



# Memorandum

**TO:** HONORABLE MAYOR &  
CITY COUNCIL

**FROM:** Edgardo Garcia

**SUBJECT: SJPD INTERNAL AFFAIRS UNIT  
2019 DEPARTMENT INITIATED  
INVESTIGATIONS REPORT**

**DATE:** September 17, 2020

Approved

Date

9/18/20

## **RECOMMENDATION**

Accept the San Jose Police Department's Internal Affairs Unit report on Department Initiated Investigations for the calendar year 2019.

## **OUTCOME**

Under the revised Internal Affairs Unit (IA) complaint process instituted in July 2008, the Police Department agreed to provide Department Initiated Investigations (DII) information to the City Council on an annual basis. This information was to be provided in conjunction with the release of the Independent Police Auditor's (IPA) Annual Report. Acceptance of this report will give the City Council and the community with statistics related to DIIs for the calendar year 2019.

## **BACKGROUND**

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

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

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

While the Police Department distinguishes a public complaint from a DII, a review of both categories gives the Department the ability to identify trends and patterns to improve Department training and supervision.

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

## **ANALYSIS**

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

- A DII may include investigations of more than one Department member and can contain multiple allegations of potential misconduct for each involved member. The Department utilizes a list of allegation categories for all Conduct Complaints and DII's. Based on IA statistics compiled for this report, the following data points for DII's conducted during five years from the calendar year 2015 through the calendar year 2019 are highlighted. (*See Attachments 1 & 2; Charts 1A - 2D*)
- In 2019, the Department initiated 11 non-sworn DIIs, as compared to 10 non-sworn DIIs initiated in 2018. The total number of non-sworn DIIs between 2015 and 2019 fluctuated, with highs of 11 in 2016 and 2019, respectively. (*See Attachment 1; Chart 1-A*)
- Of the 50 sworn DIIs initiated in 2019, there were a total of 102 misconduct allegations against sworn staff, compared to 83 allegations in 2018. (A DII may include more than one allegation of misconduct.) The total number of allegations received against sworn staff between 2015 and 2019 fluctuated, with the 102 in 2019 being the high. (*See Attachment 1; Chart 1-B*)

- In 2019, the Department received 18 allegations against non-sworn members. 22 allegations against non-sworn members were received in 2018. The total number of allegations against non-sworn members between 2015 and 2019 fluctuated, with a high of 22 allegations in 2018. *(See Attachment 1; Chart 1-B)*
- In 2019, the Department completed investigations of 117 allegations against sworn officers; 72 (62%) of the allegations were sustained. Between 2015 and 2019, the Department completed investigations of 399 allegations against sworn officers; 251(63%) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received. *(See Attachment 2; Chart 2-B)*)
- In 2019, the Department completed investigations of 24 allegations against non-sworn members; 8 (33%) of the allegations were sustained. Between 2015 and 2019 the Department completed investigations of 136 allegations against non-sworn members; 193 (68%) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received.) *(See Attachment 2; Chart 2-B)*
- Between 2015 and 2019, Documented Oral Counseling was the most common form of discipline imposed for both sworn and non-sworn Department members. Documented Oral Counseling was imposed on a total of 69 occasions during this period. *(See Attachment 2; Chart 2-D)*
- Between 2015 and 2019, the most common misconduct allegations for sworn and non-sworn Department members were, "Procedure" and "Conduct Unbecoming an Officer / Employee". Listed below is the Duty Manual definition for each type of allegation: *(See Attachment 2; Chart 2-B)*

**Procedure (P)** An allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures, or guidelines.

**Conduct Unbecoming an Officer (CUBO)** An officer's conduct, either on or off duty, which adversely reflects on 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 such conduct was unbecoming an officer. For non-sworn members, the City's Code of Ethics Policy (1.2.1) is utilized instead of CUBO.

## **CONCLUSION**

In reviewing the Experience of Involved Officer(s)/Non-sworn Chart, our officers with 1-3 years' experience are most likely to be subjected to a DII, followed by our officers with 21-30 years on. Procedure remains the most common allegation when investigating alleged misconduct. Training and Counseling is most often the discipline imposed. The Department

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ensures that officers receive 24 continued hours of California Peace Officer Standards and Training during every two-year cycle. Additionally, satellite instructors have also provided roll call and team training to also ensure we are addressing policy issues and perishable manipulative skills training. DII continues to sustain at a higher rate than conduct complaints.

### **EVALUATION AND FOLLOW-UP**

No additional follow up action with the City Council is expected at this time.

### **CLIMATE SMART SAN JOSE**

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

### **PUBLIC OUTREACH**

This report will be posted on the City's web site for the September 29, 2020 Council Agenda.

In the 2014 IPA Year-End Report, the IPA recommended the Department submit written reports describing the sworn DII investigations to the Mayor, City Council, and online for public viewing. The summaries from Attachment 3 can be found on the Department's website at [www.sipd.org](http://www.sipd.org)

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

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**CEQA**

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

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a stylized flourish extending to the right.

EDGARDO GARCIA

Chief of Police

By Acting Chief of Police

DAVE KNOFF

EG:SM

Attachments:

- 1- *RECEIVED*-Department Initiated Investigations Charts
- 2- *COMPLETED*-Department Initiated Investigations Charts
- 3- DII Summaries

For questions, please contact Lt. Stan McFadden, Internal Affairs Unit Commander, (408) 277-4094.

**ATTACHMENT 1: RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS  
CHARTS**

**FIVE YEAR SUMMARY OF DIIS (2015-2019)**

Chart 1-A

Year	2015		2016		2017		2018		2019		Total	
	Sworn	Non Sworn										
DII totals	23	10	43	11	35	10	43	10	50	11	194	52
# of Department members involved	23	10	47	12	44	10	52	13	54	12	220	57
# of investigations containing multiple Department members	0	1	4	1	10	0	8	1	6	1	28	4
Department members w/more than one DII for listed year	0	1	1	1	5	0	0	0	3	0	9	2
Total # of allegations received	32	17	58	16	99	16	83	22	102	18	374	89

**BREAKDOWN OF ALLEGATIONS**

Chart 1-B

Year	2015		2016		2017		2018		2019		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn						
Procedure	21	5	32	14	84	15	63	10	71	7	271	51
Courtesy	0	0	3	0	2	0	1	1	4	3	10	4
CUBO/ Code of Ethics	11	9	14	1	10	1	12	1	20	2	67	14
Neglect of Duty	0	1	6	1	0	0	3	0	5	0	14	2
Discrimination	0	0	0	0	0	0	0	4	0	2	0	6
Harassment	0	2	2	0	0	0	2	6	1	4	5	12
Search/Seizure	0	0	0	0	0	0	1	0	0	0	1	0
Force	0	0	1	0	3	0	1	0	1	0	6	0
Arrest or Detention	0	0	0	0	0	0	0	0	0	0	0	0
BBP	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>32</b>	<b>17</b>	<b>58</b>	<b>16</b>	<b>99</b>	<b>16</b>	<b>83</b>	<b>22</b>	<b>102</b>	<b>18</b>	<b>374</b>	<b>89</b>

\*BBP = Bias Based Policing

**ATTACHMENT 1: RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS  
CHARTS  
(CONTINUED)**

**EXPERIENCE OF INVOLVED OFFICERS(S)/NON-SWORN**

Chart 1-C

	2015		2016		2017		2018		2019	
	Sworn	Non Sworn								
0 – 3 Years experience	10	0	11	2	15	2	21	3	17	8
4 – 6 Years experience	0	3	0	0	5	2	3	5	9	2
7 – 10 Years experience	2	1	8	4	1	1	3	2	2	0
11 – 15 Years experience	2	5	3	3	4	2	5	0	4	2
16 – 20 Years experience	3	1	10	1	9	1	9	1	7	0
21 – 30 Years experience	6	0	15	2	10	2	13	2	15	0
Unknown*									1	0
<b>Total</b>	<b>23</b>	<b>10</b>	<b>47</b>	<b>12</b>	<b>44</b>	<b>10</b>	<b>54</b>	<b>13</b>	<b>55</b>	<b>12</b>

\*Unknown reflects an investigation where the Department member had an unknown number of years due to Complaint withdrawn

**ATTACHMENT 2: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS  
CHARTS**

**FIVE YEAR SUMMARY OF DIIS (2015-2019)**

Chart 2-A

Year	2015		2016		2017		2018		2019		Total	
	Sworn	Non Sworn										
DII completed investigations	23	9	33	10	38	13	45	8	52	11	191	51
# of Department members investigated	25	13	35	9	43	14	54	7	57	13	214	56
# of investigations containing multiple Department members	2	1	2	0	5	2	9	0	4	3	22	6
Department members w/more than one DII completed for listed year	1	2	1	1	3	1	3	1	2	0	10	5
Total # of Department members who received discipline	10	5	19	8	27	12	37	5	43	10	136	40

**ALLEGATIONS VS. SUSTAINED CASES**

Chart 2-B

Year	2015		2016		2017		2018		2019		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	19/13	21/6	26/15	10/10	62/39	30/28	95/74	31/27	80/55	11/5	282/196	103/76
Courtesy	2/0	1/1	2/1	0/0	0/0	0/0	3/1	1/1	2/2	6/0	9/4	8/2
CUBO/Code of Ethics	12/5	2/1	18/9	8/7	12/6	1/0	15/10	2/2	25/14	2/1	82/44	15/11
Neglect of Duty	0/0	1/1	1/1	1/1	2/1	0/0	2/0	0/0	7/0	0/0	12/2	2/2
Discrimination	0/0	0/0	0/0	0/0	1/0	0/0	0/0	0/0	0/0	1/0	1/0	1/0
Harassment	1/0	1/0	0/0	1/0	0/0	0/0	2/1	1/0	1/0	4/2	4/1	7/2
Search/Seizure	1/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	1/1	0/0	2/1	0/0
Force	0/0	0/0	0/0	0/0	1/1	0/0	3/1	0/0	1/0	0/0	5/2	0/0
Arrest or Detention	1/0	0/0	0/0	0/0	0/0	0/0	1/1	0/0	0/0	0/0	2/1	0/0
BBP	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0
<b>Total</b>	<b>36/18</b>	<b>26/9</b>	<b>47/26</b>	<b>20/18</b>	<b>78/47</b>	<b>31/28</b>	<b>121/88</b>	<b>35/30</b>	<b>117/72</b>	<b>24/8</b>	<b>399/251</b>	<b>136/93</b>

**ATTACHMENT 2: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS  
CHARTS  
(CONTINUED)**

**EXPERIENCE OF INVOLVED OFFICER(S)/NON-SWORN**

Chart 2-C

	2015		2016		2017		2018		2019	
	Sworn	Non Sworn								
0 – 3 Years experience	11	2	5	1	11	1	21	4	16	6
4 – 6 Years experience	2	3	0	1	3	1	4	1	7	5
7 – 10 Years experience	4	3	7	2	4	6	1	1	3	1
11 – 15 Years experience	5	2	2	4	3	2	6	1	7	1
16 – 20 Years experience	0	1	9	0	8	2	9	0	9	1
21 – 30 Years experience	3	2	12	1	12	2	13	0	14	2
31+ Years experience					1	0	0	0	0	0
Unknown*	0	0	0	0	1	0	0	0	1	0
<b>Total</b>	<b>25</b>	<b>13</b>	<b>35</b>	<b>9</b>	<b>43</b>	<b>14</b>	<b>54</b>	<b>7</b>	<b>57</b>	<b>16</b>

*\*Unknown reflects an investigation where the Department member's tenure with the Department was not tracked in the incident file. Typically, this occurs with Non-Misconduct Concern Incidents when the involved Department member does not have an existing profile in the Internal Affairs records database.*

**ATTACHMENT 2: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS  
CHARTS  
(CONTINUED)**

**DISCIPLINE IMPOSED**

Chart 2-D

Discipline Imposed	2015		2016		2017		2018		2019	
	Sworn	Non Sworn								
Training or Counseling	1	2	2	1	8	1	15	0	10	2
Cease Secondary Employment Activities	0	0	0	0	1	0	0	0	0	0
Documented Oral Counseling (DOC)	6	2	6	5	15	6	16	1	10	2
Letter of Reprimand	1	1	2	0	4	3	8	1	11	2
Disciplinary Transfer	0	0	0	0	1	0	0	0	1	0
10-hours Suspension	0	0	1	0	1	0	0	0	2	0
20-hours Suspension	1	0	1	0	1	0	0	0	3	1
30-hours Suspension	0	0	0	0	0	0	0	0	0	0
40-hours Suspension	0	0	3	1	0	0	2	1	0	0
Greater than 40-hours Suspension	2	0	2	0	0	0	5	0	5	0
Demotion	0	0	0	0	0	1	0	0	0	0
Termination	0	0	2	1	2	0	1	1	2	2
<b>Associated Department Investigation Outcomes</b>										
Retirement before investigation concluded	1	0	2	0	0	0	0	0	0	0
Resigned in lieu of discipline	1	0	0	1	0	0	1	0	0	0
Officers receiving more than one discipline	1	0	0	0	2	1	6	1	4	0
Retired prior to discipline on a sustained case	0	0	1	0	1	0	1	0	1	1
Settlement Agreement	2	0	1	1	0	0	4	0	1	0
Other**	0	1	1	0	0	1	0	2	1	0

\*\* Other: Discipline currently under administrative process or review

<b>ATTACHMENT 3: DII Summaries</b>
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This section was added in 2016 to comply with recommendations from the Independent Police Auditor's 2014 Annual Report:

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

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

**COMPLETED - SWORN DEPARTMENT INITIATED INVESTIGATIONS  
RESULTING IN A SUSTAINED FINDING**

#	Allegations	Incident Summary	Findings
1.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer was off duty and collided with another vehicle while driving a department-issued vehicle. under the influence of alcohol	Sustained
2.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer responded to an event involving the officer's family members. Officer entered the home and was involved in an altercation	Sustained
3.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer investigated a strong-armed robbery and made a mistake that resulted in the wrong person being arrested	Sustained
4.	<ul style="list-style-type: none"> <li>• Procedure</li> <li>• Search or Seizure</li> </ul>	Officer made an improper search and improper tow of a vehicle	Sustained
5.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer was sleeping on duty on two separate occasions and not completing secondary employment tracking sheets	Sustained
6.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to activate body-worn camera during arrest and use of force.	Sustained
7.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to upload body-worn camera footage from numerous events	Sustained
8.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer was under the influence of alcohol and involved in a crash while operating an unmarked City vehicle	Sustained

**ATTACHMENT 3: DII Summaries  
(CONTINUED)**

9.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer was off duty and drinking at a bar. A member of the public reported the officer's badge and gun were visible for someone to grab.	Sustained
10.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer made inappropriate comments to someone the officer had previously dated	Sustained
11.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer's handcuffed prisoner escaped from patrol vehicle and then fled in police vehicle	Sustained
12.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer worked without having a secondary employment work permit and did not submit tracking sheets	Sustained
13.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer lost department-issued property	Sustained
14.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer used his position to gain access to an event and was dishonest about identity when questioned by event staff	Sustained
15.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to properly investigate an event	Sustained
16.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to advise supervisor of force used and failed to properly document the incident	Sustained
17.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer accidentally discharged a round while manipulating a duty weapon. No one was injured.	Sustained
18.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to communicate with dispatch properly and was at fault in subsequent collision with another vehicle	Sustained
19.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officers gained entrance to sporting event when not assigned to that event	Sustained
20.	<ul style="list-style-type: none"> <li>• Force</li> <li>• Courtesy</li> <li>• Procedure</li> </ul>	Officer used force and was discourteous to suspect	Sustained
21.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer accidentally discharged Projectile Impact Weapon	Sustained

**ATTACHMENT 3: DII Summaries  
(CONTINUED)**

22.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to activate body-worn camera	Sustained
23.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer accidentally discharged their taser. No one was injured.	Sustained
24.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer had conflict of interest in matter and failed to activate body-worn camera	Sustained
25.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to properly document reports	Sustained
26.	<ul style="list-style-type: none"> <li>• Courtesy</li> <li>• Procedure</li> </ul>	Officer failed to investigate a weapons related incident properly	Sustained
27.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> </ul>	Officer was driving under the influence	Sustained
28.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer lost department-issued property	Sustained
29.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer accidentally discharged a taser. No one was injured	Sustained
30.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer was at an inappropriate business establishment	Sustained
31.	<ul style="list-style-type: none"> <li>• Conducting Unbecoming an Officer</li> <li>• Procedure</li> </ul>	Officer was found to be in possession of narcotics and weapons	Sustained
32.	<ul style="list-style-type: none"> <li>• Procedure</li> <li>• Neglect of Duty</li> </ul>	Officer was unprofessional with command staff, and allowed their own emotions to have a negative impact on decision making during critical incidents.	Sustained
33.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer failed to secure their vehicle properly during an arrest.	Sustained
34.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer accidentally discharged a less-lethal weapon. No one was injured	Sustained
35.	<ul style="list-style-type: none"> <li>• Procedure</li> </ul>	Officer accidentally discharged duty weapon. No one was injured	Sustained