



# OFFICE OF THE INDEPENDENT POLICE AUDITOR 2005 MID-YEAR REPORT

## **I. INTRODUCTION**

This report documents the auditing function of the Office of the Independent Police Auditor (IPA) for the period of January 1 through June 30, 2005. This was a period of tremendous change for the office as Barbara Attard began her tenure as the IPA, and there was turnover of a total of four of six staff positions. As of this writing, the IPA has completed the hiring process and a full complement of staff is in place.

Throughout this period the IPA has maintained full functioning: conducting intakes, auditing complaints, responding to officer-involved shooting incidents, and reaching out to the community to inform residents of the services the IPA has to offer.

### **A. FUNCTIONS OF THE OFFICE OF THE INDEPENDENT POLICE AUDITOR**

The mission of the Office of the Independent Police Auditor (IPA) is to provide an independent review of the complaint process, thereby ensuring increased accountability of the San José Police Department (SJPD). The four primary functions of the IPA are:

- To serve as an alternative location to file a complaint against a San José police officer;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct outreach about the complaint process and the services the office provides to the community; and
- To make policy recommendations to enhance and improve policies and procedures of the SJPD.

### **B. REPORTING REQUIREMENTS**

In 2001 the San José City Council directed the IPA to produce mid-year reports in addition to annual reports. The San José Municipal Code Section 8.04.010 mandates that the IPA submit reports to the City Council that: 1) include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the action taken; 2) analyze trends and patterns; and 3) make recommendations.

### **C. CONTENT OF THIS REPORT**

This report covers the activity of the first six months of the 2005 calendar year and includes an update on complaint statistics and two policy recommendations. The information covered in this report will be contained in more detail in the comprehensive year-end report, encompassing the activity of the IPA for the full 2005 calendar year.

## II. POLICY RECOMMENDATIONS

### 1. PROVISION OF HOMICIDE REPORTS TO THE IPA FOR REVIEW OF OFFICER-INVOLVED SHOOTING AND DEATH IN CUSTODY CASES

#### **Recommendation:**

That the IPA be issued a copy of all reports and other documents provided to Internal Affairs (IA) in officer-involved shooting and death in custody cases. The current procedures allow the IPA to review the homicide investigation in the offices of the Homicide Unit. This procedure was established in lieu of the IPA receiving a copy of the homicide investigation. For the past year the IPA has reviewed the homicide report in six officer-involved shooting cases at the Homicide Unit; however, this process is not conducive to the in-depth, decision-point analysis needed to develop an understanding of the issues at hand to formulate policy recommendations.

There are no legal barriers to the IPA receiving a copy of the homicide investigation. The IPA would agree not to make copies of the report, and would return the report after the IPA's analysis is concluded.

#### **Background:**

In its *2003 Mid-Year Report*, the IPA recommended a change in policy, that the IPA's review of officer-involved shootings be as thorough as its review of other complaints and mirror the oversight of citizen complaints. The City Council asked the IPA and the Chief of Police to discuss the recommendation and present a proposal to the Council.

There are two SJPd reports to review regarding officer-involved shootings, the Internal Affairs administrative investigation, and the homicide investigation, which includes police reports, pictures, diagrams, documentary evidence and other supporting information. After discussions between the IPA and the Chief of Police, it was determined that the IPA would be provided a copy of the Internal Affairs administrative investigation of the officer-involved shooting for auditing purposes as soon as possible after the criminal case has been concluded, but prior to the closing of the administrative investigation.

The IPA continues to have access to the homicide report to review at the Homicide Unit of the SJPd. This process has proven to be problematic. While the Homicide Unit has been accommodating to the IPA, it is not possible for the IPA to conduct the thorough examination of the documents needed to make a full policy analysis at the Homicide Unit. The files are lengthy and a thorough review is time consuming and often requires multiple reads of documents to fully analyze the issues. It is only with full access to the police reports and supporting documents that the IPA will be able to review issues for policy recommendations.

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Civilian oversight agencies in other jurisdictions throughout California and in other states are routinely given homicide files for review and analysis.<sup>1</sup> There are no legal barriers to the IPA receiving a copy of the homicide report. The IPA handles legally confidential files on all misconduct investigations and has worked with the SJPD successfully to ensure that the confidentiality of investigative documents is not breached.

As with all police records, the IPA would ensure that the homicide file is reviewed only by confidential IPA staff. The IPA would agree to make no copies of the homicide file and would return the report after all analysis is completed.

### 2. ESTABLISHMENT OF WRITTEN DIRECTIVES FOR TASER USE

#### **Recommendation:**

That the SJPD establish written guidelines for Taser use in the Use of Force chapter of the Duty Manual, to include the following:

Reestablish the guidelines that were removed from the Duty Manual in 2004 which defined the broad parameters for Taser use, i.e. delineating circumstances in which Taser use is recommended and prohibited;<sup>2</sup>

Establish recommended procedures for Taser use to include the following:

- The use of warnings when practical;
- Limiting the use of Tasers to an alternative to deadly force in situations involving vulnerable populations: i.e. young children, elderly persons, and women known to be pregnant;
- Limiting the duration of Taser applications to the standard 5-seconds shocks, and the number of shocks to two successful shocks except in extreme situations;
- Use of extreme caution when using Tasers on persons under the influence of drugs.

#### **Background:**

Tasers have become a source of serious controversy. They have proven to be a valuable and potentially life-saving alternative use of force for police officers; however, they have been associated with injuries and deaths in many cases.

The SJPD has employed Tasers for use by all officers in patrol, 820 Tasers deployed, for the last 18 months, since the spring of 2004. The use of Tasers declined dramatically, almost 50%, after the first six months as officers, and the community, have become more familiar with the device.

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<sup>1</sup> Other cities include, but are not limited to: San Diego County, CA; Sacramento, CA; Berkeley, CA; Oakland, CA; Los Angeles Sheriff's Department; Boise, ID; Portland, OR; and Tucson, AZ.

<sup>2</sup> The cited policies were removed from the SJPD Duty Manual as revised 6/16/04. The policy included language instructing officers that the Taser may be used to incapacitate assaultive or physically resisting persons and prohibiting officers from using Tasers on individuals who are unconscious, non-combative, restrained or otherwise incapacitated.

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Currently Tasers are included as a **force option** available to officers as stipulated in the SJPD Duty Manual Section L2604 “General Responsibility When Force Is Used”:

*Each situation 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.*

*Department members need not retreat or desist in the reasonable use of force. There is no requirement that Department members utilize a lesser intrusive force option before progressing to a more intrusive one, as long as the force option utilized 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.*

Since the above-mentioned Taser policy (noted in Footnote 2, Pg. 3-notation corrected) was removed from the SJPD Duty Manual, there remain no written regulations to augment this general force-options statement and provide officers with direction regarding Taser use.

Expert and community concerns about injuries and possible deaths associated with Taser deployment have caused some groups to call for banning Tasers for law enforcement, or prohibiting Taser use except in lethal-force situations.

The IPA has reviewed national research and anecdotal reports regarding Taser use and shares the concerns of the community.<sup>3</sup> The IPA also respects and agrees with the position of the SJPD to arm its officers with the tools needed to keep officers and community members safe while policing the City of San Jose. Because of the growing numbers of persons reported to have died or been injured after having been Tasered, and the lack of independent research and testing of Taser effects, it is important to take a cautious approach and impose written guidelines for officers using Tasers in the field.

A recent report issued by the International Association of Chiefs of Police (IACP)<sup>4</sup> clearly emphasizes the need and recommended parameters for written guidelines, “Policies should clearly describe the circumstances when EMDT [Electro-Muscular Disruption Technology] may be used. . . . Policies should also be explicit as to when its use is inappropriate.”

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<sup>3</sup> A sample of the reports and studies reviewed by the IPA include: International Association of Chiefs of Police (IACP), *Electro-Muscular Disruption Technology: A Nine Step Strategy for Effective Deployment*, April 4, 2005 (“IACP Report”); ACLU of Northern California, *TASER Study, “Stun Gun Fallacy: How the Lack of TASER Regulation Endangers Lives,”* September 2005 (ACLU NC Report); James Hibberd, *Amnesty International*, “Aftershocks,” Spring 2005; US Department of Defense, Human Effects Center of Excellence, “Report on Human Effectiveness and Risk Characterization of Electromuscular Incapacitation Devices”, October 18, 2004; “Further Evaluation of Taser Devices,” D.I. Wilkinson, Police Scientific Development Branch, Sandridge, St Albans, Hertfordshire, United Kingdom; James R. Jauchem, PhD, “Effectiveness and Health Effects of Electro-Muscular Incapacitation Devices,” Senior Research Physiologist, Human Effectiveness Directorate, Air Force Research Laboratory, November 16, 2004; “TASER WEAPONS, Use of Tasers by Selected Law Enforcement Agencies,” US Government Accountability Office (GAO), Report to the Chairman, Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, House of Representatives, May 2005.

<sup>4</sup> IACP Report, Page 12.

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The Police Executive Research Forum (PERF) published its CED (Conducted Energy Device) Policy and Training Guidelines for Consideration as recently as October 25, 2005. One of the recommendations, particularly on point, is that police “Agencies should create stand-alone policies and training curriculum for CEDs [Tasers] and all less-lethal weapons, and ensure that they are integrated with the department’s overall use-of-force policy.”<sup>5</sup>

Training materials produced by the manufacturer of Tasers, Taser International, have been reported to be misleading in minimizing the risks associated with Taser use, and are contradictory in suggested applications.<sup>6</sup> It is incumbent upon individual police jurisdictions that arm officers with Tasers to issue written guidelines to ensure that Tasers are used in appropriate circumstances. To rely solely upon training instead of written policy to define approved behavior gives officers no written guidelines to refer to, and entrusts the responsibility of policy making to Taser International, an arguably self-interested source. Many police jurisdictions within California have established guidelines for Taser use. IPA review of many of these policies indicate that although the guidelines can be varied, many departments have similar types of policies.<sup>7</sup>

Tasers present a different situation than other weapons employed by the SJPD because they can affect people in dramatically different ways, and there have not been adequate studies of the effect of Tasers on humans. The expected effects of other weapons carried by officers, i.e. guns, batons, and pepper spray, are more readily known. Because of the many unknown and often unintended consequences related to Taser use, it is important that officers be provided with guidance in the form of written and clear directives regarding hazardous situations to be avoided in Taser applications.

The IPA supports the SJPD in its continued study and reporting of Taser use and increased documentation of use of force incidents.

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<sup>5</sup> Police Executive Research Forum (PERF) CED (Conducted Energy Device) Policy and Training Guidelines for Consideration, October 25, 2005, #18.

<sup>6</sup> ACLU NC Report, Part III.

<sup>7</sup> A sample of police jurisdictions reviewed for this report that have written policies include: San Diego Police Department; Contra Costa County Sheriff’s Department; El Dorado County Sheriff’s Department; Fremont Police Department; Fresno Police Department; Sacramento County Sheriff’s Department; Sonoma County Sheriff’s Department; Stockton Police Department; and Vallejo Police Department.

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### III. MID-YEAR STATISTICS

#### A. EXTERNAL / CITIZEN-INITIATED COMPLAINTS

A complaint is an act of expressed dissatisfaction that relates to police operations, personnel misconduct, or unlawful acts. All complaints from the public that involve a San José police officer are registered and documented in a shared IA/IPA database. Complaints from members of the public are “external” complaints. These complaints encompass a wide range of allegations ranging from simple procedural violations to serious unnecessary force. Some complaints, such as minor rude conduct or procedural violations, though considered classified complaints, may be addressed informally by Internal Affairs personnel, by the subject officer’s supervisor or through informal counseling provided by command officers. All classified complaints receive some level of investigation and are recorded in officers’ personnel records. “Formal” complaints with more serious allegations receive a thorough investigation by IA that is concluded with a finding of whether or not the evidence is sufficient to support the allegation. If supported, a finding of “sustained” is made and discipline may be imposed.

A complaint may be classified as an inquiry if the complaint is immediately resolved by the intake officer to the satisfaction of the citizen, without requiring more extensive investigation. Inquiries are not counted as formal/classified complaints and are not recorded in officers’ records as misconduct complaints.

The IPA reviews, monitors and audits external complaints, regardless of the type, to ensure that they are classified correctly and the investigation is thorough, objective and fair.

**Table 1: External / Citizen-Initiated Complaints Filed**

External Complaints Filed	Mid-Year 2005			Mid-Year 2004		
	IPA Intake	IA Intake	Total	IPA Intake	IA Intake	Total
Formal: Citizen-Initiated Complaints	20	34	54	16	53	69
Command Review Complaints	3	4	7	6	11	17
Procedural Complaints	5	13	18	2	4	6
Policy Complaints	1	0	1	2	2	4
Inquiry	30	41	71	15	34	49
No Boland	4	2	6	6	3	9
Withdrawn	1	2	3	8	3	11
Pre-Classification	6	0	6	11	13	24
<b>Total Complaints Filed</b>	<b>70</b>	<b>96</b>	<b>166</b>	<b>66</b>	<b>123</b>	<b>189</b>
Citizen Contacts (Not Complaints)	15	6	21	9	8	17

**Table 1** includes all external complaints filed between January 1 and June 30, 2005, by classification. Of the 166 external complaints, 70 were filed in the office of the IPA and 96 were filed at the IA Unit. The number of complaints classified as inquiries has increased by 45% this year: 71 inquiries by mid-2005 compared to 49 filed by mid-2004. Classified complaints are down significantly, nearly 32%: in mid-2005, 95 classified complaints had been received as compared with 140 in mid-2004.

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### B. INTERNAL / DEPARTMENT-INITIATED COMPLAINTS

The Office of the Chief of Police initiates internal complaints after receiving information alleging a violation of Department policy or a violation of law by a member of the SJPD. The IPA does not audit most internal complaints because they involve management and not misconduct issues. If an internal complaint alleges misconduct and has a nexus to a citizen, the IPA audits the internal case as well. **Table 2** reports that 17 internal complaints were initiated by the SJPD between January 1 and June 30, 2005.

**Table 2: Internal / Department-Initiated Complaints Filed**

Internal Complaints	Mid-Year 2005	Mid-Year 2004
Department Initiated	17	13
<b>Total</b>	<b>17</b>	<b>13</b>

### C. ALLEGATIONS FILED

The number and type of allegations received during the first six months of 2005 are enumerated in **Table 3**. There were 339 total allegations filed in the first six months of 2005 as compared to 276 for mid-2004. The large increase in allegations in mid-2005 is due to a change in statistical recording. In order to more accurately determine the nature of all complaints presented, in 2005 the IPA and IA agreed to begin recording allegations in inquiry complaints.

In mid-2005, 90 allegations were identified in complaints filed as inquiries. In the remaining classified complaints, 249 allegations were identified in 95 complaints by mid-2005 as compared with 276 allegations in 140 classified complaints filed in mid-2004.

The total number of allegations is greater than the number of complaints filed because each complaint may include more than one allegation. The three most common types of allegations continue to be Improper Procedure, Unnecessary Force and Rude Conduct. Improper Procedure allegations have increased significantly from 79 allegations (29%) in mid-2004 to 126 allegations (37%) in mid-2005, due to the newly counted allegations from inquiry complaints. There was a slight decrease in Rude Conduct allegations during this period from 68 allegations (25%) in mid-2004 to 52 allegations (15%) in mid-2005.

**Table 3: Types of Allegations Received**

Types of Allegations	Mid-Year 2005		Mid-Year 2004	
	Number	%	Number	%
Discrimination	4	1%	3	1%
Excessive Police Service	4	1%	1	0%
Failure to Take Action	14	4%	4	1%
Harassment	5	1%	1	0%
Improper Procedure	126	37%	79	29%
Missing/Damaged Property	9	3%	12	4%
Policy/Procedural	1	0%	4	1%
Racial Profiling	3	1%	7	3%
Rude Conduct	52	15%	68	25%
Unlawful Arrest	26	8%	17	6%
Unlawful Search	17	5%	8	3%
Unnecessary Force w/Medical	8	2%	7	3%
Unnecessary Force w/o Medical	57	17%	53	19%
Unofficer-like Conduct	13	4%	12	4%
<b>Total Allegations</b>	<b>339</b>	<b>100%</b>	<b>276</b>	<b>100%</b>

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### D. MULTIPLE COMPLAINTS RECEIVED BY INDIVIDUAL OFFICERS

The IPA tracks the number of complaints received by each officer. **Table 4** provides an overview of this breakdown. While the number of officers receiving only one complaint by mid-2005 is lower than those in mid-2004, due in part to the decrease in the total number of complaints, the number of officers receiving multiple complaints has increased slightly.

**Table 4: Complaints Received by Individual Officers in a Six-Month Period**

Period	Officers Receiving 1 Complaint	Officers Receiving 2 Complaints	Officers Receiving 3 Complaints	Officers Receiving 4 Complaints	Total Officers Receiving Complaints	Total Numbers of Complaints*
Jan - June 2005	103	7	2	2	114	86
Jan - June 2004	169	5	1	0	175	120

\*This total includes the following types of classified citizen complaints that are recorded in officer's personnel records: Formal/Citizen Initiated, Command Review, Procedural, Policy, and Pre-Class.

### E. COMPLAINTS CLOSED BY INTERNAL AFFAIRS

**Table 5** shows the number of complaints closed by IA during the first six months of 2005. The number of complaints closed may include complaints that were filed in 2004, as well as complaints filed in 2005.

**Table 5: Closed Complaints**

Types of Complaints	Mid-Year 2005	Mid-Year 2004
External Complaints	125	176
Internal Complaints	16	18
<b>Total Complaints Closed</b>	<b>141</b>	<b>194</b>

### F. FINDINGS OF INTERNAL AFFAIRS INVESTIGATIONS

**Tables 6 and 7** detail the findings of IA complaint investigations for each allegation. The standard of proof used by IA, and most police departments, for misconduct cases is "preponderance of evidence." This means that a finding of "sustained" requires that the weight of the evidence supports the conclusion that, more likely than not, the violation occurred. In the first six months of 2005, IA closed 141 cases, 125 citizen-initiated external complaints containing 169 allegations, and 16 internal department-initiated complaints containing 16 allegations. Four allegations were sustained in four of 36 external cases closed, and 14 allegations were sustained in 14 of 16 internal cases closed.

**Table 6: Disposition of Allegations: External/Citizen-Initiated Complaints**

Disposition	Allegations													Total
	ES	D	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained							3					1		4
Not Sustained				3			9		10					22
Exonerated			6	27			8		2		6		4	53
Unfounded				6			12	1	5		1	1		26
No Finding		1		4			6		4		1	1		17
Within Procedure				6			16				1		2	25
No Misconduct Determined					1		4		5	2			2	14
Command Review							4		4					8
Within Policy														
<b>Total Allegations</b>		<b>1</b>	<b>6</b>	<b>46</b>	<b>1</b>		<b>62</b>	<b>1</b>	<b>30</b>	<b>2</b>	<b>9</b>	<b>3</b>	<b>8</b>	<b>169</b>



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**Table 7: Disposition of Allegations: Internal/Department-Initiated Complaints**

Disposition	Allegations													Total
	ES	D	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained							7	2				5		14
Not Sustained														
Exonerated														
Unfounded														
No Finding												2		2
Within Procedure														
No Misconduct Determined														
Command Review														
Within Policy														
<b>Total Allegations</b>							<b>7</b>	<b>2</b>				<b>7</b>		<b>16</b>

Legend of Allegations			
<b>D</b> =	Discrimination	<b>RC</b> =	Rude Conduct
<b>DR</b> =	Delay in Response/Slow Response	<b>RP</b> =	Racial Profiling
<b>ES</b> =	Excessive Police Service	<b>UA</b> =	Unlawful Arrest
<b>FA</b> =	Failure to Take Action	<b>UC</b> =	Unofficer like Conduct
<b>IP</b> =	Improper Procedure	<b>F1</b> =	Unnecessary Force (w/medical)
<b>H</b> =	Harassment	<b>F2</b> =	Unnecessary Force (w/o medical)
<b>MDP</b> =	Missing/Damaged Property	<b>US</b> =	Unlawful Search

### G. SUSTAINED COMPLAINTS

Complaints are resolved differently based upon the classification process with many complaints being resolved informally; therefore, not all complaints can result in officer discipline. **Table 5** indicates that 141 complaints were closed by IA by mid-2005. **Table 8** indicates that only 52 were classified as the type of complaint in which discipline could be imposed. Of those 52 complaints, 18 complaints were sustained. The IPA and SJPD have historically calculated the sustained rate only on formal complaints. The majority of sustained complaints are from internally generated cases.

**Table 8: Formal Complaints and Sustained Cases**

Period/Type of Complaints	Closed Complaints	Sustained Complaints	Sustained Rate	Combined Sustained Rate
2005 Mid-Year/External Formal Complaints	36	4	11%	35%
2005 Mid-Year/Internal Complaints	16	14	88%	
2004 Mid-Year/External Formal Complaints	71	11	15%	31%
2004 Mid-Year/Internal Complaints	18	17	94%	

### H. UNNECESSARY FORCE COMPLAINTS

Unnecessary force allegations are divided into two categories: Class I and Class II. A Class I allegation involves serious bodily injury requiring immediate medical care. A Class II allegation is an incident in which the complainant reported no injuries or the injuries were not serious enough to require immediate medical attention. **Tables 9 and 10** indicate that the number of unnecessary force complaints and allegations filed in mid-2005 has increased slightly compared to mid-2004.

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**Table 9: Unnecessary Force Allegations Filed**

Unnecessary Force Allegations Filed	Mid-Year 2005	Mid-Year 2004
UF Class I Allegations	8	7
UF Class II Allegations	52	53
<b>Total UF Allegations</b>	<b>60</b>	<b>60</b>
<b>Total Number of Allegations Filed (Not Including Inquiries)</b>	<b>249</b>	<b>276</b>
<b>UF% of Total Allegations</b>	<b>24%</b>	<b>22%</b>

**Table 10: Unnecessary Force Complaints Filed**

Unnecessary Force Complaints Filed	Mid-Year 2005	Mid-Year 2004
UF Class I Complaints	6	5
UF Class II Complaints	38	35
<b>Total UF Complaints</b>	<b>44</b>	<b>40</b>
<b>Total Number Complaints Filed</b>	<b>183</b>	<b>202</b>
<b>UF % of Total Complaints</b>	<b>24%</b>	<b>20%</b>

**Table 11** shows a breakdown of the disposition of unnecessary force allegations in complaints closed by IA at mid-year in 2004 and 2005.

**Table 11: Disposition of Unnecessary Force Allegations**

Disposition of UF Allegations	Mid-Year 2005		Mid-Year 2004	
	UF Class I	UF Class II	UF Class I	UF Class II
Sustained	0	0	0	0
Not Sustained	0	3	0	7
Exonerated	6	27	3	49
Unfounded	0	6	0	3
No Finding	0	4	1	4
Within Procedure	0	6	0	1
<b>Total</b>	<b>6</b>	<b>46</b>	<b>4</b>	<b>64</b>

Thirty unnecessary force complaints were closed by mid-year 2005; 40 unnecessary force complaints had been closed at mid-year in 2004. The IPA tracks the level of injury alleged in unnecessary force complaints. **Table 12** shows the level of injury reported by complainants in the first six months of 2004 and 2005.

**Table 12: Complainant's Level of Injury**

Degree of Injury	Mid-Year 2005		Mid-Year 2004	
	Number	%	Number	%
Major	2	7%	2	5%
Moderate	3	10%	5	13%
Minor	24	80%	22	55%
None	1	3%	4	10%
Unknown	0	0%	7	18%
<b>Total</b>	<b>30</b>	<b>100%</b>	<b>40</b>	<b>100%</b>

## IPA 2005 MID-YEAR REPORT

### I. OFFICER-INVOLVED SHOOTING / DEATH IN CUSTODY CASES

Two officer-involved shooting incidents occurred during the first six months of 2005. According to new procedures developed in 2004, the IPA was called to the scene of the incidents for a briefing regarding the circumstances of the shooting. In both cases, the Grand Jury has found that there was insufficient evidence to support a criminal charge. Both cases are currently under administrative review. The IPA will review the cases further to determine any policy issues and recommendations.

**Table 13: Officer-Involved Shootings in the first Six Months of 2005**

Case	Ethnicity	Mental Illness History?	Citizen Armed?	Type of Weapon	Citizen Shoot at Officer?	Prior Criminal Record?	CIT at Scene?	Citizen's Injuries	Within Policy?	Other Weapons Used
1	Vietnamese	No	Yes	Gun	No	Yes	Yes	Fatal	Pending	No
2	Hispanic	Unknown	Yes	Baton	No	Yes	No	Fatal	Pending	Taser

### J. AUDITING COMPLAINTS

Auditing by the IPA is the final step in the processing of a complaint, and is conducted prior to notifying the complainant or the subject officer of the findings. Audits involve a critical examination and analysis of the circumstances that led to the misconduct complaint, and evaluation of the quality of the investigation. The audit process is the community's assurance that complaints are taken seriously and examined thoroughly, impartially, and without preconceived conclusions. The audit determines whether the case should be closed or considered for additional investigation or analysis, and is documented in an internal IPA database for statistical purposes. The following statistics reflect complaints audited during the first six months of 2005. Some of the complaints closed in 2005 were filed in 2004.

Through audits, perceived deficiencies in an investigation and/or disagreements with findings reached by the IA investigator are determined. An audit results in closure of the case, request for additional investigation, or disagreement with the outcome of the investigation. **Table 14** indicates that of the 64 complaints audited, the IPA agreed with 84% of IA's dispositions after the first review. However, during the first six months of 2005 several complaints were identified by the IPA for further discussion or investigation of disagreement and were still under review as of June 30, 2005. The lower number of audited complaints is the result of fewer complaints being closed during this time period and the replacement of several key IPA staff members, including the IPA.

**Table 14: IPA Audit Determination**

IPA Determination	Mid-Year 2005		Mid-Year 2004	
	Audits	%	Audits	%
Agreed at First Review	54	84%	79	75%
Agreed after Further Action	3	5%	24	23%
Disagreed after Further Action	0	0%	3	3%
Pending Cases for Audit	7	11%	0	0%
<b>Total Complaints Audited</b>	<b>64</b>	<b>100%</b>	<b>106</b>	<b>100%</b>

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### K. OFFICER DISCIPLINE

The type of discipline that is imposed on officers varies from counseling and training to termination. The allegations in the complaint and the disposition of the investigation will determine the type of discipline imposed. **Table 15** provides a breakdown of the actions taken and of the type of discipline imposed during the first six months of the year. Although there were only four sustained allegations, there are eleven cases in which officers were disciplined or received training based upon allegations with findings closed as not sustained or exonerated.

**Table 15: Discipline Imposed on Officers**

Discipline Imposed	Mid-Year 2005				Mid-Year 2004			
	Officers in External Complaints	Officers in Internal Complaints	Total	%	Officers in External Complaints	Officers in Internal Complaints	Total	%
Training and/or Counseling	7	1	8	30%	12	2	14	37%
Documented Oral Counseling	3	7	10	37%	6	7	13	34%
Letter of Reprimand	0	0	0	0%	0	2	2	5%
Retired before Discipline	0	1	1	4%	0	0	0	0%
Resigned before Discipline	0	1	1	4%	1	0	1	3%
10- Hour Suspension	0	2	2	7%	0	1	1	3%
20- Hour Suspension	0	1	1	4%	0	0	0	0%
30- Hour Suspension	0	1	1	4%	0	0	0	0%
40- Hour Suspension	0	0	0	0%	0	2	2	5%
Demotion	1	0	1	4%	0	0	0	0%
Termination	0	0	0	0%	1	3	4	11%
Settlement Agreement	0	2	2	7%	0	1	1	3%
<b>Total Discipline Imposed</b>	<b>11</b>	<b>16</b>	<b>27</b>	<b>100%</b>	<b>20</b>	<b>18</b>	<b>38</b>	<b>100%</b>

### IV. CONCLUSION

While the appointment of a new Independent Police Auditor, the replacement of several key IPA staff, and assignment of a new Internal Affairs Commander during this time period has provided extra challenges, the Office of the Independent Police Auditor and the San Jose Police Department have worked to maintain the professional and cooperative working relationship developed during past years. Indeed, as new working relationships have developed, new opportunities have been created to further improve the complaint process. We would like to take this opportunity to acknowledge the continued cooperation received from the San Jose Police Department and, specifically, the efforts of the Internal Affairs Unit.

Although the number of complaints other than inquiry complaints is down so far this year, most statistics at this point in time are closely tracking those reported at this time last year. The IPA will continue to monitor complaint data to determine whether there are any specific trends and whether any process or procedural changes should be recommended. Tracking data from unnecessary force complaints will continue to be a priority.

## **PERF Conducted Energy Device Policy and Training Guidelines for Consideration**

The following conducted energy device (CED)<sup>1</sup> policy and training guidelines were developed by the Police Executive Research Forum (PERF). They are based on information gathered from police chiefs and other subject-matter experts, two PERF national surveys involving more than 130 law enforcement agencies, reports on CED research findings and agency policies collected for this effort. In addition, a cross section of 80 people—police practitioners of various ranks, authorities on use of force, medical doctors and researchers—vetted these guidelines during a two-day national summit held on October 18–19, 2005, in Houston, Texas, that was supported by the U.S. Department of Justice Office of Community Oriented Policing Services and the Bureau of Justice Assistance.

While every effort was made to consider the majority views of all contributors and the best thinking on the vast amount of information received, the resulting PERF guidelines do not necessarily reflect the individual views of each participating law enforcement agency, nor the views of the U.S. Department of Justice.

1. CEDs should only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others. CEDs should not be used against a passive suspect.
2. No more than one officer should activate a CED against a person at a time.
3. When activating a CED, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of those cycles to the minimum activations necessary to place the subject in custody.
4. Training protocols should emphasize that multiple activations and continuous cycling of a CED appear to increase the risk of death or serious injury and should be avoided where practical.
5. Training should include recognizing the limitations of CED activation and being prepared to transition to other force options as needed.
6. That a subject is fleeing should not be the sole justification for police use of a CED. Severity of offense and other circumstances should be considered before officers' use of a CED on the fleeing subject.
7. CEDs should not generally be used against pregnant women, elderly persons, young children, and visibly frail persons unless exigent circumstances exist.

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<sup>1</sup> CED brand names include Taser,™ Stinger™ and Law Enforcement Associates.™

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8. CEDs should not be used on handcuffed persons unless they are actively resisting or exhibiting active aggression, and/or to prevent individuals from harming themselves or others.
9. CEDs should not generally be used when a subject is in a location where a fall may cause substantial injury or death.
10. When a subject is armed with a CED and attacks or threatens to attack a police officer, the officer may defend him- or herself to avoid becoming incapacitated and risking the possibility that the subject could gain control of the officer's firearm. When possible, officers should attempt to move outside the device's range (approximately 21 feet) and seek cover, as well as request back-up officers to mitigate the danger.
11. When possible, emergency medical personnel should be notified when officers respond to calls for service in which it is anticipated that a CED may be activated against a person.
12. Officers should avoid firing darts at a subject's head, neck and genitalia.
13. All persons who have been exposed to a CED activation should receive a medical evaluation. Agencies shall consult with local medical personnel to develop appropriate police-medical protocols.
14. All persons who have been subjected to a CED activation should be monitored regularly while in police custody even if they received medical care.
15. CED darts should be treated as a biohazard. Officers should not generally remove CED darts from a subject that have penetrated the skin unless they have been trained to do so. Agencies should coordinate with medical personnel to develop training for such removal. Only medical personnel should remove darts that have penetrated a person's sensitive areas.
16. Following a CED activation, officers should use a restraint technique that does not impair respiration.
17. CEDs should not be used in the known presence of combustible vapors and liquids or other flammable substances including but not limited to alcohol-based Oleoresin Capsicum (O.C.) Spray carriers. Agencies utilizing both CEDs and O.C. Spray should use a water-based spray.
18. Agencies should create stand-alone policies and training curriculum for CEDs and all lesslethal weapons, and ensure that they are integrated with the department's overall use-of-force policy.
19. Agencies should partner with adjacent jurisdictions and enter into a Memorandum of Understanding to develop joint CED policies and protocols. This should include addressing non-alcoholic O.C. Spray carriers. Agencies should also establish multijurisdictional CED training, collaboration and policy.
20. If officers' privately owned CEDs are permitted to be used on duty, policy should dictate specifications, regulations, qualifications, etc. The devices should be registered with the department.

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21. The CED "Probe Mode" should be the primary setting option, with "Drive Stun Mode" generally used as a secondary option.
22. CEDs should be regulated while officers are off duty under rules similar to service firearms (including storage, transportation, use, etc.).
23. CEDs should not be used against suspects in physical control of a vehicle in motion to include automobiles, trucks, motorcycles, ATVs, bicycles and scooters unless exigent circumstances exist.
24. The use of brightly colored CEDs (e.g., yellow) reduces the risk of escalating a force situation because they are plainly visible and thus decrease the possibility that a secondary unit mistakes the CED for a firearm (sympathetic fire). Note that specialized units (e.g., SWAT Units) may want dark-colored CEDs for tactical concealment purposes.
25. CEDs should be maintained in a holster on an officer's weak (support) side to avoid the accidental drawing and/or firing of an officer's sidearm.
26. Officers should be trained that the TASER™ CED's optimum range is 15 feet.<sup>2</sup>
27. Auxiliary/Reserve officers can be armed with CEDs provided they receive all mandated training and maintain all requalification requirements. Training and local statutes may dictate policy.
28. A warning should be given to a person prior to activating the CED unless to do so would place any other person at risk.
29. When applicable, an announcement should be made to other officers on the scene that a CED is going to be activated.
30. A supervisor should respond to all incident scenes where a CED was activated.
31. A supervisor should conduct an initial review of a CED activation.
32. Every instance of CED use, including an accidental discharge, should be accounted for in a use-of-force report.
33. Agencies should consider initiating force investigations outside the chain of command when any of the following factors are involved:
  - a. A subject experiences death or serious injury;
  - b. A person experiences prolonged CED activation;
  - c. The CED appears to have been used in a punitive or abusive manner;
  - d. There appears to be a substantial deviation from training; and
  - e. A person in an at-risk category has been subjected to activation (e.g., young children; persons who are elderly/frail, pregnant women, and any other activation as determined by a supervisor).
34. When possible, supervisors and back-up officers should anticipate on-scene officers' use of CEDs by responding to calls for service that have a high propensity for arrest and/or use of a CED.

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<sup>2</sup> Association of Chief Police Officers, 2004. Independent Evaluation of the Operational Trial of TASER.™

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35. Every substantial investigation (and when possible every preliminary investigation) should include:

- a. Location and interview of witnesses (including other officers);
- b. Photographs of subject and officer injuries;
- c. Photographs of cartridges/darts;
- d. Collection of CED cartridges, darts/prongs, data downloads, car video, confetti ID tags; and
- e. Copies of the device data download.
- f. Other information as indicated in guideline #45.

36. Police leaders should be aware that CED download data may be unreliable. Police leaders and investigators should be able to articulate the difference between the actual duration of a CED activation on a person and the total time of discharge registered on a CED device.

37. CED activations should be tracked in the department's early intervention system (EIS).

38. The department should periodically conduct random audits of CED data downloads and reconcile use-of-force reports with recorded activations. Departments should take necessary action as appropriate when inconsistencies are detected.

39. Audits should be conducted to ensure that all officers who carry CEDs have attended initial and recertification training.

40. Departments should not solely rely on training curriculum provided by a CED manufacturer. Agencies should ensure that manufacturers' training does not contradict their use-of-force policies and values. Agencies should ensure that their CED curriculum is integrated into their overall use-of-force systems.

41. CED recertification should occur at least annually and consist of physical competency and device retention, changes in agency policy, technology changes, and reviews of local and national trends in CED use.

42. Exposure to CED activation in training should be voluntary; all officers agreeing to be subjected to a CED activation should be apprised of risks associated with exposure to a CED activation.

43. Supervisors and command staff should receive CED awareness training so they can make educated decisions about the administrative investigations they review.

44. Statistics should be maintained to identify CED trends and deployment concerns. Agencies may include display and arcing of weapons to measure prevention/deterrence effectiveness. CED statistics should be constantly analyzed and made publicly available.

45. The following statistical information should be included when collecting information about CED use:

- a. Date, time, location of incident;
- b. The use of the laser dot or display of the CED that deterred a subject and gained compliance;



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- c. Identifying and descriptive information of the suspect (including membership in an at-risk population), all officers firing CEDs, all officer witnesses, and all other witnesses;
- d. The type and brand of CED used;
- e. The number of CED cycles, the duration of each cycle, the duration between cycles and the duration that the subject was actually activated;
- f. Level of aggression encountered;
- g. Any weapons possessed by the suspect;
- h. The type of crime/incident the subject was involved in;
- i. Determination of whether deadly force would have been justified;
- j. The type of clothing worn by the subject;
- k. The range at which the CED was used;
- l. The type of mode used (probe or drive stun);
- m. The point of impact of probes on a subject in probe mode;
- n. The point of impact on a subject in drive stun mode;
- o. Location of missed probe(s);
- p. Terrain and weather conditions during CED use;
- q. Lighting conditions;
- r. The type of cartridge used;
- s. Officer suspicion that subject was under the influence of drugs (specify if available);
- t. Medical care provided to the subject; and
- u. Any injuries incurred by an officer or subject.

46. Law enforcement agencies should conduct neighborhood programs that focus on CED awareness training. CED training should be part of any citizen's training academy program.

47. The agency's Public Information Officer should receive extensive training on CEDs in order to better inform the media and the public about the devices. Members of the media should be briefed on the department's policies and use of CEDs.

48. CED awareness should extend to law enforcement partners such as local medical personnel, citizen review boards, medical examiners, mental health professionals, judges and local prosecutors.

49. CEDs can be effective against aggressive animals. Policies should indicate whether use against animals is permitted.

50. Officers should be aware that there is a higher risk of sudden death in people under the influence of drugs and/or symptoms associated with excited delirium.

51. CED cartridges with longer barbs may be more effective in extremely cold climates.

52. Agencies should be aware that CED cartridges have experienced firing problems in extremely cold weather.

These guidelines are presented with the understanding that many force situations evolve rapidly and sometimes require law enforcement officers to make quick decisions about force options. It is impossible to anticipate every possible force situation or circumstance that may occur, and in all cases officers need to rely on their training, judgment and instincts. However, it is anticipated that these considerations will help the law enforcement profession to better manage conducted energy devices and police use-of-force situations.

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## SAN DIEGO POLICE DEPARTMENT PROCEDURE

**DATE:** 09/27/2005  
**NUMBER:** 1.07 – ADMIN  
**SUBJECT:** USE OF TASERS  
**RELATED POLICY:** 1.04  
**ORIGINATING DIVISION:** TRAINING  
**NEW PROCEDURE:**   
**PROCEDURAL CHANGE:**   
**SUPERSEDES:** DP 1.07, 12/03/2004

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### I. PURPOSE

This Department procedure establishes guidelines for the proper use of Tasers.

### II. SCOPE

This procedure applies to all sworn members of the Department.

### III. DEFINITION

The Taser is a force option that is intended to temporarily incapacitate subjects to enable officers to gain control over them. The Taser is a conducted energy device that uses propelled wire to conduct energy to a remote target, thereby controlling and overriding the person's central nervous system. The Taser fires two probes up to a distance of 21 feet from a replaceable cartridge. A compressed nitrogen capsule located inside the cartridge propels both cartridge probes. When fired, the cartridge propels two probes at 160+ feet per second. These probes are connected to the Taser by thin insulated copper-clad steel wires.

When the probes make contact with the target, 50,000 volts of electricity pass between the probes and override the person's central nervous system, causing temporary incapacitation. The electrical pulses can penetrate up to two inches of clothing or other barriers. The Taser is equipped with a laser sight to allow for greater accuracy in both daylight and darkness.

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## IV. APPROVED TASERS

The following Tasers have been approved for Department use:

- A. The Taser International Air Taser Model No. 34000-a hand-held remote stun system that is operated by a 9-volt battery.
- B. The Taser International Model X-26-a hand-held remote stun system that is operated by a digital power magazine that is able to provide over 300 activations.
- C. Both Tasers use a yellow and black striped cartridge or a silver cartridge. Both cartridges are effective from point blank to 21 feet, with the optimal range being 7-15 feet.

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## V. PROCEDURES

### A. Guidelines for Taser use

1. The Taser may be used on subjects exhibiting assaultive behavior or life-threatening behavior, as defined in Department Procedure 1.04, Use of Force. The Taser may also be used to control actively resisting subjects reasonably believed to possess or have immediate access to a deadly weapon. Commands and warnings should normally be given, if feasible, prior to using the Taser.
2. Officers should evaluate whether the use of the Taser is appropriate based upon the subject's age (i.e., small children, elderly) or physical condition (i.e., under the influence, pregnant, physically disabled). In some cases, other control techniques may be more suitable, as determined by the subject's threat level to others.
3. The Taser may be used more than once on a subject if reasonable to gain control over the subject. If the Taser application is ineffective after more than two applications, officers should consider other appropriate force options to respond to the threat level presented. Cover officers should be prepared to intervene as soon as possible to take control of the subject.
4. The Taser shall not be used on a handcuffed subject, unless the subject displays life-threatening behavior.
5. The Taser should not be used when the subject is in danger of falling from a significant height, unless the subject displays life-threatening behavior.
6. The Taser should be aimed at the subject's center mass, but may be aimed at any part of the body if the subject displays life-threatening behavior.
7. The spark from a Taser can ignite flammable liquids, vapors, or sensitive explosives. As a general rule, for fire safety reasons, the Taser should not be used in areas where cigarettes are forbidden. The Taser should not be fired at anyone sprayed with an alcohol-based chemical spray, including alcohol-based pepper sprays, as the fumes could ignite. The San Diego Police Department only issues water based OC Spray that will not be

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ignited by the Taser. The Taser will not ignite standard solids or black gunpowder.

8. Uniformed officers issued a Model X-26 Taser shall carry it on their duty belt in a department-approved holster at all times while on duty.
9. Uniformed officers issued an Air Taser Model #34000 shall carry it in their department vehicle at all times while on duty.
10. The laser sight should be aimed at the subject's center mass for greater accuracy.
11. The Taser may be used in a "drive stun" mode by (placing the unit directly in contact with the subject's body). The unit shall not intentionally be placed on the subject's face, neck, head, or groin unless the subject displays life-threatening behavior. The "drive-stun" mode affects the sensory nervous system only, making it a pain compliance device. Caution should be exercised by the officer when using the "drive-stun" mode, as the unit could be used to incapacitate the officer if the subject were to gain control of the unit.
12. Although the Taser will normally immobilize a subject within two to three seconds, officers should allow the Taser to activate for a full cycle unless it appears the subject is in medical distress, such as appearing dazed or unable to control bodily functions. Cover officers may take physical control of the subject during and after the Taser is activated. Officers may make contact with the subject while the Taser is activated as long as caution is taken not to touch the subject between the locations of the two probes.
13. Repeated, prolonged, and/or continuous exposure(s) could cause strong muscle contractions that could impair breathing and respiration, particularly when the probes are placed across the chest or diaphragm. Prolonged, extended, uninterrupted discharges or extensive multiple discharges should be avoided whenever practicable in order to minimize the potential for over-exertion of the subject or potential impairment of full ability to breathe over a protracted time period.

### B. Medical treatment and transportation

1. As soon as the subject stops resisting and is handcuffed, an officer shall immediately monitor the subject's vital signs closely. The following first aid should normally be administered to subjects who have been tasered:
  - a. Roll the subject onto his/her side or into a sitting position;
  - b. Monitor breathing, and if necessary, establish an airway;
  - c. Check the pulse at the wrist;
  - d. Check the subject's facial skin color (gray or blue tint is a sign of severe medical distress); and, determine if the subject is functionally conscious (exhibiting voluntary movement, ability to converse and awareness of place, time and date).

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Officers should make every effort to avoid contacting the probes when administering first aid to a person who has been tasered.

2. Tasered subjects, whether by probes or "drive-stun" shall be transported to UCSD Medical Center for a medical examination prior to booking or final disposition. The decision to transport a subject by police vehicle or to request paramedics should be based on the officer's judgment as to which option will provide the fastest access to professional medical care, based on the circumstances. A subject tasered more than once shall be transported by paramedics.
3. After the subject has been handcuffed and is secure, officers should leave the probes imbedded in the skin, and sever the wires. Only qualified medical personnel may remove probes imbedded in the skin.
4. If paramedics transport the subject, at least one officer shall accompany the paramedics during transport to assist in the event the subject becomes violent.
5. Tasered subjects who are also suspected of being under the influence of any drug shall be transported to the UCSD Medical Center in the following manner:
  - a. Two officers shall make the transport with the passenger officer continually monitoring the subject's respiration, skin tone, and level of consciousness.
  - b. If, during transport, a medical problem arises, officers shall either request paramedics and administer appropriate first aid until they arrive, or administer appropriate first aid and transport the subject to the nearest emergency medical facility.

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### VI. REPORTS

- A. Officers shall document the circumstances surrounding the use of the Taser in accordance with Department Procedure 1.04, Use of Force, and complete the required Force Effectiveness Form referenced in Training Bulletin 03-02, dated June 18, 2003. Reports shall include the serial numbers of the Taser and the cartridge used.
- B. The reporting officer shall send a copy of the report to the Operational Support Administration at MS-776.

### VII. MAINTENANCE/ACCOUNTABILITY

- A. The Operational Support Administration will maintain Tasers.
- B. All requests for repairs or replacement of inoperative or damaged units shall be forwarded to the Operational Support Administration.

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- C. Officers needing a replacement for an expended Taser cartridge shall bring a copy of all reports relating to the discharge (i.e., arrest report or ARJIS-9) to the Division's Staff Sergeant. The Division's Staff Sergeant will ensure completion of an Equipment Replacement Request Form (PD-1022-FM) and have it signed by the Commanding Officer. Area Station Staff Sergeants will ensure all required information is listed prior to issuing a new cartridge. Officers needing to replace a defective or expired cartridge must bring the cartridge to their Staff Sergeant in order to get an authorization form. Lost cartridges will require an ARJIS-9 signed and reviewed by the officer's supervisor in order to be replaced. Employees who lose or damage equipment through abuse or negligence will be held financially responsible for the replacement or repair costs of the item and will be billed accordingly by Fiscal Services.

### VIII. TRAINING

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The Training Division is responsible for all aspects of Taser training and certification. Taser training will be coordinated and conducted by certified Taser instructors trained by the manufacturer. The Training Division will maintain a list of certified Taser instructors and certified Taser operators.