

INDEPENDENT POLICE AUDITOR



Civilian Oversight of Investigations
into Police Misconduct



YEAR END REPORT 2022

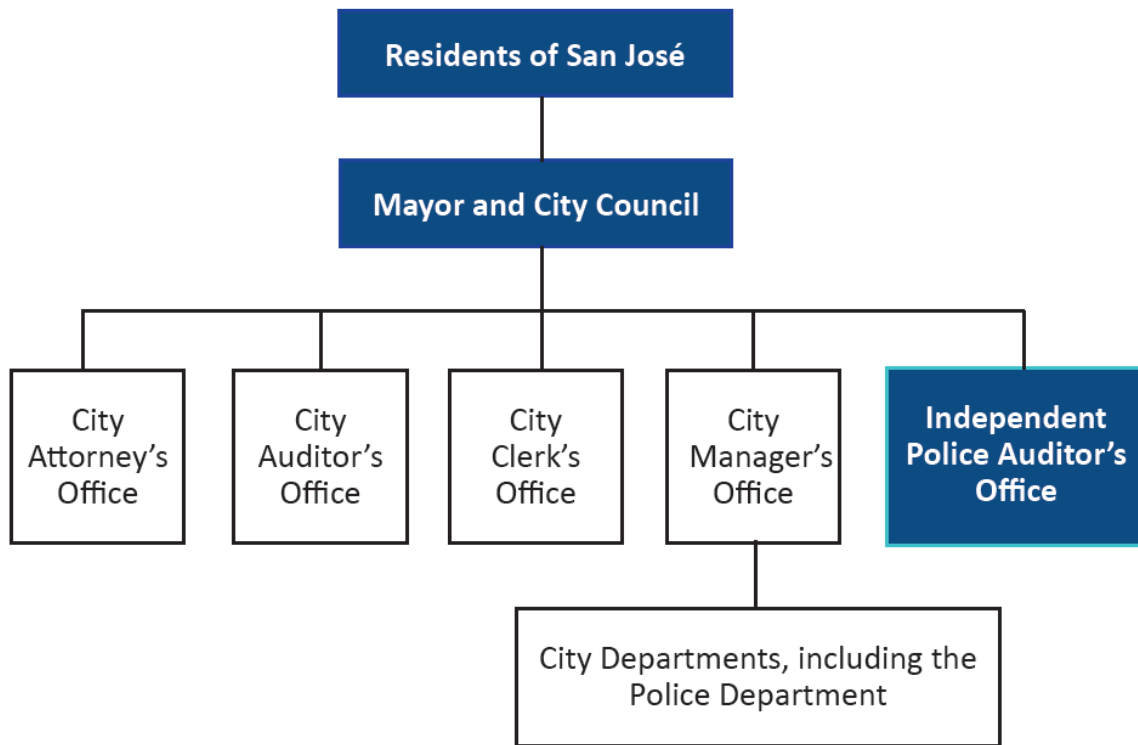
FORCE
ARREST/DETENTION
SEARCH/SEIZURE
COURTESY
PROCEDURE
NEGLECT OF DUTY



SUSTAINED
NOT SUSTAINED
EXONERATED
UNFOUNDED



City of San José Organizational Chart

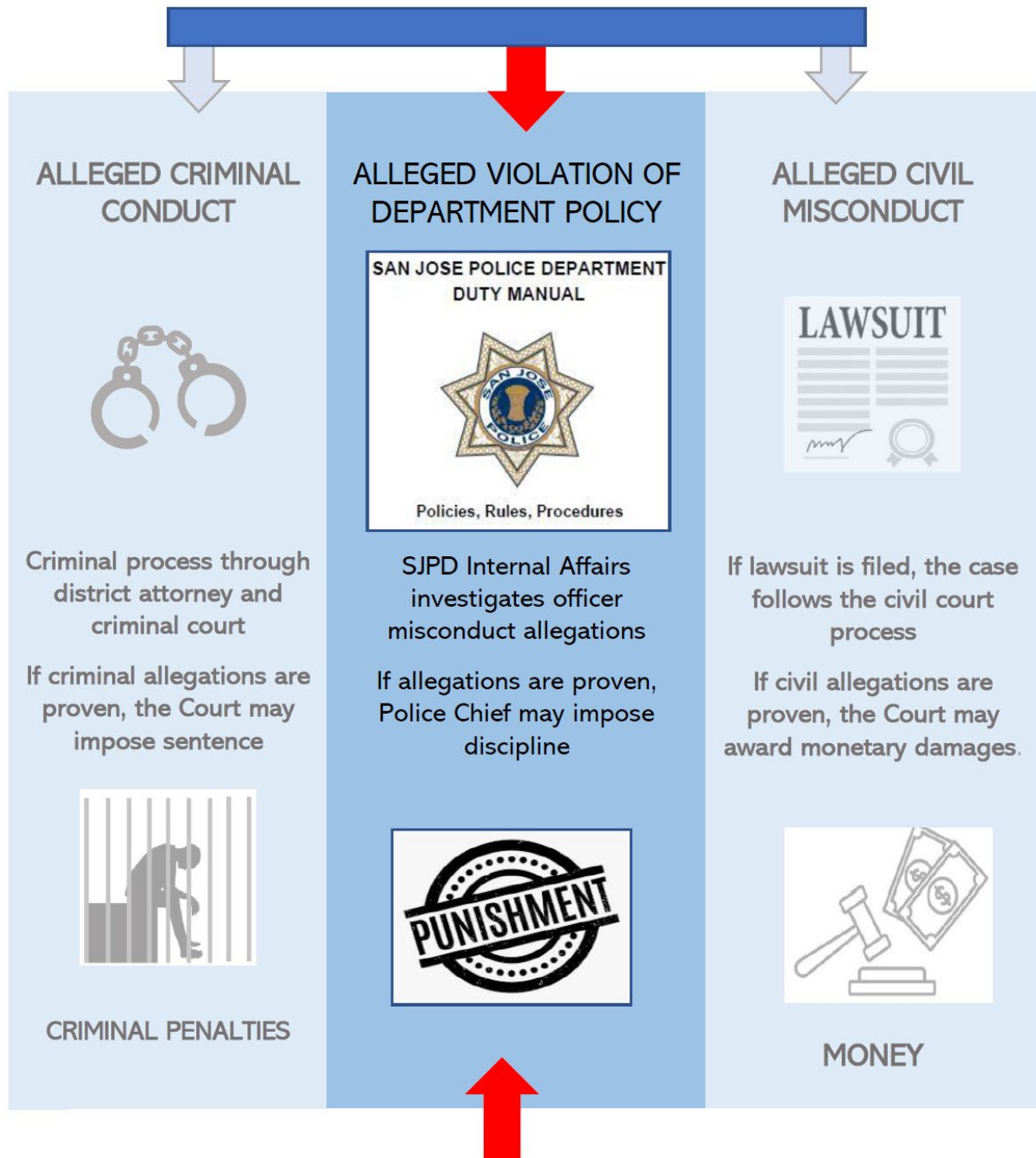


Judge Teresa Guerrero-Daley, San Jose's first Independent Police Auditor, designed the IPA's original logo in 1995.



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.

THREE AVENUES OF POLICE ACCOUNTABILITY



ONLY ONE PATH LEADS TO OFFICER DISCIPLINE

2022 IPA Year End Report

Issued June 2023

Independent Police Auditor Shivaun Nurre
and IPA Staff



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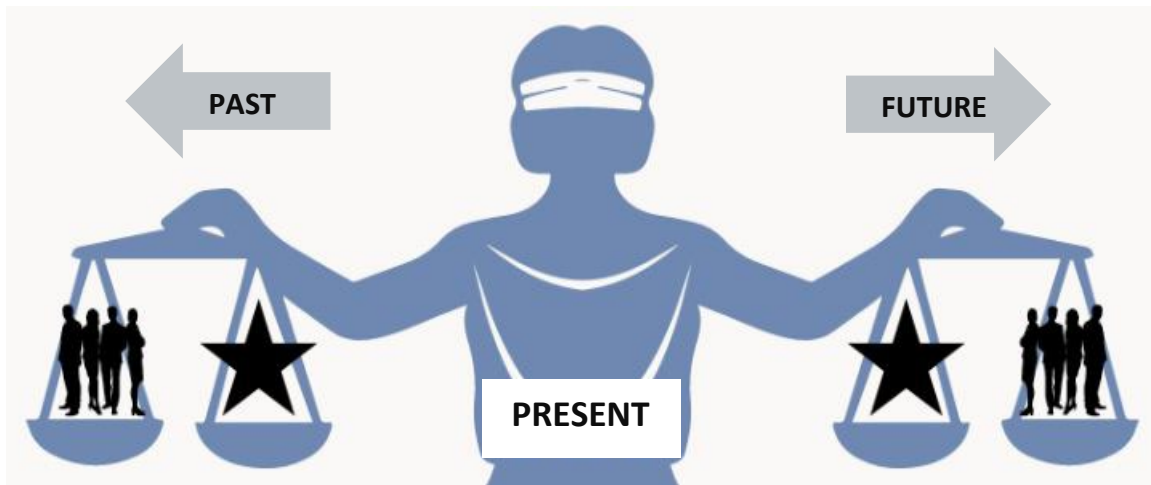
[instagram/ SanJoseIPA](https://instagram/SanJoseIPA)

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LOOKING BACK AND LOOKING FORWARD UPDATES, ISSUES AND CONCERNS



UPDATE ON POLICE REFORM

Our 2021 Year End Report presented details about various efforts at police reform efforts.

Following the death of George Floyd on May 25, 2020, protests raged across cities nationwide and San José was no exception. In late May/early June 2020, many individuals took to the streets raising their voices about policing and racial injustice. The 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. In response, the Mayor and City Council proposed a variety of police reform directives and created a Police Reforms Work Plan. The plan, encompassing 20 separate items, was ambitious both in the breadth of its scope and the required level of detail.

The IPA 2021 Year End Report provided updates on several police reform items pursued by the City of San José. The following is a brief update of the progress made on police reform efforts since the publication of the 2021 Year End Report.

► Police consolidate Reform Recommendations into a Comprehensive List

In March 2022, the City Council accepted two reports prepared by an outside consultant (CNA Corporation) on (1) the Department's Use of Force and (2) the Department's implementation of recommendations outlined by President Obama's Task Force on 21st Century Policing.¹ The council also accepted the Department's response memo. The CNA report on the Use of Force contained 48 recommendations while the report on 21st Century Policing contained 124 recommendations. The Department's Response Memo indicated that it would provide an update on the implementation of the CNA recommendations in both reports to the Public Safety Finance Strategic Support (PSFSS) Committee in the Fall of 2022.



At the same meeting, the City Council accepted an assessment report from the OIR Group, an outside consultant, on the Department's response to the social unrest in San Jose from May 29 to June 7, 2022. The council also accepted the Department's response to the OIR Group's report. The OIR Group's report included 32 recommendations. The Department stated in its Response Memo that it would provide an informational update on the implementation status of these recommendations in the Fall of 2022.



In August 2021, the Reimagining Public Safety ("RiPS") Advisory Committee was established as a community-led group. RiPS members with voting privileges were designees of 28 community-based organizations and three neighborhood representatives chosen by the City Council.² Additionally, 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 lived experience testimonies. In April 2022, the RiPS' Report was finalized and presented to the City Council. The council voted to refer the 73 recommendations from the report to the City Manager and City Attorney for analysis and other considerations such as implementation, budget, workload impact, and legal issues. The staff was directed to bring back the discussion of the RiPS recommendations the Fall meeting of the PSFSS Committee.



At the November 2022 PSFSS Committee meeting, the Department provided a report on the outstanding recommendations for reform and operational improvements that were being tracked, including those made by CNA, OIR and RiPS while at the same time adding many other recommendations. The Department's memo indicated that *to ensure all recommendations were evaluated within the context of existing workloads, assignments, budget, and staffing, the Department gathered a comprehensive list of all the open recommendations*. This comprehensive list totaled 531 recommendations and now recommendations from:

- SJPd's 2021 internal After-Action Report (41 recommendations)
- 2022 California State Auditor's report on biased conduct in law enforcement (14 recommendations)
- 2017 Traffic and Pedestrian Study by the University of Texas-El Paso's (UTEP) Center for Law and Human Behavior (6 recommendations)
- San José City Auditor (selected 45 recommendations issued between 2012 to 2021)
- San José Independent Police Auditor (selected 105 recommendations issued between 1994 to 2021)

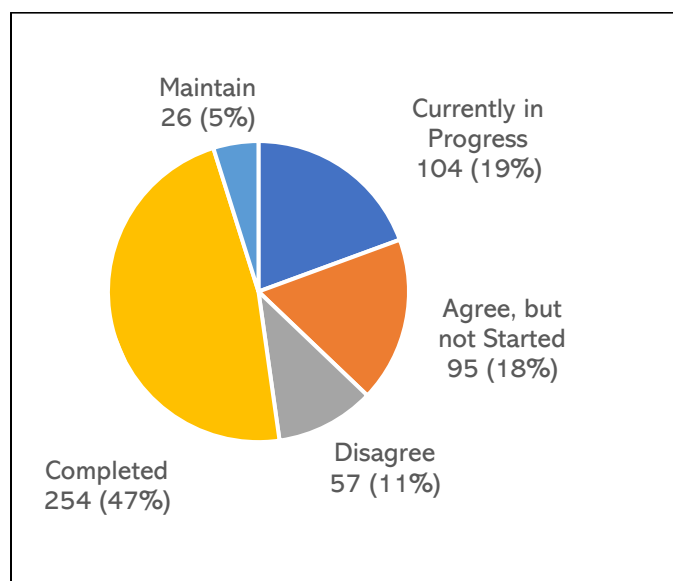


Department's
presentation at
November PSFSS
Committee

531
recommendations

At the May 2023 PSFSS Committee meeting, an update on the status of those recommendations for reform and operational improvements being tracked by the Department was provided. This same update will be provided to the full City Council in August 2023.

Visual from the Department's Presentation at the May 2023 PSFSS Committee



Completed recommendations the department has completed

Currently in Progress the department is currently undertaking some action on these recommendations such as researching a topic writing a proposal, or reformatting policy

Disagree but Not Started the department agrees with these recommendations but has not started action

Disagree the department disagrees with these recommendations and will not implement

Maintain recommendations in which the department was directed to continue a current practice

MOVING POLICE MISCONDUCT INVESTIGATIONS OUT OF INTERNAL AFFAIRS



Under San José's existing oversight model, the Independent Police Auditor (IPA) monitors the activities of SJPD's Internal Affairs Unit (IA). The IPA does not have the authority to independently investigate allegations of misconduct which is the exclusive responsibility of IA and the Department.

In November 2020, the voters of San José passed Measure G, which amended the City Charter and expanded 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 the 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 as to the scope of the IPA's assigned duties.

The passage of Measure G provided the City with an opportunity to explore one part of Mayor Liccardo's 2020 reform plan which aims to make investigations of police misconduct independent of the Police Department.



WHAT DOES MEASURE G ALLOW?

Measure G allows the City Council to *assign other duties* to the IPA without resorting modifying the City Charter each time a new duty is assigned. For example, the City Council could direct the IPA to engage in a study of detentions/arrests of person for Penal Code 148 *resisting arrest*. Prior to the passage of Measure G, the IPA was not authorized to perform such a study. During the creation of the language of the measure, the phrase *other duties as assigned* was included.

MEASURE G ONLY IMPACTS THE OFFICE OF THE IPA IT DOES NOT IMPACT THE POLICE DEPARTMENT

Measure G is provision of additional authority is limited to the IPA. Measure G did not impose any direction or obligation upon the Department or its members. Although Measure G may allow for the IPA to investigate, Measure G does not mandate that San José police officers submit to IPA investigations.

IMPACT ON IPA

Measure G language only addressed what tasks the City Council may give to the IPA

IMPACT ON SJPD

No corresponding Measure G language about what the Department and its officers must do

MEET AND CONFER IS A LIKELY A NECESSARY NEXT STEP

It is likely that the San José Police Officers and their union will view the imposition of outside investigations as a *change to officers' working conditions*, requiring negotiation with the SJPOA through the meet and confer process. The City Manager is the entity responsible for conducting union negotiations.

In November 2020, the San José City Council's Rules Committee directed the City Manager and the IPA to examine the possibility of reallocating existing resources to introduce investigatory capacity within the Office of the IPA. A consultant, Moeel Lah Fakhoury LLP ("MLF") was chosen for this project following a formal request for proposal (RFP) process. MLF was tasked with exploring 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.

The MLF report was presented to the council on December 13, 2022. MLF accurately captured the gravity of this project in the following description:

Officer misconduct is an important concern for the City and its Police Department, as it brings direct harm to the very individuals law enforcement is in place to serve and protect; and it negatively affects the public's perception of the Department, which, in turn, can damage officer morale and diminish their ability to safely execute their duties. Objective investigations of officer misconduct are essential for the Department to demonstrate to the community and internal stakeholders that it is committed to the highest level of accountability

MLF recommended a hybrid model of oversight. Under this model, some misconduct investigations would be retained by the IA Unit which would continue with its procedures

and the IPA would continue to audit IA investigations. Other investigations would be completed by professional civilian investigators who are independent of the Police Department.

From our perspective, the **boldest and core** MLF recommendation is creating an *Investigations Unit* within the current IPA structure. The Unit would be staffed with an experienced Investigative Supervisor and two knowledgeable investigators. This Unit would have full, unfettered access to investigative tools, such as documents and Department personnel to conduct investigations. It is **bold** in that the concept of investigators outside of IA has not been explored since the 1993 inception of the IPA office. However, the use of such personnel to investigate police misconduct is a practice currently being implemented in an increasing number of jurisdictions throughout the state and the nation. This recommendation is **core** in that most, if not all, of the Report's recommendations stem from the creation of an investigation unit within the IPA office. It is a recommendation that the IPA fully agrees with.

We believe that the concept of utilizing non-IA investigators should be embraced. In our opinion, the approach taken by the MLF Report towards change is tempered and measured. The Report does not advocate for the dismantling of the IA Unit Staff as most investigations would still remain within the IA Unit. Currently the IA Unit has **one** commander, **seven** investigating sergeants and **six** investigating officers. The MLF Report is proposing supplementing IPA staff with **one** investigating supervisor and **two** investigators. We agree wholeheartedly with MLF's assertion that:

It is imperative that both the IPA investigators and incoming IA investigators have prior investigative experience, as well as strong interviewing skills, demonstrated objectivity, and the ability to analyze policies and write clear reports In addition, to fill out their skill set, incoming IA and IPA investigators must undertake or will undertake shortly after joining all of the appropriate law enforcement and investigative training courses/workshops, as well as equity training in trauma-informed approaches and best practices

The MLF Report provides a long-awaited starting point for present and future discussions about moving some investigations out of the IA Unit. The Report wisely contains a mechanism whereby the structure and effectiveness of investigations, both at IA and IPA, is evaluated every three years. Possible outcomes of these changes are that they could engender a healthier confidence in the investigations process as well as eventually allowing SJPd sworn staff to return to patrol or other duties in greater measure. While the actual results of implementing the Report's recommendations are unseen, we are satisfied knowing that we are one step further in fulfilling the community's expectations regarding this issue. The IPA believes this is a positive step in the right direction for the City of San José.

The City Council accepted the MLF report, the City Manager's memo and the IPA's memo. After considerable debate, the Council directed that Staff should bring a report to PSFSS Committee in the Spring of 2023 exploring the legal, practical and other implications of a hybrid model including:³

- Direct the City Attorney to determine whether the grant of investigatory authority to the IPA constitutes a *change to officers' working conditions*, requiring negotiation with the SJPOA.
- Upon resolution of any SJPOA negotiation requirements, the City Manager and IPA shall bring a proposed hybrid model recommendation to PSFSS for an initial three-year phase of implementation, including details on budget, potential cost savings, qualifications for investigators, uniformity of training, the ability to make findings, access to evidence, and periodic reviews of the model.
- Upon approval of an initial workplan, the staff is to return to PSFSS in one year with their results in a report that will be cross-referenced to the full City Council.

The City Manager's staff and IPA's staff will present the status of this project at the June PSFSS Committee. To further our discussions, the IPA compiled information from other oversight agencies that conduct police misconduct investigations outside of the Internal Affairs Unit.⁴ The goal was to demonstrate that having an entity outside of IA conduct investigations is no longer a foreign concept and is practiced in jurisdictions across the U.S. The IPA shared this document with the Department and suggested that it may be beneficial for SJPd to reach out to officers/union members in each listed location to gain insights about benefits/detriments from an officer's perspective.

UPDATE ON SOCIAL PROTEST CASES



The City Council directed the IPA to provide information on police misconduct complaints arising from the protests in San José after the murder of George Floyd. Our 2020 Year-End Report included a description of six complaints arising from the protest that had been officially closed by the IA Unit and the IPA office. The 2021 Report provided a description of an additional six cases that have been closed after the publication of the 2020 Report.

No additional police misconduct complaints arising from the protests in San José after the murder of George Floyd have been closed since the release of the 2021 Year End Report. The twelve outstanding complaints are currently paused (“tolled”) until the associated civil cases have been resolved. The 2021 Year-End Report provided an extensive explanation of tolling and its potential pitfalls.



TIME IS OF THE ESSENCE

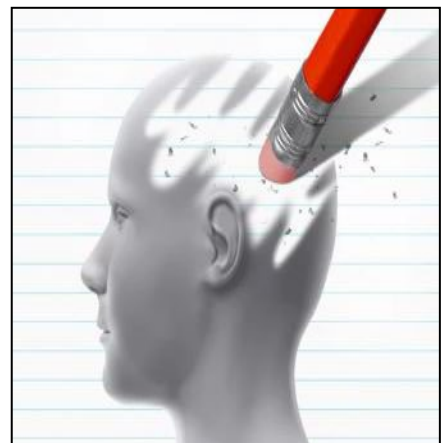
TIMELINESS IMPACT THE ABILITY TO IMPOSE OFFICE DISCIPLINE

According to the Peace Officers Bill of Rights Act, any investigation into officer misconduct must be completed within one year of the public agency's discovery of the alleged misconduct and the intended notice of discipline (if any) be given to the officer within that same time frame. 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. 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 period timeline is *tolled* while that civil lawsuit is pending. The IPA 2021 Year End Report provides comprehensive information about tolling and its associated problems. 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.

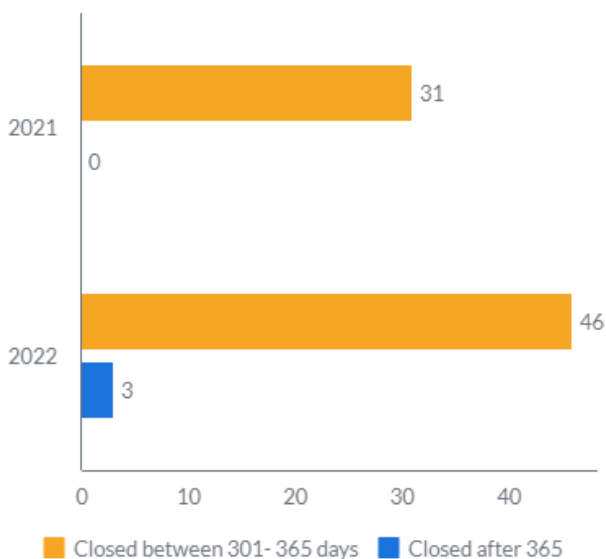


TIMELINESS IMPACTS THE QUALITY OF EVIDENCE

Timeliness of investigations are integral to obtaining accurate and objective evidence of the incidents. As time passes, the quality of evidence diminishes. This is especially true when the evidence has to do with statements, be they civilian witnesses or SJPd sworn officers. While SJPd has implemented that Body-Worn Camera (BWC) be worn by every officer, BWC footage should not be solely relied on to fully capture an event. For various reasons such as user error, lack of policy adherence or malfunctioning equipment, conducting an officer interview is necessary for a thorough investigation of an incident and should be done as early as possible in the investigation process.



TIMELINESS IMPACTS THE ABILITY OF THE IPA TO DO ITS JOB

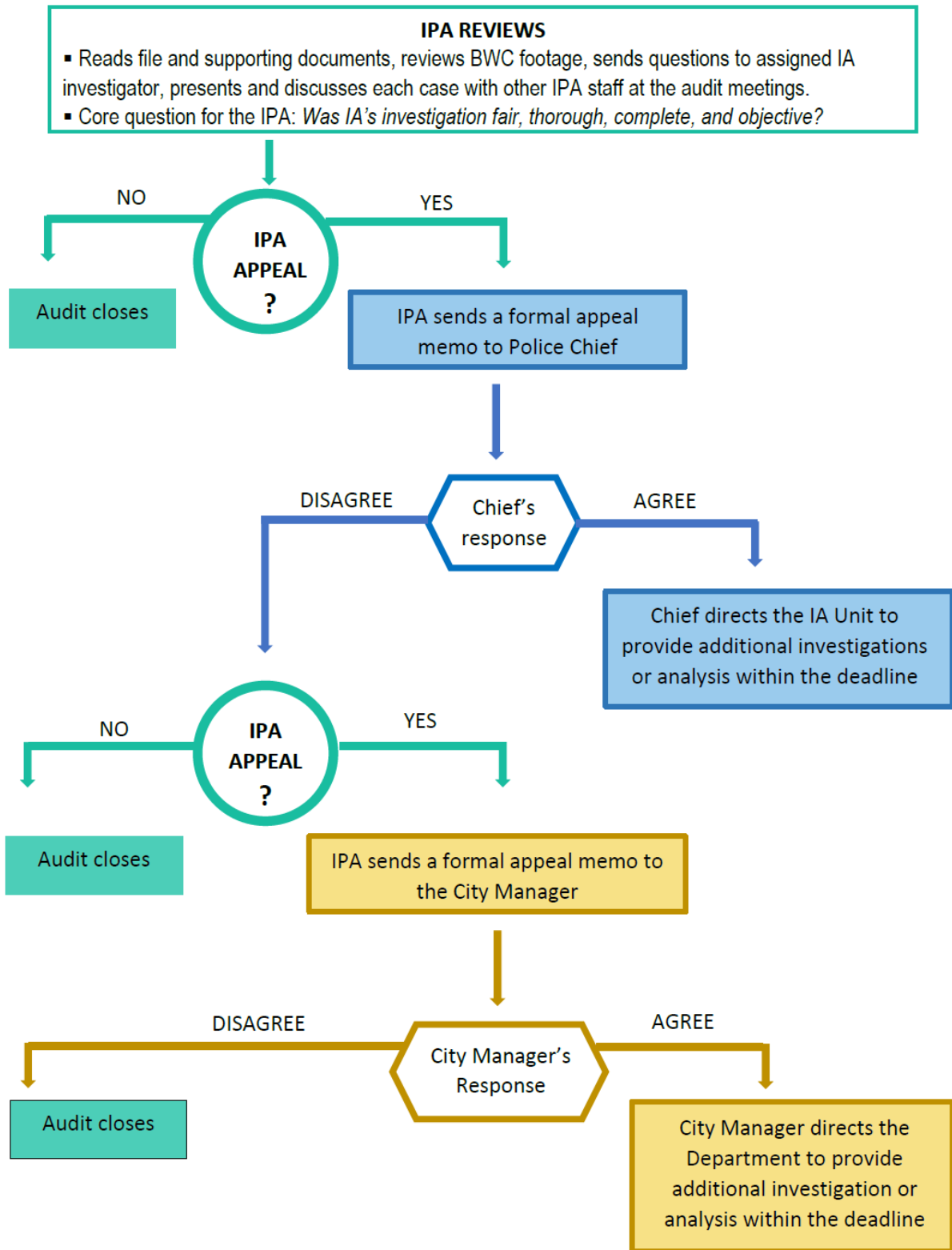


In 1998, California state law implemented a one-year deadline for completing most misconduct investigations.⁵ If SJPd believes that discipline is a necessary action based on the investigation and evidence gathered, the Department must notify the officer within this one-year deadline. In order for the IPA to fulfill its function of auditing IA's completed cases, the IPA's subsequent recommended actions (i.e, obtaining additional evidence or provided a re-analysis) must also be completed within the one-year deadline.

The IA and the IPA have established working timeline to ensure that cases move promptly through our offices. Those timelines are found at the end of this section.

After a pattern of untimely investigations coming out of IA, in 1997 the IPA recommended that SJPd adhere to a timeline mandating that completed investigations/analysis of each case be provided to the IPA within 300 days from the date of the complaint's filing. If SJPd properly observed this 300 day timeline, the IPA office would have at least 65 days prior to the one-year deadline to complete its review and, if warranted, utilize the appeals process.

**IF IA PROVIDES COMPLETED INVESTIGATION/SUPPORTING DOCUMENTATION TO THE IPA
300 DAYS AFTER THE COMPLAINT WAS FILED
WHAT MUST BE DONE IN 65 DAYS**



The issue of timeliness of IA investigations has once again re-emerged.⁶ In fact, the rate of late-closed cases has continued to increase steadily every year since 2019. In 2022, IA closed 25% (49 of 193) of misconduct cases more than 300 days after they were filed. Three cases were closed **more than 365 days** after they were filed. While a few of these cases are exempt from the 365-day deadline due to tolling eligibility, IA's failure to promptly and consistently identify tolled cases has made it challenging for the IPA to accurately partition tolled cases from those cases closed late. This was an issue that the IPA addressed in the 2021 Year End Report⁷ and one that as of yet, has not been resolved.

Moreover, IA has not completed its investigation of two cases filed in **2020** each containing force allegations; one is subject to public disclosure under SB 1412. The two cases were improperly placed on tolling status and were removed from tolling status in 2022:

Summary of Case #1:

In April 2020, complainant's brother was arrested. The complainant stated that her brother was hit by one of the police vehicles, attacked by a police canine, and then beaten by police officers. She alleged that her brother sustained severe injuries to his leg.

- Force allegation

Summary of Case #2:

In May 2020, SJPd conducted a search warrant at a residence. Officers did not enter the home right away. Officers called out for the individuals inside to come out of the house. The individuals, including the complainant's son complied. According to the complainant, her son told the officers, *don't shoot* and stated that he had a broken arm. The officers then ordered the son to crawl to them. The complainant alleged that her son damaged his arm during the crawl. The rod that had been placed in his arm became displaced and protruded by two inches. She alleged that when the son reached the officers, they hit him in the head. The son was interrogated for approximately four hours and was not read his Miranda rights.

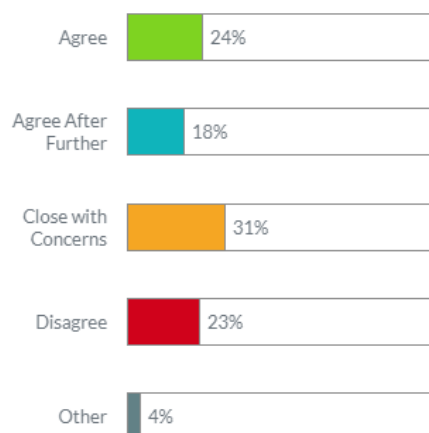
- Force allegation
- Procedure
- Courtesy

In addition to the two cases filed in 2020, IA had not completed its investigation of four cases filed in **2021**. None of these four were placed on tolling status. One case includes a force allegation. Another case includes allegations for bias-based policing, arrest/detention and search/seizure.⁸

The pattern of IA's providing completed investigations to the IPA in an untimely manner continued into 2023. In the first quarter of 2023 (1/1/23 to 3/31/23) 35% of closed

cases (18 of 51) were provided for IPA review with less than one month remaining until the expiration of the statutory deadline.⁹

IA's overdue in closing of cases does not necessitate a "*Disagreed*" determination by the IPA, but it does increase the likelihood that the IPA will take issue with the investigation. In 2022, the IPA *Agreed* with only 24% of the cases IA closed more than 300 days after filing, and *Disagreed* or *Closed with Concerns* approximately 54% of the cases. Put in another way, the IPA *Disagreed* or *Closed With Concern* with more of those cases that were closed late (after more than 300 days) than those that were closed in a timely fashion.



IMPACT OF MISSED DEADLINES

IF DEADLINE EXPIRES, THERE CAN BE NO OFFICER DISCIPLINE

IF DEADLINE EXPIRES, ISSUES ARISE AS TO HOW TO MAKE AN ACCURATE RECORD

IF DEADLINE EXPIRES, INVESTIGATION CAN AVOID IPA SCRUTINY

IF DEADLINE EXPIRES, THERE CAN BE NO OFFICER DISCIPLINE

As outlined in the above section, an officer cannot be disciplined if notice of the discipline was not provided to the officer within one year of the discovery of the misconduct except if the matter is tolled.

IF DEADLINE EXPIRES, ISSUES ARISE AS TO HOW TO MAKE AN ACCURATE RECORD

Given that the officer cannot be disciplined if the notice was not received within the 365 day deadline, the question arises as to how to make an accurate record of the officer's conduct, particularly whether the allegation associated with that officer can be sustained. Arguments have been raised that findings can be made post deadline if the finding would not negatively impact an officer's prospects for promotion or might factor into a future dismissal.

Findings such as *exonerated* or *unfounded* would, most likely, not create a negative impact. However, findings of “*not sustained*” or “*sustained*” would likely be problematic. A plausible argument could be made that a *sustained* finding on a courtesy allegation might not create a negative impact. However, a *sustained* finding on allegations of force, arrest/detention, search/seizure, conduct unbecoming an officer (CUBO) or bias-based policing undoubtedly would – and should – negatively impact the officer’s prospects for promotion or might factor into a future dismissal. Such findings could – and should – be accurately documented in the Department’s Early Warning System. Moreover, there are impacts of such findings that exceed internal systems. Such findings could impact whether the investigation documents must be provided to the public under SB 1421/SB 16. Such findings could also impact whether the officer is placed on the Brady List and/or whether a judge would allow defense council access to information pursuant to a Pitchess Motion. Given the above, one can ascertain the problem closing an investigation post deadline with severe limitations on the available findings.

IF DEADLINE
EXPIRES,
INVESTIGATION CAN
AVOID IPA SCRUTINY

Lack of timeliness in closing cases seriously hinders any meaningful audit from the IPA office. The IPA has been given an appeal mechanism, first to the Police Chief and second to the City Manager. However, the IPA has serious fears that by rolling past deadlines it negates the opportunity for the IPA to do a thorough review and ability to appeal when necessary. In sum, the Department can evade IPA scrutiny by providing closed investigations near/on/after the 365-day deadline.

Current IA and IPA Working Deadlines

Intake at IPA

72 HOURS

IPA enters into IA PRO post receipt

Complaint is received at the IPA through various platforms (e.g., intake via in-person, phone, email, website). IPA enters the information into IA Pro within 72 hours (business days) including those allegations identified by the IPA.

IA MAKES FINAL DECISION
ON ALLEGATIONS LISTED

30 DAYS post

The complaint is assigned to an IA officer who has 30 days to complete classification of the complaint and enter allegations.

30 DAYS post

After 30 days from receipt, the IPA reviews the complaint summary and may request that IA add allegations.

IA MAKES FINAL DECISION
ON ALLEGATIONS LISTED

90 DAYS post

Officer has 90 days from the date the complaint is received to complete investigation.

Complaint is reviewed by Sergeant at completion of Officer Investigation. **IF** the investigation does not require an officer interview, it is sent to the IPA.

90 DAYS post
receipt from IA

The IPA has 90 days to review the officer's investigation and either close or request additional investigation/analysis.

Intake at IA

10 DAYS

IA enters into IPA Pro post receipt

Complaint is received at the IA through various platforms (e.g., intake via in-person, phone, email, website) and entered into IA Pro within 10 days.

Case assigned to an IA Sergeant. IPA notified.

IF the Sergeant reviews the Officer Investigation and determined that additional investigation is necessary, the complaint is assigned to an IA sergeant

14 days
post receipt from IA

The IPA is notified of the assignment and is provided 14 days to review the officer's investigation and all relevant BWC. During these 14 days, the IPA has an additional opportunity to request that IA add allegations.

**IA MAKES FINAL DECISION
ON ALLEGATIONS LISTED**

48 hours notice
before the interview
(business days)

The Sergeant will provide the IPA with **at least** 48 hours advance notice of any interviews that will be conducted.

24 hours
Prior to interview

The IPA staff will inform the sergeant about in-person attendance at the interview, forwarding suggested questions for the interview, or declination to attend **no later** than 24 hours before the interview.

9 MONTHS
post receipt of case

IA Investigations are completed with a goal of 9 months post receipt.

If the case is not sent for F&R, the IPA is provided with the completed investigation.

If the case is sent to F&R, the IPA is notified after the case is returned from F&R to IA and provided the complete investigation

IPA may appeal requesting additional investigation/analysis be conducted or close

IPA may appeal requesting additional investigation/analysis be conducted or close

IF appeal granted, case returns to IA for additional investigation/analysis

IF appeal granted, case returns to IA for additional investigation/analysis

Unless tolled, this entire process must be completed and notice of intended discipline (if any) be provided to the officer **365-days** from the receipt of the complaint.

ALLEGATIONS CHART THE TRAJECTORY OF THE COMPLAINT

THUS CONTROL OVER ALLEGATIONS MUST BE FAIR AND OBJECTIVE

Duty Manual section C 1705 defines an *allegation* as an unproven accusation that a police officer violated Police Department or policy, procedure, or the law.¹⁰ To address allegations made against police officers, the Department has a process that proffers to protect both community and Department members.¹¹ The Department classifies allegations into eight categories. The Department's stated purpose in using these eight categories is *to characterize objectively the conduct alleged and to avoid using value-laden words that will prejudice an allegation prior to investigation.*¹²

- Search or seizure
- Arrest or detention
- Bias-based policing
- Courtesy
- Force
- Neglect of duty
- Conduct Unbecoming An Officer (CUBO)

► Workplace Discrimination/Harassment allegations are generally handled exclusively by the City's Office of Employee Relations within the City Manager's Office.



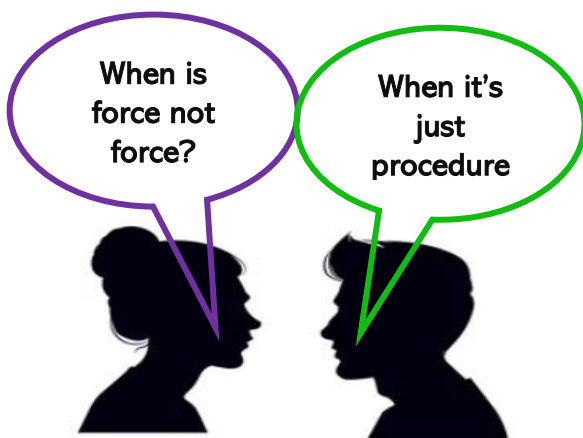
The Department Exerts Significant Power Of The Complaint Process By Assigning Allegations.

COMPLAINT ALLEGATIONS DETERMINE:

- Who will be named as a subject officer?
 - What evidence will be gathered?
 - What rules apply?
 - What questions can be asked of the officer?
 - The level of discipline (if any)?
 - Public disclosure (if any)?

Following the publication of the IPA 2021 Report, we have become increasingly concerned that the Department is not dedicating objective attention to allegations. We believe that the IA unit sometimes avoids allegations, mischaracterizes conduct, dismisses allegations without investigation or findings, and omits allegations for fear that the mere presence of an unproven accusation is detrimental.

Join us for a brief Q&A session as we explore the topic of allegations.



Despite a history of pattern and practice, in September 2022, the IA began categorizing an officer's pointing a gun at another person as a procedure allegation, not a force allegation. We contend that pointing a gun at a person constitutes the use of force and should be investigated in accordance with the Department's Use of Force policies and Fourth Amendment principles.

In various parts of the country, law enforcement agencies specifically include pointing a firearm, without discharging it, within the definition of *reportable* use of force.

Case law recognizes that, depending on circumstances, an officer's pointing a firearm at a person is excessive force.

See Recommendation #1 in Chapter Two.



We are very concerned that the Department mischaracterizes certain use of force actions as *accidental* when they may, in fact, be *intentional*. Labeling conduct *accidental* precludes it from ever being properly examined as a use of force action. The analysis of such conduct should explore accidental causes, but targeted focus should be on facts that imply intent.

As an illustration, in March 2021, the Department initiated a case against one of its officers. The subject officer deployed his Taser twice. The first discharge was highly effective; the suspect stiffened, fell backwards and hit his head on the ground. The suspect was rendered unconscious although the subject officer claimed to be unaware of that fact. The subject officer continued to give commands to, *not move*. According to the officer's report, he then activated the TASER for a second cycle because he, *didn't want to get into another physical confrontation*.

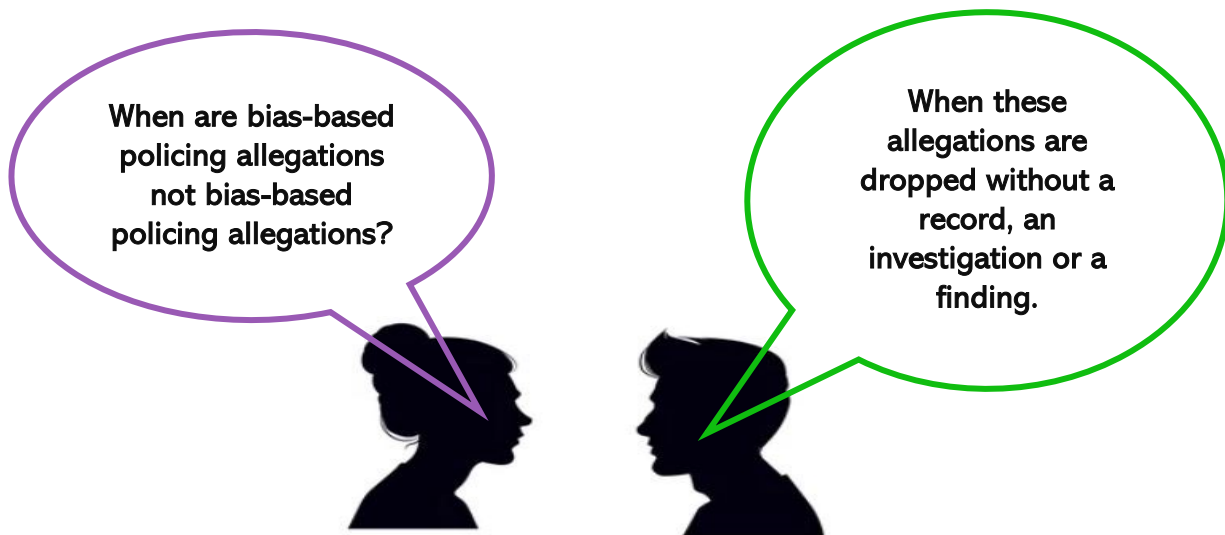
<p>Our office asserted that two allegations of force should have been investigated:</p> <ul style="list-style-type: none"> ▶ FORCE: was the <u>initial</u> deployment of the TASER in accordance with SJPD policy? ▶ FORCE: was the <u>second</u> deployment of the TASER in accordance with SJPD policy? 	<p>Instead, IA attached these two allegations to this investigation</p> <ul style="list-style-type: none"> ▶ FORCE: was the <u>initial</u> deployment of the TASER in accordance with SJPD policy? ▶ PROCEDURE: was the <u>second</u> deployment of the TASER an accidental discharge covered by L 2617?
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The issue with IA's characterization is that it prejudices the second deployment was accidental *before* conducting any IA investigation. This precludes a finding on the force used in the second deployment, regardless of whether it is *sustained*, *not sustained*, *exonerated*, etc. The label of *accidental* caused the investigation to view the officer's actions as unintended. In this case, the subject officer provided multiple reasons why he intended to use and actually deploy his TASER for a second deployment indicating that he intended to use it. The subject officer intended to pull the trigger — and did pull the trigger. Such conduct should not be deemed *accidental*.

In another case,¹³ IA investigated an officer's use of his patrol car to block the path of a fleeing suspect as a *vehicle collision accident* under Duty Manual section L 2635.5 instead of a force allegation. Two suspects fled from officers and ran across a street and onto a dirt trail. Pursing the suspects, one officer drove over the curb and onto the dirt trail. The officer continued to drive behind the fleeing suspects with the police vehicle's red lights and siren activated. The officer intentionally attempted to block the suspects' path by driving in front of them but was unsuccessful. One suspect collided with the police vehicle and was run over after falling to the ground. The suspect's injuries included a broken tibia, a broken pelvis and a broken ankle.

The IA investigation concluded **the officer did not intend to hit the suspect**, and deemed the collision was accidental. The IPA contested this rationale. We recommended that intentional acts of force, such as utilizing vehicles to stop pedestrians, be classified and investigated as force allegations rather vehicle collision accidents. Here the officer intended to use his car to block the suspects; the facts that he did not intend for the suspect to be injured does not negate his use of the car as a method of force.





Investigations of alleged bias-based policing (BBP) incidents can be challenging. A very large percentage of such allegations are closed as *unfounded*, both locally in San Jose and nationwide. However, this does not mean that allegations of bias-based policing should be unilaterally dropped without investigation. When a person alleges that an officer engaged in such conduct, the standard investigative procedures should be taken, including documenting the allegation, obtaining supporting evidence such as documents and body-worn camera footage, interviewing relevant parties to obtain statements if warranted, and making a conclusion.

► The IPA accepts an *unfounded* finding only if it is supported by the investigative record, which means that the investigation proved that either the act or acts complained of did not occur.

► Similarly, a finding of *no finding* may be appropriate if it is supported by the investigative record for instance, the complainant failed to disclose promised information needed to advance the investigation or is no longer available for clarification of material issues.

The IPA strongly objects to dropping bias-based policing allegations before an investigation is finalized. Such conduct improperly prejudices the outcome.

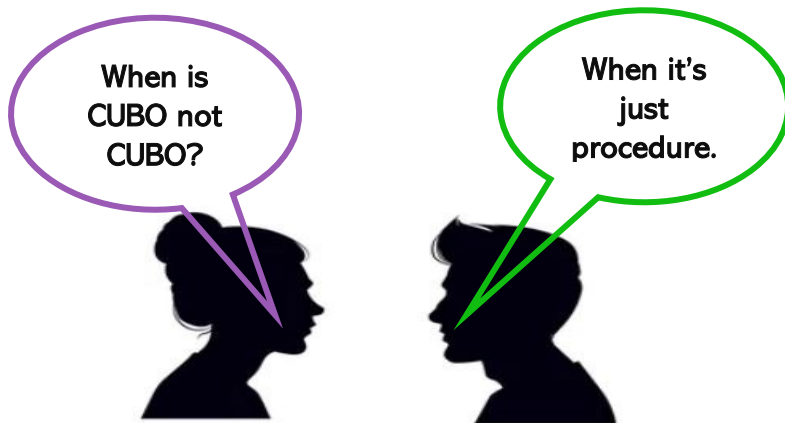
In a case closed in 2022,¹⁴ the complainant alleged that an officer was biased *based on the circumstances* without further elaboration. Once supporting evidence such as documents and body-worn camera video were reviewed and officer statements obtained, the following facts emerged:



A driver was stopped by an officer who suspected that the car's registration had expired. The officer did not believe the driver's explanation that the owner of the car had updated that registration just that morning. The driver provided the updated papers and the car had up-to-date registration tags. The driver and the passenger, both Hispanic, were directed to sit on the curb. It was later discovered that both individuals had expired driver's licenses.

The driver refused the officer's repeated requests to search the car. Body-worn camera video captures the officer using profanity. During the officer's interview, he justified his use of foul language by saying: *Sometimes talking in street lingo or verbiage are easier understood than others, and a way of talking to people, he may have understood me a little bit better. . . . From my training and experience from working on the eastside, sometimes people don't take, they don't know how to 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.* [Neither the driver nor the passenger cursed during the encounter]. The officer decided to tow the car; such action would allow him to conduct an inventory search of the car. The officer proceeded to do a full search of the car for weapons and evidence — an action not allowed by an inventory search. Contrary to Department's guidelines, the officer refused to let the driver contact the owner of the car to get the car to avoid the tow. The IA investigation determined that bias could not be proven by applying a preponderance standard. A finding of *not sustained* was made.

Recall that the only detail that the driver provided to show bias was *the circumstances* and nothing else. Nonetheless, the allegation was properly attached and properly investigated. Requiring a complainant to provide concrete facts before attaching a bias-based policing allegation is helpful but should not be determinative. Such detail is not required when attaching other allegations such as force, unlawful detention, etc.



The Department should not hesitate to investigate conduct unbecoming an officer as a CUBO allegation if the circumstances warrant its inclusion.

C 1404 CONDUCT UNBECOMING AN OFFICER:

An officer's conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine **if the act was such that a reasonable person would find that such conduct was unbecoming an officer.**

The IA Unit received at least three separate complaints regarding alleged conduct that could constitute perjury and/or being untruthful.



(1) An officer signed an important form under penalty of perjury. This resulted in a state agency opening a potential perjury complaint against that officer.

(2) An officer signed a court affidavit under penalty of perjury. The defense council presented the court with concerns about the accuracy and truthfulness of the officer's statement. The judge granted the defense council's motion to suppress evidence.

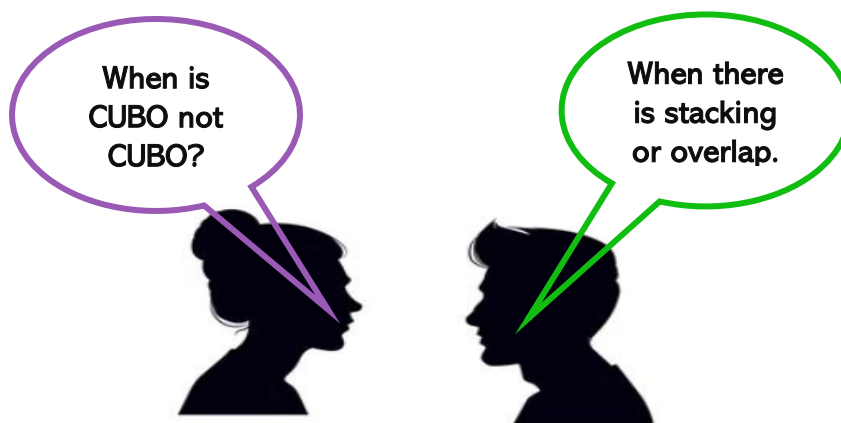
(3) An officer testified at a preliminary hearing and at a motion to suppress evidence. The judge granted the suppression motions opining that the officer was not credible.

In each of these three cases, the IPA asked that a CUBO allegation be added. In each case, the IPA asserted that if the truthfulness of statements arising from an officer's signature or testimony under penalty of perjury is challenged, such conduct should be examined under a CUBO allegation because a reasonable person could find such conduct unbecoming an officer.

IA did not add any CUBO allegations. Instead, the officers' conduct was examined under various procedure allegations (e.g., R 1108 Accuracy & Brevity of Reports, C 1302 Law Enforcement Code of Ethics).

The biggest problem with IA's approach in labeling the allegations is that prejudices the conduct before any IA investigation has taken place. In doing so, IA precludes a finding on CUBO, whether that be *sustained*, *not sustained*, *exonerated*, etc.

A thorough and complete investigation of the complaint would have included CUBO allegation along with the other potentially applicable procedural allegations. Then both CUBO and procedure could have been examined under the facts without prematurely excluding CUBO.



As stated above, The Department should not hesitate to investigate conduct unbecoming an officer as a CUBO allegation if the circumstances warrant its inclusion.

What is **stacking? (aka overlap)** The Department and the City Manager assert that a CUBO allegation is not warranted or should not be sustained if the conduct at issue is otherwise covered by other duty manual sections.

An incident illustrates this concept of stacking. In July 2021, SJPD Officer E attempted to stop a vehicle for minor vehicle code violations. After passing a major street, Officer E informed SJPD communications of her intention to stop the vehicle. She activated his lights and siren on the avenue prior to passing the adjacent Street. The suspect vehicle failed to stop and made a rapid right turn onto that street. Officer E followed. The suspect's vehicle reached over 100 mph as it fled from Officer E. The GPS device on Officer E's patrol car indicated she drove up to 80 mph. Notably, this location is a residential area, and the speed limit is 25 mph. Moreover, throughout the duration of her pursuit, Officer E failed to update communications to dispatch that the suspect was fleeing from her and that she was following him. In fact, Officer E did not transmit any radio traffic during the entire time she was following the suspect's vehicle.

The IA investigation established that Officer E engaged in an unauthorized and unlawful high-speed pursuit. Surveillance video showed that the fleeing suspect's vehicle traveling northbound at a high rate of speed entered a major intersection. The video shows a separate car traveling eastbound on another street and entering the intersection. The

suspect vehicle collided (“*T-boned*”) into the passenger side of the eastbound car. The impact of the collision was so forceful that it caused the victim's body to be ejected from his vehicle, and the body then collided into a parked vehicle. The victim sustained severe injuries and was pronounced dead at the scene. Meanwhile, the suspect fled on foot and was not located. At the accident scene, Officer E failed to provide timely information about the fleeing suspect’s description and direction of travel.

The IA analysis concluded that Officer E's actions were a contributing factor to the collision — a collision that caused a person to lose their life.

Officer E committed a number of violations. The Finding and Recommendation Process returned 12 separate sustained **procedure** allegations. However, IA staff deemed the CUBO to be exonerated.

We appealed this determination initially to the Police Chief and subsequently to the City Manager. We contended that the CUBO allegation should have been sustained as that allegation captured the entirety and gravity of the incident. Moreover, parsing conduct into separate procedure allegations did not sufficiently capture the bigger picture. Officer E's combined actions both contributed to the fatal collision and the suspect's ability to escape the area. Reasonable persons would find this conduct unbecoming and it reflects poorly on the Department.

The Department and the City Manager deemed otherwise. They determined that the subject officer's conduct was adequately addressed under the 12 procedure allegations. Their stated intention was not to add CUBO allegations simply because of the gravity of the situations or the egregious nature of a particular act of misconduct.

We strenuously disagree with the Department/City Manager's assertion as it does not address the rare instances in which the violation of a Duty Manual section is so egregious that it would be deemed unbecoming an officer.

- Hypothetically an officer's use of force may be found not only excessive but also sadistic. A force allegation would not capture the gravity of the officer's action and a member of the public would find the behavior unbecoming an officer.
- Hypothetically an officer's berating of a subject with racial slurs and profanity may be so intense and prolonged that a Courtesy and a BBP allegation would not capture the gravity of the officer's action and a member of the public would find the behavior unbecoming an officer.

The CUBO definition is unique in that it incorporates a community standard, that of a reasonable person. To limit a CUBO allegation to only that conduct not otherwise covered by other duty manual sections unduly rejects community perspective.

A similar rationale was applied in another case. The subject officer responded to a family disturbance. Two women were at the home, one in her 70s and the other in her late 60s. The officer was made aware that the younger woman had inherited all/part of the home

from a relative. The older woman was her sister-in-law who also lived at the home. She had recent surgery for cancer and was awaiting a second surgery for the same malady. Also present at the home was a young male relative who was visiting. As the officer attempted to gather details, the people started arguing. The officer responded to the women by repeatedly using offensive language, yelling at them, shining his flashlight into the older woman's eyes, and following her into her bedroom where he continued to berate her. The explanation for his behavior was found to be not credible. However, the Department deemed the one Courtesy allegation to be sustained and the CUBO allegation to be not sustained meaning that the investigation failed to prove or disprove the allegation. The Department's rationale was that the officer's conduct was best analyzed under the Courtesy spectrum of misconduct and that a sustained finding on CUBO would be unfairly *stacking allegations*. We disagreed. From our perspective, the officer's conduct was so egregious that it exceeded the spectrum of a Courtesy allegation. His mistreatment of two elderly women (one sick with cancer) was persistent, pervasive, and shocking.

THE DEPARTMENT SHOULD INVESTIGATE ALL APPLICABLE ALLEGATIONS REGARDLESS OF OVERLAP/STACKING

The issue of the presence of overlapping allegations was addressed in a report presented to the City Council in December 2022. As mentioned above, in response to Council direction, the IPA and City Manager hired a consultant with expertise in evaluating Internal Affairs models and civilian police oversight models. Moeel Lah Fakhoury LLP ("MLF") was chosen for this project after a formal request for proposal (RFP) process.

In its report, MLF stated that all applicable allegations be added even if they many overlap with other allegations. According to MLF, disregarding an allegation:

- results in an incomplete investigation, and
- does not result in the type of thorough and complete analysis calculated (1) to improve performance, and (2) to signal to the public that all potential misconduct and potential policy violations will be addressed.¹⁵

We agree with MLF's recommendation. Both the Department and the community are better served when all potential misconduct is addressed.

IPA POLICY RECOMMENDATIONS

1

Track When an Officer Points a Firearm at a Persons As a Use of Force.

2

The Department Should Use Best Efforts to Track Data on Suspects Perceived Armed and Weapons Found.

3

The Duty Manual Should Provide Guidance That a Search of a Person Incident To Arrest Applies Only and Solely to Full Custodial Arrests.

4

The Department Should Provide Guidance About Officer Discretion When Compelling Citizens to Exit Cars to Sign Citations.

5

The Department Should Obtain Devices to Verify Window Tint Prior to Issuing a Citation.

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 TRACK WHEN AN OFFICER POINTS A FIREARM AT A PERSON AS A USE OF FORCE

The IPA renews its 2018 recommendation that the SJPD track and document when an officer points a firearm at a person as reportable force. **We recommend:**

- *that the pointing of a firearm at a person be included in Duty Manual L 2644 reportable use of force defined.*
- *that such use would require the completion of the Department's Automated Use of Force Template*
- *that such use would cover any situation except that in which an officer's gun is pointed at a 45-degree angle or less and not at a person.*
- *that such use be reflected on the Department's Force Analysis Dashboard.*

The narrative from our 2018 Year End Report has been updated.

1. Over the intervening years, more law enforcement agencies included pointing a firearm as a Use of Force.



In 2021, the California Commission on Peace Officer Standards and Training (POST) issued its most recent Use of Force Standards and Guidelines.¹⁶ POST states that pointing a weapon is a use of firearms. POST outlines six separate elements under its *Use of Firearms Standard #6: An agency shall provide clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.* SJPD may benefit from reviewing these elements outlined by POST.

In June 2020, the **Philadelphia Police Advisory Commission** published its study of other U.S. police department that track pointed firearms events. Twelve law enforcement agencies were selected. Nine agencies deemed pointing a firearm as force. Agencies differed on how they use this information. Most use the information to review compliance with firearm/force policy. At least seven agencies release the data in their annual use of force report. A few used the data in their Early Intervention Systems.



Based on the June 2020 study,¹⁷ the Philadelphia Police Advisory Commission made eleven separate recommendations including:

- ▶ the Department's use of force policy be amended to include the pointing of a firearm as a use of force
- ▶ the pointing of a firearm should be categorized as *deadly force*
- ▶ when reporting pointed firearm incident, officers should first relay event over the police radio so that a supervisor may respond to the scene; these radio transmissions must be preserved
- ▶ ensure that reporting procedures are categories to make later evaluation on data and incidents accessible
- ▶ seek community feedback while amending these policies



After 18 months of collaboration and study, the **San Francisco Police Commission** adopted revisions to the Department's Use of Force policy in 2021.¹⁸ One key change was broadening categories of Reportable Force to include the intentional pointing of a firearm at the *low ready*.

The Commission approved additional revisions, including pointing firearms, in March 2022.

5.01.07 Section G.1, Handling, Drawing and Pointing Firearms

(d) *Pointing a firearm at a person* — the pointing of a firearm at a person is a seizure and requires legal justification. No officer shall point a firearm at or in the direction of a person or have the firearm at the low ready position unless they are objectively reasonable facts to believe the situation may escalate to justify deadly or lethal force. . . Officers shall document in their incident reports their justification for drawing exhibiting pointing their firearm or having their firearm at a low ready position.

(e) *Reporting* - when an officer intentionally points any firearm at a person (including low ready) it shall be considered a reportable use of force such use of force must be reasonable under the objective facts and circumstances and such justification and circumstances shall be documented in their incident report.

2. Research shows reporting such incidents reduces officers' use of firearms

Many departments restrict the display of firearms unless an officer has a reasonable belief that there is a substantial risk that deadly force may be justified. Common use-of-force policy language on this topic states that *unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of the citizens, and may result in an unwarranted or accidental discharge of the firearm.*¹⁹

A recent study²⁰ found that there is one policy associated with systematically reducing the rate of officer-involved shooting fatalities – a policy that requires officers to file a report when he/she points a gun at someone but does not fire. According to the study, Departments who have this policy in place have lower rates of officer-involved gun deaths. The study reviewed a large data set of officer-involved shooting incidents, department-level policy data, and community-level demographics to determine whether specific policies can be associated with higher or lower rates of officer-involved shooting deaths.

This study also noted a legitimate concern by law enforcement agencies: whether implementing this policy will endanger the lives of the officers because he/she will hesitate when drawing their firearms in situations that could be life-threatening. The research has shown that implementing this policy has **no effect** on the rate of gun deaths of police officers. The study did not examine whether the policy had an effect on the rate of serious injuries sustained by either the citizen or the officer.

3. State regulations mandate the documentation of pointing a firearm

The Department is already capturing this data to comply with state regulations. As of November 2017, the California Code of Regulations requires that any city or county law enforcement agency that employs peace officers must document all actions taken by them during a detention. The officer must document a variety of data values, including when a firearm is pointed at a person.²¹

4. Other agencies recognize pointing a firearm as a reportable use of force

We recommend that SJPD track and document pointing a firearm as a *reportable use of force*.²² Various law enforcement agencies in different parts of the country specifically include pointing a firearm, without discharging it, within the definition of *reportable* use of force. Officers are required to document all instances when a firearm is drawn and pointed at a citizen. A sample of agencies classifying a display of firearm as reportable force include:

- San Francisco Police Department
- Oakland Police Department
- San Diego Police Department
- Los Angeles Police Department
- Baltimore Police Department
- Cleveland Police Department
- Dallas Police Department
- Metropolitan Police Department in Washington, D.C.
- Portland Police Department
- Detroit Police Department
- Houston Police Department
- New Orleans Police Department
- Phoenix Police Department
- Seattle Police Department
- Denver Police Department

5. Other considerations:

- Case law recognizes that, depending on circumstances, an officer's pointing a firearm at a person is excessive force. *Thompson v. Rahr*, 885 F.3d 582 (9th Cir. 2018), *Robinson v. Solano City*, 278 F.3d 1007 (9th Cir. 2002)
- Prior to September 2022, an allegation that an SJPD officer improperly pointed his firearm was classified as a force allegation within the Department's complaint process.
- The community, particularly those who have experienced such conduct, generally consider pointing a firearm as a Use of Force. Community members have indicated that experiencing this kind of force can be traumatic and intense; the memory of the encounter can resonate for years. It is frightening and suggests the possible imminent use of deadly force.
- Documenting the conduct as a Use of Force would allow for the display of such conduct aside the other uses of force information already displayed on the SJPD Use of Force Analysis dashboard. Incorporating such data into the dashboard would allow one to more easily compare and contrast firearm

display with the other uses of force already captured (e.g., takedown, strike, impact weapon, canine, etc.).

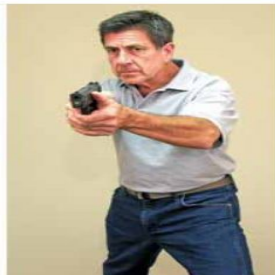
- Documenting the conduct as a Use of Force requires review of the conduct by the officer's immediate supervisor who can evaluate the circumstances, including review of body worn camera footage, and determine whether future action is necessary.

What is low ready and why is it important?

This term has been interpreted in a variety of ways. The highest threshold, and the one closest to deployment, is called *on target*.²³



Tactical positions lower than *on target* generally incorporate the word ready. Here are two versions of low ready. Note the angle of the gun varies dramatically.



The distinctions are important. A less than precise description of what positions are covered can result in under-reporting. For example, a 2018 study found that Oakland Police were under-reporting use of force incidents.²⁴ Upon further examination, it was revealed that there were two distinct definitions of the low ready positions.

We recommend that whatever tactical positions are covered, low ready be defined as any situation in which an officer's gun is **pointed at a 45-degree angle or less and not at a person.**

#2 THE DEPARTMENT SHOULD USE BEST EFFORTS TO TRACK DATA ON SUSPECTS PERCEIVED ARMED AND WEAPONS FOUND

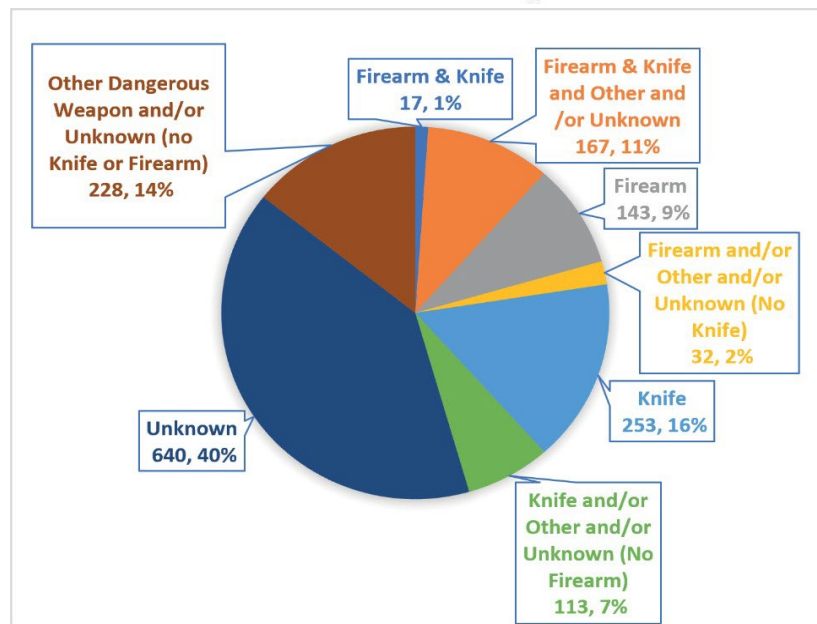
We recommend that:

- the Department direct its officers to, as accurately as possible, fill out these items in the force response report form and to use best efforts to confirm whether the suspect was armed:
 - Was suspect perceived armed? [YES] [NO]
 - If YES, indicate the weapon type (check all that apply)
 - Was the suspect confirmed armed? [YES] [NO]
 - If YES, confirm weapon type (check all that apply)
- the supervisor who reviews the officer's force response forms, ensures that the 4 questions listed above are completed before the supervisor signs off.

In our 2021 Year End Report, we focused on the particular aspect of the independent outside consultant (CNA) hired by the City to assess the Department's Use of Force. Of 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 2/27/27 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 **single perceived weapon** (e.g., a *knife* or a *firearm*) or **combinations** (e.g., *knife* and *firearm* or *knife* and *other*).

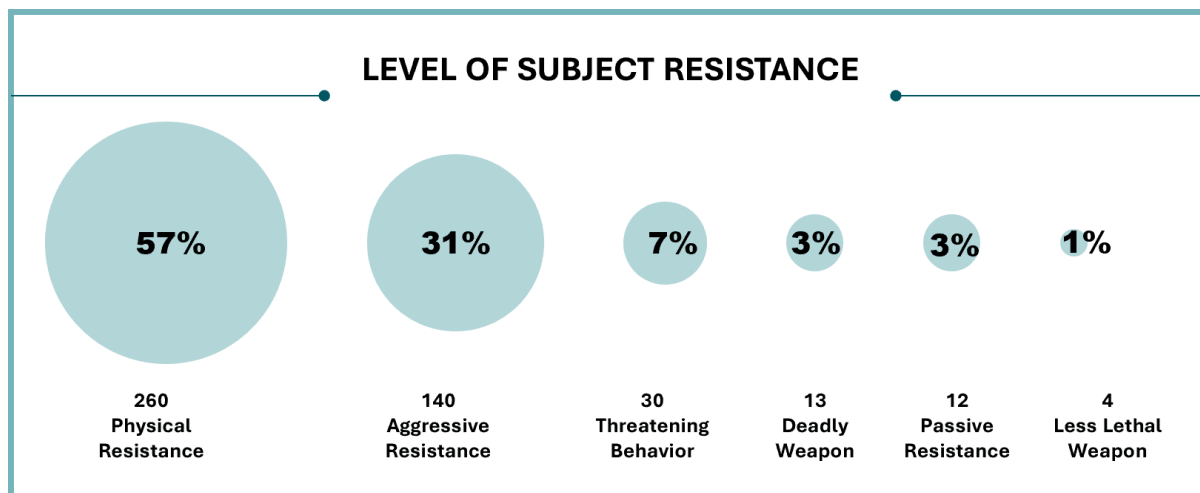
- By far the most frequent weapon type option reported by officers was *unknown*. In 640 (40%) of the 1,593 events, the officers reported the weapon was *unknown*.
- Officers in 253 events (16 percent) reported a knife, blade, or stabbing instrument as the only weapon.
- Officers in 182 events (11 percent)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

Perceived Weapons



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.



We believe that the accuracy of the officers' perceptions of persons being armed and whether those perceptions are confirmed is important, especially for training purposes. Additionally, the accuracy is important to members of the community who may be subject to searches/force because the officer perceives a weapon. This data may also provide some insights on the prevalence of the types of weapons in the community.

#3 THE DUTY MANUAL SHOULD PROVIDE GUIDANCE THAT A SEARCH OF A PERSON INCIDENT TO ARREST APPLIES ONLY AND SOLEY TO FULL CUSTODIAL ARRESTS

- We recommend that Duty Manual section L 4901 should expressly limit search incident to arrest to those situations in which a full custodial arrest is made. The current language does not make this requirement clear.
- Alternatively, if the Department deems that an officer can search for a bookable offense when there is no custodial arrest, we recommend that this be memorialized in the Duty Manual so there is no ambiguity about officers' engaging in such conduct.

The Fourth Amendment of the U.S. Constitution controls when police can search persons. The police are allowed to conduct a *frisk* or *pat search* of detained persons. To conduct a *pat search*, the office must have articulable facts that reasonably support a belief that the suspect is armed and dangerous. *Terry v Ohio* (1968) 392 U.S. 1, 21. The *pat search* is limited to an exploration of the outer clothing to determine whether the suspect is carrying weapons, such as guns, knives or other hidden instruments. *People v Collins* (1970) 1 Cal.3d 658, 662. *Pat searches* are generally viewed as minimally intrusive searches which ensure officer safety.

To reduce the dangers posed by a suspect whose freedom of movement will be clipped by an arrest, and to make it harder for arrestee to destroy evidence, the courts allow officers to make a search known as *search incident to arrest*. *United States v. Robinson* (1973) 414 U.S. 218, 235. *Knowles v Iowa* (1998) 525 U.S. 113, 116. A search *incident to arrest* is entirely distinct from a *pat search*. A search *incident to arrest* is more intrusive; officers can search the entire person, including outer/inner clothing, and remove items from pockets. It extends to any container or article in the suspect's possession.

These requirements must be met:²⁵

#1 Lawful arrest:
the suspect must have
been lawfully arrested.

#2 Custodial arrest:
the arrest must have
been custodial in
nature

#3 Contemporaneous
search:
the search must have
been contemporaneous
with the arrest

If these three requirements co-exist, the officer may conduct a search of the person. A lawful search incident to arrest is usually limited to the person and immediate surroundings of a suspect who is being lawfully arrested.

#2 Custodial arrest:
the arrest must have
been custodial in
nature

Our concern focuses on the second element – custodial arrest. A custodial arrest means that the officers must have decided to transport the arrestee to jail, a police station or other place of confinement or treatment, i.e., he will not be cited and released at the scene. This requirement was imposed because the main justification for these searches is the increased danger that necessarily results from the extended exposure

which follows the taking of a suspect into custody and the attendant proximity, stress and uncertainty.²⁶

The key California case is Macabeo in which the California Supreme Court concluded plainly: There is no exception for a search incident to citation.²⁷ The court analyzed precedent and concluded the authority to search *derives from* taking a defendant into custody. Courts have since reaffirmed Macabo's central holding.

The elemental requirement of a custodial arrest is outlined by the Alameda County District Attorney in their 2021 publication *Point of View*. The full article is provided in the appendix.

Because an arrest becomes *custodial* when the officers decide **to transport the arrestee**, the search will also be permitted if officers had decided to take the arrestee to a detox facility, mental health facility, or hospital. An arrest of a minor is *custodial* if the arrestee will be taken to school, home, a curfew center; or will be taken into protective custody. Even if an arrestee is transported despite no statutory authorization, the arrest is nevertheless *custodial* because

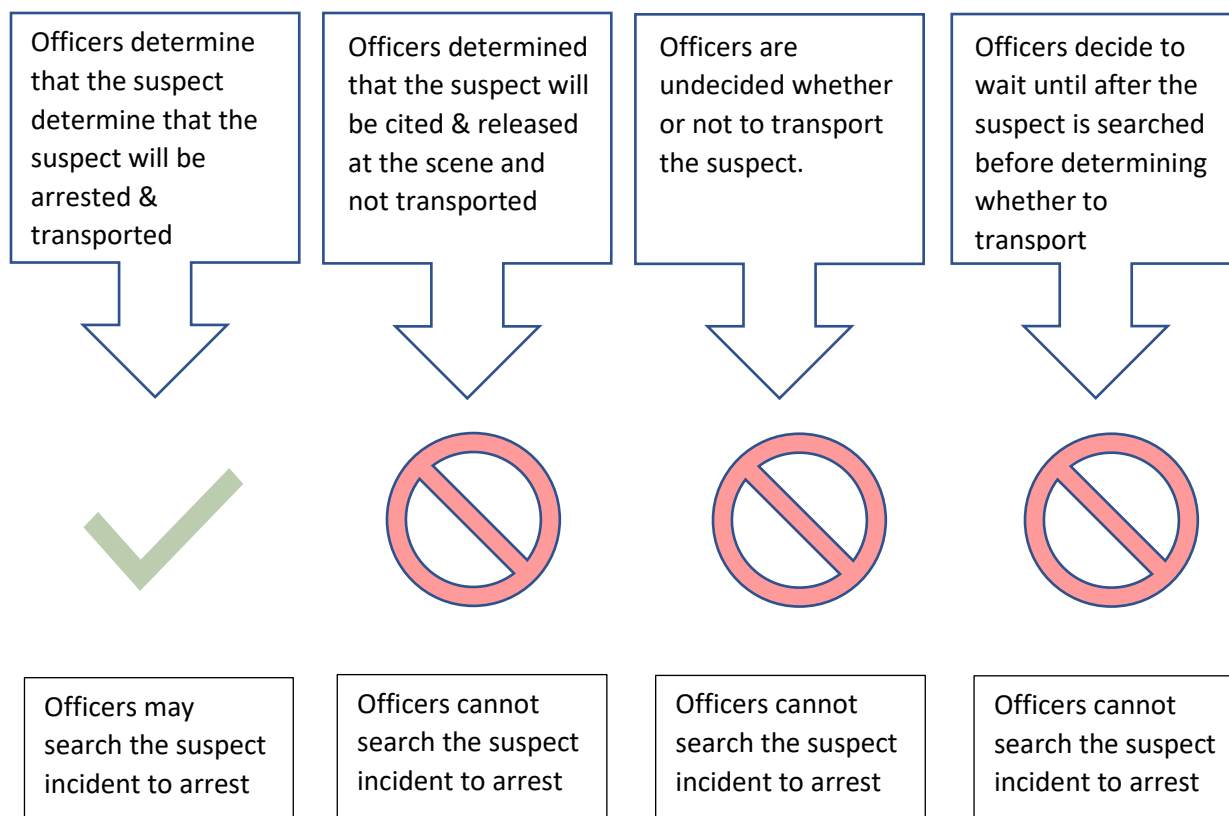
it is the decision to transport the arrestee - not the statutory authority - to do so **that justifies the search**.

On the other hand, an arrest will not be deemed *custodial*
(1) if the officers had decided not to transport the suspect or
(2) if the officers had not yet decided to what to do.



Thus, an officer cannot support his decision as to whether to transport the suspect based on the results of his search. If the officers are undecided as to whether to transport, that determination does not allow the officers to search incident to arrest.

The sequence is simple yet critical.



We recommend that language be added to the Duty Manual Section L 4900 to make clear these requirements. In particular, **L 4901 should expressly limit search incident to arrest to those situations in which a full custodial arrest is made.** The current language does not make this requirement clear.

L 4901 When an arrest occurs, the officers making the arrest may perform a limited search with the areas under control of the arrestee. This means an area within which the arrestee could obtain a weapon or gain possession of evidence. Lacking the presence of emergency circumstances, further warrantless search will not be conducted.

This recommendation does not apply to searches of vehicles after the driver and/or passenger has been arrested. The guidelines of searching a car do not precisely overlap with those a searching an arrestee.²⁸

#4 THE DEPARTMENT SHOULD PROVIDE GUIDANCE ABOUT OFFICER DISCRETION WHEN COMPELLING CITIZENS TO EXIT CARS TO SIGN CITATIONS

We recommend that the Department should provide guidance to its officers on how to exercise discretion when compelling citizen to exist car to sign citations.

- That guidance should include the principle that officer discretion should be exercised judiciously and uniformly throughout the city.

- In addition, the practice of directing drivers to exit cars in order to sign traffic citations should be equal throughout the city.

If a car has been lawfully detained for a traffic violation, the police officers can order drivers to get out of the car without violating the Fourth Amendment proscription of unreasonable search and seizure. According to the Supreme Court, during a traffic stop the concerns about the safety of the police officer are legitimate and substantial; the intrusion placed upon the driver exiting the car is a *mere inconvenience*. *Pennsylvania v. Mimms* (1977) 434 U.S. 106.

Officers can and often do ask occupants out of cars at beginning of stop. At this stage, the officer's subjective opinion concerning his safety is legitimate and substantial.

Less frequently, officers can and do ask occupants out of car *during* the car stop. At this stage, the officer may have developed concern about his safety based on the interaction with the occupants and/or plain view search.

Even less frequently, officer can and do ask occupants out of car at the *end* of the stop and direct them to the patrol car to sign the citation. Why is this concerning? Because the longer the driver sits in the car, the officer's concerns about his safety are more attenuated. Common sense dictates that, had the officer felt unsafe, he would have removed the occupants from the car at the start of the encounter or soon thereafter. Likewise, the intrusion placed on the driver is now more than a mere inconvenience. The location at which a citation is signed should be the place most expedient to terminating the encounter. Ordering a driver out of the car and to the patrol car unleashes a cascade of potential consequences:

- It unduly prolongs the detention
- May result in the officer's prerogative to conduct a pat search of the driver for weapons
- The officer's placing hands on the driver may result in the driver's tensing and/or pulling away
- The driver's tensing and/or pulling away may result in the officer using more force and/or handcuffing the driver and/or criminal charges for resisting arrest.

We are not disputing the discretion of the officer to ask the driver to exit the car to sign a citation. However, some in the community might view this conduct as harassment or a pretext to engage in a pat search or to gain a wider plain view search of the car's interior.²⁹ We are asserting that the Department and its officers should be aware of the public's perception of this conduct when instructing its officers how to exercise discretion in such situations. An officer's discretion should be exercised judiciously and uniformly throughout the city. In addition, the practice of directing drivers to exit cars in order to sign traffic citations should be equal throughout the city.

As one subject officer explained, *I ask **everyone** outside to my vehicle to sign citations, I like to get people out of their comfort zones due to officer safety concerns and case law.*

Duty Manual C 1305 EQUALITY OF ENFORCEMENT

People throughout the city have a need for protection, administered by fair and impartial law enforcement. As a person moves about the city, that person must be able to expect a similar police response to his/her behavior — wherever it occurs. When laws are not evenly enforced, a reduction in respect and resistance to law enforcement follows. The element of even handedness is implicit in uniform enforcement of law. The amount of force or the method employed to secure compliance with the law is governed by the particular situation. Similar circumstances require similar treatment — in all areas of the city as well as for all groups or individuals. In this regard department members will strive to provide equal service to all persons in the community.

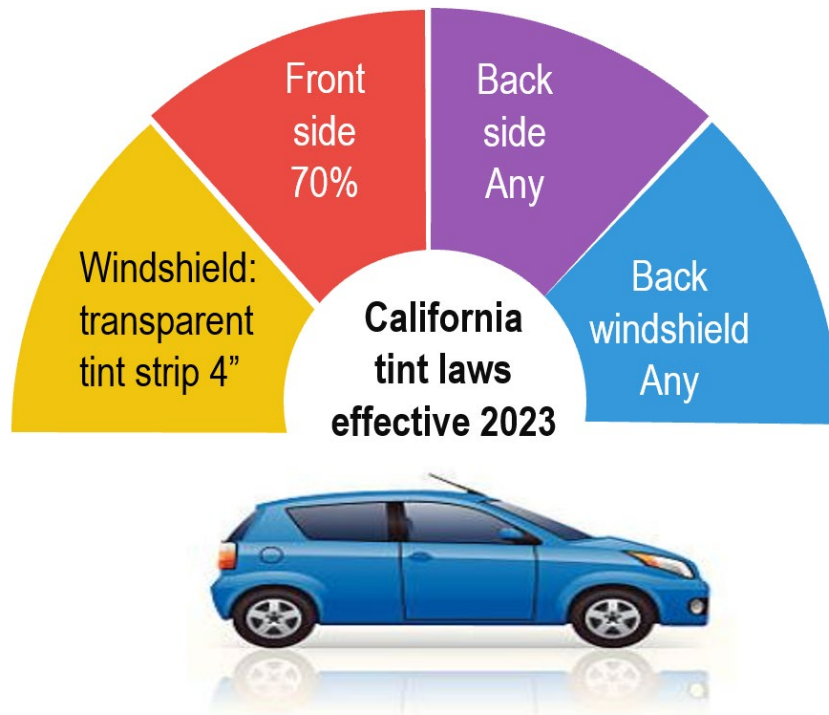
#5 THE DEPARTMENT SHOULD OBTAIN DEVICES TO VERIFY WINDOW TINT PRIOR TO ISSUING A CITATION

- We recommend that the Department obtain window tint measuring devices.
- We recommend that Department require the use of such a device as objective measure to determine whether a citation should be issued.
- We recommend that the Department track (a) stops based on window tint (b) the device results (c) whether a ticket or a warning was issued.

We hear both in complaints and anecdotally that officers often detain and then cite cars based on the tint of the windows or windshield.

In the state of California, there are very specific laws governing the percentage of window tint darkness and reflection an automobile is allowed to have.³⁰ The amount of light which passes through the window of an automobile is measured in Visible Light Transmission (VLT)³¹ percentage. This refers to the amount of light that can pass through the glass as well as the tint film. The 2023 California window tint laws requirements are for the front

windshield and front side windows to have a 70% VLT. California car window tint law has no restriction on how dark the tint on the rear and back side windows can be. However, if the rear window of a vehicle is tinted, it has to have dual side mirrors.



How do officers discern when the tint exceeds state law? SJPd does not require the use of a Window Tint Card or window tint measuring device before issuing a citation for window tint. Furthermore, the Department does not have any of these devices for an officer to use, including those officers in the Traffic Enforcement Unit (TEU).

We are not questioning an officer's discretion to use his/her visual assessment of tint when stopping a car for tint. If the officer has reasonable suspicion to believe the tint is unlawful, he/she may stop the car.

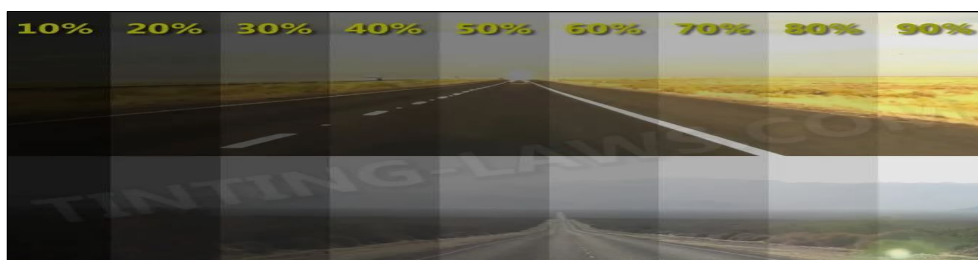
Officer may use **reasonable suspicion** to stop and temporarily detain the car to determine if the tint is unlawful.

However, requiring the use of such a device would provide an objective measure to determine whether a citation should be issued. Using such a device would allow greater confidence in the public that an officer's concerns about the amount of tint is legitimate. The results would provide immediate feedback to the officer on whether probable cause to cite exist. Documenting the results of the device on the officer's BWC and on the ticket would provide data dispelling concerns about the detention being harassing or pretextual.³² Such documentation could lead to the difference in the driver being cited with a fix-it ticket or infraction which entails money, time and effort or being released without a ticket. Once the tint level is confirmed, the officer should not unduly prolong the detention.

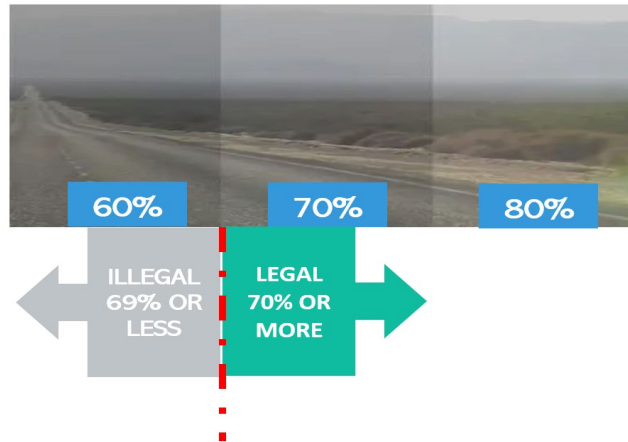
Officers should use a tint measuring device to confirm the tint level before issuing a citation based on **probable cause**.



While the range of VLT from 10% to 90% tint is fairly obvious:



The range of VLT from 60% to 80% is not as obvious.³³ Mechanical devices provide a method to precisely measure what the human eye may not readily discern. This is particularly true if the detention occurs at night, or in poor lights or bad weather.



We recommend that the Department research how other law enforcement entities train and deploy window tint measuring devices. These battery-powered devices appear to be both small and lightweight. The price for one device purchased on-line is approximately \$150.³⁴ Presumably the Department would be able to find a lower price if purchasing in bulk.



Inspector II tint meter
\$179
Product Dimensions:
3.75 x 1.25 x 1.75 inches;
3.2 Ounces

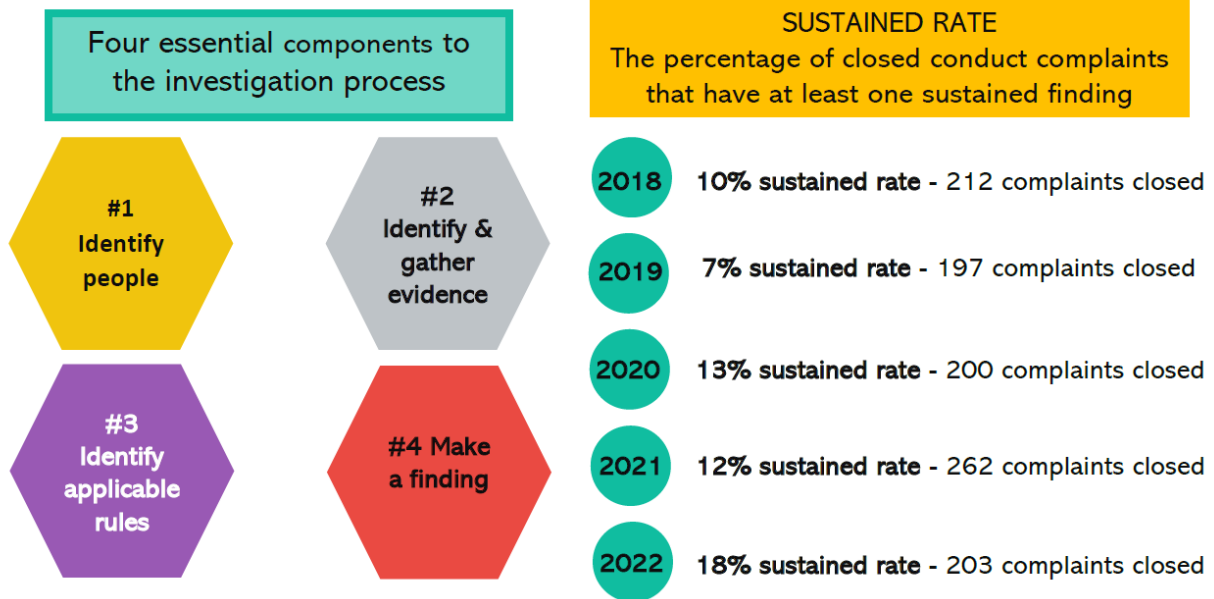
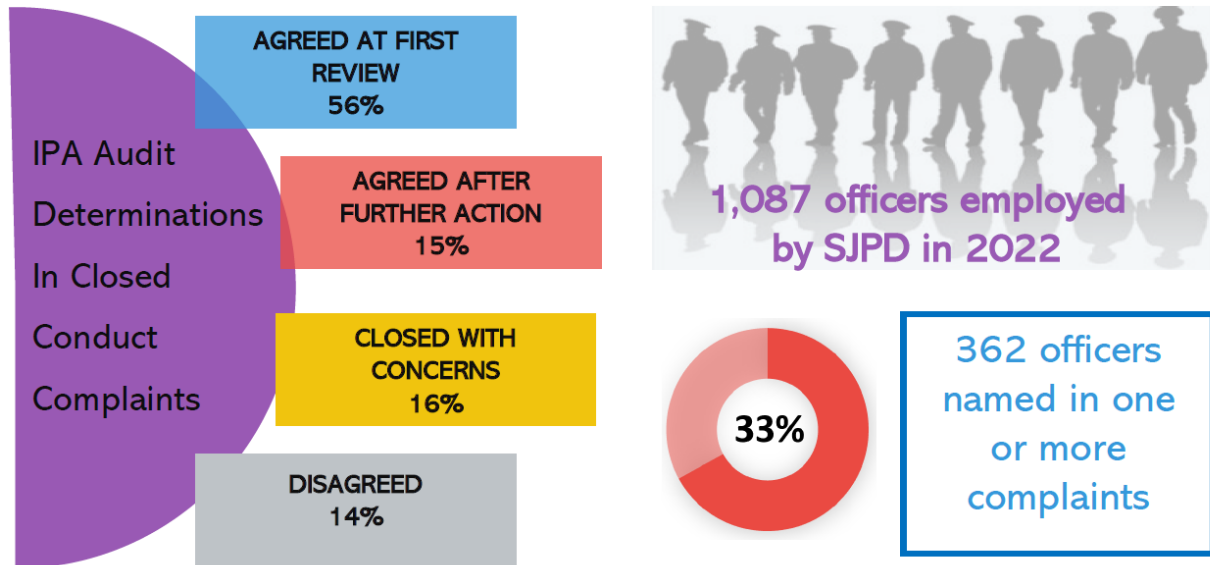


Inspector II tint meter
\$179
Product Dimensions:
3.75 x 1.25 x 1.75 inches;
3.2 Ounces



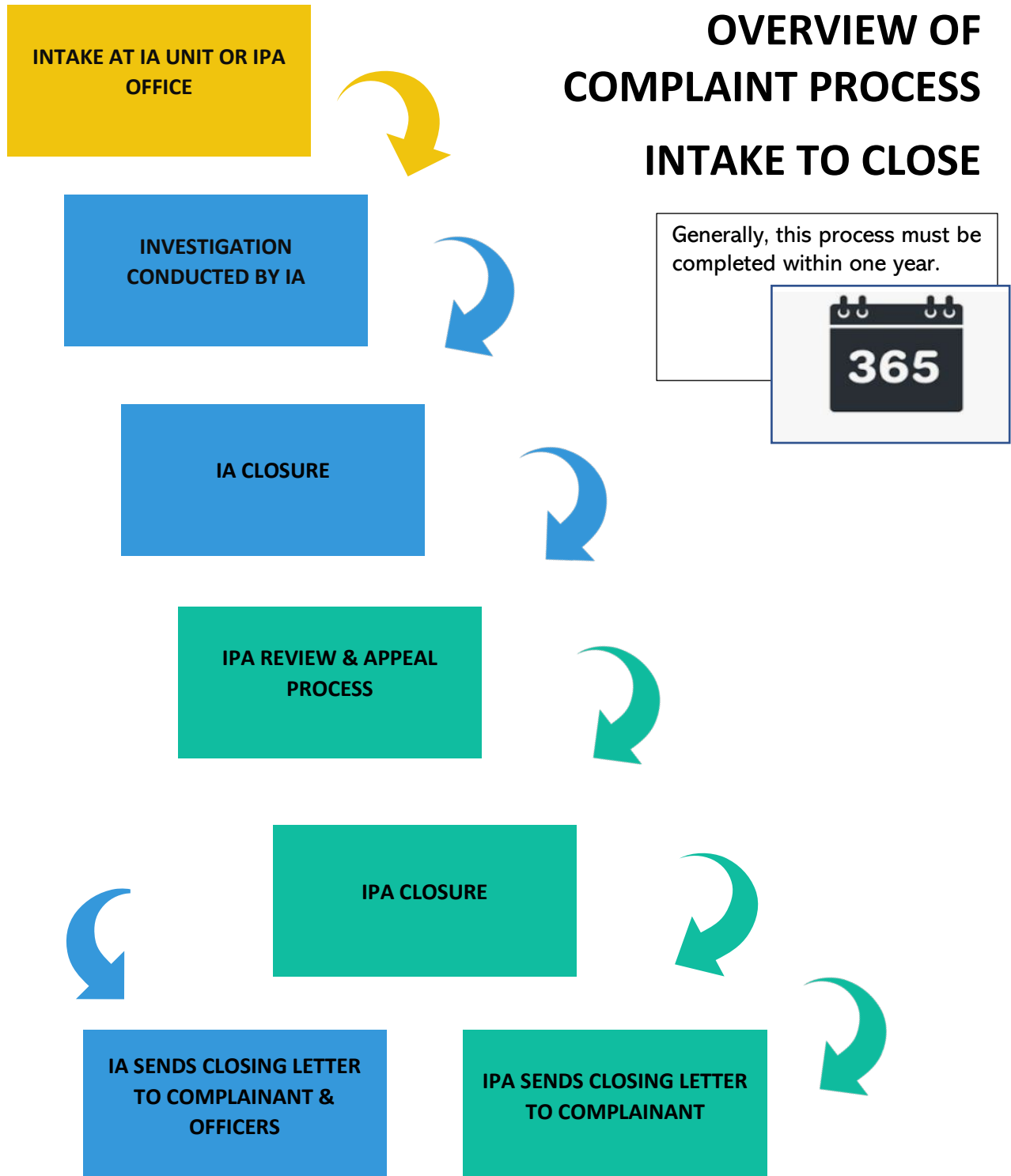
RockRose portable solar
tester meter
\$109.95
7.13 x 4.17 x 1.93 inches;
5.82 Ounces

STATISTICS FOR CALENDAR YEAR 2022



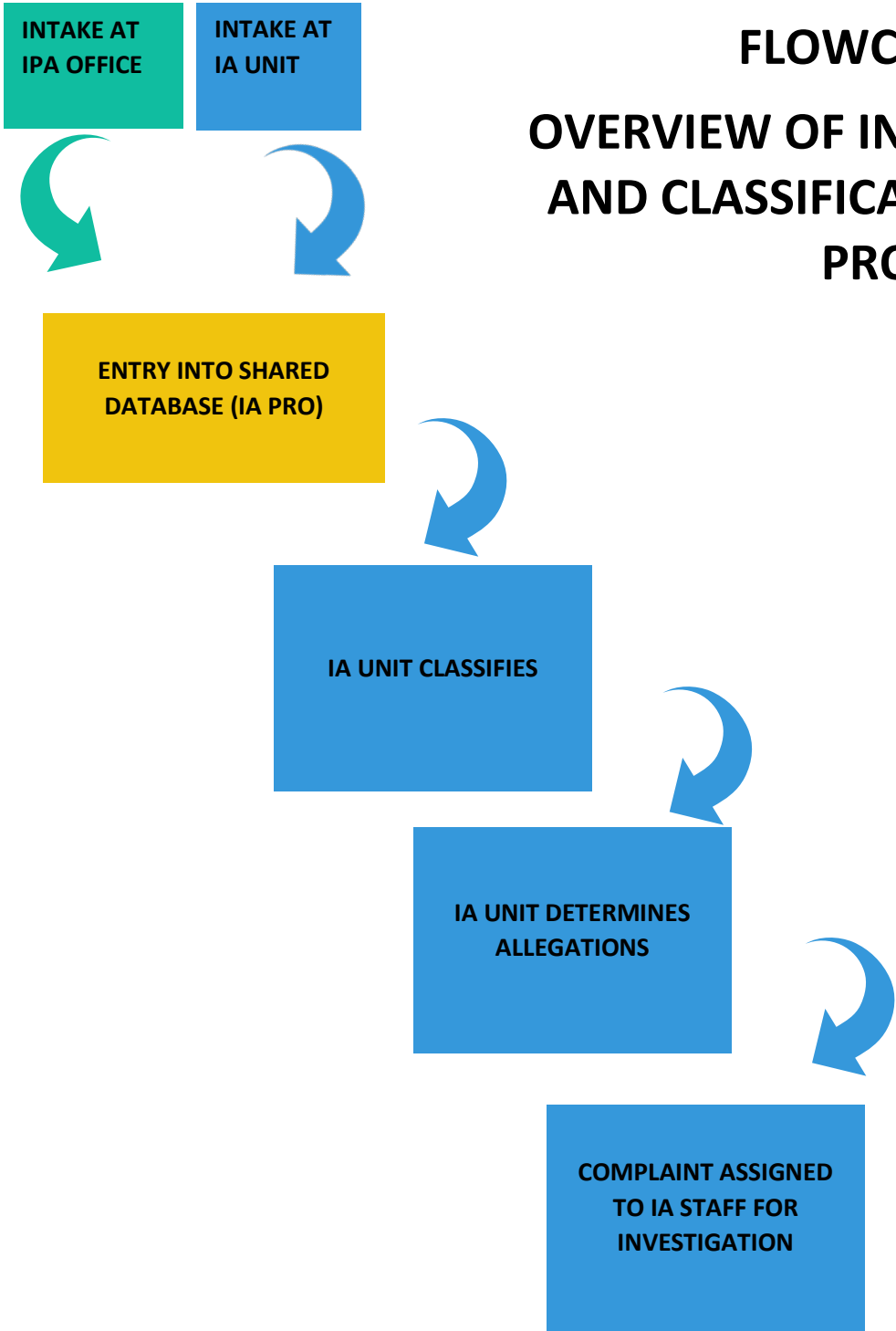
OVERVIEW OF COMPLAINT PROCESS

INTAKE TO CLOSE



FLOWCHART

OVERVIEW OF INTAKE AND CLASSIFICATION PROCESS



Next Flowchart:
IA investigation

INTAKE AT IA UNIT OR AT THE IPA OFFICE

INTAKE PROCESS

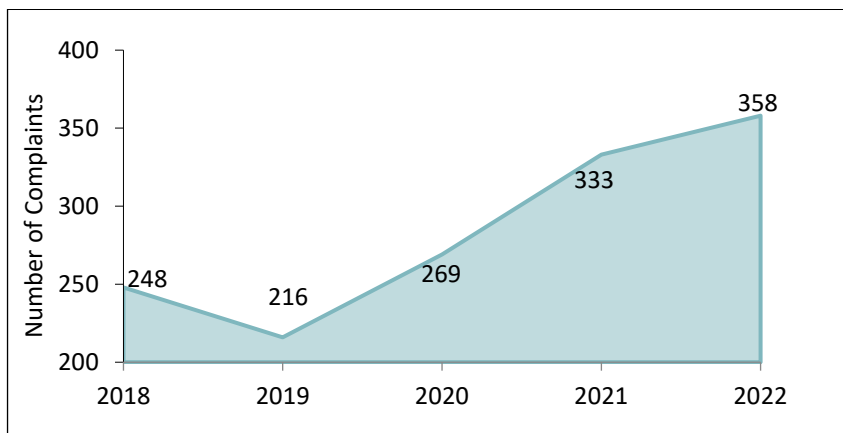
The complaint process begins when a member of the public files a complaint about a San José Police Department (SJPd) officer(s) or an SJPd policy. **Complaints** submitted by community members are distinct from investigations initiated by the Department (**DIIs**) which will be discussed later in this chapter.

Complaints can be filed either with the IPA or with the Internal Affairs (IA) Unit of SJPd. For the past five years, a majority of complaints have been filed with the IA Unit. Anyone can file a complaint regardless of age, immigration status, or city of residence. It does not matter whether the complainant was directly involved in the incident, observed the incident as a bystander, or learned about the incident on the news or through word of mouth. **Anyone can file a complaint.** Complainants may also choose to remain anonymous.

During the intake process, IPA staff or IA staff will take a statement from the complainant. This statement is recorded (with the complainant's permission) to ensure that the complainant's account of the incident is documented accurately. IPA staff review every contact to ensure that each concern about misconduct is properly captured and classified. IPA staff will also send an acknowledgment of receipt to any complainant who provides their contact information. The complaint is then entered into a shared IA/IPA database. This initial process is called **intake**.

In 2022, a total of 358 complaints and concerns were filed by members of the community. An additional 55 complaints were initiated by the Department against one of its sworn employees.

Illustration A: Complaints Received — Five Year Overview (2018-2022)*



*Excluding Department-Initiated Investigations

WHY EACH COMPLAINT MATTERS



Police Accountability

Every time a complaint is filed, the complaint must be reviewed by the Police Department, regardless of the alleged severity.



Counseling

If an officer receives too many complaints, the officer will receive mandatory Intervention Counseling by the Police Department to identify and correct problematic behaviors.



Mediation

Many times, complainants say they want to discuss their complaints directly with the officers. Mediation provides a confidential and respectful setting for both the complainant and the officer to discuss the incident candidly in the presence of a mediator.



Unbiased Review

IPA staff provides an unbiased review to ensure that the Police Department's investigations and analyses of the allegations are fair, thorough, and objective.



Trends

One way the IPA can determine if a certain police practice has become a trend in the community is if members of the public voice their concerns and file complaints.



Policy Changes

When civilians voice concerns about SJPDP policies, the IPA has the unique opportunity to make policy recommendations to the Police Department. Many of our recommendations have had a positive impact on policing in the City.

HOW TO REACH THE IPA OFFICE



Fax to:
408-977-1053



U.S. Mail to
96 N. Third St., Suite 150
SJ, 95112



On-line complaint form:
www.sanjoseca.gov/ipa



In Person at:
96 N. Third St., Suite 150
SJ, 95112



Telephone
408-794-6226



Email to
ipa@sanjoseca.gov

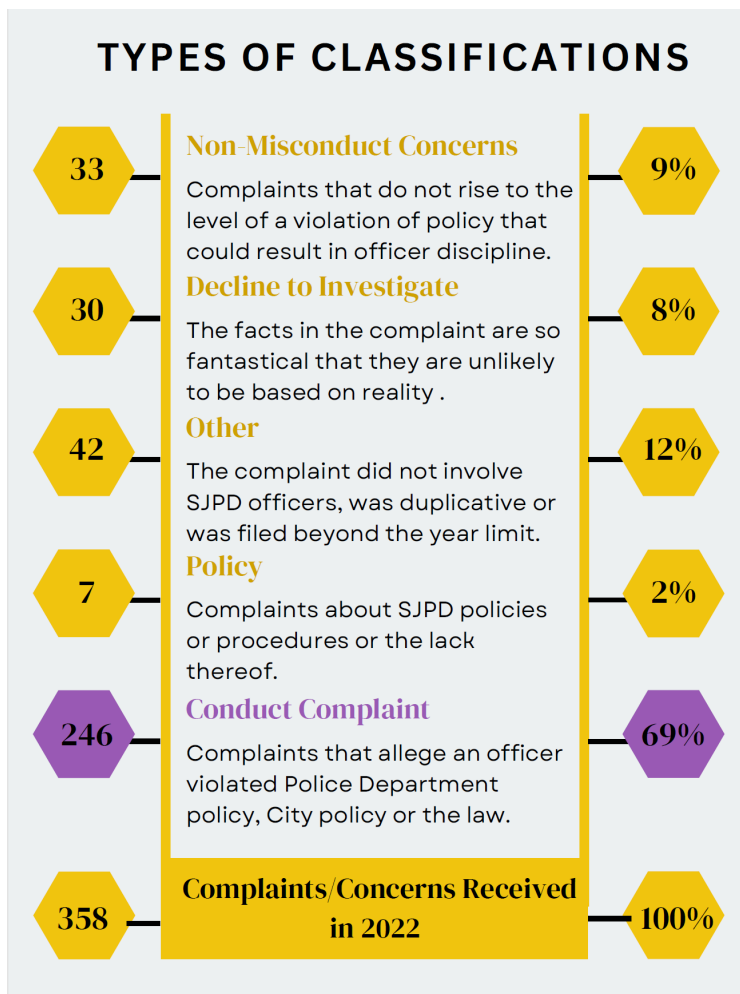
◀ Prior: Entry into shared data base

IA Unit classifies

THE CLASSIFICATION PROCESS

▶ Next: IA unit determines allegations

After the complaint has been entered into the shared database (IA Pro), IA staff will classify the complaint based on the subject matter of the complaint and whether a full investigation is warranted. There are five classifications. Only complaints classified as Conduct Complaints are subject to a full investigation. IPA staff review the Department's decisions early in the process and can appeal if the classification is not appropriate.



▶ Next: IA unit determines allegations for conduct complaints

◀ Prior: IA unit classifies

IA Unit adds
allegations

ADDING ALLEGATION PROCESS

▶ Next: IA Unit investigates

Conduct Complaints contain one or more allegations. An *allegation* is an unproven 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 assertions made by the complainant.

There were 246 Conduct Complaints filed in 2022. These Conduct Complaints contained 802 distinct allegations. The number of allegations always exceed the number of complaints because a complainant may raise multiple issues of concern within a single complaint. For example, a person may complain that one officer engaged in several types of misconduct during one traffic stop, such as being rude, searching the car, and acting in a biased manner [three separate allegations]. As a different example, a person may complain that several officers engaged in one type of misconduct during an encounter, such as three officers each using excessive force [three separate allegations].

The number of Conduct Complaint increased from 2021 to 2022; however, the number of allegations contained in those complaints decreased over the same time period.

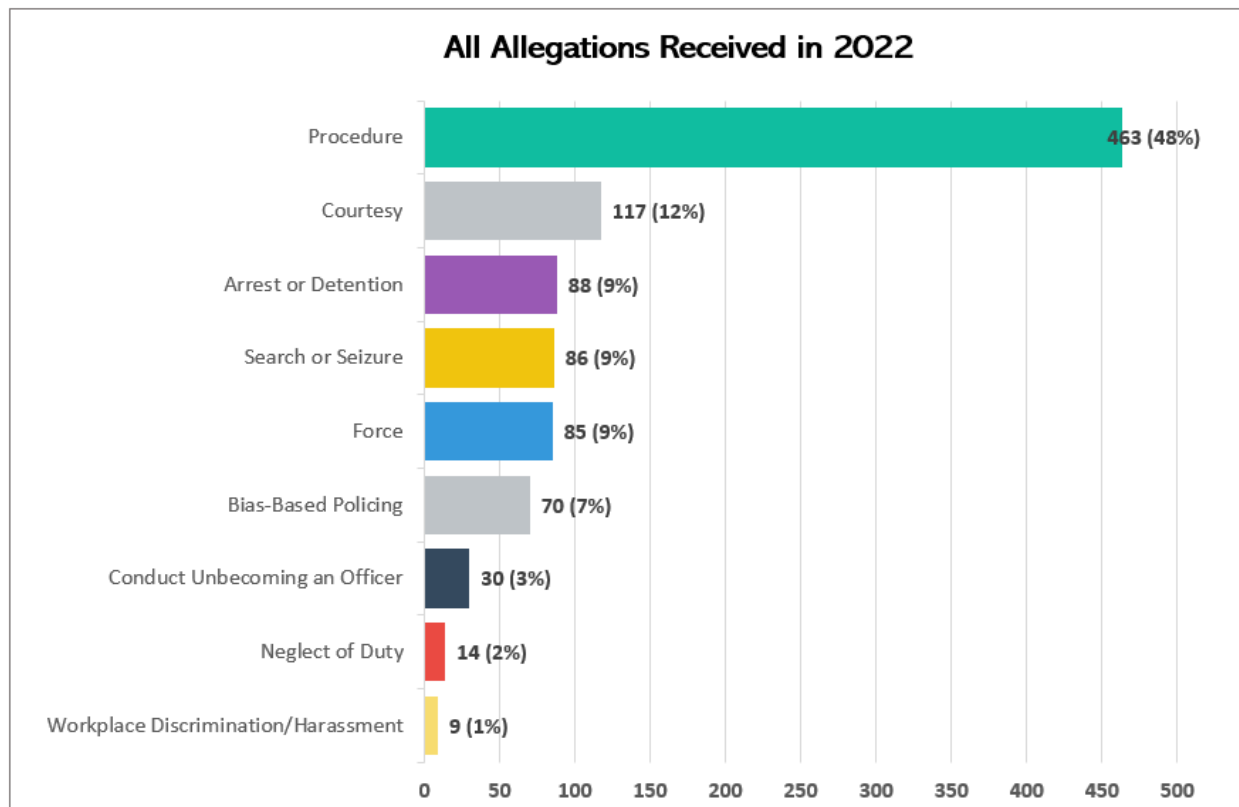
- ▣ IA adds allegations
 - ▶ allegation definitions

ALLEGATIONS and their DEFINITIONS

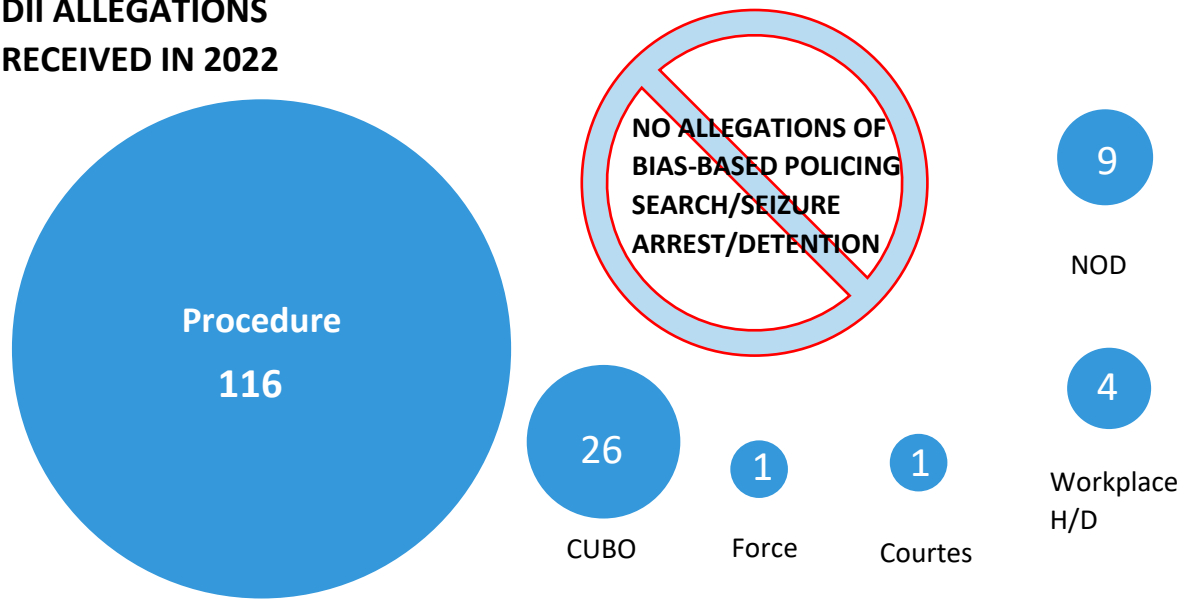
PROCEDURE	An officer did not follow appropriate policy, procedure or the law	463 allegations received 48% of total allegations received
COURTESY	Officers were not courteous and professional OR officers failed to control their tempers or exercise utmost patience	117 allegations received 12% of total allegations received
ARREST OR DETENTION	An arrest lacked probable cause, or a detention lacked reasonable suspicion	88 allegations received 9% of total allegations received
SEARCH OR SEIZURE	A search or seizure violated the 4th Amendment of the U.S. Constitution	86 allegations received 9% of total allegations received
FORCE	The officer used force that was not objectively reasonable as defined by SJPD Duty Manual section L 2602.	85 allegations received 9% of total allegations received
BIAS-BASED POLICING	An allegation that an officer engaged in conduct based on a person's protected status, e.g., race, sex, etc.	70 allegations received 7% of total allegations received
CONDUCT UNBECOMING OFFICER	A reasonable person would find the officer's conduct unbecoming a police officer, and such conduct reflects adversely on the Department	30 allegations received 3% of total allegations received
NEGLECT OF DUTY	An officer failed to take action required by law, policies, or procedure	14 allegations received 1% of total allegations received

See DM section C 1723 for precise wording

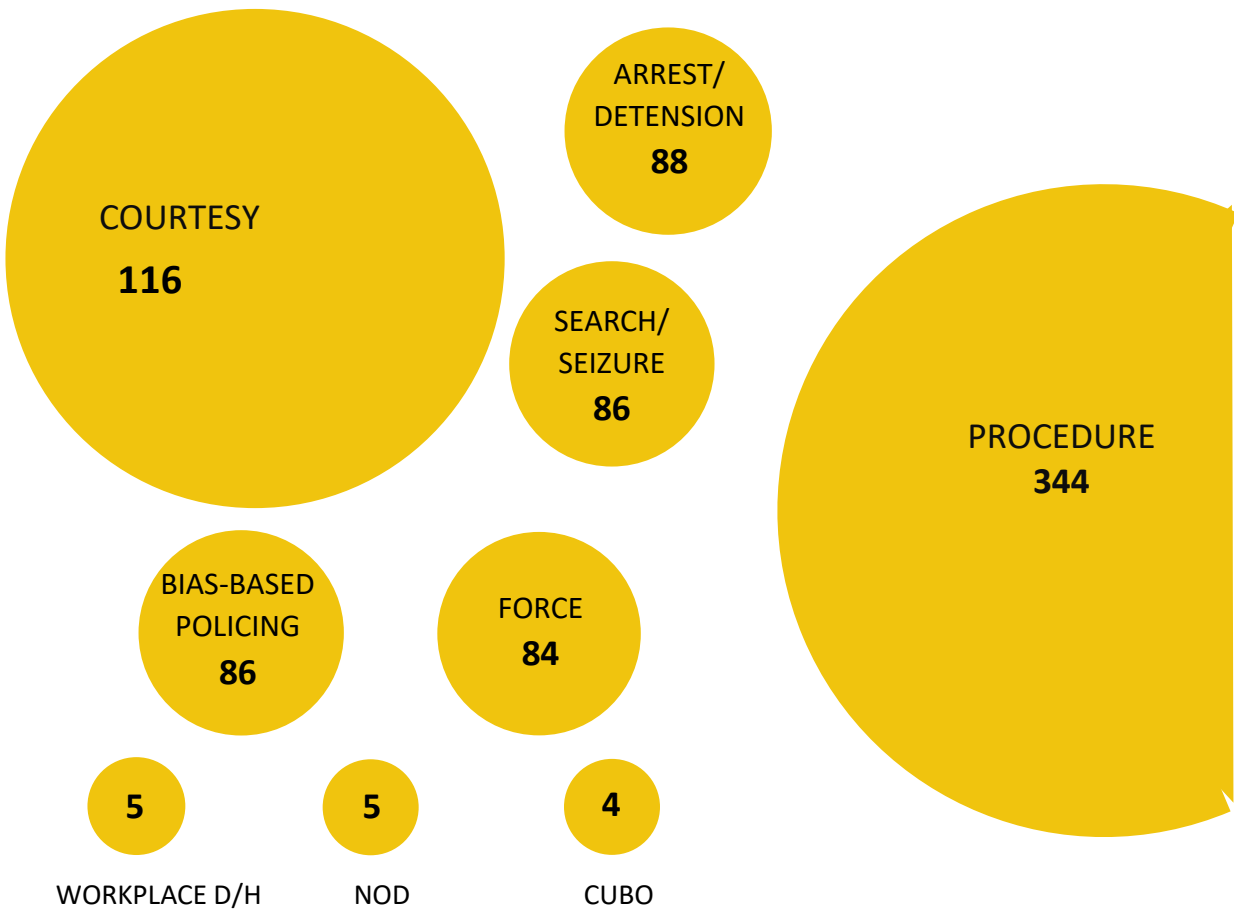
☐ IA adds allegations
 ► allegation definitions

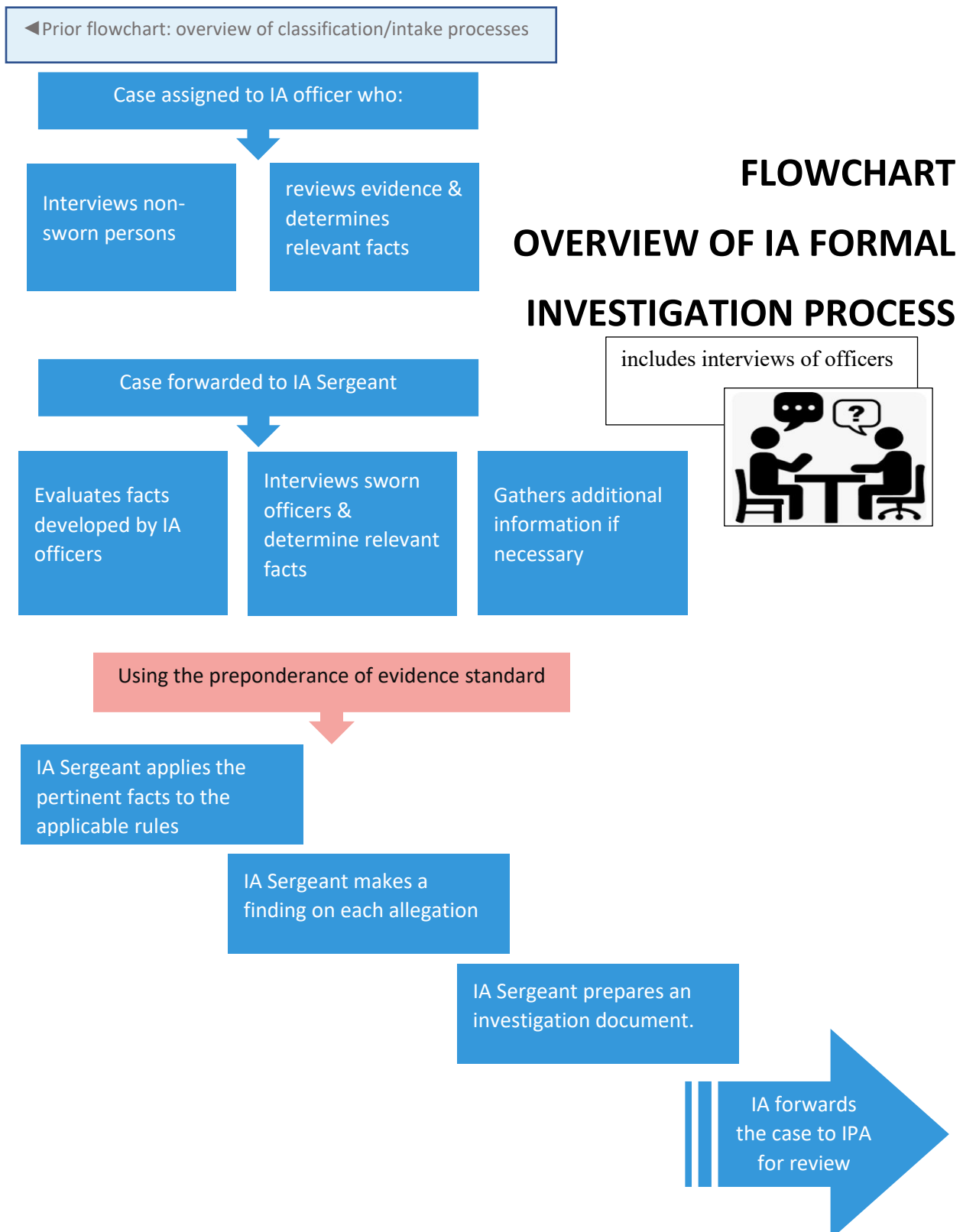


DII ALLEGATIONS RECEIVED IN 2022



CONDUCT COMPLAINT ALLEGATIONS RECEIVED IN 2022



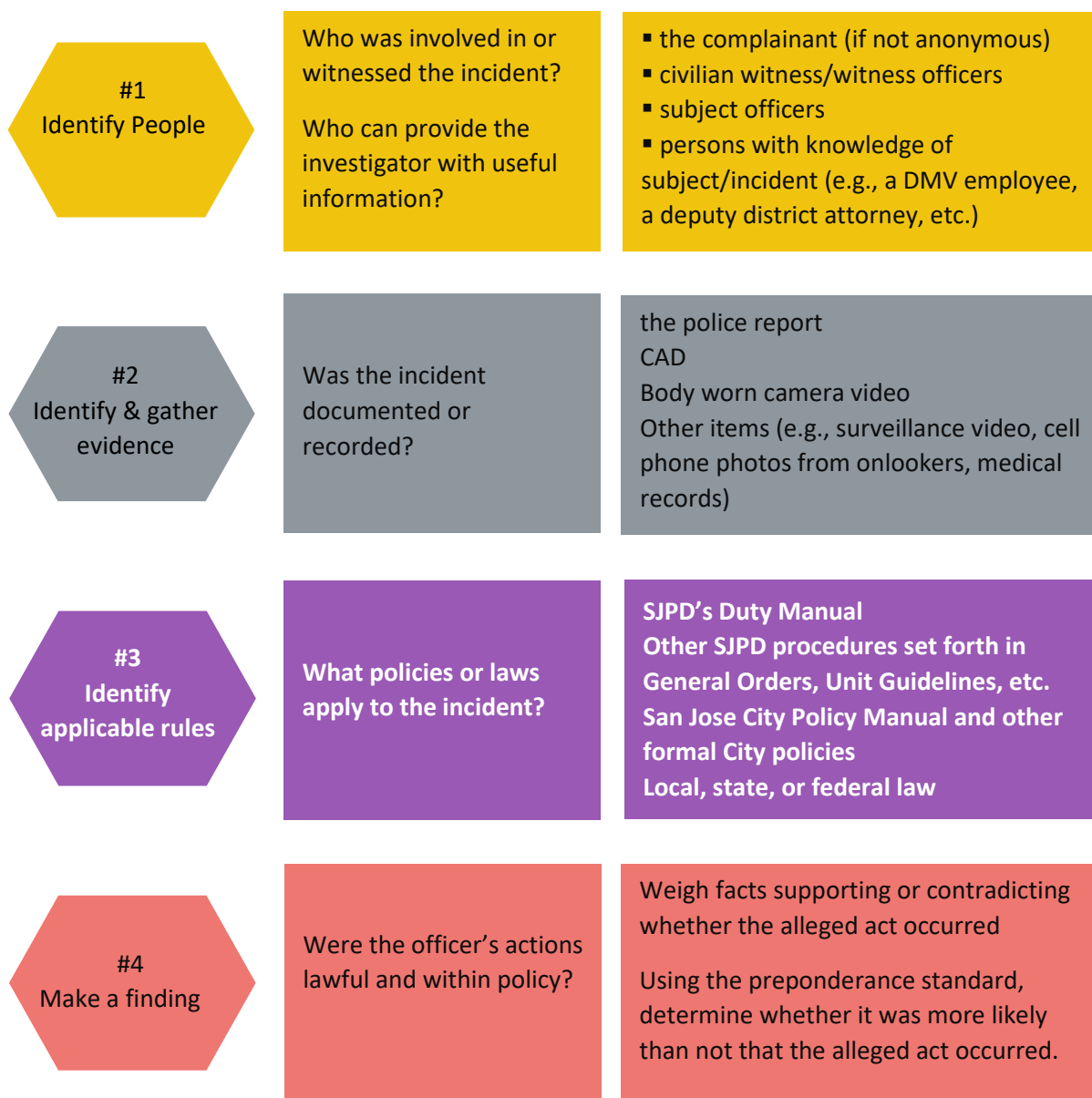


IMPORTANT FACT

The Police Department's Internal Affairs Unit has the sole authority to investigate police misconduct. 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. 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.

FOUR Essential components to the INVESTIGATION PROCESS



See IPA review & appeal flowchart

◀ Prior: IA forwards case for IPA review

IPA reviews IA case investigation & supporting documentation/analysis. What do we look for?

Seven essential elements:

- timeliness
- allegations
- documentation
- interviews
- analysis
- application of policy to facts
- use of preponderance standard

At a group staff meeting, IPA staff discusses IA's investigation and analysis of the case.

Four factors are key:

**#1 WAS IA'S INVESTIGATION
FAIR?**

**#2 WAS IA'S INVESTIGATION
COMPLETE?**

**#3 WAS IA'S INVESTIGATION
THOROUGH?**

**#4 WAS IA'S INVESTIGATION
OBJECTIVE?**

If there are concerns about one or more of the four factors, the IPA may appeal.
If there are no concerns, the IPA will close the case.

OVERVIEW

IPA REVIEW PROCESS

WHAT WE LOOK FOR

Our officer reviews IA investigations to ensure they are fair, objective, thorough and complete. We do this by considering a number of factors some of which are included in this chart.



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.

— Agreed After Further Action —

IPA requested that IA complete additional investigation and/or analysis and IA provided a satisfactory response to that request.

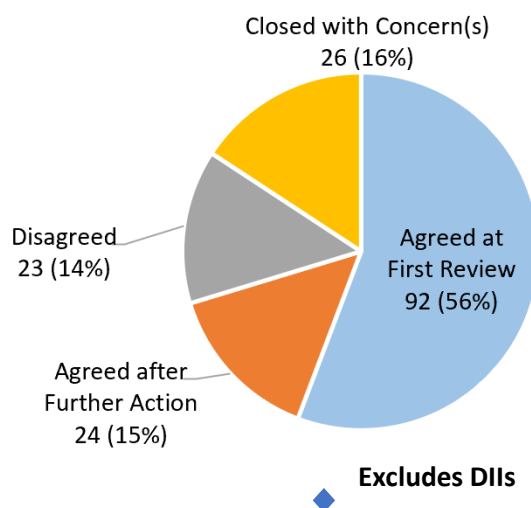
— Closed with Concerns —

The IPA had issues with IA's investigation and/or analysis, but the concerns did not warrant a formal disagreement.

— Disagreed —

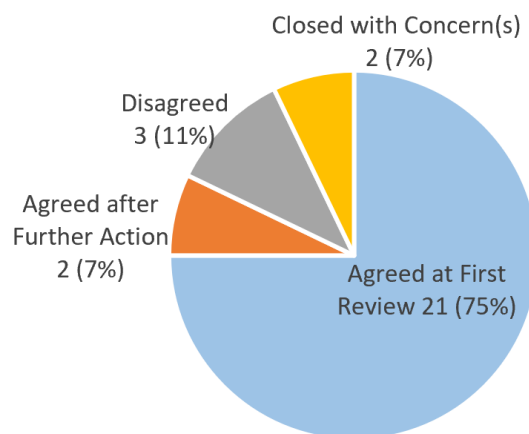
The IPA determined that IA's investigation and/or analysis were not thorough, complete, objective, and fair.

IPA Determinations in Conduct Complaints in 2022



Upon first review, the IPA agreed that the IA investigation was fair, thorough and complete in 56% of conduct complaints closed in 2022. This is a significant decline from prior years (72% in 2021, 71% in 2020, and 84% in 2019).

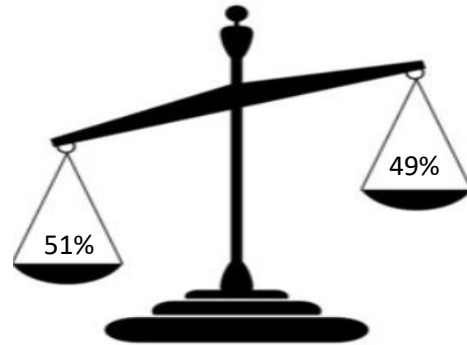
IPA Determinations in Closed DII Investigations



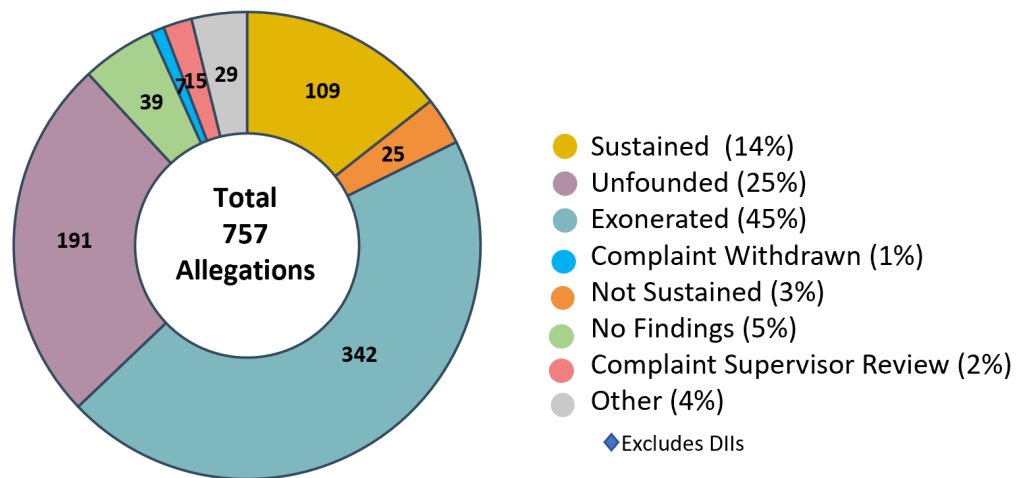
The IPA agreed that the IA investigation of DII complaints was fair, thorough and complete in 77% of the cases closed in 2022.

COMPLAINTS CLOSED IN 2022

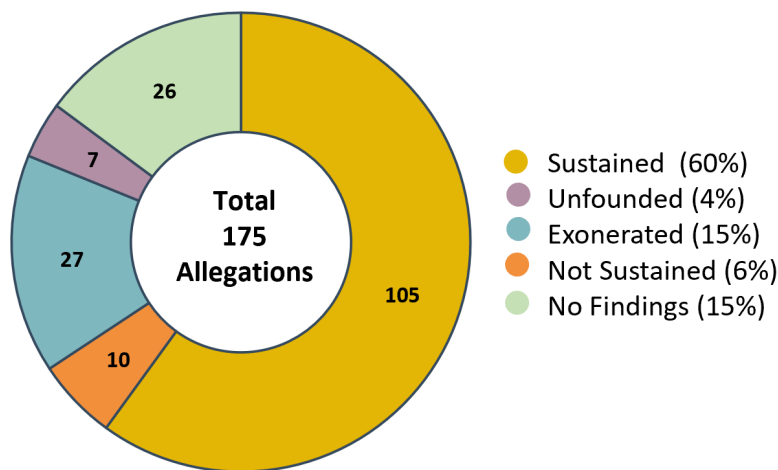
In each complaint, the Department must make a *finding* of whether the alleged misconduct occurred. Findings are based on an objective analysis using the *preponderance of the evidence* standard. This standard governs the amount of evidence needed in order to make a determination.



Dispositions of Allegations Closed in Conduct Complaints



Dispositions of Allegations Closed in DII Complaints



FINDINGS AND THEIR DEFINITIONS *

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

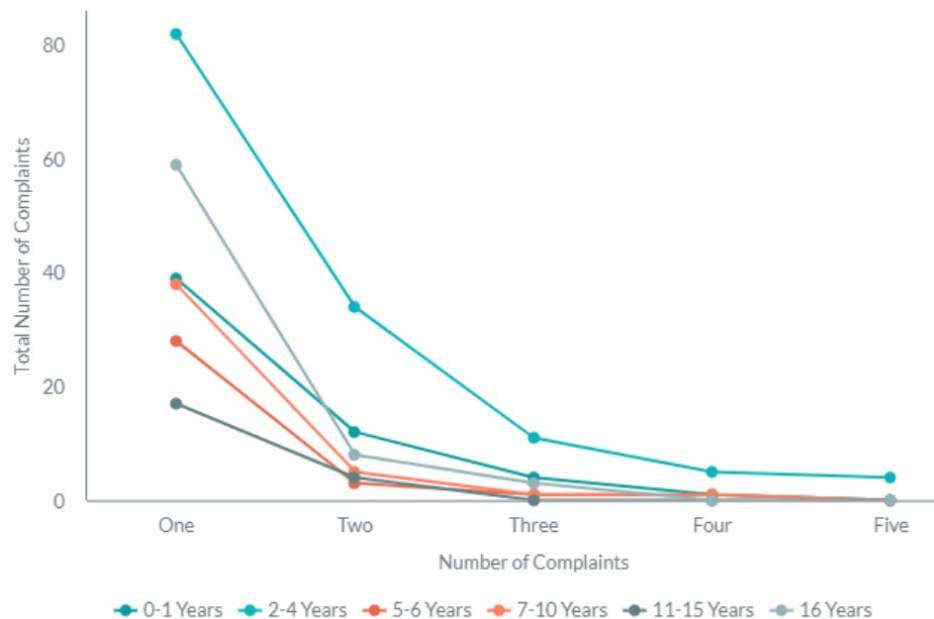
The complainant affirmatively indicates the desire to withdraw their complaint

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

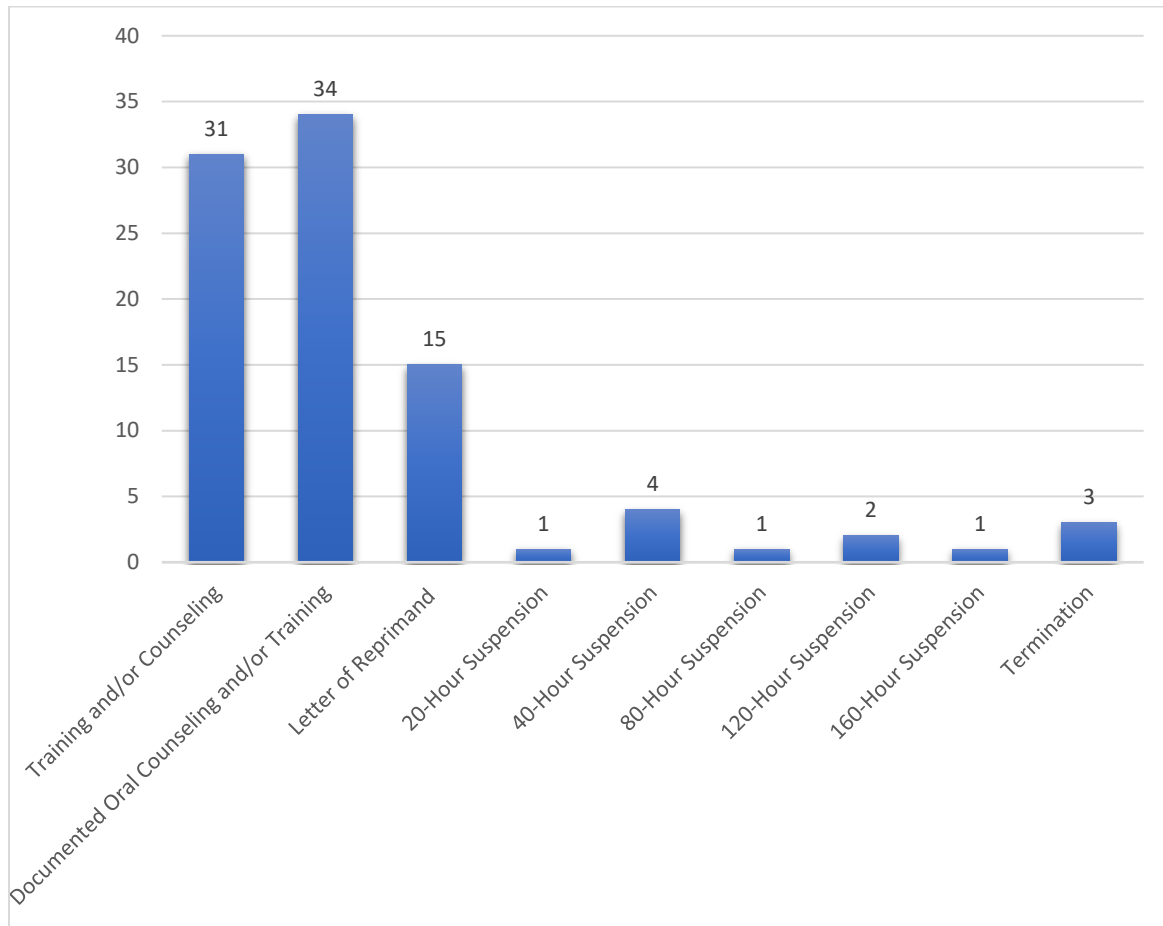
See DM section C 1723 for precise wording.

SJPD Officers Named in One or More Complaints in 2022



**Subject Officers Receiving Complaints
(Years of Experience)**







Type of Discipline Imposed by Department



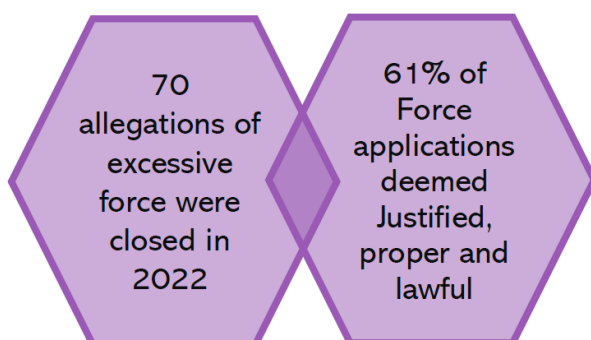
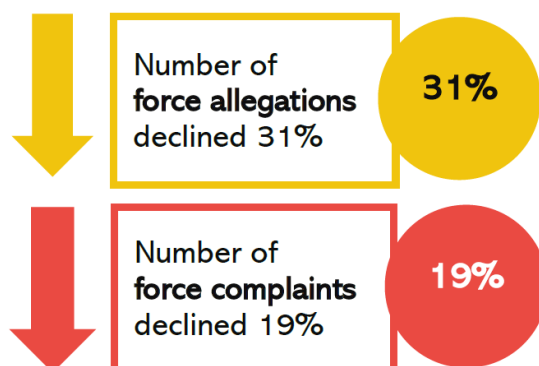
A CLOSER LOOK AT SUSPENSIONS

A suspension is one form of Department discipline. Historically a suspension resulted in officers being off work and without pay for a specified period of time — typically between 10 hours and 180 hours. If there is mutual agreement, the city and the officer may enter into a settlement agreement in which some suspension hours are off work and without pay and the remaining suspension hours are held in abeyance. Officers need not serve the suspension hours in abeyance as long as the officer follows the details of the settlement agreement. The terms of these agreements generally indicate the officer must refrain from engaging in the type of misconduct which led to the suspension for a certain period of time, usually two to three years. If the officer complies with the agreement, the hours held in abeyance are cancelled.

However, under the most recent agreement with the police Officers Association, officers no longer must serve suspension hours off work and without pay. Instead, this new MOU provision allows for suspensions to be *served* via a one-step pay reduction rather than the officer being sent home without pay. Thus, during the time an officer is *on suspension* the officer continues to receive a paycheck, does not lose out on their benefits, and maintains their senior seniority

Discipline Imposed	# of Officers	Disposition	Outcome
20 hours suspension	1 	Disciplinary Settlement for 1 officer	10 hours actual suspension 10 hours suspension held in abeyance
40 hours suspension	4 	Disciplinary Settlement for each officer	20 hours actual suspension 20 hours suspension held in abeyance
80 hours suspension	1 	Disciplinary Settlement for 1 officer	60 hours actual suspension 20 hours suspension held in abeyance
120 hours suspension	1 	Skelly Hearing Hearing for 1 officer	80 hours actual suspension 40 hours suspension held in abeyance
120 hours suspension	1 	No settlement	120 hours actual suspension
160 hours suspension	1 	No settlement	Officer's employment ended before suspension imposed

Chapter 4 Use of Force



See chapter two – recommendation #2

PERCEPTION

Did the officer perceive that the suspect had a weapon?

CONFIRMATION

Did the officer confirm that the suspect was, in fact, armed?

California law created new duties regarding when an officer observes another officer using excessive force



An officer **must report** potential excessive force to a supervisor when observing another officer using force beyond which is reasonable.



An officer **must intercede** when observing the other officer using force that is clearly beyond that which is necessary.

SB 1421 and SB 16 FORCE RECORDS AVAILABLE FOR PUBLIC REVIEW

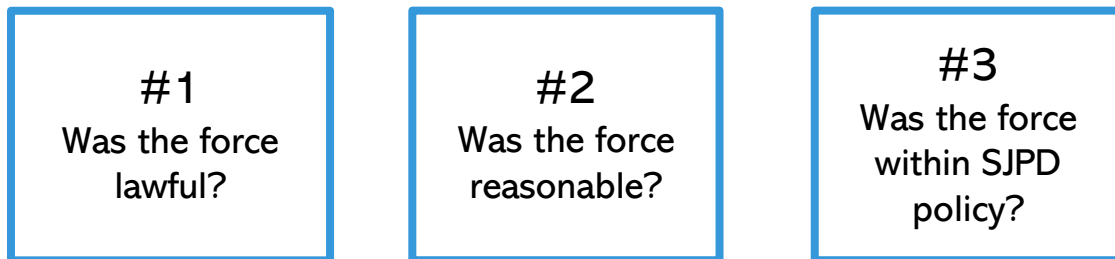
- Use of Firearms
- Use of Force Resulting in death of great bodily injury:
- Great Bodily Injury (GBI): GBI means significant or substantial physical injury.
- Sustained Finding of Excessive Force.
- Sustained Finding on Failure to Intervene

USE OF FORCE

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.

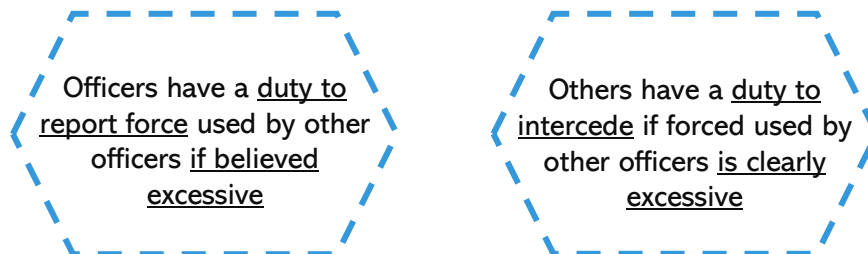
An examination of force must answer these three questions:



The investigation must examine all relevant factors including:

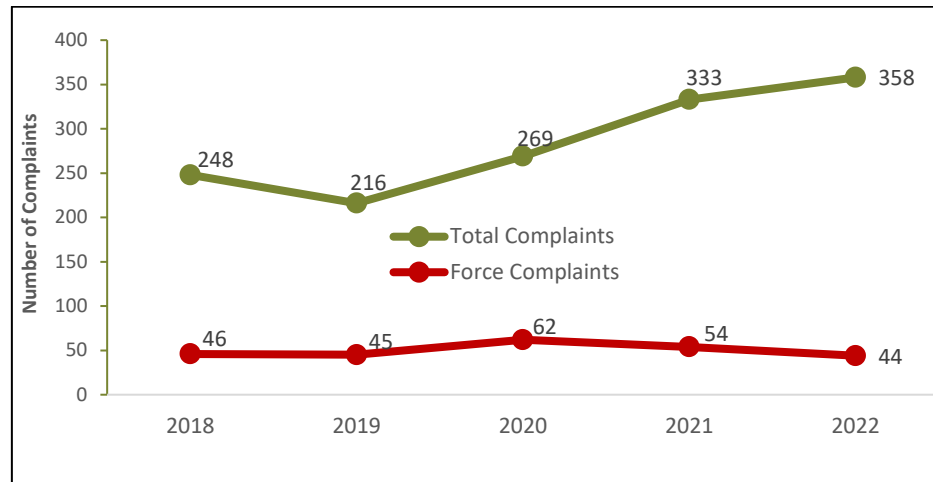


The investigation should also consider the duties of officers who do not use force:



A Force Complaint is a complaint that includes one or more allegations of excessive force. Force complaints usually represent about 12% (44 out of 358) of all complaints filed.

Force Complaints Received Relative to Total Complaints Received*



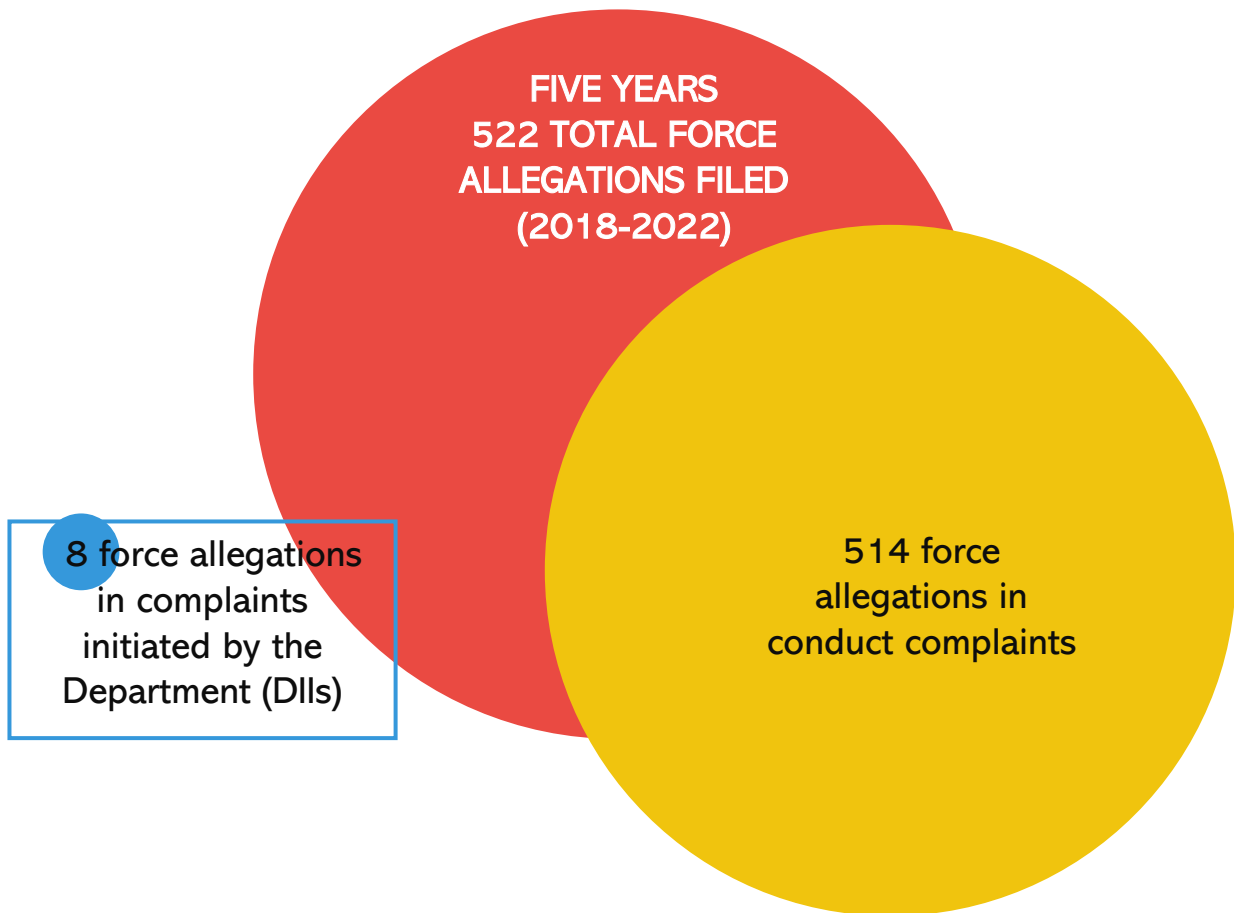
*Conduct Complaints only

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 (2018-2022).

Complaints received in 2022 showed a decline in Force allegation*

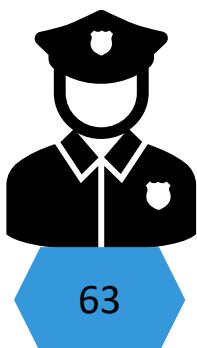
Year	Total Force Allegations	Total Force Complaints	Total Number of Complaints	Force Complaints As % of Total Complaints
2018	98	46	248	19%
2019	100	45	216	21%
2020	111	62	269	23%
2021	121	54	333	16%
2022	84	44	358	12%

*Conduct Complaints only

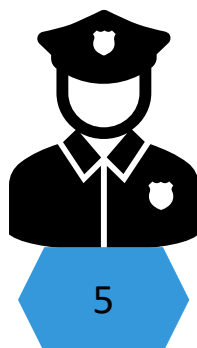


Each complaint may name one or multiple subject officers

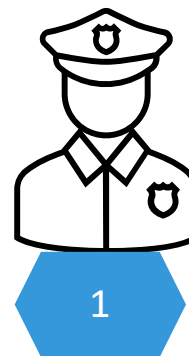
63 officers
named in 1 force
complaint



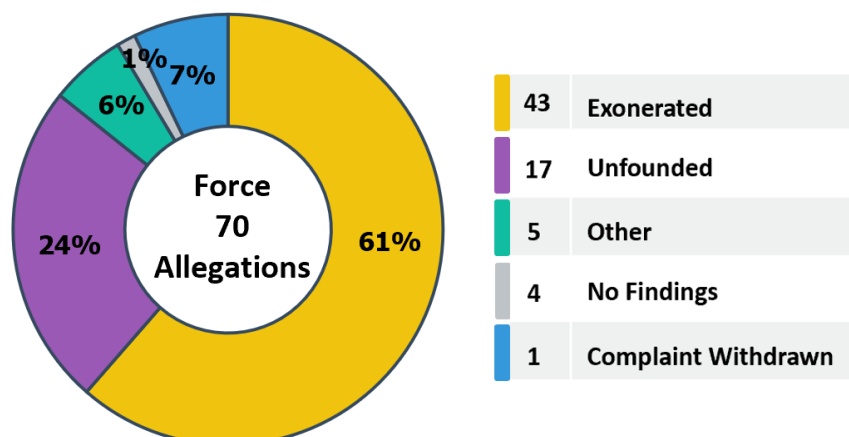
5 officers named
in 2 force
complaint



1 officer named in 1
force complaint initiated
by the Department



DISPOSITIONS OF ALL FORCE ALLEGATIONS CLOSED in 2022



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)

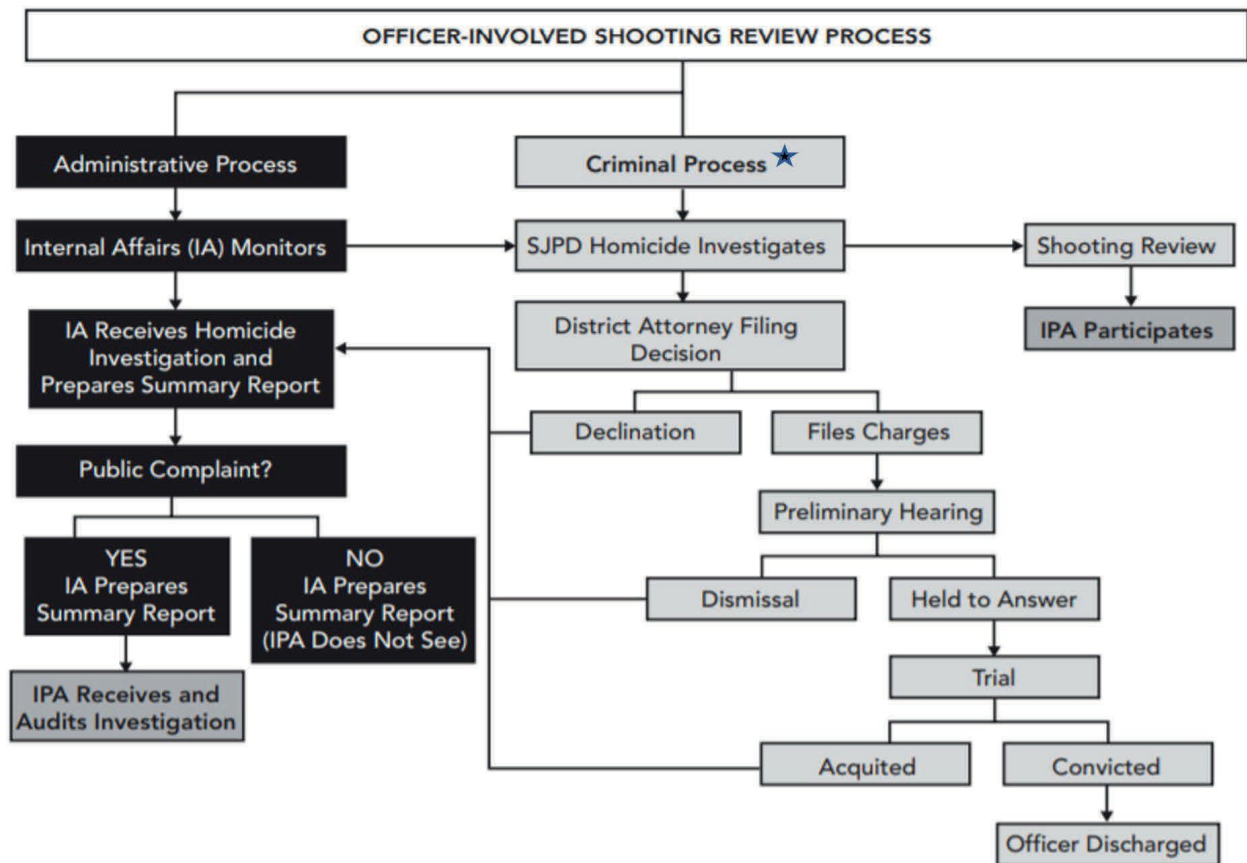
SJPD Officer-Involved Shooting Investigations & Review Panels

- **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.

- **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.

Officer-Involved Shootings



OFFICER-INVOLVED SHOOTING INCIDENTS IN 2022

OIS No. 1	Race of suspect --	White
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	Handgun
	Prior convictions --	Yes
	On probation or parole --	Yes
	Known mental health history --	None
	CIT on scene --	Yes
	Number of officers who fired weapon --	4
	Involved officer(s) experience --	21 years, 8 years, 6 years, 5 years
OIS No. 2	Race of suspect --	African American
	Gender --	Male
	Deceased or injured --	Injured
	Armed --	Handgun
	Prior convictions --	No
	On probation or parole --	No
	Known mental health history --	None
	CIT on scene --	Yes
	Number of officers who fired weapon --	1
	Involved officer(s) experience --	4 years
OIS No. 3	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	Handgun
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	None
	CIT on scene --	Yes
	Number of officers who fired weapon --	2
	Involved officer(s) experience --	27 years, 4 years

STATE OIS INVESTIGATIONS - UPDATE ON ASSEMBLY BILL 1506

In our 2021 Year End Report, we outlined, a new law with potentially big impacts. Historically, officer-involved shooting (OIS) incidents in California have been handled by local law enforcement agencies and the state's 58 district attorneys within the County where the incident occurred.

AB 1506 turned 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.³⁵ When a qualifying incident occurs, CaPSIT team members deploy to the incident scene. Team members coordinate with local responding agencies throughout the investigation of the OIS. CaPSIT members serve as concurrent, independent investigators of these OIS incidents. Once the initial investigation is completed, the matter is turned over to the California DOJ's Special Prosecutions Section within the Criminal Law Division for review.

When appropriate, the DOJ will disseminate relevant information and materials about covered incidents and, ultimately, make public its determinations whether criminal charges are or are not appropriate.³⁶ Cases that have been completed by the DOJ will be added to the case archive webpage.³⁷ 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.³⁸

On November 3, 2022, California Attorney General Rob Bonta announced the result of the DOJ's first investigation and review under California Assembly Bill 1506. This first investigation concerned the death of Matthew James Silva who was shot and killed by Los Angeles Police Department officers on July 15, 2021.³⁹ As of April 2023, the AG has completed its investigation of two incidents and those reports are available online.⁴⁰ In addition, 33 other incidents are currently under investigation; details about these cases are available online.⁴¹ Recently, there has been criticism about the speed of these DOJ investigations.⁴²



IPA AUDITS IN 2022 — A FOCUS ON TRANSPARENCY

The complaints outlined below were closed by IA and audited by the IPA in 2022. 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.

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 we 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 we 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, we 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, we will close as DISAGREE.

CLOSE AS DISAGREE – CASE #1

Summary:

In January 2022, at approximately midnight, a blue Chevy Tahoe entered the parking lot at the police administrative building. Shortly thereafter, a dark blue BMW entered the same parking lot. The BMW parked next to the Chevy Tahoe. Some minutes later, the two female occupants of the BMW, flagged down Officers A and B who were speaking with unrelated persons in the parking lot about a separate incident.

The women claimed that the man in the blue Chevy Tahoe parked next to them stole one of their wallets. Simultaneously, the driver in the Chevy Tahoe attempted to flee the parking lot. Officer B ordered the driver to park the Chevy and he complied.

When questioned, the driver of the Chevy Tahoe told the following

- 1) he did not know the two women
- 2) he did not have their wallet
- 3) he had driven to the SJPD parking lot to sleep because he had consumed *a few beers* [the officers had not observed any symptoms of intoxication.]

While the alleged theft was investigated, the driver identified to himself to Officer B as a retired SJPD officer currently serving as a reserve officer for the department. [Note: Seven days after this incident, Reserve Officer X resigned from his position as a reserve officer.]

Officer A requested additional fill officers and Officers C and D arrived.

During their investigation into the theft of the wallet, the officers learned that the two women were massage therapists hired by Reserve Officer X after meeting him online. Earlier in the evening, Reserve Officer X had met the women at the Wyndham Hotel. During their encounter at the hotel, Reserve Officer X discovered that the women were *not girls*. This caused him to leave the hotel without paying the women \$120 they had requested for their services. Reserve Officer X then drove to the police station. Reserve Officer X told Officer B that one of the women *must have been pissed cause I didn't give her the money. That's why she came over here.*

The women told officers that they were not associated with any business and instead were *independent, private* massage therapists. The women stated they travelled to San José from Fresno, where they reside.

Unable to determine the location of the woman's wallet, Reserve Officer X was allowed to leave the scene. The women were provided a case receipt.

On January 27, 2022, Lieutenant L1 issued a memo **recommending that a Department Initiated Investigation (DII) be opened** against four San José full-time officers, Officers A, B, C and D. No recommendation was made that Reserve Officer X's conduct be investigated.⁴³

Department-Initiated Investigation and Analysis:

The investigation was assigned to Lt. L2 who was serving in the Bureau of Field Operations (BFO) and not within the Internal Affairs Unit. The scope of the investigation included neglect of duty allegations and a procedure allegation against the four subject officers who were on scene that night.

All four subject officers were interviewed. No notice of these interviews was provided to the IPA. Hence IPA staff could neither attend nor question the officers. Moreover, no documented attempts were made to interview Reserve Officer X, who had resigned.

The investigation into the four subject officers resulted in the following findings:

- Neglect of Duty: Failing to properly investigate and report a DUI investigation regarding Reserve Officer X' admission that he had consumed so much alcohol that he had to sleep off the effects of the intoxicant in the police parking lot. All officers were *exonerated*.
- Neglect of Duty: Failing to properly investigate and report a theft case regarding the women's wallet. All officers were *exonerated*.
- Procedure: Failing to notify Internal Affairs of an allegation of a felony/misdemeanor involving a department member [Reserve Officer X]. Three officers were *exonerated*. a single allegation was *sustained* against one officer.

Of great significance is the fact that the BFO Lieutenant **acknowledged in his own investigation that a violation of prostitution may have occurred** between the complaining parties and Reserve Officer X. That analysis states:

Because the statements of the complaining parties changed significantly, it led me to believe the complaining parties believed they were wronged by Mr. X in a way they were unable or unwilling to fully report to officers. Likely because it may have involved illegal activity such as prostitution.

IPA Concerns and Appeal:

The IPA did not contest the findings made against the subject officers. Our concern was that an allegation of failing to investigate prostitution was not included in the BFO investigation. It should have been.

Police officers are entitled to investigate criminal activity when there is ***reasonable suspicion based on the totality of the circumstances*** that a crime has occurred or is ongoing. *Reasonable suspicion* is the lowest legal standard. It permits an officer to take investigatory steps into possible criminal activity as was present here.

Objective facts that provide the basis for *reasonable suspicion* may be gleaned from statements made by individuals. The statements by the parties on scene here provided officers the legal justification to investigate whether prostitution occurred involving a fellow department member.

At the minimum, the apparent violation of San José City Ordinance 6.44.380 limiting when massage may be performed at hotels should have prompted further investigation.⁴⁴

Under closer examination, the statements and explanations of the women which were inconsistent with those of Reserve Officer X should have created a *reasonable suspicion* that prostitution may have occurred.⁴⁵ The IPA is concerned (1) that prostitution involving a department member was not investigated by the four officers, and (2) that the absence of such an investigation was not part of BFO's investigation.

Our initial appeal to the Police Chief requested a new allegation be opened to determine whether the subject officers failed to investigate prostitution involving a former SJPD sergeant/current reserve officer. We did not prejudge the outcome of that investigation. We simply requested that an allegation of potential misconduct be investigated.

Appeals Process And Closure:

Despite our recommendation, the Chief declined to investigate whether SJPD officers failed to investigate a prostitution case involving a reserve officer in January 2022.

The IPA appealed to the City Manager. We contended that there was sufficient indicia of prostitution such that an investigation into prostitution should have been commenced. The City Manager denied the IPA appeal. She reiterated the Chief's statement that there were insufficient facts to add an allegation as to whether prostitution should have been investigated by the officers that evening.

The IPA closed this case as disagree. We believe that irrespective of the facts, both the Chief and the City Manager prejudged the outcome of the allegation by stating that there was no indicia (or *reasonable suspicion*) to investigate the crime. The purpose of the investigation, however, would have focused on the very fact of whether *reasonable suspicion* existed utilizing a preponderance of evidence standard. The IPA was not prejudging the outcome of the allegation investigation. But we felt strongly that an investigation should have commenced to determine the facts.

Since 2018, the SJPD has devoted considerable efforts to shutting down massage business that fail to conform to the governing ordinance.⁴⁶ Issues with the City's regulation of massage establishments was again in the public spotlight when a City inspector was charged in 2020 and later convicted in 2022 of several offenses.⁴⁷

Even with the benefit of hindsight and access to evidence, as well as its own suspicion that the crime of prostitution may have occurred, IA did not investigate whether the subject officers failed to conduct a prostitution investigation into a department member.

Confidence in internal investigations can only be maintained when the veracity of the investigation scales with the seriousness of the allegations or the conduct in question. In July 2022, the Department spoke with local media about SJPD's resolve to identifying and investigating misconduct committed by San José police officers.⁴⁸ When public trust is

undermined by the conduct of officers, it is only exacerbated when the investigatory arm of the department serves to condone, not correct, that conduct.

This Department Initiated Investigation fell short. The Department had a clear opportunity to ensure the investigation was comprehensive. Instead, it chose to ignore examining potential misconduct.

CLOSE AS DISAGREE – CASE #2

Summary:

In July 2021, at approximately 3 a.m., a patrol watch commander responded to a fatal hit-and-run collision that occurred at 3rd Street and Truman Ave. The commander spoke with several officers at the scene including Officer E, who said that she had attempted to conduct a traffic stop on the subject vehicle prior to the collision. Specifically, she tried to initiate a traffic stop when the suspect's car turned right onto Truman Ave. She followed the vehicle for a short distance with lights and sirens, but when she realized the suspect was not going to stop, she stopped her patrol car in the roadway just north of 2nd Street. Officer F pulled up next to her and inquired why she had stopped in the roadway. At that moment, one or both of them heard a collision in the area of Truman Ave and 3rd Street. The officers drove to that location and discovered that the suspect's vehicle had collided with another vehicle ("victim's vehicle").

The watch commander reviewed the reports of both officers E and F and the surveillance videos from several houses and businesses along Truman Ave. He noticed inconsistencies between the officers' verbal statements to their supervisor at the scene and their written reports. As a result, a Department-Initiated Investigation was opened.

Department-Initiated Investigation and Analysis:

The Internal Affairs (IA) Unit staff obtained and analyzed surveillance videos from several houses and businesses along Truman Ave. In addition, they obtained and reviewed GPS data from both officers' vehicles, and also reviewed available body-worn camera (BWC) footage. The IA Unit interviewed both subject officers.

Despite Officer E's innocuous description of the event, the investigation established that she engaged in an unauthorized and unlawful high-speed pursuit which caused a fatal collision between the suspect's vehicle and the victim's vehicle. The impact of the collision was so forceful that it caused the victim's body to be ejected from his vehicle, the body then collided into a parked vehicle on the northeast corner of 3rd Street and Truman Ave. The victim sustained severe injuries and was pronounced dead at the scene. Meanwhile, the suspect fled on foot and was not located. At the accident scene, Officer E failed to provide timely information about the fleeing suspect's description and direction of travel.

Officers' actions during the pursuit

The investigation considered whether both officers had violated Duty Manual sections governing police pursuits. A fundamental element is the speed of a pursuit. SJPD detectives determined that the suspect's vehicle reached over 100 mph as it fled from officer E. The GPS device on officer E's patrol car indicated she drove up to 80 mph while driving on Truman Ave. Officer F's patrol car showed speeds up to 69 mph. Notably, this location is a residential area, and the speed limit is 25 mph. Surveillance and GPS evidence showed that neither officer came to a complete stop at a stop sign located at Truman Ave. and 1st Street. While both officers admitted to slowing down in order to clear the intersection, they also admitted they did not come to a full stop at the stop sign.

Officer E stated in both her interview and police report that there was another uninvolved vehicle between her patrol vehicle and the suspect's vehicle at the beginning of the pursuit. However, surveillance video reveals that officer E travelled directly behind the suspect's vehicle during all pertinent parts of the chase. Officer E stated that she believed the suspect's vehicle would not stop only after the it failed to stop at the stop sign at Truman Ave. and 2nd Street. She then deactivated her emergency lights approximately four houses north of 2nd Street. However, GPS data indicates officer E did not stop until she reached the next intersection, that of Truman Ave. and 3rd Street. Officer E stated she did not witness the accident as she had stopped one block north of the fatal intersection and only heard the sound of a collision when officer F pulled up next to her patrol car. However, the surveillance footage showed that when officer E deactivated her lights and siren, she was approximately 200 feet away from the intersection where the accident occurred. The intersection was well lit and there were no obstructions between her and the suspect vehicle.

Officer's experience and awareness

It is notable that both officers failed to comprehend that they were engaged in a vehicle pursuit or driving "Code 3."⁴⁹ In their interviews, Officers E and F admitted that they had never participated in a vehicle pursuit before; both failed to consider their inexperience and lack of training when they continued to follow the suspect's vehicle at high speeds. Despite the speed of the suspect's car, Officer E failed to recognize that the suspect was intentionally fleeing from her. Instead, she responded by increasing her speed in an attempt to catch up with him.

Communication about actions

Moreover, throughout the duration of her pursuit, Officer E failed to update communications to dispatch that the suspect was fleeing from her and that she was following him. In fact, Officer E did not transmit any radio traffic to during the entire time she was following the suspect's vehicle.⁵⁰

Conduct at the scene

At the scene, Officer E had the opportunity to speak with at least three potential witnesses who were present near the suspect's vehicle. She only spent 19 seconds speaking with them and failed to identify them. In her interview, Officer E indicated that she did not feel safe to interview the witnesses at the scene because the suspect had fled on foot. One of the individuals provided her with a brief description of the suspect and his direction of travel. Officer E then drove around attempting to locate the suspect. She did not transmit any radio traffic during this time to inform others about the suspect's description or her actions.

At the conclusion of its Department-initiated investigation, nine procedure allegations were sent to the finding and recommendation process. Each was *sustained*.⁵¹

IPA Concerns and Appeal:

◆ Preliminary note: The Internal Affairs Unit provided its completed investigation to the IPA for review on June 22, 2022 – only 25 days from the 365-day deadline.

The allegation of Conduct Unbecoming an Officer (CUBO) was not sent through the findings and recommendation process. The IA staff deemed that allegation to be *Exonerated*. We disagreed and appealed initially to the Police Chief and then to City Manager.

IA staff phrased the CUBO allegation as follows:

Did Officer E engage in Conduct Unbecoming an Officer by documenting false information in her police report and by providing a false statement while on scene?

The IA analysis noted that Officer E made several false statements:

In her interview Officer E stated she was shocked when reviewing her BWC and hearing what she initially told the watch commander. With the assistance of her attorney, Officer E indicated that she meant to tell the watch commander she was closer to M Street when she heard the crash.

From reviewing the video surveillance of the incident, Officer E was approaching the Edson Building located at 281 Truman Ave. when the accident occurred. This indicated that Officer E's statement was still false and incorrect. Officer E stated in her interview that she did not intentionally document false information in her report.

Officer E stated in her interview she did not intentionally document false information in her report, but the facts and evidence show otherwise. One could understand one mistake being committed. Officer E documented and provided a tremendous amount of inaccuracies in her police report and in her statement. Her actions were a contributing factor to the collision. The collision caused a person to

***lose their life.** It is unknown why Officer E had so many inaccuracies to her investigation and to her report. [emphasis added]*

By limiting the CUBO allegation to only conduct that occurred at the scene on the incident date, the analysis of the allegation failed to capture the dubious and less-than-truthful statements proffered by Officer E during her IA interview that were either implausible or contrary to body-worn camera (BWC) footage and other video.⁵²

Despite this analysis, IA deemed the CUBO finding to be exonerated because ***the allegations were covered under separate questions/allegations.***

C 1404 CONDUCT UNBECOMING AN OFFICER:

An officer's conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming an officer. [emphasis added]

We contended that the CUBO allegation captures the entirety and gravity of the incident. Separating the officer's conduct in chasing the suspect's car into separate and discrete elements does not address the fact that Officer E engaged in a high-risk car stop – an action afforded to law enforcement only under stringent requirements given the associated fatalities.⁵³ Officer E's combined actions were a contributing factor to a fatal collision.⁵⁴ Moreover, separating them does not address the fact that, at the accident scene, Officer E failed to immediately transmit the suspect's description, direction of travel, and to obtain witness information in a timely manner following a felony hit-and-run.⁵⁵ **Officer E's combined actions both contributed to the fatal collision and the suspect's ability to escape the area.**

We contended that the conduct outlined revealed that a sustained CUBO allegation was warranted. Officer E's combined actions both contributed to the fatal collision and the suspect's ability to escape the area. Reasonable persons would find this conduct unbecoming and it reflects poorly on the Department.

Appeals Process And Closure:

In response to the IPA's appeal, the Police Chief asserted that, *when considering whether CUBO is befitting a circumstance, it is important to understand that CUBO is typically applied to hold an officer accountable for behavior **that is not otherwise specifically described in the Duty Manual.** This section is necessarily vague and subjective, allowing the department to impose discipline for behavior that is unbecoming, but not specifically defined elsewhere.*

The IPA then appealed to the City Manager, presenting four points as the basis for the appeals.

1. The definition of CUBO does not include any language limiting its applicable to behavior *that is not otherwise specifically described in the Duty Manual*.
2. Historically, the Police Chief had not asserted that that CUBO was reserved for behavior not otherwise specially described in the Duty Manual.
3. The Police Chief's assertion did not address the rare instances in which the violation of a Duty Manual section is so egregious that a member of the public would find the behavior unbecoming an officer.
4. The CUBO definition is unique in that it incorporates a community standard, that of a reasonable person. By limiting a CUBO allegation to only that conduct not otherwise covered in other sections of the duty manual unduly rejects community perspective.

The City Manager rejected our arguments that Officer E's conduct met the threshold of conduct unbecoming an officer. The IPA closed this case as disagreed.

CLOSE WITH CONCERNS – CASE #3

Summary:

In July 2021, approximately midday, Officer G observed a vehicle that failed to stop at a stop sign. Officer G activated the lights on his patrol vehicle. San José Police Communications indicated the vehicle had been reported stolen. The vehicle ran another stop sign, then stopped and parked. The sole occupant was the driver. The suspect's vehicle stopped just behind Officer H's patrol car; Officer H had been involved in an unrelated call at this location.

Both officers conducted a high-risk vehicle stop and used force in taking the suspect into custody.

The suspect was booked into Santa Clara County Jail on a felony warrant and other criminal violations.

While conducting a force investigation, the Sergeant on scene believed officer G's tactics were unsafe and opposite of the training received at SJPD or at POST (California Commission on Peace Officer Standards and Training). The Chief authorized a Department-Initiated Investigation into the officer's conduct.

Department-Initiated Investigation and Analysis:

The IA investigation focused on three issues

1. Did Officer G use reasonable tactical conduct (Procedure) during this incident?
2. Did Officer G use reasonable force (Force) when arresting the suspect?
3. Did Officer G accurately describe what occurred in his crime report (Procedure)?

A review of body worn camera footage, documents and statements of the officers revealed that Officer G initiated a high-risk car stop. He gave instructions to the driver who spoke only Spanish. The driver did comply Officer H's instruction in Spanish to put his hands above his head. In English, Officer G told the suspect to toss his *f**king keys* out the window. Suspect did not comply with these commands. Suspect remained passive non-compliant with both hands raised above his head. There were no further commands given in Spanish. Officer G did not wait for any response from the suspect.

With his weapon drawn, Officer G approached the vehicle. He opened the driver's door with his left hand. The suspect's hand was still above/behind his head. Officer G struck the suspect in his upper back with his right hand while holding the firearm; he described this action as a *pistol whip*. He then holstered his gun and used his closed fist to strike the suspect five times in the back. After the suspect was taken from the car, Officer G wrapped his arms around the suspects torso to keep him off balance and used his body weight to push the suspect against the car. Officer G indicated on his force response form that he perceived suspect was armed with a firearm, knife, or other dangerous weapon, however he never confirmed whether the suspect was, in fact, armed.

IA concluded that officer G failed to use reasonable tactics during the incident. He created an unnecessary level of urgency and put him in itself in a position of potential danger without any cover or concealment.

Rather than broadcasting the appropriate radio traffic, obtain further information about the felony warrant, and wait for fill units/resources, Officer G decided to initiate and conduct the felony car stop on his own. Officer G created an unsafe level of urgency by walking up to the suspect vehicle on his own within five seconds of getting out of his patrol car. There was no tactical plan.

After Officer G stepped out of his patrol car, he immediately drew his firearm. The analysis noted that it was apparent Officer G was in a *high level of stress by the inflection of his voice, rapid breathing, and handshaking while at the high ready position with the firearm*. By contrast the suspect was passive resistant and posed no immediate threat.

Once the high-risk car stop was initiated, the suspect complied with commands given by Officer H to place his hands above his head as he was seated behind the driver 's seat. Officer G stated that he pressed the level of urgency because he did not want the suspect to get away or drive down the street. However, the analysis noted that Officer G had ample time to slow things down, communicate a tactical plan with officer H and wait for additional resources. Officer G chose not to utilize sufficient time.

There also appeared to be a language barrier as the suspect spoke Spanish. The suspect responded to officer H's Spanish commands to place his hand in the air. However, when Officer G approached the suspect's vehicle and ordered the driver to toss the *f***** keys* out the window, the suspect did not comply with these commands but remained passive non-compliant with both hands raised above his head. Officer G gave no further commands in Spanish or in English as to what he wanted the suspect to do. Officer G did not wait for

any response from the suspect. The suspect was never informed in English or in Spanish that force would be used if the suspect failed to exit the car.

In conclusion, IA deemed that Officer G violated tactical conduct and failed to use sound judgment in dealing with this event. He did not rely on the training provided to him within the Academy and the Department. His tactical conduct was not consistent with the department standards.

Despite a *Sustained* finding on tactical conduct, IA concluded that Officer G's use of force was justified, lawful and proper, i.e. *exonerated*.

IPA Concerns and Appeal:

We contended that IA's analysis of the Force allegation completely discounted the fact that Officer G's conduct was the reason that force was needed. Due to Officer G's (1) lack of deliberate tactical conduct as well as (2) his inability to properly ascertain if the suspect understood directions, Officer G created the circumstances in which force was used. His conduct changed an event in which no force was necessary into one in which he used force. His conduct violated the Duty Manual for **both** (1) **tactical conduct** **and** (2) the **force** which resulted from his lack of tactical conduct.

- In his IA interview, Sergeant S1, stated *the force was not necessary in this situation if Officer G used sound tactical conduct prior to approaching the suspect.*
- Officer G himself stated that the suspect was passively resisting at the beginning. The suspect had his hands up behind his head, *abiding by the instructions given in Spanish by Officer H because the suspect did not understand English.*

Officer G did not utilize any of the tools at his disposal, learned during his eight years with SJPD, that would have de-escalated the incident and instead chose to immediately resort to an unnecessary use of force on an individual who did not understand the language or what was occurring.

The IPA stressed for a more rigorous application of these Duty Manual sections:

- *L 2602 OBJECTIVELY REASONABLE FORCE (Definition): 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.*

The IPA asserted that the other sworn officers interviewed were reasonable officers of the Department and both agreed in their separate interviews that they would not have handled the situation as Officer G chose to do. Particularly, Officer H who was on the scene from the beginning *faced with the same circumstances as the officer who has actually used force* did not use force until Officer G's creation of

circumstances required him to. Even then, Officer H did not have his gun in his hand when he went hands on with the suspect unlike Officer G.

- *L 2604 GENERAL RESPONSIBILITY WHEN FORCE IS USED: Each situation involving the use of force is unique. The Department relies on the officer's judgment and discretion to employ an objectively reasonable level of force under each unique circumstance. Each incident in which force is used shall meet the conditions specified in this chapter. Officers need not retreat or desist in the reasonable use of force. There is no requirement that officers use a lesser intrusive force option before progressing to a more intrusive one, as long as the force option used is objectively reasonable under the circumstances at that time. When confronted by force or resistance, an officer may use an objectively reasonable higher level of force to overcome that resistance. Department members will notify the next rank above them in their chain of command without unnecessary delay when reportable force is used. This includes instances where Department members take enforcement action while off-duty and a use of force occurs.*

In his IA interview, Officer H stated that he *noticed that Officer G was striking the suspect with his firearm as an impact weapon or was making a striking movement with his gun hand*. However, when Officer H approached the suspect, he holstered his weapon. Use of the butt of the gun for does not fit the definition of use of force option that is *objectively reasonable under the circumstances at that time*. It is reckless to argue that this situation warranted Officer G having his gun in his hand and/or hitting the suspect with the butt of the gun. The IA analysis stated that Officer G *realized that he utilized the butt of his firearm as an improvise impact weapon*. However, IA analysis then asserts that Officer G 's large hands covered the butt of the gun. IPA's review of the BWC footage proffered by IA to support this assertion does not concur is inconclusive. To use this argument is flawed.

The IPA argued that it is incompatible to find that Officer G have a sustained finding for the Procedure allegation for L 2602.5 Tactical Conduct and not have a sustained finding for the Force allegation L2603 Objectively reasonable force.

Closure:

The IA Unit Commander was not persuaded by the arguments in the IPA appeal. He declined to re-open the case. The IPA closed with concerns.

CLOSE WITH CONCERNS – Case #4

Summary:

In November 2021 at approximately 2 a.m., an individual was involved in a one vehicle collision with a light pole. A passing reporting party spoke to the driver of the vehicle; the driver acknowledged that he was intoxicated. The reporting party passed this information on to the dispatcher. When Officer J and Officer K showed up to the scene, the driver said he saw a cat in the roadway. His swerving to avoid the cat caused the accident. Officers ran the driver's information and became aware that the driver had a suspended driver's

license due to a prior DUI in addition to the admission of intoxication to the reporting party. Officer J and Officer K processed the scene as a single car accident and had the driver call someone to pick him up. The driver's partner showed up to the scene. Officer J and Officer K had a discussion with the partner during which neither officer had their Body Worn Camera (BWC) activated. The officers told the driver's partner that they thought the driver might have been intoxicated but that they were not going to breathalyze him. The driver and his partner then left the scene. The officers stayed behind to make sure the car was towed. Sometime after the incident, the driver of the vehicle committed suicide. The complainant in this case believed that had the officers done a thorough job and arrested the driver, the driver may not have committed suicide.

IA Investigation and Analysis:

The IA investigation focused on 3 issues:

1. Did the Officer J and Officer K deactivate their BWC's improperly?
2. Did the Officer J and Officer K violate department policy by not documenting observations regarding a possible intoxication case?
3. Did Officer K fail to conduct a thorough DUI investigation?

Both officers in this case were interviewed as was the partner of the now deceased driver and two additional witness officers. The IPA had a representative for both subject officers' interviews as well as one of the witness officer interviews. IA collected all documentation as well as BWC footage.

IA analysis asserted that neither officer smelled alcohol nor saw any indications of intoxication; therefore, there was no need to document any observations regarding a possible intoxication case. Both officers were *exonerated* of this allegation.

IA felt that the analysis for whether Officer K for the violation of department policy by failing to not conduct a thorough DUI investigation was sufficient enough for Findings and Recommendations. IA analysis concluded that given the reporting parties concerns, the background of the driver (**a suspended license due to a DUI the month prior**) and the time of day there was sufficient cause for Officer K to have conducted a complete DUI investigation. The allegation was *sustained* and the officer was disciplined.

Additionally, both officers were found to have committed violation of the Duty Manual in deactivating their BWC. The conversation between the officers and driver's partner as well as the conversation between the officers should have been captured; both officers were still on the call and not finished. IA sent this allegation for both officers for Findings and Recommendations. The allegation was *sustained* and the officers were disciplined.

One procedure allegation was *Exonerated*.

- Intoxication cases – general provisions (Duty Manual section L 6601)

A Procedure allegation for both officers was *Sustained*.

- When to deactivate (Duty Manual section L 4436)

An additional Procedure allegation for one officer was *Sustained*.

- Initial Investigative Procedures (Duty Manual section L 6905)

IPA Concerns and Appeal:

The IPA had a concern regarding this case in that it was similar to other cases beginning to look like a trend. The possible trend is SJPd officers' willingness to overlook potential DUI observations to skirt necessary documentation and investigations.

IA's assertion that the officers did not observe any signs of intoxication discounts the facts the officers had on hand. Following up on at least the reporting parties statement as well as probing the driver further on his sobriety may have changed the outcome of the drivers life. The IPA wrote in the closing of the case:

Given the facts of the case and the tragedy that befell Mr. P, it is troubling that the Officers did not conduct a thorough DUI investigation nor take a report and deactivated their BWC when they spoke with Mr. P's partner. All three parties who were present during the unrecorded conversation stated that the conversation they had did involve Mr. P's sobriety. Given Mr. P's admission of receiving a DUI the month prior, the admission of Mr. P to the reporting party of being intoxicated and the conversation that the Officers had with the Mr. P's partner it is alarming that the officers did not feel the need to do a more thorough investigation and write a report. Had the officers conducted a more thorough DUI investigation, it would have merited writing a report in which all DUI observations could have, would have and should have been documented. *The IPA sees this case as just one of a disquieting trend of cases wherein officers are choosing to not follow policy and conduct thorough investigations* [emphasis added].

While the IPA was satisfied in the analysis and findings for failing to do a thorough DUI investigation and deactivation of BWC's, it was concerning to see that IA did not feel that the officers needed to write down their observations of a possible DUI.

Closure:

The IPA was provided with the completed investigation on November 10, 2022, — only nine days before the deadline. Thus, there was little time to avail ourselves of the appeal process that would usually invoke in a case such as this. Therefore, the IPA closed with concerns.

CLOSE AGREE AFTER FURTHER – CASE #5

Summary:

In August 2021, the registered owner of a white utility van reported a hit-and-run collision that had occurred the month prior. The victim provided surveillance video that showed a

San José PD patrol SUV backing into his parked utility van and immediately leaving the scene. The victim's vehicle sustained obvious damage to the driver's door area.

Patrol personnel performed an initial investigation. They determined that the patrol vehicle involved in the collision was vehicle #Z and the driver of the vehicle at the time of the collision as Officer L. On the evening of the collision, he had been involved in an emergency response to a battery on a Parks and Recreation patrol unit. Patrol personnel collected video of the collision from nearby surveillance cameras and photographs of the damage as evidence

Officer L made no report of the collision.

IA Investigation and Analysis:

IA's analysis examined a variety of facts about Officer L (a) was he involved in a reportable vehicle collision on this event, (b) his level of awareness of the vehicle collision, (c) his actions following the vehicle collision, and (d) finally whether those actions constituted a violation of department policy regarding on duty collisions (L7002) or conduct unbecoming an officer (CUBO).

IA concluded that Officer L's own actions indicated that he at least strongly suspected he had been involved in a minor accident shortly after the collision occurred. Within minutes, he had repeatedly examined the affected area of his patrol car and mentioned the possibility to another officer. His belief that he may have been involved in a collision persisted for hours, prompting him to check the area where it had occurred for damaged vehicles. Officer L had ample opportunity later that shift to notify Sergeant S2 of the possible vehicle collision, yet he chose not to. Officer L based his decision not to inform his sergeant of the incident on the negative results of his own investigation into the matter. However, an officer investigating their own potential collision is a clear conflict of interest. Officer L's self-investigation was inadequate. Passing through the area of the collision during darkness with multiple police vehicles blocking his view of the area most likely to yield visible damage was not an effective means of determining if he had been involved in a collision.

Two procedure allegations were *sustained*

- failure to follow on-duty collision procedures (L7002)
- failure to report damage (C1441)

One CUBO allegation was *not sustained*

One procedure allegation was *unfounded* (failure to obey all laws C 1402)

IPA Concerns and Appeal:

The IPA had two concerns regarding the Department's analysis of two questions

1. Was there any evidence that Officer L failed to obey all laws?

IA asserted that there is no evidence on this point and made a finding of *unfounded*. The IPA asserted otherwise and argued the finding must be *sustained*.

IA concluded that

there was no clear evidence that Officer L knowingly violated any law in this case. He has not been formally charged with or convicted of any crime. Therefore, the allegation of PROCEDURE: for failing to obey all laws is UNFOUNDED.

The IPA made several rebuttal arguments:

- a) The preponderance standard, not the clear and convincing standard, is the applicable burden of proof. Stating that there is *no clear evidence* that Officer L *knowingly violated* any law obfuscates the standard.
- b) If Officer L obeyed all laws, then one would presume the Department would not forward the potential misdemeanor nature of a hit-and-run vehicle collision to the DA.
- c) If Officer L had obeyed all laws, then one would presume that the DA would not offer diversion since there would be no grounds for the DA to file charges.

Although Officer L was not charged with any crime, he was offered and accepted a pre-sentence diversion option. This option does not mean that the crime did not occur. Nor does it imply that the DA did not have grounds to charge. It meant that the DA determined not to file charges that could be filed because the option of diversion appeared suitable to the DA and, apparently, to Officer L.⁵⁶

However, submitting to a diversion program affirmatively acknowledges that the DA could have filed charges. According to the DA's website:

*The prosecutor can authorize filing a charge(s) if he/she reasonably believes **probable cause exists** that the suspect committed the offense, and he/she reasonably believes the charge can be proven **beyond a reasonable doubt** at trial with the information known at that time.*

In this case, the prosecutor reasonably believed **probable cause existed** that Officer L committed the offense. Instead of filing charges, the prosecutor offered diversion. If probable cause existed that the officer committed the offense, then the finding cannot be *unfounded*. And, if the prosecutors reasonably believed that the charge could be proven beyond a reasonable doubt at trial, then the IA finding must be *sustained* because the standard of evidence is lower in administrative investigations, i.e., the preponderance of evidence.

2. Did Officer L engage in Conduct Unbecoming an Officer?

The Department made a **not sustained – meaning that there was insufficient evidence to prove or disprove the allegation**. The IPA asserted otherwise and argued the finding must be sustained.

The Department concluded that

“per direction on such cases from C.O.P.” meaning that there was insufficient evidence to prove or disprove the allegation

The IPA made several rebuttal arguments:

The Department has affirmatively and repeatedly stated that officers have a very high ethical standard. Applying that standard, the IPA submits that, contrary to IA’s position, many reasonable persons would deem the misconduct in this case as unbecoming an officer

- a) In the IA investigation, staff concluded that Officer L’s own actions indicated that he at least strongly suspected he had been involved in a minor vehicle collision shortly after the collision occurred.
- b) A closer examination of the evidence at the Finding & Recommendation level revealed:⁵⁷
 - i. The collision was obvious.
 - ii. That fact that Office L deactivated his BWC and approached Officer M to say that he thought he might have collided with another vehicle is another indicator that Ofc. L was aware of the collision.
 - iii. Ofc. L drove back over the area and looked to see if he could find the damage vehicle/light pole/object – an action he would not do if he believed he did not hit anything.
 - iv. Ofc. L inspected his own vehicle and at one point, wiped it with his hand in the area where the damage ends up being found from further investigation.
 - v. Officer L’s participation in a pre-filing diversion program was not a refusal of the District Attorney to file, but a mediation to keep this lower-level case from having to go through the court system.
 - vi. Ofc. L’s decision to not report the incident to his supervisor who could have conducted an objective investigation lends itself to an omission that impacts community trust.

Moreover, the IPA asserted that the trust held by the owner of the truck and those persons who supplied the surveillance video were likely negatively impacted by seeing the SJPd car hit the van and then drive away.

In sum, the actions of this officer showed, by a preponderance of the evidence, a disregard for the property of others, a failure to follow the directions of his supervisor at the scene, an avoidance of criminal liability, and a failure to take responsibility. We contended that reasonable persons would find this conduct unbecoming an officer.

Closure:

The Police Chief considered our appeal and determined to change the finding on the CUBO allegation from *Not Sustained* to *Sustained*. The IPA closed as Agree After Further.

AGREE AT FIRST REVIEW – CASE #6

Summary:

In April of 2021, SJPd officers were advised by a DMV Investigator that an SJPd officer had disseminated information retrieved from an automated database to a person who was listed as a suspect in an on-going investigation. SJPd Criminal Investigations Details (CID) investigated and submitted their findings to the District Attorney's Office who declined to file charges. The case was then transferred to the IA Unit to conduct an administrative investigation.

IA Investigation and Analysis:

IA's analysis examined whether the officer had violated policy when:

- (1) he obtained information from the California Law Enforcement Telecommunications System (CLETS) and then shared said information to an unauthorized receiver of the information,
- (2) whether the officer violated Department Policy when he obtained information from a Sensitive Controlled Information (SCI) inquiry and shared said information to an unauthorized user,
- (3) whether the officer violated Duty Manual policy in his misuse of information obtained from a Criminal Offender Record Information (CORI) inquiry,
- (4) whether or not the officer had violated the Department Code of Ethics by inappropriately accessing Department databases and sharing the information, and
- (5) whether the officer had engaged in actions that created or gave the appearance of a conflict of interest.

IA analysis was clear that the officer had conducted the CORI, CLETS and SCI inquiries. The officer acknowledged this conduct during his interview with IA. The officer did so without any investigative involvement that would have necessitated the use of the databases as well as violating the Departments *need to know, right to know* policy of using the databases. During the officer interview, it became clear that the officer's friend was involved in an active investigation that was potentially criminal in nature. While the officer argued that his use of the databases was nothing more than looking at the information to provide his friend with advice on how to move forward, IA's analysis was clear that the officer had violated Duty Manual policies.

During initial discussion of allegations for this case, the IPA requested that the Duty Manual regarding Ethics and Conflicts of Interest be added to the case. IA acquiesced to the IPA's request and after review of the analysis, all five procedural allegations were sent for findings and recommendations and *sustained*. Notably, the Office of the IPA did request that a CUBO allegation be added to the case however, IA declined. All five procedural allegations sent up the Chain of Command were *Sustained* and the officer was disciplined.

Five Procedure allegations in which all allegations were *Sustained*.

- Authorized Receivers (C 2003)
- Authorized Receivers of Sensitive Controlled Information - SCI (C 2003.1)
- Penalties for Misuse (C2011)
- Code of Ethics (C 1302)
- Conflict of Interest (C 1450)

Closure:

IA sent all allegations for Findings and Recommendations; all allegations were then sustained and the officer was disciplined.

The IPA closed as Agree at First Review.

AGREE AT FIRST REVIEW – CASE #7

Summary:

In January of 2022, an adult Hispanic male driver was pulled over. The driver spoke both Spanish and English. When the SJPD officer approached the driver, the driver seemed to have his phone up in recording mode. The officer stated the reasons for being pulled over, namely that the driver had both earphones in his ears (a violation of California Vehicle Code 27000), as well as having tinted windows (a violation of California Vehicle Code 26708 (a)(2)). The driver believed that the officer was illegally detaining him and believed the officer was biased because of his race. Intermittently throughout the detention, the driver told the officer that he was a racist. At one point, the driver spoke in Spanish to the recording cellphone that the officer was racist. At this point, the officer, who also spoke Spanish, began speaking in Spanish to the driver and reiterating the reasons for the stop and detention. When the officer asked the driver for his license, the driver was unable to provide it. At this point, the officer requested the driver to exit his vehicle. As the driver was exiting his vehicle, the officer asked if the driver had any weapons. The driver replied, / *have bazookas only in there*. For officer safety, at that point the driver was handcuffed. The driver later alleged that the officer had applied the handcuffs unnecessarily tightly.

IA Investigation and Analysis:

IA's analysis examined whether the officer had violated policy when he handcuffed the driver, whether the officer had the legal basis to pull over and detain the driver and whether the officer showed racial bias towards or against the driver at any point during the interaction.

IA analysis showed that the officer had reasonable suspicion to stop and detain the driver due to the violations of the California Vehicle code. The BWC footage showed that the driver did, in fact, make the statement regarding bazookas. Given that statement, the officer's handcuffing the driver was a reasonable officer safety decision. Upon review of the

BWC footage, IA analysis described the moments captured on BWC footage to show that the officer made a reasonable effort to ensure the handcuffs were not unduly tight.

During the IA investigation, IA officers called the driver to get further information of why the driver believed the officer had engaged in Bias-based policing in regard to the drivers race. The driver was unable to provide clarification of why he believed the officer was engaging in bias due to his race. During IA analysis, there was nothing captured on BWC that would show that the officer had engaged in Biased based policing.

One Procedure allegation was *Exonerated* (Procedures immediately following arrest (L 2902)

One Arrest/Detention allegation was *Exonerated*

One Bias-Based Policing Allegation was *Unfounded* (C 1306)

Closure:

IPA felt that the IA investigation and analysis were sufficient to support findings.

The IPA closed as Agree at first review.

AGREE AT FIRST REVIEW – CASE #8

Summary:

In November 2021 at approximately 2 a.m., a husband and wife were crossing the street. The husband kept walking, but the wife saw a car coming and stopped to let it pass. As it neared her, it slowed down then stopped in the middle of the road. The wife kept crossing the street. It was at this point that the wife realized that the vehicle was an SJPD vehicle. An officer came out of the vehicle and started cursing at the wife as to why she was dressed the way she was. The officer then grabbed her and threw her bags to the ground and handcuffed her. The wife was detained, pat searched, and then her bags were searched. After some time passed and nothing illegal was found on the wife, she was given back her property and released from the scene.

IA Investigation and Analysis:

IA's analysis examined (1) whether Officer M violated policy when detaining the wife, (2) whether excessive force was used, (3) whether Officer M had violated policy when searching the wife, (4) whether Officer M violated policy when the wife was handcuffed, (5) whether the detention of the wife was prolonged, and (6) whether Officer M and Officer P were discourteous in their interaction with the wife.

IA analysis was incomplete for officer P who had solely a Courtesy allegation. The officer resigned prior to the investigation being completed and therefore the investigation yielded a *No Finding*.

IA analysis for Officer M was completed and included an officer interview which the IPA had a representative attend. IA analysis stated that the officers had the legal capacity to detain the wife as it was early morning, officer M had prior experience with the wife and based on her dress (all dark clothing) and visible weapons. Moreover, the analysis noted that the Officer M's attempt to keep the limit the time of the detention was unsuccessful due to the wife's comments regarding a separate issue; thus, the officer's interaction with the wife was longer than the usual detention. The analysis noted that BWC footage showed the officer did not use excessive force and therefore the finding was *unfounded*. IA analysis argued that the officer reasonably exercised his discretion to handcuff the wife for safety reasons given the time of day, the dark clothing of the wife, and visible weapons.

During initial discussion of allegations for this case, the IPA requested that each Search (pat search, search of two different bags), be listed as separate allegations. IA declined to do so asserting that these elements would be included within the search of the wife's person. IA's analysis found that the officer had conducted a legal pat search of the wife but had violated the Duty Manual regarding his search of her bags. This allegation was sent for findings and recommendations and *sustained*. Additionally, the use of profanity on the part of officer M was found to be in violation of the policy regarding Courtesy and sent for findings and recommendations as well. IA analysis noted that the officer used profanity indiscriminately and without necessity or use as a tool. The allegation was then *sustained*.

One Courtesy allegation for Officer P came to a No Finding (C 1308)

One arrest/detention allegation for one officer was *Exonerated*

- Street checks during detentions (L 3302.5)

A Force allegation for one officer was *Unfounded* (L 2644)

Two Procedure allegations for one officer was *Exonerated*

- Procedures immediately following arrest (L 2902)
- Duration of Stop (L 3309)

A Search and Seizure allegation for one officer was *Sustained* (L 4801)

A Courtesy allegation for one officer was *Sustained* (C 1308)

Closure:

IA sent the necessary findings up to the Chain of Command who then sustained them and disciplined the officer.

The IPA closed as Agree at first review.

APPENDIX A — GLOSSARY

Agreed (IPA determination): A complaint is closed as “agreed” if the Independent Police Auditor (IPA) determines that the Department investigation of a complaint was thorough, objective, and fair.

Agreed After Further (IPA determination): A complaint is closed as “agreed after further” if the IPA determines that the Department investigation of a complaint was thorough, objective, and fair after additional inquiry and/or investigation.

Allegation: a person’s accusation that a member of the SJPd violated Department or City policy, procedure, rules, regulations, or the law. Only Conduct Complaints contain allegations. There are eight types of allegations: Procedure, Search or Seizure, Arrest or Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, and Neglect of Duty. A Conduct Complaint can have more than one allegation. When IA finishes a Conduct Complaint investigation, IA issues a finding on each allegation.

Arrest or Detention (an allegation): an arrest lacked probable cause or a detention lacked reasonable suspicion

Audit: the process the IPA uses to decide if a Conduct Complaint investigation by the Department was thorough, objective, and fair

Bias-Based Policing (an allegation): An officer engaged in conduct based on a person’s race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability. The SJPd changed its definition of Bias-Based Policing in February 2011 to clarify that this form of misconduct can occur at any time during an encounter between an officer and another person, not only when the encounter begins.

CIT: see Crisis Intervention Training

Classification: a decision about whether an issue or complaint raised by a member of the public about an officer is a Conduct Complaint, a Policy Complaint, or a Non-Misconduct Concern. Classification is an IA determination; the IPA can appeal the classification determination through the appeal process.

Closed With Concerns (IPA determination): A complaint is “closed with concerns” if the IPA questioned the Department investigation and/or the IA analysis. The complaint is closed without an Agree or Disagree determination. The IPA first implemented this determination in 2010.

Complainant: any member of the public who files a complaint

Complaint: an expression of dissatisfaction that contains one or more allegations of police misconduct

Complaint process: the sequence of events that begins when a person files a complaint, continues when the Department investigates the complaint and issues findings, and concludes when the IPA audits the investigation and issues a determination

Conduct Complaint (a classification): a statement from any member of the public that alleges that a SJPd officer broke one (or more) of the rules he or she must follow, and requesting that the officer's conduct be investigated by the SJPd

Conduct Unbecoming an Officer (an allegation): an officer's on or off-duty conduct could reflect adversely on the SJPd or that a reasonable person would find the officer's on or off duty conduct unbecoming a police officer

Courtesy (an allegation): an officer used profane or derogatory language, wasn't tactful, lost his/her temper, became impatient, or was otherwise discourteous. This definition went into effect in October 2010. Previously, only an officer's use of profane words, derogatory language or obscene gestures was considered misconduct.

Crisis Intervention Training (CIT): a 40-hour training program that teaches officers how to better address situations involving persons who are experiencing a mental or emotional crisis, or who have a developmental disability, thus reducing the possibility of the officers using force to gain control of the situation

Department-Initiated Investigation: an investigation into a misconduct allegation that is initiated by someone within the SJPd, and not by a member of the general public

Disagreed (IPA determination): A complaint is closed as "disagreed" if the IPA determines that the Department investigation of a complaint was not thorough, objective, or fair.

Documented Oral Counseling: a form of officer discipline

Duty Manual, the: a book of rules that each SJPd officer must follow. An officer's failure to abide by the rules in the Duty Manual can result in discipline. The Duty Manual is a public document and can be viewed on the SJPd website.

Exonerated (finding): the officer engaged in the conduct described by the complainant, and the officer's conduct was justified, lawful, and proper

Finding: When a misconduct investigation is finished, IA makes a finding for each allegation. The possible findings are Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other.

Force (an allegation): the amount of force the officer used was not "objectively reasonable"

Force Case: a Conduct Complaint that includes one or more allegations of improper use of force by a San José police officer(s)

IA: see Internal Affairs

Independent Police Auditor (IPA): a City Council appointee who leads the office that takes complaints from the public about SJPd officers, audits investigations of those complaints, and makes recommendations to improve police practices and policies

Independent Police Auditor Teen Leadership Council (IPA-TLC): young people selected by the IPA to advise the IPA staff about how to improve outreach to youth in San José

Independent Police Auditor Advisory Council (IPAAC): adult volunteers selected by the IPA to promote community awareness of the services offered by the IPA office and inform the IPA office about police-related issues within the San José community

Intake: the first step in the process of filing a complaint

Internal Affairs (IA): the unit within the SJPd that investigates allegations of officer misconduct

IPA: see Independent Police Auditor

Letter of Reprimand: a form of officer discipline

Misconduct: an act or omission by an officer that is a violation of policy, procedure, or law

Neglect of Duty (an allegation): an officer neglected his/her duties and failed to take action as required by policy, procedure, or law

No Finding (finding): the complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject officer is no longer employed by the SJPd before the completion of the Department investigation

Non-Misconduct Concern (classification): a concern expressed by a member of the public about an officer's conduct that the Department determines does not rise to the level of a violation of policy, procedure, or law or that would not result in officer discipline

Not Sustained (finding): The Department investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation[.]” This means it was a “he said-she said” situation where it is one person's word against another and the Department can't tell which version to believe.

Officer-involved shooting: an incident that involves an officer's discharge of his or her firearm

Other (finding): when SJPd declines to investigate because of too long a delay from the date of the incident to the date of filing, or because the officer was not a SJPd officer, or because a duplicate complaint exists

Police Officer's Association (POA): the bargaining unit (union) that represents SJPd police officer interests

Policy Complaint (classification): complaints from the public about SJPd policies or procedures

Procedure (an allegation): an officer did not follow appropriate policy, procedure, or guidelines

Search or Seizure (an allegation): a search or seizure violated the 4th Amendment of the United States Constitution

Sustained (finding): the investigation disclosed sufficient evidence to clearly prove that the allegation about the conduct of the officer was true

Sustained rate: the percentage of Conduct Complaints (not allegations) that results in a finding of Sustained for one or more allegations

TLC: see Independent Police Auditor Teen Leadership Council

Unfounded (finding): The investigation conclusively proved either that the act or acts complained of did not occur, or that the officer named in the allegation was not involved in the act or acts, which may have occurred. This means that the Department investigation concluded that the acts never happened.

Withdrawn (finding): the complainant expressed an affirmative desire to drop the complaint.

APPENDIX B — GLOSSARY

HOW DO DIIs DIFFER FROM COMPLAINTS?

DEPARTMENT-INITIATED INVESTIGATIONS



COMPLAINTS

ORIGIN

Information supporting a DII generally comes from (1) an SJPD officer/employee who reportsⁱ 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 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 provide 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 interviewing 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 are forwarded 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

78%

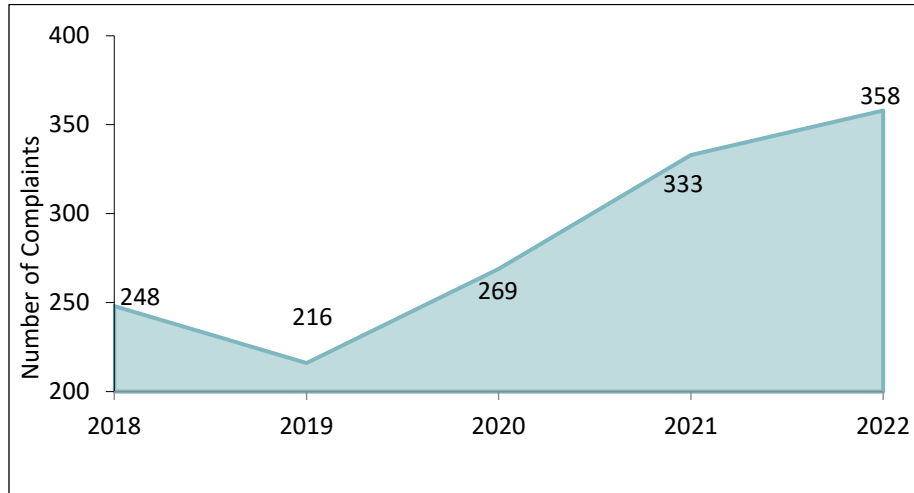
18%

ⁱ This may include a supervisor's Use of Force Command Review.

ⁱⁱ C 1724

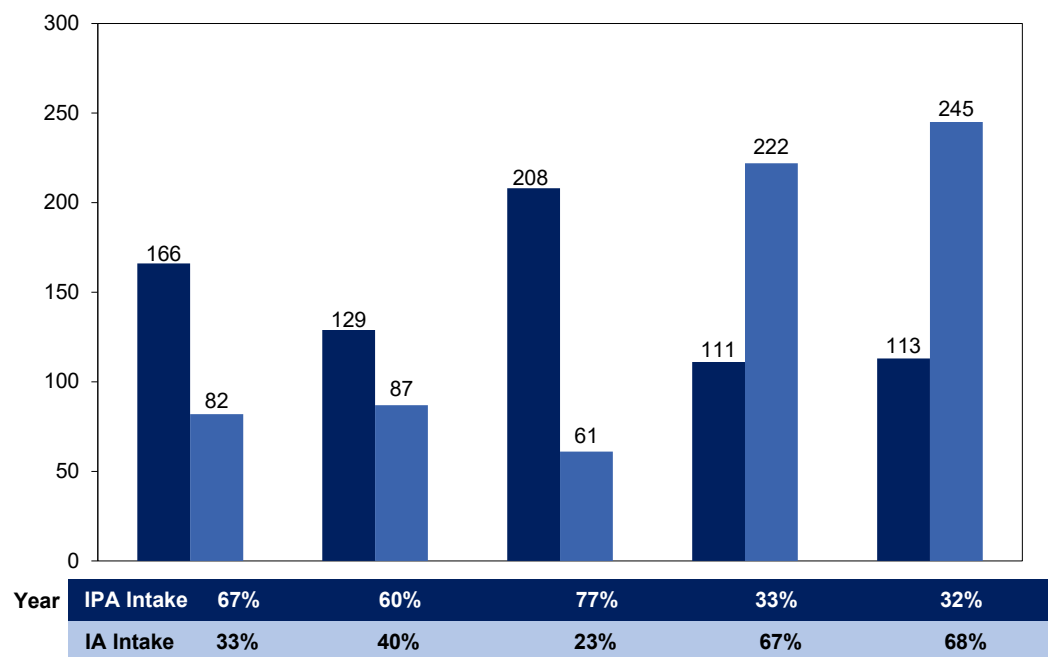
APPENDIX C — ADDITIONAL STATISTICAL DATA

Illustration A: Complaints Received — Five-Year Overview (2018-2022) *



* Excluding Department-Initiated Investigations

Illustration B: IPA and IA Intakes — Five-Year Overview (2018-2022) *



* Excluding Department-Initiated Investigations

Table 1: Complaints/Concerns Received in 2022*

Matter Received	IA	IPA	Total	%
Conduct Complaints	165	81	246	60%
Department Issued	55	0	55	13%
Policy Complaints	4	3	7	2%
Non-Misconduct Concerns	25	8	33	8%
Decline to Investigate	27	3	30	7%
Other	24	18	42	10%
Total	300	113	413	100%

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

Table 2: Allegations Received — Two-Year Overview (2021-2022) ***Table 2-A: All Allegations Received (Including DII)**

Allegations Received	2021		2022	
	#	%	#	%
Procedure	465	43%	463	48%
Force	121	11%	85	9%
Courtesy	142	13%	117	12%
Arrest or Detention	112	10%	88	9%
Search or Seizure	53	5%	86	9%
Bias Based Policing	122	11%	70	7%
Conduct Unbecoming an Officer	50	5%	30	3%
Neglect of Duty	3	0%	14	1%
Workplace Discrimination	1	0%	3	0%
Workplace Harassment	1	0%	6	1%
Total Allegations	1070	100%	962	100%

* Including Department-Initiated Investigations

Table 2-B: Allegations Received (DII only)

Allegations Received	2021		2022	
	#	%	#	%
Force	2	3%	1	1%
Arrest or Detention	0	0%	0	0%
Search or Seizure	0	0%	0	0%
Bias-Based Policing	0	0%	0	0%
Procedure	49	70%	116	74%
Courtesy	3	4%	1	1%
Conduct Unbecoming an Officer	14	20%	26	17%
Neglect of Duty	0	0%	9	6%
Workplace Discrimination	1	1%	1	1%
Workplace Harassment	1	1%	3	2%
Total Allegations	70	100%	157	100%

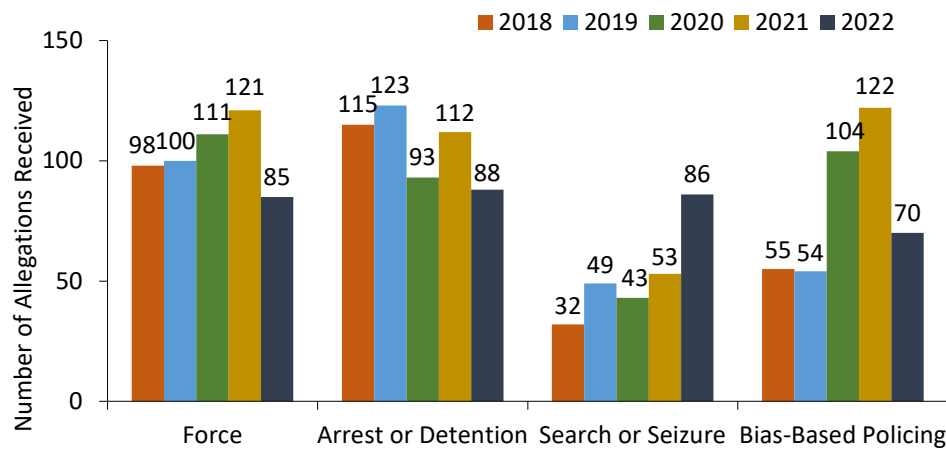
* Department-Initiated Investigations only

Table 2-C: Allegations Received (Conduct Complaints only)

Allegations Received	2021		2022	
	#	%	#	%
Procedure	416	42%	344	43%
Force	119	12%	84	10%
Courtesy	139	14%	116	14%
Arrest or Detention	112	11%	88	11%
Search or Seizure	53	5%	86	11%
Bias Based Policing	122	12%	70	9%
Conduct Unbecoming an Officer	36	4%	4	0%
Neglect of Duty	3	0%	5	1%
Workplace Discrimination	0	0%	2	0%
Workplace Harassment	0	0%	3	0%
Total Allegations	1000	100%	802	100%

* Conduct Complaints only

Illustration C: All Allegations Received — Five-Year Overview (2018-2022) *



* Including Department-Initiated Investigations in 2021 and 2022

Illustration D: Allegations Received (Conduct Complaints only) — Five-Year Overview (2018-2022) *

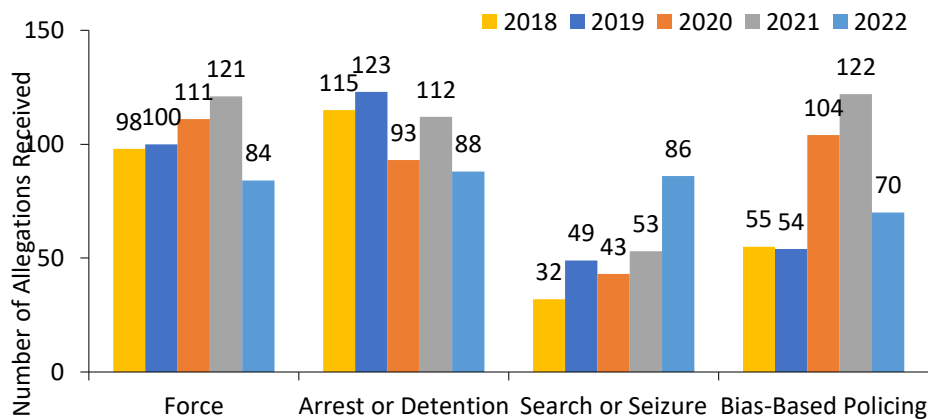


Table 3: Force Complaints Received Relative to Total Complaints Received — Five-Year Overview (2018-2022) *

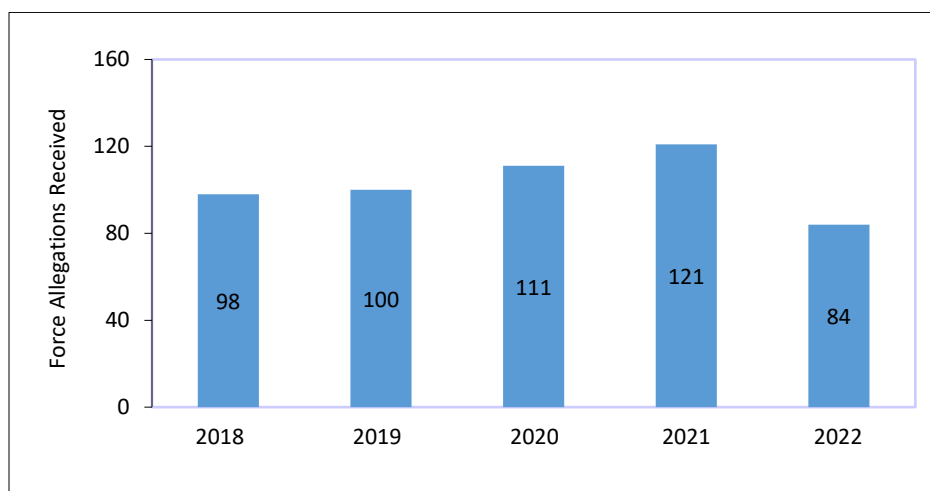
Year	Total Force Allegations	Total Force Complaints	Total Number of Complaints	Force Complaints As % of Total Complaints
2018	98	46	248	19%
2019	100	45	216	21%
2020	111	62	269	23%
2021	121	54	333	16%
2022	84	44	358	12%

*Conduct Complaints only

Table 4: Force Allegations Received in Conduct Complaints and Department Initiated Complaints — Five-Year Overview (2018-2022) *

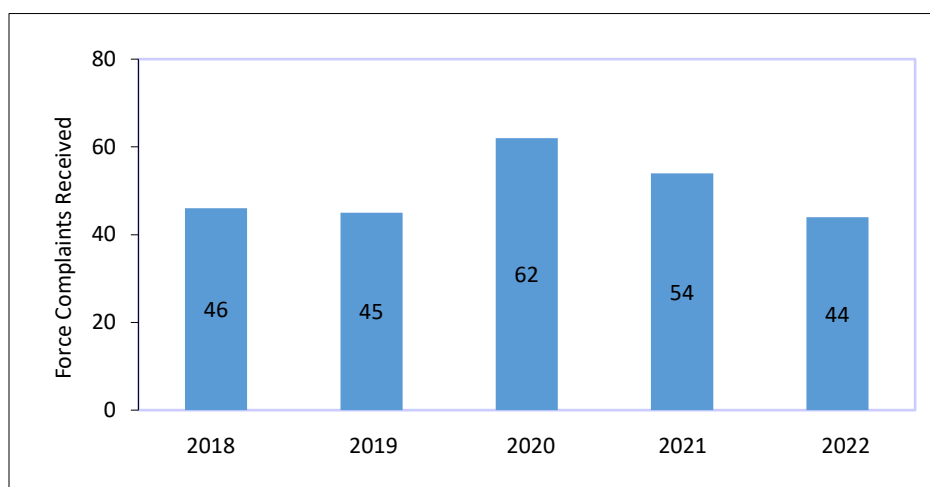
Year	Force Allegations in Conduct Complaints	Force Allegations in Department-Initiated Complaints	Total Number of Allegations
2018	98	1	99
2019	100	1	101
2020	111	3	114
2021	121	2	123
2022	84	1	85

Illustration E: Force Allegations Received — Five-Year Overview (2018-2022) *



*This illustration reflects only complaints filed by members of the public (2018-2022).

Illustration F: Force Complaints Received — Five-Year Overview (2018-2022) *



*This illustration reflects only complaints filed by members of the public (2018-2022).

Illustration G: Force Complaints Received Relative to Total Complaints Received — Five-Year Trend *

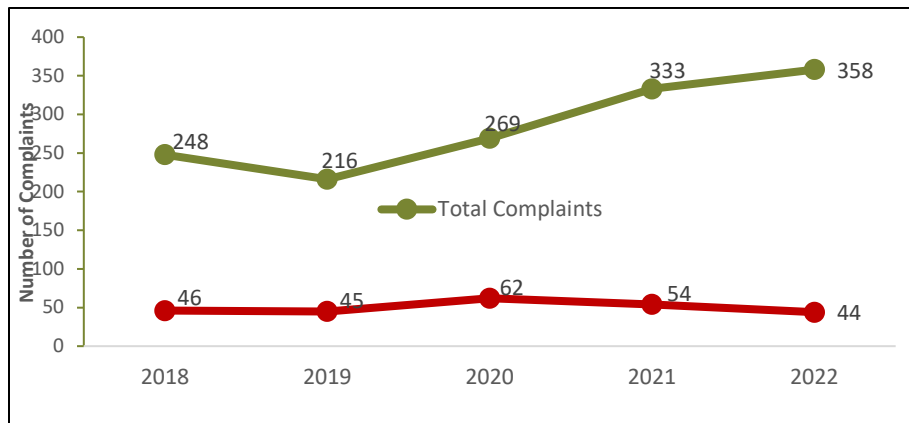


Table 5: Force Complaints Received in 2022 — by Complainants' Ethnicities*

Ethnicities From Complainant Intakes	Force Complainants		Total Complainants		% of San Jose Population**
	Number	%	Number	%	
African American	3	6%	28	9%	3%
Asian American/Pacific Islander	3	6%	19	6%	32%
Caucasian	5	11%	36	12%	29%
Hispanic/Latino	14	30%	70	23%	33%
Native American	1	2%	3	1%	1%
Other	1	2%	15	5%	2%
Decline/Unknown	20	43%	132	44%	0%
Complainant Responses	47	100%	303	100%	100%

* Information on the ethnicity of complainants is obtained during intake and from voluntary surveys.

Not all complainants reside within the City of San Jose; however, all complainants are members of the public.

** Source: U.S. Census Bureau, Census 2010

*** For the purpose of this illustration, Filipino and Vietnamese are listed together with Asian/Pacific Islanders.

Table 6: Subject Officers Receiving Complaints in 2022 (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	39	82	28	38	17	59	263
2 Complaints	12	34	3	5	4	8	66
3 Complaints	4	11	1	1	0	3	20
4 Complaints	1	5	1	1	0	0	8
5 Complaints	0	4	0	0	0	0	4
Total Number of Officers Receiving Complaints	56	136	33	45	21	70	361

*Including the number of officers who were named in Department-Initiated Investigations in 2021, 2022

Table 7: Complaints Received by Individual Officers — Five-Year Overview (2018-2022) *

Officers Receiving	2017	2018	2019	2020	2022
1 Complaint	207	189	216	245	263
2 Complaints	51	41	54	78	66
3 Complaints	6	15	15	17	20
4 Complaints	1	2	2	8	8
5 Complaints	1	0	1	0	4
6 Complaints	1	0	1	0	0
Total Number of Officers Receiving Complaints	267	247	289	348	361

*Including the number of officers who were named in Department-Initiated Investigations in 2021, 2022

Table 8: Years of Experience of Officers with Sustained Findings in 2022*

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	ND	P	SS	WH		
0- 1+	14	19%	0	4	1	0	37	2	0	44	24%
2- 4+	41	56%	4	7	9	3	75	5	2	105	57%
5- 6+	5	7%	0	1	0	0	10	0	0	11	6%
7-10+	5	7%	0	2	1	0	6	0	0	9	5%
11- 15+	2	3%	0	0	0	0	3	0	0	3	2%
16+	6	8%	0	2	2	0	8	0	0	12	7%
	73	100%	4	16	13	3	139	7	2	184	100%

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

Table 9: Ethnicities of Subject Officers in 2022*

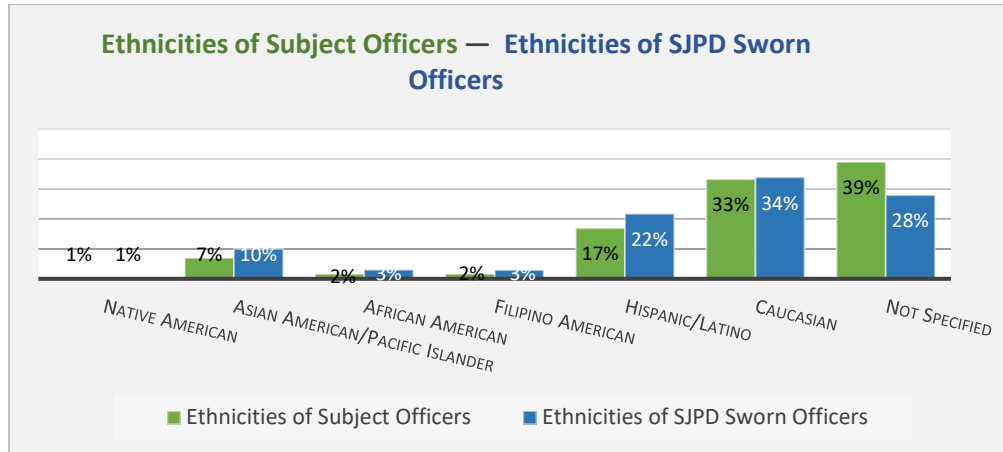
Ethnicities	Subject Officers		SJPD Sworn Officers	
		%		%
Native American	2	1%	6	1%
Asian American/Pacific Islander	25	7%	108	10%
African American	6	2%	33	3%
Filipino American	6	2%	32	3%
Hispanic/Latino	61	17%	236	22%
Caucasian	120	33%	368	34%
Not Specified	141	39%	304	28%
Total	361	100%	1087	100%

*Including the number of officers who were named in Department-Initiated Investigations in 2022

Table 10: Gender of Subject Officers in 2022*

Gender	Subject Officers	%	SJPD Sworn Officers	%
Male	320	89%	949	87%
Female	41	11%	138	13%
Total	361	100%	1087	100%

Illustration H: Ethnicities of Subject Officers — Ethnicities of SJPD Sworn Officers in 2022 *



* Including Department-Initiated Investigations

Table 11: Officers Receiving One or More Complaint/s in 2022*

Officers Receiving	#
1 Complaint	263
2 Complaints	66
3 Complaints	20
4 Complaints	8
5 Complaints	4
Total Number of Officers Receiving Complaints	361

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

Table 12: Complainants Filing One or More Complaint/s in 2022 *

Complainants Filing	# People
1 Complaint	270
2 Complaints	23
3 Complaints	7
4 Complaints	2
8 Complaints	1
Total Number of Complainants	303

* Excluding complainants who filed anonymous complaints, and Department-Initiated Investigations.

Table 13: Officers Receiving One or More Force Complaint/s in 2022*

Table 12-A: All Types of Complaint Classification

Officers Receiving	#	%
1 Force Complaint	63	91%
2 Force Complaints	6	9%
Total Number of Officers Receiving Force Complaints	69	100%

Table 12-B: Department-Initiated Investigations

Officers Receiving	#	%
1 Force Complaint	1	100%
Total Number of Officers Receiving Force Complaints	1	100%

Table 12-C: Conduct Complaints

Officers Receiving	#	%
1 Force Complaint	63	93%
2 Force Complaints	5	7%
Total Number of Officers Receiving Force Complaints	68	100%

Table 14: Types of Complaints IA Closed and IPA Audited in 2022

Types of Complaints	IA Closed	IPA Audited
Conduct Complaints	203	165
Department-Initiated Issues	32	28
Policy Complaints	6	0
Non-Misconduct Concerns	37	0
Other	35	0
Decline to Investigate	28	0
Total	341	193

Table 15-A: Dispositions of All Allegations Closed *

Type of Dispositions	Dispositions of Allegations											
	AD	BBP	C	CUBO	F	ND	P	SS	WD	WH	Total	%
Sustained	4	0	17	17	0	3	162	9	0	2	214	23%
Not Sustained	2	1	3	5	0	0	24	0	0	0	35	4%
Exonerated	76	0	41	2	46	8	157	39	0	0	369	40%
Unfounded	1	57	44	7	17	0	65	7	0	0	198	21%
No Findings	2	4	7	5	4	1	32	4	3	3	65	7%
Complaint Withdrawn	1	0	1	0	1	0	3	1	0	0	7	1%
Complaint/Sup Review	0	0	0	0	0	0	15	0	0	0	15	2%
Other	2	5	1	2	5	0	14	0	0	0	29	3%
Total Allegations	88	67	114	38	73	12	472	60	3	5	932	100%

* Including Department-Initiated Investigations

Table 15-B: Dispositions of Allegations Closed in Conduct Complaints*

Type of Dispositions	Dispositions of Allegations											Total	%
	AD	BBP	C	CUBO	F	ND	P	SS	WD	WH			
Sustained	4	0	17	4	0	3	71	9	0	1	109	14%	
Not Sustained	2	1	3	4	0	0	15	0	0	0	25	3%	
Exonerated	76	0	41	1	43	0	142	39	0	0	342	45%	
Unfounded	1	57	41	6	17	0	62	7	0	0	191	25%	
No Findings	2	4	7	2	4	1	13	4	2	0	39	5%	
Complaint Withdrawn	1	0	1	0	1	0	3	1	0	0	7	1%	
Complaint/Sup Review	0	0	0	0	0	0	15	0	0	0	15	2%	
Other	2	5	1	2	5	0	14	0	0	0	29	4%	
Total Allegations	88	67	111	19	70	4	335	60	2	1	757	100%	

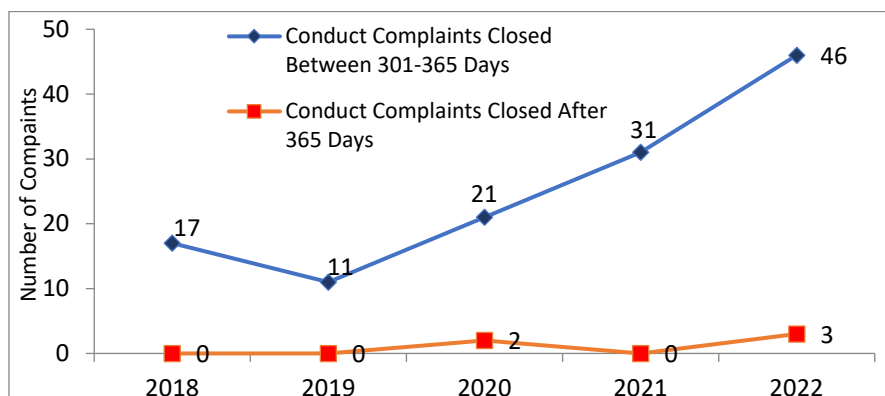
*Excluding Department-Initiated Investigations

Table 15-C: Dispositions of Allegations Closed in Department-Initiated Investigations*

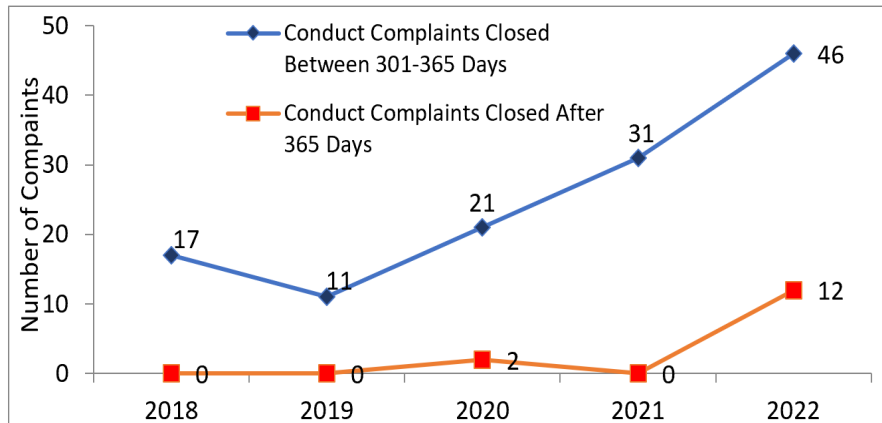
Type of Dispositions	Dispositions of Allegations											Total	%
	AD	BBP	C	CUBO	F	ND	P	SS	WD	WH			
Sustained	0	0	0	13	0	0	91	0	0	1	105	60%	
Not Sustained	0	0	0	1	0	0	9	0	0	0	10	6%	
Exonerated	0	0	0	1	3	8	15	0	0	0	27	15%	
Unfounded	0	0	3	1	0	0	3	0	0	0	7	4%	
No Findings	0	0	0	3	0	0	19	0	1	3	26	15%	
Complaint Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0%	
Complaint/Sup Review	0	0	0	0	0	0	0	0	0	0	0	0%	
Other	0	0	0	0	0	0	0	0	0	0	0	0%	
Total Allegations	0	0	3	19	3	8	137	0	1	4	175	100%	

* Department-Initiated Investigations only

Illustration I: Timeliness of Conduct Complaint Investigations Closed by the Department — Five Year Overview (2018-2022) *



*Excluding nine toll cases



*Including all tolled cases

Table 16: Conduct Complaints Closed with Sustained Allegations — Five-Year Overview (2018-2022) *

Year	Conduct Complaints Sustained	Conduct Complaints Closed	Sustained Rate
2018	22	212	10%
2019	14	197	7%
2020	25	200	13%
2021	31	262	12%
2022	36	203	18%

* Including Conduct Complaints only

Table 16-A: DIIs Closed with Sustained Allegations

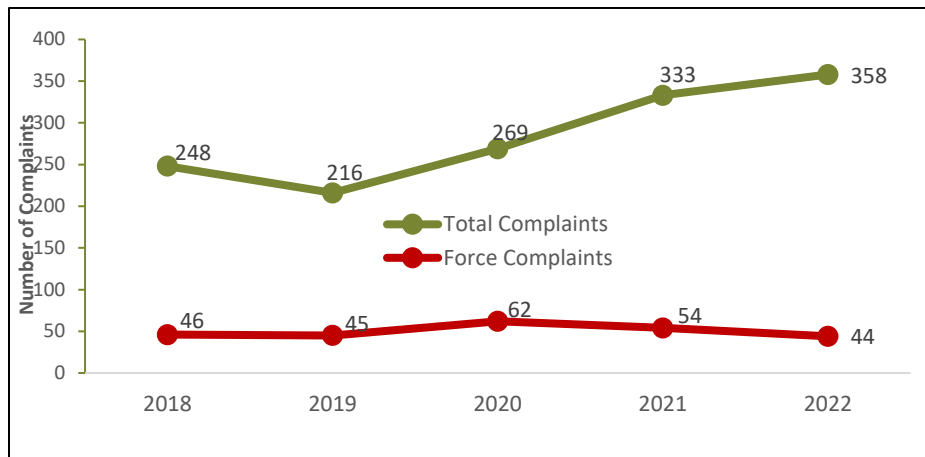
Year	DIIs Sustained	DIIs Closed	Sustained Rate
2021	11	14	79%
2022	25	32	78%

Table 17: SJPDP Findings for Force Allegations Closed — Five-Year Overview (2018-2022) *

Disposition of Force Allegations	2018		2019		2020		2021		2022	
	#	%	#	%	#	%	#	%	#	%
Sustained	1	1%	0	0%	2	3%	2	2%	0	0%
Not Sustained	0	0%	2	1%	1	1%	0	0%	0	0%
Exonerated	73	76%	106	76%	52	70%	92	77%	43	61%
Unfounded	11	11%	18	13%	10	14%	21	18%	17	24%
No Findings	1	1%	5	4%	2	3%	5	4%	4	6%
Complaint Withdrawn	1	1%	0	0%	1	1%	0	0%	1	1%
Other	9	9%	8	6%	6	8%	0	0%	5	7%
Total	96	100%	139	100%	74	100%	120	100%	70	100%

* Including Department-Initiated Investigations in 2021 and 2022

Illustration J: Force Complaints Received Relative to Total Complaints Received — Five-Year Trend *



*This illustration reflects only complaints filed by members of the public (2018-2022).

Illustration K: IPA Audit Determinations in All Closed Complaints in 2022

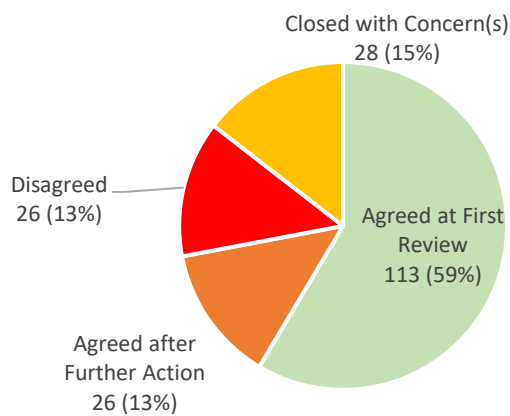


Illustration L: IPA Audit Determinations in Closed Conduct Complaints in 2022

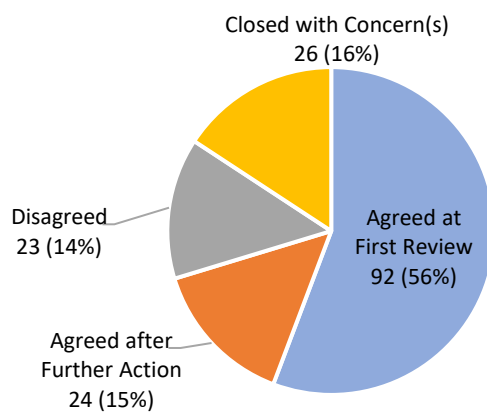


Table 18: IPA Audit Determinations in All Closed Complaints — Five-Year Overview (2018-2022) *

Audit Determination in Investigated Cases	2018		2019		2020		2021		2022	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	124	71%	133	84%	130	71%	179	72%	113	59%
Agreed after Further Action	35	20%	9	6%	16	9%	26	10%	26	13%
Disagreed	6	3%	6	4%	10	5%	22	9%	26	13%
Closed with Concern(s)	10	6%	11	7%	27	15%	23	9%	28	15%
Total Complaints Audited	175	100%	159	100%	183	100%	250	100%	193	100%

* Including Department-Initiated Investigations in the second half of 2021 and the full year of 2022.

Table 19: IPA Audit Determinations in Closed Conduct Complaints — Five-Year Overview (2018-2022) *

Audit Determination in Investigated Cases	2018		2019		2020		2021		2022	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	124	71%	133	84%	130	71%	170	71%	92	56%
Agreed after Further Action	35	20%	9	6%	16	9%	26	11%	24	15%
Disagreed	6	3%	6	4%	10	5%	22	9%	23	14%
Closed with Concern(s)	10	6%	11	7%	27	15%	22	9%	26	16%
Total Complaints Audited	175	100%	159	100%	183	100%	240	100%	165	100%

* Excluding Department-Initiated Investigations in the second half of 2021 and the full year of 2022.

Table 20: Officer-Discipline Imposed by the Department in 2022*

Type of Discipline	2022	
	# of Times	% of All Discipline
Training	16	17%
Counseling	2	2%
Training and/or Counseling	13	14%
All Training and/or Counseling	31	33%
Documented Oral Counseling (DOC)	33	35%
DOC and Training	1	1%
Letter of Reprimand (LOR)	15	16%
All DOC & LOR	49	53%
20-Hour Suspension	1	1%
60-Hour Suspension	4	4%
80-Hour Suspension	2	2%
120-Hour Suspension	1	1%
160-Hour Suspension	1	1%
All Suspensions	9	10%
Disciplinary Transfer	1	1%
Termination	3	3%
Total Discipline Imposed	93	100%

* Disciplinary imposes for all complaints, Conduct Complaints, and Including Department-Initiated Investigations in 2022

Table 21: Age Range of Complainants in 2022 by Percentage

Age Range of Complainants	Number	%
Under age 20	3	1%
20-24 years	9	3%
25-29 years	17	6%
30-34 years	31	10%
35-39 years	24	8%
40-44 years	37	12%
45-49 years	27	9%
50-54 years	19	6%
55-59 years	15	5%
60-64 years	23	8%
65-69 years	7	2%
70-74 years	6	2%
75 and over	1	0%
Decline/Unknown	84	28%
Total Complainant's Responses to Intakes	303	100%

* Excluding complainants who filed anonymous complaints, and Department-Initiated Investigations.

Table 22: Ages of Subjects in Force Allegations Closed in 2022

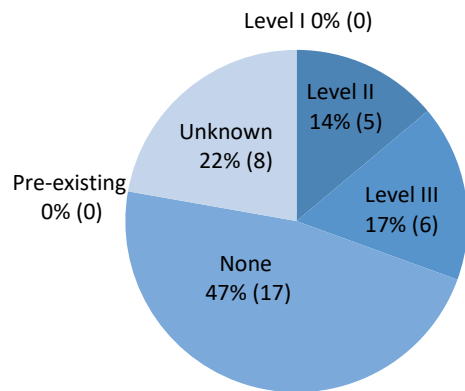
Age of Subjects in Force Allegations Closed	Number	%
Under age 20	2	6%
20-24 years	3	9%
25-29 years	7	21%
30-34 years	4	12%
35-39 years	5	15%
40-44 years	2	6%
45-49 years	0	0%
50-54 years	1	3%
55-59 years	0	0%
60-64 years	1	3%
65-69 years	2	6%
70 and over	0	0%
Decline/Unknown	6	18%
Total Complainant's Responses	33	100%

Table 23: Gender of Subjects in Force Allegations Closed in 2022

Gender	Number of persons	% of Total persons
Male	24	73%
Female	9	27%
Total persons	33	100%

Table 24: Location of Force Applications in Allegations Closed in 2022

Locations of Force Applications	Number	%
Head	5	12%
Neck	1	2%
Torso	20	47%
Limbs	17	40%
Total	43	100%

Illustration M: Levels of Injury in Force Allegations Closed in 2022**Table 25: Types of Force Applications in Allegations Closed in 2022**

Types of Force	Number of Applications	% of Total Force Applications
Baton	1	2%
Body Weapons	6	11%
Canite Bite	0	0%
Car Impact	0	0%
Chemical Agent	0	0%
Control Hold	20	37%
Flashlight	0	0%
Gun	7	13%
Chokehold	0	0%
Takedown	11	20%
Taser	3	6%
Other	6	11%
Total	54	100%

Table 26: Types of Force Applications in Allegations Closed from 2018 through 2022

Type of Force	2018		2019		2020		2021		2022	
	# 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	6	8%	4	5%	3	5%	1	1%	1	2%
Body Weapons	7	10%	14	18%	6	11%	8	11%	6	11%
Canine Bite	2	3%	0	0%	2	4%	3	4%	0	0%
Car Impact	0	0%	1	1%	2	4%	2	3%	0	0%
Chemical Agent	0	0%	0	0%	0	0%	0	0%	0	0%
Control Hold	25	35%	26	33%	16	29%	22	29%	20	37%
Flashlight	1	1%	0	0%	0	0%	0	0%	0	0%
Gun	4	6%	4*	5%	8	15%	11	14%	7	13%
Lifting up cuffs	0	0%	0	0%	0	0%	0	0%	0	0%
Takedown	14	20%	17	22%	9	16%	12	16%	11	20%
Taser	8	11%	2	3%	2	4%	3	4%	3	6%
Chokehold	1	1%	2	3%	1	2%	0	0%	0	0%
Other	3	4%	8	10%	6	11%	14	18%	6	11%
Total	71	100%	78	100%	55	100%	76	100%	54	100%

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

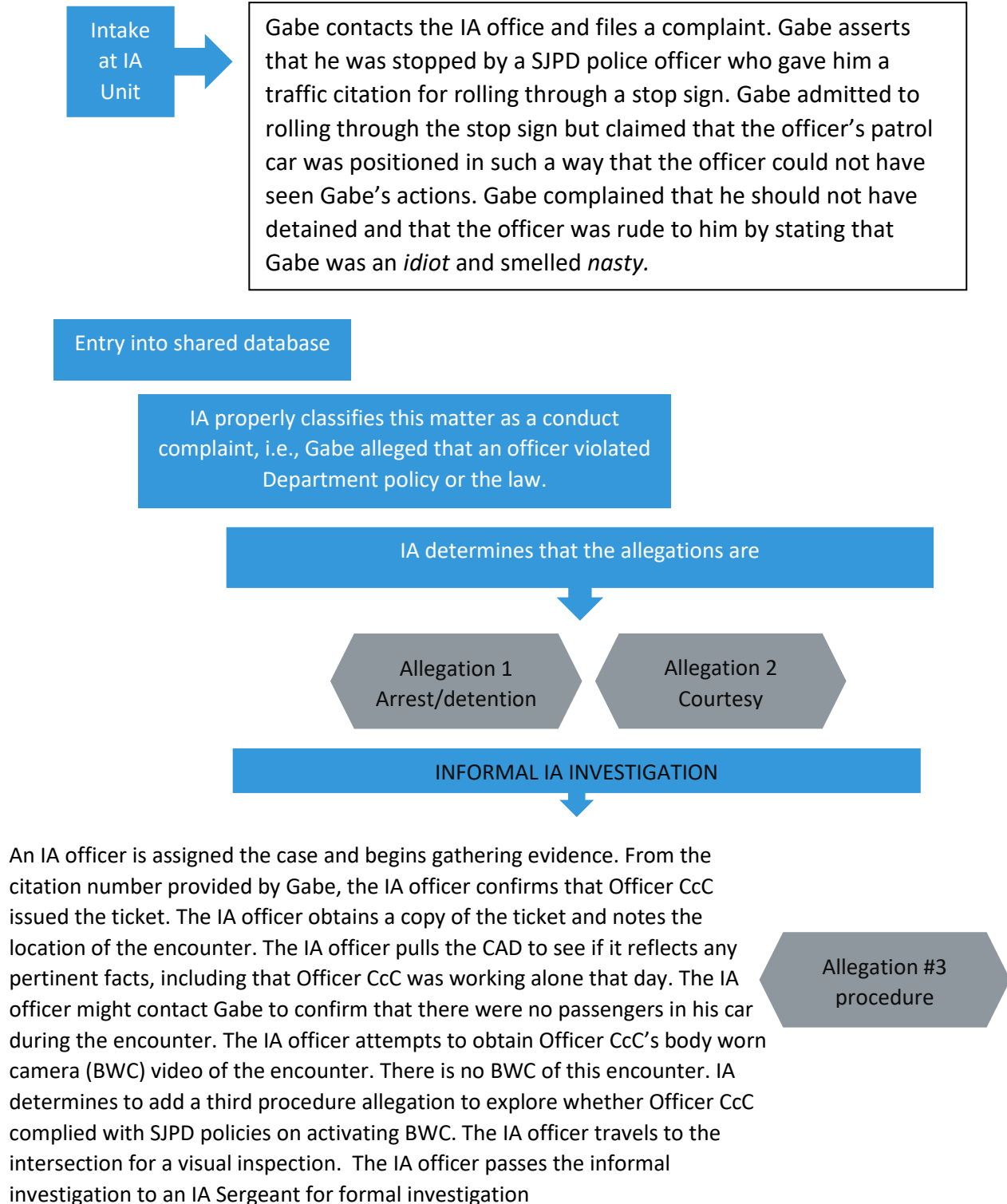
Table 27: Ethnicities of Subjects in Force Allegations Closed in 2022

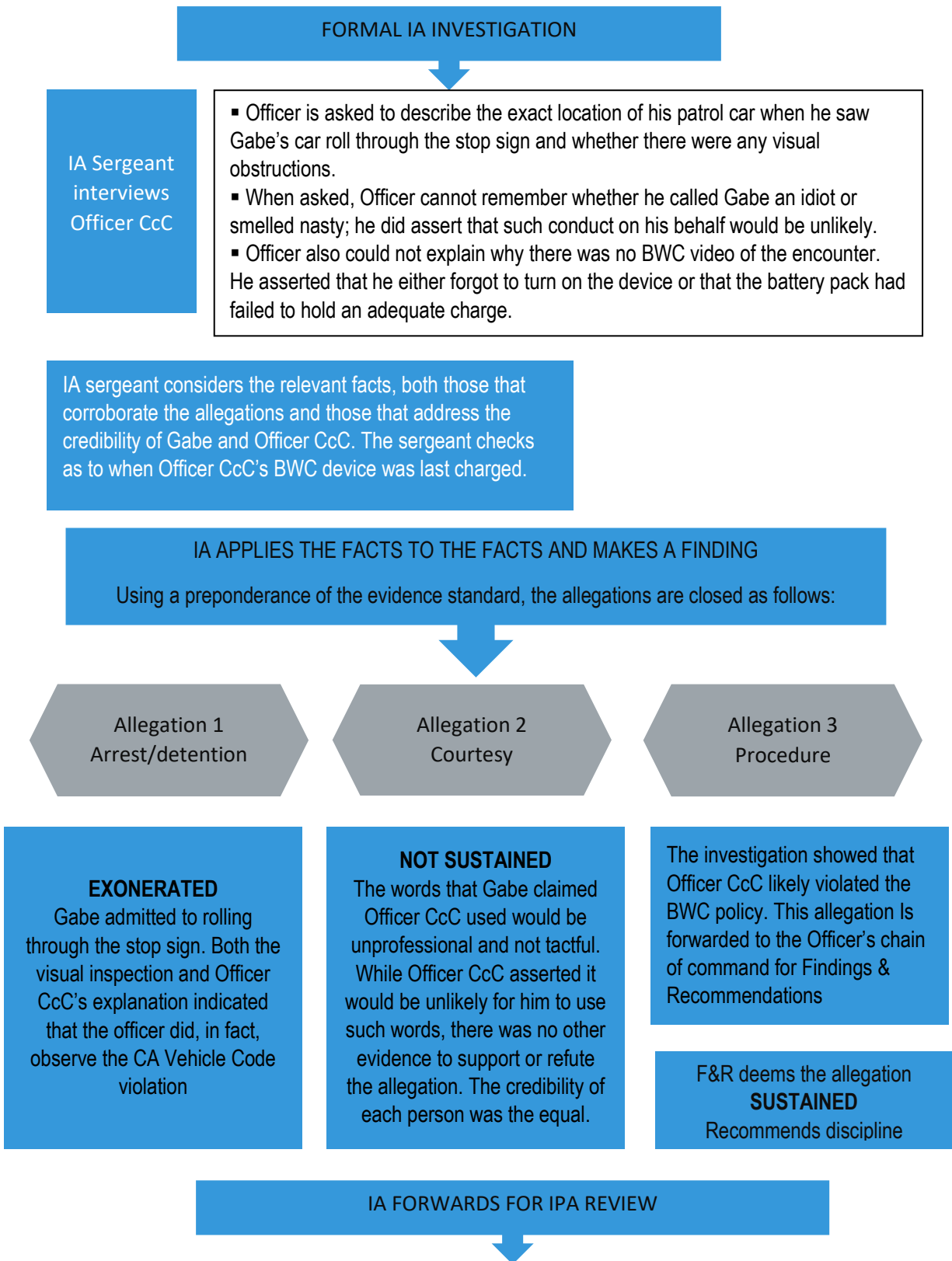
Ethnicities	Number of persons	Percentage of total persons	Percentage of San Jose Population*
African American	5	15%	3%
Asian American/Pacific Islander	1	3%	32%
Caucasian	5	15%	29%
Hispanic/Latino	11	33%	33%
Native American	2	6%	1%
Other	1	3%	2%
Decline/Unknown	8	24%	0%
Total persons	33	100%	100%

* Source: U.S. Census Bureau, Census 2010

APPENDIX D — HYPOTHETICAL IA INVESTIGATION

IA Intake to IA Close





APPENDIX E — HYPOTHETICAL EXAMPLE

IPA Appeal Process

The appeal process allows the IPA to request that additional steps be taken to remedy those investigations that are not fair, thorough, complete, or objective.

The lack of subject officer interviews is perhaps the most common reason for an IPA appeal. Cases closed without an officer interview can involve making assumptions (generally in the officer's favor) about his/her actions.

COMPLAINT WITH ONLY ONE ALLEGATION: SEARCH

complainant alleged one subject officer conducted an improper pat search (aka frisk)

APPLICABLE RULE 4th Amendment & DM sections

To make a finding whether alleged a pat search was proper or improper, IA must determine if the subject officer documented specific and articulable facts that reasonably support a suspicion that the suspect is armed and dangerous.

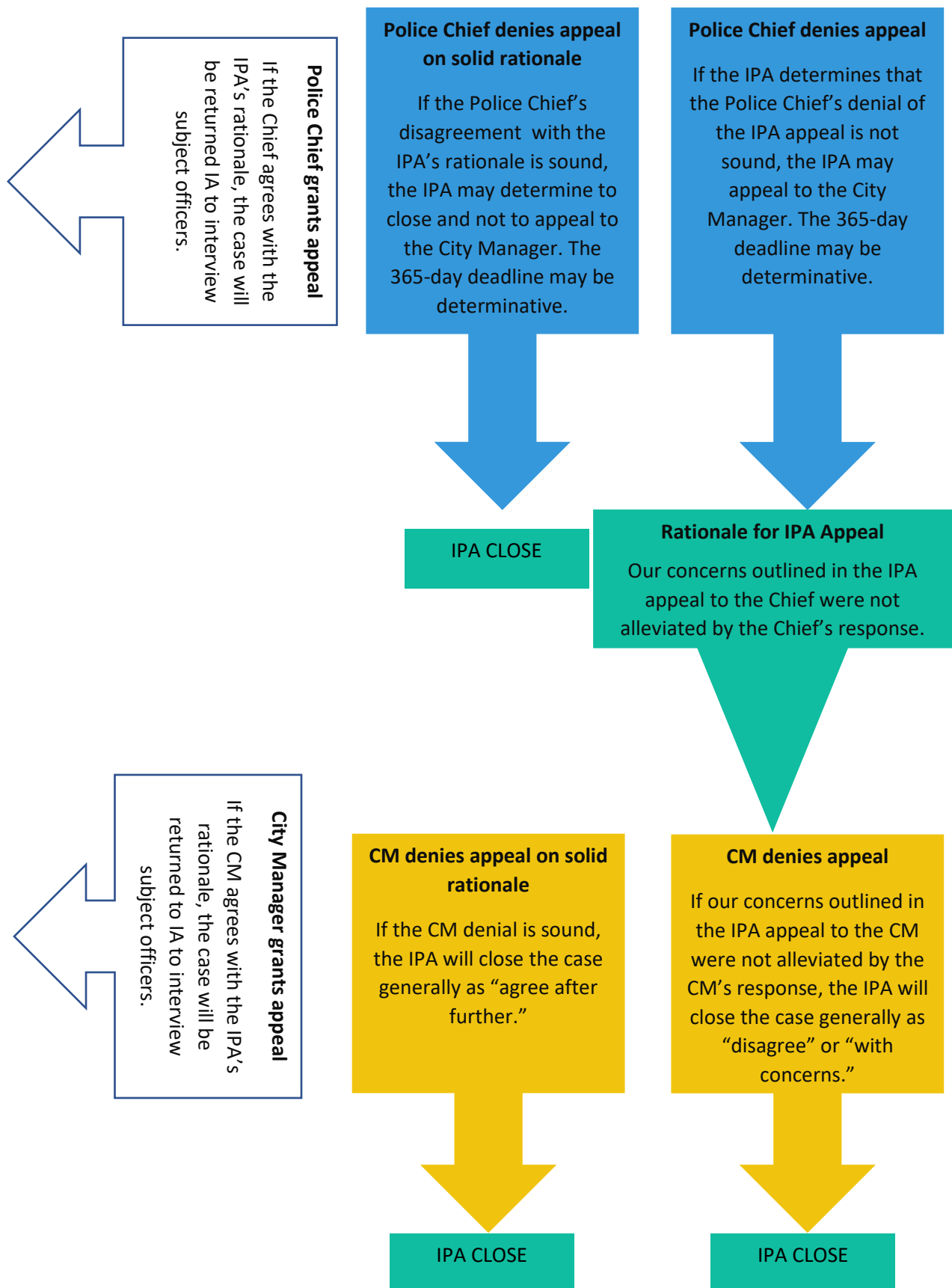
If the subject officer documents (in his/her report or on BWC video) specific and articulable facts supporting a suspicion that the suspect was armed and dangerous, then the case may not require an officer interview. IA closes and sends investigation to the IPA.

If the report and BWC video do not provide specific and articulable facts, then an interview of the subject officer is necessary to obtain the officer's statement about his/her perceptions. Thus, if IA closes and sends to the investigation to the IPA, the IPA may appeal.

IPA CLOSE
"AT FIRST REVIEW"

Rationale for IPA Appeal

Absent an interview, the investigation of this search allegation would not be complete or thorough. Absent such interview, concluding assuming that the subject officer had suspicion that the suspect was armed would be based on assumptions would not be objective or fair.



APPENDIX F — RIPA 2023 REPORT QUICK FACTS

RIPA

Racial and Identity Profiling Advisory Board

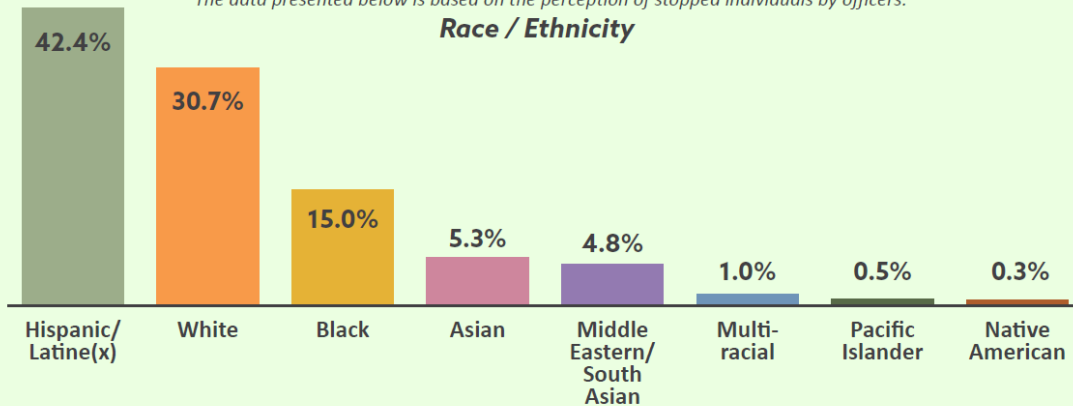
2023 Report Quick Facts

Between January 1, 2021 and December 31, 2021, **58 law enforcement agencies in California** collected and reported data on nearly **3.2 million vehicle and pedestrian stops**. A “stop” under the Racial and Identity Profiling Act is defined as a detention or search, including a consent search.

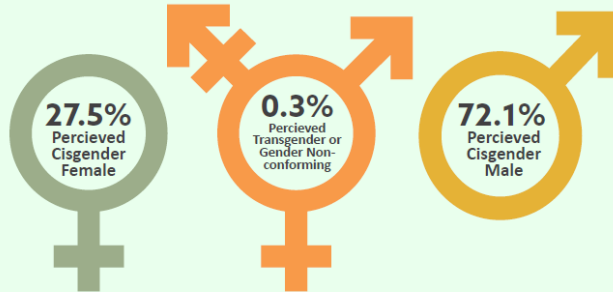
Demographics of Stopped Individuals (Report Pages 34-37)

The data presented below is based on the perception of stopped individuals by officers.

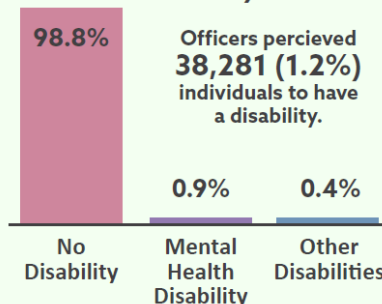
Race / Ethnicity



Gender

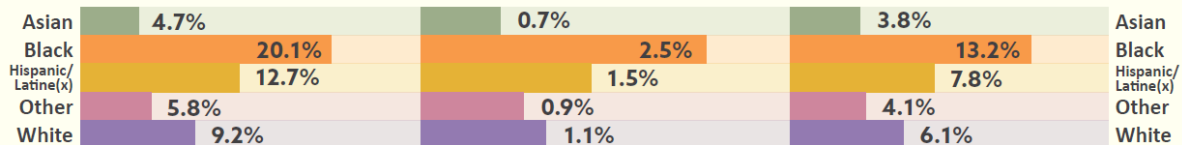


Disability



Racial/ Ethnic Disparities

The Board examined both data elements “Actions Taken by Officer During Stop” and “Result of Stop.” In completing Actions Taken by Officer During Stop, officers must report the types of actions (e.g., search of person, curbside detention, etc.), if any, they took during the stop. In completing Result of Stop, officers must report the result of the stop. These fields reveal disparities in the types of actions taken against a person during, and as a result of, a stop.



Action Taken – Search (p. 43)

The search rate of Black individuals was 2.2 times the search rate of White individuals. Overall, officers searched 6,622 more Black individuals than White individuals.

Action Taken – Use of Force (pp. 57-60)

Officers used force against Black individuals at 2.2 times the rate of White individuals.

Result of Stop – No Action (pp. 46-47)

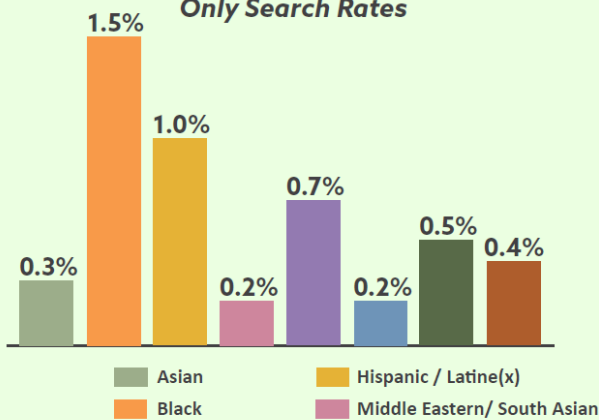
In responding to the question “result of stop,” officers must report the outcome of the stop (for example, warning or citation given, arrest, or no action taken). Officers reported “no action taken” for Black individuals 2.2 times as often as they did for White individuals, indicating those stopped Black individuals were not engaged in criminal activity.

Pretextual/Traffic Violation Stops (Report Pages 69-74)

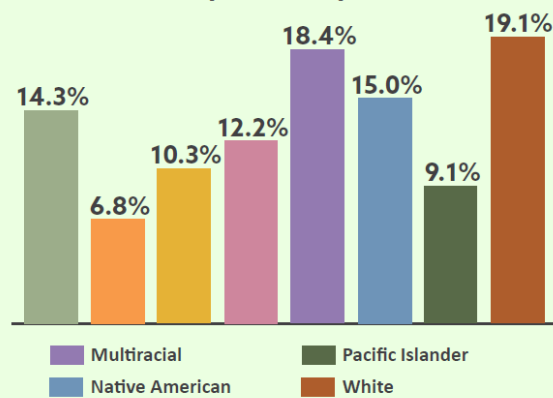
Consent Only Searches and Discovery Rates

During stops for traffic violations, officers requested to perform a search of nearly twice as many Black individuals as White individuals (16,414 requests and 8,863 requests, respectively) despite stopping 2.2 times more White individuals (845,418) than Black individuals (385,773). Accordingly, a far higher percentage of stops of Black individuals for traffic violations involved consent-only searches – those where the only basis for the search is designated as “consent given” – compared to any other racial/ethnic group. Consent only search discovery rates during stops for traffic violations were lowest among individuals perceived to be Black (6.8%), Pacific Islander (9.1%), and Hispanic/Latine(x) (10.3%).

Traffic Violation Consent Only Search Rates



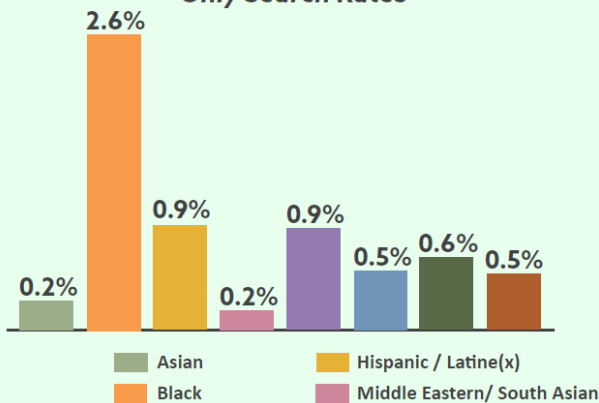
Traffic Violation Consent Only Discovery Rates



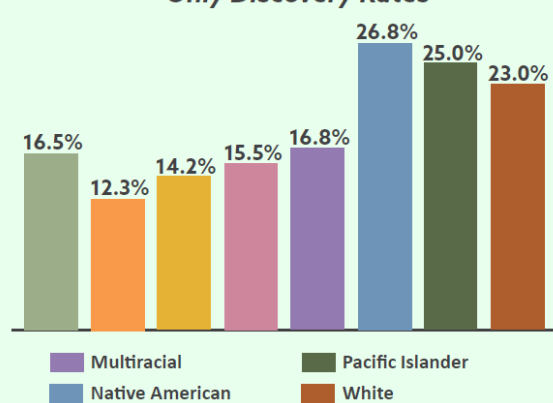
Supervision Only Searches and Discovery Rates

The percentage of stops for traffic violations that involved supervision only searches, where parole or probation supervision status was the only basis for the search, was highest among individuals perceived to be Black. Disparities in supervision search rates during traffic stops led to more than twice as many supervision searches of individuals perceived as Black (9,863) compared to individuals perceived as White (4,172). Stops for traffic violations involving supervision only searches for individuals perceived to be Black or Hispanic/Latine(x) resulted in contraband discovery less frequently (12.3% and 14.2%, respectively) compared to all other racial/ethnic groups.

Traffic Violation Supervision Only Search Rates



Traffic Violation Supervision Only Discovery Rates



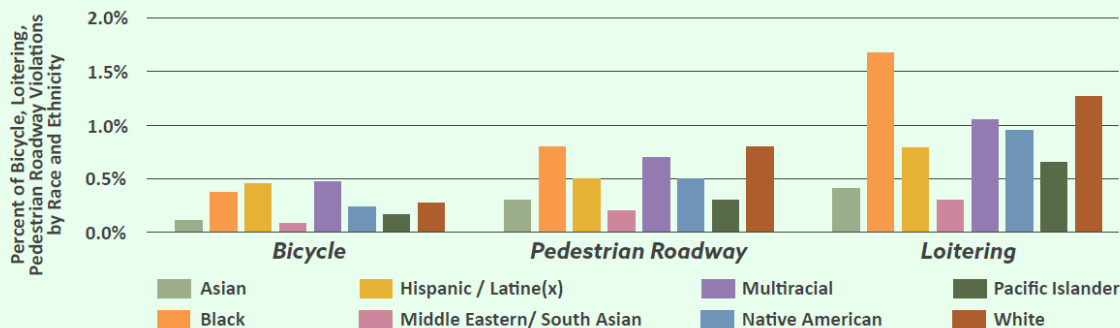
Bicycle-Related, Pedestrian Roadway and Loitering-Related Violation Stops (Report Pages 74-88)

Percent Bicycle-Related Offense, Pedestrian Roadway, and Loitering-Related Violations by Race and Ethnicity

Overall, bicycle-related violations represented 0.35 percent (11,023) of all reported stops. Bicycle-related offense stops made up a larger percentage of stops of individuals perceived to be Multiracial (0.47%), Hispanic/Latine(x) (0.45%), and Black (0.37%) compared to the overall proportion of all stops that were for bicycle-related offense stops.

Pedestrian roadway violations, such as not crossing at a designated intersection, represented 0.6 percent (19,929) of all stops. Compared to the overall percentage of stops that were for pedestrian roadway violations, a higher proportion of stops of individuals perceived to be Black (0.81%), White (0.80%), and Multiracial (0.66%) were for pedestrian roadway violations.

Loitering violations made up a larger percentage of stops of individuals perceived to be Black (1.68%), White (1.27%), or Multiracial (1.05%) compared to the overall proportion of all stops that were for loitering violations (1.03%, 32,785).

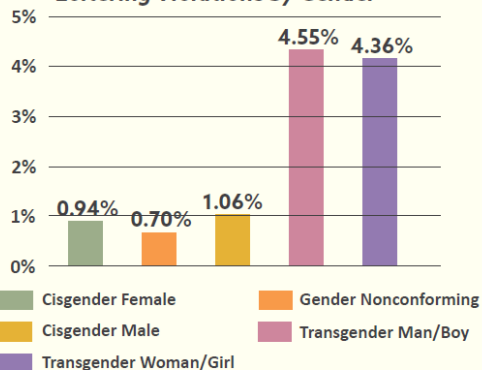


Loitering Stops – Percent Stops for Loitering-Related Violations Across Gender and Disability

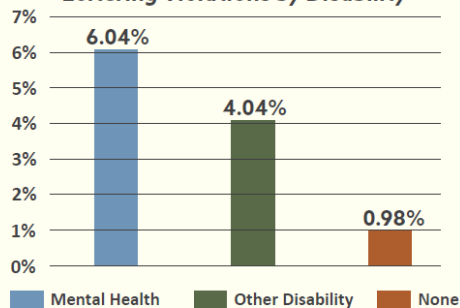
The proportion of stops of persons perceived to be Transgender Men/Boys and Transgender Women/Girls that were for loitering violations (4.55% and 4.36%, respectively) were over four times the overall proportion of stops that were for loitering violations (1.03%).

A much larger proportion of stops of persons perceived to have a mental health disability or another disability tended to be for loitering violations (6.04% and 4.04%, respectively) than stops of persons whom officers perceived did not have a disability (0.98%).

Loitering Violations by Gender



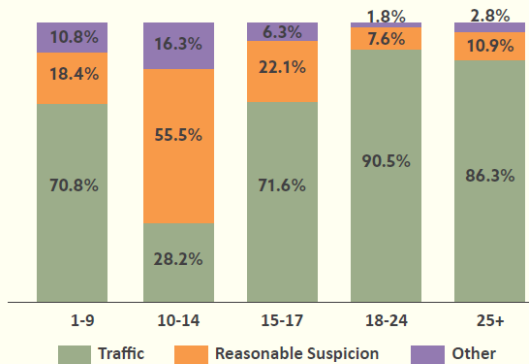
Loitering Violations by Disability



Youth and Law Enforcement (Report Pages 109-123)

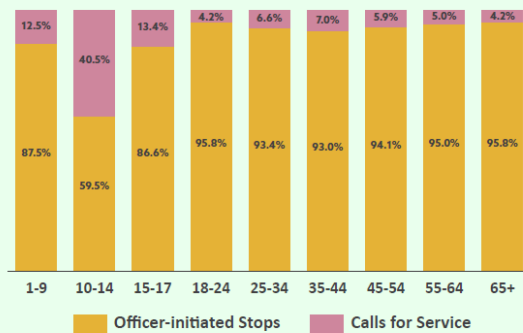
Reason for Stop by Age Group

Overall, the most common reason for a stop was a traffic violation (86.8%), followed by reasonable suspicion that the person was engaged in criminal activity (10.5%). A substantially higher proportion of stops of persons perceived to be adults were for traffic violations, while youth perceived to be under 18 had a higher proportion of stops reported as reasonable suspicion stops.



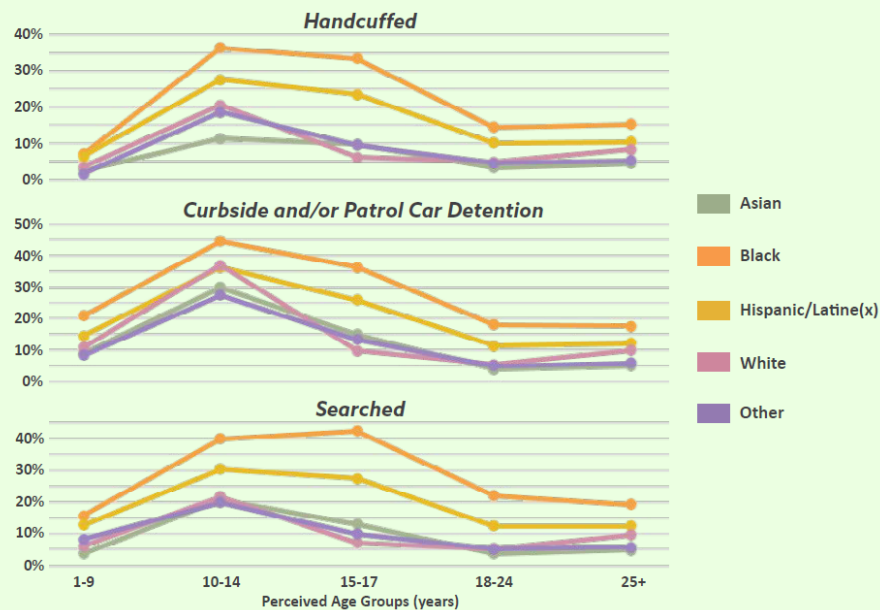
Calls for Service Status by Age Group

Relative to other age groups, stopped youth whom officers perceived to be between the ages of 10 and 14 had the highest proportion of their stops initiated in response to a call for service (40.5%), whereas youth between the ages of 18 and 24 (4.2%), and individuals aged 65 or higher had the lowest proportion (4.2%).



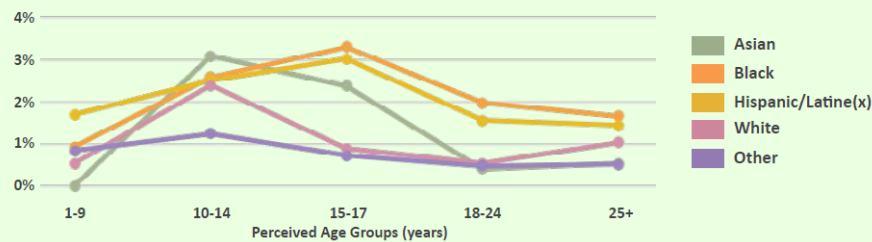
Search, Curbside and/or Patrol Car Detainment, and Handcuff Rates by Age and Racial and Ethnic Groups

Within intersections of perceived age and racial/ethnic identity, Black youth (10-14 and 15-17 years old) were detained (44.5% and 36.2% of the time, respectively), searched (39.9% and 42.4% of the time, respectively), or handcuffed (36.5% and 33.5% of the time, respectively) during a higher percentage of stops than any other combinations of race/ethnicity and age group.



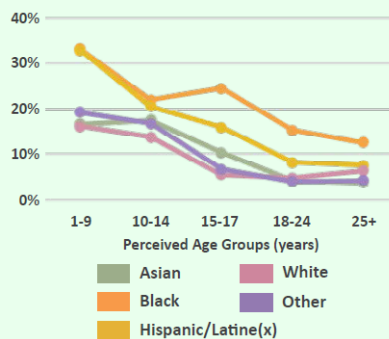
Consent Only Search Rates by Age and Race

Officers performed a consent only search during 1.2 percent of all stops. Across racial/ethnic and age groups, the consent only search rate was highest among Black youth between the ages of 15 and 17 years old (3.3%).



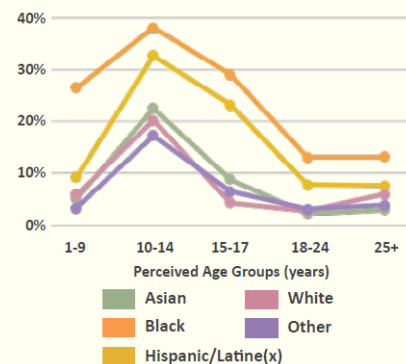
Rate of No Reportable Action Taken as Result of Stop by Age and Racial and Ethnic Group

The percent of stops resulting in no action taken, which may often indicate the stopped individual was not engaged in criminal activity, was highest among individuals perceived as Black across all age groups and second highest among individuals perceived as Hispanic/Latine(x) across all age groups.



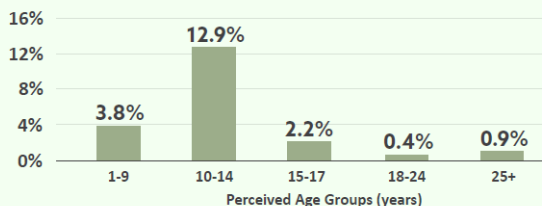
Field Interview Card Rates by Age and Racial and Ethnic Group

Across all racial/ethnic groups, youth aged 10-14 tended to have field interview cards – a tracking system for officers to record contacts and information that can later be entered into law enforcement databases – completed more often than all other age groups. Across all age groups, officers completed field interview cards during a higher percentage of stops of individuals perceived to be Black, and the second highest percentage during stops of individuals perceived to be Hispanic/Latine(x).



Mental Health Disability by Age Group

Within the 2021 RIPA stop data, officers perceived 12.9% of youth between the ages of 10 and 14 to have a mental health disability, the highest within any age group percentage.



Visit the RIPA Board website at oag.ca.gov/ab953 for more information about the Racial and Identity Profiling Act.

RIPA Board email: AB953@doj.ca.gov.

To view the full 2023 RIPA Board Report, visit oag.ca.gov/ab953/board/reports.

END NOTES

¹ See City Council meeting agenda items 4.1 and 4.2. Details from this meeting, including links to the consultant's reports and the Department's response may be found here: <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5455918&GUID=0B27E602-AA43-4345-B249-D6E4AD03BA8B&Options=&Search=>

² In 2021, the City Manager established the Reimagining Community Safety Advisory Group. The initial Advisory Group reflected a diverse membership, representing the of San José 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.

³ The approved direction consisted of this language:

Staff should explore the legal, practical and other implications of the following recommendations and bring a report to PSFSS in the Spring.

1. Direct the City Attorney to determine whether the grant of investigatory authority to the IPA constitutes a *change to officers' working conditions*, requiring negotiation with the SJPOA. If so, then direct the City Manager to commence union negotiations, consistent with the side letter in the current and pending collective bargaining agreement with SJPOA to discuss police reforms.
2. Upon resolution of any SJPOA negotiation requirements, the City Manager and IPA shall bring a proposed hybrid model recommendation to PSFSS, including the following elements:
 - a. Hire a limited number of investigators for an initial phase of implementation, contingent on Council budgetary authorization, and:
 - i. Explore and provide analysis to Council how hiring of IPA investigators may provide cost savings for the City with expansion of enforcement capacity, insofar as IPA investigator hiring could facilitate redeployment of SJPd officers from IA to patrol and other duties;
 - ii. Explicitly engage the Council in considering whether to hire experienced and professional law enforcement investigators, either sworn or nonsworn, for IPA investigatory roles.
 - iii. Ensure uniformity of investigatory training for IA and IPA investigators
 - iv. Grant IPA investigators the ability to make findings including, but not limited to, sustained, not sustained, exonerated, and unfounded.
 - v. All discipline will remain within the authority of the Chief of Police and the City Manager's Office.
 - b. Define the initial scope of IPA investigatory authority, identify misconduct cases by allegation type for a three-year phase of implementation, with:

-
- i. A recognition that the scope may change with the benefit of experience and iterative adjustment;
 - ii. A coordinated process that mitigates risk of parallel, conflicting, wasteful, or unduly burdensome investigations addressing the same misconduct allegation
 - c. Enable the IPA to have access to needed investigatory tools, including access to IAPro and evidence.com, SJPD records, and a grant of subpoena power.
 - i. Should the IPA be unable to employ sworn investigators, consider a formal agreement between the City Manager and IPA that authorizes the SJPD's IA to file affidavits for search warrants or other investigatory tools upon request by the IPA.
 - d. Review both the IA and the IPA oversight structure, processes, and outcomes every three years to learn and make adjustments.
 - e. Honor all employment protections under existing law and under the City's collective bargaining agreement with the SJPOA.
 3. As the IPA urges, decline to accept any recommendation that might implicitly or explicitly limit the IPA's ability to appeal a decision by the Chief of Police, and continue the current model whereby the IPA may appeal first to the Chief of Police and then, if warranted, to the City Manager.
 4. Refer the proposed hybrid workplan to the Public Safety, Finance and Strategic Support (PSFSS) Committee meeting in April 2023, and upon approval of an initial workplan, return to PSFSS in one year with their results in a report that will be cross-referenced to the full City Council.

⁴ Information was collected from the NACOLE website, the individual agency websites, and/or phone calls with agency members. The information included:

- Agency name
- Agency location
- Jurisdiction size
- Number of sworn officers
- Total violent crime
- Agency conducts independent investigations? (yes/no)
- IA conducts parallel investigations of the same conduct? (yes/no)
- Can make or recommend findings?
- Recommends officer discipline
- Enacts officer discipline
- General subpoena power
- Subpoena power over sworn officer
- Consent decree (presence/absence)
- Total staff of agency
- Number of investigators employed by agency
- Agency can employ former law enforcement
- Independent legal counsel

⁵ The one-year deadline can be tolled (put on hold) during the time any criminal or civil court action is proceeding, or if the investigation is particularly complex because it is multijurisdictional or involves multiple officers. Gov't Code section 3304(d)(2). One 2011 IPA recommendation is to ensure that tolling be applied consistently.

⁶ The IPA has put a spotlight on the timeliness issue multiple times over the years. The IPA Audit of Recommendations to SJPd (1993-2009), reported to the City Council on January 10, 2012 established that the IPA made 10 recommendations on the issue of IA investigation timeliness from 1993 to 2009. SJPd adopted many of these recommendations as policy.

⁷ The 2021 IPA Year End Report discussed at length the issues of tolling; see page 2-4 and Recommendation #9 on page 58.

⁸ Case #1 filed July 2021

- Courtesy
- Procedure

Case #2 filed August 2021

- Procedure

Case #3 filed August 2021

- Courtesy
- Force

Case #4 filed August 2021

- Procedure
- Courtesy
- Arrest/detention
- Bias-based policing
- Search/seizure

⁹ Days remaining from date of IPA receipt of file until deadline

- 1 day past deadline – 1 case
- 1 day prior – 3 cases
- 2 days prior - 1 case
- 3 days prior 1 case
- 7 days prior – 2 cases
- 8 days prior – 1 case
- 9 days prior – 1 case
- 10 days prior – 1 case
- 12 days prior – 3 cases
- 15 days prior 1 case
- 16 days prior 1 case
- 23 days prior 1 case
- 28 days prior 1 case

¹⁰ Duty Manual section C 1705

¹¹ Duty Manual section C 1700

¹² Duty Manual section C1710

¹³ For more information about this case, see the IPA 2020 Year End Report on page 86 regarding Case #8.

¹⁴ For more information about this case, see the IPA 2021 Year End Report on page 40 and on page 50 regarding Complaint #I202:♦♦♦B and #I202:♦♦♦F. It is the same case.

¹⁵ The MLF report at page 46 states: *The process of making an investigative determination, with regard to CUBO when the contact is already being analyzed in connection with other allegation, is perceived as stacking and some SJD personnel have expressed frustration with the IPA's requests to add the CUBO allegation.*

Effective oversight and accountability practices dictate that all potential violation of policy be thoroughly investigated. The determination about whether conduct negatively reflects upon the department or the officer does not necessarily require additional discipline be imposed because the chief may ultimately decide that issuing appropriate levels of discipline for the most serious sustained allegations to be sufficient to correct the officer's approach going forward, which also has a remedial effect on the culture of the department and on the field training received by newer officers.

Disregarding an allegation, simply because the conduct may implicate more than one policy requirement, necessarily results in an incomplete investigation, and does not result in the type of thorough and complete analysis calculated to improve performance, and to signal to the people served by the department that all potential misconduct and potential policy violations will be addressed. . . Accordingly, the consulting team recommends that when a policy violation may objectively reflect poorly on the department, an allegation of CUBO should be fully investigated, and a conclusion should be reached as to whether the policy was violated.

¹⁶ The POST Publications page allows one to access the Use of Force Standards and Guidelines document.

https://post.ca.gov/Portals/0/post_docs/publications/Use_Of_Force_Standards_Guidelines.pdf

¹⁷ [Pointing Firearm Executive Review PDF](https://www.phila.gov/media/20201016221621/Pointing-Firearm-Executive-Review.pdf)
<https://www.phila.gov/media/20201016221621/Pointing-Firearm-Executive-Review.pdf>

¹⁸ January 2022 Press Release <https://sf.gov/news/san-francisco-police-commission-adopts-improved-use-force-policy> September 2022 revisions

<https://www.sanfranciscopolice.org/sites/default/files/2022-03/SFPDNotice22-025-20220301.pdf>

¹⁹ Denver Police Department Operations Manual Use of Force Policy 105.01; Seattle Police Department Manual Section 8.300, Los Angeles Police Department's Drawing or Exhibiting Firearms Policy, Section 556.80.

²⁰ Jennings, Jay and Rubado, Meghan "Preventing the Use of Deadly Force: The Relationship between Police Agency Policies and Rates of Officer-Involved Gun Deaths," *Public Administration Review* (March/April 2017)

²¹ See Cal. Code Regs. Title 11, section 999.226 (2017).

²² *Reportable Force* is a level of force which requires documentation by the officer per Duty Manual section L 2644. Most force is considered reportable although there are some limited exceptions. SJPD Duty Manual section L 2644 DEFINITION OF REPORTABLE FORCE:

A reportable use of force is defined as any incident in which officers, either on or off duty, exercises their police powers and uses deadly force or any force option including physical force in conformance with L 2603, Force Options Policy.

²³ See *America Cop*, <https://americancop.com/ready-positions/>
<https://www.guns.com/news/review/training-three-ready-positions-every-concealed-carrier-should-know>

²⁴ There were two definitions of *low ready* (1) holding the firearm a 45-degree angle or less and (2) any situation in which an officer's gun *is pointed at a 45-degree angle or less and not at a person*. In other words, if an officer draws their gun and points it at a 45-degree angle toward the person's legs or feet, it constitutes a use of force. . . .*many cops either weren't aware of this, or treated the rule as a loophole and didn't file a report.*

<https://eastbayexpress.com/further-evidence-emerges-that-the-oakland-police-under-reported-use-of-force-incidents-2-1/>

²⁵ Alameda County District Attorney's Office *Point of View* Winter 2021 at page 9

²⁶ *Point of View* at page 9 citing *United States v. Robinson* (1973) 414 U.S. 218, 234 (fn. 5), 235.

²⁷ *People v. Macabeo*, 1 Cal. 5th 1206, 1218 (2016).

²⁸ San Jose Police Department Training Bulletin #2022-018 states that an officer may conduct a search of the vehicle incident to the arrest of an occupant only under these two scenarios: (1) the arrestee is unsecured and could reasonably gain access to the passenger compartment of the vehicle or (2) it would be reasonable to believe the passenger

compartment of the vehicle contains evidence of the crime for which the passenger was arrested.

²⁹ Two separate complaints brought this issue to our attention. In one case, Officer R initiated a vehicle stop for vehicle infractions. He wrote the driver a citation for (1) nonfunctioning license plate lights and (2) tinted windows. Officer R directed the driver to exit his car to sign the citation. As the driver exited the car, the Officer immediately tried to grab the driver's hands and *escort* him to his patrol car to conduct a pat-search. The driver reacted by *tensing* up and pulled his hands away. A struggle ensued and resulted in Officer R using force by attempting a takedown of the driver, delivering closed-fist punches to the driver's head and deploying a TASER (both prongs and drive-stun modes). The driver later filed a lawsuit against the City in the U.S. District Court for the Northern District of California.

In the other case, Officer T detained a driver and his passenger at night. The officer claimed that the vehicle's license plate was obscured. The officer also claimed that he smelled the odor of burnt cannabis while he was at the driver's window; he did not, however, mention this to his partner, Officer V. Officer V did not smell this odor. The officers decided to have the driver and his passenger exit the car so the officers could do a plain view search. If there was nothing in plain view, they would issue a warning about the license plate instead of a citation. Officer T stated that, *I ask everyone outside to my vehicle to sign citations, I like to get people out of their comfort zones due to officer safety concerns and case law Pennsylvania v. Mimms*. Once the two men exited the car, each was immediately pat-searched.

³⁰ Persons may obtain a window tint exemption from the DMV provided that the application is accompanied by a signed document/letter from licensed dermatologist, optometrist, physician or surgeon stating they need window tint to shield them from the sun because of a serious medical condition with which they suffer.

³¹ Visible Light Transmission refers to the percentage of visible light passing through your vehicle windows. Several levels or percentages range from 5% to 90%. The term VLT describes the degree of darkness in a tint. The color is darker when the number is lower. A percentage rate of 5%, for example, means a very dark tint.

³² Some community members in San José and others across the nation believe that stopping and ticketing for tint violations is motivated by implicit bias. In San José, the IPA has received at least ten cases since 2020 which involve a detention for tinted windows. A study in North Charleston SC showed that of the estimated 1,560 window-tinting tickets handled in the city's municipal court since January 2010, black drivers received about 1,200 of them. That means blacks account for nearly 77% of these tickets, while they make up 47% of the city's population. https://www.postandcourier.com/news/window-tinting-tickets-biased/article_e8a361d4-3304-51ac-97a7-f54b00ff299c.html A study in Deerfield Beach, FLA showed the demographics of the people issued tint citations: 55% African-American, 36% white, and 9% Hispanic. This rate was disparate from with the overall population: The 2010 census found Deerfield Beach's black

population at 25%, white at 69%, and Hispanic at 14%.

<https://www.browardpalmbeach.com/news/public-defender-cops-in-deerfield-beach-are-using-tinted-window-stops-to-target-african-americans-7172971>

³³ <https://www.tinting-laws.com/tint-darkness-example/>

³⁴ <https://www.windowtintinginv.com/best-window-tint-meters.html>

³⁵ 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 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).

³⁶ See California Department of Justice AB 1506 main page for information and greater details: <https://oag.ca.gov/ois-incidents>.

³⁷ 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>.

³⁸ 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>.

³⁹ Attorney General Bonta Announces Result of First AB 1506 Investigation <https://www.youtube.com/watch?v=bzybDiQll7k>

⁴⁰ <https://oag.ca.gov/ois-incidents/case-archive>

⁴¹ <https://oag.ca.gov/ois-incidents/current-cases>.

Incidents under investigation include these jurisdictions

Los Angeles Police Department – 4 incidents

San Bernardino County Sheriff's Department – 4 incidents

Bakersfield Police Department – 3 incidents

Los Angeles County Sheriff's Department – 3 incidents

Fresno Police Department – 2 incidents

California Highway Patrol – 2 incidents

Riverside County Sheriff's Department – 2 incidents
San Francisco Police Department – 2 incidents
Tulare Police Department
Newark Police Department and Fremont Police Department
Southgate Police Department
Fullerton Police Department
Culver City Police Department
Woodlake Police Department
San Diego Police Department
Westminster Police Department
Salinas Police Department
Fontana Police Department
Covina Police Department
Fontana Police Department
Antioch Police Department
Anaheim Police Department
Tustin Police Department

⁴² *California promised a fair review of her son's death by police. Now she's asking them to drop it.* Cal Matters May 17, 2023 by Nigel Duara.

<https://calmatters.org/justice/2023/05/california-police-shooting-delays/>

⁴³ Reserve Officer X resigned from the reserves on the same day the DII was opened. It is unknown whether Reserve Officer X was aware of a pending DII before he submitted his resignation. However, his resignation from the Department would not prevent a criminal investigation into his conduct

⁴⁴ The San Jose City ordinance section 6.44.380 states that *It is unlawful for a person to perform massage at a hotel or motel that does not have a business permit issued pursuant to this chapter [6.44 MASSAGE]*

⁴⁵ Those circumstances include:

- Reserve Officer X parked his car at the SJPD parking lot but attempted to leave when the occupants of the BMW flagged down an SJPD officer.
- Reserve Officer X admitted that he met the women online, that he went to go visit *this girl* at a hotel room, that he left after determining the girl *wasn't a girl*, and that he said *I'm not paying \$120*. Reserve Officer X surmised that *she must have been pissed cause I didn't give her the money. That's why she came over here. That's why she's saying that*. Reserve Officer X does not explain the reason for the visit or why the visit would entail the exchange of money.
- The women asserted that they were from Fresno, the Reserve Officer X arranged for a massage on-line and that they met at a hotel room. Ms. Y explains that they do not work for a massage company; she is *just independent, private*. The women stated that Reserve Officer X took a wallet containing \$120.
- Officer B asked X why he thinks the women would make the theft accusation. Reserve Officer X replied in a hushed tone, *I'll be honest with you. I went to their hotel, and these*

aren't girls, you can tell. So, I left. And then, she said where's my \$120? I said I'm not paying \$120 and left. So, they followed me over here. I came over here...

- Reserve Officer X initially explained that he went to the police parking lot to sleep off two beers. He later stated that he came to the police station *to get away from them* [the women] and that he would be *safe* at the police station.
- The \$120 dollar amount was consistent between Officer X and the women.
- Reserve Officer X resigned from SJPd Reserves on the very day that a DII was opened about the 1/20/22 encounter.
- In his interview, Officer A acknowledged that he did not believe Reserve Officer X's explanation and believed him to be lying.
 - Union Representative asked Officer A: *Going back to Mr. X's statement to you that he had drive to the police department to sleep because he had two beers. Do you believe he was lying?*
 - Officer A: *Yes*
 - Union Representative: *I don't think we need to expand on why.*
 - Lt. L2: *No, I don't think so either.*

One can only surmise why expansion on officer A's answer was not necessary.

⁴⁶ Gwendolyn Wu, "San Jose police bust 100-plus illicit massage parlors, arrest numbers unclear." *San Francisco Chronicle*, Oct. 17, 2018.

<https://www.sfchronicle.com/crime/article/San-Jose-police-100-massage-parlors-prostitution-13315614.php>; Katie Lauer, "Was San Jose's massage parlor crackdown a success?" San Jose Spotlight, August 28, 2019. <https://sanjosespotlight.com/was-san-joses-massage-parlor-crackdown-a-success-trashed-2/>

⁴⁷ Dan Noyes, San Jose code enforcement inspector charged with sexual assault, extortion of massage parlor owners. ABC 7 News, Nov. 5, 2020. <https://abc7news.com/san-jose-code-enforcement-inspector-arrest-bill-gerry-sj-officer-sexual-assault-bribery/7676048/>; Omar Perez, Former San Jose inspector sentenced for extorting bribes, sex from massage parlors. KRON 4 News, May 20, 2022, <https://www.kron4.com/news/bay-area/former-san-jose-inspector-sentenced-for-extorting-bribes-sex-from-massage-parlors/>

⁴⁸ Inclusion of whether the subject officers failed to investigate the crime of prostitution would have conformed to the Department's stated *willing[ness] to own up to mistakes that are made here at the police department that's not going to sweep anything under the rug or cover anything up*. The conduct of the subject officers and the Reserve Officer in this case, as well as the scope of the investigation conducted by the department, raises significant concerns as to the integrity of the Department's investigations into its employee's conduct, despite assurances from the Department that *the public can feel confident that if we're aware of the problem or if we're aware of the misconduct, it's going to be handled*. Candice Nguyen, et al., "San Jose PD Officer Arrested for DUI Directly Before Shift," *NBC Bay Area News*, July 22, 2022. <https://www.nbcbayarea.com/investigations/san-jose-police-officer-dui/2951053/>

⁴⁹ *Code 3* is justified solely as an emergency response under certain circumstances, such as a crime or hazard that endangers life, a request for emergency assistance by a police

officer or the incident involves the immediate pursuit of a suspected violator by law enforcement. None of these circumstances in this event justified driving *Code 3*.

⁵⁰ Officer F was not aware of Officer E's action due to her lack of communication, which thus did not require him to have any communication with radio or to assume the role of a secondary unit engaged in a vehicle pursuit.

⁵¹ Nine Procedure allegations for failing to comply with Duty Manual sections L 2102 (Initiating Pursuits), L 2111 (Communications), L 2113 (Continuation and termination of pursuit), L 2108 (Driving tactics), L 4435 (When to activate BWC), L 4436 (When to deactivate BWC), L 2112 (Capture of Suspects), L 4203 (Definition and scope of investigative processes), L 6904 (Initial responsibility upon arrival at the scene), L 6910 (Investigating Hit and Run Accidents), R 1108 (Accuracy and Brevity), R 1201 (General Provisions)

⁵² Dubious and less-than-truthful statements proffered by Officer E during her IA interview that are either implausible or contrary to BWC and other video include:

- Officer E stated that there was a car between her patrol car and the suspect's car for some period of time. However, video shows this statement is untrue.
- Officer E said that she kept the safety of other people in mind when she failed to stop at the stop sign at Turman Ave and 2nd Street because she slowed down and cleared the intersection. However, video surveillance and GPS data reflect her patrol car slightly slowing only after she cleared the intersection.
- Officer E said that she was so focused on the suspect's car that she did not update communications while passing various streets and markers, and was not aware that she was traveling approximately 80 mph.
- GPS data and video surveillance reflect Officer E stopped in the area of Truman Ave. and 3rd Street about 200 feet from the intersection. According to Officer E, the intersection was well illuminated with streetlights, and there was no obstruction that prevented her from seeing the suspect's direction of travel or the intersection. [Note that 200 feet is a short distance and can be seen easily with the human eye. <https://measuringstuff.com/how-far-is-200-feet/>]. She stated that she heard the sound of a collision after she had stopped. Yet, she asserted that she did not see the accident *because she was not focused on the suspect's vehicle anymore*. This assertion is dubious given her unwavering focus on the suspect's car mere seconds prior. Furthermore, the video surveillance shows that she did not stop when the collision occurred. Moreover, if Officer E was still driving, then her attention would have been on the road, and she would have seen the collision.
- Instead of immediately calling communication and running to the intersection to assess injury and damage, both Officer E and Officer F turned off their BWC and had a discussion. Officer E said that she deactivated her BWC because *she was not assigned to anything* and that she and Officer F *wanted to make sure they were both doing OK*. She also asked Officer F about the process of conducting a fatal collision and did not want it recorded on BWC. Officer E said that she did not want to make it seem she was unsure of what she was doing. This casts additional doubt on her assertion that she did not see the collision; if she did not see the collision, how did she know there was a fatality?
- Officer E approached the damaged cars and spoke with a subject whom she believed was a witness. The witness provided her with a brief description of the suspect and his direction of travel. Officer E then drove around attempting to locate the suspect. She did not transmit

any radio traffic during this time to inform others about the suspect's description or her actions.

⁵³ Governmental entities who seek immunity from liability for any injury, death or property damage arising from such pursuits must meet certain requirements, including: (a) The written policy must minimally address 13 subjects set forth in the statute (b) Agencies must provide officers with regular and periodic annual training consistent with POST guidelines outlined in Vehicle Code § 17004.7(d), (c) Promulgation of the policy must include a requirement that all officers certify in writing they have received, read and understand the policy. Despite strict regulations, compared with other states, California has the highest number of pursuit-related fatalities from 1996–2015. These fatalities include peace officers, occupants of pursued vehicle, occupants of other vehicles, and nonoccupants. Police Vehicle Pursuits, 2012-2013 U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics by Brian A. Reaves, Ph.D., BJS Statistician Special Report NCJ 250545 May 2017. <https://bjs.ojp.gov/content/pub/pdf/pvp1213.pdf> See also California Highway Patrol September 2020 report to the Legislature which outlines law enforcement pursuit data and the types of crimes associated embarking on such action. https://www.chp.ca.gov/Documents/Police_Pursuits_SB_719_%202020.pdf

⁵⁴ Indeed, one could argue that Officer E's conduct was a major factor in the collision. Had she not been pursuing the suspect's vehicle, the suspect likely would not have been speeding through the intersection. In her IA interview, Officer E was *asked if she believed, at that time, that the want for the suspect outweighed the risk of capturing him (i.e., was the juice worth the squeeze?)*. Officer E replied that it was not because the violations she had observed were only related to vehicle code.

⁵⁵ The suspect was arrested by another Bay law enforcement entity ten months and 5 days after the fatal July 2021 collision.

⁵⁶ IA asserts, and we agree, that, regardless of his motivations, participation in pre-filing misdemeanor diversion cannot be considered an admission of [the officer's] guilt.

⁵⁷ The F&R investigation stated:

- This particular collision was obvious, it would be unlikely not to recognize the impact. Watching the video shows the patrol car had a significant impact with that van and parts of the van fall off during that collision. The “jolt” referred to by Ofc. L occurred in the middle of the street and reasonably a driver would know they had not impacted a curb, or a light pole.
- Ofc. L, during the call for service, deactivates his BWC and approaches Ofc. G to say that he thought he might have collided with another vehicle. Ofc G advised Ofc. L to notify his sergeant about the collision. This is another indicator that Ofc. L was aware of the collision and sought feedback on the issue.
- Ofc. L drove back over the area and looked to see if he could find the damage vehicle/light pole/object – an action he would not do if he believed he did not hit anything.
- Ofc. L inspects his own vehicle and at one point, wipes it with his hand in the area where the damage ends up being found from further investigation.
- The incident was witnessed by a female who is heard on the video saying “Whoa, whoa, whoa!” as the police car backs into the van. Although the woman is not interviewed for this

case, she observed a collision caused by Ofc. L and him driving away. This potentially impacts community trust with the police department.

- Officer L's participation in a pre-filing diversion program was not a refusal of the District Attorney to file, but a mediation to keep this lower-level case from having to go through the court system.
- Ofc. L's decision to not report the incident to his supervisor who could have conducted an objective investigation lends itself to an omission that impacts community trust.