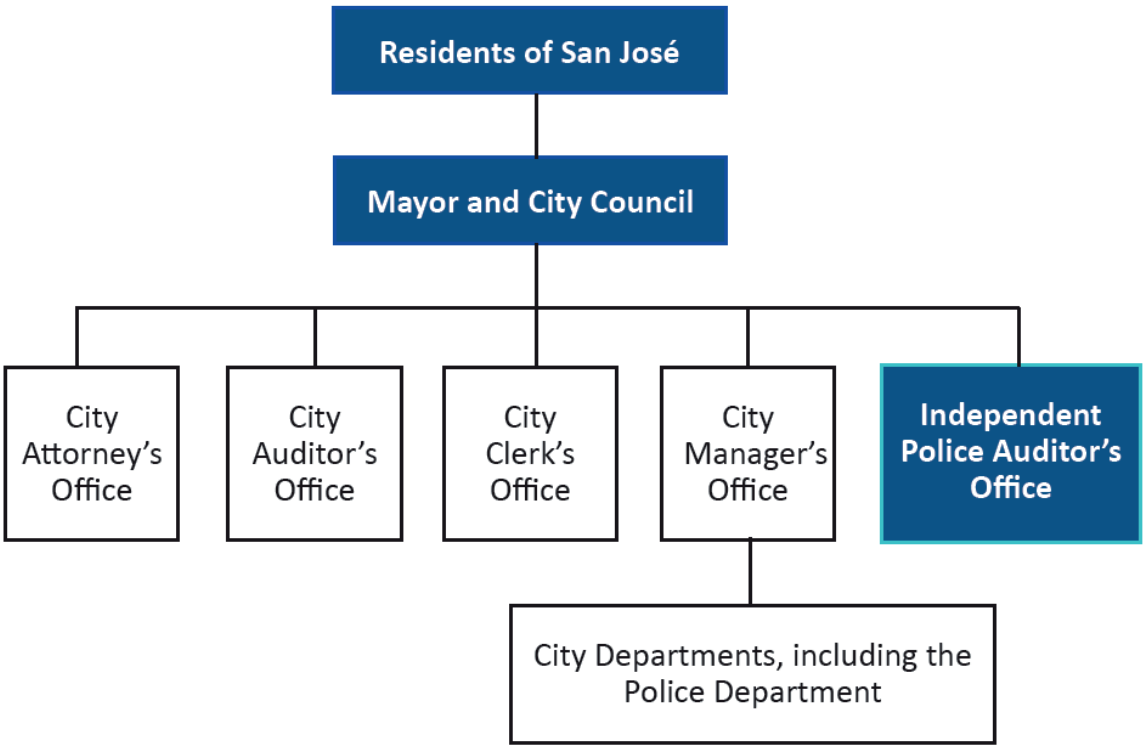
IPA YEAR END REPORT 2021

City of San José Organizational Chart



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- The artwork on the cover and throughout the report was selected by IPA staff members.

- Special thanks to Paul Hastings of 1066 Photographic Art for photograph editing.

https://www.1066photographicart.com/home

2021 IPA Year End Report

Issued September 2022

Independent Police Auditor Shivaun Nurre

and IPA Staff

INDEPENDENT POLICE AUDITOR

CITY OF SAN JOSE

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TABLE OF CONTENTS

Facts at a Glance

1 Update on Social Protest Complaints

13 Police Reform Efforts and IPA Participation

38 IPA Policy Recommendations

61 Complaint Statistics

78 Force Complaints

90 IPA Audit Summaries

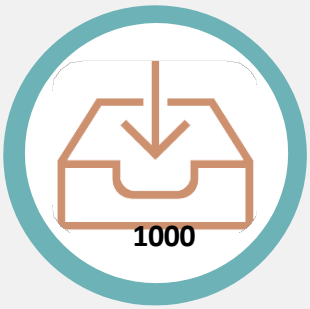
116 Community Outreach

118 Endnotes

130 Appendix

FACTS AT A GLANCE

Received **333** complaints



Received **1000** allegations

16% of complaints contained force allegations

31% of sworn officers received at least one complaint

Audited **240** completed IA investigations

Agreed with IA investigation at first review in **71%** of complaints

IPA oversight now includes review of Department-initiated investigations

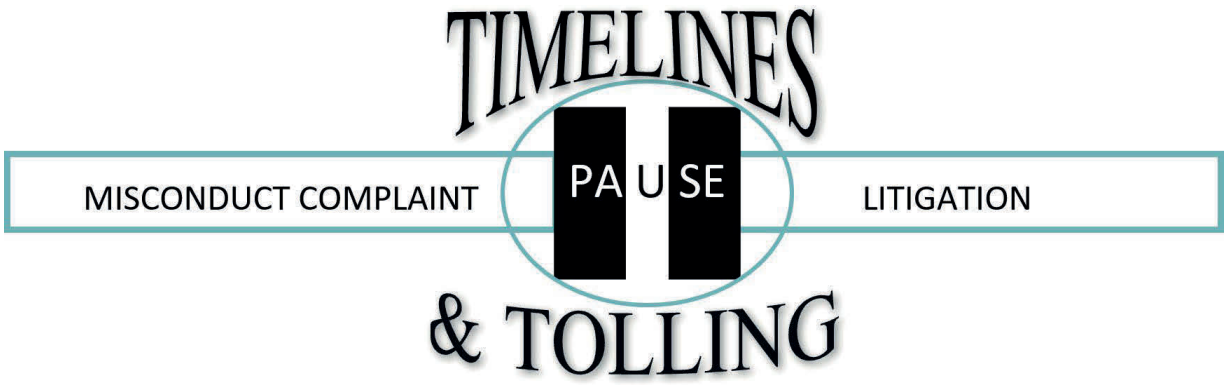
Issued **10** policy recommendations

Results of one-year pilot project

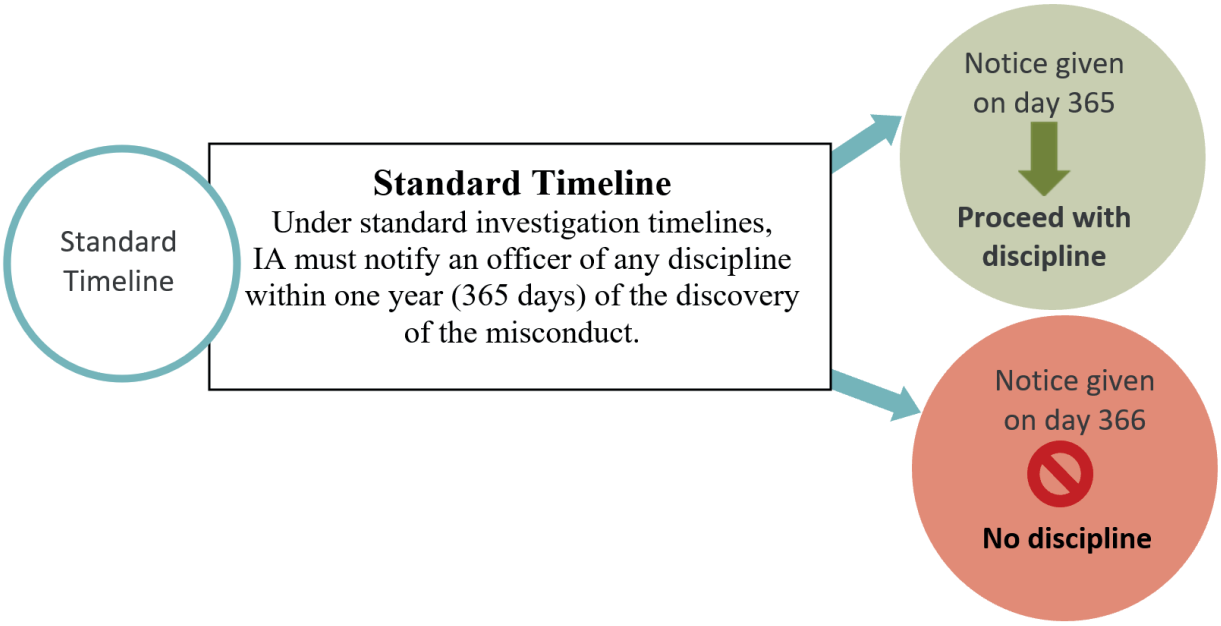
UPDATE ON SOCIAL PROTEST COMPLAINTS

For most of the world, 2020 was unlike any other year. After George Floyd was killed on the streets of Minneapolis on May 25, 2020, individuals across the country reacted and took to the streets. Demonstrators lined the Downtown area in San José protesting police culture and conduct. While the pandemic spiraled, many residents watched national news and saw protesters on our local freeways. Although some demonstrations were peaceful, chaos erupted at others. Eventually, the City declared a state of emergency and imposed an evening curfew. Hundreds of community members called the Office of the Independent Police Auditor (IPA) or the San José Police Department's Internal Affairs (IA) Unit office to express concerns over the officers' actions at the protests. The combined complaints totaled 2,271.[1]

Our 2020 Year-End Report included a description of six complaints arising from the protest demonstrations that had been officially closed by the IA Unit and the IPA office. This report provides a description of an additional six cases that have been closed since our last report. It also provides some information about the tolling status of another twelve cases.

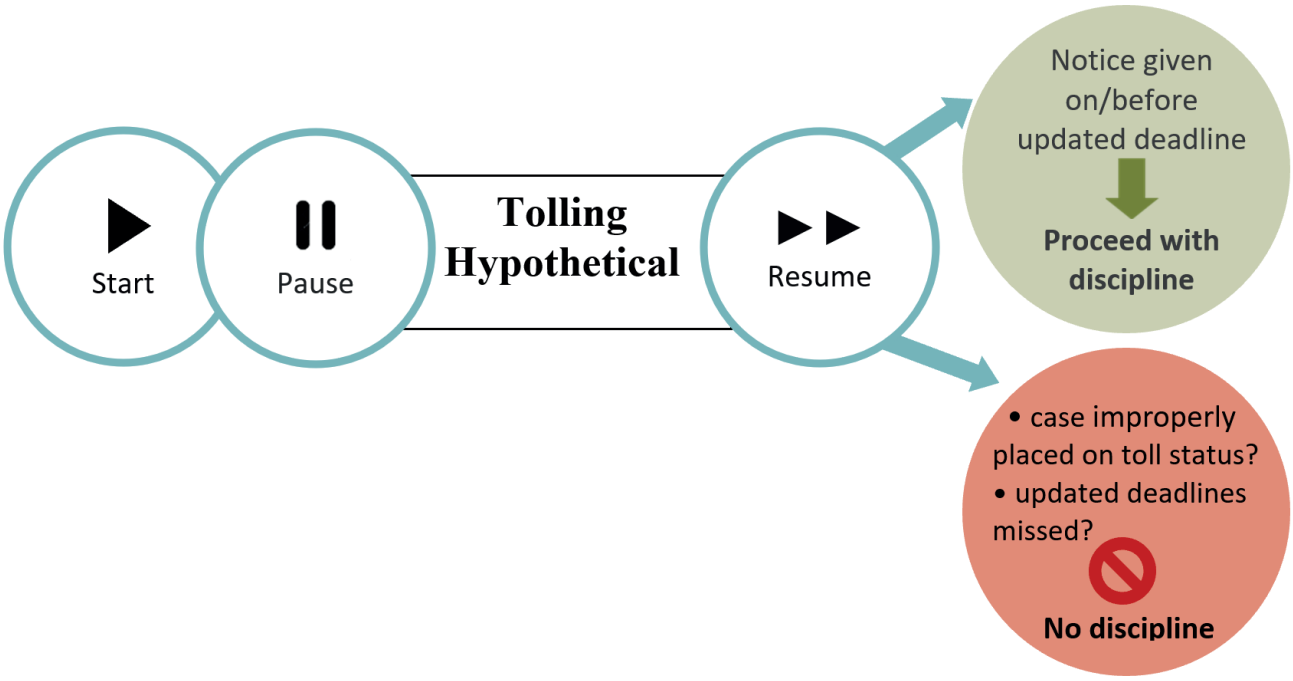


According to the Peace Officers Bill of Rights Act,[2] any investigation into officer misconduct must be completed and intended notice of discipline (if any) be given to an officer within one year of the public agency's discovery by a person authorized to initiate an investigation of the alleged misconduct. Under standard timelines, an officer cannot be disciplined if notice of the discipline was not provided to the officer within one year (365 days) of the discovery of the misconduct.



The standard investigation timeline is straightforward. The 365-days run uninterrupted from the trigger date to the date upon which notice of discipline must be provided to the officer. If IA fails to provide notice of discipline within the one-year timeline, **then the Department cannot discipline the officer.**

There are several exceptions to the standard one-year timeline discussed above. The exception most applicable to this chapter involves litigation. According to California Government Code section 3304, if an agency's investigation into officer misconduct also involves a civil litigation lawsuit in which the subject officer is named as a defendant, then the one-year time period is ***tolled*** while that civil lawsuit is pending.



Tolling hypothetical:

- An individual contacts the IPA on June 30, 2020 and alleges that at 2 p.m., SJPD officers 1, 2, and 3 used excessive force near City Hall. IA begins an investigation into the conduct of officers 1, 2, and 3.
- A month later, on July 31, 2020, a protestor files a lawsuit in federal court. The lawsuit alleges that on June 30, 2020 at 2:00 p.m., SJPD officers engaged in excessive force near City Hall. Officers 1, 2, and 3 are named as defendants in that lawsuit.
- The one-year time period for IA to complete its investigation is tolled while the civil lawsuit is pending. This means that, starting July 31, 2020, IA decides to temporarily place its investigation on **pause** until the litigation is completed. The pause could last several months or several years.
- Civil ligation is completed on February 14, 2022.
- Once civil litigation is complete, IA resumes its investigation into the conduct of officers 1, 2 and 3 and IA calculates a new deadline based on the number of days during which the litigation was pending. The total number of days allowed for investigation is 365 days but, due to tolling, those days need not be continuous. Under this hypothetical, IA must provide notice of discipline to officers 1, 2 and/or 3 on/before January 14, 2023.

Issues with Tolling

The IA Unit staff decides when complaints will be tolled (paused) and calculates updated timelines. It is crucial that IA's determination to toll an investigation be correct.

- If officers named in an IA misconduct complaint are not also named defendants in litigation, then the misconduct complaint cannot be tolled.
- If IA is not vigilant about the date on which the complaint was tolled or when the litigation is resolved, then IA risks miscalculating or missing the new timeline dates.

If a complaint is improperly tolled, the standard timeline applies and the investigation must be completed within 365-days uninterrupted from the date the misconduct was discovered regardless of IA's error. If the investigation is completed after this one-year period, the Department cannot discipline the officer.

Most of the six closed cases described in this chapter had tolling issues. The IPA recommends that complaints are carefully monitored when tolled, that IPA be notified when investigations are tolled for any reason and that the supporting information be provided to our office. See recommendation entitled **The Duty Manual and the IA Unit Guidelines Should Document the Tolling Process** in Chapter Three.

Did you know California has the Racial and Identify Profiling Act?

The Racial and Identify Profiling Act (RIPA) of 2015 (AB 953)

- ▶ Prohibits racial and identity profiling by law enforcement.
- ▶ Requires law enforcement agencies to report data to the Attorney General's Office on a) all vehicle and pedestrian stops and b) citizen complaints alleging racial and identity profiling.
- ▶ Establishes the Racial and Identity Profiling Advisory Board that oversees implementation.
- ▶ Provides data, best practices and recommendations for community advocates, organizations, law enforcement and policymakers to collectively advance the goals of RIPA.

https://oag.ca.gov/ab953

TWELVE INVESTIGATIONS REMAIN TOLLED

Due to lawsuits filed in July 2020, twelve police misconduct complaints arising out of the period of civil unrest were tolled and have remained on tolling status for approximately 24 months. If any of these 12 complaints close during the coming year, the IPA will provide details regarding the findings and audits in our next annual report.

TWO CASES CLOSED AS DISAGREED

Case #1: The complainant contacted the IPA. He asserted that on May 29, 2020, he was peacefully protesting in local social demonstrations. He alleged that SJPD officers deployed projectiles into the crowd. He named an officer whom he complained **agitated** the situation **by sending projectiles flying inches from people's faces.** He claimed this officer was **reckless** in his use of force and engaged in this conduct moments after the situation had de-escalated. The complainant stated he was struck by a projectile which he claimed resulted in bruising and other symptoms.

Four allegations were identified; these are listed below with IA findings.

- Named officer:
  - PROCEDURE (UNFOUNDED),
  - FORCE (EXONERATED), and
  - COURTESY (UNFOUNDED)

- Unnamed officer: FORCE (NO FINDING)

IA determined that, during the incident, the named officer utilized a patrol 40mm launcher and deployed OC (Oleoresin Capsicum) infused 40mm rounds. The IA analysis stated that **the deployment** of the OC powder round from the officer's 40 mm launcher **did not target any individual**. Thus, the officer's **decision to strike an inanimate object** and not a protestor was within the Duty Manual sections governing all officers assigned to special operations.

The IPA disagreed with the IA investigation of this case on two grounds:

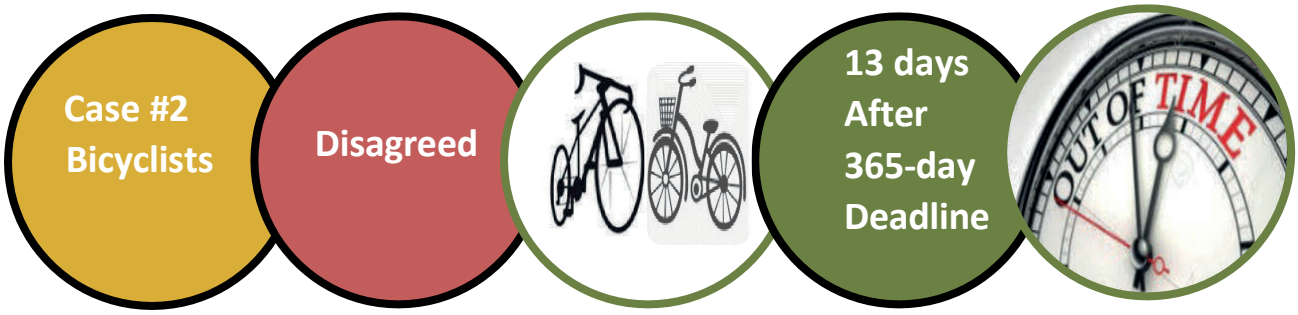
1. Procedure:

   Case #1 was filed on June 8, 2020. IA tolled its investigation on July 18, 2020, due to civil litigation. No notice document was provided to the subject officer, the complainant, or the IPA. IA subsequently determined that it should not have tolled the investigation. On May 13, 2021, IA provided the complaint investigation to IPA for review - **only 26 days before the 365-day deadline.**

   Twenty-six days is not adequate time for IPA to review. IA's improper placement of the complaint on tolling status effectively cut off the IPA's ability to request that officers be interviewed or to challenge IA's findings through the appeal process.

2. Substance:

   The crux of this investigation was to determine whether the subject officer's conduct was within the parameters outlined in the Duty Manual. IA should not have assumed that the officer acted within policy, instead IA should have interviewed the subject officer. Absent his statement, there is no basis to support IA's assertion that the officer's decision to strike an inanimate object and not a protestor was based on the Duty Manual. **Without an officer interview, there was no evidence to determine the officer's intentions and decisions.** Thus, the investigation was not fair, thorough, or complete and discrepancies were improperly resolved in favor of the officer.



Case #2: Anonymous submitted a complaint to the IPA about the actions of several unknown officers during the demonstrations on May 29, 2020. Anonymous expressed concern over the officers' force used on a male bicyclist and a female bicyclist during the protests.

Three subject officers were identified; they are listed below with IA findings.

Officer 1: FORCE allegation => EXONERATED

Officer 2: FORCE allegation => NO FINDING (left SJPD employment)

Officer 3: FORCE allegation => EXONERATED

The IPA disagreed with the IA investigation of this case on two grounds:

1. Procedure:

   Case #2 was filed on June 4, 2020. IA tolled this investigation on July 18, 2020, due to civil litigation. Notice of tolling was emailed to the subject officers; however, no notice was provided to the IPA. IA subsequently determined that it should not have tolled the investigation. **On June 4, 2021, the 365-day deadline expired. Thirteen days later, IA provided its investigation to the IPA for review.**

   IA's improper placement of the complaint on tolling status effectively cut off the IPA's ability to request that officers be interviewed or challenge IA's findings through the appeal process. IA provided the completed investigation to the IPA **after** the expiration of the 365-day deadline.

2. Substance:

   None of the three subject officers or any of the multiple witness officers were interviewed. Absent statements, making assumptions about officers' actions were based solely on their reports and the Body Worn Camera (BWC) video. IPA contends that there were significant issues about the use of force that warranted officer interviews. Absent subject officer interviews, the investigation was incomplete and IA improperly resolved discrepancies in favor of the officers.

The IA investigation embraced the perspective in the written report that the male and female bicyclists were refusing to leave the area upon lawful orders from the police and were antagonizing the officers. The BWC video reflected that both the male and female were refusing to disperse; however, their conduct did not distinguish them from the approximately 100 to 150 persons who were within feet of the police line. Unlike many others in the crowd, the bicyclists did not use profanity.

The three subject officers were on the skirmish line and moved forward on the order to *move*. Officer 1 moved forward along with the rest of the skirmish line to maintain the integrity of the skirmish line. The male bicyclist told Officer 1, *don't break my bike …. look at our bikes; they're tangled* while motioning for the officer to look at the two bikes. BWC at this moment reflects that the kickstand is down on the female's bike and that **the position of both bikes appears to prevent the male and female from stepping backwards**.

According to the written report, (a) the female cyclist refused to move when Officer 1 ordered, *move, move, go move*, (b) Officer 2 used the tip of his baton and **pressed** it into the female cyclist's back to get her to move, and (c) the female cyclist fell forward onto her bicycle.

- BWC shows that Officer 2's conduct was significantly more forceful than merely pressing the tip of his baton. BWC video also shows that Officer 1 was using a baton on the female cyclist at the same time.

According to the written report, (d) the male cyclist refused to move back, and (e) Officer 3, holding his baton horizontally in both hands, pushed the male's back to propel him forward. The male cyclist fell onto the female cyclist's bicycle.

- **Given the placement of the two bicycles**, it appears that the male could not move back without falling on the bicycle, the female cyclist, or both.

According to the written report, as Officer 3 pushed the male cyclist, the cyclist **shoved** his bicycle towards Officer 1 and **hit her with it.**

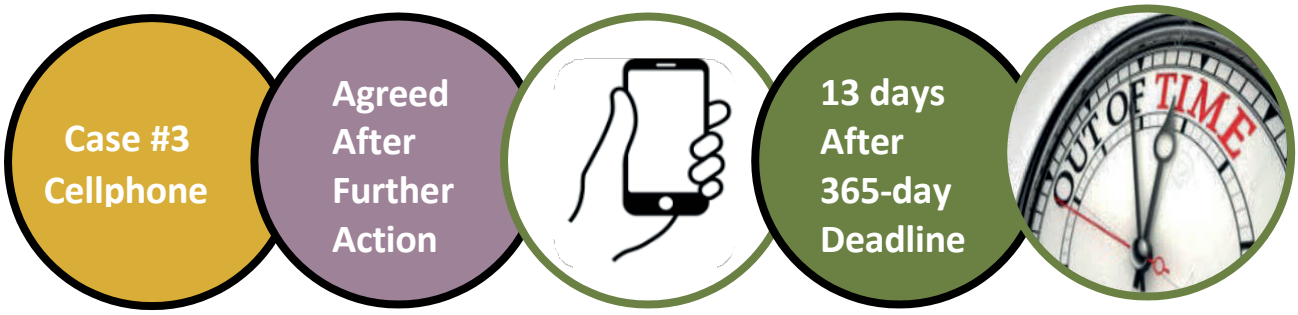
- A review of BWC at this moment does not appear to show the male shoving his bike at Officer 1 or hitting her with it.

The written report stated that, as the male cyclist stood up to his feet, he came towards Officer 1 and was within several inches of her face. Officer 1 held her baton horizontally with both hands and pushed the male with her baton into his chest area.

- BWC shows the male holding his phone close to officers' faces as many other demonstrators were doing.

Most troubling is that the considerable force used by several officers on the male cyclist after he was taken behind police lines was neither described nor analyzed in IA's investigation. Officers who used force at this point in the encounter were not identified as subject officers or interviewed. Because the force is not clear from the BWC video and because there are discrepancies between the BWC video and the written reports, officer interviews were necessary for a complete, fair, and objective investigation. Instead, the IA investigation relied upon assumptions that were not supported by the assembled evidence.

ONE CASE CLOSED AS AGREED AFTER FURTHER ACTION



Case #3: On May 30, 2020, a complaint was filed about an officer's conduct on the day prior. The complainant alleged that a specific officer (a) failed to adhere to SJPD policy regarding onlookers, (b) used unnecessary force by grabbing and throwing a cell phone, and (c) engaged in conduct unbecoming an officer (CUBO) by inciting the crowd of demonstrators.

The IA investigation showed that Officer 4 was ordered to assist other officers in dealing with aggressive protesters on Highway 101. When Officer 4 arrived, a dispersal order was given, and protesters moved westbound on Santa Clara Street. Officer 4 observed a lot of protesters and media members using their cell phones to film and photograph what was occurring. Officer 4 asked many of them to move to the sidewalks in an effort to clear the streets. In his IA interview, Officer 4 stated that he was comfortable with people filming, as they maintained some distance from the skirmish line. Officer 4 said the skirmish line stopped, creating some distance between the two groups. Officer 4 observed bottles being thrown at uniformed officers. Nonetheless, he was comfortable with the distance until an object was placed within inches of his face. When Officer 4 observed an object in his peripheral vision, he immediately believed it was a weapon. For his safety, he grabbed the object instinctually and threw it before it could harm him. It was not until he released the object into the air that he realized it was a cell phone. Without hesitation, the phone's owner punched the officer in the face. The punch knocked Officer 4 unconscious and Officer 4 required immediate transport to a local hospital. The suspect fled the scene on foot and was apprehended later.

Based on the BCW video and officer interviews, the IPA concurred that the IA investigation demonstrated that Officer 4 believed the object placed in his face was a weapon and that the suspect was not at a reasonable distance. The suspect approached and placed an unknown object in the officer's face limiting the officer's ability to see the suspect and the crowd behind him. Approximately two seconds transpired between the suspect approaching and Officer 4 grabbing the phone from his hand. The BWC showed that the suspect was close enough to punch Officer 4 in the face without the need to move closer. Given these circumstances, the officer's use of force was reasonable based on a preponderance standard.

We also concurred that the investigation demonstrated (1) that Officer 4's conduct conformed to the Department's onlooker policy that was in effect on May 29, 2020 and (2) there was no evidence that Officer 4 incited the crowd of demonstrators.

The IA investigation in this case was provided for IPA review 13 days after the 365-day deadline had expired. However, unlike the two cases outlined above, the subject officer was interviewed and we felt that the investigation was complete. The improper placement on suspension status, although procedurally worrisome, did not negatively impact IPA's ability to make a closure decision on Case #3.

After our initial review of the investigation, we requested certain findings be changed to reflect the supporting evidence more accurately. IA changed the findings, and the IPA closed the case as AGREED AFTER FURTHER ACTION.

THREE CASES CLOSED AS AGREED AT FIRST REVIEW

Case #4: An individual complained about two separate police encounters that occurred on May 31, 2020.

The first encounter occurred at City Hall. The complainant alleged, among other things, that he was unlawfully detained, had his phone slapped out of his hand, was taken to the ground, and an officer attempted to remove his backpack by cutting the straps. The IA investigation included review of BWC video and video supplied by the complainant. The investigation showed the complainant walking around and recording various officers. The officers informed the complainant that his **press pass** did not preclude him from obeying the curfew announcement. Officers approached. One officer grabbed the complainant's right hand (holding the phone) and pulled the right arm behind his back. The complainant was pulled to the ground, and he was handcuffed. When asked, the complainant refused to provide identification. One officer unsuccessfully attempted to undo the straps of the complainant's backpack to remove it. The officer then removed the suspect's handcuffs after which the officer was able to remove the backpack. No knife was used to cut the straps. After the officer completed a form, the complainant was released. No allegations were sustained. The IPA believed this investigation into this event was fair, thorough, and complete.

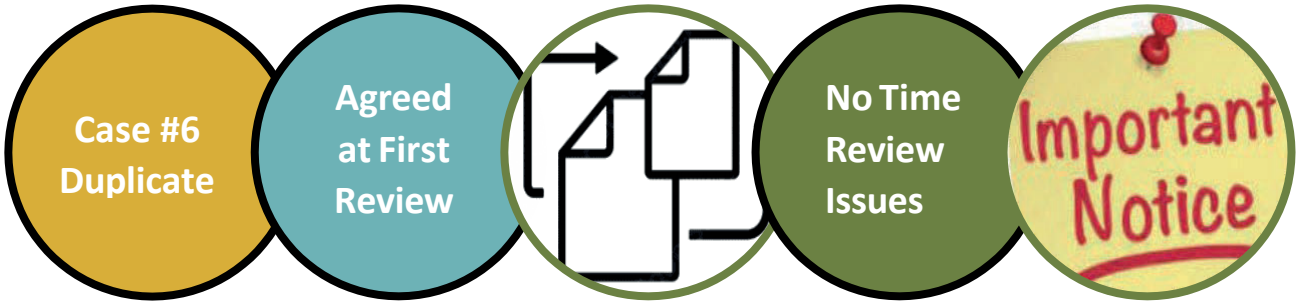
The second encounter occurred at the scene of an accident a few blocks from City Hall. The complainant alleged, among other things, that he was unlawfully detained and arrested, was pushed, and was not allowed to film officers. The investigation showed that the complainant was allowed to film the area until his ability was stopped when he was arrested for a curfew violation. Three officers approached the complainant and advised him about the curfew order. The complainant replied that he was a ***legit*** member of the press but did not supply his credentials. Officers confirmed that the complainant did not have press credentials. As one officer held the complainant's right arm, another held his left arm; the complainant was handcuffed without incident. The BWC video showed no additional force used. The IPA concurred with IA's determination that the DETENTION/ARREST was lawful and that the FORCE used to conduct the arrest was reasonable.

The IPA closed case #4 as AGREED ON FIRST REVIEW. Although this case was improperly tolled due to civil litigation, IA closed its investigation and provided the case for IPA review four months before the 365-day deadline. This was adequate time to complete an IPA review. The improper

placement on suspension status, although procedurally worrisome, did not negatively impact IPA's ability to make a closure decision on Case #4.

Case #5: A complainant alleged that during a protest on June 1, 2020, the officer in charge used force on a protestor causing her to fall to the pavement. The incident occurred in the afternoon directly in front of City Hall. The complainant stated he had video footage of the incident and he provided IA a link to that video. The IA Unit also reviewed BWC video from officers at the scene. The video reflected a crowd numbering between 1,000 to 2,000 people on Santa Clara Street near 4th and 5th Streets. The officers were attempting to clear pedestrians out of the streets since the streets were still open to vehicular traffic. The subject officer described the scene as *chaotic*. Several persons carrying cardboard signs quickly approached the subject officer. One female approached the officer despite his shouting several times for her to remain on the sidewalk and off the street. She continued to yell and advance toward him; she came within one foot of the officer. The officer feared the female would push past him and potentially interfere or assault him or the officers behind him. The officer put both of his hands on the cardboard sign the female held and pushed her back up onto the sidewalk. She did not fall. She remained on the sidewalk and complied with his order. The female was restrained on the sidewalk by her associates. The officer maintained his position in the immediate area to observe the female's behavior. She did not appear injured and continued to protest with vigor. Another officer approached the subject officer and asked if the female should be arrested; the subject officer replied, *no*.

The IPA agreed with the IA assessment that the use of force under these circumstances was reasonable. We closed this case as AGREED ON FIRST REVIEW. Although this case was improperly placed on suspension due to civil litigation, IA interviewed the subject officer, closed its investigation, and provided the case for IPA review four months before the 365-day deadline. Four months is adequate time for IPA review. The improper placement on suspension status, although procedurally worrisome, did not negatively impact IPA's ability to make a closure decision on Case #5.



Case #6: IA determined that the allegations in this complaint were duplicative of the allegations in another complaint about the same incident. The allegations were consolidated into one main complaint. IA closed Case #6 as Other. The IPA agreed with IA's determination and closed Case #6 as AGREED AT FIRST REVIEW.

A letter was sent to the complainant in Case #6, informing her that her allegations would be investigated under a different case number. She was not informed that the new case number reflected a case that had been placed on tolling status due to civil litigation on July 18, 2020. None of the other six complainants, in that case, had been informed of the tolling status.

Did you know that there is a national organization for civilian oversight of law enforcement?

The National Association for Civilian Oversight of Law Enforcement (NACOLE) is a non-profit organization established to create/improve civilian oversight of police officers in the United States. NACOLE is dedicated to promoting greater police accountability by:

- ► Acting as a resource to jurisdictions considering the creation or revitalization of oversight bodies.
- ► Identifying best practices as they emerge.
- ► Encouraging networking and information-sharing to counter the isolation inherent in the profession.
- ► Providing information to government officials and community representatives that will support their advocacy of oversight in their states, counties, and cities.

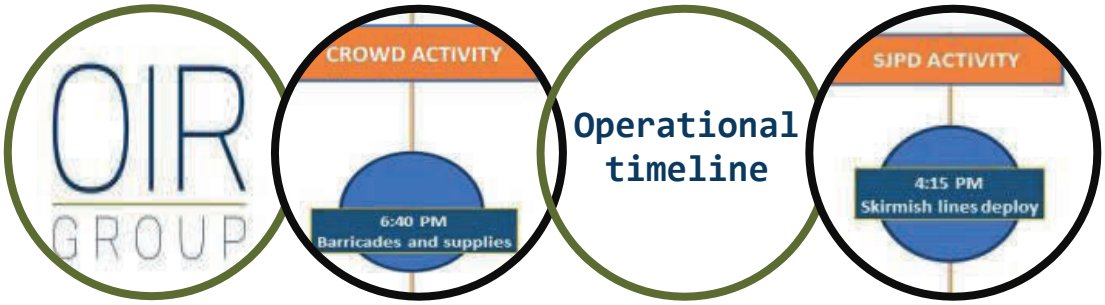
https://www.nacole.org/about_us

2021 UPDATE

IPA PARTICIPATION IN POLICE REFORM EFFORTS

As outlined in last year's IPA Year End Report, the Mayor and City Council proposed a variety of police reform directives in response to the local protest demonstrations in May and early June 2020 and created a Police Reforms Work Plan. As of March 2022, six of the twenty directives remain outstanding.[3] Council provided direction to the Independent Police Auditor on the enumerated tasks outlined below.

INDEPENDENT AFTER-ACTION REPORT



Following the May 25, 2020 death of George Floyd, protests raged across cities nationwide. San José was no exception. Many individuals took to the streets raising their voices about policing and racial injustice. San José Police Department's (the Department) response to the first ten days of the protests drew criticism from some members of the public, the media (both local and national), and City officials. By July 15, 2020, the Department's Internal Affairs Unit (IA) and the Independent Police Auditor's (IPA) office received 2,271 complaints about the Department's response to the civil unrest.

Pursuant to the City's Police Reforms Work Plan, the Department prepared an internal Preliminary After-Action Report to examine the events and make improvements to future responses. That report, issued September 3, 2020, reflected the Department's operational point of view and covered the period from May 29, 2020 through June 7, 2020.[4]

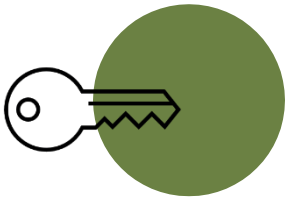
On June 16, 2020,[5] the City Council directed the IPA to obtain an independent consultant to prepare a separate After-Action Report. The OIR Group[6] was selected after a formal request for proposals (RFP) process. The report was presented and discussed at the March 1, 2022 City Council meeting. See endnotes for a link to the full 102-page OIR report[7] and the 15 council presentation slides.[8]

The OIR Group's Independent After-Action Report (OIR Report) critically examined the Department's Preliminary After-Action report, identifying both strengths and weaknesses in its approach and analysis. The OIR Report captured the various perspectives of those who were

engaged or affected by the demonstrations, whether as a protestor, a bystander, a downtown business, a community member impacted by the curfew, or a police officer.

The OIR Group's methodology included:

- ◆ Interviews with SJPD sources
- ◆ Documentary/digital evidence
  - Reports
  - Body-worn camera
  - Radio communications
- ◆ Outreach to City Council & other officials
- ◆ Community input
  - Individual interviews
  - Stakeholder group interviews
  - Community listening sessions



OIR KEY FINDINGS

LEADING UP TO MAY/JUNE

- Training deficiencies
- Chronic understaffing, especially in leadership
- Lack of operational planning
- Intelligence & communication deficiencies

FORCE CONCERNS

- Inexperience with deployment of projectile impact weapons
- Policy changes during operational period
- Questionable uses of force
- Deviation from normal reporting protocol

ARREST STRATEGY

- Early days:
  - Insufficient resources to arrest
  - Some criminal behavior left "unchecked"
- Later days:
  - Effective targeted arrest strategy
  - Transport and processing concerns
  - Field jail and release concerns

COMMUNICATION WITH PUBLIC

- More communication with organizers when feasible
- Defining and declaring "Unlawful Assembly"
- Clearly communicated, effective Dispersal Order
- Coordinated effort with clear directives
- "Micro-communication" real-time with crowd

CURFEW AS A TACTIC

- Curfew implemented on May 31
- Intention to provide a "cooling off" period
  - Peaceful protest in daytime
  - Clear streets at night (8:30 pm)
- Critiques of:
  - Insufficient lead time
  - Poor communication
  - Suppression of rights

TACTICS CHANGED OVER OPERATIONAL PERIOD

- Early days: skirmish lines
- Later days:

Department takes a reactive stance responding only if significant acts of violence occur

  - Unified command & command post
  - Daily debrief
  - Increased deployment addressed concerns about sufficient resources

COMMAND & CONTROL LEADERSHIP VOID

Lack of operational planning

- Span of control limited
- Reliance on Special Operations
- Missing the **"LIEUTENANT LINK"**

Per OIR: *Law enforcement agencies speak of "**Command and Control**" in reference to both clear, organized decision-making and the coherent field responses that flow from it in the context of a particular operation. Many of the more significant issues we identified within the SJPD response stemmed from shortfalls in the Department's ability to establish appropriate command and control structures in the first days of the unrest.* (see page 39)

Per OIR: *Lieutenants maintain contact with the Incident Commander. They implement the Commander's Intent by communicating objectives and performance expectations to their subordinate personnel. In the field, they are a visible representation of accountability to the line personnel. This was an important missing component on day one of the unrest. Without patrol lieutenants, the span of control was far too great for the Special Operations lieutenants to effectively communicate with their own personnel and take command of patrol personnel. So, patrol personnel were largely left to their own devices with no clear communication from Command.* (see page 42)

The OIR Report included 32 separate recommendations to bring constructive change in the Department. Chief Mata submitted a separate report outlining the Police Department's response to each of OIR's recommendations.[9] No recommendation was rejected outright. The Department developed a priority framework to illustrate the Department's operational readiness to undertake the workload demands and projected completion dates for each recommendation.

The Department stated that in Fall 2022 a public memorandum will report on the implementation status of OIR Group's recommendations.

USE OF FORCE ASSESSMENT REPORT

Under the Police Reforms Work Plan, the IPA was directed to be the lead in soliciting an independent consultant to produce a Use of Force Report. CNA Corporation was selected after a formal request for proposals (RFP) process. The report was presented and discussed at the March 1, 2022 City Council meeting. See endnote for link to the full 109-page report[10] and to the 42 council presentation slides.[11]

CNA was directed to analyze the Department's use of force policies. They were required to conduct background research, conduct interviews, and analyze the following:

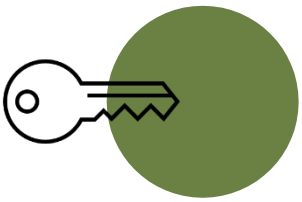
- Policies and procedures governing the use of force
- Training materials on use of force
- How use of force incidents are reported and documented
- The process, roles, and responsibilities for the review of force incidents
- Equipment, tools, and tactics
- Use of force aggregate data
- Innovative approaches to policies, practices, and training on use of force.

CNA was directed to produce a report setting forth recommendations to the Department that reflect best practices and innovative approaches regarding use of force.

The CNA's methodology included:

- ◆ Document Review
  - Duty Manual,
  - Local ordinances,
  - Training lesson plans,
  - Training materials
  - Use of force cases
- ◆ Targeted Interviews
  - Virtual and site visits
- ◆ Officer focus groups
- ◆ Quantitative analysis
- ◆ Community listening sessions
- ◆ Community Interviews

CNA's Use of Force Assessment Report includes 39 findings and 51 separate recommendations.



CNA USE OF FORCE KEY RECOMMENDATIONS

The Summary of Key Recommendations States that the Department should:

better **define levels of resistance,** including the minimum resistance needed for each force option

create **a force review board including community representatives** to identify policy, training, equipment, and personnel implications

adopt a ***physical coercion against resistance*** definition of force

provide concrete prohibitions on the use of **electronic control weapons**

revise the Duty Manual to provide **guidance on post-incident requirements**, particularly for incidents involving lethal force

pursue implementation of a **new use of force reporting system**

should **look further into racial disparities** found in the quantitative analyses, identify potential reasons for the differences, and—where reasons are identified—take remedial steps.

Update at Fall PSFSS Committee

21ST CENTURY POLICING ASSESSMENT REPORT

Under the Police Reforms Work Plan, the Independent Police Auditor was directed to be the lead in soliciting an independent consultant to produce a report assessing the Department's implementation of 21st Century Policing Principles. CNA was selected after a formal request for proposals (RFP) process. The report was presented and discussed at the March 1, 2022 City Council meeting. See endnotes for link to the 162-page report[12] and the 42-slide presentation to Council.[13]

The Task Force on 21st Century Policing

In December 2014, President Obama issued an Executive Order creating the President's Task Force on 21st Century Policing (Task Force). The goal of the Task Force was to identify the best means to provide an effective partnership between law enforcement and local communities that both reduces crime and increases trust. A diverse group of law enforcement leaders, academics, youth leaders, and social advocates were appointed to serve. The Task Force organized a national information-gathering effort that included testimony from over 100 experts as well as voices of community members. The Task Force also collected over 1,000 pages of written input from the public. The Final Report[14] of the Task Force includes nearly 60 unanimous recommendations developed to promote crime reduction and build trust between law enforcement and the communities they serve.

The Task Force identified six pillars depicted on the next page. Each pillar has associated themes, recommendations, and action items.

Building Trust & Legitimacy

Promoting trust and ensuring legitimacy through procedural justice, transparency, accountability and honest recognition of past and present obstacles

Community Policing & Crime Reduction

Encouraging the implementation of policies that support community-based partnerships in the reduction of crime

Policy & Oversight

Developing comprehensive and responsive policies on key topics while also implementing formal checks/balances and data collection/analysis

Training & Education

Emphasizing the importance of high quality and effective training and education through partnerships with local and national training facilities

Technology & Social Media

Balancing the embrace of technology and digital communications with local needs, privacy, assessments, and monitoring

Officer Wellness & Safety

Endorsing practices that support officer wellness and safety through data collection/analysis to help prevent officer injuries

CNA's ASSESSMENT

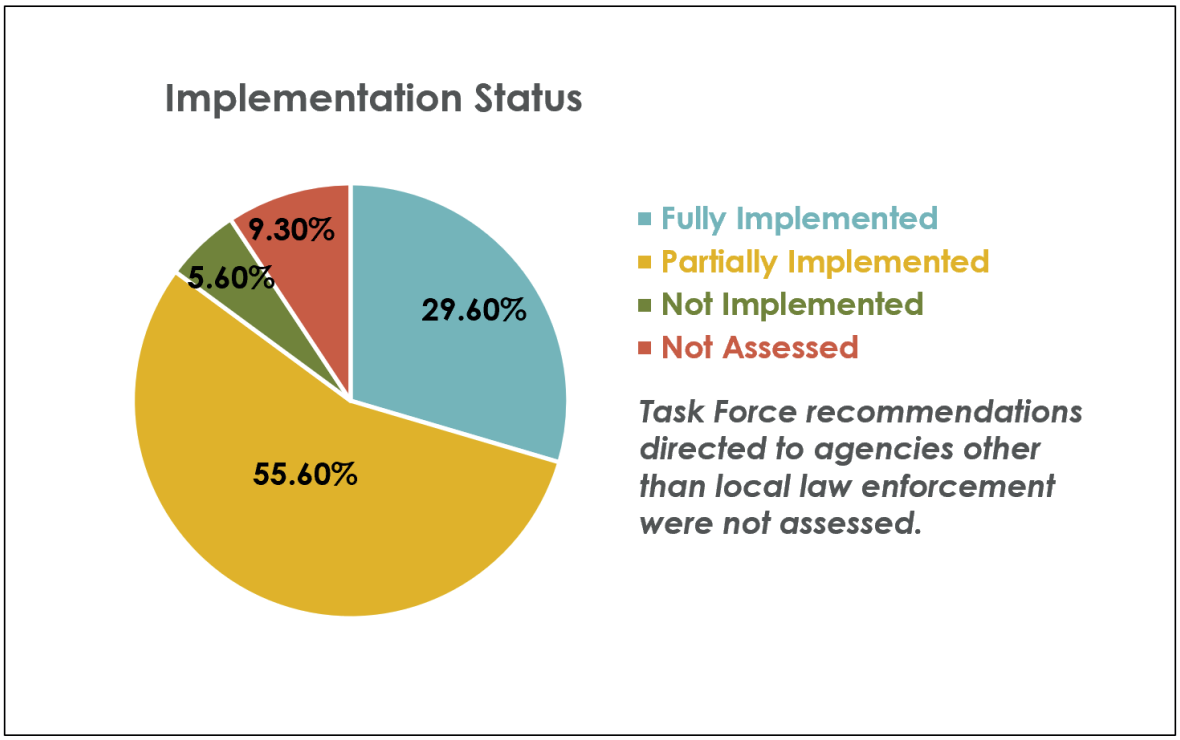
The City directed CNA to review the Department's overall policies and operations, exclude any specific incidents or police officers, and provide a report containing a substantive analysis and discussion of the policies above that have been:

(1) fully implemented,

(2) partially implemented, and

(3) not implemented, and to provide reasons for and against implementation as well as the associated costs.

Because each Task Force pillar contains multiple recommendations and action items, CNA assessment was likewise detailed. The assessment outlined 59 recommendations and 92 action items. Using the same methodology described above under Assessment of Use of Force, CNA determined that the Department had fully or partially implemented 85% of the 21st Century Policing recommendations.



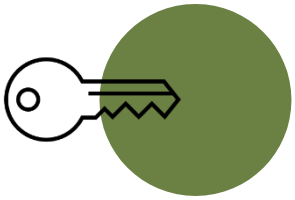
MAIN FINDINGS – CNA'S ASSESSMENT

IMPLEMENTATION: The Department has implemented or made *substantial progress* in implementing many of the recommendations and action items of the President's Task Force on 21st Century Policing reflecting a demonstrated commitment to current standards.

STAFFING ISSUES: The SJPD operates with *fewer officers per capita* than other cities of similar size which impacts standard tasks such as responding to calls or completing paperwork, response times, use of overtime, the ability to conduct comprehensive audits, and to engage in community policing. This directly affects officers' physical and mental health.

- Staffing shortages were a common theme during interviews with all stakeholders
- Department staffing levels are discussed in depth in the San José City Auditor's March 2021 report

COLLECT AND STUDY DATA: Opportunities to measure and document exist, ranging from collecting internal employee surveys and hosting community meetings to creating an ongoing empirical methodology for determining the degree of public trust in the Department.



CNA KEY RECOMMENDATIONS

FOCUS ON THE COMMUNITY

• Create a consistent and ongoing **empirical methodology** for determining the degree of **public trust** and legitimacy.
• Create a comprehensive **community** engagement plan for the department, each division. Include personal goals for officers as well as the metrics officers will be evaluated on. The plan should include specialized outreach to youth.
• Incorporate consistent and regular **feedback from community members** and SJPD members on departmental policies, training, and operation.
• Where allowed by law, **provide greater public access to available data** regarding SJPD stops, summonses, and arrests

FOCUS ON THE DEPARTMENT

• Maintain current efforts for all findings recognizing SJPD's positive efforts.
• Continue to address the findings of the recent **City Auditor's staffing assessment**.
• Incorporate a regular **organizational survey** to collect employee sentiment about the Department.
• Study the specific **mental health challenges that SJPD staff are experiencing** and develop a customized plan for ensuring members' wellness.
• Require officers to **gain consent** during warrantless searches and document this consent in a consistent manner.
• Incorporate a **consistent body worn camera audit program** and gather robust stakeholder input on the process.

SJPD'S RESPONSE TO CNA'S REPORT ASSESSMENT

Chief Mata submitted a report outlining the Police Department's response to each of CNA's recommendations regarding Use of Force and 21st Century Policing.[15] No recommendation was rejected outright. The Department's response described a four-phase approach to implementation giving due consideration to several factors.[16]

Update at Fall PSFSS Committee

#1 IMMEDIATE IMPLEMENTATION

The Department will focus on implementation of these items over the next year and will report back on progress in **Fall 2022**.

52 recommendations

#2 CONTINUATION OF EXISTING EFFORTS

This category includes items that the Department has already implemented and will continue implementing.

23 recommendations

#3 POTENTIAL IMPLEMENTATION

According to the Department, the items in this category require additional analysis in areas such as policy interconnectivity, national best practices, implementation strategies, staffing necessities, or workload/budget implications.

In **Fall 2022**, the Department will provide a report outlining its additional analysis and implementation timeline of these recommendations.

102 recommendations

#4 COLLABORATION WITH OUTSIDE ENTITIES REQUIRED

According to the Department, these items require collaboration with outside entities. As with the items in the previous category, these items will be considered for implementation in future phases.

11 recommendations

MOVING POLICE MISCONDUCT INVESTIGATIONS OUT OF INTERNAL AFFAIRS

In November 2020, the voters of San José passed Measure G, amending the City Charter and the responsibilities of the Office of the Independent Police Auditor. Among other provisions, Measure G allows the City and the San José Police Officers Association (POA) to agree to further expansions of IPA's duties where consistent with the Charter, subject to the meet and confer process, without needing to return to the voters for modification of the City Charter**.**

The passage of Measure G provided the City with an opportunity to move forward with part of the reform plan authored by Mayor Liccardo in 2020 – making investigations of police misconduct independent of the San José Police Department.[17]

In November 2020, the San José City Council's Rules Committee directed the City Manager and the IPA to explore reallocating existing resources to introduce investigatory capacity within the Office of the IPA.

The IPA and City Manager decided to hire a consultant with expertise and experience in evaluating both Internal Affairs models and civilian police oversight models.[18] The consultant will explore transferring responsibility for investigations involving sworn police personnel from the Internal Affairs Unit of the San José Police Department to either the IPA or an alternative entity. Moeel Lah Fakhoury LLP ("MLF")[19] was chosen for this project after a formal request for proposal (RFP) process. It is anticipated that their report will be presented at City Council in the Fall of 2022.

Decision informed by range of perspectives

MLF will implement an outreach plan to engage stakeholders and promote public participation so that its proposed recommendations are informed by a range of perspectives. In addition, MLF will interview:

- Current and former IA Unit Commanders employed by SJPD
- SJPD Command Staff
- Current IPA Staff & at least two former IPAs
- Staff from the City's Office of Employee Relations
- Persons from the POA Board of Directors
- The District Attorney and/or his designee
- Persons from other jurisdictions about the use of sworn investigators and/or civilian investigators.

With transition plan, move investigations out of IA

IF MLF recommends **moving** some or all investigations out of IA, it will provide a written report to that effect, including an **implementation roadmap** that identifies the actions, timelines, and resources necessary to accomplish the recommendations. That transition plan must ensure that investigations conducted by an alternative entity will be thorough and in accordance with the Public Safety Officers Procedural Bill of Rights (POBR) should a decision be made to do so.

With improvement plan, keep investigations in IA

IF MLF recommends **keeping** some or all investigations within the IA, it will provide a written report outlining **options to improve IA's** current policies and procedures and ensure they conform to the oversight industry's best practices.

Report to Council in September 2022

REIMAGINING PUBLIC SAFETY IN SAN JOSE

One component of the Police Reforms Work Plan was to create a Public Safety Community Process, tasked with evaluating and recommending new ways in which the Police Department intervenes with social issues and reduces social conflicts that are noncriminal.

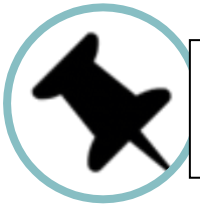
In 2021, the City Manager established the Reimagining Community Safety Advisory Group. The initial Advisory Group reflected a diverse membership, representative of San José's community. The initial group held three meetings in March and April 2021. Then the initial group disbanded primarily due to the desire of the group members to have more autonomy from the City Administration over the process by which the group was organized and the topics the group would examine, including police oversight and transparency.

In August 2021, a new community-led group was formed, the Reimagining Public Safety ("RiPS") Advisory Committee. RiPS members with voting privileges were designees of 28 community-based organizations and three neighborhood representatives chosen by the City Council. Nine non-voting members represented City/County agencies and San José State University. The Independent Police Auditor served as a non-voting member; she attended and participated in most Committee meetings.

A steering committee was elected, and subcommittees were organized to develop recommendations and collect community input on those ideas. An associated semi-autonomous Youth Council was also created. The RiPS Advisory Committee and subcommittees met frequently for nine months at which times members heard presentations on various topics and live experience testimonies. In April 2022, the RiPS' Report was finalized and presented at City Council.[20]

RiPS' recommendations to the Council were organized into seven categories. At the May 10, 2022 Council Meeting, the RiPS Committee and the RiPS Youth Council presented their reports and summary recommendations to the Mayor and Councilmembers. This presentation also included recommendations from the Charter Review Commission on police oversight.

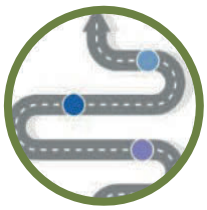
The City Council voted to refer all but three of the RiPS recommendations to City Manager and City Attorney for analysis and other considerations such as implementation, budget, workload impact, and legal issues. These recommendations will be discussed at a public meeting of the Public Safety, Finance and Strategic Support Committee in Fall 2022.



RiPS Recommendations to be discussed at Fall meeting of PSFCC committee

POLICE CONDUCT	PERSONNEL	ENFORCEMENT PRIORITES
Searches Critical Incidents Body Worn Camera Social Media Policy	Hiring/Training Community Engagement Discriminatory Behavior Homeless Response	Criminalization of Homelessness School Partnerships Child Protective Services

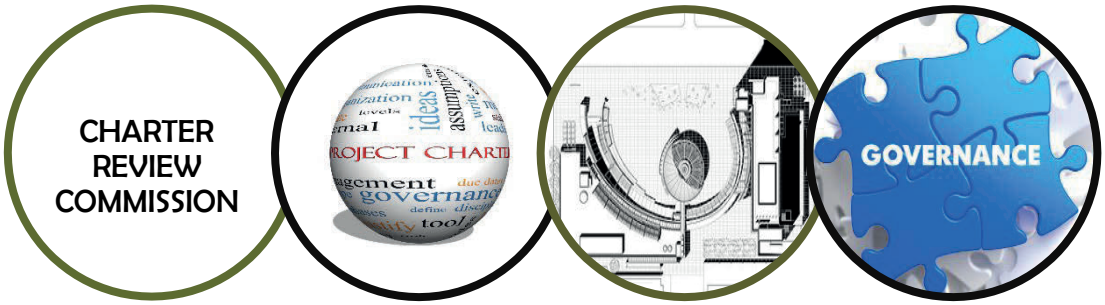
ALTERNATIVE SAFETY RESPONSES	SUPPORT FOR IMPACTED FAMILIES	IMPROVE COMMUNITY
Mental Health Response Homeless Response Traffic Safety	Trauma Relief Fund Prevent Exits to Homelessness Reparations Pilot	Affordable Housing Living Wage/Wage Theft Campaign Zero



RiPS 3

RiPS Recommendations to create 3 new police oversight entities were the same as those proposed by the Charter Review Commission. These recommendations were sent to Citywide Roadmap prioritization process. See discussion on the following pages.

CHARTER REVIEW COMMISSION

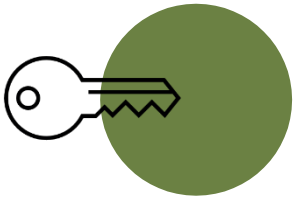


In September 2020, the San José City Council established a Charter Review Commission (Commission).[21] The commission was directed to consider potential changes to the San José City Charter related to the City's governance structure and mayoral election cycle, and additional changes to improve accountability, representation, and inclusion at San José City Hall. Among other things, the Commission considered moving mayoral elections to the Presidential cycle, implementing ranked choice voting and establishing future Commission every decade.

As stated in the Commission's By-Laws,[22] the aftermath of the May 2020 murder of George Floyd:

> *led to calls for racial justice and equity, and the members of the Charter Review Commission voted to consider all proposals to amend the Charter of the City of San José through the lens of racial and gender equity and address historic and institutional racism, inequity, and disenfranchisement of the residents of the City.*

The concepts of racial justice and equity prompted establishing a subcommittee focused on policing, municipal law, accountability, and inclusion. The San José IPA, as well as other oversight experts, provided statements before the subcommittee and the full Commission. The Commission completed its Final Report in December 2021.[23]



Charter Review Commission

Commission recommended that the City create 3 new police oversight entities. These same entities were also recommended by the RiPS Committee.

#1

POLICE COMMISSION

Create and add a Police Commission to the Charter that conducts regular public hearings on San José Police Department policies, rules, practices, customs, and General Orders, as well as address the public's concerns regarding the oversight structure and the San José Police Department. The Police Commission shall have subpoena authority and full unredacted access to the documents retained by the City.

#2

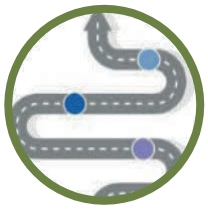
INDEPENDENT INVESTIGATIONS DEPARTMENT

Convert the Independent Police Auditor Office to the Independent Investigations Department, with subpoena authority and full unfettered and unredacted access to the documents retained by the City.

#3

INSPECTOR GENERAL

Create an Office of the Inspector General, with subpoena authority and full unfettered and unredacted access to the documents retained by any City department or any employee relating to SJPD, to assist the Police Oversight Commission in conducting reviews of patterns, practices, trends, systems, and policies at the Police Department.



RiPS

Charter Review Commission

Both the Reimagining Public Safety Committee and the Charter Review Commission recommended the City establish 3 new oversight entities. These recommendations were sent to Citywide Roadmap prioritization process.

2022-2023 CITY INITIATIVES ROADMAP AND BACKLOG APPROVED MAY 2022

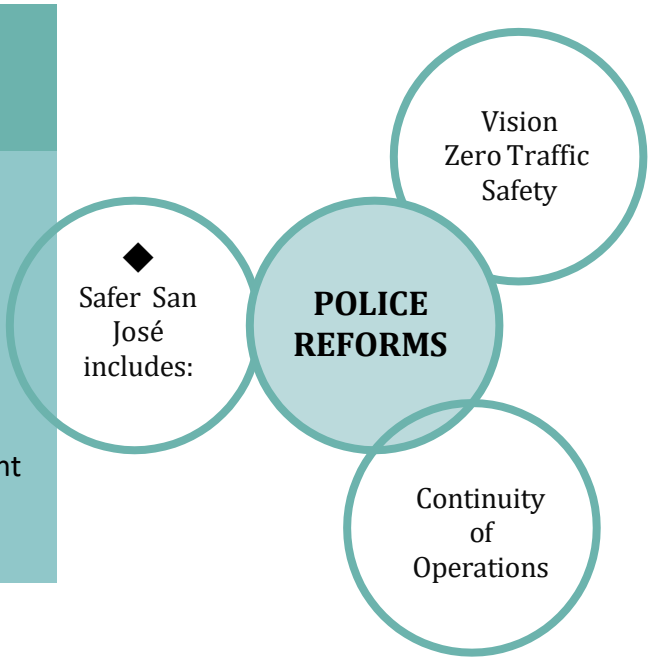
The purpose of the City Initiatives Roadmap (Roadmap) is to focus on vital change initiatives and service transformations. These initiatives are distinct from City's Core Services in that they represent significant new policies/strategies or are projects that are complex, cross-departmental, cross-agency, and/or require significant strategic planning and leadership capacity to deliver successfully.[24] [25]

The City Initiatives Roadmap Backlog (Backlog) defines the pipeline of priority change initiatives and service transformations that are *next in line* to be worked on if the Administration finds capacity to take on additional work above and beyond the City Initiatives Roadmap

The City Council engages in the Roadmap exercise annually to identify/prioritize those items on the roadmap, those items moved to the backlog, those backlog items completed, and those backlog items to be removed entirely.[26]

2022-2023 RoadMap Initiatives

- COVID-19 Pandemic Economic Recovery
- Resilient Infrastructure
- Emergency Preparedness
- **Safer San José ◆**
- Ending Homelessness
- Inclusive Neighborhoods & Public Life
- Building the San José of Tomorrow
- Strategic Fiscal and Resource Deployment
- Powered by People

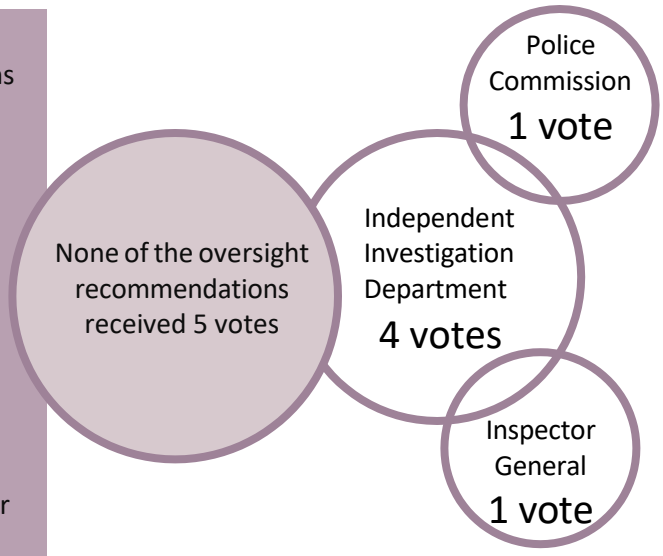


2022-2023 Roadmap Backlog

31 items were presented for council's consideration including the recommendations from the Charter Review Commission and Reimagining Public Safety Community Advisory Committee (RiPS) to:

- Create a Police Commission;
- Create an Independent Investigation Department;
- Create an Office of the Inspector General;

The top 10 items receiving 5+ councilmember votes were placed on the 2022-2023 Roadmap Backlog.



In sum, creating three new police oversight entities as recommended by the RiPS Committee and the Charter Review Commission will not be a priority. These recommendations may or may not be placed on the City's RoadMap Initiatives exercise in the next cycle.

However, other police reforms outlined on the City's Roadmap Initiative will receive focused attention over the next year.

ONE YEAR PILOT PROJECT

In May 2021, the City and the Police Officer's Union (POA) agreed to a one-year pilot project regarding how investigations of police misconduct were to be conducted. Although this agreement was not on the City's Police Reforms Work Plan, this pilot project is a significant change to the current Internal Affairs process. Both the IPA and the City Manager's Office of Employee Relations (OER) are allowed access to pending investigations.

The pilot project started on July 1, 2021 and will end June 30, 2022. The project will be close to completion by the time this report is published. During this timeframe, the IPA has assessed how much, if any, these three changes (see below) have resulted in increased confidence in the investigation of conduct complaints. Currently, investigations of complaints are controlled by the Internal Affairs (IA) Unit.

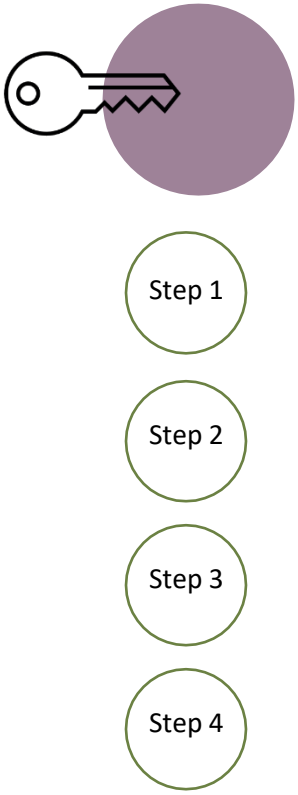
As detailed on the next page, two changes in the process have resulted in the IPA's increased confidence in the investigation of police misconduct complaints. Unintended consequences of the pilot project include time demands, sequencing, and delays.

Ability to add allegations. The IPA periodically reviews complaints throughout the process, from intake to closure. We want to ensure that the concerns voiced by the complainant are reflected in the allegations. Complainants, however, do not have the knowledge IPA staff members possess of the Police Department's Duty Manual, the City's policy manual, California law, and Federal law. We sometimes see police officers engaging in conduct that we feel IA should capture in an allegation and formally investigate. For example, a complainant may not know the legal justification an officer must have before searching a vehicle – and there are several. During the course of the pilot project, the IPA requested that various allegations be added to several complaints. On rare occasions, we asked that additional subject officers be named. Most of our requests were granted. Due to this new authority, the IPA had greater confidence that the investigations covered all potential misconduct and not just that which the complainant vocalized.

Ability to ask direct questions. Asking direct questions of subject officers has proved valuable. Asking questions without the filter of an IA Sergeant provides greater ability to phrase both initial questions and follow-up questions. We can ask questions framed by our perspective of the encounter. This ability allows IPA Staff members to better explore details and our areas of concern. Because we find the interviews are now more valuable, we have made more efforts to attend more interviews or send written questions for the IA Sergeant to ask. We are thankful that IA Staff, subject officers, and POA Union representatives have been mostly receptive to this change in protocol.

Unintended consequences - time demands, sequencing and delays. The time demands on both IPA and IA Staff increased when the IPA had more stake in the process. IPA Staff requested to review cases, including any updates, at more regular intervals. This entailed IPA staff looking at more documents and more BWC videos more often, even multiple times. IPA Staff prepared and attended more officers' interviews. IPA had more dialogue via email or formal memoranda with IA and Command Staff on the quality of the IA investigations and the Finding and Recommendation process.

And, at any step in this sequence, the IPA could ask IA Staff to complete additional tasks, such as adding allegations or subject officers, providing documentation, conducting interviews, and addressing pertinent Duty Manual sections or legal principles (e.g., 4th Amendment). This required IA Staff to expend time and energy responding to IPA requests.



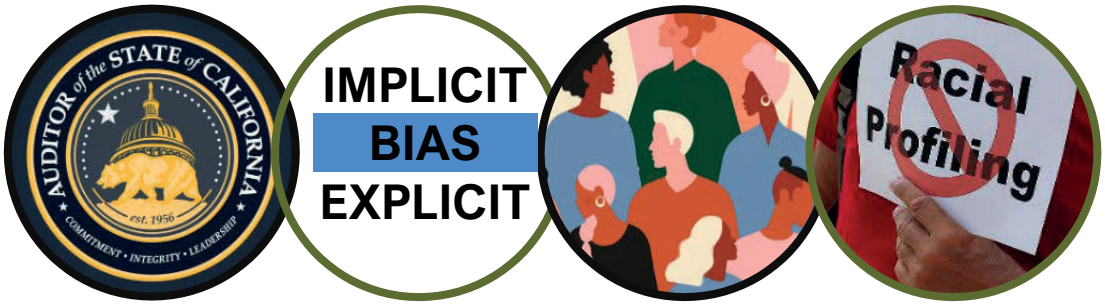
SIDE LETTER PROCESS

While the intent of the pilot project may have been to streamline the process, the reality reflects much more staff time from each office is devoted to each individual case. The turn-around time is highly dependent on the back-and-forth communications between the staffs and their speed in providing and/or reviewing requested items. The Findings and Recommendation (F&R) process creates sequencing and additional time delays. While we believe that the pilot project improves the prospect that each individual case more accurately identifies officer conduct that warrants scrutiny, the time involved slows the process. Generally, investigations involving officer misconduct must be completed within one year.

SIDE LETTER OUTCOMES

In our overall assessment, we believe that this pilot project has provided some level of additional confidence in the **procedure that defines how the scope of potential misconduct** is identified. However, our confidence in the **outcome of the process, i.e., the findings and supporting analysis**, has remained the same; it has neither increased nor decreased. Thus, we look forward to the MLF report later this year about improving IA investigations or moving investigations out of Internal Affairs.

CALIFORNIA STATE AUDITOR REPORT ON OFFICER BIAS



In April 2022, the State Auditor released its report entitled *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct.* The Auditor examined five law enforcement departments throughout the State – San José Police, Stockton Police, San Bernardino Police, Los Angeles Sheriff and the California Department of Corrections & Rehabilitation.

Given that law enforcement departments and sworn officer exercise considerable authority, it is imperative that the exercise of such authority be without regard for individuals' identity characteristics, such as race, national origin, or mental or physical disability. **The audit concluded that each of the five departments has not adequately guarded against biased conduct among their officers.** Over the past 14 years, 753 bias-based policing allegations have been filed against SJPD officers; one allegation was sustained based on racial bias and two allegations have been sustained based on bias associated with a person's mental disability.

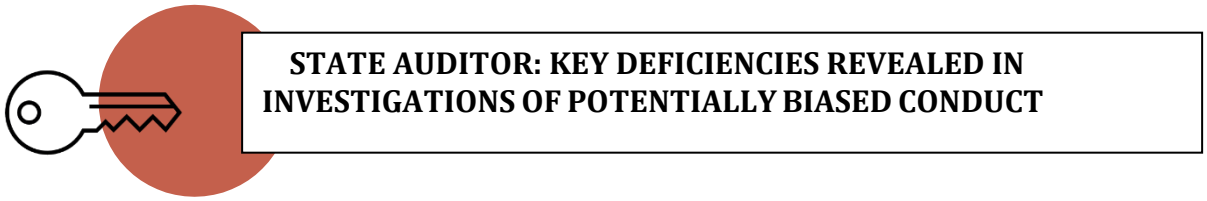
Over the past 14 years, the San José Police Department has sustained only one allegation for bias-based policing based on race. That incident is reflected in State Auditor's Report on page 21 [excerpt from graphic provided here].

According to the State Auditor, the agencies had insufficient policies in place:

1. to safeguard against biased attitudes/conduct within their ranks,
2. to investigate biased attitudes/conduct when they are alleged or
3. to address biased attitudes/conduct once identified.

The Report asserted that *as a result, these departments are at a higher risk of being unaware of and unable to effectively address the ways in which their officers exhibit bias. Without a comprehensive set of practices to address bias ..... departments cannot know the extent to which bias is a problem in their organizations or whether they are effectively combating that problem.*[27]

The IPA focused its review primarily on the chapter that discussed the ***investigation*** of potentially biased conduct. We contend that IA's investigations sometimes exhibit the key deficiencies listed below. The presence of any of these elements may prompt the IPA to invoke the appeal process.



The State Auditor's Report asserted that independent review could ensure that law enforcement departments adequately investigate their officers' misconduct. In this discussion, the focus was on the San José oversight process because *the San José IPA was the only entity whose review was clearly noted in and had impact upon the **selected** case files.*[28] It is important to note that the Auditor's staff reviewed a **selection** of five (5) internal investigations at each department. [29]

The Auditor stated that in one case, significant changes were a direct result of the IPA's input. In this case, the IPA successfully argued that an **UNFOUNDED** finding on bias-based policing be changed to a NOT SUSTAINED finding. Additionally, at the IPA's request, an improper search allegation was added and subsequently sustained.[30]

The Auditor's Report also outlined weaknesses in the IPA's authority and approach. *Most importantly, San José Police sometimes disagreed with and declined to implement key feedback from the San José Police Auditor*. IA's denial was significant in two cases in which the IPA's analysis showed indications of bias, but the IA deemed the allegation UNFOUNDED. However, the IPA failed to invoke further appeal on these two cases. The report included the IPA's comments regarding time constraints, which occurs in some but not all decisions to appeal. The State Auditor concluded:[31]

> Despite …limitations, the San José Police Auditor has increased the transparency and accountability of San José Police [Department's] misconduct investigation process, including in its investigations of bias. With the proper guidelines in place, independent oversight like that provided by the San José Police Auditor could help improve accountability in investigations of bias-related misconduct throughout the State.

While we appreciate the Auditor's confidence in our contribution to the process, **we contend that greater progress will be achieved by the Police Department's commitment to acknowledge and repair the four exhibited key deficiencies outlined on the prior page.**

The State Auditor's Report includes the San José Police Department's response to the audit[32] and the Auditor's comments to SJPD's response.[33]

IPA POLICY RECOMMENDATIONS

1. The Department Should Examine and Provide Guidance on Police-Community Communications.
2. The Department Should Provide Clear Direction to Address Retaliation.
3. Police Officers Should Provide Important Information During a Traffic Stop.
4. The Department Should Expand Avoiding Vehicle Tows by Placing an Affirmative Duty on Officers to Provide Options to Drivers.
5. The Department Should Provide More Thorough Guidance and Training on Vehicle Searches.
6. The Duty Manual Should Provide Guidance on When Officers May Enter Cars to Search for Recreational Marijuana.
7. The Duty Manual Should Provide Guidance on When Officers Engage in Foot Pursuits.
8. The Duty Manual Should Provide Guidance on Handcuffing Detainees.
9. The Duty Manual and the IA Unit Guidelines Should Document the Tolling Process.
10. Changes Should Be Made to the IA-IPA Process.

IPA POLICY RECOMMENDATIONS

When the electorate of the City of San José amended the City Charter in 1996 to create the Independent Police Auditor's (IPA) Office, the vote mandated that the IPA recommend ways to improve how San José police officers perform their duties. The IPA has a unique perspective from which to make informed proposals to the Police Department based on our independent review of complaint investigations, information we learn from the public through community outreach and research on best practices from other jurisdictions.

1 The Department Should Examine and Provide Guidance on Police-Community Communications.

Given the current climate of re-establishing and re-imagining police-community relations, we recommend the Department focus on verbal communication. Effective verbal communication is a critical law enforcement skill. The Department should explore current best practices and training used by other police agencies and determine what, if anything, should be incorporated in San Jose.

Use of vernacular/street talk

Review of BWC video often depicts officers using vernacular terms such as *bro, dude,* or *man*. Officers say that they use these terms in an attempt to build rapport and/or reduce tensions. However, the recipient of such language may view its use as disparaging, disrespectful or evidence of police bias. Further, if the use of street talk as a rapport building tactic is not working, the officer might consider dropping such language.

Complaint #I202:✧✧✧A is illustrative. The complainant was stopped by a recruit officer for a cracked windshield and complied with the recruit's directions. After the encounter, the complainant contacted Internal Affairs (IA). He stated the recruit officer was discourteous throughout the stop and treated him differently because of his race. The IPA requested that the subject officer's conduct during the entirety of the stop be examined **not only** to determine whether the Duty Manual was followed **but also** for possible indication of bias. We specifically asked that the subject officer's use of tone, casual word choices ***my man, chill, dude, power down bro*** needed to be examined in **both** the context of courtesy and bias-based policing.

In his interview, the subject officer stated that, based on his training/experience, using that type of language can be a de-escalating technique. He further stated that he uses his de-escalation technique with all classes of people, not just a particular group. We noted, however, that the other officer on scene used the word ma'am when addressing the Caucasian female passenger. (Do me a favor **ma'am**, don't pull stuff out of your bag.) IA accepted the subject officer's explanation without any critical analysis. The IPA pointed out that if the desired effect was to de-escalate the encounter, it was illogical that officer persisted in using this technique when it was not working.

The IPA suggests that the Department be mindful that the use street talk may deteriorate the conversation into uses of profanity.

- Complaint #I202:✧✧✧B is illustrative. Officer 5 was asked to explain his choice of words, including *F**k*, during his conversation with a Hispanic driver. The driver was stopped because it appeared the car's registration was expired. At the scene, the driver refused to allow the officer to search the car despite his repeated attempts.

    - The officer then said, *The car is mine; I am towing it. It's on, dude. The car is getting towed. Congrats, congrats on the attitude. It could have been a warning, right.*

        - In his IA interview, the officer explained, *When talking to subjects sometimes, the flow of the conversation can go easy and there is a, or excuse my language from the incident, but when speaking with subjects, **from my experience of working on the eastside** sometimes the slang and the lingo in the dialog in talking to them, you can [get] through with people. If the conversation was not going smoothly then I just informed them of my discretion, my decision that I was going to tow his vehicle.*

    - At the scene, Officer 5 is captured on BWC video using the words *f**k* and *s**t.*
        - In his IA interview, the officer justified his use of the word *F**k.*
            - *As I said, sometimes talking in street lingo or verbiage, some words are easier understood than others, and a way of talking to people, he may have understood me a little bit better.* He further explained that *when he used the word F**k, it was not meant to be disrespectful towards the driver or her passenger.*

        - The officer was asked to explain why cursing is easier to understand than not cursing.

    Officer 5*, **From my training and experience from working on the eastside,** sometimes people don't take, they don't know how **interact with you**. They don't talk to you and sometimes if you curse or they curse at you, it's kinda more of a street lingo*.

        - The officer was asked, if at any point of time, if either of the individuals cursed at him.
            - Officer 5 did not remember but upon review of the BWC and IA analysis, neither of the individuals did.

- The Department closed this case with a SUSTAINED finding on COURTESY and a NOT SUSTAINED finding on BIAS-BASED POLICING.[34]

- Complaint #I202:✧✧✧C is likewise illustrative. Two officers detained a Hispanic male driver and his teenage passenger to investigate suspicious tags on the vehicle. Officer 6 took the teenager aside and conducted a *street check* regarding the teenager's association with local gangs. Several times throughout the encounter, Officer 6 used profanity, namely:
  - *Nobody hit you up about it, nobody said where the f**k you got that?*
  - *I'm giving you every f**king out I can, ain't nothing in this world free.*
  - *You threw your f**king key up, like what the f**k right?*
  - *I am not telling you to f**ken snitch anyone out.*

    - In his IA interview, Officer 6 explained his choice of words. He stated that street vernacular or street conversation was something he learned in the academy as a way to communicate normally. *It was just street jargon, it's something that would come up, if somebody was getting hit up they are not going to be polite about it so I was just expressing that with him.* Officer 6 said the word choice was not disrespectful and that **he conducted himself professionally the entire contact**. Officer 6 acknowledged that neither the driver nor the passenger used profanity during the encounter.

A systematic analysis of BWC video from the Oakland Police Department co-authored by Jennifer Eberhardt at Stanford University involving police officers' use of language shows that officers consistently use less respectful language with black community members than with white community members.[35, 36] This study focused on sworn officers in the Oakland Police Department; the data was gathered in 2014.[37] The racial disparities in speech remained even after the researchers controlled for the race of the officer, the severity of the infraction, and the location and outcome of the stop.[38]

The Office of the Inspector General of the Los Angeles Police Commission is presently doing an assessment of the Los Angeles Police Department (LAPD) similar to that of Professor Eberhardt. The commission will select a sample of LAPD stops and analyze the verbiage used by officers during those stops across different demographic variables. The data collection will not be as broad as that gathered by Professor Eberhardt. However, academic researchers from University of Southern California (USC), University of California at Riverside; and Georgetown University are initiating a much larger study of similar issues, to include analysis of voice tone (not just word choice/usage), over a huge sample of stops (tens of thousands). They will use machine learning to assist in the analysis of such a massive sample of stops. Although they anticipate producing public updates of their analysis along the way, the study in its entirety may not be completed until the end of 2023 or beyond.

We recommend that the Department follow these various studies and associated recommendations to determine applicability to SJPD training and standards.

2 The Department Should Provide Clear Direction to Address Retaliation.

Currently the Duty Manual addresses retaliation in three scenarios.

- Workplace harassment/discrimination [Duty Manual sections C 1313, C 1316]
- Whistleblower Policy [Duty Manual section C 1744]
- Retaliation [Duty Manual section C 1745 – protects persons from retaliation for filing a complaint about alleged police misconduct]

We have reviewed several cases which, we believe, showed differing levels of retaliatory conduct:

- A young driver refused to allow an officer to search her car after repeated requests from the officer. Contrary to department policy, the officer did not allow the registered owner to retrieve the car. The officer impounded the car and conducted an inventory search for weapons and contraband. This search was improper because inventory searches prohibit searching for weapons and contraband. The impound of the car was also improper.

- An employee driving their employer's company van decorated with the company's logo made a disparaging comment to two motorcycle officers while at a stoplight. There was no evidence of a vehicle code violation or other crime. Within a few days, one of the officers wearing his SJPD uniform showed up at the company's office to tell the employer about his employee's conduct. If there was a law enforcement or public safety reason for the visit, it was not documented in any fashion.

- An officer pulled over a driver who provided his license at the officer's request. There were three officers at the scene. It was discussed that a warning would be issued. One officer handed the license back to the driver. The driver then asked for the officer's name and identifying information. The officer replied that the information would be on the citation, took back the license, and issued a ticket.

We recommend that Duty Manual sections C 1101 be amended to clearly to prohibit officers from acting in a retaliatory manner under any scenario. Proposed new text is in bold type:

> C 1100 - DISCRETIONARY JUDGMENT: Reasonable and appropriate police action varies with each situation. Different facts or circumstances may justify an investigation, a detention, a search, an arrest or no further action. Thus, Department members must continually exercise discretionary judgment in order to ensure that the safety and security of the public is properly protected.

C 1101 EXERCISING DISCRETIONARY JUDGMENT:
Department members will exercise discretionary judgment in a reasonable manner and remain within the limits of their authority as defined by law, judicial interpretation, and departmental directives. **Department members shall not exercise discretionary judgment in a retaliatory manner.**

We also recommend that the Department provide direction on when to contact employers. We propose the following language be used or amended:

Unless the employer is at the scene, department members shall not contact employers after an encounter between a sworn member and a community member unless all the following criteria is met:

1. A reason for the contact exists being either
    1. A law enforcement reason (i.e., investigating or preventing **crime**) for the contact and/or
    2. public safety reason (i.e., the protection of the general public) for the contact

2. Notification and documented approval must be obtained from the department member's supervisor

3. The contact with the employer must be recorded (audio and/or video)

Supervisors will pay close attention to those circumstances in which a department member wants to contact an employer about an employee engaging in conduct which may protected by the First Amendment (i.e., Freedom of Speech, Freedom of Religion, Freedom of Assembly.)

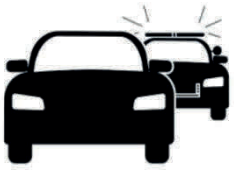
NEW CALIFORNIA LAW ENFORCEMENT LEGISLATION AB 48

Enacted Sept. 30, 2021

Effective Jan. 1, 2022

Prohibits the indiscriminate use of **kinetic energy projectiles and chemical agents** by law enforcement on peaceful protestors or to facilitate curfews. Sets clear, minimum standards for use of these "less lethal" weapons by law enforcement if there is a threat to life or serious injury; and require de-escalation tactics, verbal warnings and opportunities to leave the scene. Requires data collection on the use of, and any resulting injuries from, these "less lethal" weapons by law enforcement. Departments would also need to release reports on their use of such weapons within 60 days (or 90 days if the agency has "just cause").

3 Police Officers Should Provide Important Information During a Traffic Stop.



The Department need not wait months to hire a community engagement consultant[39] and then wait months or years for the consultant's recommendation to be implemented. Efforts to enhance community relations can be implemented now – incrementally through every traffic stop.

One of the common themes in misconduct complaints is the alleged failure of the officer to provide the reason for the stop at the beginning of the stop. It is frustrating for persons not to know why officers are exerting their authority. It is equally frustrating when the officer asks, *Do you know why I pulled you over*.

The IPA recommends the Duty Manual be updated to include these concepts:

- Officers should provide their **name and badge number** at the beginning of the traffic stop.
- With the exception of exigent circumstances, if there is any indication of a possible language barrier, officers should comply with the Department's Language Access Plan.
- Officers should provide the **reason for the stop** as early as possible.
- **When feasible**, officers should provide **the reason for the stop before officers ask for consent to search**. There are legitimate law enforcement reasons to delay providing the basis for the car stop.
- Using their BWC, officers should contemporaneously narrate the reason for (1) a pat-search of the driver/occupants (2) the reason for handcuffing (if applicable), and (3) the reason for searching the car (i.e., incident to arrest, car exception, inventory search).
- The Department should encourage the primary officer to provide a business card to drivers who are not cited or arrested.

NOTE: CNA's Report on 21st Century Policing deemed requiring officers to identify themselves and provide the reason for the stop was both **low cost and high priority**.[40]

Pillar	Number	Recommendation	Cost	Priority
2 – Policy & Oversight	2.11.1	Revise Duty Manual to require officers proactively identify themselves during the stop and the reason for the stop.	Low	High

Appendix C: Finding and Recommendations – Cost and Priority CNA Report

4 The Department Should Expand Avoiding Vehicle Tows by Placing an Affirmative Duty on Officers to Provide Options to Drivers.

Currently Duty Manual Section L 5210 *Seizures of Vehicles* states:

> WHEN DRIVER ARRESTED: When a person is arrested and taken into custody while driving in control of the vehicle and the vehicle is not stolen or otherwise evidence of a crime, does not contain evidence of a crime which can readily be removed at the scene, and is not the means used to commit a crime, officers shall advise the arrested person that the vehicle shall be towed to a secure facility for safe storage **unless the officer received direction from the arrestee to dispose of the vehicle in some other lawful manner (leaving it lawfully parked or surrendering the vehicle to another qualified person who can lawfully drive the vehicle)**. If the arrestee refuses to leave the vehicle at the scene or refuses to cooperate in lawfully disposing of the vehicle to ensure its safety, the arresting officer shall impound the vehicle.

We recommend that the Duty Manual expand its current guidance on avoiding tows. **Officers should be mandated under L 5210 to affirmatively ask the driver** if they (1) wish to surrender the vehicle to a qualified person, (2) wish to leave the vehicle lawfully parked, or (3) wish to dispose of the vehicle in another lawful manner that either the officer or the driver can suggest.

We recommend that the scope of L 5210 not be limited to arrestees. It should also cover drivers who do not have a valid license regardless of whether they are released with a citation or a warning. Such a change will be in keeping with the Department's stated mindset and Duty Manual provisions which stress that tows should be avoided when possible.

Placing the burden on the arrestee to provide directions to the officers is problematic. The arrestee may not know that he/she has options under the Duty Manual. Even when a driver knows about the Duty Manual provisions, they may not remember those options because of the stress associated with being detained. The driver (particularly those of color or low socio-economic background) may not feel comfortable telling the uniformed officer what to do with the vehicle given the power dynamic of a cite/arrest situation.

We assert that requiring the officer to provide options to the driver is beneficial. It creates a modicum of good will in a law enforcement setting. It informs the driver of a benefit afforded to them in the Duty Manual. It relieves the arrestee and their family (if any) of the significant tow and storage fees associated with an impound.[41] And in some situations, it will allow the vehicle to be used by other family members who might rely on that vehicle to travel to work, school, church, etc. **NOTE**: There are some impounds that dictate a 30-day minimum. Under those circumstances, the officer need not ask the driver for direction.

5 The Department Should Provide More Thorough Guidance and Training on Vehicle Searches.

The Fourth Amendment protects people from unreasonable searches. Police may search a car if they comply with legal principles that justify a vehicle search. Officers need to understand that the various aspects of car searches are not interchangeable. **We recommend that officers should document the principle supporting their search on BWC with contemporaneous narration and in their reports.**

◆ CONSENT SEARCH OF CAR

The SJPD Duty Manual Section L 4904 lists three required elements for consent. Fourth Amendment rights, like other constitutional rights, may be waived and persons may consent to an officer searching their car. We recommend the following regarding consent searches:

- **Officers seeking consent to search should document a *yes* or *no* answer.**

  A valid consent search can only be justified if the suspect communicates the decision to consent. A suspect expressly consents to a search if, upon being asked for consent, replies in the affirmative. Consent will be implied if the suspect said or did something that was interpreted by officers as authorization to search, even though the suspect's words or conduct were somewhat ambiguous.[42] We believe implied consent is a vague concept and too often tied to the officer's subjective opinions. We believe that obtaining an affirmative *yes* as consent is far preferable to an absence of *no* because negatives are inherently hard to prove.

- **When feasible, officers seeking consent to search should provide a basis for the car stop.**

  If the officer provides a basis for the stop, the driver can better decide whether to provide consent. If, for example, the basis for the car stop was a non-working taillight, the driver can determine whether this basis warrants providing consent to search the interior of the car. There are legitimate law enforcement reasons to delay providing the basis for the car stop.

- **Officers seeking consent should not ask the driver more than twice**.

  Repeated requests may be perceived as discourteous or intimidating. Repeated requests can invoke subtle intimidation from a uniformed officer which casts doubt on the *voluntary* quality of the consent (if obtained).[43]

- **All initial searches based on consent should be limited in scope.**
  We make this recommendation primarily for community relations. Most persons do not know that if they agree to a consent search, officers can search inside any object in the

car and remove car paneling to look behind. We believe that such scope and intensity of this search exceeds the reasonable expectations most persons have of a consent search of a car.[44] Such conduct may result in drivers and passengers forming a negative view of the search and the officers who conducted the search. In the absence of a good rationale, we believe such car searches by SJPD officers may be unnecessarily alienating to the community members they serve.

Thus we recommended that if the initial search of the car is based on consent, the search be limited in scope to only those areas a reasonable person would believe was intended in the initial request. Initial searches should generally be limited to the passenger compartment, glove box, and center console.

After an initial limited search, officers are free to ask the driver for consent to search additional places/items as long as informed consent is obtained regarding the scope and intensity of the more thorough search. Also, if an initial limited search of the car reveals indicia of weapons or illegal objects, then the officer has grounds to justify a more expansive search without obtaining consent to search for those objects.

Complaint #I202:✧✧✧D is illustrative.

> The driver and his teenage son are detained for an expired car registration issue. Subject officer says, *Any weapons in the car? Anything we need to be worried about? Do you mind if we check?* Driver provides consent. Officer searches the passenger compartment, the glove box, and the console. He removes the interior paneling in the trunk and the spare tire to search underneath. Both persons were released without citation or arrest. Complainant stated that the officers' conduct was improper and biased.

◆ CAR SEARCH INCIDENT TO ARREST

In *Arizona v Gant* (2009) 556 US 332, 129 S Ct 1710, 173 L Ed 2d 485, the Supreme Court adopted a two-part rule under which an automobile search incident to a recent occupant's arrest is constitutional (556 U.S. at 341-344, 351):

Prong #1: Either the **arrestee is unsecured and within reaching distance of the vehicle** during the search thereby justifying the search to protect officer safety or prevent the destruction of evidence**; or**
Prong #2: The police have reason to believe that the vehicle contains **evidence of the crime for which the defendant was arrested.**

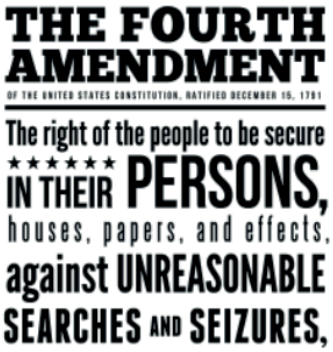
Vehicle searches *incident to arrest* are **limited to the glove box, passenger compartment and containers located in the passenger compartment**. It does not provide a rationale for searching the trunk of a vehicle or other areas beyond the passenger compartment. *Arrest* in this context means custodial arrest.

- **We recommend that if a search is done under the first prong**, that BWC capture the reaching distance between the arrestee and the danger or evidence.
- **We recommend that if a search is done under the second prong**, that officers record on their BWC video the basis for believing that the vehicle contains evidence of the crime for which the defendant was arrested before conducting the search.

Complaint #I202:✧✧✧E is illustrative.

> Officer described searching the suspect's car while the suspect was secured in the patrol car as *incident to arrest*. The suspect was arrested on a California Penal Code section 148 charge (delaying or obstructing the police). We believe Prong #1 was not met because the suspect was secured in the patrol car; we believe Prong #2 was not met because there was no reason to believe that evidence of the section 148 violation would be found inside the car.

◆ THE AUTOMOBILE EXCEPTION TO THE 4TH AMENDMENT

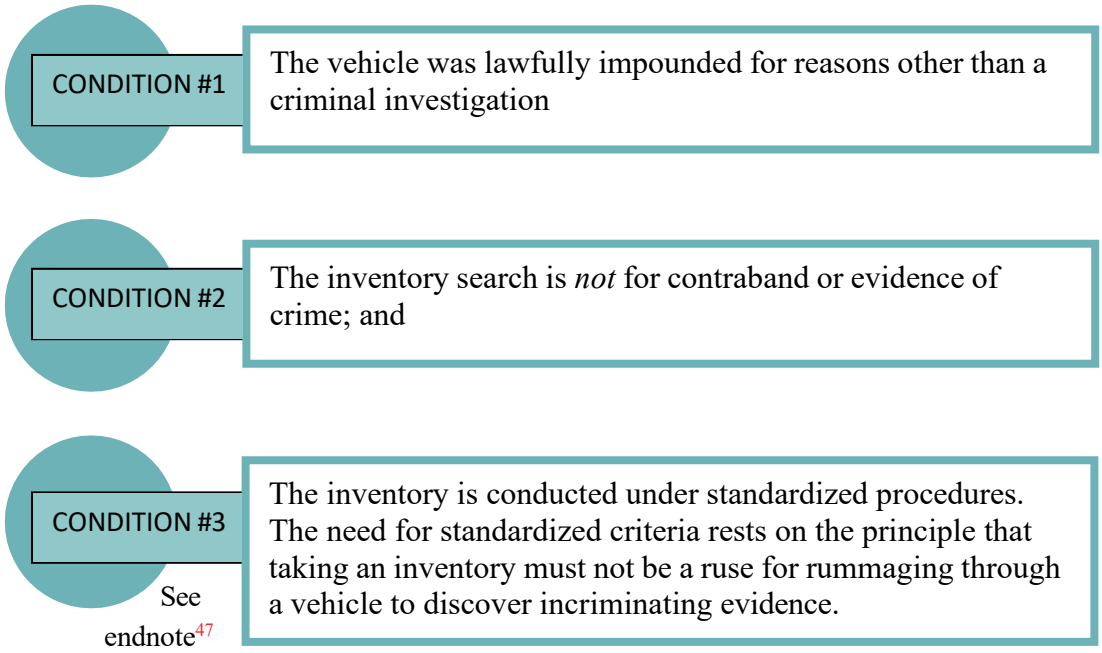


Under the automobile exception, police officers who have **probable cause** to believe a vehicle contains evidence of criminal activity or contraband may conduct a warrantless search of any area of the vehicle in which the evidence or contraband could be found. *U.S. v Ross* (1982) 456 US 798, 799-800

- **We recommend that if a search is conducted under the automobile exception** that
  - BWC captures the officer's statement justifying their entry into the vehicle before entering the vehicle.
  - The statement includes facts supporting the officer's belief that the vehicle contains (1) evidence of criminal activity and/or (2) contraband.

◆ INVENTORY SEARCH

Inventory searches are not intended to look for weapons or contraband.[45] Warrantless inventory searches are lawful under the following three conditions:[46]



See endnote[47]

SJPD Duty Manual sections L 5400 through L 5415 address towing, storing and/or impounded vehicles. Neither of these sections clearly indicates the limits of an inventory search or discusses the three conditions outlined above.

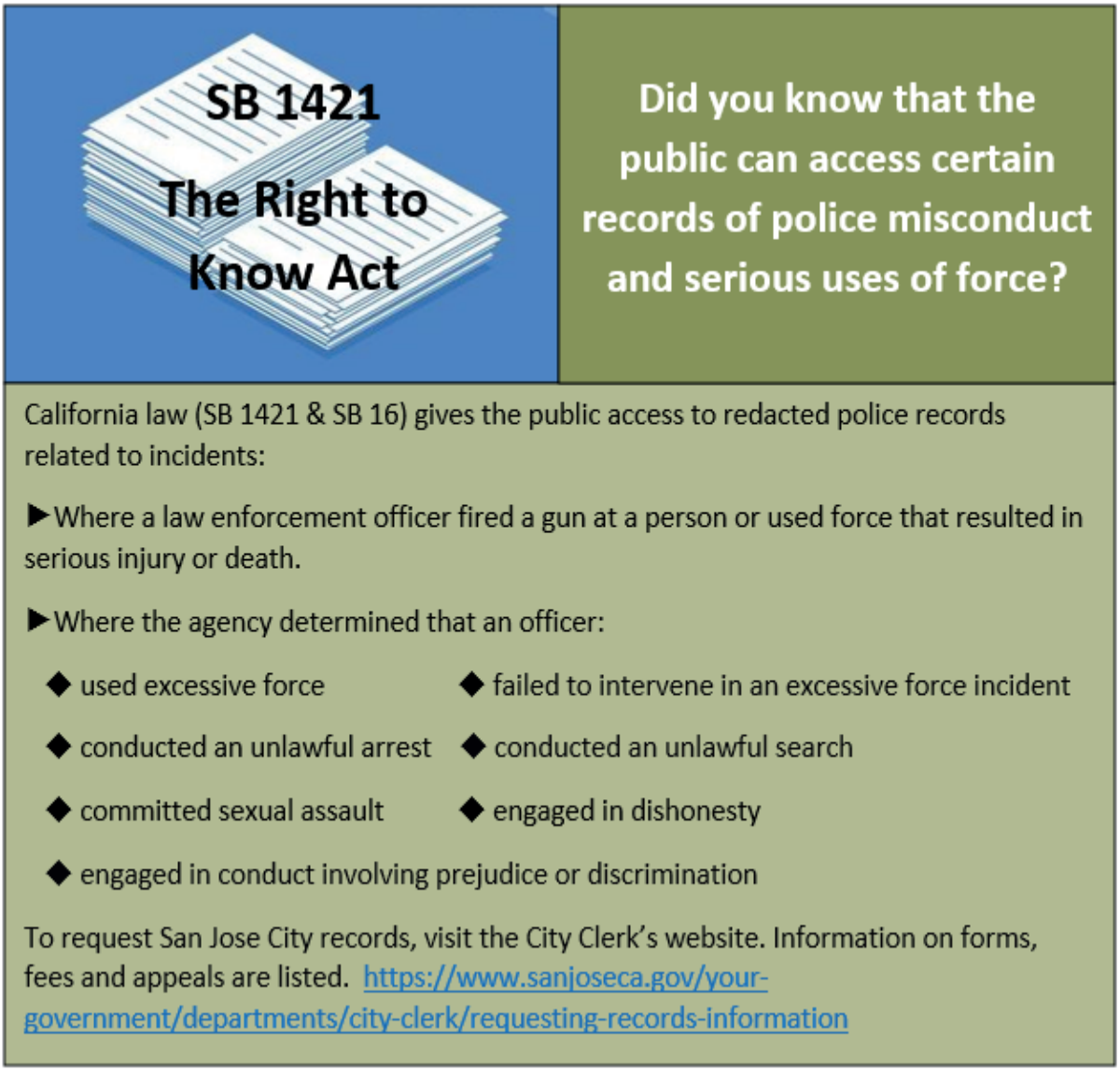
The only Duty Manual section that addresses inventory searches (L 5406) states:

> The Police Department and the contract tow company share a responsibility to protect the vehicle and its contents while in police custody. The towing officer has an obligation to make an inventory that is as complete as possible, **given the limitations established by search and seizure case law and inaccessibility to certain areas of the vehicle**. Therefore, the inventory section of Form CHP 180 should contain as much detail as possible before the officer releases the vehicle to the contract tow company.

- The IPA recommends that the Duty Manual Policy L 5400 **be explicit regarding the rationale supporting inventory searches.**
- The IPA recommends that the Duty Manual L 5400 **clearly state that an inventory search is not, and cannot be used as, a search for contraband or evidence of crime.**

Complaint #I202:✧✧✧F is illustrative.

> Officer stated that he performed an inventory search of the car. In his IA Interview, Officer said that the Duty Manual requires that an inventory search be conducted when towing a vehicle. According to the subject officer, the purpose of an inventory search is to make sure there are no weapons or illegal contraband inside of the vehicle and to make sure that *all of their belongings are there*. Officer also stated the inventory search is to make sure that nothing gets lost or stolen from the vehicle after it is impounded. Officer stated that he searched the glove box looking *for weapons*. He pulled out the glove box and searched behind it because *he had located a firearm there in the past*. He stated that *illegal contraband or anything like that can be located anywhere, any nooks or crevices.* He acknowledged that he *always* searched *the nooks and crannies*. The Chief of Police sustained an improper search on this allegation after the IPA appealed the determinations of the IA Unit Commander and subsequently the determinations made by the Findings & Recommendation review.



6 The Duty Manual Should Provide Guidance on When Officers May Enter Cars for Recreational Marijuana.

In 2016 California voters approved Proposition 64, also known as the Adult Use of Marijuana Act. Among other things, Proposition 64 made it legal as of January 1, 2018, for people 21 and older to possess and use specified amounts[48] of marijuana.

The focus of our recommendation is to address officers entering cars to search for marijuana. Unconstitutional car searches can result in evidence being suppressed and, in some cases, charges being dismissed. In several complaints, officers justified their vehicle searches based on an assumption that the mere presence of marijuana, regardless of amount, provided justification to enter and search the entire car.

This table summarizes California laws and penalties regarding possession of recreational marijuana applicable to our recommendation.

Marijuana Offense	Type of Offense & Penalty	Search of Car
Health & Safety Code § 11357(b) - Possession of more than 28.5 grams (1 ounce) of dried marijuana or more than 8 grams of concentrated cannabis (hashish, hashish oil)	● Persons 18 and older: misdemeanor with up to $500 fine and up to 6 months in county jail ● Persons under 18: infraction with drug counseling and community service	A search of the car is improper unless the officer possesses objective facts indicating that quantity of marijuana exceeds 28.5 grams of dried marijuana or more than 8 grams of concentrated cannabis.
Vehicle Code §23222(b) - Driving a vehicle on a highway while in possession of marijuana that is either in an open container or no container at all.	Infraction with a fine up to $100	A search of the car is improper unless the officer possesses objective facts indicating marijuana is not in a proper container.

HOW MUCH IS 28.5 GRAMS/ONE OUNCE?

- Rob Pedregon, a Los Angeles Airport Police spokesman, described it as akin to *a fistful.* Sgt. Michael Lee of the San Francisco Police Department's Airport Bureau said it would depend on how tightly the marijuana was packed, but if it was in a Ziploc, it would likely fill a *loosely packed sandwich bag*. Both Pedregon and Lee also said that it's **usually visually apparent** whether or not an individual's stash will fall into the category of personal use. *If it's something blatantly illegal, it's kind of obvious,* Lee said.[49]
- A *zip of weed* typically refers to one ounce of cannabis. The origin of the term is quite simple: an ounce of weed fits nicely in a Ziploc bag.

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LIMITS ON THE LAWFUL AMOUNT OF RECREATIONAL MARIJUANA

Given that California law allows recreational marijuana, the presence of marijuana in a vehicle cannot **by itself** justify an officer's search for more marijuana on the theory that if a person has a lawful amount of marijuana, the search might disclose a larger, unlawful amount of marijuana. Instead, there must be evidence—that is, additional evidence beyond the mere possession of a legal amount—that would provide **probable cause** to believe that a search would disclose evidence of a crime, such as the possession of an unlawful amount of marijuana or other drugs.

LIMITS ON THE LAWFUL TRANSPORT OF RECREATIONAL MARIJUANA

Likewise, given that the law allows a driver to store marijuana in a sealed container in a car, an officer cannot justify a search for that container **on the theory** that the marijuana is not sealed in a container or not in any container. Instead, there must be evidence—that is, **additional evidence beyond the mere possession of marijuana**—that would cause a reasonable person to believe the defendant has not placed that marijuana in a proper container within the car. The standard is probable cause, not mere reasonable suspicion.[52]

We recommend that officers be provided clear direction on when and under what circumstances a search of the car is legal under Health & Safety Code § 11357 and/or Vehicle Code § 23222(b). Officers should be informed of the presence or absence of certain elements (individually or in combination) that may, or may not, support a lawful search, such as:

- The driver or passenger acknowledging that marijuana is in the car
- Answers to officers' questions about the amount of marijuana in the car and how it is stored
- Any evidence of driver impairment that may fairly be attributable to the driver's consumption of marijuana
- Plain view observation of the amount of marijuana[53]
- Plain view observation of the container in which marijuana is stored
    - A container or package must be open to the air when found in the car, and not merely have the potential to be opened or have previously been opened.[54]

If the officer decides to search the car, the officer should:

- Photograph the marijuana (BWC is insufficient to capture a visual of the quantity)
- Photograph the container, if any, in which the marijuana is stored to document whether the container, when found, is open to the air.

7 The Duty Manual Should Provide Guidance on When Officers Engage in Foot Pursuits.

The Duty Manual has no guidance as to when or if an officer should engage in a foot pursuit. We believe that such guidance should be added. Foot pursuits can be dangerous. At stake is the need for officers to weigh the potential threat posed to the public if a suspect is not pursued versus the possible harm that could be created by engaging in a chase on foot both to themselves and the suspect. Other jurisdictions have provided updated guidance on engaging in foot pursuits as outlined further in this section. The IPA frequently reviews encounters involving foot pursuits. In one complaint, a police officer engaged in a foot pursuit at night over an open field because a bicyclist without a bike light crossed over a double-yellow street line and refused to stop when ordered. Considering the relatively minor nature of the crime, we questioned whether the pursuit was warranted given the danger of injury posed to both the officer and the suspect. The danger ranges from (1) injuries sustained by either the suspect or the officer from tripping and/or falling on the ground or onto an object to (2) the officer using force on the suspect at the end of the pursuit.

We recommend that a section be added to the Duty Manual providing direction on when to engage in a foot pursuit. We recommend this policy include clear direction that officers assess the seriousness of the crime for which the suspect is wanted.

In a 2021 publication entitled Policing: A Journal of Policy and Practice, Meghan Stroshine and Steven Brandl documented that: *Studies have shown that police use of force is more likely during foot pursuit-related arrests than in arrest situations generally.* ***Specifically, Kaminski found that compared to other arrests, foot pursuits increased the likelihood of police using of force by 345%****. The greater likelihood of force also increases the risk of injuries and assaults in arrest situations involving foot pursuits compared to other arrest situations, leading Kaminski to conclude that '...compared to arrests generally, foot pursuits appear to be a higher risk activity'*[55]

Acknowledging the risks associated with foot pursuit, several law enforcement agencies have recently provided clear direction on when to engage or not engage in such conduct.

DALLAS POLICE DEPARTMENT[56]
Situations exist that may require officers to pursue a suspect who is evading capture on foot. Foot pursuits are proven to be dangerous. It is the policy of the Dallas Police Department that the safety of our officers and the public shall be the determining factor for initiating and/or terminating a foot pursuit. *Accordingly, the decision to initiate a foot pursuit must be based on the pursuing officer's conclusion that* ***the immediate danger to the public*** *created by the failure to apprehend the* ***suspect outweighs the potential risk of danger in pursuing the suspect on foot.***

LAS VEGAS POLICE DEPARTMENT:[57]
Las Vegas Metro Police Department discourages, but does not ban, officers from foot pursuits of suspects when the officer is alone or when the suspects are armed. Las Vegas police officials also added a rule that an officer who initiates a pursuit should not be the first person to lay hands on the suspect and should instead call for backup. John Jay College Professor Phillip Atiba Goff studied the changes in Las Vegas and found a 23 percent decrease in use of force by officers and an 11 percent decrease in officer injuries after the new policies were implemented.

SACRAMENTO POLICE DEPARTMENT
Under a new policy[58] enacted as a result of the Stephon Clark fatality,[59] Sacramento officers must consider their own safety, danger to the public and suspect, and the importance of making an arrest. Officers must also start their body cameras, state why they are chasing that suspect, and state the person's description.

CHICAGO POLICE DEPARTMENT[60]
Spurred by public outcry over the deaths of a teenager and a young man, the Chicago Police Department enacted a temporary foot pursuit policy in May 2021. The temporary policy received significant public criticism as being too vague and was revised in February 2022.[61] The revised policy states that foot pursuits may only be initiated when there is a valid law enforcement need to detain the individual being pursued.[62] The revised policy expands the role to supervisors and lays out clear instances in which officers will discontinue or not initiate a foot pursuit.

PALO ALTO POLICE DEPARTMENT[63]
The Palo Alto policy states that the safety of department members and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. ***Officers must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department members***.

8 The Duty Manual Should Provide Guidance on Handcuffing Detainees.

Although the Duty Manual provides some direction about handcuffing **arrestees**,[64] it is devoid of guidance as to when **detainees** may/should be handcuffed. The terms are distinct.

DETENTION based on reasonable suspicion

Officers may **detain** a person if there is **reasonable suspicion** that the detainee has committed a crime.

During a detention, a person's freedom to leave is restricted allowing the officers to investigate their **suspicions** about the crime.

If the investigation reveals **probable cause** that the suspect committed a crime, the suspect is arrested.

ARREST based on probable cause

If the investigation does not result in **probable cause**, the detainee cannot be arrested and is released.

NO ARREST detainee released

Handcuffing an arrestee is proper because the probable cause threshold has been met; that threshold requires more than suspicion. However, during the time an officer is evaluating whether **probable cause** exists, the officer is operating under the lower threshold of **reasonable suspicion**. An officer's handcuffing a detainee should be accomplished, if at all, with Department guidance. The use of handcuffs is intrusive and demeaning and can impact the community's trust in the police. Case law holds that *handcuffing substantially increases the intrusiveness of a detention*.[65] While officers must ensure their safety, the application of restraints should never be considered standard operating procedure. Other jurisdictions provide guidance on the handcuffing of detainees.

We recommend that a section be added to the Duty Manual providing direction on the handcuffing of detainees.

This guidance is outlined by Santa Clara County Deputy District Attorney Charles Gillingham in his Third Degree article entitled *Handcuffing During a Detention*.[66]

> *The handcuffing of detainees has been determined to be reasonably necessary in the following circumstances:*
>
> *a) The suspect is uncooperative.*
> *b) The officer has information that the suspect is currently armed.*
> *c) The officer has information that the suspect is about to commit a violent crime.*
> *d) The detention closely follows a violent crime by a person matching the suspect's description.*
> *e) The suspect acts in a manner raising a reasonable possibility of danger or flight.*
> *f) The suspects outnumber the officers.*

A variety of California law enforcement agencies have such policies. Some address handcuffing of detainees and arrestee together; some address each group separately. These agencies include the Oakland Police Department, the Los Angeles Police Department, and the UC Santa Cruz Police Department.

NEW CALIFORNIA LAW ENFORCEMENT LEGISLATION AB 481

Enacted Sept. 30, 2021

Effective May 1, 2022

Requires all California law enforcement agencies to "obtain approval of the applicable governing body, by adoption of a **military equipment use policy**, as specified, by ordinance at a regular meeting held pursuant to specified open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment, as defined." Also requires similar approval for the continued use of "military equipment" acquired by all California law enforcement agencies prior to January 1, 2022, and allows the governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines that the military equipment meets specified standards.

9 The Duty Manual and the IA Unit Guidelines Should Document the Tolling Process and Include Procedures for Better Communication.

As outlined in Chapter 1, many complaints concerning the police response to the demonstrations in late May/early June 2020 were improperly tolled due to pending litigation. If a complaint is improperly tolled, then the Department may be unable to impose any discipline even if misconduct has been substantiated.

In particular, our office had concerns about the alleged misconduct contained in two complaints about the demonstrations that IA had improperly tolled. We were unable to advance our concerns because California state law mandates that investigations of police misconduct be completed within a 365-day deadline. [67]

The IA Unit has currently placed several force cases on tolling status; a few of these cases include allegations of great bodily injury. We have sent our concerns about the rationale supporting the tolling status to the Chief.

Sections in the Duty Manual[68] and the IA Unit Guidelines[69] address coordination with other City Departments, but the scope of coordination and the steps documenting that coordination are lacking. We recommend that the **process of *coordination* be enumerated** including documentation which lists the reason(s) why tolling is appropriate and those persons in the various departments who coordinated on the decision.

- If the tolling is due to litigation, the documentation should also include
- The date the litigation was filed
- The court case number
- The named plaintiffs and defendants
- The causes of actions and/or criminal charges
- A brief summary of the incident

- If the tolling is due to a waiver signed by the subject officer, the documentation should include:
- A brief summary of the incident
- The entity requesting the waiver (i.e., the Department or the officer(s))
- The reason for the waiver
- The deadline on which the waiver expires

The matter should be monitored for **periodic review** so that that the case may be timely reopened after the reason supporting the toll ends. Subject officers, complainants[70] and the IPA should be notified by email or letter informing them that the complaint has been placed on a toll status. Upon request, the City will provide the IPA with the documentation that supports tolling.

10 Changes Should Be Made to the IA-IPA Process.

Various documents outline the IA-IPA audit process; the most informative are the IPA Year-End Reports and the IA Unit Guidelines.[71] The IPA recommends implementing the following to increase the efficiency and effectiveness of the IA- IPA process:

- The IA Unit should make recommended sustained findings.

  Currently, the IA Unit has the ability to make most allowed investigation findings (e.g., unfounded, exonerated, not sustained) but are prohibited from rendered a finding of sustained. The current inability of the IA Unit to make sustained findings is not an efficient and effective use of time and resources. Given their training and experience, IA staff, with the concurrence of the IA Unit Commander, should be able to recommend a sustained finding.

  The recent report by the CNA Group noted that

  > It is unclear why the [IA Unit] investigators would be able to make a proposed finding of not sustained but not be able to make a proposed finding of sustained given the standard of proof is the same between the two (i.e., preponderance of the evidence). **The IA investigator who conducted interviews with the officer/community member and thoroughly reviewed the related evidence is in the best position to make an initial finding based on the preponderance of the evidence.** While we acknowledge that the ultimate responsibility for the finding lies with the chief, the investigator should be able to make a **preliminary** finding.[72]

  When IA makes a recommended finding of sustained, that finding should then be forwarded through the Findings and Recommendation (F&R) process. The members participating in the current F&R process are the subject officer's immediate supervisor, the subject officer's immediate captain, the Assistant Chief and the Chief of Police. If any member in the F&R process wants to depart from the sustained finding recommended by IA, that member should provide a formal memo describing in detail the facts, the applicable Duty Manual Sections, and the rationale warranting a departure.

- IPA staff should be granted early and continued access to BWC video.

  Currently each IPA staff member must request individual access to BWC video from the assigned IA officer/sergeant. This access lasts for approximately 30 days. If we need access again, we must go through the request process. This current process is inefficient. We recommend that within four weeks after a complaint has been opened, all analysts, the assistant IPA and the IPA must be granted access to **all** BWC video attached to an event. In addition, we request access to all other video that may subsequently be found associated to the complaint. Our access should remain until the case is closed by both SJPD and the IPA office. Emails acknowledging access must include the IA complaint number on the subject line or in the body of the email.

- IA should record all interviews/statements used in its investigation.

  If conversations/interviews conducted by IA **relevant** to the investigation of the complaint, those conversations/interviews should be recorded and attached to IAPro. As stated in California Evidence Code section 210, for statements to be **relevant**, there must be some logical connection between the statement and the fact it is offered to prove or disprove.[73] IA staff should affirmatively ask for consent to record. If consent is not given, that fact should in the investigation including the explanation provided, if any.

- All IA investigations and memos should include the date on which the document was completed.

  IA documents without dates makes follow-up difficult, including determining if documents have been updated or revised.

- IA should use the Coordinated Universal Time (UTC) when referring to BWC footage in investigation write-ups.

  The IA write-ups should refer to the UTC time on the officers' BWC.

- Documents and forms associated with an event should be attached to IAPro. This may include, but is not limited to, Taser downloads, consent forms, warrants and affidavits that are not sealed.

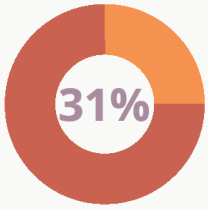
Independent Police Auditor Statistics

2021

IPA Audit Determinations in Closed Complaints

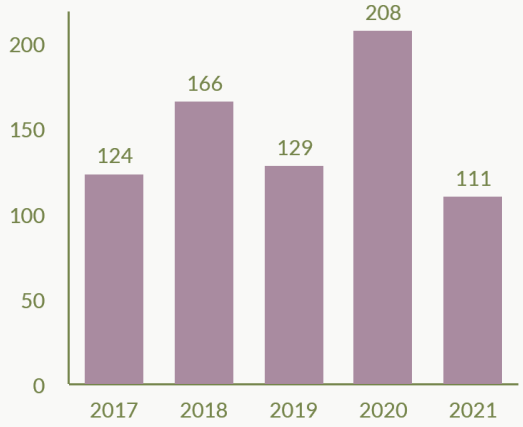
- Agreed at first review: 71% 170 Cases
- Agreed After Further Action: 11% 26 Cases
- Disagreed: 9% 22 Cases
- Closed with Concerns: 9% 22 Cases

1138 officers employed by SJPD in 2021



348 officers named in one or more complaints

IPA Intakes (2017-2021)



Conduct Complaints Closed with Sustained Allegations

- 2017: 226 Conduct Complaints Closed — 16% of allegations sustained
- 2018: 212 Conduct Complaints Closed — 10% of allegations sustained
- 2019: 197 Conduct Complaints Closed — 7% of allegations sustained
- 2020: 200 Conduct Complaints Closed — 13% of allegations sustained
- 2021: 262 Conduct Complaints Closed — 12% of allegations sustained

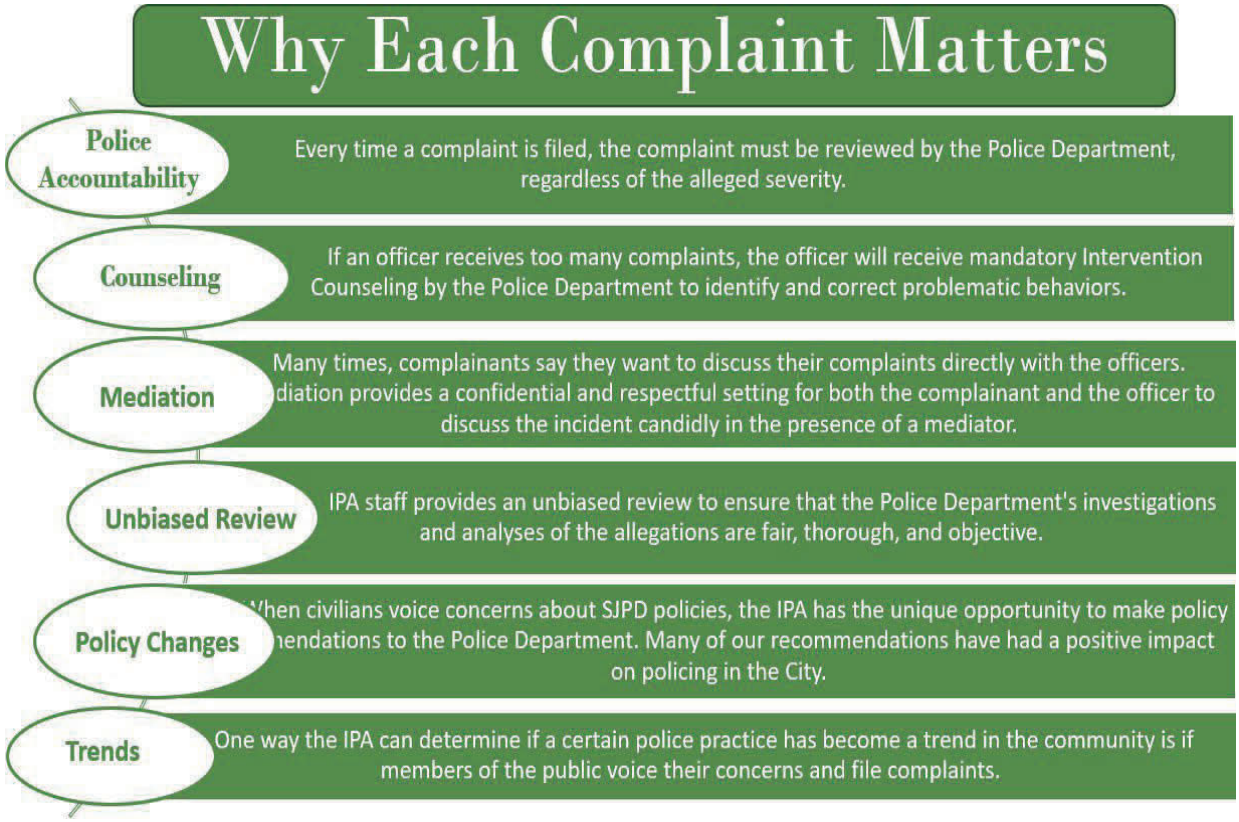
Excluding DIIs

COMPLAINTS RECEIVED AND CLASSIFIED

The complaint process begins when a member of the public files a complaint about a San José Police Department (SJPD) officer(s) or an SJPD policy. **Complaints** submitted by community members are distinct from investigations initiated by the Department (**DIIs**) which will be discussed later in this chapter. Complaints can be filed either with the IPA or with the Internal Affairs (IA) Unit of the SJPD. For the past five years, a majority of complaints have been filed with the IPA office. However, 2021 has been irregular in this regard.

Anyone can file a complaint regardless of age, immigration status, or city of residence. Members of the community may file complaints even if they do not have a direct or indirect connection to the incidents or the persons involved. Complainants may also remain anonymous.

Prior to obtaining a statement, IPA staff or IA staff will request consent to record the complainant's statement. IPA staff or IA staff record statements to ensure that each description is documented accurately. IPA staff review every contact to ensure that each concern about misconduct is properly captured and classified. The IPA staff sends an acknowledgment of receipt if contact information is provided. The complaint is then entered into a shared IA/IPA database. This initial process is called **intake**.

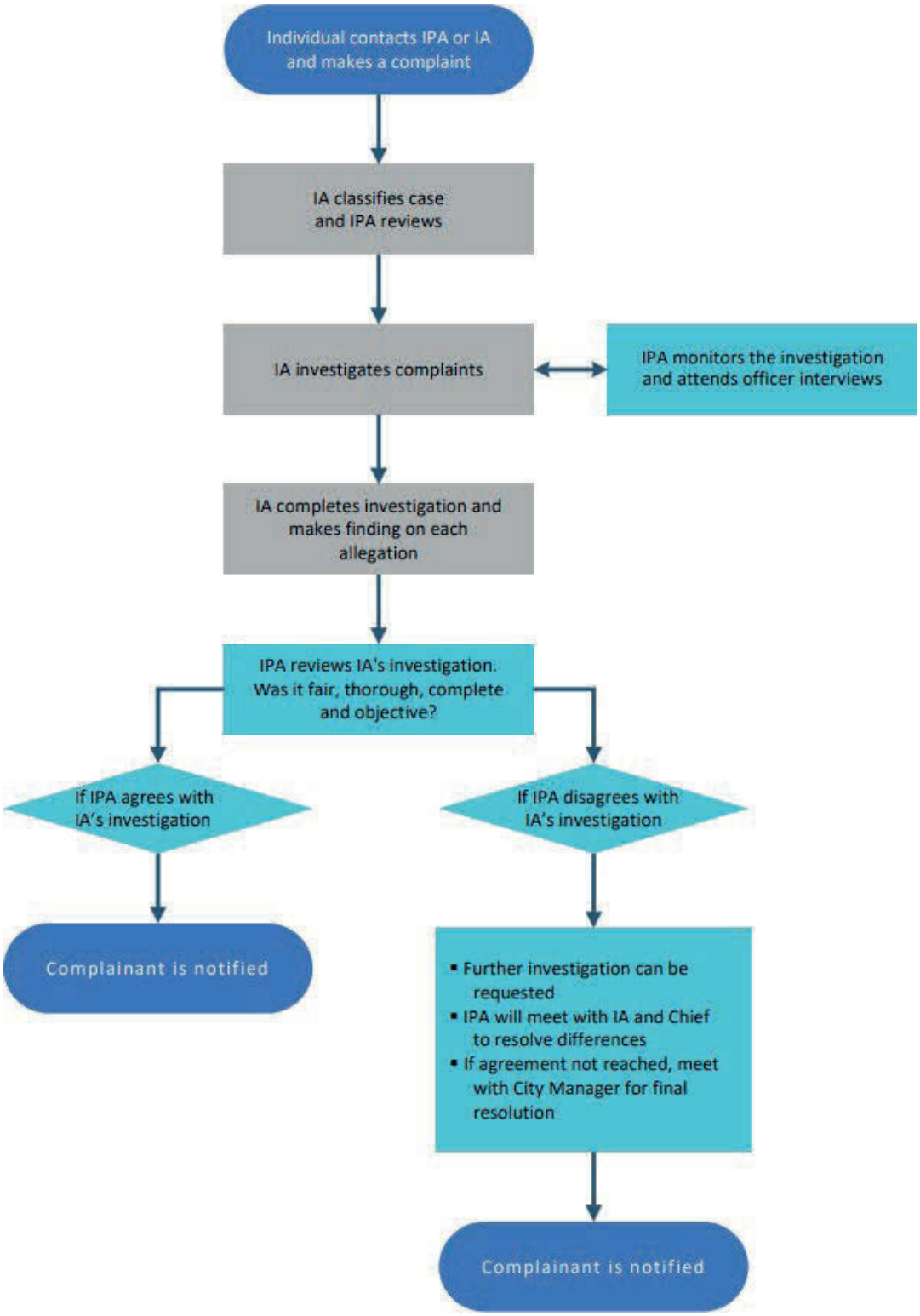


In 2021, a total of 333 complaints and concerns were received. This is a twenty four percent (24%) increase in the number of complaints and concerns received compared to 2020.

Excludes DIIs

The factors that influence the number of complaints received each year are difficult to measure. However, this year followed a year of unique events in 2021 that precipitated a spike in the number of persons contacting IA and the IPA as well as an awareness of the procedure to file a complaint.

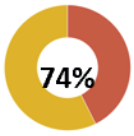
The Complaint Process



This process does not reflect the one-year Pilot Project described on pages 31 to 34.

Types of Classifications

Conduct Complaints — 273

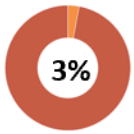


- Complaints that allege an officer violated Police Department policy, City Policy or the law

Policy Complaints — 10

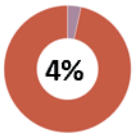
- Complaints about SJPD policies or procedures or the lack thereof

Non-Misconduct Concerns — 11



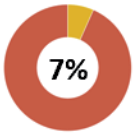
- Complaints that do not rise to the level of a violation of policy that could result in officer discipline

Decline to Investigate — 13



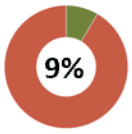
- The facts in the complaint are so fantastical that they are unlikely to be based on reality

Other — 26



- The complaint
  - Did not involve SJPD officers
  - Was duplicative;
  - Was filed after 1 year from incident date

Department Initiated Investigations — 34

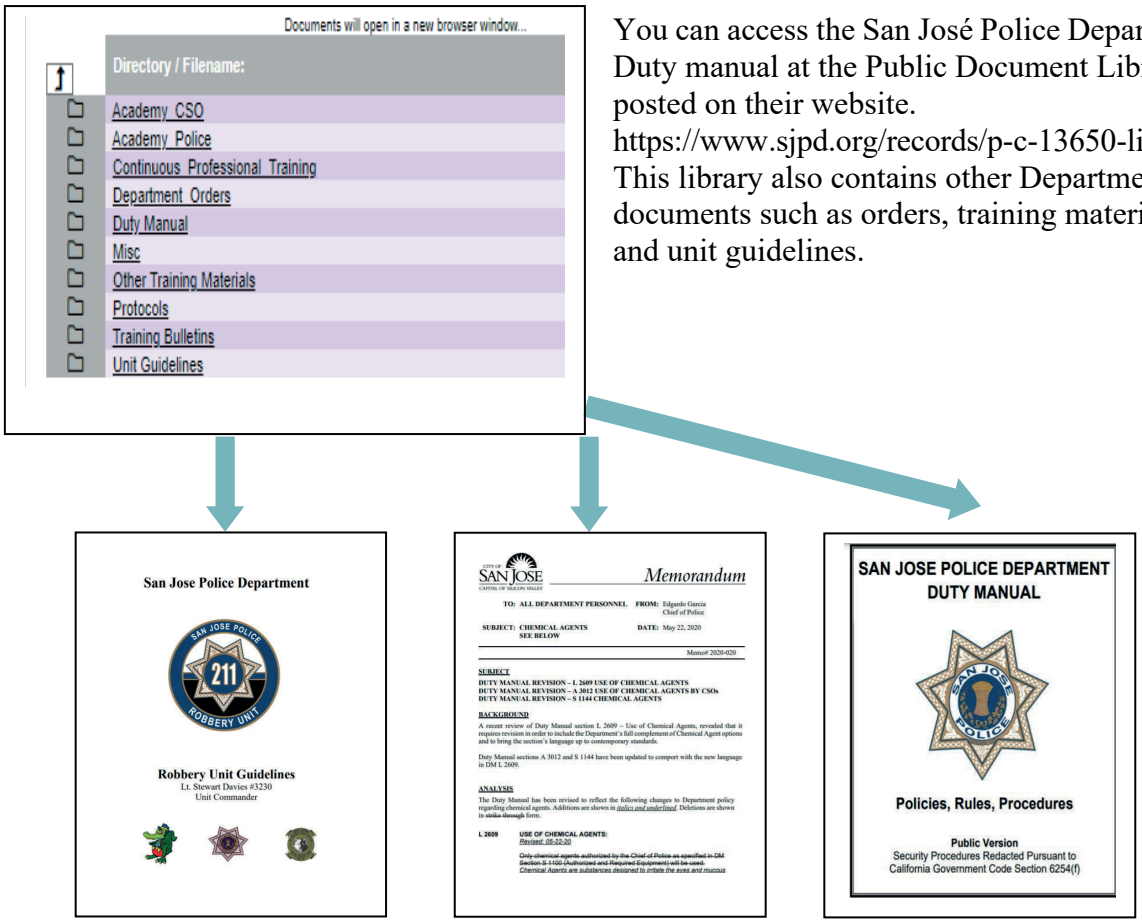


- Investigation initiated by the Department against a sworn officer

Conduct Complaints contain one or more allegations. An *allegation* is an accusation that an SJPD officer violated Police Department or City policy, procedure, or the law. The Department policies are listed in the SJPD Duty Manual. At the intake stage, these allegations are assertions whose validity has not yet been determined. Throughout the process, IA investigators obtain records and statements that provide additional details, including those which may corroborate or conflict with the initial details.

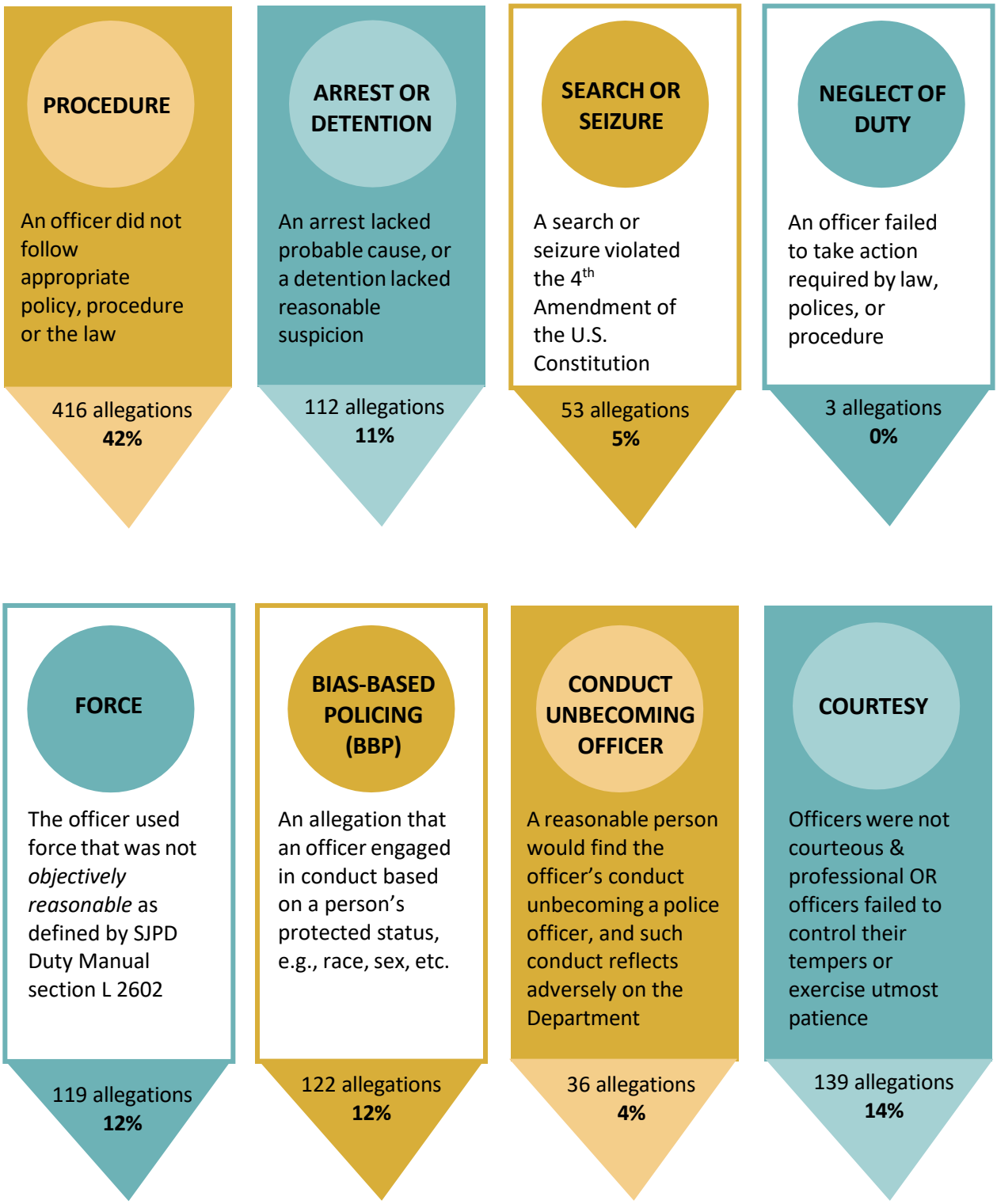
Complaints filed in 2021 contained 1,000 distinct allegations. Both the total number of complaints received in 2021 increased as well as the number of allegations received. This means that complainants frequently raised multiple issues of concern in their individual interactions with police. Members of the public filed more allegations in 2021 than in any of the last five years.

Procedure allegations continue to be the most common allegation in Conduct Complaints over the past five years. More Procedure allegations (465) were filed in 2021 than in any of the last five years. Neglect of Duty allegations decreased substantially from 18 in 2020 to 3 in 2021. Allegations of Bias-Based Policing increased somewhat from 104 (12% of all allegations) filed in 2020 to 122 (11% of all allegations) filed in 2021.



You can access the San José Police Department Duty manual at the Public Document Library posted on their website. https://www.sjpd.org/records/p-c-13650-library This library also contains other Department documents such as orders, training materials, and unit guidelines.

Complaints filed in 2021 contained 1,000 distinct allegations.



Includes allegations in DIIs

INTERNAL AFFAIRS COMPLAINT INVESTIGATIONS AND FINDINGS

The Police Department's Internal Affairs Unit has the sole authority to investigate conduct complaints. Currently, the IPA does not have investigatory powers. IA investigators review relevant documentation such as police reports, body-worn camera video, and dispatch records. IA may also conduct follow-up interviews with the complainants, witnesses, and officers to gather more information about the incident. IPA staff are authorized to attend officer interviews and ask direct questions of the officers.

This evidence is collected to determine what facts support or refute the allegations in the complaint. The evidence is then analyzed in light of relevant SJPD Duty Manual policies and procedures.

Generally, the Department has one calendar year (365-days) from the date the complaint was filed to investigate and make findings.

In each complaint, the Department must make a *finding* of whether the alleged misconduct occurred. Findings are based on an objective analysis using the *preponderance of the evidence* standard. This standard governs the amount of evidence needed in order to make a determination. For example, the preponderance standard is met for a finding of SUSTAINED if the evidence indicates that it is *more likely than not* that the officer committed a violation of the Duty Manual.

Findings and their Definitions

When a misconduct investigation is finished, IA makes a finding for each allegation. There are eight possible findings for misconduct allegations.

Sustained

The investigation disclosed sufficient evidence to prove clearly the allegation made in the complaint

Not Sustained

The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation

Exonerated

The act, or acts, which provided the basis for the allegation or complaint, occurred however, the investigation revealed they were justified, lawful, and proper

Unfounded

The investigation conclusively proved either that the act or acts complained of did not occur, or that the Department member named in the allegation was not involved in the act or acts, which may have occurred

No Finding

The complainant failed to disclose promised information needed to further the investigation, or is no longer available for clarification of material issues, or the subject department member is not longer employed by the Department for the completion of the investigation

Complaint Supervisor Review

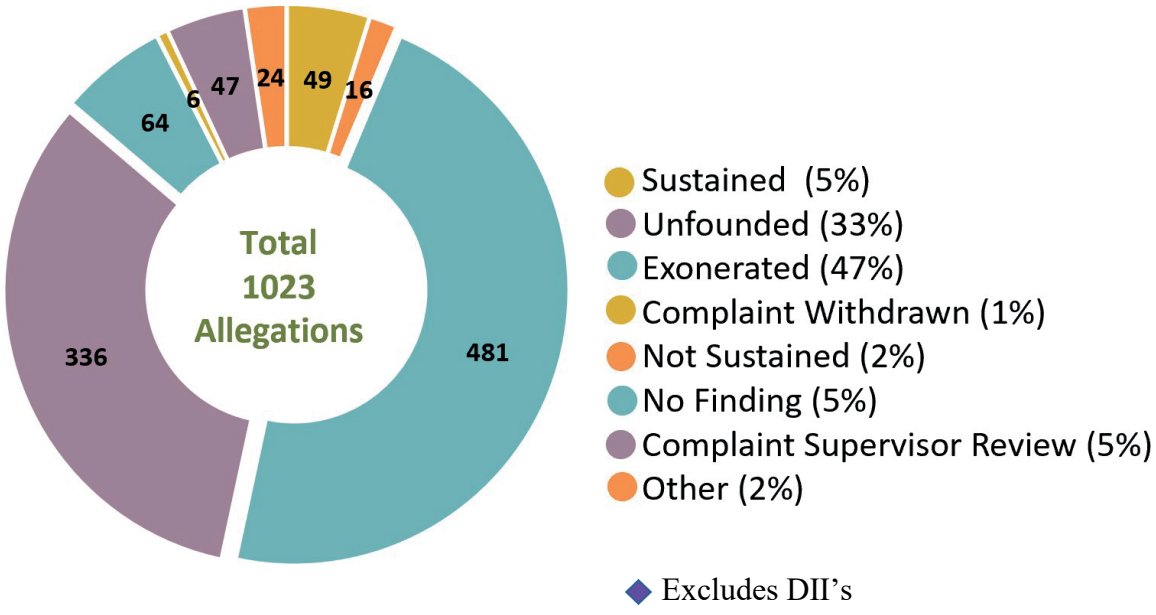
Complaints which involve an allegation of a minor transgression that the Department feels may be best handled by bringing the matter to the attention of the subject officers' supervisor and chain of command

Complaint Withdrawn

The complainant affirmatively indicates the desire to withdraw their complaint

Other

Allegations were closed as Other when SJPD declined to investigate because of a delay of years from the date of filing or because the officer who allegedly engaged in the misconduct was employed by another law enforcement agency, and not by SJPD



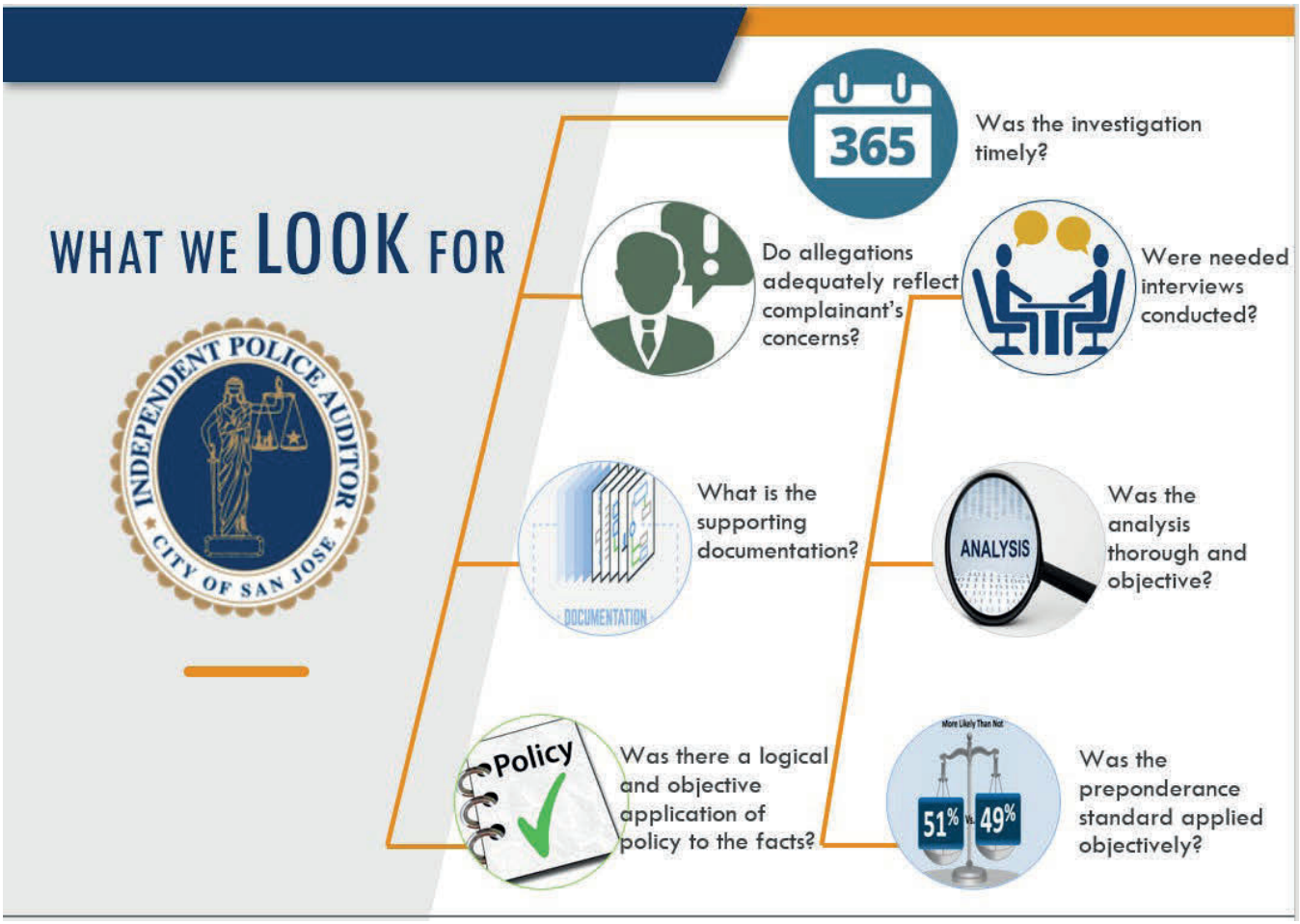
◆ Excludes DII's

IPA AUDIT OF CLOSED COMPLAINT INVESTIGATIONS

After the Internal Affairs Unit (IA) completes its investigation and findings, it forwards all materials it has compiled to the IPA for audit. The IPA does not have authority to conduct additional investigation into the allegations. The IPA is required to audit all complaints with Force allegations and at least 20% of all other complaints. In 2021, the IPA audited all 56 force complaints and 250 non-force complaints - a total of 306 complaint investigations.

IPA REVIEW OF IA's INVESTIGATIONS IS FOUR-FOLD

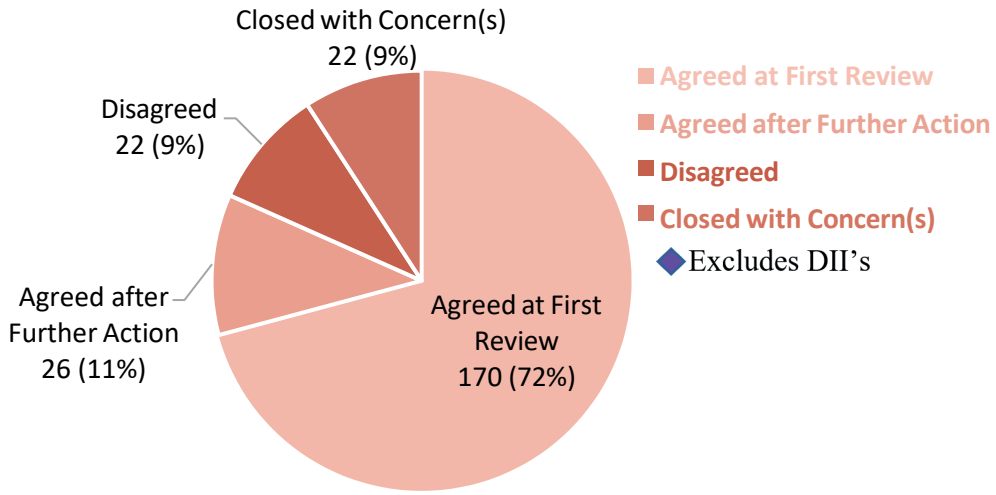
#1 Was the investigation fair?	#2 Was the investigation thorough?
#3 Was the investigation complete?	#4 Was the investigation objective?



After auditing the complaint, the IPA will make one of the following determinations:

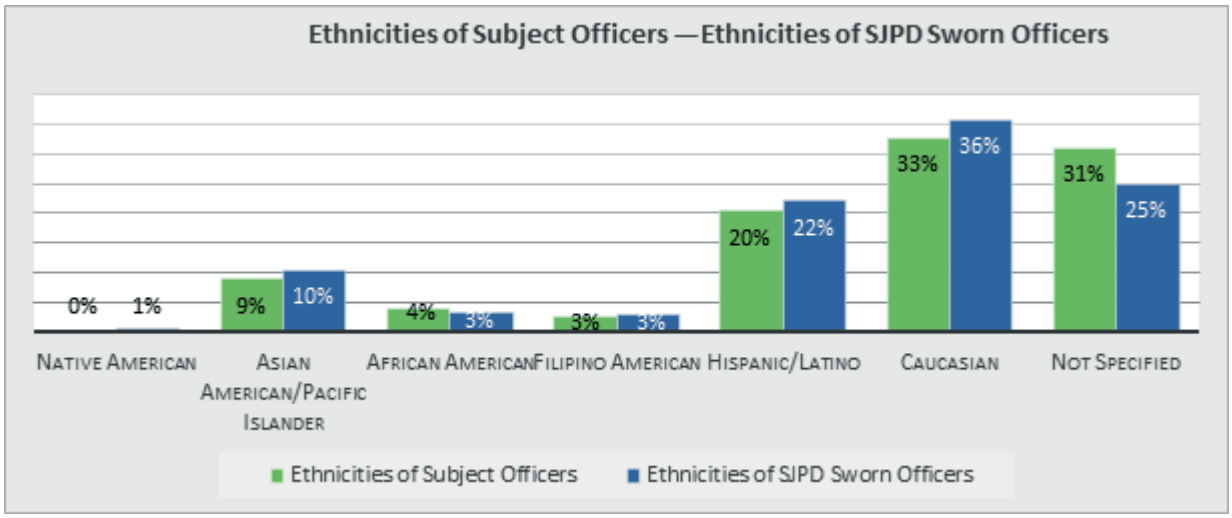
FOUR CATEGORIES OF IPA ASSESSMENT OF COMPLAINT INVESTIGATIONS	
— Agreed at First Review — The IPA agreed that IA's investigation was fair, thorough, complete and objective upon initial review.	**— Closed with Concerns —** The IPA had issues with IA's investigation and/or analysis, but the concerns did not warrant a formal disagreement.
— Agreed After Further Action — IPA requested that IA complete additional investigation and/or analysis and IA provided a satisfactory response to that request.	**— Disagreed —** The IPA determined that IA's investigation and/or analysis were not thorough, complete, objective, and fair.

The IPA agreed that the IA investigation was fair, thorough and complete in 82% of the cases closed in 2021. This percentage has remained approximately the same over the last three years.



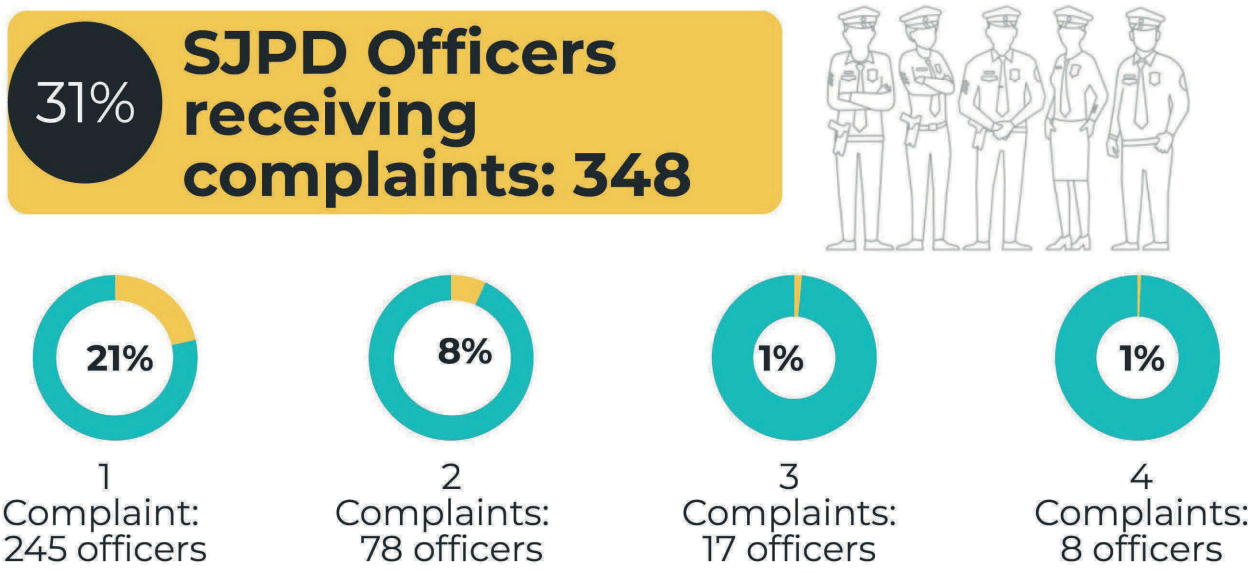
INFORMATION ON SUBJECT OFFICERS

The SJPD provided demographic data about subject officers who were employed during the 2021 calendar year. The data includes officers named in complaints and in Department initiated investigations (DIIs). The Police Department's data reveals that the number of subject officers who identify with a specific ethnicity continues to closely mirror the representation of ethnicities of the Department.



◆ Includes DII's

In 2021, the San José Police Department employed 1138 sworn officers. Of these, 348 received complaints or DII's. A number of officers received multiple (two or more) complaints or DII's in 2021. Seventeen (17) officers received three or more complaints or DII's; the corresponding number for 2020 was fifteen officers.



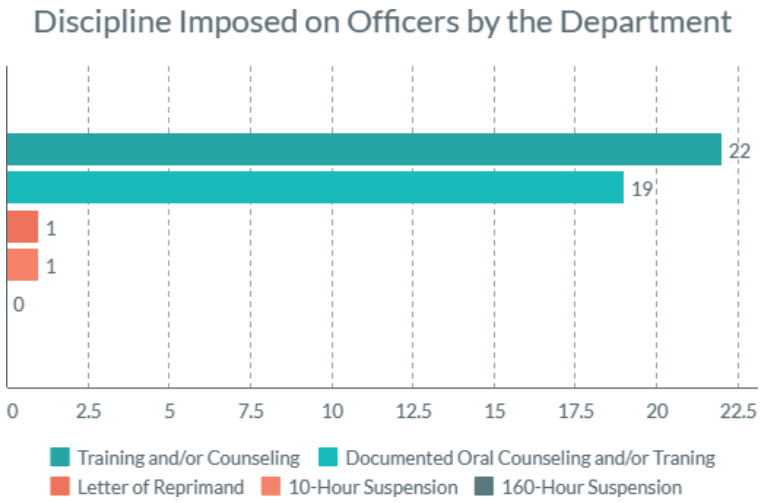
◆ Includes DII's

Subject Officers Receiving Complaints (Years of Experience)

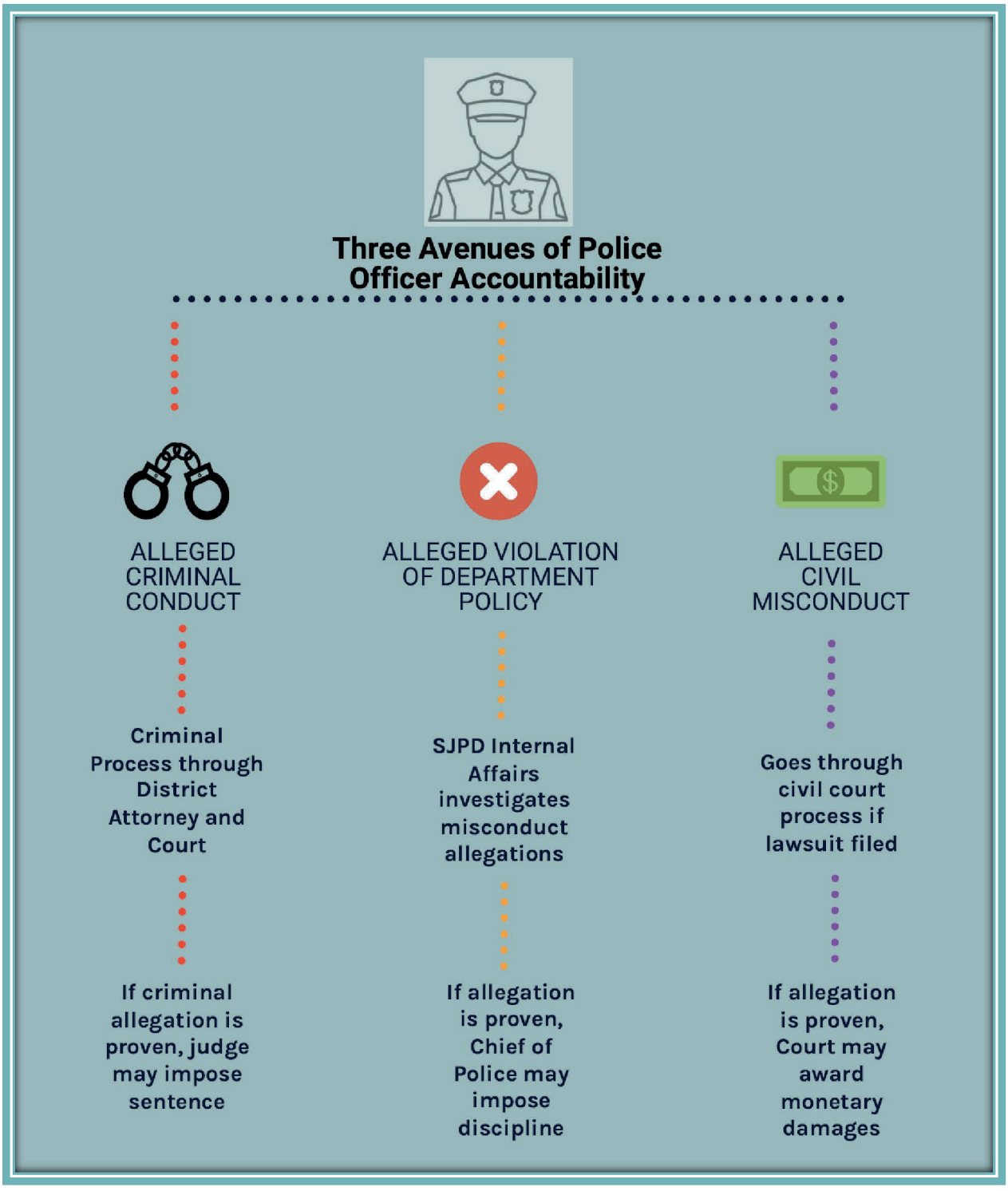
- Includes DII's

The majority of officers who receive complaints in a calendar year, regardless of how many years of experience, receive between one and two complaints. It is infrequent that an officer receives more than two complaints. However, in 2021 eight officers did receive four complaints each.

Officers who receive sustained findings are subject to discipline by the Department. Generally, under state law, the names of the officers and the discipline imposed upon them are confidential and cannot be disclosed to anyone, not even the complainants.



- Includes DII's



ONLY ONE PATH LEADS TO OFFICER DISCIPLINE.

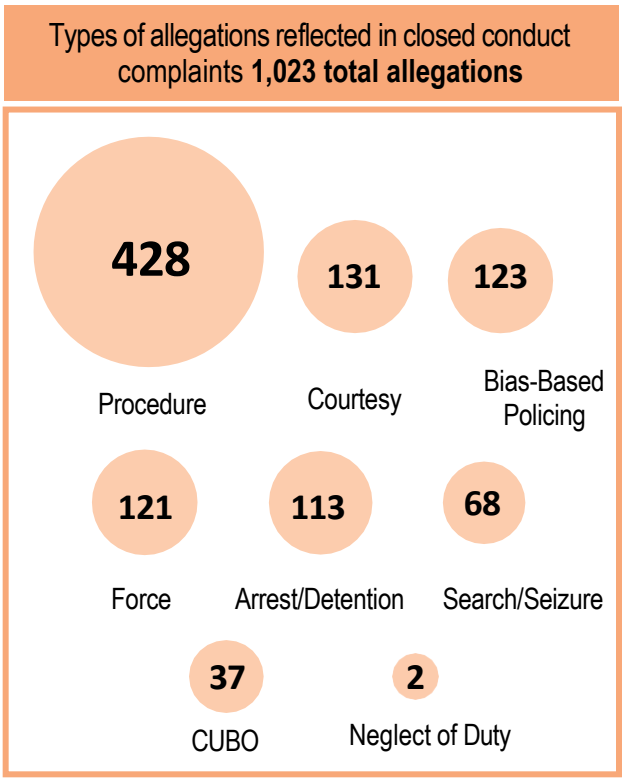
HOW DO DIIs DIFFER FROM COMPLAINTS?

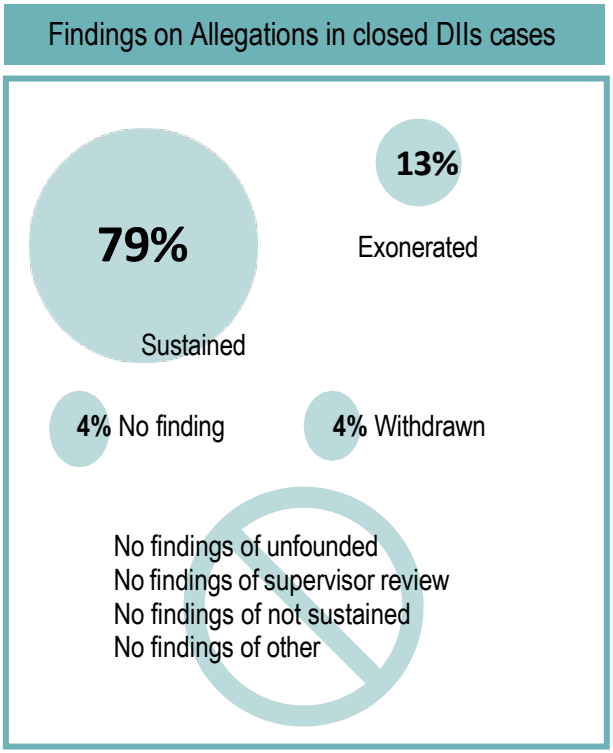
DEPARTMENT-INITIATED INVESTIGATIONS	COMPLAINTS
ORIGIN	
Information supporting a DII generally comes from (1) an SJPD officer/employee who reports[i] concern about a fellow employee's conduct or (2) from other law enforcement agencies. Information about the conduct and supporting documents is supplied via memo to the Chief of Police. At the direction of the Chief of Police, the Department initiates an investigation into misconduct allegations against an SJPD employee. Thus, DIIs do not reflect all reported concerns but only those that the Chief decides to pursue.	The complaint process begins when a member of the public files a complaint about a San José Police Department (SJPD) officer(s) or an SJPD policy. The complaint can be filed either with the IPA or with the Internal Affairs (IA) Unit of the SJPD.
PROCESS	
The memo provided to the Chief is forwarded to the Internal Affairs Unit. The IA staff may conduct additional investigation such as acquiring documents, video and interviewing witness and/or subject officers.	IA classifies the complaints into one of five classifications. Conduct complaints are investigated by IA staff who review documents, video and interview witnesses and/or subject officers. If there are no *sustained* findings, the documents are forwarded to the IPA.

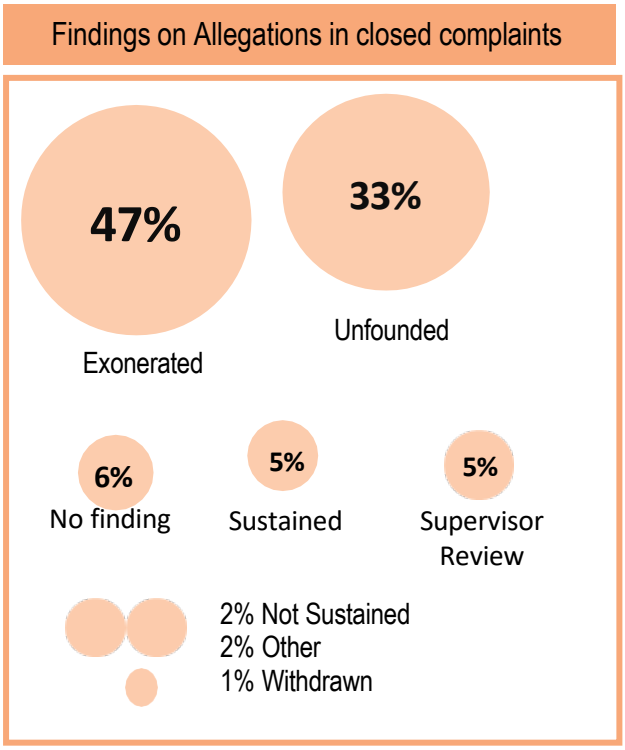
	REVIEW & FINDINGS	
	No one on the IA staff, including the Unit Commander, can make any findings. With DIIs cases, the IA Unit Commander sends the documents to the **Office of Chief**. This office makes findings for each allegation. The documents are then forwarded to the IPA.	No one on the IA staff, including the Unit Commander, can make a sustained finding. Those conduct complaints which may warrant a sustained finding are sent to the Findings & Recommendation (F&R) process. The IA investigation is sent initially to ***the responsible commander*** [ii] (who is outside of IA and may have no IA training). The responsible commander makes findings supported by a memorandum and forwards these to the involved **member's Bureau Command** for review and comments. Next all documents at forward to the **Office of the Chief** who confirms or changes the F&R findings. The documents are then forwarded to the IPA.
	IPA INPUT	
	IPA staff cannot investigate. The IPA has no investigatory powers. IPA staff can attend IA interviews. We review the completed documents to ensure that the investigation was fair, thorough, and complete. If the investigation is lacking, we can appeal to the Chief of Police and then to the City Manager.	IPA staff cannot investigate. The IPA has no investigatory powers. IPA staff can attend IA interviews. We review the completed documents to ensure that the investigation was fair, thorough, and complete. If the investigation is lacking, we can appeal to the Chief of Police and then to the City Manager.
	SUSTAINED RATE	
	79%	12%

[i] This may include a supervisor's Use of Force Command Review.
[ii] C 1724

Allegation types reflected in closed DII
24 total allegations
20
Procedure
3
Conduct Unbecoming an Officer
1
Courtesy
No bias-based policing allegations
No force allegations
No arrest/detention allegations
No search/seizure allegations
No neglect of duty allegations


Types of allegations reflected in closed conduct complaints 1,023 total allegations
428
Procedure
131
Courtesy
123
Bias-Based Policing
121
Force
113
Arrest/Detention
68
Search/Seizure
37
CUBO
2
Neglect of Duty


Findings on Allegations in closed DIIs cases
79%
Sustained
13%
Exonerated
4% No finding
4% Withdrawn
No findings of unfounded
No findings of supervisor review
No findings of not sustained
No findings of other


Findings on Allegations in closed complaints
47%
Exonerated
33%
Unfounded
6%
No finding
5%
Sustained
5%
Supervisor Review
2% Not Sustained
2% Other
1% Withdrawn

FORCE COMPLAINTS

When it comes to public perceptions about policing, the use of force generates the most controversy. Due to the high degree of interest in how, why and on whom police officers use force, the IPA is required by the City Municipal Code to audit every IA investigation containing a Force allegation.

The Supreme Court ruled in *Graham v. Connor*, 490 U.S. 386 (1989) that all force used by police officers must be objectively reasonable and that *a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.* The San José Police Department (SJPD) Duty Manual section L 2602 states that 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.

An examination of force must answer these three questions:

#1
Was the force lawful?

#2
Was the force reasonable?

#3
Was the force within SJPD policy?

The investigation must examine all relevant factors including:

Severity of the crime

Threat presented by the suspect

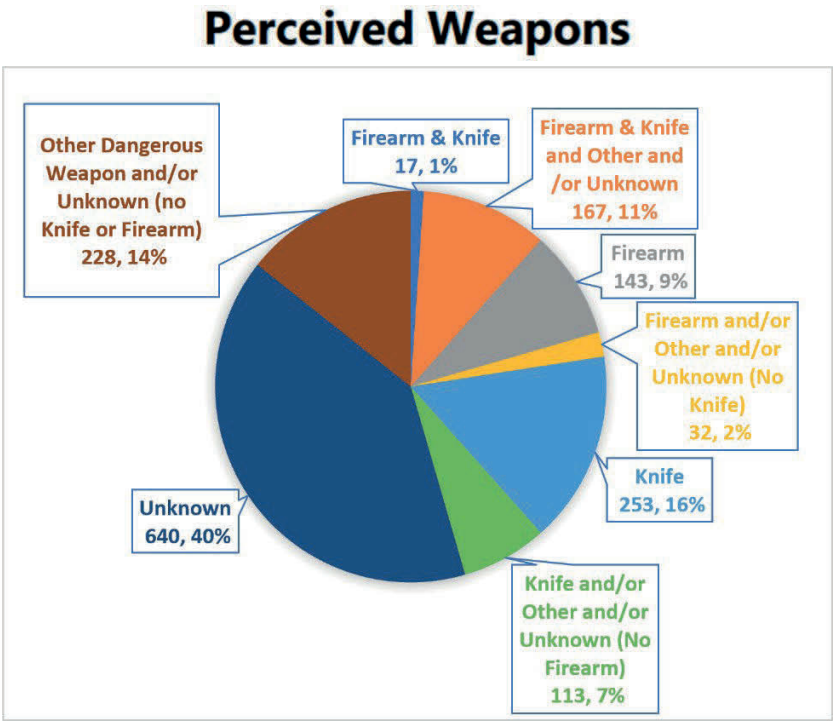
Resistance offered by the suspect

As outlined in Chapter Two, under the Police Reforms Work Plan, the City Council directed the IPA to solicit an independent consultant to produce a Use of Force Report. CNA Corporation was selected after a formal request for proposals (RFP) process. CNA was required to conduct background research, conduct interviews, and analyze the following:

- policies and procedures governing the use of force
- training materials on use of force
- how use of force incidents are reported and documented
- the process, roles, and responsibilities for the review of force incidents
- equipment, tools, and tactics used
- use of force aggregate data
- innovative approaches to policies, practices, and training on use of force

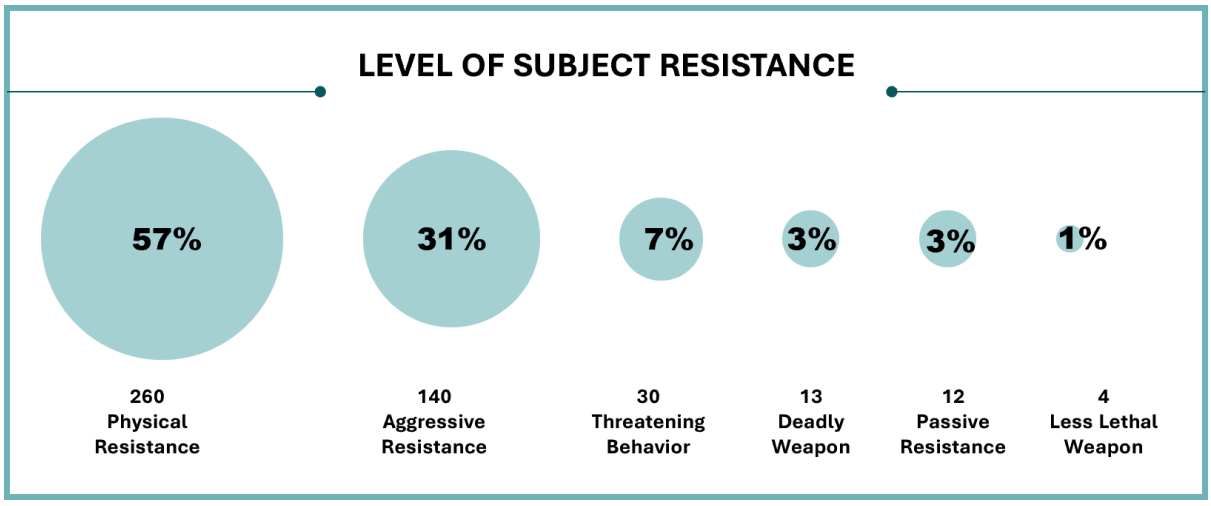
Of particular note was the CNA narrative addressing the officers' perception that a suspect was armed with a weapon. The threat of an armed suspect is certainly greater than that presented by an unarmed suspect. Additionally, the threat of a weapon provides substantial weight in justifying the use of force. How were those perceptions documented? The CNA report examined data from 2/17/17 to 2/27/21 reflecting 2,352 uses of force over roughly four years. This examination included data on those use of force events where the officer perceived a community member was armed (1,593 events relative to 2,352 total use of force events or 65%). Officers can conduct a frisk, or pat-down search, of a detainee to look for weapons if they have a justifiable belief that the person is armed and dangerous. An officer has the option to identify a **<u>single</u> perceived weapon** (e.g., a *knife* or a *firearm*) or **<u>combinations</u>** (e.g*., knife and firearm* or *knife and other*).

- By far the most frequent weapon type option reported by officers was "unknown." In 640 (40%) of the 1,593 events, the officers reported the weapon was "unknown."
- Officers in 253 events (16 percent) reported a knife, blade, or stabbing instrument as the only weapon.
- Officers in 182 events (11 percent) reported that an "other dangerous weapon" was the only weapon.
- **In over half of the events (868 out of 1,593 or 54%), the officers reported the perceived weapon either as *unknown* (640 or 40%), *other dangerous weapon* (182 or 11 percent), or *other and unknown* (46 or 3 percent).**

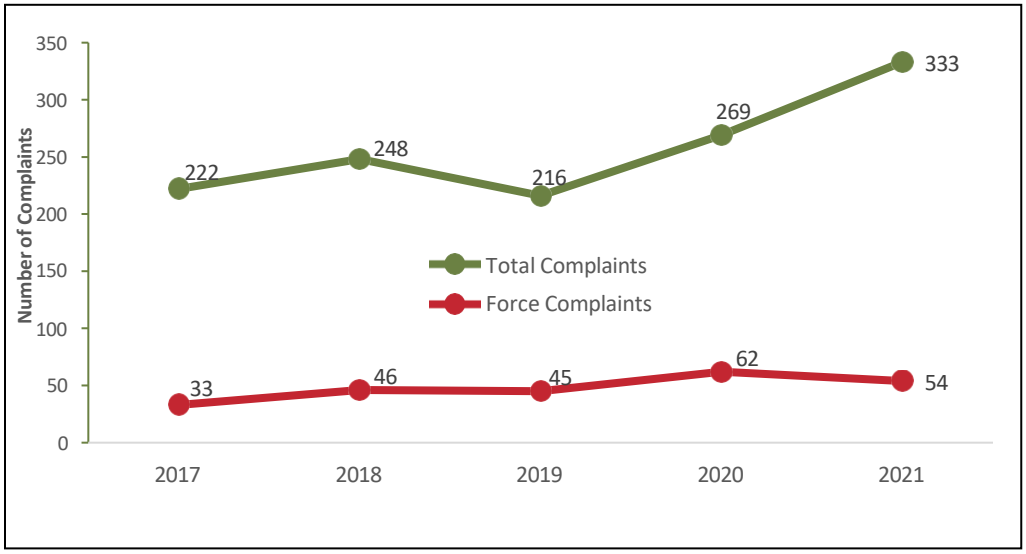


Number of Use of Force Reports with Listed Weapon
Compiled by CNA

This data warrants closer examination regarding the accuracy of the officers' perceptions of persons being armed and/or the diligence of officers in completing the forms with sufficient detail. It is also important to ensure that the entry entitled ***weapons found*** be accurately completed. CNA did not provide data reflecting weapons found. The SJPD Force dashboard provides this information for calendar year 2021. Suspects armed with weapons, deadly or otherwise, were found in only 4% of use of force incidents. The CNA data reflecting officers' perceptions of suspects armed with weapons differs markedly from the SJPD dashboard data reflecting actual weapons found by the officers.

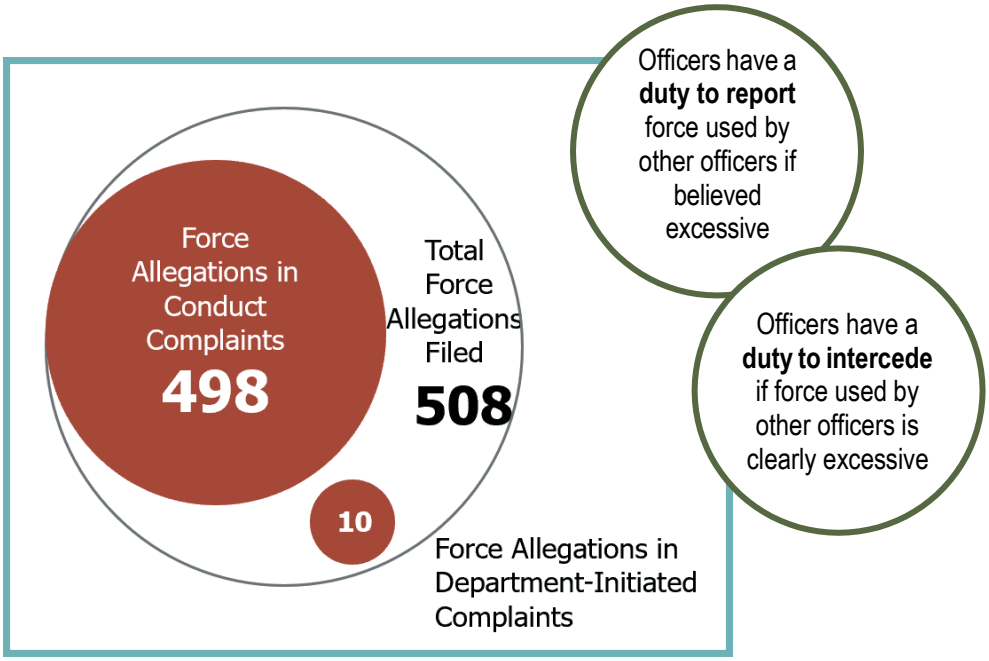


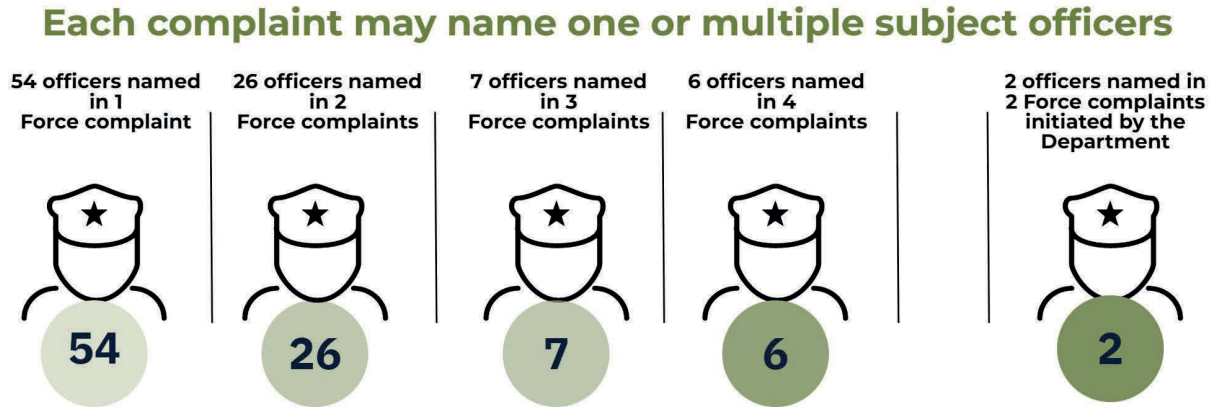
A Force Complaint is a complaint that includes one or more allegations of excessive force. Force complaints usually represent about 15% (56 out of 367) of all complaints filed.



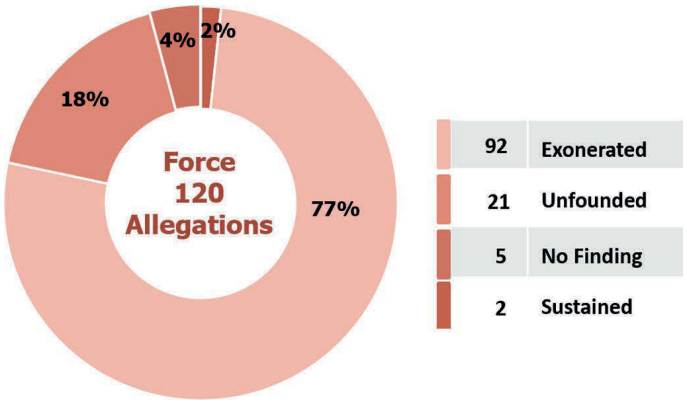
Force Complaints Received Relative to Total Complaints Received. Data from 2021 includes Department initiated investigations.

There is a significant difference between the number of **force allegations** filed by community members and the number of **force allegations** initiated by the Department against one of its officers. Similarly, there is also a significant difference between the **number of officers** named in force complaints filed by the public and the **number of officers** named in force complaints initiated by the Department. Here is the data from force cases received over five years (2017-2021).





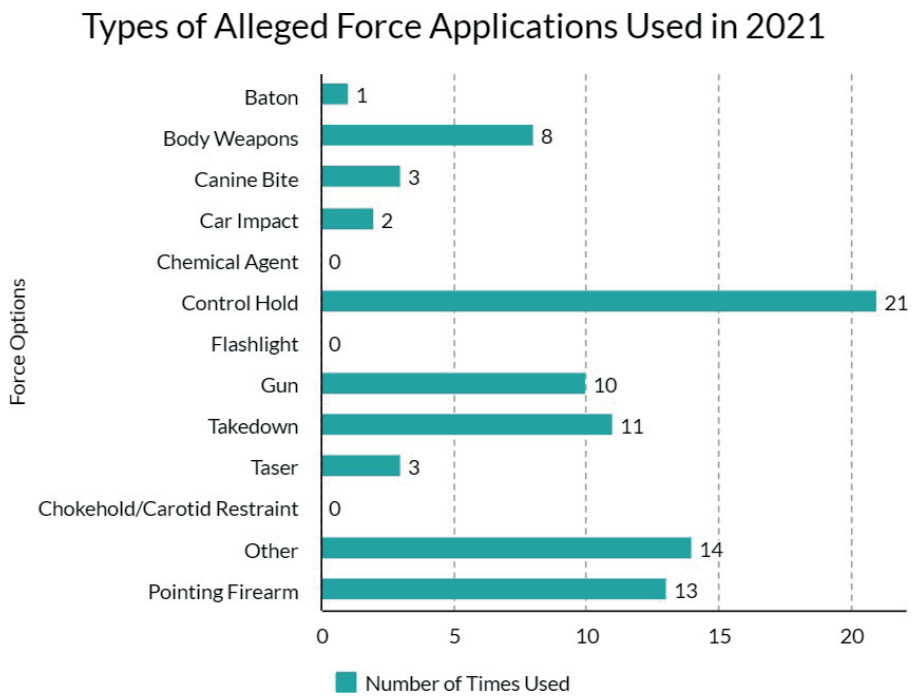
Disposition of All Force Allegations Closed in 2021



The IPA collects data about the alleged types of force applications (baton, control hold, police canine, etc.). The total number of the alleged types of force applications is always greater than the total number of Force Complaints because there is often more than one type of force alleged in one complaint.

There may also be more than one officer alleged to have used force in one complaint—one officer struck a complainant with a baton, and another officer hit him with fists and slammed him against a wall. This example illustrates three different applications of force by multiple officers in one complaint.

Additionally, an allegation of force may focus only on one application of one type of force or it may focus on multiple applications of force. Our review of the data showed that the 38 Force Complaints closed and audited in 2021 contained 76 alleged applications of force.



We track the level of injury sustained by civilians through six categories developed by the IPA:

- Level I
- Level II
- Level III
- None
- Pre-existing
- Unknown

Level I contains the most serious injuries and Level III reflects the least serious injuries. Nearly half of all allegations of excessive force did not result in an alleged injury in cases closed in 2021.

Force Options: Selected Terms

Force: SJPD Duty Manual section L 2603 describes force options ranging from mere physical contact (touching) to impact weapons, electronic control weapons (TASER) and deadly force. While the Duty Manual also lists voice commands as a force option, the use of voice commands usually does not provide a basis for a force allegation under the misconduct complaint process.

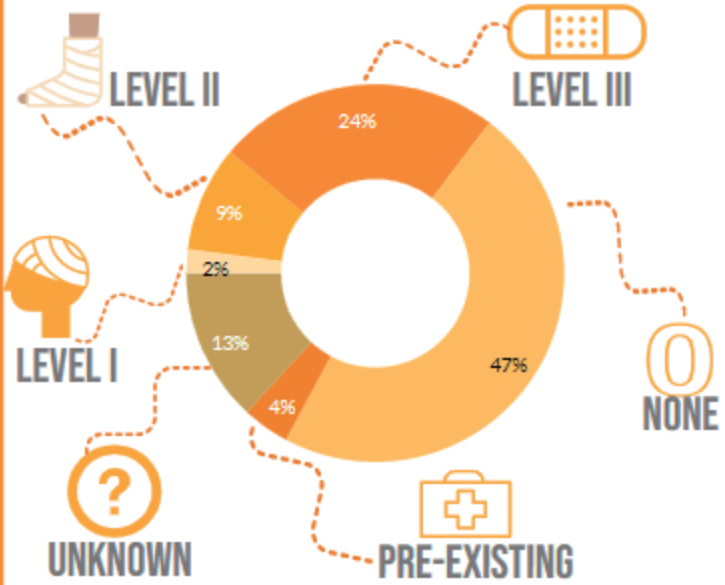
Control Hold: an officer's use of his/her limbs, torso or body weight, to move or restrain a person or to constrict a person's movements.

Takedown: the use of an officer's limbs, torso or body weight to force a person against an immovable object (such as a car or a wall) or to force a person to the ground.

Body Weapons: the use of an officer's limbs in a manner similar to an impact weapon, e.g., an officer's use of hands to punch, hit or slap a person.

LEVEL OF INJURY 2021

The IPA tracks the level of injury sustained using six categories.



Level One Injury

- Fatal Injury
- Broken Bones
- Compound Fracture
- In-patient hospital stay required
- Blood loss transfusion
- Major Concussion
- Loss of conciousness
- Debilitating chronic pain
- Damage to organ (other than skin)
- Effective tasings

Level Two Injury

- Minor bone broken
- Major laceration requiring stitches
- Minor concussion
- Brief loss of conciousness
- Chipped or lost tooth
- Major abrasion
- Sprain

Level Three Injury

- Bruising
- Minor laceration
- Minor abrasion

FORCE LOCATIONS

HEAD 14%

NECK 3%

TORSO 29%

LIMBS 53%

OFFICER-INVOLVED SHOOTINGS

SJPD policy states that an officer may discharge a firearm when deadly force is both objectively reasonable and necessary for self-defense or in defense of another person's life. (Duty Manual section L 2638)

SJPD Officer-Involved Shooting Investigations & Review Panels

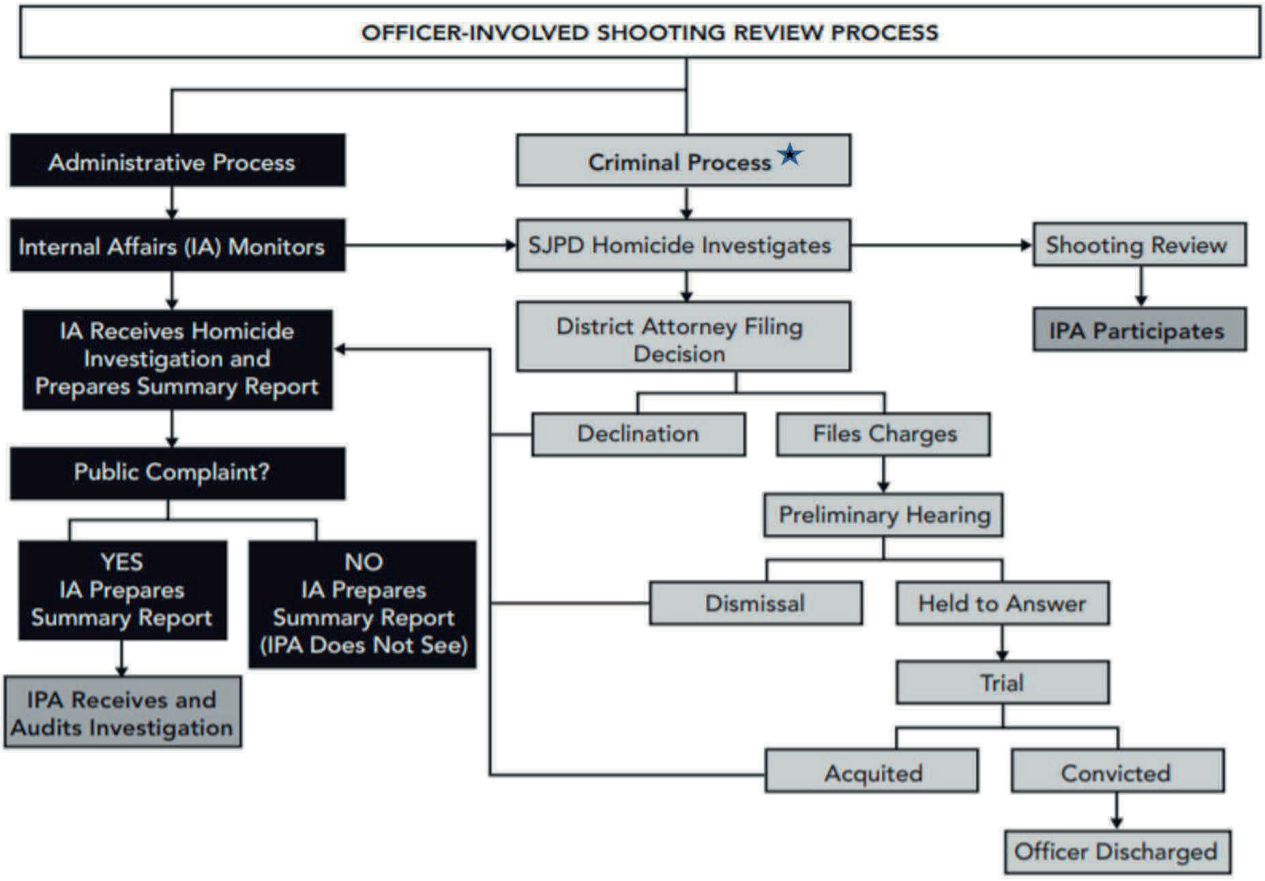
- Criminal Process: Every officer-involved shooting that results in death is subject to an investigation and review process. The Department's Homicide Unit conducts a criminal investigation which is then submitted to the Santa Clara County District Attorney. The District Attorney determines whether criminal charges will be filed.

  Pursuant to California Assembly Bill 1506, effective July 2021, the California Department of Justice will be in charge of investigating and prosecuting all fatal OIS incidents involving an unarmed civilian.[74]

- Administrative Process: The Department's Internal Affairs Unit conducts a separate investigation of fatal and non-fatal incidents. This is an administrative investigation to determine whether the use of force was within Department policy. Until this year, the extent of the IPA's role in reviewing the administrative investigation depended upon whether a member of the public had filed a complaint about the incident. If so, the IPA would audit the Department's administrative investigation of the incident to assess whether it was fair, thorough, complete and objective.

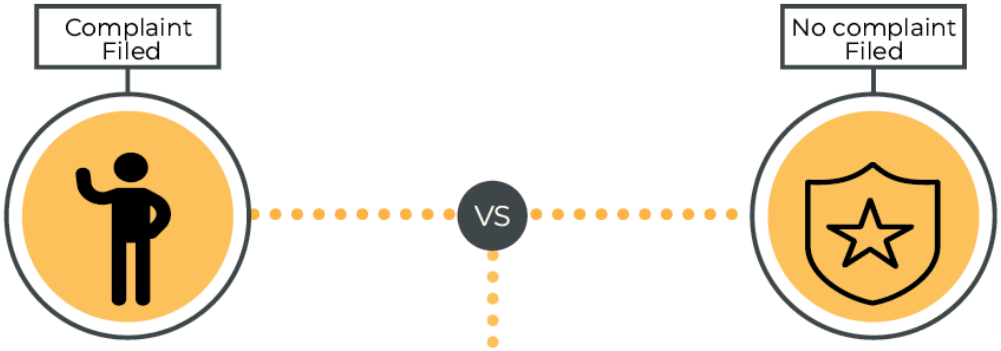
- Measure G, passed by the voters in 2020, expanded the IPA's ability to review records about officer-involved shooting incidents.

- Officer-Involved Incident Training Review Panel: The Department also convenes a shooting review panel to determine whether a possible training, equipment or policy issue exists requiring closer examination. The Department holds these Officer-Involved Incident (OII) review panels within 90 days of fatal and non-fatal incidents. The IPA and IPA senior staff attend the OII review panels and can ask questions about training, procedures and equipment. These sessions provide the IPA with valuable information that can serve as the foundation for future policy recommendations.



★ Pursuant to California Assembly Bill 1506, effective July 2021, the California Department of Justice will be in charge of investigating and prosecuting all OIS (Officer-Involved Shooting) incidents involving an unarmed civilian.[75]

Officer-Involved Shootings



IPA Notified

IPA is notified of incident and can respond to the scene and be briefed by IA Commander.

Notification

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IPA is notified of incident and can respond to the scene and be briefed by IA Commander.

SHOOTING REVIEW PANEL

IPA can participate in the shooting review panel to discuss best practices, NOT fault. The IPA is provided with relevant documents to prepare and participate.

Shooting Review Panel

SHOOTING REVIEW PANEL

IPA can participate in the shooting review panel to discuss best practices, NOT fault. The IPA is provided with relevant documents to prepare and participate.

IPA PARTICIPATION

IPA may attend officer and witness interviews.

Interviews

IPA PARTICIPATION

IPA may not participate.

IPA PARTICIPATION

The Department completes an investigation to determine if the shooting was within policy. The IPA audits the completed investigation.

Investigation

IPA PARTICIPATION

IPA may not audit the investigtion.

IPA PARTICIPATION

IPA may appeal the Department's determination to the City Manager.

Appeal

IPA PARTICIPATION

IPA may not appeal the decision to the City Manager.

OFFICER-INVOLVED SHOOTING INCIDENTS IN 2021

OIS No. 1	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	No
	Prior convictions --	Yes
	On probation or parole --	Yes
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	3
	Involved officer(s) experience --	13 years, 13 years, 15 years

OIS No. 2	Race of suspect --	Unknown
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	Yes
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	1
	Involved officer(s) experience --	14 years

NEW CALIFORNIA LAW ENFORCEMENT LEGISLATION SB 2

Enacted Sept. 30, 2021

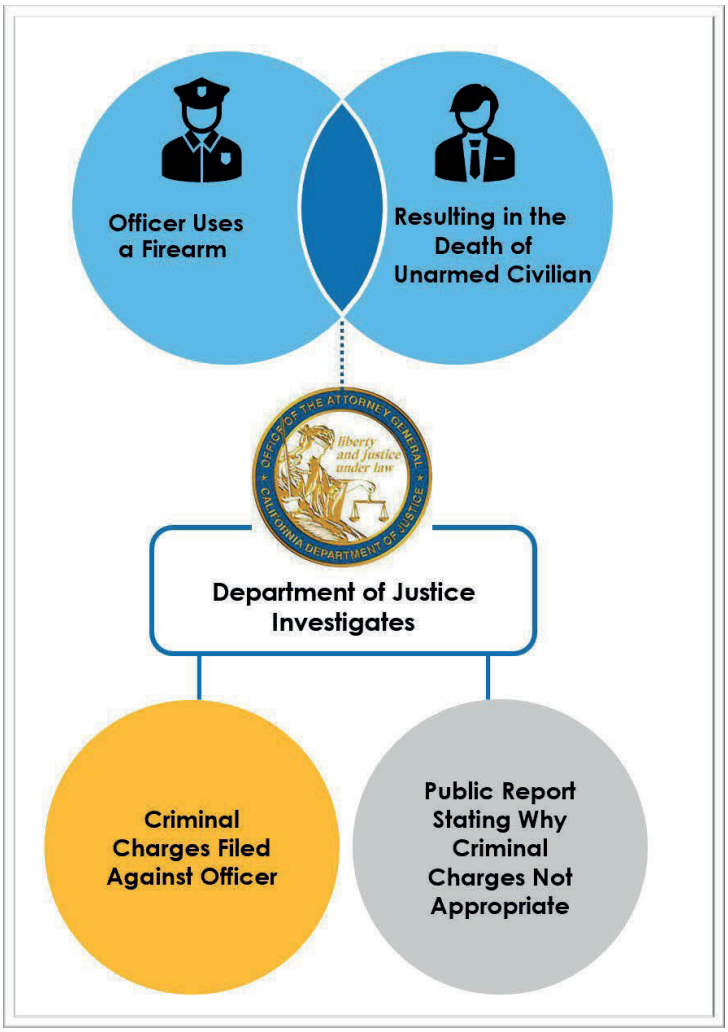
Effective Jan. 1, 2022

Creates a system within the Commission on Peace Officer Standards and Training (POST) to **investigate and revoke or suspend peace officer certification for serious misconduct.** This legislation creates the Peace Officer Standards Accountability Division and the Peace Officer Standards Accountability Advisory Board within POST to review serious misconduct cases.

CHANGES TO OFFICER-INVOLVED SHOOTING INVESTIGATIONS

Historically, officer-involved shooting (OIS) incidents in California have been primarily handled by local law enforcement agencies and the state's 58 district attorneys within the County where the incident occurred.

A new law, AB 1506, effective July 1, 2021, turns some of that responsibility over to the California Department of Justice in an effort to strengthen public trust in and understanding of the process. One supporting premise is that the state's top law enforcement officer can be more removed from local pressures. The state Attorney General has hired qualified persons to serve on the California Police Shooting Investigation Teams (CaPSIT).



AB 1506 covers only those incidents in which a law enforcement officer shoots and kills an unarmed civilian.[76] When a qualifying incident occurs, CaPSIT team members immediately deploy to the incident scene. Team members will coordinate with local responding agencies throughout the investigation of the officer-involved shooting. CaPSIT members will serve as concurrent, independent special agent investigators of these critical incidents. Once the initial investigation has been completed, the matter will then be turned over to the California Department of Justice's Special Prosecutions Section within the Criminal Law Division for review. California Department of Justice will, as soon as feasible and appropriate, disseminate relevant information and materials about covered incidents and, ultimately, make public its determinations whether criminal charges are or are not appropriate.[77] Cases that have been completed by the DOJ will be added to the ***case archive*** webpage.[78]

Local investigators will meanwhile review whether the officer followed departmental procedures or if there is any civil liability, as well as review any suspected crime that may have led to the shooting.[79]

IPA AUDITS IN 2021 — A FOCUS ON TRANSPARENCY

The complaints outlined below were closed by IA and audited by the IPA in 2021. The complaints selected were not chosen by a statistical method. Instead, these were selected because we believe they are illustrative of the interchange between the IPA and the Department. The narratives reflect how the IPA raises issues about the quality of the IA investigations and how the Department responds to those issues.

Under the City Ordinance, the IPA is to ensure that investigations into police misconduct are **fair, thorough, complete and objective**. If this standard is not met, the IPA can request additional investigation and/or analysis. Please see the illustration **What We Look For** in Chapter Four.

Agreed at First Review

If, upon initial review, the IPA staff finds that IA's investigation into alleged misconduct is fair, thorough, complete, and objective, then will close the case as AGREED AT FIRST REVIEW.

Agreed after Further Action

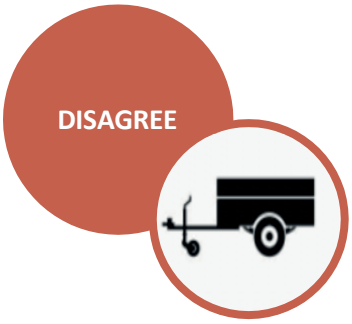
The IPA staff may find that IA's initial investigation into alleged misconduct needs improvement. We may request that IA staff take additional action to address concerns about the quality of the analysis or whether the finding is supported by the evidence. If IA's subsequent investigation adequately addressed our concern, then the IPA will close the case as AGREED AFTER FURTHER ACTION.

Closed with Concerns

At the end of the process, if the IPA still has **some** concerns about the quality of IA's investigation/analysis or whether the evidence supports the finding, the IPA will close as WITH CONCERNS.

Disagreed

At the end of the process, if the IPA still has **significant** concerns about the quality of the investigation/analysis or whether the evidence supports the finding, the IPA will close as DISAGREE.



Complaint: Among other things, the complainant alleged that an SJPD officer registered his large RV as *a utility trailer* with an associated $7 fee thereby avoiding an annual DMV fee of approximately $500. The complainant believed the officer had abused his position as a police officer and/or was given *special treatment* due to his position to obtain the Permanent Trailer Identification (PTI) for his RV.

IA's First Investigation & Analysis:
The initial IA investigation consisted of

- Reviewing a photograph of the DMV permanent trailer ID Card sent by the complainant
- Contacting the DMV
- Reviewing comments regarding the PTI program on a web discussion group
- ➢ IA did not interview the subject officer

IA concluded that the RV owned by the subject officer (officer) was a 42-foot, 3 axle, fifth-wheel trailer that must be pulled by a separate vehicle. Under IA's interpretation of the DMV's manual on the Permanent Trailer Identification (PTI) program[80] the officer's RV fell within certain exceptions and was thus qualified for PTI status.
The IA investigator also referenced on-line discussion forums which revealed some confusion about the registration of trailers, RVs, coaches, utility trailers, etc. The investigator presumed that if non-sworn persons were confused, the officer would likewise be confused.[81]
IA concluded that the officer's use of the PTI registration was justified, lawful and proper. Therefore, the PROCEDURE allegation was EXONERATED.

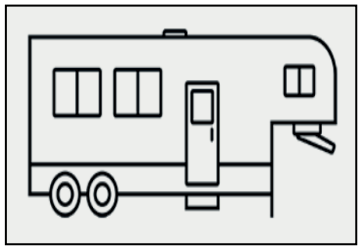
IPA's Response to IA's First Investigation & Analysis:
IPA contested this initial closure because it was neither thorough nor complete. A thorough investigation would include obtaining the RV's registration and payment history. Moreover, the discussion board postings about the PTI program were neither quantitative nor qualitative and did not confirm that the officer was confused about the PTI program. The subject officer needed to be interviewed.

IA's Second Investigation & Analysis:
IA re-opened the investigation

- ➢ IA did not interview the officer
- ➢ IA did not take measurements of the officer's RV
- IA obtained additional information from a DMV employee (conversation not recorded). The RV was registered in early 2016 and the amount paid appeared to be the standard amount for registration. The employee noted that the officer paid $10 in 2020 because the trailer was registered as a PTI with a renewal fee of $10 every five years.
- Using only a photograph and a ruler, the investigator created a diagram and data extrapolation about the officer's RV.

IA's analysis and findings remained unchanged from the initial investigation. IA concluded that the 42-foot, 3 axle, fifth-wheel trailer RV qualified for the DMV's PTI program. Online discussion forum conversations also revealed general confusion regarding DMV registration under the PTI program.[82] Thus, IA concluded that the officer's actions in registering the RV in the PTI program were justified, lawful, and proper.

IPA's Response to IA's Second Investigation & Analysis:



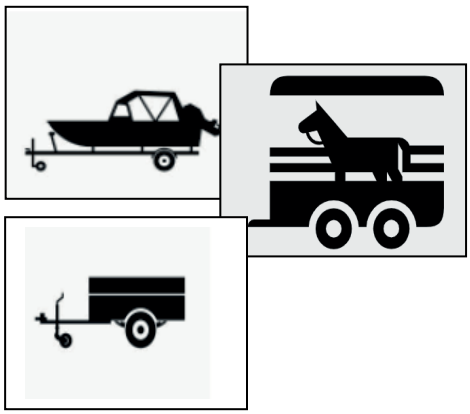
The IPA contested IA's second investigation on three points:

First, IA never measured the RV or interviewed the officer to confirm the dimensions of the RV. Conclusions were based on a diagram and IA's *data extrapolation*. Given that IA could have simply measured the actual RV, this approach was neither objective nor complete.

A *trailer coach* is a vehicle, other than a motor vehicle, *designed for human habitation or human occupancy* for industrial, professional, or commercial purposes, for carrying property on its own structure, and for being drawn by a motor vehicle. CVC Section 635

Second, excerpts from on-line discussions are not supporting evidence. Only an interview would show if the officer was confused about the DMV registration of his trailer coach under the PTI program and, if so, what steps he took to remedy his confusion.

Lastly, the RV would not qualify for the DMV's PTI program and its associated fees because the RV is a ***trailer coach*** (body type model CCH) and cannot be registered under the PTI program. The exceptions that IA relied upon apply to fifth-wheel travel trailers (not coaches). The alleged dimensions of Officer's RV place his vehicle in the classification of a trailer coach and not a travel trailer.[83]



All trailers, except *trailer coaches* and park trailers, are registered under the *Permanent Trailer Identification* (PTI) program. For example, PTI trailers include semi-trailers, boat trailers, utility trailers, flat bed trailers, box trailers or horse trailers. CVC section 468

IA's Third Investigation & Analysis:

IA reopened the investigation and interviewed the officer. The officer stated that he initially had trouble getting a VIN verification since he had purchased the trailer new from an east-coast state in 2016. He believed that the initial plates sent to him by CHP or DMV *didn't look normal*. He stated that, around 2016 or 2017, he re-did the process through the CHP and DMV. According to the officer, the second set of plates *looked normal*. The officer stated that he did not know anything about the PTI program until this complaint was filed. He denied submitting any paperwork for the PTI program and asserted that CHP or DMV determined how to register a vehicle into any particular classification.

IA concluded that there was no indication the officer registered his RV illegally or improperly. Thus, the officer's actions in registering the RV in the PTI program were justified, lawful, and proper. IA noted that the officer denied making any misrepresentation about his RV and that the associated paperwork was completed by the CHP, the DMV or the Midwest bank acting as his attorney during the purchase process.[84]

IPA's Response to IA's Third Investigation & Analysis:

The IPA noted that IA failed to provide a cogent explanation addressing how the RV got a PTI classification without any explanation or action by the officer. We believe it is puzzling that a bank, a company located in the Midwest, would be aware of and request a California PTI for this RV without notifying the officer. The facts also show that paperwork submitted about the officer's RV contained conflicting information, were incomplete and lacked his signature. These significant discrepancies in IA's analysis were improperly resolved in favor of the officer. Under these circumstances, a **not sustained** finding would be appropriate and supported by the evidence.

IPA Closure: The IPA closed this case as **disagree**.

Complaint: The complainant alleged that during the early hours of a Saturday, she and her husband were awakened by the SJPD helicopter, people screaming, and dogs barking. From their backyard, the couple looked outside and observed a naked male suspect pacing back and forth. The male laid down and masturbated for about seven minutes. Numerous officers arrived and illuminated the scene. The officers gave the suspect commands, but the naked suspect continued to pace back and forth.

At one point, the suspect appeared to obey the officers' commands by walking to the sidewalk and getting down upon his knees on the sidewalk. Then, the suspect rose to his feet, naked and with empty hands. The suspect was illuminated with spotlights, and seconds later, officers released a police dog. The dog attacked the suspect and the suspect fell out of the complainant's line of sight.

The complainant alleged, among other things, that the officer should not have used a police dog on an individual going through a mental health crisis.

IA's First Investigation & Analysis:
The IA investigator

- conducted a brief interview with the complainant
- obtained dispatch logs, BWC video, the complainant's video, and the police report.

➢ **13 officers responded to the scene; not one was interviewed.**

IA's investigation revealed that, shortly after midnight, a reporting party (RP) [distinct from the complainant who was a neighbor] called 911 to report an unknown naked male was inside his home. The male was rummaging through his property. The RP provided a physical description of the male and his last known location.

Thirteen SJPD officers responded to the scene. The police helicopter located a male lying down under a covered porch area outside of the residence. Officers found the suspect completely naked and masturbating on the front porch. A perimeter was established around the residence. Officers formed an arrest team, which included an SJPD officer trained in using a dog (K9 officer) and his assigned police dog.

Officers announced that a police dog may be used and the suspect could be bitten. The suspect put his hands up but then continued to masturbate. Officer asked the suspect if he understood; the suspect continued to masturbate. Officers continued to give several arrest commands. Per the officers' direction, the suspect exited a small gate near the sidewalk, got down on his knees and put his hands up in the air. Seventeen seconds later, per officers' direction, the suspect placed his hands on the sidewalk. Despite commands, the suspect refused to crawl towards officers on the other side of the street. Instead, according to the IA analysis from the written reports the suspect got into a *modified sprinters stance*. Six seconds later, the K9 officer deployed the police dog who engaged the suspect on his upper arm. In total, the dog remained engaged on the suspect for approximately 1 minute and 26 seconds.[85] IA asserted that this length of time was reasonable.[86]

Without interviewing the K9 officer or any officers, IA asserted that, at the time force was used (i.e., deployment of the police dog), the suspect had committed a felony burglary inside the residence (Penal Code 459). In addition, the officer's report documented his determination that the suspect's erratic behavior of masturbating on the front porch while being noncompliant with lawful orders was a violation of Penal Code 148 (delaying or obstructing an officer).

IA asserted that the K9 officer reasonably believed the suspect posed an immediate threat of violence or serious physical injury to officers and citizens. Based on training and experience, the officer documented his knowledge that suspects who commit burglary typically have tools that could be used as weapons (hammers, pry bars, screwdrivers, knives, or other sharp instruments) to break into buildings. According to the officer's report, the porch area and surrounding shrubbery were unsearched and an area in which weapons could have been easily concealed. The officer surmised that if arrest team officers were forced into close proximity with the suspect, the suspect could arm himself with a weapon. The K9 officer also believed the suspect might re-enter the house creating a potential hostage situation because the officer was unaware if the victim was still inside the residence.

IA concluded that the type and degree of force used was objectively reasonable and based upon the facts and circumstances of the situation. According to IA, the investigation proved that the K9 officer's use of force (deployment of the police dog) was justified, lawful, and proper.

IPA's Response to IA's First Investigation & Analysis:
The IPA appealed the exonerated finding on force initially to the IA Unit Commander and subsequently to the Chief of Police. The IPA contended that the IA investigation failed to critically examine whether a reasonable officer would believe that that the suspect, fully naked and masturbating, created an ***immediate*** threat of violence or serious injury to others such that the use of the police dog was warranted.

Review of the CAD call hardcopy revealed some additional salient facts:

- The RP stated that the naked male believed he had been invited inside (which would negate the specific intent required for a burglary)
- The RP stated that male volunteered to *clean up*
- The male did not touch the RP, threaten the RP and did not carry any weapons
- Twice the RP said all the doors and windows were locked.
- The RP stated he had no roommate
- The RP exited the residence at 00:37:46, no other persons in the residence
- Approximately 2 minutes later (at 00:39:35) the K9 announcements are made
- Approximately 3 minutes later (at 00:42:48), AIR3 states that the male is fighting with K9

The K9 officer's BWC video indicates that radio traffic advised that the RP was out of the residence; that advisement was sufficiently loud to be heard on the K9 officer's BWC video. Four minutes after this advisement, the dog was deployed.

The factors to consider when balancing an arrestee's constitutional rights and the need for use of force include:

1. **The severity of the crime at issue**
   Officers assumed that the suspect had committed a residential burglary. California Penal Code Section 459 defines burglary as the act of entering a building with the intent to steal something. In this encounter, the suspect told the RP that he believed he had been invited to enter and volunteered to *clean up* before he left. He was unarmed and did not touch or threaten the RP.

2. **Whether the suspect poses an *immediate* threat to the safety of persons**
   Merriam-Webster defines *immediate* as: *occurring, acting, or accomplished without loss or interval of time. Immediate* relates to the present instant, the here and now. It does not encompass possibilities that something might occur.

The K9 officer stated that he had a *reasonable belief that the suspect posed an* ***immediate*** *threat of violence or serious physical injury to officers based upon his erratic behavior of self-pleasuring himself while fully naked on the porch.*

Although this conduct is undoubtedly alarming and disturbing, we believe that a person self-pleasuring himself while fully naked on a porch does not pose an ***immediate*** threat of violence or serious injury to other persons. And, the IPA asserts that a reasonable officer would not come to this conclusion. There is no indication that the suspect had a weapon. The RP did not see a weapon. The suspect raised his hands into the air multiple times during the encounter. He raised his hands into the air 34 seconds before the police dog was released and he put his hands on the sidewalk 17 seconds before the police dog was released. None of the 13 officers on scene saw a weapon in the suspect's hands.

The K9 officer surmised that the suspect might access a weapon because *criminals who commit the act of burglary typically have tools that could be used as weapons, such as hammers, pry bars, screwdrivers, knives or other sharp instruments to break into buildings.* The officer's statement may be true if the burglar had been clothed or had a backpack, but its application to fully naked persons is attenuated.

The K9 officer also stated that by releasing his dog, he was preventing a potential hostage situation. His report stated, *communications was still on the phone with the RP trying to obtain more information and to see if we could safely have the RP exit the residence or stay inside*. However, the officer's BWC video indicates that radio traffic advised that the RP was out of the residence and that the advisement was sufficiently loud to be heard on his own video. In addition, the K9 officer's uncertainty about whether the RP remained in the residence is speculative,[87] it is not *immediate*.

3. **Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.**
   The facts show that the suspect was non-compliant, in part, with officers' commands. However, before the police dog was released, the suspect did not move in ways to defeat the officers' attempt at physical control such as bracing, tensing, pulling away. Officers did not touch the suspect and he did not touch them. He was not assaultive, aggressive or combative. He was on his knees with his hands in the air 34 seconds before the dog was released. Seventeen seconds before the dog was released, he put his hands on the sidewalk as directed. According to IA, the suspect assumed a *modified sprinters stance*. Given that he was ordered to place his knees and hands on the sidewalk, it seems likely that the officers directed him to take this stance. Since none of the officers were interviewed, this point remains unresolved. This does not indicate an attempt to evade arrest by fleeing.

In sum, the IPA concluded that the IA investigation was not thorough or complete.

- No SJPD officers were interviewed.
- Discrepancies were resolved in favor of the officer

Chief's Response to IPA's Appeal:
At IPA's request, the Chief provided a response focused on the three elements outlined on the prior pages.

1. **the severity of the crime at issue**
   The Chief contended that Residential burglary is a *strike* offense, per California Penal Code section 1192.7(c), which lists *serious or violent felonies*. Furthermore, he noted that there is inherent danger presented by an unknown suspect inside a structure for unknown reasons. In addition, the RP had initially refused to exit the house but then relented. Prior to the dog being deployed, however, Communications advised that the victim had exited the residence. Unfortunately, both the K9 officer and his supervisor missed this transmission. Thus, both these officers were operating under the mistaken assumption that the RP was still inside the residence. The Chief did not explain what efforts the K9 officer and his supervisor made to confirm the location of the resident before deploying the dog.

2. **whether the suspect poses an immediate threat to the safety of persons**
   The Chief noted that when the suspect was first discovered by the RP, the suspect was standing naked in the victim's bedroom and acting in a bizarre manner. The officers had no idea how the suspect got there, or what he may have brought with him when he arrived that may have still been inside the house or out on the front porch area. Additionally, if the suspect re-entered the house, he could possibly arm himself with weapons or dangerous household objects contained within. Had the suspect entered the house, the officers would have been justified using the police dog to search for him, Therefore, the Chief did not find persuasive the fact that the suspect was naked at the time of the police dog's deployment.

3. **whether the suspect is actively resisting arrest or attempting to evade arrest by flight.**
   The Chief noted that the suspect initially exited the residence and began to comply with the direction given to him by the officers. He then stood up and walked back towards the front door of the residence. The suspect's actions indicated an intent to either enter the victim's residence or to flee in some other direction. The suspect's actions did not indicate an intention to comply with the directions given to him by the officers.

IPA Closure: IPA closed this case as **disagree**. The investigation and analysis were not thorough or complete and thus failed to support an exonerated finding. Both the IA Unit Commander and the Chief's responses relied on assumptions about the involved officers' conduct without interviewing them. We believed that factual discrepancies and inconsistent rationales were improperly resolved in favor of the subject officer.

Complaint: The complainant resides with her one-year-old grandchild and her daughter (the child's mother). The child's father resides elsewhere. At the time of this incident, there were no court orders regarding the custody of the one-year-old. The father called SJPD for a civil standby. He wanted to pick up his child and avoid any disturbance with complainant's family.

Two officers arrived. After speaking with family members and after the mother declined to allow the father to take the child, the officers left. However, the complainant felt the officers were unprofessional during the encounter. Among other things, she felt the officers unduly pressured and intimidated the mother to release the child to the father. Officers were dismissive of the mother's concern that the father had been placed on two mental health holds in the month prior. Allegedly, officers were rude to members of the extended family who were visiting at Thanksgiving.

IA's First Investigation & Analysis:
The assigned IA investigator

- Pulled the computer dispatch records
- Reviewed both officers' BWC video
- ➢ No officers were interviewed

The IA Unit's analysis asserted that when the mother's brother became verbally abusive, the officers told him to go back into the house. IA noted that the officers did not use profanity with the brother. Similarly, the officer did not direct profane or derogatory language at the complainant or her family. Based on BWC footage, IA asserted that the officer did not intimidate or attempt to intimidate the mother and did not pressure her into giving custody of the child to the father. The officer did state, *you can only imagine that him being the father and him walking away on a holiday without seeing his child is going to fire him up*. Without interviewing the subject officer, the IA investigation asserted that the officer made the comment in overall context which brought into light the totality of situation. IA stated:

> Unresolved custody issues are likely to be emotionally charged, especially when a civil standby is requested, and the police are summoned. The [subject] officer recognized the outcome of the civil standby may produce future animosities between the parties. The officer's comment was targeted and intended to shed light on how future interaction might unfold.

It was puzzling to us how IA ascribed such a cogent explanation to the officer if that officer was never interviewed. Nonetheless, IA closed the COURTESY allegation as UNFOUNDED.

IPA's Response to IA's First Investigation & Analysis:
IPA had concerns about IA's investigation and analysis. IA asserted that the officer was professional during the encounter because he did not use profane of derogatory language. IPA agrees that the officer did not use profane language. However, the IA analysis did not address other aspects of the officer's behavior. When the complainant provided officers with the information about the father's recent mental health holds, it would have been prudent for the officers to check on the father's history rather than insisting that the mother relinquish the child. Instead, the subject officer told both women, *You can only imagine that [the father of the child] walking away without seeing his child is going to fire him up.* The comment was unnecessary, appeared intimidating, and lacked due regard for the mother's anxiety and the child's safety. *Firing up* a person with recent mental health issues is generally ill-advised; here the officer is suggesting to the women that it will be their fault if the father gets *fired-up*.

Without an interview of the complainant or her daughter, the assumptions regarding what comments and gestures were intimidating are speculative. Without interviewing the subject officer, IA determined the rationale that motivated the officer's choice of words. Since motivation is subjective, such conclusions cannot be drawn without input from the officer himself. It appeared all doubts were resolved in favor of the officer which is not objective. The investigation and analysis were incomplete. The IPA recommended that the investigation be re-opened.

IA's Second Investigation & Analysis:
IA re-opened the investigation and attempted to contact the complainant for more detail. She did not respond. IA did not interview the subject officer. IA then concluded, based on the analysis in its initial investigation, that the COURTESY finding would remain UNFOUNDED.

IPA Closure: IPA closed with concerns.

Complaint: The complainant has several children of adult age. She alleged that her adult son was detained and arrested by SJPD. She herself was detained and placed in handcuffs and later moved into the back of a patrol car. The allegations included BIAS-BASED POLICING (RACE), ARREST/DETENTION, and PROCEDURE.

IA's First Investigation & Analysis:
Documents show that officers were dispatched to a disturbance call. The reporting party (RP) said a male was seen pulling a female's hair and trying to hit her. Both the male suspect and the female victim were described as Hispanic, 20-30 years, approximately the same height and weight, both wearing blue jeans.

A passerby told officers that two males were arguing in the middle of the street. Officers found two males in the middle of a street yelling at each other. Officer 7 and Officer 8 separated the males. Complainant (a 50-year-old Hispanic female) was outside trying to persuade her son to

come inside. Officers handcuffed and pat-searched the complainant. For 20 minutes, she sat handcuffed on the street curb. She was then moved to the back of a patrol car where she remained for another 26 minutes.

IA concluded that the officers' conduct was within policy. The IA analysis asserted that because the officers were investigating a possible domestic violence (DV) incident, it was important to separate the parties to prevent further violence and to determine who was the primary aggressor. In addition, placing both the males and the female in handcuffs de-escalated the situation. IA deemed that there was no evidence of BIAS-BASED POLICING.

IPA's Response to IA's First Investigation & Analysis:
Although IA asserted that the officers were investigating a possible DV incident, the facts do not support that assertion. IA stated it was important to determine who was the primary aggressor. The initial reporting party indicated that the male was seen pulling a female's hair and trying to hit her. In the absence of other facts, it appears that the male was the primary aggressor. If the officers were indeed investigating the DV incident, the act of pat-searching and handcuffing the DV victim appeared both insensitive and out-of-policy. IA contended that placing both the male and female in handcuffs de-escalated the situation. It seems unlikely that handcuffing a probable DV victim would de-escalate two males in a verbal argument. And, in this case, handcuffing the complainant in front of her adult son resulted in the immediate escalation in the son's conduct.

A detention is only lawful if the officer has reasonable suspicion that the detainee has engaged in criminal conduct. The detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. While the complainant is sitting on the curb, one officer says, *I have a feeling it was them two [males] fighting against each other and mom stepped in to stop them.* Another officer replies, *Right – when we rolled down the corner – that's what it like was happening.* Yet the complainant remained handcuffed for the next 34 minutes.

The complainant was detained for 46 minutes (19:15 to 20:27). The IPA asserted that the initial detention was improper and the length of the detention was unreasonable. IA's assertion that the officers were investigating a DV incident in which she was involved was not supported by evidence or analysis. There was no reasonable suspicion that she was engaged in criminal activity. The reason for the pat-search was not established.

We asked that the investigation be re-opened and that SEARCH allegations be added. Our particular concern was focused on the officers' pat-search of the complainant.

IA's Rebuttal:
IA did not re-open the investigation. Their rebuttal asserted that complainant matched the description of the DV victim, and thus the officers were justified in detaining her to investigate alleged DV. They handcuffed the males and the complainant to ensure that there was no chance of further violence to the complainant or to the male. In IA's rebuttal, it was asserted that *In this case, at the very least, officers observed an objective manifestation of criminal activity – a fight in public – a violation of CA Penal Code 415(1)*.

While the complainant was in the patrol car, an officer said, *We got a call about a man and a woman. The man was pulling her hair, so I don't know what's happening right now.* According to IA this *statement clearly outlined that the officer had not yet dismissed complainant of any wrongdoing*. IA also asserted that the detention was not unreasonably long because the complainant asked for a Spanish speaking officer. In fact, the complainant did not request an interpreter. Officers asked if she spoke English or Spanish; she replied that she spoke Spanish and no English. None of the officers ask for a translator. Twelve minutes later, the primary officer asked, *does anyone speak Spanish?*

IA asserted that the pat-search was justified and within department policy. IA's rationale was multilayered. According to IA, under the definition of police purpose, the officers were investigating a crime of violence. The yelling was an indication that a disturbance was still on-going. It was night-time and the area was illuminated with streetlights. The location has been historically a gang neighborhood. There had been numerous drive-by shootings and homicides in that area. It was clear from the BWC footage that the complainant was wearing a shirt that obscured her waistband. Even though the RP did not see a weapon, that did not mean a weapon could not be hidden on the complainant's person.

IPA's Appeal to the Chief:
The IPA appealed IA's rebuttal to the Chief of Police. Our appeal focused, among other things, on the complainant's detention and the pat-search.

The Detention: In our appeal, we argued that IA's investigation provided no facts to support reasonable suspicion that the complainant had engaged in criminal conduct.

- Domestic Violence: The complainant was not asked any questions about domestic violence. She was never asked whether she had been hurt or injured – clearly an important question to ask a potential victim. This lack of questioning casts doubts on any assertion that she was detained based on a DV incident - including the length of that detention.

- Fighting in Public (Penal Code 415(1): Similarly, the complainant was not asked if she had challenged anyone to fight or had engaged in public fighting. Neither of the males were asked if the complainant had challenged or engaged in public fighting. None of the witnesses on the sidewalk were asked about who engaged in fighting. This lack of questioning casts doubt on any detention based on 415(1) suspicions - including the length of that detention.

The Pat-Search: In our appeal, we argued that IA's investigation provided no facts to justify officers pat-searching the complainant. The U.S. Supreme Court has provided a two-prong test under which officers may pat-search a person if (1) the underlying detention is valid and (2) the officer has reason to believe he is dealing with an armed and dangerous individual.[88]

- First Prong: Given that complainant's detention was invalid, the associated pat-search would be invalid under the first prong.

- Second Prong: Regarding the second prong, we asserted that IA failed to show sufficient facts that officers reasonably believed the complainant was armed and dangerous. She did not make furtive movements. Her actions were not threatening – she immediately dropped everything she was holding when officers approached. The IA investigation showed no facts that her clothing bulged in a manner suggesting the presence of a weapon. And we disputed IA's assertion that the sound of yelling provided evidence that a serious and violent offense was occurring.

Chief's Response to IPA Appeal:
The Chief agreed with the IPA's argument on the detention of complainant; the EXONERATED finding was changed to SUSTAINED. The Chief also stated there would be NO FINDINGS on the requested additional pat-search allegation, but that the conduct would be addressed through informal training.

IPA Closure: The IPA closed this case with concerns.

Complaint: In February 2020, an anonymous person made an online complaint with the IPA office alleging that a SJPD officer was working on paid overtime as an electrician on the SJPD's Department's command vehicle (CRV). The anonymous complainant claimed the officer was defrauding the taxpayers because he was observed primarily sitting in the CRV on his cellphone and that he submitted excessive overtime at taxpayer expense.

IA's First Investigation & Analysis:
The IA investigator:
- Interviewed (but did not record) one of the officer's supervisors
- ➢ Did not review any timecards
- ➢ Did not interview the subject officer

IA initially closed the allegations as UNFOUNDED. The officer's supervisor said that he was *in charge* of the CRV retrofit project which required extensive work. According to this supervisor, the usual City channels, namely the General Service (GSA) and Fleet Maintenance were unavailable to perform the work. Thus, the subject officer was *assisting* because he had previously worked as a certified electrician with the City of San José. The supervisor asserted that all of the officer's work was approved by his chain of command.

IPA's Response to IA's Initial Investigation & Analysis:
The IPA countered that IA had not provided any documentation of either the work completed and/or the timecards. The investigation of the alleged timecard fraud was incomplete because IA failed, among other things, to determine:

1) If SJPD followed proper procedure regarding hiring an electrician,
2) If SJPD followed proper procedure regarding pay,[89]
3) If an adequate mechanism was used to document the subject officer's work on the CRV, and
4) If the Department determined the accuracy of the timecards/quality of the subject officer's work.[90]

IA's Second Investigation and Analysis:
IA re-opened the investigation. The IA investigator:

- Obtained and examined documents
- Interviewed the subject officer
- Re-interviewed the subject officer's supervisor
- Interviewed a witness officer

The witness officer stated that he saw the subject working on the CRV at different times on different days. He observed subject officer sitting inside the CRV on his cell phone *spending a lot of time not doing much work*. When the witness officer advised the subject officer's supervisor of his concerns, he was told that the subject officer was conducting *electrical upgrades to the van*. The witness officer felt a supervisor should *ensure someone was overseeing the hours worked*. He believed that the subject officer's supervisor was assigned to the night shift and unable to monitor all the hours alleged to justify the overtime expenditure. Both the subject officer's supervisor and the witness officer confirmed this conversation occurred in 2018.

After reviewing the IA interviews and the additional documentation, IA closed the sole CONDUCT UNBECOMING AN OFFICER (CUBO) allegation as UNFOUNDED on two grounds:

(1) **The anonymous Complaint was untimely**: IA stated that the concerns raised by the witness officer in 2018 were similar in nature to the allegations brought forth by the anonymous complainant in February 2020. Government Code section 3304 (also known as the *Police Officers Bill of Rights (POBAR*)) states that officer misconduct must be investigated within one year of the Department's discovery by a person authorize to initiate an investigation of the alleged misconduct. IA asserted that once the witness officer told the subject officer's supervisor about alleged excess overtime, the Department, by extension, also became aware of the misconduct. Thus, any investigation into timecard fraud needed to be completed by 2019.

(2) **The subject officer performed an exemplary job**: IA stated that the subject officer maintained *constant communication* with his supervisors throughout the project. This *constant communication* allowed for his commanders to stay involved and aware. He documented his overtime on his timesheet as he was instructed and in accordance with City policy. The subject officer utilized his expertise and skill to improve the Department's CRV. IA closed its investigation with the assertion that the evidence showed the alleged fraud did not occur. The finding was UNFOUNDED.

IPA's Response to IA's Second Investigation & Analysis:

(1) The IPA noted that, per case law, the Department indeed had knowledge of misconduct once the knowledge is shared with a person who can initiate an investigation. The issue was whether the subject officer's supervisor could, by himself, initiate an investigation. Designating persons who can initiate a Department investigation is within the discretion of the Department. The IPA requested that the Department enumerate those persons within the chain of command who are/were authorized to initiate an investigation (e.g., sergeants, lieutenants, captains) so as to avoid confusion in the future as this issue also caused concern in the investigation of a separate complaint. The Department responded that it would not create a Duty Manual section designating a single person or command level with the authority to initiate investigations because the current system is *appropriate and timely*.

(2) IA asserted that the subject officer properly documented his time and that the amount of overtime for this retrofit project was not excessive. The IPA questioned IA's conclusion based on two factors: (a) questionable documentation, and (b) proper supervision and expertise.

(a) Questionable Documentation

Unfortunately, there was no contemporaneous documentation showing what retrofit work was done and on what dates.[91] The subject officer supplied a hand-written log at his interview. He stated that he listed the entries on page one within a week of the action described. The entries on the remaining pages, dating from 2019, were created *from memory* shortly before his January 2021 interview at IA – approximately two years later. Furthermore, IA failed to critically examine the log. Such examination showed that, for all the dates and conduct listed on page one **(**created within a week of the action described), there were no corresponding entries on his timesheet for those dates reflecting such work. This creates credibility issues with the hours worked and the approval of those hours, not only for the first page but the following pages created *from memory*.

The subject officer said that he worked on the CRV retrofit using both regular and overtime hours. He did not distinguish the regular hours devoted to the CRV retrofit from other regular hours devoted to law enforcement. He did not have a consistent method for inputting his hours. He referenced photographs on his cell phone (date/time) to confirm the hours he worked on a particular day. His timesheets were approved by different sergeants depending on who he was working for at the time. IA's assertion that *after the review of the timecards, it was apparent that he distinguished the overtime he worked on the command van from other department approved overtime* is not supported by the facts.[92]

(b) Supervision and Expertise

According to persons interviewed by IA, the subject officer's knowledge of electronics and technology made him a qualified person to assist on the project. Apparently, he also had familiarity with RVs.

However, given the lack of expertise in electrician work or familiarity with RVs held by any of his supervisors, one questions whether anyone possessed the ability to evaluate and approve the retrofit work. Electricians employed by the City of San José are supervised by more experienced electricians with expertise in the scope of work and knowledge of the time and materials needed for various job. Both the electricians and the supervisors keep records that can corroborate their time spent on various projects.

Furthermore, although it appears that the subject officer was chosen due to his expertise as an electrician, many of the tasks he performed on the retrofit did not require electrician skills. Some tasks may have been done more efficiently and effectively by other skilled professionals within the City. Many of these other tasks could have been completed by non-sworn staff on regular time. For example, there are many entries on research, talking to fiscal, and shopping.

PLUMBING	Research plumbing fixtures and toilets, remove old fixtures, sinks, toilets, and all joints due to leaks, shop for toilet and accessories, talk to fiscal regarding purchasing toilet, repair leaks and install new faucets, install new toilet
CHAIRS	Research new chairs for interior, write-up purchase order for new chairs, talk to fiscal regarding purchasing chairs, shop for chairs
TV MOUNT	Design and research overhead TV mount, write up purchase order for TV mount
TECHNOLOGY	research & design interior touchscreen computer & mounting bracket, research & design LaserJet printer options, research & design layout of modems, Meet with R&D for SIM cards for modems, Install SIM cards in modems, research &designed Bluetooth speaker option, install and wire Bluetooth transmitter, write up purchase order for speaker and transmitter
PAINTING	Meeting regarding new paint job designs, coordination with painters and graphics designer, design changes, write up purchase order for paint job, drop off for paint in Newark, pick up from paint in Newark
OTHER	install hooks in bathroom for gun belts, shopping for food for deployments, install feminine product shelf, purchase feminine products
MISC.	Corporate yard visit to pressure wash exterior

For some years, the Department has been understaffed. An SJPD officer's time is very valuable to the City's constituents. Much effort is expended at every step of an officer's hiring, academy training, field training, supervision, and evaluation process to ensure each officer meets expected standards. Officers receive pay commensurate with those standards. Officers working overtime receive 1.5 times their regular pay. It is important for the fiscal standards of the City and the expectation of the community that officers be paid to perform tasks that only sworn officers can

do, such as driving patrol cars, deploying weapons, and making forceable arrests. The IPA has grave concerns that this officer was working as an electrician, a plumber, a chair-purchaser, a paint/design liaison, and a courier picking up/dropping off items – while being paid a salary and overtime paid at time and a half. Although the CRV retrofit project was deemed a success by the Department, it appears the Department does not have a firm grasp on the dollars and time expended on the project. We recommend that overtime should be more closely scrutinized, documented, and supervised.[93]

For these reasons, the IPA this closed this complaint with concerns.

Complaint: An anonymous complainant reported observing a police officer on top of a prone suspect. The suspect was screaming, *Get off me*, and was *sort of crying*. At the scene were four police vehicles, an ambulance, and a fire truck; a police helicopter was overhead. The complainant was unaware of the underlying incident but believed the suspect may have been unnecessarily injured and the officer utilized unnecessary force.

IA First Investigation & Analysis:
The IA investigation showed that Officer 9 and Officer 10 were assigned as a two-officer vehicle. They saw a person riding his bike without a bike light. The bicyclist crossed over a double solid yellow in the street pavement. The officers activated lights and siren to stop the bicyclist for the two vehicle code violations. The suspect rode away on his bike – a violation of Penal Code section 148 (delaying or refusing to obey the lawful commands of an officer). Officer 9 exited the car and initiated a foot pursuit. Officer 10, driving his police vehicle, followed the suspect and unsuccessfully attempted to block the suspect's path. Officer 10 then pursued the suspect on foot. The SJPD helicopter supported the event by providing updates on the suspect's location to officers on the ground. Officer 10 described the location *as dimly lit, a high crime area, and high gang area.* He stated that, *based on his training and experience, the longer this event continued, the higher risk there was for officers being injured and injury to the suspect*. Officer 10 deployed his Taser at the suspect who was riding his bicycle. The Taser was not effective. The suspect continued riding his bike until he collided with a small wall. Officers controlled the suspect with force to effect the arrest.

IA investigated one FORCE allegation against Officer 10 (Taser) and another FORCE allegation against Officer 9 (use of body weight). Since IA staff are precluded from making a SUSTAINED finding, the issue of whether the Taser deployment on a person riding a bicycle was appropriate was sent up the Chain of Command for Findings & Recommendations (F&R). The F&R process concluded that the use of the Taser was within policy.

IPA's Response to IA's First Investigation & Analysis:
The IPA was concerned with the officers' decision to engage in a foot pursuit, at night, on a bicyclist who (1) did not have a front light on his bike and (2) crossed over a double yellow line and then failed to stop when ordered. We believed that it was unclear whether the officers' actions were in accordance with Duty Manual section L 2202.

L 2202 DISCRETIONARY ENFORCEMENT:

> The Department must necessarily exercise discretion in the enforcement of laws for the following reasons: the Department has limited resources available, and there are often a number of acceptable and more effective ways of accomplishing the purpose of the law. Officers **will take enforcement action** whenever the criminal act is or has the potential to endanger the lives, safety, property and well-being of the public.

In our opinion, the officers engaged in a pursuit of a person whose *criminal act* had no *potential to endanger the lives, safety, property and well-being of the public*. Instead, the officers placed themselves and the suspect in a dangerous situation as many foot pursuits result in officers being injured and/or using excessive force on the suspect.

We were also concerned that the Department's Duty Manual fails to indicate under what conditions a Taser may be deployed on a bicyclist. As of the date of the incident, the TASER manual indicated that there is a risk of death or serious injury if the deployment is used on a person who is *operating or riding in or on any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, cart, train, or airplane) conveyance (e.g., escalator, moving walkway, elevator, skateboard, skates or rollerblades) or machinery*.

IPA Closure: The IPA closed with concerns.

Complaint: The complainant stated that he was driving near a vehicle accident where a person drove into a utility box and SJPD officers and the San José Fire Department responded. The complainant alleged that two patrol officers and the fire department were on scene when a third SJPD patrol car came to the scene driving recklessly, almost hitting another car. The complainant alleged that the officer's reckless driving endangered other drivers and was unnecessary since other officers had already responded.

IA's First Investigation & Analysis:
IA came to a finding of EXONERATED with proposed training for the PROCEDURE allegation of reckless driving. IA acknowledged that the officer was driving too fast at 75 mph on a city street

but argued that he was responding to a dangerous vehicle accident. Although other officers were already on scene, the goal of the subject officer was to block traffic to prevent any other vehicles from passing through the accident scene.

IPA's Response to IA's First Investigation & Analysis:
Although IA's rationale may be true in part, the IPA noted that IA had failed to analyze the officer's conduct against the more relevant Duty Manual sections, namely L 1211 Determining Manner of Response and L 2004 Use of Emergency Lights and Siren.

Duty Manual section L 1211 states that there are only two types of police vehicle response: (1) Normal Response and (2) Emergency Response.

> A Normal Response is any call or assignment which is not an emergency...Department members will obey all traffic laws and consider road traffic conditions when making a "normal response." Red lights and/or siren are not authorized. (Emphasis added.)
>
> An Emergency Response is any call or assignment which is an emergency and requires a faster police response than would occur if traffic laws were strictly obeyed. Red lights and siren are used...When making an "emergency response," emergency lights and siren are used to warn other users of the highway and to assist in gaining the right of way. (Emphasis added.)

Officers cannot disobey traffic laws to get to an accident scene more quickly without using lights and sirens. As stated in the Duty Manual sections above, it is very dangerous to drive at 75 mph on a side street without warning other drivers. The officer said that he was not responding Code 3, but this *was,* in fact*,* a Code 3 response—an incomplete one.

IA's analysis failed to note that another officer had arrived at the scene earlier had cancelled any other Code 3 responses. Further, Duty Manual section L 1211 states that Code 3 responses require that a sergeant acknowledge an officer's request to respond Code 3 before that officer initiates the emergency response. Here, the officer did *not* obtain a sergeant's permission to respond Code 3 but *did* initiate an emergency response without the requisite lights and sirens, creating a danger to other vehicles sharing the road. This conduct does not comply with the Duty Manual. Therefore, an EXONERATED finding was not supported.

IA's Second Investigation & Analysis:
IA re-opened the investigation and conducted additional analysis. The PROCEDURE allegation for excessive speeding was SUSTAINED through the Findings and Recommendations process (F&R).

IPA Closure: The IPA agreed after further action.

Complaint: This complaint was submitted online. On a Wednesday at approximately 10 pm, the complainant noticed a parking citation and an orange warning notice on her car. Both documents reflected badge #XXX and were dated Thursday, the next day. The citation was for parking on a street for more than 72 hours without movement. The time on the citation was 4 p.m. She disputed the citation and the warning.

IA's First Investigation & Analysis:
IA staff first needed to identify the subject officer. SJPD badge numbers are four digits and the citation in question had only three digits. This process proved time-consuming because officers had improperly logged in/out parking citation books.

Once determining identity, IA interviewed the subject officer. The IPA did not attend the interview. However, the IPA explained to the interviewing sergeant that seemingly mundane issues, such as misdating citations, can reveal bigger issues.[94] The IPA provided IA an article on just such an incident in 2016. An Asian driver made a complaint against a Massachusetts State Police Trooper who repeated yelled at the driver, *do you speak English*? The driver, who had a medical degree from Harvard and spoke four languages fluently, alleged the trooper was unprofessional. And, the driver noted, the trooper did not put the actual date on the citation; instead, he put the following day as the incident date. This complaint eventually exposed a massive scam of phony tickets and falsified time sheets within the State Police implicating 46 troopers. Eight troopers pled guilty to embezzlement charges. The IPA wanted to be certain that IA focused detailed questioning about the date on the citation.

The subject officer was not in a patrol assignment. Instead, he was a tow hearing officer. During his interview, he acknowledged that he cited the complainant's car. He stated that *neighbors often notified him of vehicles that had been on the street for an extended period of time*. He also believed that he *may have written parking tickets on his street before* but could not remember. IA also interviewed the subject officer's neighbor. The neighbor acknowledged that she told the officer or his wife about those cars parked for an extended period. She stated that the officer *is wonderful about tagging them* [vehicles].

IA investigator requested a list of parking citations issued by the subject officer over the last three years. However, his message request to San José's Department of Transportation went unanswered.

IA concluded that there was insufficient evidence to determine whether the officer violated procedure by citing the vehicle for San José Municipal Code 11.36.220 Storing Vehicles on Streets prior to 72 hours elapsing. If the complainant has parked her vehicle close to midnight on Tuesday, then 72 hours would not have elapsed from the time she parked the vehicle to the time the vehicle was cited on Wednesday. However, the subject officer was very confident that at

least 72 hours had passed. IA found no evidence to corroborate when the car was parked. IA made a finding of NOT SUSTAINED.

IA also determined that there was insufficient evidence to determine whether the officer violated procedure by taking off-duty enforcement action in a neighborhood dispute where there may have been a conflict of interest. IA made a finding of NOT SUSTAINED.

IA determined that there may be sufficient evidence to determine whether the officer violated procedure when he placed the incorrect date on the citation. This allegation was deemed SUSTAINED through the Findings and Recommendation process (F&R).

IPA's Response to IA's First Investigation & Analysis:
The IPA asserted that IA's investigation was not thorough or complete without obtaining a history of citations issued by the subject officer. In our estimation, follow-up with the City's Department of Transportation was imperative.

❖ Car Parked in Excess of 72 hours

IA concluded that there was insufficient evidence to show whether 72 hours had elapsed before the subject officer issued the citation. IA asserted it was unable to corroborate how long the complainant's car had been parked. The IPA asserted that sufficient evidence existed by assessing the credibility of the complainant and the subject officer.

- In his IA interview, the subject officer said that he did an on-view of the car 5 to 7 days before he issued the citation. He explained that he usually notes the presence of the car and then returns the following week if see if the car had moved. He said that he *doesn't wait until the 73rd hour* to cite a car. However, **it would be impossible for the officer to see the car 5 to 7 days before he issued the Wednesday citation because the complainant purchased the car the previous Sunday.**

- The time on the citation and the orange warning sheet was 1600 – 4 p.m. However, in his interview, the subject officer stated that he would not be home at 4 p.m. His timecard for that day reflects he clocked out at 4:30. He put an incorrect date on both the citation and on the orange warning. Badge numbers for SJPD officers contain four digits. The subject officer's badge number is #XXXX; on the citation, he listed is badge number as #XXX. His badge number is illegible on the orange warning, yet all his other entries are legible**. The combination of these six errors could be carelessness, however it could also reflect a desire to be undetected.**

- The officer stated that **he could not tell if the car had moved during the 72 hours and returned to the same position.** He stated that he normally chalks tires when he is working patrol. But he was not working patrol – he was working as a tow hearing officer. No explanation was provided as to why he could not chalk the tire, check valve stem position or simply put a pebble on the tire.

❖ Conflict of interest

IA determined that there was insufficient evidence to determine whether the officer violated procedure by taking off-duty enforcement action in a neighborhood dispute where there may have been a conflict of interest. When asked why he did not affix the orange warning card, wait 72 hours, and then issue a citation, the officer replied, *I was just trying to avoid the tow*.

IA's analysis did not examine whether it is proper for the Department's Tow Hearing Officers to be issuing warnings on or off duty about potential tows and ticketing cars for violating Municipal Code 11.36.220 without a warning.

The problem with the subject officer issuing the warning is that, if the complainant had not moved her car, he would be both the hearing officer and the witness at the tow hearing.[95] The burden of proof is on the Department to establish that the car had been properly towed.[96] The officer's testimony would be needed to establish the proper record. That testimony might also entail explaining why a warning and a citation were issued simultaneously which is not standard procedure.

It seems self-evident to the IPA Office that tow hearing officers should not engage in any enforcement actions on or off-duty that could possibly result in a car tow.

IA's Second Investigation & Analysis:
IA re-opened the investigation and obtained citations issued by the subject officer. These citations revealed that the subject officer, while off duty, cited over 20 cars around his neighborhood during the past 1.5 years; in that same period, the officer wrote only one other parking citation that was not in his neighborhood. IA revisited the evidence on the municipal code citation and conflict of interest. Those allegations were forwarded to the Chain of Command; each were deemed SUSTAINED.

IPA Closure: IPA closed this case as agree after further action.

Complaint: While her vehicle was stopped at a red light, the complainant witnessed a police interaction from her vehicle. The incident happened very quickly. The complainant saw an officer stop his patrol car, exit his patrol car, use a loudspeaker, and make contact with a woman in front of a business. The woman had her hands raised. The officer went back to his vehicle and returned with a weapon which the complainant believed was a gun. The officer rushed to the woman and said something. The officer then pulled the woman by her hair and took her to the ground. According to the complainant, the woman did not show any resistance or try to run away from the officer.

IA's First Investigation & Analysis:
The IA investigator

- Interviewed the complainant
- Reviewed the computer dispatch records, the officer's report and BWC video
- ➢ The subject officer was not interviewed

According to IA, the investigation showed that the officer was dispatched to a weapons call in front of a medical office. Dispatch advised that a woman was walking in front of the business armed with a knife, calling out an employee's name. When the officer exited the patrol car, he had his firearm pointed at the suspect. The suspect was pacing in front of the location creating a disturbance by yelling and demanding to see her sister who was inside the building. The suspect dropped her bag and put her hands out *airplane style*. The officer informed dispatch that the suspect was not following orders to get on the floor. According to the officer's narrative, the suspect stated, *Just shoot me*. He transitioned to a taser and began yelling commands. The officer told the suspect get *on the f**kin' ground* and walked up with a Taser. The suspect tried to walk toward the front doors of the business. The officer yelled, *get on the f**kin ground*. The officer then pulled the suspect away from the door and did a *hair pull take down* to bring her to the ground. The officer stated that the suspect refused to give him her left hand and instead turned onto her back and raised her right arm and hand towards the officer's face. The officer then struck the suspect once in the face with an open hand strike. The officer said, *don't f**kin' move, b**ch*! The suspect replied, *you are hurting me*. He responded, *good*. The suspect was then handcuffed.

The suspect was a 48-year-old female, 5'1" tall and 115 pounds. The subject officer had 10+ years of experience with SJPD.

Without critical examination and without interviewing the officer, the IA investigator accepted the officer's assertion that his use of force *was due to the suspect's erratic behavior, her refusal to comply with his commands, the suspect's statement to the officer to "Shoot her" and the safety of the occupants in the business.* The FORCE allegation was closed as EXONERATED.

IPA's Response to IA's First Investigation and Analysis:
The IPA was concerned with the analysis and the finding on the FORCE allegation. We also asserted that a COURTESY allegation should be added and investigated.

Duty Manual section L 2608.5 Physical Contact and Body Weapons has a two-prong test:

(1) Does the suspect present an immediate and credible threat of physical harm to any person?, or
(2) Is there is an immediate need to use physical force?

Regarding prong #1, the officer documented his belief that the occupants in the building were in danger. In our estimation the IA analysis failed to critically examine the danger posed by the suspect. The complainant indicated that when the suspect had possession of the knife, she did not point it at anyone. The dispatch records [CAD] reflected that the suspect threw the knife into the middle of the road before the subject officer arrived on scene. When the suspect walked up to the

front of the building, there is no indication that she had re-armed herself with the knife. The CAD stated that the suspect did not retrieve the knife that she had thrown into the road. The CAD also reflected that the suspect could not get in through the front of the building per *build design*.

There is a considerable distance between the roadway and the front entrance of the medical building. The IA analysis did not critically examine the officer's assertion that the suspect posed an immediate and credible threat of physical harm to himself. Again, the entries in the CAD supported a conclusion that the suspect was not armed with a knife and could not enter the building when the officer used force. However, since the officer was not interviewed, the evidence on this point was incomplete.

Regarding prong #2, the IA analysis failed to critically examine whether the need to use force was immediate. There was no examination of whether the officer could have delayed going hands-on in order to wait for the arrival of back-up officers and/or to engage in de-escalation tactics. Since the officer was not interviewed about the urgency of the scenario, the evidence on this point was incomplete.

Although IA confirmed that the officer had received Critical Incident Training (CIT), the analysis failed to address the officer's utilization (if any) of that training. There was no discussion of how the officer used de-escalation tactics when approaching this incident with a female experiencing a mental break. Training is a component of the learning process, but carrying that training into practice is the true test of whether such a program is effective. An examination of how the officer used his CIT training and de-escalation tactics was necessary for a complete analysis of the force interaction.[97]

The IPA also asserted that the language used by the officer during the interaction warranted analysis. The officer's profanity and word choices violated Duty Manual C 1308 (COURTESY). We also had concerns that such word choices (1) were not reflective of CIT training (2) were counter to any attempt to de-escalate the situation, and most concerning (3) were not the first complaint in which this subject officer has called a mentally ill woman a *b**ch*.

IA's Second Investigation & Analysis:
IA re-opened its investigation.

- The subject officer was interviewed.

After additional analysis, the IA sent allegations of FORCE and COURTESY up the Chain of Command to the Findings and Recommendation process. The F&R process SUSTAINED both the FORCE and COURTESY allegations and added an additional FORCE allegation which was also SUSTAINED.

IPA Closure: IPA closed this case as agree after further action.

Complaint: The complainant was the parent of a college student who had experienced domestic violence. The grown child had been physically attacked by their partner. A roommate who heard the noise and stopped the attack. Days later, the college student's parent came to visit and called SJPD to take a report. The officers who responded to the call took the victim's statement as well as the complainant's (the parent) statement.

The roommate who was present during the actual attack was not at the home at the time that the officers responded. The victim provided the officers with the contact information for the roommate. The victim wanted to ensure that the roommate would be contacted and that her statement would be included in the police report. The primary officer failed to add the contact information for the roommate to the case and later the case was dismissed by the District Attorney. The complainant alleged that if the primary officer completed the report and included the witness information, the District Attorney may have gone forward criminal prosectution.

IA's First Investigation& Analysis:
The IA investigator:

- Compiled all written documentation
- Reviewed Body-Worn Camera video
- Interviewed the officers who responded to the call.

The allegation of PROCEDURE for an incomplete report was SUSTAINED through the Findings and Recommendation process.

IPA's Response:
The IPA agreed that the officer should have included the information regarding the witness as Domestic Violence cases often hinge upon gathering all available evidence including witness statements. The IPA reviewed all documentation and analysis that IA compiled and felt it was thorough.

IPA Closure: The IPA agreed at first review.

Complaint: On the date of this event, the complainant was unhoused; she was living under a freeway. The complainant had made a call to the Santa Clara Sheriff's Office earlier regarding a similar incident. However, SJPD was called for a separate incident. The complainant alleged that an individual had threatened both to kill her and to set fire to the encampment where she was staying.

Two SJPD officers responded to the call. Both officers reviewed the actions completed by the Sheriff's department but did not follow up with the complainant regarding the threats of violence or arson. Neither officer attempted to obtain from the complainant the details of how the suspect had threatened her. Such action is necessary to ascertain whether the suspect needed to be arrested. Instead, both officers made assumptions regarding the threats and other crimes as described by the complainant and made the decision that nothing was to be done.

IA's First Investigation & Analysis:
Through the Findings and Recommendation (F&R) process, the Department made a finding of SUSTAINED for both officers regarding PROCEDURE allegations. Although neither officer fully ignored their duties, both conducted a lackluster investigation that did not fully comply with the Duty Manual.

IPA's Response: The IPA reviewed all documentation, BWC video and attended the officer interviews. The IPA agreed that both officers had a duty to thoroughly investigate allegations of violence and arson. The IPA agreed with IA's analysis.

IPA Closure: The IPA agreed at first review.

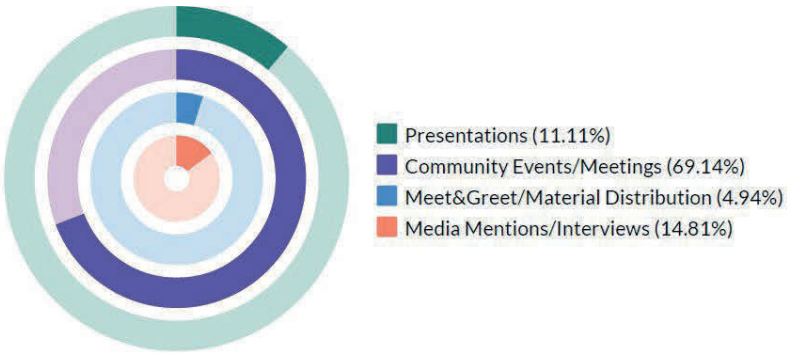
INDEPENDENT POLICE AUDITOR COMMUNITY OUTREACH

2021

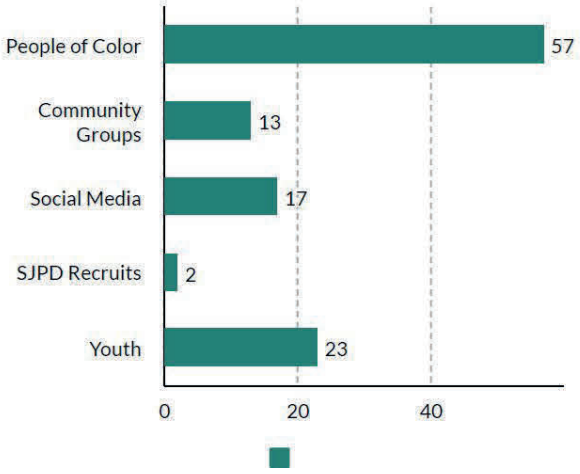
Presentations	Meetings/Events
9	56

COMMUNITY OUTREACH 2021

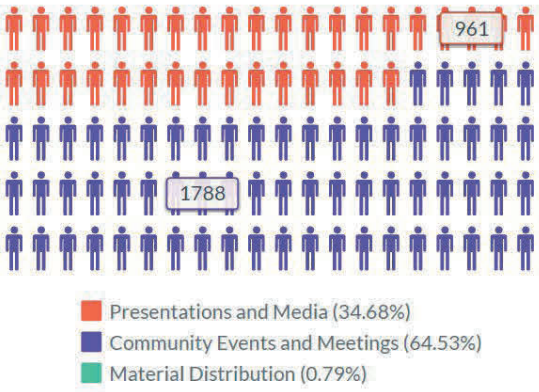
+339%
INCREASE IN SOCIAL MEDIA PRESENCE

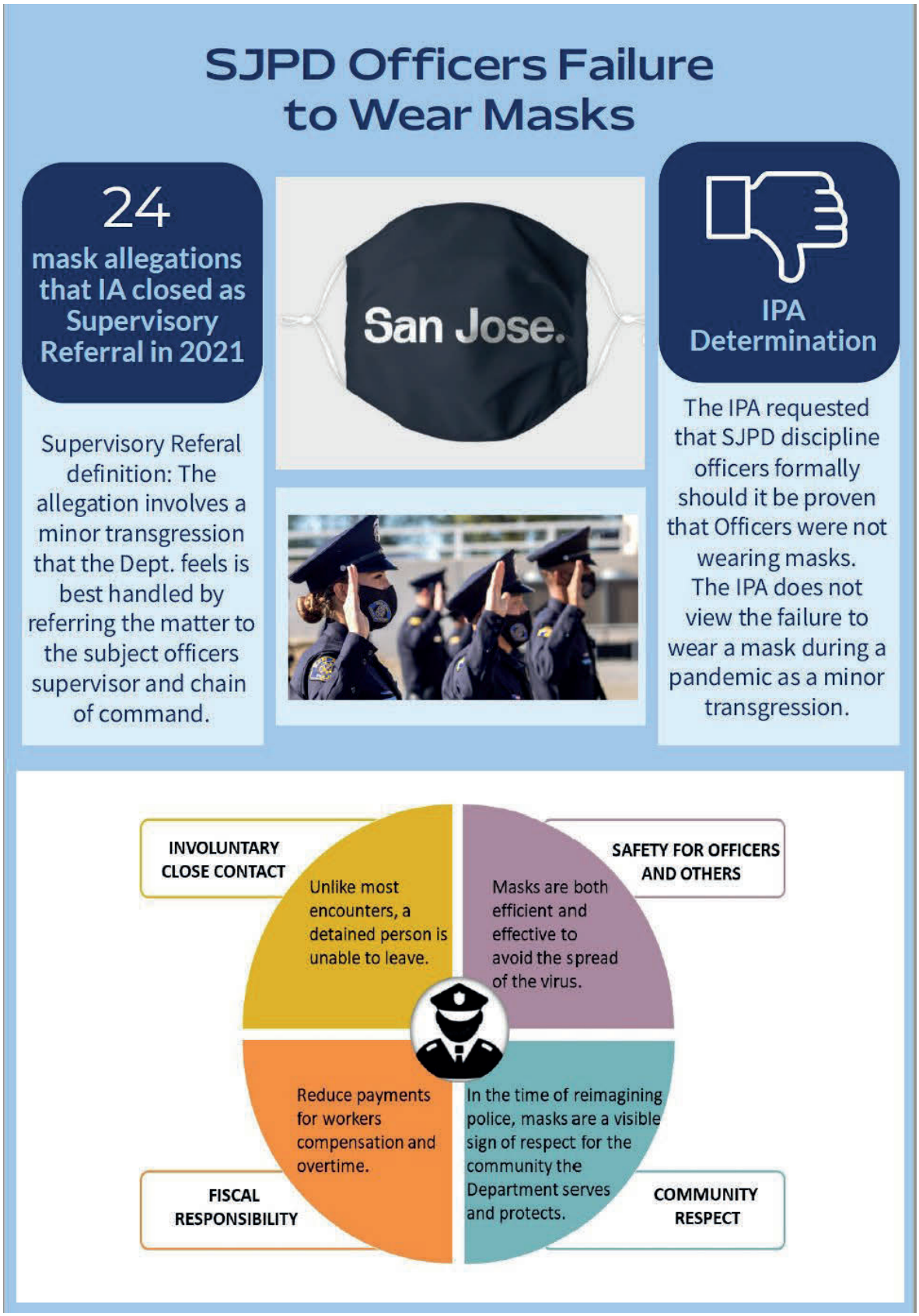


OUTREACH AUDIENCE



COMMUNITY MEMBERS REACHED





For additional narrative on this topic, see IPA 2020 Year End Report at page 4.

ENDNOTES

[1] The number 2,271 reflects the period starting on May 20, 2020 and ending July 15, 2020. It does not include the number of people who contacted the Police Chief's office, the City Manager's office, or the Mayor and Councilmembers. The IPA and IA staff worked together to move these 2,271 concerns into enumerated complaints and to eliminate duplications of incidents.

[2] This document is also known as the *Public Safety Officers Procedural Bill of Rights Act*. Cal. Gov't Code, sections 3300 *et seq*.

[3] For more detail on all directives, please see Lee Wilcox, "Police Reforms Work Plan Update" (Memorandum, City of San José, March 22, 2022), https://www.sanjoseca.gov/home/showpublisheddocument/83486/637835537085230000

[4] Edgardo Garcia, "Police Department Preliminary After Action Report for the Public Protests, Civil Unrest, and Law Enforcement Response from May 29 – June 7, 2020" (Memorandum, City of San José, September 3, 2020), https://sanjose.legistar.com/View.ashx?M=F&ID=8769493&GUID=3ED4A6F5-F069-4E7F-BADE-99421D9991B3

[5] Materials from June 16, 2020 City Council meeting may be found at https://sanjose.legistar.com/View.ashx?M=A&ID=712197&GUID=7E95C0BF-5B35-4E18-9ACA-9308FBEF2A85.

[6] The OIR Group has demonstrated experience in both oversight of law enforcement and in preparing special reports including comprehensive assessments of law enforcement agencies and in critical incident review and analysis. OIR Group members have presented many times at conferences and educational seminars on police practices and oversight. OIR Group presented written testimony at the request of the President's Task Force on 21st Century Policing. Since 2020, OIR has evaluated protest-related policing issues in several cities, including Santa Monica and Santa Rosa in California, Kalamazoo (MI), and Iowa City (IA). https://www.oirgroup.com/.

[7] Michael Gennaco et. al., "Independent After Action Regarding the Events of May 29 – June 7, 2020" (Report, OIR Group for City of San José, October 2021), https://sanjose.legistar.com/View.ashx?M=F&ID=10534601&GUID=0D5B5719-6345-4C8E-AC9E-DD7392A14948.

[8] OIR Group, "Independent After Action Regarding the Events of May 29 – June 7, 2020" (Slideshow Presentation, OIR Group for the City of San José, March 1, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10562489&GUID=A02C3D44-7907-4F05-B506-D8DF5EA21394.

[9] Anthony Mata, "Police Department's Response to the Independent After Action Regarding the Events of May 29 – June 7, 2020 Report" (Memorandum, City of San José, February 15, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10537596&GUID=3C5ADDF7-7ACC-439B-BF3C-85E36DA3C17C.

[10] Daniel S. Lawrence, et. al., "Use of Force Assessment of the San José Police Department" (Final Report, CNA for the City of San José, February 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10534656&GUID=4A3087A9-620E-42CD-ADF4-AB00C83EDCC1.

[11] Thomas Christoff, "CNA 21st Century Policing Assessment and Use of Force Assessment of the San José Police Department" (Slideshow Presentation, CNA for the City of San José, March 1, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10564238&GUID=D7D1E611-7D8C-475A-B154-44EBC9CCC2AC

[12] Thomas Christoff, et. al., "21st Century Policing Assessment of the San José Police Department" (Final Report, CNA for the City of San José, February 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10534650&GUID=E35D9ADD-D51B-48A7-9A2D-64E7CD8E66D7.

[13] Thomas Christoff, "21st Century Policing Assessment and Use of Force Assessment of the San José Police Department" (Slideshow Presentation, CNA for the City of San José, March 1, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10564238&GUID=D7D1E611-7D8C-475A-B154-44EBC9CCC2AC

[14] The report is available through the US Department of Justice as a PDF download: "Final Report of the President's Task Force on 21st Century Policing." Final Report of the President's Task Force on 21st Century Policing | Office of Justice Programs. https://www.ojp.gov/ncjrs/virtual-library/abstracts/final-report-presidents-task-force-21st-century-policing.

[15] Anthony Mata, "Police Department's Response to the Use of Force Assessment of the San José Police Department Report and the 21st Century Policing Assessment of the San José Police Department Report" (Memorandum, City of San José, February 15, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10538779&GUID=9EBCA823-BBEE-4202-89C9-3363F281530B. The enumerated factors are:

- Staffing limitations
- Budget constraints,
- Workload capacity
- Meet-and-confer process
- Cross-agency collaboration (City internal)
- Outside agency responsibility (external to City)

[17] Liccardo, Sam. "Fulfilling the Promise of the 14th Amendment: Our next Steps to Enhancing Police Accountability in San José" Medium. Medium, June 24, 2020. https://samliccardo.medium.com/fulfilling-the-promise-of-the-14th-amendment-our-next-steps-to-enhancing-police-accountability-in-7398bead42ff

[18] The consultant was directed to include civilian police oversight models outlined in the COPS 2021 report: Michael Vitoroulis, et. al., "The Evolution and Growth of Civilian Oversight: Key Principles and Practices for Effectiveness and Sustainability" Department of Justice. Office of Community Oriented Policing Services, 2021, https://cops.usdoj.gov/RIC/Publications/cops-w0951-pub.pdf.

[19] See Moeel Lah Fakhoury LLP ("MLF") website: https://www.mlf-llp.com/

[20] Lee Wilcox, Angel Rios, "Report of the Reimagining Public Safety Community Advisory Committee and Charter Review Commission Public Safety Recommendations" (Memorandum, City of San José, April 28, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10860951&GUID=67148606-483F-4E54-B28F-3492A9FD7886;
RiPS full recommendation spreadsheet, https://docs.google.com/spreadsheets/u/0/d/14Ess6np5EI4rBgkOWJF5udHslBta6DUf9bGHaI1j4xU/htmlview?lsrp=1#gid=0; RiPS Committee, "Report to City Council" (Slideshow Presentation, RiPS Committee, City of San José, May 10, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10885883&GUID=7E18D0F2-7102-4E0F-8F2B-763C1AF3E979;
Youth RiPS Council, (Slideshow Presentation, Youth RiPS Council, City of San José, May 10, 2022), https://sanjose.legistar.com/View.ashx?M=F&ID=10885882&GUID=DD2A1C24-96D1-4593-9547-4C5159B5A38D.

[21] A Resolution of the Council of the City of San José Establishing the Size, Composition, and Responsibilities of the Charter Review Commission as Directed by the City Council on July 28, 2020, Resolution No. 79722 (2020), https://records.sanjoseca.gov/Resolutions/RES79722.pdf

[22] San José Charter Review Commission, "Final Report of the San José Charter Review Commission" (Report, City of San José, December 3, 2021), P. 15, Appendix 3, https://www.sanjoseca.gov/home/showpublisheddocument/83662/637838020447400000.

[23] San José Charter Review Commission, "Final Report of the San José Charter Review Commission" (Report, City of San José, December 3, 2021), https://www.sanjoseca.gov/home/showpublisheddocument/83662/637838020447400000

[24] Lee Wilcox, "2022-2023 City Roadmap Study Session" (Memorandum, City of San José, May 11, 2022),

https://www.sanjoseca.gov/home/showpublisheddocument/85735/637879053009170000; Lee Wilcox, "Final 2022-2023 City Initiatives Roadmap and Backlog" (Memorandum, City of San José, May 23, 2022), https://www.sanjoseca.gov/home/showpublisheddocument/86081/637889820001870000

[25] See video of May 16, 2022 budget study session at 3:55:17 for votes and ranking of items placed on Backlog. https://sanjose.granicus.com/MediaPlayer.php?view_id=52&clip_id=13100

[26] 2022-2023 City Initiatives Roadmap, PDF version, https://www.sanjoseca.gov/home/showdocument?id=86061.

[27] Auditor of the State of California, "Law Enforcement Department Have Not Adequately Guarded Against Biased Conduct" (Report, State of California, April 26, 2022), https://www.auditor.ca.gov/reports/2021-105/index.html.

[28] Id. at page 88.
[29] Id. at page 1.
[30] Id. at page 88.
[31] Id. at page 89.
[32] Id. at page 107.
[33] Id. at page 115.

[34] Seven allegations were investigated and closed against one subject officer:
Arrest or Detention - Exonerated
Biased-Based Policing - Not Sustained
Search or Seizure - Exonerated
Procedure - Procedures to Store/Impound a Vehicle - Sustained
Search or Seizure - Inventory of Stored/Impounded Vehicles - Sustained
Procedure - Private Property Damage Resulting From Duties - Sustained
Courtesy - Police C1308 Courtesy - Sustained

[35] Rob Voigt, Nicholas P. Camp, Vinodkumar Prabhakaran, William L. Hamilton, Rebecca C. Hetey, Camilla M. Griffiths, David Jurgens, Dan Jurafsky, and Jennifer L. Eberhardt, "Language from Police Body Camera Footage Shows Racial Disparities in Officer Respect," *Proceedings of the National Academy of Sciences* 114, no. 25 (2017);

[36] See also Akpan, Nsikan. "Police Respect Whites More than Blacks during Traffic Stops, Language Analysis Finds." PBS. Public Broadcasting Service, June 5, 2017. https://www.pbs.org/newshour/science/police-respect-whites-blacks-traffic-stops-language-analysis-finds
See also "Black Drivers Receive Less Respect from Police Officers, Study Says." NBCNews.com. NBCUniversal News Group, July 30, 2021. https://www.nbcnews.com/news/nbcblk/black-drivers-receive-less-respect-police-officers-study-says-n1275452

[37] See also "Police Officers Treat Black and White Men Differently. You Can Hear It in Their Tone of Voice." Los Angeles Times. Los Angeles Times, July 16, 2021. https://www.latimes.com/science/story/2021-07-16/cops-treat-black-and-white-men-differently-you-can-hear-it-in-their-tone-of-voice

[38] The study excluded offensive language such as swearing or use of profanity. "*To be clear: There was no swearing," said Dan Jurafsky, a study co-author and Stanford professor of linguistics and of computer science. "These were well-behaved officers. But the many small differences in how they spoke with community members added up to pervasive racial disparities*." Alex Shashkevich, "Police officers speak less respectfully to black residents than to white residents, Stanford researchers find," *Stanford News*, June 5, 2017, https://news.stanford.edu/2017/06/05/cops-speak-less-respectfully-black-community-members/

[39]Anthony Mata, "Police Department's Response to the Use of Force Assessment of the San José Police Department Report and the 21st Century Policing Assessment of the San José Police Department Report" (Memorandum, City of San José, 2022).

[40] https://sanjose.legistar.com/View.ashx?M=F&ID=10538779&GUID=9EBCA823-BBEE-4202-89C9-3363F281530B

[41] According to a March 2019 study entitled Towed Into Debt: How Towing Practices in California Punish Poor People,[41] for low income persons the consequences of a towed vehicle can be devastating. The study states:

- The most minor reasons for tow are some of the most common and have the most devastating results. Statewide, over one fourth of tows are conducted just because the owner had unpaid parking tickets, lapsed registration, or parked in one place for 72 hours. Vehicles towed for these reasons are 2-6 times more likely to be sold at lien sale than the average towed car.
- Getting a car back after a tow is expensive. As a result of all the add-on and administrative fees, the average price people must pay after a debt-collection tow is over $1,100.

[42] "Consent Searches," *Alameda County District Attorney Point of View* https://le.alcoda.org/publications/files/CONSENTSEARCHES.pdf

[43] It is coercive to ask reluctant persons why they object to a search and to tell them they should have no objections if nothing is wrong. *Crofoot v Superior Court* (1981) 121 CA3d 717, 725.

[44] See explanation provided in Alameda County's District Attorney Publication *Point of View* Spring-Summer 2015 at page 1. "Before beginning a consensual search, officers must understand what they may search and the permissible intensity of the search. This requirement will be easy to satisfy if the suspect authorized a search of a single and indivisible object, such as a pants pocket or cookie jar. But in most cases, they will be searching something (especially a home or car) in which there are containers, compartments, or separate spaces. So, how can officers determine the permissible scope of such a search? Actually, it is not difficult because the Supreme Court has ruled that, in the absence of an express agreement, the scope and intensity of a consent search is determined by asking: **What would a reasonable person have believed the search would encompass**? As the Court put it, "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" Florida v. Jimeno (1991) 500 U.S. 248, 251."

[45] Inventory *searches are unreasonable and therefore violative of the Fourth Amendment when used as a ruse to conduct an investigatory search*. People v Steeley, 210 Cal. App. 3d 887, 891-892 (1989).

[46] *California Judges Benchbook: Search and Seizure* (Oakland: Continuing Education of the Bar, 2021), section 5.65.

[47] The inventory must be conducted under standardized police department procedures that leave little or no discretion regarding the scope of the search. Colorado v. Bertine, 479 U.S. 367, 372-374 (1987). Some discretion is permissible, as long as it is exercised according to standard procedures. Florida v. Wells, 495 U.S. 1, 3-4 (1990); *Colorado v Bertine, supra.* Thus, closed containers may not be opened during an inventory search unless the police agency has a policy concerning this matter, but the policy may allow or forbid the opening of all containers, or permit officers to open those whose contents cannot be ascertained by external examination. *Florida v Wells, supra;* see People v. Williams, 20 Cal. 4th 119, 126-127 (1999) (policy requiring inventory before tow inadequate because absence of policy on opening closed containers); People v. Needham, 79 Cal. App. 4th 260, 266 (2000).

[48] Possession of up to 28.5 grams of marijuana (Health & Saf. Code, § 11357). Possession of up to 8 grams of concentrated cannabis (Health & Saf. Code, § 11357).

[49] Julia Wick, "Newsletter: Essential California: What are the rules for bringing weed into a California airport?" *Los Angeles Times*, May 14, 2019, https://www.latimes.com/newsletters/la-me-ln-essential-california-20190514-story.html

[50] "How Much is a Gram, Quarter, Half Ounce and Ounce of Weed?" *Greenito*, April 6, 2015, https://greenito.com/news/news/how-much-is-a-gram-ounce-of-weed/

[51] "How Many Grams In An Ounce?" *Greendorphin*, last modified August 26, 2019, https://greendorphin.com/how-many-grams-ounce/

[52] In each of these cases, the court held that officers lacked probable cause under the 4th Amendment automobile exception to search vehicles for marijuana People v. Hall, 57 Cal. App. 5th 946 (2020); People v Johnson, 50 Cal. App. 5th 620 (2020); People v. Lee, 40 Cal. App. 5th 853 (2019); People v. Shumake, 45 Cal. App. 5th Supp. 1 (2019).

[53] A court could not infer possession of marijuana from debris found in defendant's pocket unless that debris constituted a usable quantity. People v. Villalobos, 245 Cal. App. 2d 561 (1966). Though a court might, at some point, take judicial notice that a certain quantity or condition of narcotic substance is usable, 50 milligrams of marijuana scraped from a pocket does not reach the status of a usable quantity of narcotic. Id. Where the quantity of marijuana is so minute as to bring into question whether or not it is a usable quantity, the burden is on the prosecution to prove that fact. Id. In a prosecution for unlawful possession and transportation of marijuana in which there was no testimony as to whether certain fragments of marijuana, themselves, or a partially smoked marijuana cigarette, itself, constituted a usable quantity, it could not be inferred that they did so. People v. Valerio,13 Cal. App. 3d 912 (1970).

[54] People v Johnson (2020) 50 Cal.App. 5th 620 Health & Saf. Code, § 11362.3, subd. (a)(4)

[55] Meghan S Stroshine, and Steven G Brandl. "The Impact of Foot Pursuits on Police Use of Force," *Policing: A Journal of Policy and Practice* 15, no 4 (2021): https://doi.org/10.1093/police/paab054

[56] Eric D. Campbell, "Foot Pursuit Policy Update" (Memorandum, City of Dallas, 2015). https://dallascityhall.com/government/Council%20Meeting%20Documents/2015/PS_Foot_Pursuit_Policy_Update_01262015.pdf

[57] "Las Vegas Metropolitan Police Department: Partners with the Community" (Policy, City of Las Vegas) https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/UODF/LVMPD_POLICY/POLICY_5_212_05_Foot_Pursuits_1_20.pdf

[58] "Sacramento Police Department: General Orders" (Policy, City of Sacramento, 2018) https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO/Section-500/GO-58013-Foot-Pursuit-8818-Final-format-no-sig1.pdf?la=en

The Sacramento Police Chief explained the rationale supporting the change in this interview. https://www.kcra.com/article/qanda-sacramento-police-chief-breaks-down-new-foot-pursuit-policy/22720777#

[59] "Stephon Clark shooting leads Sacramento Police to change foot chase policy" KCRA, last modified August 13, 2018, https://www.kcra.com/article/stephon-clark-shooting-leads-sacramento-police-to-change-foot-chase-policy/22714615#

[60] "Chicago Police Department: Foot Pursuits Policy" (Policy, City of Chicago, 2021) https://home.chicagopolice.org/reform/policy-review/foot-pursuits-policy-draft/

[61] Heather Cherone, "Chicago Police Revise Foot Pursuit Policy After Criticism," *WTTW*, February 10, 2022, https://news.wttw.com/2022/02/10/chicago-police-revise-foot-pursuit-policy-after-criticism

[62] "Chicago Police Department: Revised Foot Pursuit Policy Draft" (Policy, City of Chicago, 2022) https://home.chicagopolice.org/chicago-police-department-releases-a-revised-foot-pursuit-policy-draft-for-a-15-day-public-comment-period/

[63] "Palo Alto Police Department Policy Manual" (Policy, City of Palo Alto, 2021) https://www.cityofpaloalto.org/files/assets/public/police-department/public-information-portal/policy-manual-for-web-8-1-2021.pdf

[64] San José Police Department Duty Manual § L 2902 (states that when an arrest is made, *handcuff the offender behind the back if there is a* ***danger of escape*** *or if the* ***prisoner poses a danger to the officer's or others' safety***.)

[65] People v. Stier, 168 Cal. App. 4th 21 (2008)

[66] Charles Gillingham, "Handcuffing During a Detention," *Third Degree Communications, Inc.*, https://www.tdcorg.com/wp-content/uploads/2019/08/HandcuffingDuringaDetention_NovArticle1_120408.pdf

[67] California Government Code Section 3304 sets out the general one-year rule and limited exceptions to that general rule.

[68] Duty Manual C 1736 Statute Of Limitations For Investigating Complaints:
Revised 07-18-08
. . . .
In the event that the Office of the Chief of Police is considering extending or tolling the one year statute of limitations [Government Code Sections 3304(d) (1) - (8) and 3508.1(a) (1) - (8)] for an investigation, or reopening an investigation [Government Code Sections 3304(g) and 3508.1(d)], the Office of the Chief of Police shall **coordinate** with the Office of Employee Relations and the City Attorney's Office prior to making its decision.

[69] IA Unit Guidelines:

> All Conduct Complaints and Department Initiated Investigations must be completed within 300 days from acceptance to ensure the case review process can move forward unencumbered by time issues. The exemptions listed in Government Code Section 3304 shall toll these time constraints. In the event the Department is considering extending or tolling the one year statute of limitations (Government Code Sections 3304 (d)(1-8) and 3508.1(a)(1- 8) or reopening an investigation (Government Code Sections 3304(g) and 3508.1(d), the Department should first **coordinate** with the Office of Employee Relations and the City Attorney's Office. The final administrative decision to toll the statute of limitations is subject to a reasonableness review by the courts. This consultation should be sought as early in the course of the IA investigation as possible, so as not to prejudice the ability of the City to discipline the employee should the Department ultimately decide to issue a Notice of Intended Discipline in the event that the City decides that tolling is not appropriate. (See attached Memorandum in appendix A.)

[70] During the meetings on Charter Review and Reimagining, several speakers complained that nothing was happening with their complaints when, in fact, their police misconduct complaints had been placed on toll.

[71] "2020 Internal Affairs Unit Procedural Manual" (Policy, City of San José, 2020) https://www2.sjpd.org/records/pc-13650_library/Unit%20Guidelines/IA%20Unit%20Guidelines%202020.pdf

[72] Thomas Christoff, et al., "21st Century Policing Assessment of the San José Police Department" (Final Report, CNA for the City of San José, 2022) 27-28. https://sanjose.legistar.com/View.ashx?M=F&&ID=10534650&&GUID=E35D9ADD-D51B-48A7-9A2D-64E7CD8E66D7

[73] California Evidence Code states *"Relevant evidence" means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action*. (Enacted by Stats. 1965, Ch. 299.)

[74] Rob Bonta, Attorney General, "AB 1506: Officer-Involved Shooting Investigations and Reviews" State of California Department of Justice, https://oag.ca.gov/ois-incidents.

[75] Rob Bonta, Attorney General, "AB 1506: Officer-Involved Shooting Investigations and Reviews" State of California Department of Justice, https://oag.ca.gov/ois-incidents.

[76] An "unarmed civilian" is "anyone who is not in possession of a deadly weapon." (Gov. Code, § 12525.3, subd. (a)(2).) "'Deadly weapon' includes, but is not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum, ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles." (Gov. Code, § 12525.3, subd. (a)(1).) All firearms, and BB/pellet guns, even if unloaded or inoperable, are deadly weapons. Objects that have a legitimate non-weapon purposes are considered deadly weapons only when, based on all

the circumstances, they are actually being used in a manner likely to produce death or great bodily injury. The following are examples of objects that have been considered a deadly weapon when used in that manner: knives, box cutters, screwdrivers, bottles, chains, automobiles, rocks, razor blades, and iron bars. Replica firearms are not considered deadly weapons unless they are used in some particular manner likely to produce death or great bodily injury (e.g., as a bludgeon).

[77] See California Department of Justice AB 1506 main page for information and greater details: https://oag.ca.gov/ois-incidents.

[78] Rob Bonta, Attorney General, "Case Archive" State of California Department of Justice, https://oag.ca.gov/ois-incidents. https://oag.ca.gov/ois-incidents/case-archive.

[79] Thompson, Don. "California Shifts Police Shooting Probes to Attorney General." AP NEWS. Associated Press, July 8, 2021. https://apnews.com/article/california-police-reform-shootings-police-government-and-politics-07c36cecf21edb9b5a0f49a77ded8b7f.

[80] "Chapter 14: Permanent Trailer Identification (PTI)." California DMV, May 28, 2020. https://www.dmv.ca.gov/portal/handbook/vehicle-industry-registration-procedures-manual-2/permanent-trailer-identification-pti/.

[81] This argument may have been meritorious if the subject officer was not a law enforcement officer with more than 10 years of experience and knowledge of the vehicle code.

[82] The IA investigator reviewed various on-line discussion groups about RV registration and the PTI program. The investigation document included excerpts from two groups; these excerpts consisted of 7 posts from 2009 and 1 post from 2003. Note that the subject officer's RV was registered in 2015 or 2016.

[83] California DMV Vehicle Definitions. https://www.dmv.ca.gov/portal/vehicle-registration/registration-fees/vehicle-definitions/

[84] IA acquired a number of documents regarding the RV. The officer purchased the RV in 2015. In 2015, the officer granted a bank the power of attorney to complete paperwork. In 2015, an application for registration was submitted. In 2015, a verification form was filled out by a CHP representative; the applicant portion of this form was not completed or signed by the officer. In 2015, the officer completed a *statement of facts* form to correct a date on the VIN verification.

[85] During the engagement, the suspect struggled and punched the dog. While the dog was engaged with the suspect, the suspect was given numerous commands to stop fighting the police canine and to lay on the ground. The suspect refused to comply with orders, so the K9 officer allowed his dog to stay engaged until the suspect gave compliance by eventually lying down on the porch. The suspect was told that the dog would disengage when he brought his hands out from underneath his body. Once officers gained control of the suspect's hands, the K9 officer commanded his dog to disengaged from the suspect. The dog was placed in a patrol car.

[86] The IA investigator asserted that the length of time was *reasonable* considering: The distance

from the arrest team to the suspect was approximately 60 feet; suspect actively resisted and fought the dog; suspect carried the dog away from the direction of the arrest team; suspect did not remove his hands from underneath his body; the dog was removed as soon as it was safe to do so.

[87] The CAD reflected the RP stated twice that doors and windows were locked.

[88] Terry v Ohio (1968) 392 US 1, 21, 27.

[89] Important topics to analyze included: How did the Department determine the officer's pay rate for the CRV project? Did the Department determine whether officer pay for the RV project would be recognized as pensionable? Did he devote any of his regularly scheduled work time to the project? Was he paid overtime for the project? Did the City pay the officer at a rate that is within the acceptable rate range to pay an electrician, or that of an officer including the cost associated with pensionable pay?

[90] The IPA provided these questions to the IA investigator: Who approved the officer's timecard for the CRV project? How did the timecard approver determine if the timecard was accurate? Did IA obtain the timecards? How was overtime for law enforcement purposes distinguished from overtime on the CRV renovation project? How did Officer document his progress on the renovation project? When did he finish the renovation?

[91] One would think that a project of this size would entail such a work log for these reasons: (1) to document what projects were completed, by whom and at what cost (2) to serve as a maintenance log noting timing of inspections and warranties and (3) to ensure that taxpayer dollars were spent efficiently and effectively should the project be questioned.

[92] In his interview, Officer acknowledged that not all of the retrofit work was completed on overtime; he completed the work both on regular time and overtime. Officer did not distinguish on his timesheet between the number of regular hours (not overtime) he worked on the van retrofit from the regular hours he worked for his patrol assignment. Officer could if could recall the total number of regular or overtime hours he devoted to the retrofit.

[93] According to the San José City's auditor March 2021 report, SJPD overtime costs grew by over 300 percent in the past decade and accounted for 10 percent of total expenditures in FY 2019-20. See Office of the City Auditor, "Police Staffing, Expenditures, And Workload: Staffing Reductions Have Impacted Response Times And Led To High Overtime Costs" (Report, City of San José, March 2021), https://www.sanjoseca.gov/home/showpublisheddocument?id=70064.

[94] Rocheleau, Matt. "How a Trooper's Alleged Racist Remark Ignited the State Police Overtime Scandal" The Boston Globe, August 17, 2019. https://www.bostonglobe.com/metro/2019/08/17/how-one-trooper-alleged-racist-remark-ignited-state-police-overtime-fraud-scandal/xrzYDzQHFRFA9RTIhWPDHP/story.html?p1=BGSearch_Advanced_Results

[95] It is possible that another tow hearing officer could handle this particular matter. It is unclear whether that action would entirely remedy the conflict of interest problem. Furthermore, the subject officer stated that one of his motiving factors in citing the car in his neighbor was to

alleviate extra work on other officers. Having another tow hearing officer handle a case in which the subject officer is a witness would tend to create more, rather than less work, for the tow hearing staff.

[96] Duty Manual L 5410

[97] The Department has stated that when dealing with mental health patients that may be violent but not criminal, de-escalation tactics are emphasized.

> *Officers need to make critical, split-second decisions under pressure and stress…*
>
> *They're not thinking myopically about force. They're thinking about giving some distance, maybe utilizing some obstacles to put between themselves and a suspect and talking to the people, developing a rapport, and hopefully minimizing the reliance on physical force.*

David Louie, "San Jose police demonstrate de-escalation training" *ACB 7 News,* August 8, 2016. https://abc7news.com/san-jose-police-department-training-officers-in-de-escalation-use-of-force-bay-area/1462056/

> *Based on preliminary review, most of our policy and training procedures are already in compliance with [SB 230*], an SJPD officer said in a statement to San José Inside*. We had an instructor-led debate on the use-of-force on mental health patients and people experiencing a medical emergency that may be violent but not criminal. The need to utilize de-escalation tactics was emphasized during those discussions.*

Nicholas Chan, "New State Law Rewrites the Rules for Police Use of Force—But Not Much Changes for SJPD" San Jose Inside, September 16, 2019.
https://www.sanjoseinside.com/news/new-state-law-rewrites-the-rules-for-police-use-of-force-but-not-much-changes-for-san-jose-pd/

APPENDIX A — MEET IPA STAFF

Shivaun Nurre - IPA

Shivaun joined the IPA office in 2006. She was appointed to the IPA position in December 2018. Prior to joining the IPA office, Shivaun worked for ten years as a Deputy County Counsel for Santa Clara County. In the IPA position, she oversees a range of procedural and substantive functions from budget and case management to developing policy recommendations and City Council reports. She is responsible for leading her capable office staff in completing its mandated duties.

Erin O'Neill - Assistant IPA

Erin is the Assistant IPA. In this role, she audits IA investigations and researches policies and law enforcement best practices. She also assists staff in the day-to-day office work. As the Assistant IPA, Erin attends officer interviews as needed, and attends officer-involved shooting review panels. Lastly, Erin assists with outreach as directed by the community outreach coordinator.

Eva Roa - Analyst I

The Analyst conducts intakes of civilians who wish to file complaints regarding SJPD Sworn Officer conduct. The Analyst conducts reviews of internal investigations to determine if the investigations have been thorough, complete, objective, and fair. This work enables the IPA to provide an effective and timely review of community concerns and critical or use of force incidents and investigations.

Jessica Flores - Office Specialist II

Ms. Flores joined the IPA office in June of 2006, attended West Valley College and uses that training as the front lobby receptionist.
She enters case information on databases, creates and maintains case files, and helps where ever needed.

Telina Barrientos - Senior Analyst and Community Engagement Coordinator

Telina works in partnership with the IPA and Assistant IPA to audit misconduct complaints. In addition to her legal analysis work, Telina also leads efforts to expand awareness and increase community input that informs the IPA work and recommendations. Telina's engagement seeks to, build trusting relationships with the community, and provide inclusive and meaningful ways for all people to influence decisions that impact them.

Vivian Do - Senior Analyst

Vivian's primary responsibilities include managing the IPA website and database, finance and budget, statistical data analysis, desktop publishing, and providing computer and technical support for the IPA office.

APPENDIX B— ADDITIONAL STATISTICAL INFORMATION

Table 1: Complaints/Concerns Received in 2021*

Matter Received	IA	IPA	Total	%
Conduct Complaints	187	86	273	74%
Department Issued	34	0	34	9%
Policy Complaints	7	3	10	3%
Non-Misconduct Concerns	9	2	11	3%
Decline to Investigate	8	5	13	4%
Other	11	15	26	7%
Total	**256**	**111**	**367**	**100%**

* Including Department-Initiated Investigations. The IPA cannot receive a DII.

Table 2: Allegations Received — Two-Year Overview (2020-2021) *

Allegations Received	2020		2021	
	#	%	#	%
Procedure	358	40%	465	43%
Force	111	12%	121	11%
Courtesy	141	16%	142	13%
Arrest or Detention	93	10%	112	10%
Search or Seizure	43	5%	53	5%
Bias Based Policing	104	12%	122	11%
Conduct Unbecoming an Officer	28	3%	50	5%
Neglect of Duty	18	2%	3	0%
Workplace Discrimination	0	0%	1	0%
Workplace Harassment	0	0%	1	0%
Total Allegations	**896**	**100%**	**1070**	**100%**

***** Including Department-Initiated Investigations.

Allegations Received	2020		2021	
	#	%	#	%
Force	3	1%	2	3%
Arrest or Detention	0	0%	0	0%
Search or Seizure	0	0%	0	0%
Bias-Based Policing	0	0%	0	0%
Procedure	190	90%	49	70%
Courtesy	2	1%	3	4%
Conduct Unbecoming an Officer	15	7%	14	20%
Neglect of Duty	0	0%	0	0%
Workplace Discrimination	0	0%	1	1%
Workplace Harassment	0	0%	1	1%
Total Allegations	**210**	**100%**	**70**	**100%**

***** Department-Initiated Investigations only.

Table 3: Subject Officers Receiving Complaints in 2021 (by Years of Experience) *

Years of Experience	0- 1+	2- 4+	5- 6+	7-10+	11- 15+	16+	Total Number of Officers Receiving Complaints
Number of Complaints							
1 Complaint	48	91	15	28	21	42	245
2 Complaints	16	38	5	2	4	13	78
3 Complaints	2	10	3	2	0	0	17
4 Complaints	2	6	0	0	0	0	8
Total Number of Officers Receiving Complaints	**68**	**145**	**23**	**32**	**25**	**55**	**348**

* Including the number of officers who were named in Department-Initiated Investigations in 2021

Table 4: Complaints Received by Individual Officers — Five-Year Overview (2017-2021) *

Officers Receiving	2017	2018	2019	2020	2021
1 Complaint	176	207	189	216	245
2 Complaints	39	51	41	54	78
3 Complaints	7	6	15	15	17
4 Complaints	2	1	2	2	8
5 Complaints	1	1	0	1	0
6 Complaints	0	1	0	1	0
Total Number of Officers Receiving Complaints	**225**	**267**	**247**	**289**	**348**

* Including the number of officers who were named in Department-Initiated Investigations in 2021

Table 5: Years of Experience of Officers with Sustained Findings in 2021*

Years of Experience	Total Officers with Sustained Findings	% of Officers with Sustained Findings	Type of Allegations						Total Sustained Allegations	Percent of Sustained Allegations
			AD	C	CUBO	F	P	SS		
0- 1+	12	29%	1	1	0	0	14	1	17	25%
2- 4+	13	31%	0	2	0	0	18	0	20	30%
5- 6+	5	12%	0	1	0	0	7	0	8	12%
7-10+	3	7%	0	1	0	0	3	0	4	6%
11- 15+	5	12%	0	4	1	2	3	0	10	15%
16+	4	10%	0	0	0	0	8	0	8	12%
	42	**100%**	**1**	**9**	**1**	**2**	**53**	**1**	**67**	**100%**

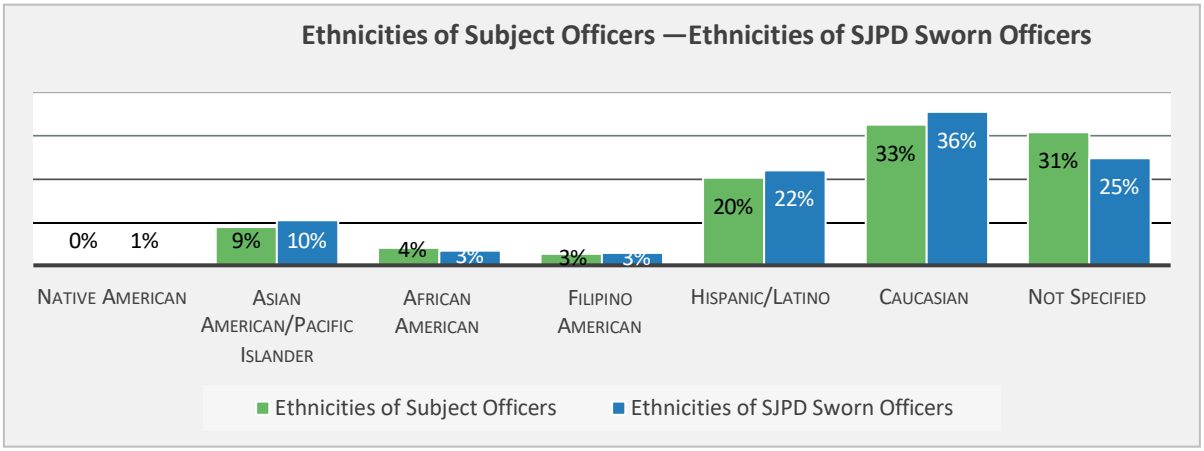
* Including the number of officers who were named in Department-Initiated Investigations in 2021

Table 6: Ethnicities of Subject Officers in 2021*

Ethnicities	Subject Officers	%	SJPD Sworn Officers	%
Native American	1	0%	6	1%
Asian American/Pacific Islander	31	9%	119	10%
African American	14	4%	38	3%
Filipino American	9	3%	32	3%
Hispanic/Latino	71	20%	252	22%
Caucasian	114	33%	407	36%
Not Specified	108	31%	284	25%
Total	**348**	**100%**	**1138**	**100%**

* Including Department-Initiated Investigations

Illustration A: Ethnicities of Subject Officers —Ethnicities of SJPD Sworn Officers in 2021 *



* Including Department-Initiated Investigations

Table 7: Officers Receiving One or More Complaint/s in 2021*

Officers Receiving	#
1 Complaint	245
2 Complaints	78
3 Complaints	17
4 Complaints	8
Total Number of Officers Receiving Complaints	**348**

* Including the number of officers who were named in Department-Initiated Investigations

Table 8: Officers Receiving One or More Force Complaint/s in 2021*

Table 8-A: All Types of Complaint Classification

Officers Receiving	#	%
1 Force Complaint	54	58%
2 Force Complaints	26	28%
3 Force Complaints	7	8%
4 Force Complaints	6	6%
Total Number of Officers Receiving Force Complaints	**93**	**100%**

Table 8-B: Department-Initiated Complaints

Officers Receiving	#	%
1 Force Complaint	2	100%
2 Force Complaints	0	0%
3 Force Complaints	0	0%
4 Force Complaints	0	0%
Total Number of Officers Receiving Force Complaints	**2**	**100%**

Table 9: Types of Complaints Closed by IA and Audited by IPA in 2021*

External Complaints	IA Closed	IPA Audited
Conduct Complaints	262	239
Department-Initiated Issues	14	0
Policy Complaints	9	1
Non-Misconduct Concerns	9	0
Other	28	0
Decline to Investigate	11	0
Total	**333**	**240**

Table 10-A: Dispositions of Allegations Closed in Conduct Complaints*

Type of Dispositions	Dispositions of Allegations									
	AD	BBP	C	CUBO	F	ND	P	SS	Total	%
Sustained	1	0	7	0	3	0	37	1	**49**	**5%**
Not Sustained	0	0	9	3	0	1	3	0	**16**	**2%**
Exonerated	103	0	24	1	92	0	205	56	**481**	**47%**
Unfounded	4	102	77	22	21	0	99	11	**336**	**33%**
No Finding	3	16	9	10	5	1	20	0	**64**	**6%**
Complaint Withdrawn	0	1	1	0	0	0	4	0	**6**	**1%**
Complaint/Sup Review	0	0	4	0	0	0	43	0	**47**	**5%**
Other	2	4	0	1	0	0	17	0	**24**	**2%**
Total Allegations	**113**	**123**	**131**	**37**	**121**	**2**	**428**	**68**	**1023**	**100%**

* Excluding Department-Initiated Investigations

Table 10-B: Dispositions of Allegations Closed in Department-Initiated Investigations*

Type of Dispositions	Dispositions of Allegations									
	AD	BBP	C	CUBO	F	ND	P	SS	Total	%
Sustained	0	0	1	1	0	0	17	0	**19**	**79%**
Not Sustained	0	0	0	0	0	0	0	0	**0**	**0%**
Exonerated	0	0	0	1	0	0	2	0	**3**	**13%**
Unfounded	0	0	0	0	0	0	0	0	**0**	**0%**
No Finding	0	0	0	1	0	0	0	0	**1**	**4%**
Complaint Withdrawn	0	0	0	0	0	0	1	0	**1**	**4%**
Complaint/Sup Review	0	0	0	0	0	0	0	0	**0**	**0%**
Other	0	0	0	0	0	0	0	0	**0**	**0%**
Total Allegations	**0**	**0**	**1**	**3**	**0**	**0**	**20**	**0**	**24**	**100%**

Table 11-A: Conduct Complaints Closed with Sustained Allegations—Five-Year Overview (2017-2021) *

Year	Conduct Complaints Sustained	Conduct Complaints Closed	Sustained Rate
2017	37	226	**16%**
2018	22	212	**10%**
2019	14	197	**7%**
2020	25	200	**13%**
2021	31	262	**12%**

* Including Conduct Complaints only

Table 11-B: Department-Initiated Complaints Closed with Sustained Allegations

Year	DIIs Sustained	DIIs Closed	Sustained Rate
2021	11	14	**79%**

Table 12: SJPD Findings for Force Allegations Closed — Five-Year Overview (2017-2021) *

Disposition of Force Allegations	2017		2018		2019		2020		2021	
	#	%	#	%	#	%	#	%	#	%
Sustained	0	0%	1	1%	0	0%	2	3%	2	2%
Not Sustained	6	7%	0	0%	2	1%	1	1%	0	0%
Exonerated	58	63%	73	76%	106	76%	52	70%	92	77%
Unfounded	20	22%	11	11%	18	13%	10	14%	21	18%
No Finding	4	4%	1	1%	5	4%	2	3%	5	4%
Complaint Withdrawn	1	1%	1	1%	0	0%	1	1%	0	0%
Other	3	3%	9	9%	8	6%	6	8%	0	0%
Total	**92**	**100%**	**96**	**100%**	**139**	**100%**	**74**	**100%**	**120**	**100%**

* Including Department-Initiated Investigations in 2021

Table 13: IPA Audit Determinations in Closed Complaints — Five-Year Overview (2017-2021) *

Audit Determination in Investigated Cases	2017		2018		2019		2020		2021	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	196	83%	124	71%	133	84%	130	71%	170	71%
Agreed after Further Action	18	8%	35	20%	9	6%	16	9%	26	11%
Disagreed	10	4%	6	3%	6	4%	10	5%	22	9%
Closed with Concern(s)	12	5%	10	6%	11	7%	27	15%	22	9%
Total Complaints Audited	**236**	**100%**	**175**	**100%**	**159**	**100%**	**183**	**100%**	**240**	**100%**

* Excluding Department-Initiated Investigations in 2021

Table 14: Location of Force Applications in Allegations Closed in 2021

Locations of Force Applications	Number	%
Head	9	15%
Neck	2	3%
Torso	17	28%
Limbs	32	53%
Total	**60**	**100%**

Table 15: Types of Force Applications in Allegations Closed from 2017 through 2021

Type of Force	2017		2018		2019		2020		2021	
	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications
Baton	7	8%	6	8%	4	5%	3	5%	1	1%
Body Weapons	18	21%	7	10%	14	18%	6	11%	8	11%
Canine Bite	3	4%	2	3%	0	0%	2	4%	3	4%
Car Impact	1	1%	0	0%	1	1%	2	4%	2	3%
Chemical Agent	0	0%	0	0%	0	0%	0	0%	0	0%
Control Hold	25	30%	25	35%	26	33%	16	29%	22	29%
Flashlight	1	1%	1	1%	0	0%	0	0%	0	0%
Gun	2 [a]	2%	4	6%	4[b]	5%	8	15%	11	14%
Lifting up cuffs	0	0%	0	0%	0	0%	0	0%	0	0%
Takedown	21	25%	14	20%	17	22%	9	16%	12	16%
Taser	5	6%	8	11%	2	3%	2	4%	3	4%
Chokehold	0	0%	1	1%	2	3%	1	2%	0	0%
Other	1	1%	3	4%	8	10%	6	11%	14	18%
Total	**84**	**100%**	**71**	**100%**	**78**	**100%**	**55**	**100%**	**76**	**100%**

a. In 2017, there were 2-gun applications involved use of a less lethal projectile weapon.

b. In 2019, there was 1-gun application involved use of a less lethal projectile weapon.

Table 16: Discipline Imposed on Officers by the Department (2017-2021) *

Type of Discipline	2017 # of Times	2018 # of Times	2019 # of Times	2020 # of Times	2021 # of Times
Training and/or Counseling	12	11	8	13	22
Documented Oral Counseling and/or Training	21	9	7	7	19
Letter of Reprimand	5	4	2	2	1
10-Hour Suspension	1	0	1	1	1
20-Hour Suspension	0	1	0	0	0
40-Hour Suspension	1	1	0	0	0
80-Hour Suspension	0	0	0	0	0
160-Hour Suspension	0	0	0	1	0
Settlement Agreement	1	0	0	0	0
Resigned before Discipline	0	1	0	0	0
Termination	0	0	0	1	0
Total Discipline Imposed	**41**	**27**	**18**	**25**	**43**

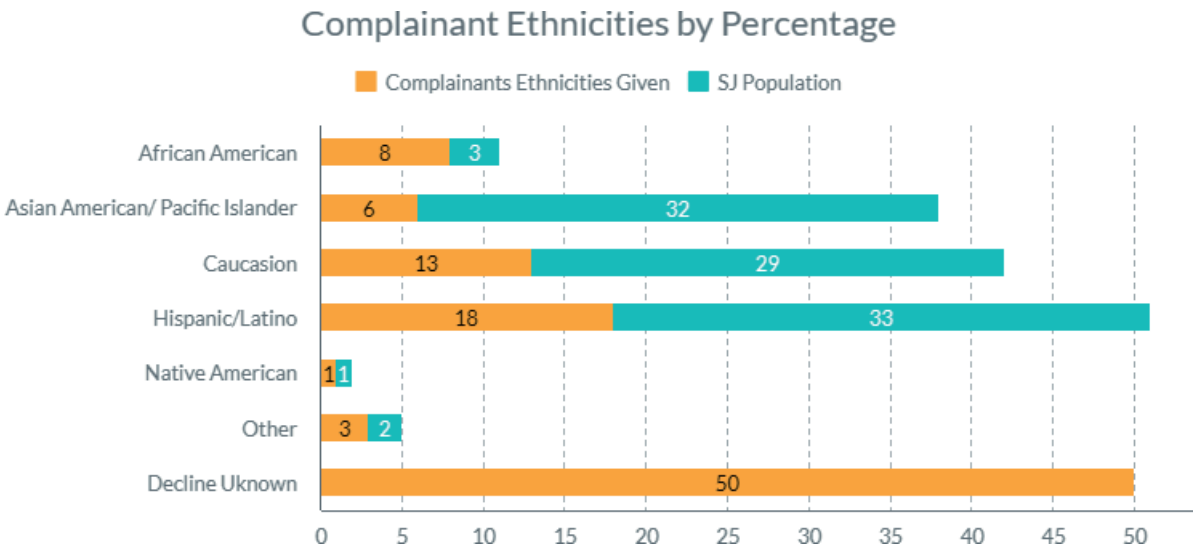
* Including Department-Initiated Investigations in 2021

Table 17: Officer-Involved Shootings in 2021

Case	Ethnicity	Person Armed?	Mental Illness History?	CIT* at Scene?	Prior Criminal Record	Police Weapons Used	Cause of Injury/Death
1	Hispanic	No	None reported	Yes	Yes	Duty Pistol	Deceased
2	Unknown	Yes	None reported	Yes	Yes	Duty Pistol	Deceased

INFORMATION ON COMPLAINANTS

During the intake process, IA and the IPA office gather demographic data about complainants. In 2021, 90% of complainants chose to identify their ethnicities at intake; such disclosure is entirely voluntary. Below is a comparison chart of complainant and San José resident demographics in 2021, as collected in the 2019 American Community Survey.



The IPA logo incorporates one of the most recognized legal symbols, Lady Justice. Lady Justice is blindfolded signifying impartiality. The IPA logo depicts the scales of justice with a badge symbolizing the SJPD on one side and an image symbolizing the people of San José on the other. In creating this logo, the IPA envisioned a trademark that would convey the message that it is the weight of the evidence that determines the outcome of a complaint. The virtues represented by Lady Justice – fairness, impartiality, without corruption, prejudice, or favor are virtues central to the mission of the IPA office and are the guiding principles by which the IPA seeks to operate.

Judge Teresa Guerrero-Daley, San Jose's first Independent Police Auditor, designed the IPA's original logo in 1995.

In 2022, IPA Shivaun Nurre and IPA staff developed a new logo. Our goal was to create a more modern design while retaining the key elements in our original 1995 logo.

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