



2018 IPA Year End Report

Office of the Independent Police Auditor
City of San José



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2018 IPA Year End Report



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by

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The Office of the Independent Police Auditor

Creation of the Office of the Independent Police Auditor

The Office of the Independent Police Auditor was established by the San José City Council in 1993 with the enactment of a city ordinance codified in the San José Municipal Code. Thereafter, on November 6, 1996, the voters of San José amended the City Charter to establish the Office of the Independent Police Auditor as a permanent arm of city government. (Please see Appendix A for Municipal Code section 8.04.010 and City Charter section 809.)

In the 25 years that the IPA office has existed, there have been six Independent Police Auditors: Teresa Guerrero-Daley (1994-2005); Barbara J. Attard (2005-2008); Shivaun Nurre, Interim IPA (2009-2010); Judge LaDoris Cordell (Ret.) (2010-2015); Shivaun Nurre, Interim IPA (2015); Walter Katz (2016); Shivaun Nurre, Interim IPA (2017); Aaron B. Zisser (2017-2018); and Shivaun Nurre, the current IPA, appointed in December 2018.

Mission of the Office of the Independent Police Auditor

The mission of the Office of the Independent Police Auditor is four-fold: (1) to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations; (2) to conduct outreach to the San José community; (3) to propose thoughtful policy recommendations to the San José Police Department; and (4) to strengthen the relationship between the San José Police Department and the community it serves.

Independence of the Police Auditor

Pursuant to San José Municipal Code section 8.04.020, the Independent Police Auditor shall, at all times, be totally independent such that requests for further investigations, recommendations and reports shall reflect the views of the Independent Police Auditor alone. No person shall attempt to undermine the independence of the Police Auditor in the performance of the duties and responsibilities set forth in San José Municipal Code section 8.04.020. (Please see Appendix A for Municipal Code section 8.04.020.)



City of San José Organizational Chart

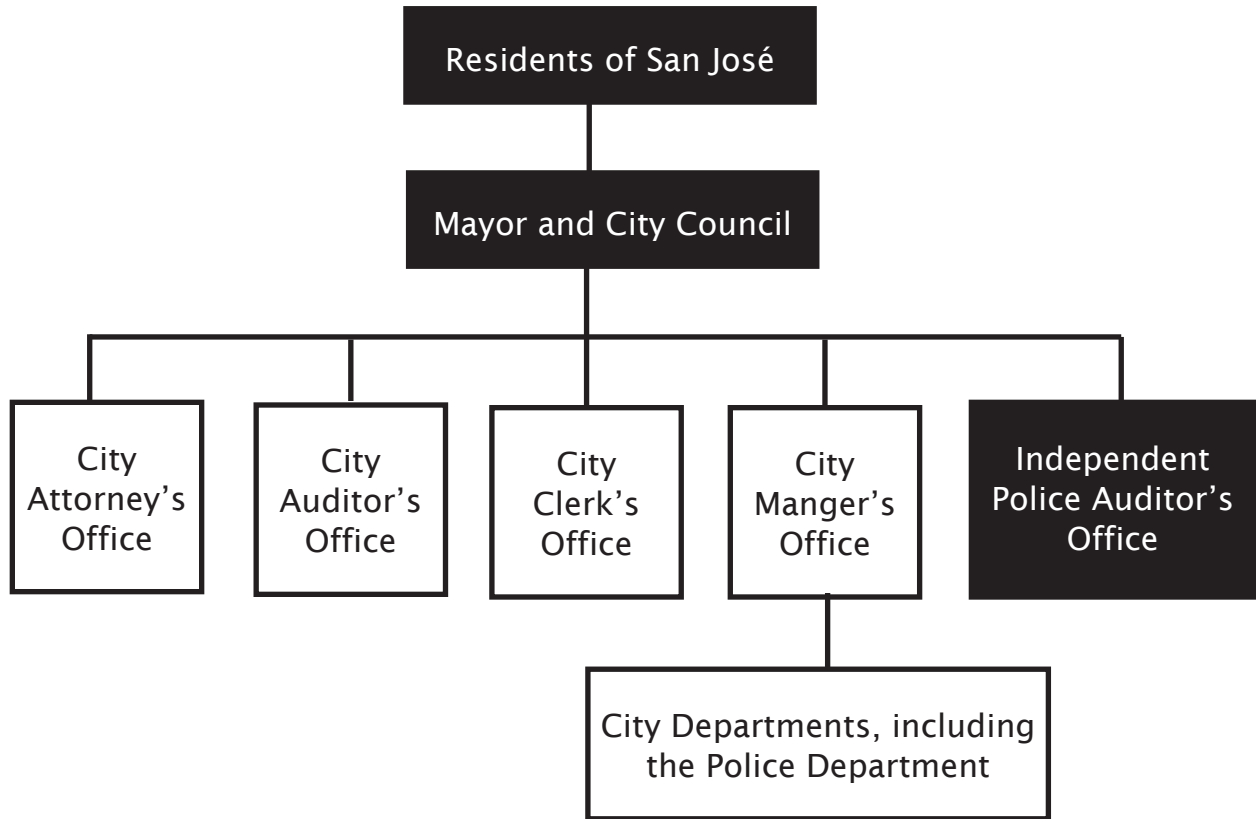


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CHAPTER ONE

INTRODUCTION

I. Summary of 2018 IPA Report

A. 2018 Statistics:

- A total of 248 complaints/concerns were received in 2018—a twelve percent (12%) increase from 2017. (see page 8)
- The IPA office began tracking those persons filing multiple complaints. Thirty-nine percent (39%) of citizen-initiated complaints in 2018 were filed by people who filed multiple complaints. (see page 9)
- Procedure allegations continue to be the most common allegation. (page 15)
- Most allegations (52%) were closed with a finding of Exonerated meaning that the officer engaged in the alleged conduct and that conduct was within Department policy. Five percent (5%) of allegations were closed as Sustained. This means that the Department determined that the officer engaged in misconduct. (see page 19)
- The IPA agreed that the Department’s investigation of alleged misconduct was fair, thorough and complete in 91% of complaint investigations either on initial review or after the Department provided additional investigation/analysis. The IPA closed 9% of cases as disagreed or “with concerns.” This closure data is similar to that in calendar year 2017. (see page 21)
- In 2018, 24% of all SJPD officers were named in Conduct Complaints. Subject officer demographics reflecting ethnicity and gender closely mirror their representation in the Department. (see pages 22-23)
- “Control hold” has been the most frequently alleged type of force over the last five years. The use of body weapons has dropped considerably from 31% in 2014 to 10% in 2018. The use of the Taser has increased from 2% in 2016 to 11% in 2018. (see page 33)
- The IPA tracks the level of injury alleged in complaints. For cases closed in 2018, many allegations of force – 41% - resulted in no injuries. (page 34)

B. IPA Outreach Activities:

The IPA and IPA staff conducted community outreach throughout the City through meetings and presentations reaching over 3,600 San José residents. We hosted two community forums in partnership with the Silicon Valley Chapter of the National Coalition of 100 Black Women and advocates for the homeless. The IPA and IPA staff attended the National Association for Civilian Oversight of Law Enforcement (NACOLE) annual conference and regional conferences. The Independent Police Auditor Advisory Council (IPAAC) met quarterly to discuss issues about policing in San José and other community concerns.

C. The IPA Made Five Policy Recommendations in 2018:

1. Track when an Officer Points A Firearm At A Person
2. Implement A Robust Early Intervention System
3. Record All Interviews and Interrogations
4. Provide Progress Report On 2017 UTEP Recommendations
5. Install Surveillance Cameras In Evidence Room At Substation

D. Summaries of Complaints Audited by the IPA Office

In an effort to promote transparency about our audit process, while strictly adhering to the requirements of confidentiality, this Report presents summaries of all of the cases that our office audited in 2018 in which we Agreed After Further, Closed with Concerns, and Disagreed. We have “sanitized” these summaries so that the identities of the complainants and subject officers are protected from public disclosure. Similarly, this Report includes summaries of a sample of cases in which we agreed with IA’s investigations and conclusions upon initial review. Our goal in providing this information about our audits is to ensure that the public understands that independence and objectivity are an integral part of the work of the Independent Police Auditor.

II. Update on Expansion of Oversight Authority

In 1996, the citizens of San José voted to place the Office of the Independent Police Auditor (IPA) into the City Charter. The IPA was the first auditor model of oversight in the United States.¹ Since 1996, the auditor/monitor model of oversight has been recreated, in various forms, in many cities. Through the years, the auditor/monitor model of oversight has revealed its strengths and weaknesses. Some jurisdictions have moved to revise the model or to add additional layers of oversight onto the existing auditor model.²

In 2014, IPA Judge LaDoris Cordell (Ret.) recommended that there should be increased oversight of the San José Police Department (SJPD).³ Although that 2014 recommendation focused on independent review of misconduct investigations initiated by the Department, the subsequent discussions included exploring other options for oversight expansion. In 2016, the IPA office recommended that SJPD provide it with access to investigations of the most serious uses of force.⁴

On January 16, 2018, the City Council held a study session to discuss the existing framework of San Jose’s auditor model, as well as other possible authorities that may enhance or strengthen the auditor framework. The IPA office led the study session⁵ that included a panel of oversight practitioners, observations from the Chief of Police, and public comments.

1. Joseph DeAngelis, Brian Buchner, Richard Rosenthal, “Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models,” *National Association for Civilian Oversight of Law Enforcement*, September 2016. www.ojpdagnosticcenter.org/sites/default/files/NACOLE_Civilian_Oversight.pdf.

2. For example, components similar to a citizen review board have been formally added to police oversight in jurisdictions with the auditor model for BART (Bay Area Rapid Transit) CA, Denver, CO and Fairfax, VA.

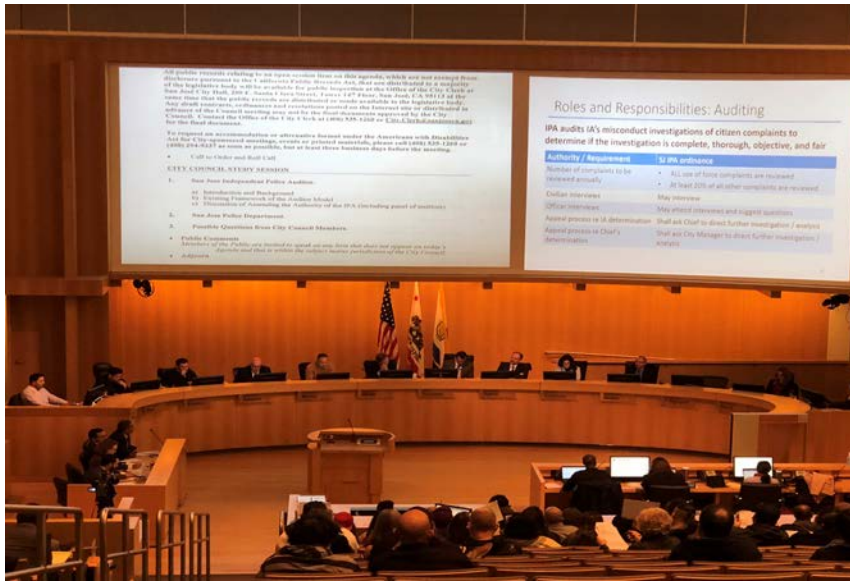
3. In the 2014, Judge LaDoris Cordell recommended requiring independent civilian oversight of all Department-Initiated Investigations. 2014 IPA Year End report, pages 68-70.

4. 2016 IPA Year End report, pages 48-50.

5. The IPA Study Session presentation is here

<https://www.sanjoseinside.com/wp-content/uploads/2018/01/IPA-Study-Session-Presentation.pdf>

Later in 2018, Council directed city staff to begin discussions with the San José Police Officers' Association about possible expansion of IPA authority. Discussions have continued into 2019; the various proposals are posted on the City's website. <http://www.sanjoseca.gov/index.aspx?NID=533>




III. Outreach Innovations

IPA outreach efforts in 2018 focused on modernizing outreach efforts and supporting community requests for more transparency. With the support of the Silicon Valley Community Foundation, staff continued to build on its earlier efforts with the Community Trust and Policing Project started in 2017. In 2018, the IPA hosted targeted community meetings with the unhoused, youth, and community-based organizations. The community meetings provided additional data points for the IPA's project.

Home IPA Insights Community Conversations IPA Report

San José Independent Police Auditor


We promote accountability to strengthen the relationship between the San José Police Department and the community it serves.



IPA Insights

View data visualizations of SJPD-initiated stops. See themes from IPA forums.


[View Insights](#)



Community Conversations

Make your voice heard! Let us know what you think about your police

[View Conversations](#)



IPA Year End Report

View the online version of the San José IPA's Annual Report

[View Report](#)

The project also provided an opportunity for the IPA office to reimagine how to best provide information in an accessible format that allowed community members to provide their thoughts and comments. The IPA office created sjipaengage.com to both provide information and capture feedback from the community. [Sjipaengage.com](https://sjipaengage.com) stores and displays important information from multiple data sources into one easy to access place. <https://sjipaengage.com/>

SJIPAENGAGE.COM has four sections:

- 1.) General information about the IPA office and our complaint process
- 2.) *IPA Insights* provides data visualization for SJPD officer-initiated traffic and pedestrian stops
- 3.) An online version of the IPA's annual report
- 4.) *Community Conversation* seeks input from the community about police related topics and then displays that data in interactive charts.

Over the next year, the Office of the IPA will continue to enhance sjipaengage.com. Additions will include: adding data to provide transparency, a feedback tool to comment on IPA services, a mechanism to file complaints, and a section dedicated to community perceptions about policing.

IV. New Legislation Grant Access to Police Records/Recordings

For years, California laws limited access to police records. California laws were more restrictive than many other states.⁶

In 2018, however, big changes happened at the State Capitol. Legislators passed two bills that allowed the public access to a limited set of records about use of force and officer misconduct. Governor Jerry Brown signed both bills.

A. Senate Bill 1421

In passing Senate Bill 1421, *Peace officers; release of records*, the Legislature made these findings:

- (a) Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.⁷
- (b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.⁸

6. *Here's how California became the most secretive state on police misconduct*, Los Angeles Times 8/15/18 <https://www.latimes.com/politics/la-me-california-police-discipline-secret-20180815-story.html>

7. http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20172018OSB1421 Section 1(a)

8. *Id.* Section 4.

The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.⁹

Effective January 1, 2019, Senate Bill 1421 states that, certain documents shall not be confidential and shall be made available for public inspection¹⁰ pursuant to the California Public Records Act.

Use of Force Records	The public may inspect any record relating to the report, investigation ¹¹ , or findings of:
	An incident in which the use of force by a police officer against a person resulted in death.
	An incident in which the use of force by a police officer against a person resulted in great bodily injury.
	Any incident involving the discharge of a firearm at a person by a police officer.
Internal Affairs Records	The public may inspect any record of:
	An incident in which a sustained finding was made by the law enforcement agency that a police officer engaged in sexual assault ¹² involving a member of the public
	An incident in which a sustained finding was made by the law enforcement agency of dishonesty by a police officer <ul style="list-style-type: none"> • directly relating to the reporting, investigation, or prosecution of a crime, or • directly relating to the reporting of, or investigation of misconduct by, another police officer, • Records include any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

9. Id. Section 4.

10. The agency may redact information for limited and enumerated purposes.

11. An agency may withhold a record of an incident that is the subject of an active criminal or administrative investigation.

12. Senate Bill 1421 defines sexual assault as *the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.*

B. Assembly Bill 748

This bill applies to body-worn camera footage; it establishes a standard that balances privacy interests with the public's interest in the footage.¹³ According to Assembly member Phil Ting, the bill's author:

Transparency between law enforcement and the communities they protect is critical to establishing and maintaining good relationships. For those law enforcement agencies that have chosen to deploy body cameras on their officers, this bill simply requires these agencies to adopt and post a policy on how the public may seek access to the body camera recordings. Too often, confusion about public access to these recordings exacerbates sensitive or controversial situations.

The new changes to the Public Record Act mandate that recordings, both audio and visual, of critical incidents are to be made publicly available. Similar to the text in SB 1421, these incidents are:

- a. An incident in which the use of force by a police officer against a person resulted in death.
- b. An incident in which the use of force by a police officer against a person resulted in great bodily injury.
- c. Any incident involving the discharge of a firearm at a person by a police officer.

Generally, these recordings are to be made available within 45 days of the critical incident. The agency may delay disclosure for a set period of time under limited circumstances.¹⁴ Redaction technology may be used to protect the reasonable expectation of privacy of persons captured on the recording. The law is effective July 1, 2019.¹⁵

V. Other Developments in 2018

A. SJPD Use of Force Dashboard

In 2006, the SJPD published its first report capturing all reportable force used by SJPD officers during the calendar year. Another comprehensive report was published in 2007. Ten years followed in which there was no public report on reportable force. Fortunately, in January 2018, SJPD launched an interactive on-line dashboard that shows data on use of force incidents from 2015 through 2018. Data sets include:

- time and location of use of force incidents
- use of force tactics and injuries sustained
- subject characteristics and criminal charges referred
- calls for service, arrest rates and use of force rates

13. AB 748 Assembly Floor Analysis 08/31/2018.

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB748

14. For example, the agency may withhold recordings if disclosure would *substantially interfere* with an active criminal or administrative investigation.

15. See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748 for bill language.

The dashboard also provides an analysis prepared by Bob Scales of Police Strategies LLC. This report reflects a high level view of the SJPd data and presents how SJPd use of force compares with force used by other police departments.

The SJPd's Use of Force dashboard is here <http://www.sjpd.org/crimestats/forceanalysis.asp>

B. Staffing Changes

There was a major change in the IPA office in 2018. Aaron Zisser was appointed as the IPA by the City Council in September 2017. In August 2018, Mr. Zisser resigned from the IPA position. In December 2018, the City Council appointed Shivaun Nurre to serve as the IPA. Ms. Nurre first joined the City of San José in 2006 as the Assistant Independent Police Auditor, a tenure which has included four stints serving as the Acting Independent Police Auditor.

CHAPTER TWO

OVERVIEW OF THE PROCESS AND STATISTICS

This chapter discusses the Independent Police Auditor’s (IPA) role in the complaint process. Statistical information about the types of cases received, the classification of cases, findings reached, officer discipline and the audit process are also included.

It helps to understand the complaint and investigation process to best make sense of the statistics drawn from those complaints made in 2018. Terms like *complaints*, *allegations* and *findings* can appear interchangeable, but they all refer to a part of the process that begins when a person files a complaint with either the IPA or SJP. (The terms can also be found in the glossary at the end of this Report.)

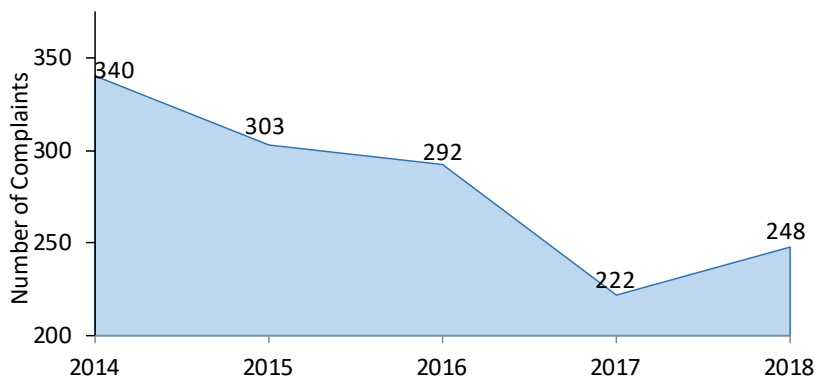
I. Step One: Intake

The complaint process begins when a member of the public files a complaint about a San José Police Department (SJP) officer(s) or an SJP policy. Complaints can be filed either with the IPA or with the Internal Affairs (IA) Unit of the SJP. Complaints or concerns may be filed in person, by phone, fax, email, or postal mail with either office. Anyone can file a complaint regardless of age, immigration status, or city of residence. Members of the community may file complaints even if they do not have a direct connection to the incidents or the persons involved. Complainants may also remain anonymous.

With the complainant’s consent, IPA or IA staff record the complainant’s statement to ensure that the concerns and information provided by the complainant are captured accurately. The complaint is then entered into a shared IA/IPA database. This initial process is called **intake**. In 2018, a total of 248 complaints and concerns were received. This was a twelve percent (12%) increase in the number of complaints and concerns received compared to 2017.

Illustration 2-A depicts the total number of complaints received in the past five years. The factors that influence the number of complaints received each year are difficult to measure.

Illustration 2-A: Complaints Received — Five-Year Overview (2014-2018)



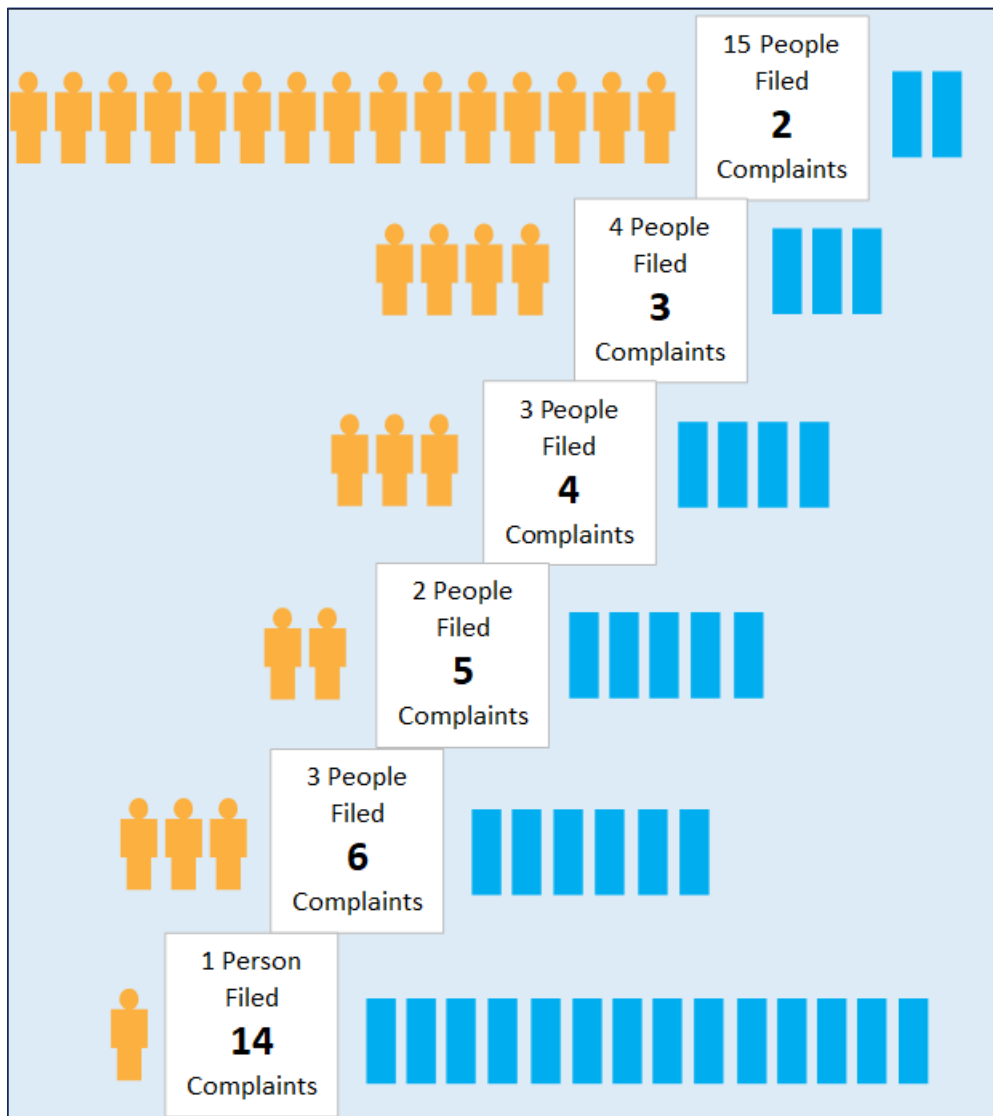
Multiple Complainants

We have seen a rise in the number of complaints received by members of the public in 2018. However, of the 248 complaints received in 2018, 96 were filed by people filing multiple complaints. Thus, 39% of citizen-initiated complaints in 2018 were filed by people who filed multiple complaints.

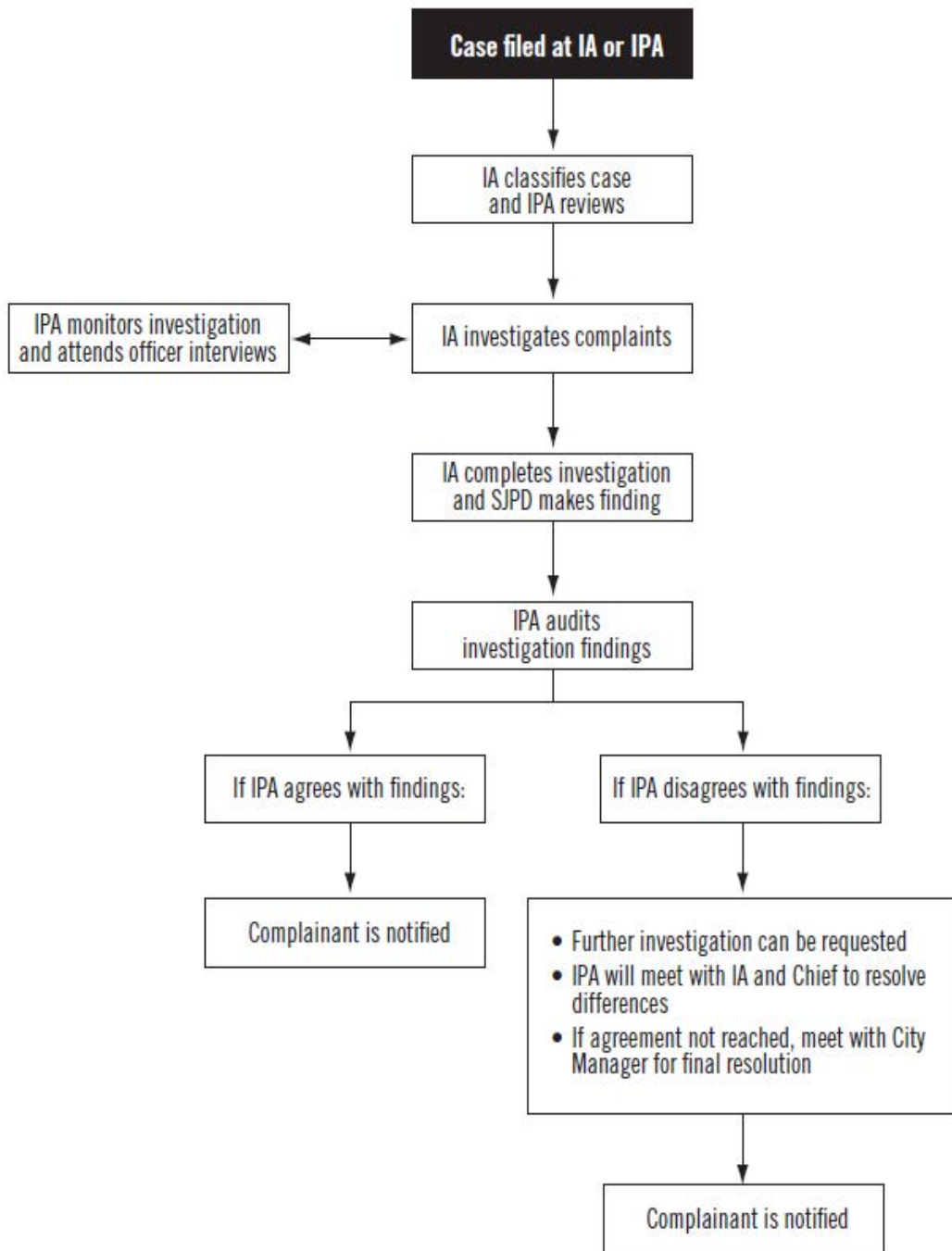
As depicted by the illustration below, one person filed 14 complaints, three people filed six complaints, and 15 people filed two complaints. This is the first year that the IPA office has tracked this data. This information does not imply that these complaints are unmeritorious or frivolous. On the contrary—only three of these complaints were classified as *Decline to Investigate*, and only four were classified as *Non-Misconduct Concerns*.

We will continue to track this data as well as the impact that complainants filing multiple complaints have on our statistics. However, our policy will remain to accept every allegation of misconduct filed by a member of the public and assess the merits individually.

Illustration 2-B: Multiple Complainants (2018)



The Complaint Process Flow Chart



A. Why Each Complaint Matters

- **Holding Officers Accountable**

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

- **Unbiased Review**

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

- **Trends**

The only way the IPA can identify trends that point towards problematic police practices is if members of the public speak up about their concerns and file complaints.

- **Mediation**

When a complainant expresses a desire to discuss their complaints directly with the officer, 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. These conversations promote a better understanding between the officers and the community they serve. Both the Internal Affairs Unit and the Office of the IPA must agree that mediation is appropriate and the complainant must be willing to withdraw the complaint.

- **Policy Changes**

When civilians voice concerns about SJPD policies, the IPA has the unique perspective and opportunity to make policy recommendations to the Department. Many of our recommendations have had a positive impact on policing in the City, such as the implementation of Body-Worn Cameras.

- **Early Intervention System**

If an officer accumulates too many individual complaints, the officer will receive mandatory intervention counseling by the Department to identify and correct problematic behaviors.

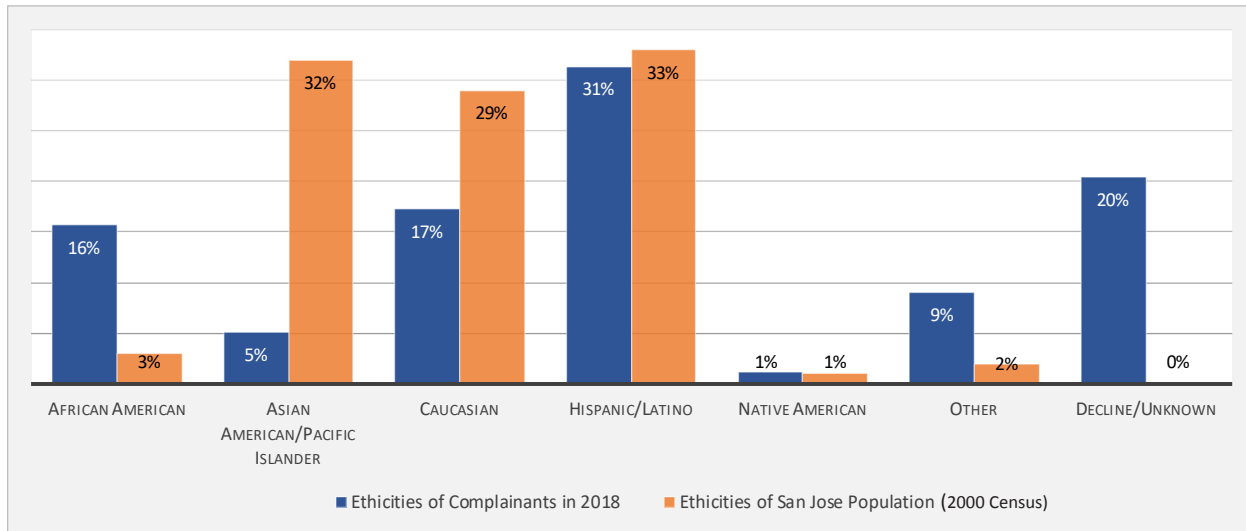
People Involved in the Complaint Process

- **Complainant** — the complainant is the person who files the complaint.
- **Subject Officer** — the subject officer is the officer who engaged in the alleged misconduct.
- **Witness Officer** — the witness officer is an officer who witnessed the alleged misconduct. The complaint is not against this officer.
- **Civilian Witness** — a civilian witness is a person with firsthand knowledge about the incident that gave rise to the complaint.
- **Internal Affairs Investigator** — the Internal Affairs investigators are police officers assigned to the Internal Affairs Unit who receive and investigate the complaints. The investigators analyze the complaints by applying the relevant SJPD Duty Manual sections. IA then sends written reports of their investigations and analyses to the IPA office for audit.
- **IPA Staff** — the IPA staff receive complaints and also audit the Department's investigations and analyses to ensure that they are fair, thorough, and objective.

B. Demographics of Complainants

During the intake process, IA and the IPA office gather demographic data about complainants. In 2018, 80% of complainants chose to identify their ethnicities at intake; such disclosure is entirely voluntary. Below is a comparison chart of complainant and San José resident demographics in 2018.

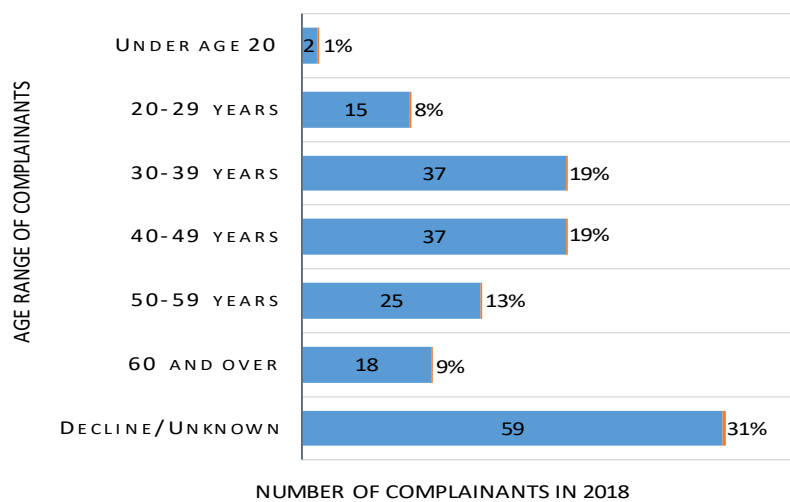
Illustration 2-C: Ethnicities of Complainants and San José Population



In recent years, we have seen a decrease in the number of complainants who identify as Asian American/Pacific Islander, and an increase in the number of complainants who identify as African-American.

As shown in Illustration 2-D, of the complainants who chose to identify their age at intake, 38% were between the ages of 30 and 49 years old.

Illustration 2-D: Age Range of Complainants in 2018



Historically, young people (ages 30 and below) do not file many complaints. Although youth do not make up a large percentage of complainants, one of our significant recommendations is regarding SJPD officers on

school campuses. We recommended that all officers who conduct interviews of youth on school campuses record these interviews, so that concerns about Miranda warnings and coercive interviews can be better evaluated. However, because youth are not filing many complaints, we are relying on parents, guardians, or other adults to relay concerns about police and youth interactions.

II. Step Two: Classification

Complaints fall into five classifications: *Conduct Complaints*, *Policy Complaints*, *Non-Misconduct Concerns*, *Decline to Investigate*,¹⁶ and *Other*.¹⁷ The Department is ultimately responsible for classifying complaints upon receipt. IPA staff reviews the Department's decisions early in the process and can appeal the classification if it is not appropriate. Illustration 2-E shows a breakdown of the various complaints received in 2018. Eighty-one percent of all complaints received in 2018 were classified as *Conduct Complaints*.

Illustration 2-E: Complaints/Concerns Received in 2018*

Matter Received	Total	%
Conduct Complaints	203	81%
Policy Complaints	11	4%
Non-Misconduct Concerns	6	2%
Decline to Investigate	7	3%
Other	21	8%
Total	248	100%

*Excludes Department-Initiated Investigations

A. Conduct Complaints

Conduct Complaints contain one or more allegations. An allegation is an accusation that an SJPD officer violated Department or City policy, procedure, or the law. The Department policies are listed in the SJPD Duty Manual. Any member of the public may access the Duty Manual on the SJPD website (<http://www.sjpd.org/Records/DutyManual.asp>) and on the IPA website (www.sanjose.ca.gov/ipa). There are eight types of allegations that, if proven, could result in officer discipline:

1. Procedure (P),
2. Search or Seizure (SS),
3. Arrest or Detention (AD),
4. Bias-Based Policing (BBP),
5. Courtesy (C),
6. Conduct Unbecoming an Officer (CUBO),
7. Force (F), and
8. Neglect of Duty (ND).

16. Seven (7) cases were classified as *Decline to Investigate*. This classification indicates that the facts in the complaint are so fantastical that they are unlikely to be based on reality. These cases are not investigated, but are retained and tracked for statistical purposes.

17. Twenty-three (23) cases were closed (not received) as *Other* this year because (a) the complaint did not involve any SJPD officers (16), (b) the complaint was duplicative of an existing case (5), (c) the incident occurred over one year before the complaint was filed (1), and (d) the complaint is regarding an officer who is no longer employed by SJPD (1). The IPA reviews all cases classified as *Other* to ensure this classification is appropriate.

In 2018, a total of 748 allegations were identified in the 248 complaints received. Illustration 2-F describes each allegation type, lists examples of allegations, and gives the number of each type of allegation received in 2018.

Illustration 2-F: Misconduct Allegations

MISCONDUCT ALLEGATIONS RECEIVED IN 2018

Procedure: The officer did not follow appropriate policy, procedure, or guidelines.

- 284 allegations (38%)
- **Example:** An officer allegedly failed to provide adequate translation services as required by the Department's Language Access Plan (LAP).

Courtesy: The officer used profane or derogatory language, wasn't tactful, lost his/her temper, became impatient, or was otherwise discourteous.

- 87 allegations (12%)
- **Example:** A complainant was scammed by a person he met online into buying a laptop for \$5,000. He provided the cash without simultaneously receiving the laptop. When he reported it to SJPd, the investigating officer allegedly said, "There's no way I'm taking this case...it's not my fault you fell for a scam."

Force: The amount of force the officer used was not "objectively reasonable," as defined by SJPd Duty Manual section L 2602.

- 98 allegations (13%)
- **Example:** A complainant, arrested for trespassing, alleged that officers used too much force when they "drug her out of the house."

Arrest or Detention: An arrest lacked probable cause or a detention lacked reasonable suspicion.

- 115 allegations (15%)
- **Example:** A complainant alleged that officers were unlawfully detaining homeless people that were in St. James park after hours.

Search or Seizure: A search or seizure violated the protections provided by the 4th Amendment of the United States Constitution.

- 32 allegations (4%)
- **Example:** A complainant stated that officers contacted him as he was sleeping in his car at night and then unlawfully searched his car.

Bias-Based Policing: 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.

- 55 allegations (7%)
- **Example:** A complainant believes that officers have not responded to his calls for service and have not investigated reports of criminal activity surrounding his residence because he is Latino.

Neglect of Duty: An officer neglected his/her duties and failed to take action required by policies, procedures, or law.

- 43 allegations (6%)
- **Example:** Complainant alleged that officers failed to investigate a fraud case.

Conduct Unbecoming an Officer: A reasonable person would find the officer's on or off duty conduct to be unbecoming a police officer, and such conduct reflected adversely on the SJPd.

- 34 allegations (5%)
- **Example:** A complainant alleges that an officer stole money from his car during an inventory search before his car was towed.

Illustration 2-G depicts the frequency of allegations over the last five years. Procedure allegations continue to be the most common allegation in *Conduct Complaints* over the past five years.

Illustration 2-G: Allegations Received — Five Year Overview (2014-2018)

Allegations Received	2014		2015		2016		2017		2018	
	#	%	#	%	#	%	#	%	#	%
Force	139	17%	121	18%	108	15%	68	12%	98	13%
Arrest or Detention	79	10%	91	13%	102	14%	52	9%	115	15%
Search or Seizure	65	8%	50	7%	38	5%	34	6%	32	4%
Bias-Based Policing	46	6%	50	7%	50	7%	54	9%	55	7%
Procedure	308	38%	251	36%	307	41%	251	44%	284	38%
Courtesy	142	17%	103	15%	109	15%	81	14%	87	12%
Conduct Unbecoming an Officer	27	3%	22	3%	17	2%	18	3%	34	5%
Neglect of Duty	7	1%	0	0%	11	1%	11	2%	43	6%
Total Allegations	813	100%	688	100%	742	100%	569	100%	748	100%

Legend of Allegations:

AD: Arrest or Detention; **BBP:** Bias-Based Policing; **CUBO:** Conduct Unbecoming an Officer;
C: Courtesy; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure; **SS:** Search or Seizure

B. Policy Complaints

Policy Complaints are complaints that are not directed against any individual officer, but are complaints about SJPD policies or procedures or the lack thereof. *Policy Complaints* are typically forwarded to SJPD's Research and Development Unit for review and evaluation to determine if changes need to be made to the SJPD Duty Manual.

Eleven complaints, or 4% of all complaints, received in 2018 were classified as *Policy Complaints*. Examples of *Policy Complaints* filed in 2018 are:

- Slow response times for calls for service;
- Procedures relating to the SJPD Main Lobby;
- Unfair enforcement of SJMC 13.44.240 (Failure to comply with rules at a city park);
- Inappropriate signage in a patrol vehicle; and,
- Improper/incomplete criminal investigations.

C. Non-Misconduct Concerns

Non-Misconduct Concerns (NMC) are complaints that do not rise to the level of a violation of policy, procedure, or law that could result in officer discipline. When IA classifies a complaint as an *NMC*, it is then forwarded to the IPA office. If the IPA has a concern about the *NMC* classification, the IPA discusses the matter with IA staff.

When the case is classified as an *NMC*, the subject officer's supervisor addresses the matter with the officer.

After the supervisor confirms to IA that the subject officer has been spoken to, the officer's name and allegations are removed.

In 2018, six complaints (2% of all complaints received) were classified as *NMCs*.

D. Supervisory Referral

Supervisory Referrals are complaints which involve an allegation of a minor transgression that the Department feels may best be handled by bringing the matter to the attention of the subject officer's supervisor and chain of command. The allegation must involve a minor transgression in which a finding of Sustained would not likely result in suspension or termination (formal discipline).

These allegations are not formally investigated by Internal Affairs, and therefore formal discipline may not be imposed. Since these complaints are not investigated, the IPA does not perform an audit. However, each classification of *Supervisory Referral* is sent by IA to the IPA office for review. The IPA can appeal this classification in the same manner the IPA can appeal classifications of *Non-Misconduct Concern, Other, or Decline to Investigate*.

Although *Supervisory Referrals* are not investigated, they are considered complaints which trigger the Early Warning System. These complaints will also be disclosed if responsive to a *Pitchess* motion. Lastly, the officer's name and allegations are retained for six years.

Once a case has been closed as *Supervisory Referral*, the complainant receives a letter from Internal Affairs letting the complainant know that the officer's conduct has been addressed by the officer's Commander. There were 8 allegations closed as *Supervisory Referrals* in 2018. Examples include:

- Failing to activate Body-Worn Camera;
- Failing to wear a Department-issued nametag;
- Failing to note the display of a TASER in the CAD;
- Speeding in a patrol car while not responding Code 3 with lights and sirens to a call; and,
- Failing to follow proper procedure for elder abuse investigations
- The IPA will continue monitoring *Supervisory Referrals* to ensure that allegations which are not minor transgressions continue to be investigated.

III. Step Three: The Department Investigation

After intake and classification, IA is solely responsible for investigating all *Conduct Complaints*. The IPA office does not investigate complaints. IA investigations include the review of all relevant documentation, such as police reports, medical records, photos, Body Worn Camera (BWC) video and the Computer-Aided Dispatch (CAD)¹⁸ 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.

¹⁸ The CAD (Computer-aided Dispatch) is a log of all of the events from the moment the police are called, until the moment they leave. The information is logged by dispatch as it is being relayed by the officers and the reporting parties.

Although the IPA lacks investigatory powers, the IPA monitors the IA investigations in order to assess the objectivity and thoroughness of the investigation, and the collection of supporting documentation. The IPA accomplishes this by

1. Reviewing complaints received at IA to ensure that complaints are properly classified and that the allegations reflect all of the complainants' concerns;
2. Attending officer interviews or requesting that IA investigators ask subject officers specific questions; and,
3. Updating complainants about the status of IA investigations.

IPA staff has the option to request notification of interviews in any complaints. However, IA must notify the IPA of officer interviews for all complaints received at the IPA office and all complaints with allegations of Force or Conduct Unbecoming an Officer. Only the IPA and the Assistant IPA are authorized to attend officer interviews.

IV. Step Four: Department Makes Finding

In each complaint, the Department must make a finding of whether or not the alleged misconduct occurred. Findings are based on an objective analysis using the preponderance of the evidence standard. The standard is met and a Sustained finding is made if the evidence indicates that it is more likely than not that the officer committed a violation of the Duty Manual. The seven possible findings for misconduct allegations are: Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other. Illustration 2-H lists and defines each of the findings and gives the number of each finding in 2018. It is important to note that many complaints opened in 2017 are closed in 2018. Therefore, many findings made in 2018 are based on complaints from the prior year. Officer discipline is imposed if an allegation receives a Sustained finding.¹⁹

19. On occasion, officers may also receive counseling or training even if the investigation results in a finding of Exonerated or Not Sustained. See SJPD Duty Manual sections C 1722, C 1804 and C 1812.

Illustration 2-H: Findings for Misconduct Allegations Closed in 2018

FINDINGS FOR MISCONDUCT ALLEGATIONS

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.”²⁰ This means that the officer engaged in the conduct and the conduct was within policy.

- **Result:** The officer cannot be disciplined when there is an Exonerated finding. However, the officer may be required to undergo counseling or training.
- 402 allegations (52%) were closed as Exonerated in 2018.

Not Sustained: “The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.” Here, Internal Affairs is unable to determine, after reviewing all of the facts, which party’s version of events is true.

- **Result:** This finding does not result in officer discipline. However, the officer may be required to undergo counseling or training.
- 21 allegations (3%) were Not Sustained in 2018.

Sustained: “The investigation disclosed sufficient evidence to prove clearly the allegation made in the complaint.” This means that the Department determined that the officer engaged in misconduct.

- **Result:** This finding results in officer discipline.
- 42 allegations (5%) were Sustained in 2018.

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.” This means that the IA investigation concluded that the alleged misconduct never happened.

- **Result:** The officer is not disciplined.
- 190 allegations (25%) were Unfounded in 2018.

No 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 Department member is no longer employed by the Department before the completion of the investigation.” This means that the complainant did not provide sufficient information for IA to investigate, or the officer is no longer employed by SJPD.

- **Result:** The officer is not disciplined.
- 49 allegations (6%) were closed with No Finding in 2018.

Withdrawn: “The complainant affirmatively indicates the desire to withdraw his/her complaint.” This means the complainant decided not to pursue the complaint.²¹

- **Result:** This finding does not result in officer discipline.
- 14 allegations (2%) were Withdrawn in 2018.

Other: Allegations were closed as Other when SJPD declined to investigate because of a delay of years from the date of the incident to 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.

- **Result:** No officer is investigated, and the officer name is removed.
- 44 allegations (6%) were closed as Other in 2018.

20. All definitions in quotations in this table are from 2017 Duty Manual section C 1723.

21. IPA staff routinely follows up to ensure that the complainants’ decisions to withdraw their complaints are entirely voluntary.

A. How Allegations Were Closed by the Department in 2018

Illustration 2-I lists the 770 allegations closed by SJPD in 2018 and their respective findings. Most allegations (52%) were closed as Exonerated.

Illustration 2-I: Dispositions of all Allegations Closed in 2018

Type of Dispositions	Dispositions of Allegations									
	AD	BBP	C	CUBO	F	ND	P	SS	Total	%
Sustained	0	0	3	0	1	2	34	2	42	5%
Not Sustained	0	0	1	5	0	1	13	1	21	3%
Exonerated	93	0	33	1	73	6	161	35	402	52%
Unfounded	1	52	35	14	11	17	59	1	190	25%
No Finding	5	3	8	8	1	6	17	1	49	6%
Complaint Withdrawn	1	0	3	0	1	3	6	0	14	2%
Complaint/Sup Review	1	0	0	0	0	1	6	0	8	1%
Other	8	6	5	1	9	4	10	1	44	6%
Total Allegations	109	61	88	29	96	40	306	41	770	100%

Legend of Allegations:

AD: Arrest or Detention; **BBP:** Bias-Based Policing; **CUBO:** Conduct Unbecoming an Officer;
C: Courtesy; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure; **SS:** Search or Seizure

B. The Sustained Rate

The term sustained rate has a unique connotation. Each closed complaint may contain multiple allegations and several subject officers depending on the complexity of the incident. A closed complaint may contain several sustained allegations or none. If any closed complaint includes one sustained allegation against any officer, the case is recorded as a sustained complaint. Thus, a sustained complaint is distinct from a sustained allegation. The Sustained Rate is the percentage of closed Conduct Complaints that contain at least one allegation with a Sustained finding. In 2018, ten percent (22) closed Conduct Complaints had an allegation with a Sustained finding.

Illustration 2-J: Complaints Closed with Sustained Allegations — Five-Year Overview (2014-2018)

Year	Conduct Complaints Sustained	Conduct Complaints Closed	Sustained Rate
2014	25	253	10%
2015	19	304	6%
2016	29	275	11%
2017	37	226	16%
2018	22	212	10%

V. Step Five: IPA Audit

After the Department completes its investigation, conducts an analysis, and makes a finding, it forwards the written report to the IPA for audit. The IPA audited 175 complaints in 2018. The IPA is required to audit all complaints with Force allegations and at least 20% of all other complaints. In 2018, the IPA fulfilled this requirement by auditing all completed investigations containing Force allegations (41 complaints) and 77% of all other complaints. IPA staff review various issues during the IPA audit to determine if the Department's investigations and analyses were fair, thorough, and objective.

Illustration 2-K Issues Reviewed During IPA Audit

ISSUES REVIEWED DURING IPA AUDIT	
Timeliness / tolling	<ul style="list-style-type: none"> Was the investigation completed in a timely manner?
Classification	<ul style="list-style-type: none"> Was the case properly classified?
Presence/absence of allegations	<ul style="list-style-type: none"> Do the listed allegations adequately capture the concerns voiced by complainant?
Presence/absence of supporting documentation	<ul style="list-style-type: none"> If pertinent, did the investigator obtain and review documentation such as: <ul style="list-style-type: none"> CAD (SJPD Computer-Aided Dispatch logs) Medical records Photographs Body-Worn Camera video Police reports/citations TASER activation logs Use of force response reports
Presence/absence of interviews conducted by Internal Affairs	<ul style="list-style-type: none"> Witnesses — what efforts were taken to identify and contact witnesses? Witness officers — what efforts were taken to identify and interview officers who witnessed the incident? Subject officers — what efforts were taken to identify and interview subject officers?
Presence/absence of logical objective application of policy to the facts	<ul style="list-style-type: none"> What is the policy/Duty Manual section that governs the conduct in question? Is this authority applicable to the case or is other authority more pertinent? Does the analysis apply all the factors set forth in the authority to the facts?
Presence/absence of objective weighing of evidence	<ul style="list-style-type: none"> What weight was given to officer testimony? Why? What weight was given to civilian testimony? Why? Does the analysis use a preponderance standard? Does the analysis logically address discrepancies?

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

- **Agreed at First Review** with the Department’s investigation of the case after initial review (122 (69%) of cases audited in 2018),
- **Agreed After Further** action, such as receiving from IA a satisfactory response to an IPA inquiry or request for additional clarification or investigation (39 (22%) of cases audited in 2018);
- **Closed with Concerns**, which means the IPA had issues with the Department’s investigation and/or analysis, but the concerns did not warrant a formal disagreement (six (3%) of audited cases); or
- **Disagreed**, meaning the IPA determined that the Department’s investigation and/or analysis were not thorough, objective, and fair (ten (6%) of audited cases).

Illustration 2-L: IPA Audit Determinations in 2018

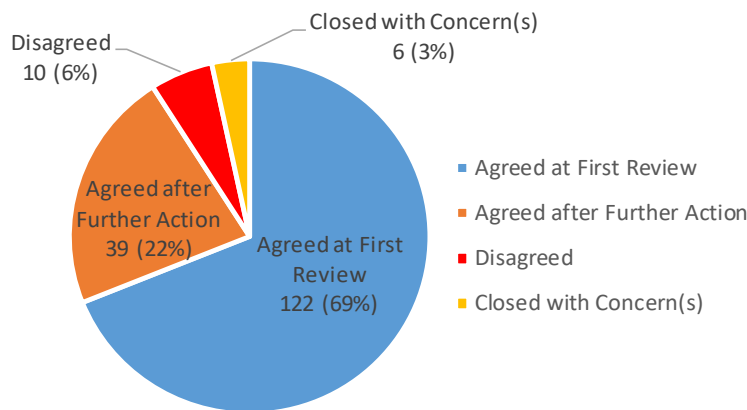


Illustration 2-M: IPA Audit Determinations in Closed Complaints—Five-Year Overview (2014-2018)

Audit Determination in Investigated Cases	2014		2015		2016		2017		2018	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	207	74%	202	69%	219	79%	196	83%	122	69%
Agreed after Further Action	29	10%	39	13%	26	9%	18	8%	39	22%
Disagreed	19	7%	27	9%	5	2%	10	4%	10	6%
Closed with Concern(s)	25	9%	24	8%	27	10%	12	5%	6	3%
Total Complaints Audited	280	100%	292	100%	277	100%	236	100%	177	100%

VI. Officer Complaint Rates and Experience Levels

A. Subject Officer Demographics

The SJPD provided demographic data about subject officers²² who were employed during the 2018 calendar year. The data reveals that the number of subject officers who identify with a specific ethnicity continues to closely mirror the representation of ethnicities of the Department.

22. This data reflects Conduct Complaints only and does not include officers named in *Department-Initiated Investigations*, *Policy Complaints* and *Non-Misconduct Concerns*.

Illustration 2-N: Ethnicities of Subject Officers

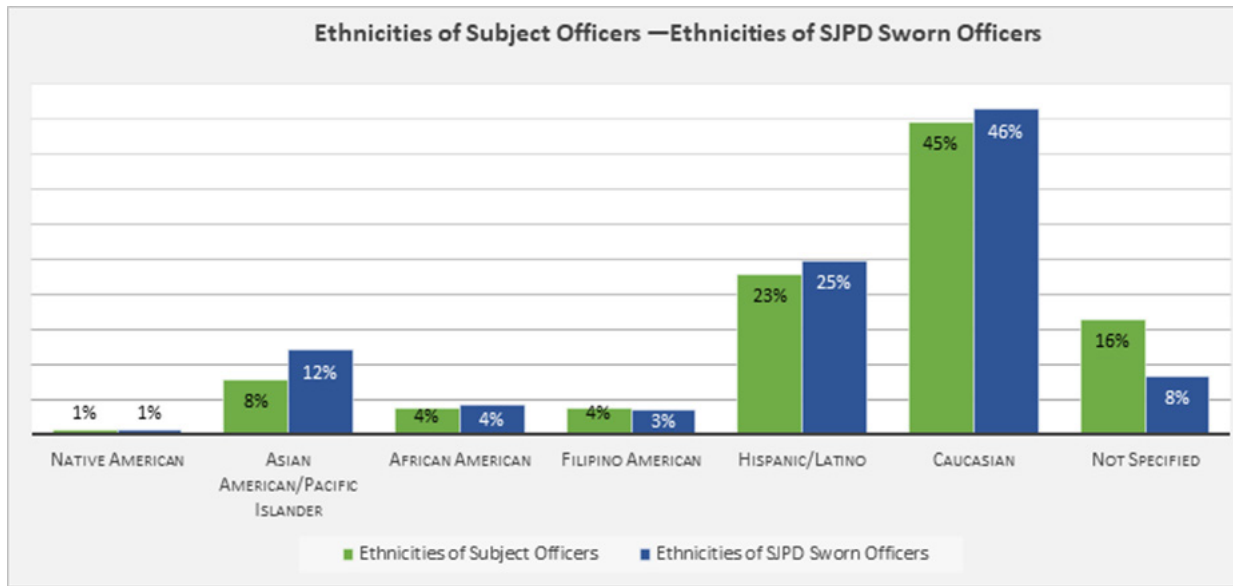


Illustration 2-O demonstrates that male and female officers also received complaints comparable to their representation in the Department.

Illustration 2-O: Gender of Subject Officers in 2018*

Gender	Subject Officers	%	SJPD Sworn Officers	%
Male	243	91%	981	90%
Female	24	9%	111	10%
Total	267	100%	1092	100%

*Not including officers named in *Department-Initiated Investigations, Non-Misconduct Concerns, Decline to Investigate, Policy Complaints, and Other*.

B. Officers Receiving Multiple Complaints

A number of officers received multiple (two or more) complaints in 2018. Nine officers received three or more complaints.

Illustration 2-P: Subject Officers Receiving Complaints (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	53	34	23	8	34	55	207
2 Complaints	13	14	7	1	2	14	51
3 Complaints	2	2	0	0	0	2	6
4 Complaints	0	1	0	0	0	0	1
5 Complaints	0	1	0	0	0	0	1
6 Complaints	0	0	0	0	1	0	1
Total Number of Officers Receiving Complaints	68	52	30	9	37	71	267

C. Officer Complaint Rates

Both the Department and the IPA collect the following data about subject officers:

- Number of complaints received by each subject officer
- Types of allegations attributed to each subject officer in the complaint
- Experience level of each subject officer

In 2018, 267 officers were named in Conduct Complaints — 24% of all SJPD officers. Of these officers, most (207 or 78% of subject officers) received only one complaint. Fifty-one (51) subject officers received two (2) complaints (19% of subject officers). Six (6) subject officers received three (3) complaints and three (3) subject officers received four (4) or more complaints.

Illustration 2-Q provides a five-year overview of complaints received by individual officers. This data reflects only those complaints in which individual officers are identified by name either by the complainant or through the IA investigation process. There were 38 *Conduct Complaints* received in 2018 in which officers could not be identified (*Unknown* officers).

Illustration 2-Q: Complaints Received by Individual Officers — Five-Year Overview (2014-2018) *

Officers Receiving	2014	2015	2016	2017	2018
1 Complaint	205	198	200	176	207
2 Complaints	58	49	64	39	51
3 Complaints	11	19	14	7	6
4 Complaints	8	6	5	2	1
5 Complaints	3	2	1	1	1
6 Complaints	0	0	0	0	1
Total Number of Officers Receiving Complaints	285	274	284	225	267

*Subject officer names are not retained in complaints classified as *Non-Misconduct Concern, Policy, or Withdrawn*. It does not include officers named in *Department-Initiated Investigations*.

VII. Overview of Sustained Findings

In 2018, the Department investigated and closed 212 conduct complaints containing 770 allegations. Of these allegations, the Department closed 42 (5%) with findings of Sustained. A finding is Sustained when the Department concludes that the investigation disclosed sufficient evidence to clearly prove that the alleged misconduct occurred.

Thirty-four of the 42 Sustained findings in 2018 (81%) were for Procedure violations of the Duty Manual. The remaining eight Sustained findings were for misconduct related to Courtesy (3), Search/Seizure (2), Force (1), and Neglect of Duty (2).

Illustration 2-R: Allegations Closed by the Department in 2018*

Type of Dispositions	Dispositions of Allegations								Total	%
	AD	BBP	C	CUBO	F	ND	P	SS		
Sustained	0	0	3	0	1	2	34	2	42	5%
Not Sustained	0	0	1	5	0	1	13	1	21	3%
Exonerated	93	0	33	1	73	6	161	35	402	52%
Unfounded	1	52	35	14	11	17	59	1	190	25%
No Finding	5	3	8	8	1	6	17	1	49	6%
Complaint Withdrawn	1	0	3	0	1	3	6	0	14	2%
Complaint/Sup Review	1	0	0	0	0	1	6	0	8	1%
Other	8	6	5	1	9	4	10	1	44	6%
Total Allegations	109	61	88	29	96	40	306	41	770	100%

*Excludes Department-Initiated Investigations

Legend of Allegations:

AD: Arrest or Detention; **BBP:** Bias-Based Policing; **CUBO:** Conduct Unbecoming an Officer;
C: Courtesy; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure; **SS:** Search or Seizure

A. Officer Discipline for Sustained Findings

Officers who receive sustained findings are subject to discipline by the San José Police Department. The Department does not disclose to the IPA the discipline that is imposed on an officer with a sustained complaint. What we can reveal are the number of officers who were disciplined and the types of discipline imposed in 2018.

According to SJPD data, one (1) officer was suspended for 20 hours and another officer was suspended for 40 hours. Eleven (11) officers received training and/or counseling, eight (8) officers received documented oral counseling, one (1) officer received documented oral counseling and training, and four (4) officers were given a letter of reprimand.

Illustration 2-S: Officer Discipline Imposed by the Department in 2017 and 2018

Type of Discipline	2017		2018	
	# of Times	% of All Discipline	# of Times	% of All Discipline
Training	3	7%	3	11%
Training & Counseling	12	29%	8	30%
Documented Oral Counseling (DOC)	18	44%	8	30%
DOC and Training	0	0%	1	4%
Letter of Reprimand (LOR)	5	12%	4	15%
10-Hour Suspension	1	2%	0	0%
20-Hour Suspension	0	0%	1	4%
40-Hour Suspension	1	2%	1	4%
Resigned before Discipline	0	0%	1	4%
Settlement Agreement	1	2%	0	0%
Total Discipline Imposed	41	100%	27	100%

B. Experience Levels of Officers with Sustained Findings

Of the 26 officers who received sustained findings in 2018, ten (10) of them had 16 or more years of experience. This means that 38% of the officers with proven misconduct were the most experienced ones on the force. Of the 34 sustained findings for Procedure allegations, 17 (50%) were against officers who had more than sixteen years of experience.

Illustration 2-T: Years of Experience of Officers with Sustained Findings in 2018

Years of Experience	Total Officers with Sustained Findings	% of Officers with Sustained Findings	Type of Allegations					Total Sustained Allegations	Percent of Sustained Allegations
			C	ND	F	P	SS		
0- 1 ⁺	1	4%	0	0	0	1	0	1	2%
2- 4 ⁺	8	31%	1	1	1	7	0	10	24%
5- 6 ⁺	0	0%	0	0	0	0	0	0	0%
7-10 ⁺	3	12%	1	0	0	4	0	5	12%
11- 15 ⁺	4	15%	1	0	0	5	0	6	14%
16 ⁺	10	38%	0	1	0	17	2	20	48%
	26	100%	3	2	1	34	2	42	100%

Legend of Allegations:

AD: Arrest or Detention; **BBP:** Bias-Based Policing; **CUBO:** Conduct Unbecoming an Officer;
C: Courtesy; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure; **SS:** Search or Seizure

CHAPTER THREE

USE OF FORCE COMPLAINTS AND AUDITS

I. Force Complaints and Force Allegations

A. Overview

When it comes to public perceptions about policing, the use of force generates the most controversy. Because of the high degree of interest in how, why and on whom police officers use force, this chapter of our report focuses solely on misconduct complaints containing Force allegations. The data include Force Complaints received as well as Force Complaints closed by the Department and audited by the Independent Police Auditor (IPA) in 2018.

The legal foundation for the use of force is found in California Penal Code section 835a:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

Such force must be in accordance with the legal standard that all force used must be objectively reasonable. The San José Police Department (SJPD) Duty Manual states:

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. (Duty Manual section L 2602.)

The IPA is required by the City's Municipal Code to audit all complaints containing Force allegations filed by members of the public. The IPA lacks the authority to review officers' use of force when no complaint has been filed. This is the case even when the use of force is serious and results in loss of consciousness, broken bones, hospitalization, or death.

B. Force Complaints

In this report, a *Force Complaint* is a complaint that includes one or more allegations of improper use of force by a San José police officer.

The Department's investigation of a Force Complaint should answer three questions:

1. Was the force response lawful?
2. Was the force response reasonable?
3. Was the force response within SJPD policy?

The Department's investigation must examine all the facts and circumstances associated with the incident to determine whether the officer acted reasonably. The factors that the Department evaluates include the severity of the crime, the threat presented by the suspect and the resistance offered by the suspect.

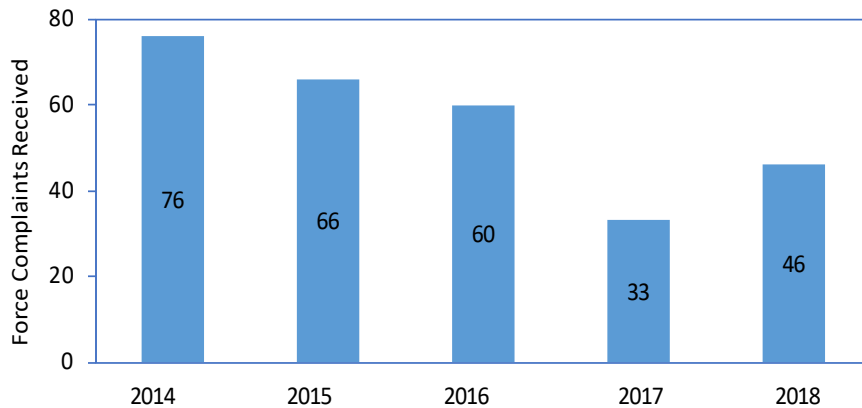
Forty-six (46) Force Complaints were received in 2018.^{23 24} That number is 39% higher than the number of Force Complaints received in 2017 (33) and is 18% lower than the average number of Force Complaints received over the past five years (56). Illustration 3-A shows the number of Force Complaints received in years 2014 through 2018.

In January 2018, the Department provided significantly more access about use of force than in years prior. The Department created a new online dashboard available to the public which provides data on time/location of force, tactics/injuries, subject/criminal charges, and arrest rates. The dashboard can be accessed at <https://www.sjpd.org/crimestats/forceanalysis.asp>

The dashboard provides some context.

- 2018 calls for service totaled 338,124;
- San Jose police officers used *reportable force* requiring documentation²⁵ in 662 incidents.
- Members of the public filed 46 complaints alleging excessive force in 2018.

Illustration 3-A: Force Complaints Received – Five Year Overview (2014-2018)



C. Force Allegations

The annual number of Force **allegations** in complaints is always higher than the annual number of Force Complaints because one complaint can have more than one Force allegation. For example, a complainant might allege that one officer struck him with a baton and then another officer kicked him while he was on the ground; this example reflects one Force Complaint with *two* Force *allegations*. The 46 Force Complaints received in 2018 contained 98 Force allegations. Thirty more Force allegations were received in 2018 than in 2017; the average number of Force allegations received annually over the past five years is 107.

23. Even if a complaint is received in 2018, it may not necessarily be closed in 2018.

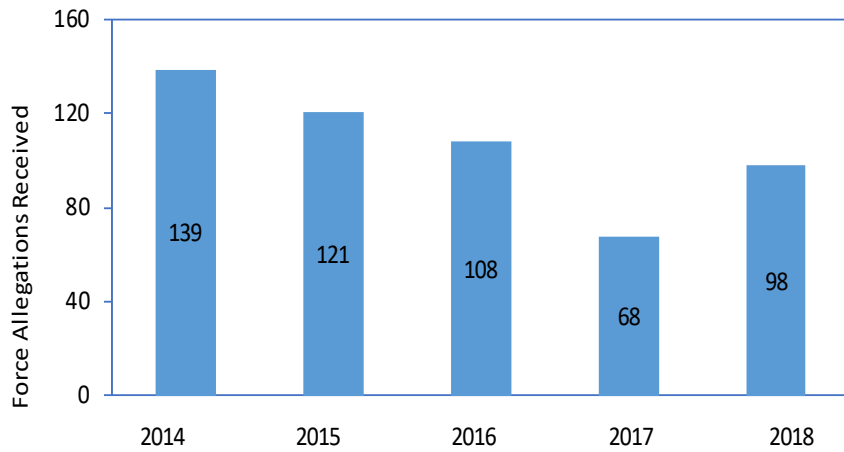
24. Two persons filed two Force complaints in 2018. Each complaint contained one force allegation.

25. “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.

Exceptions to Reportable Force: The use of a firm grip control which does not result in injury, the appearance of injury or complaint of pain (e.g., the use of a grip to control the suspect’s hands while searching or handcuffing); or that force reasonable to overcome resistance due to physical disability or intoxication, which does not result in injury, the appearance of injury or complaint of pain (e.g., lifting an intoxicated person to a standing position).

Illustration 3-B: Force Allegations Received — Five Year Overview (2014-2018)



Nineteen percent (19%) of all complaints received in 2018 were Force Complaints containing one or more Force allegations. Illustration 3-C shows the number of Force Complaints relative to all complaints received from the public from 2014 to 2018. The percentage of Force Complaints received in 2018 relative to all complaints is comparable to the percentage of Force Complaints received over the previous four years.

Illustration 3-C: Force Complaints Received Relative to Total Complaints Received —2014 through 2018

Year	Total Force Complaints	Total Number of Complaints	Force Complaints As % of Total Complaints
2014	76	340	22%
2015	66	303	22%
2016	60	292	21%
2017	33	222	15%
2018	46	248	19%

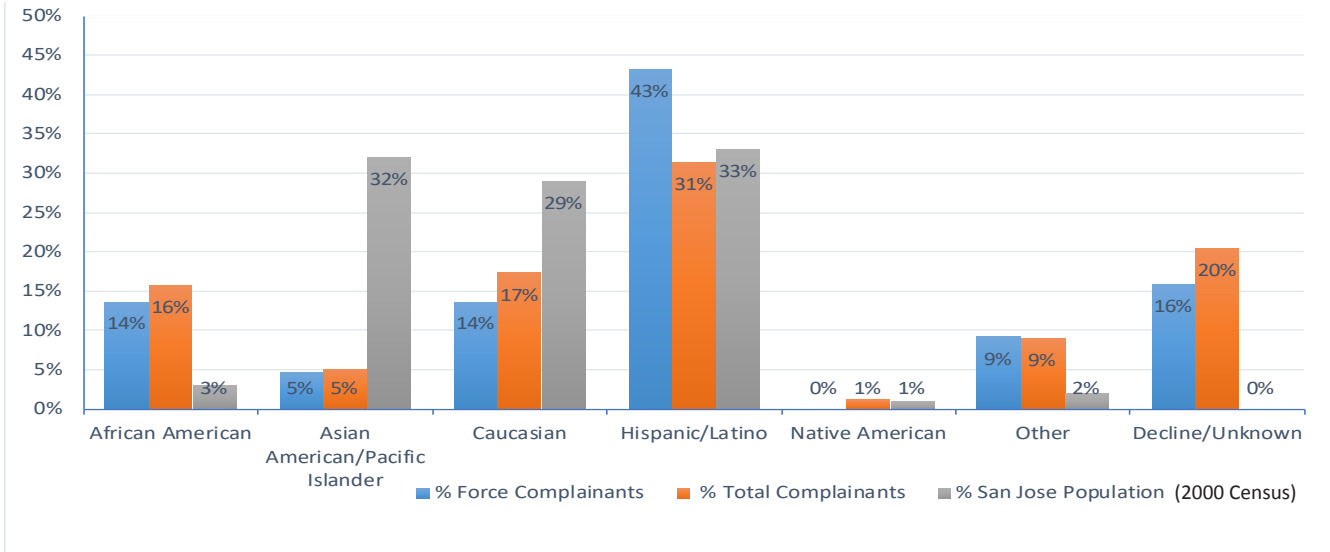
Illustrations 3-A, 3-B and 3-C reflect that, when comparing 2018 data to 2017 data, more Force Complaints were filed in 2018 and those Force Complaints contained more Force allegations. However, the percentage of Force Complaints relative to all complaints remained steady.

II. Force Complaint Demographics

A. Ethnicities of Complainants in Force Complaints Received in 2108

The IPA attempts to identify the ethnicities of complainants during the initial complaint intakes. Illustration 3-D shows the ethnicities of the complainants who filed Force Complaints, the ethnicities of all complainants, and the percentage of those ethnic groups within the San José population.

Illustration 3-D: Force Complaints Received in 2018 — by Complainant’s Ethnicities*



* Information on ethnicity of complainants is obtained during intake and from voluntary surveys. In 2018, two persons filed two separate Force complaints; these persons are not double-counted for this table.

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 included in Asian/Pacific Islanders.

B. Subjects of Force Allegations Closed in 2018

Anyone can file a complaint regardless of the person’s connection to the incident. A complainant may be the subject of force, a witness to force used on another, a relative of the suspect, or a civilian who, having learned about force used upon another, has concerns about that force. Since anyone can file a complaint, the demographics of complainants may not reflect the demographics of the persons upon whom police are allegedly using force. For example, it is not uncommon for parents to file complaints about the force police allegedly used upon their adult or minor children. The demographics of the parents (the complainants) may be different from those of the children (the subjects of the force). The IPA reviewed the Force Complaints closed in 2018 to determine the ethnicities, ages and genders of the subject of the alleged force; this data is reflected in Illustrations 3-E, 3-F, and 3-G. This detailed information was gleaned from police reports, citations, and/or medical records. We could identify the race/ethnicity, the gender and the age of the individuals against whom force was allegedly used. As we have consistently observed in prior years, Hispanics and African-Americans are over-represented in force-related complaints relative to their representation in the city’s population.

**SJPD Duty Manual
Section 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, such person must be able to expect a similar police response to the person’s behavior -- wherever it occurs. Where the law is not evenly enforced, there follows a reduction in respect and resistance to enforcement.

“The element of evenhandedness 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 and individuals. In this regard, Department members will strive to provide equal service to all persons in the community.”

Illustration 3-E: Force Complaints Closed in 2018 — Subjects of Alleged Force by Ethnicity

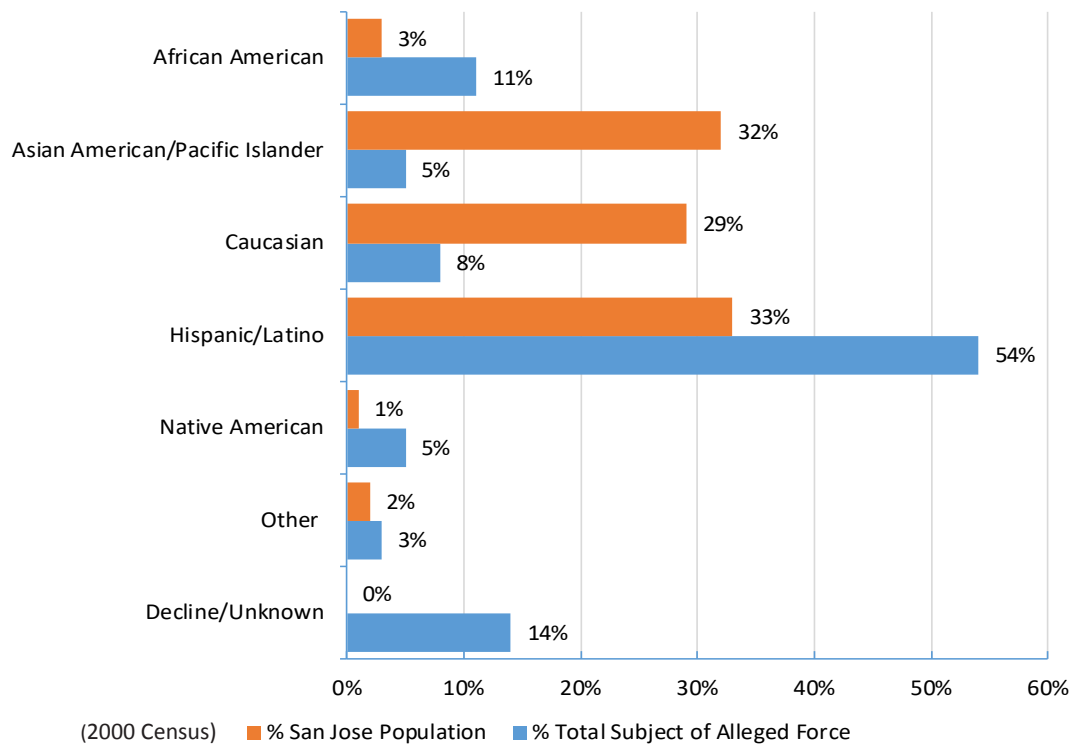


Illustration 3-F: Gender of Subjects in Force Allegations Closed in 2018

Gender	Number of persons	% of Total persons
Male	25	68%
Female	12	32%
Total persons	37	100%

Illustration 3-G: Ages of Subjects in Force Allegations Closed in 2018

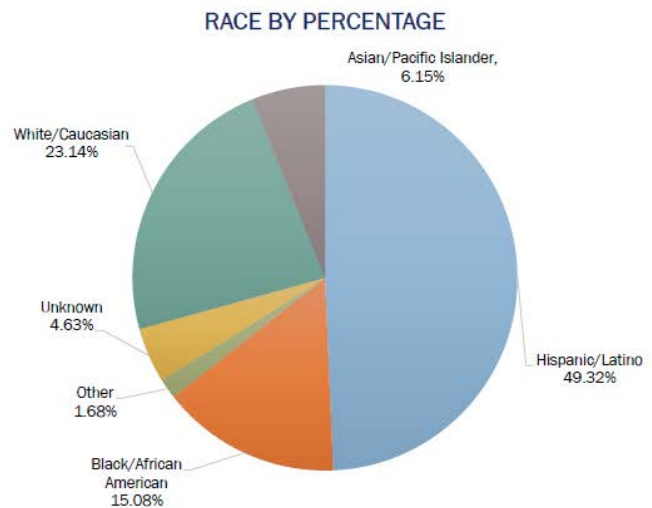
Age of Subjects in Force Allegations Closed	Number	%
Under age 20	9	24%
20-24 years	3	8%
25-29 years	3	8%
30-34 years	3	8%
35-39 years	7	19%
40-44 years	3	8%
45-49 years	3	8%
50-54 years	3	8%
55-59 years	1	3%
60-64 years	0	0%
65-69 years	1	3%
70 and over	1	3%
Decline/Unknown	0	0%
Total Complainant's Responses	37	100%

Disparities Found Elsewhere In The Criminal Justice System In Santa Clara County

Other data reflects racial disparities in other parts of the criminal justice system.

In 2019, the Santa Clara County District Attorney released its third annual *Race and Prosecutions Report** which showed racial disparities in the filing of criminal complaints. We particularly focused on individuals arrested and charged with resisting arrest (Penal Code section 148) because that charge often follows a use of force incident. The District Attorney's study found a racial disparity in filing of resisting arrest charges. According to the study, the racial breakdown of the county is roughly: 2% African American, 26% Hispanic, 33% Caucasian, and 35% Asian/Pacific Islander. The study revealed this racial breakdown for resisting arrest charges: 15% African American, 49% Hispanic, 23% Caucasian and 6% Asian/Pacific Islander.

Resisting Arrest PC 148



This information reflects the following: 148(a)(1), 148.3(a), 148.4(a)(1), 148.4(a)(2), 148.5(a), and 148.9

A disparity does not necessarily mean that there is discrimination by law enforcement or the prosecution. It does mean, though, that further exploration is critical to understand why the disparities exist. Being transparent about such an inquiry would go a long way to improve relations with communities of color.

* *Race and Prosecutions 2018 Update, A Report of the Santa Clara County District Attorney's Office.*

https://www.sccgov.org/sites/da/newsroom/newsreleases/Documents/2019NRDocs/R_P_2018.pdf

III. Data Tracked from Force Complaints

The IPA analyzed data from Force Complaints to determine whether any trends or patterns can be detected. The IPA tracked information reported by complainants, as well as information gleaned from the Department's investigation — primarily officer interviews, witness interviews, police reports and medical records. We gathered additional trend information regarding the consistency of the data reported by the complainant versus the data reported by the SJPD officers and/or reflected in written documents.

A. Types of Force Applications

We collected data about the types of force used to track the frequency as shown in Illustration 3-H. The total number of types of force alleged is always greater than the total number of Force Complaints because there is often more than one type of force alleged in one complaint. There may also be more than one officer alleged to have used force in one complaint. For example, a complainant may allege that one officer struck him with a baton, and another officer hit him with fists and slammed him against a wall. This example illustrates three different applications of force by multiple officers in one complaint. Additionally, an allegation of force may focus only on one application of one type of force or it may focus on multiple applications of force. Our review of the data showed that the 41 Force Complaints closed in 2018 contained 71 alleged applications of force.

Control holds was the type of force most frequently alleged in Force Complaints that were closed in 2018. The next most frequently alleged type of force was *takedowns*. The use of the *Taser* and *body weapons* were, respectively, next in order. Illustration 3-I shows the frequency trend over the past five years.

Reviewing types of force applications over a five-year period shows that the use of *control holds*, as a percentage of total applications, has been the most frequently alleged type of force. The use of *body weapons* as a percentage of total applications dropped considerably from 31% in 2014, to 23% in 2016, and to 10% in 2018. On the other hand, the use of the *Taser* as a percentage of total applications increased from 2% in 2016, to 6% in 2017 to 11% in 2018.

Force Options: Selected Terms

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

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

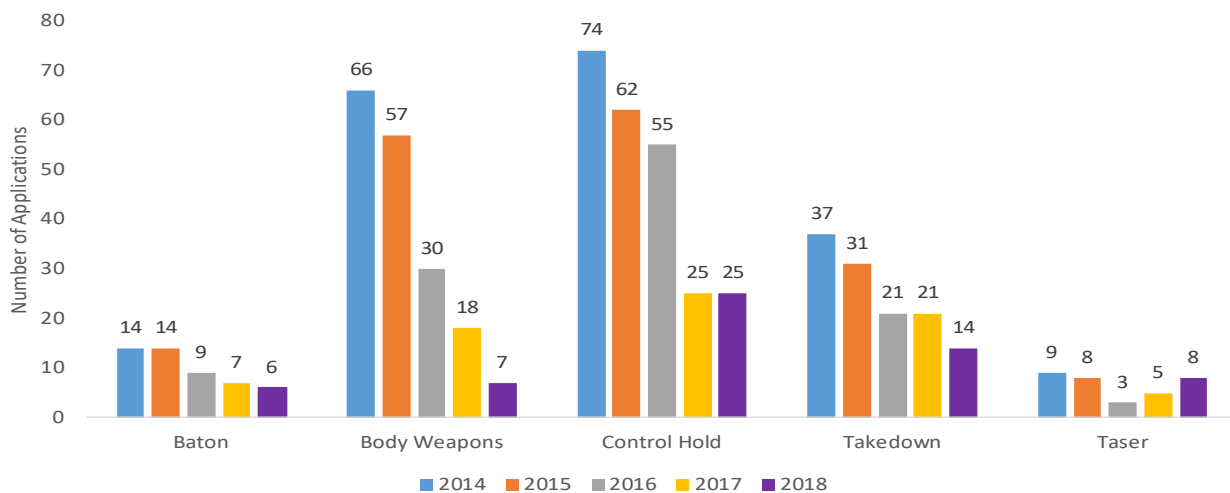
Takedown: an officer's use of his/her limbs, torso or body weight to force a person against an immovable object (such as a car or a wall) or to force a person to the ground.

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

Illustration 3-H: Types of Force Applications in Allegations Closed from 2014 through 2018

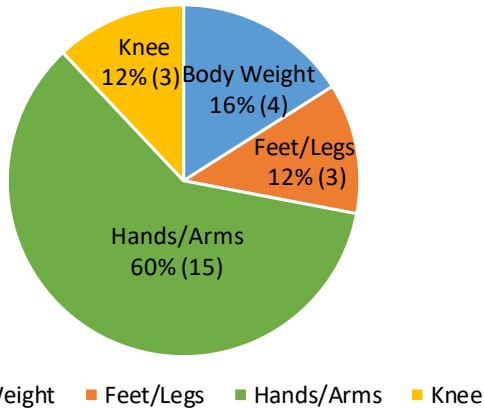
Type of Force	2014		2015		2016		2017		2018	
	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications	# of Applications	% of Total Force Applications
Baton	14	6%	14	8%	9	7%	7	8%	6	8%
Body Weapons	66	31%	57	31%	30	23%	18	21%	7	10%
Canine Bite	1	0%	6	3%	7	5%	3	4%	2	3%
Car Impact	1	0%	0	0%	1	1%	1	1%	0	0%
Chemical Agent	4	2%	3	2%	0	0%	0	0%	0	0%
Control Hold	74	34%	62	33%	55	42%	25	30%	25	35%
Flashlight	0	0%	0	0%	1	1%	1	1%	1	1%
Gun	8 ^a	4%	4 ^b	2%	2 ^c	2%	2 ^d	2%	4 ^e	6%
Lifting up cuffs	2	1%	1	1%	1	1%	0	0%	0	0%
Takedown	37	17%	31	17%	21	16%	21	25%	14	20%
Taser	9	4%	8	4%	3	2%	5	6%	8	11%
Chokehold	0	0%	0	0%	0	0%	0	0%	1	1%
Other	0	0%	0	0%	0	0%	1	1%	3	4%
Total	216	100%	186	100%	130	100%	84	100%	71	100%

- In 2014, there were 8 gun applications; 5 involved use of a less lethal projectile weapon.
- In 2015, there were 4 gun applications; 2 involved use of a less lethal projectile weapon.
- In 2016, there were 2 complaints alleging gun-related force, neither involved use of a less lethal projectile.
- In 2017, there were 2 gun applications involved use of a less lethal projectile weapon.
- In 2018, there were 4 gun applications, 3 involved display of a firearm and 1 involved use of a less lethal projectile weapon.

Illustration 3-I: Five-Year Trend Types for Most Complained of Force Applications (2014-2018)

A *control hold* is defined as the application of force or pressure by the officer to move, push, pull a person, to keep a person in one position, or to restrain a person's limbs, torso, or head. For example, an officer may use a control hold to grab a suspect's arm and to force the arm behind the suspect's back. The hold both prevents the suspect from striking the officer and allows the officer to handcuff the suspect behind his/her back. If a suspect is on the ground, an officer may use control holds to pull his/her arms from underneath the suspect's body and then force them behind his/her back for handcuffing. During this process, the officer may place his/her knee on the suspect's back to prevent the suspect from getting up and fleeing. In 2018, there were 25 control hold applications that formed the bases of Force allegations. Most of these, 60% (15), involved officers' uses of hands.

Illustration 3-J: Control Hold Methods in Force Allegations Closed in 2018 (25 total)



B. Injuries in Force Allegations Closed in 2018

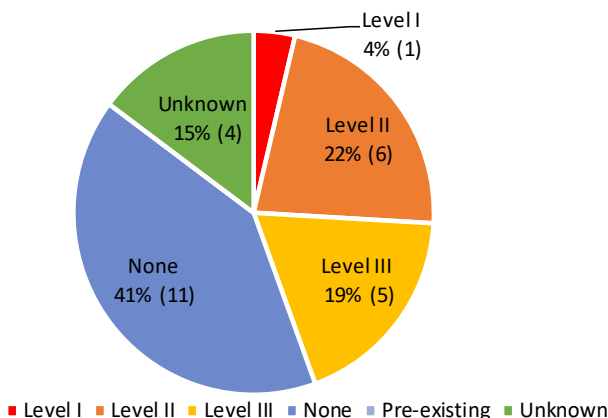
1. Levels of Injury in Force Allegations Closed in 2018

We track the level of injury sustained by civilians through six categories: *Level I*, *Level II*, *Level III*, *none*, *pre-existing*, and *unknown*. *Level I* contains the most serious injuries and *Level III* reflects the least serious injuries.

Illustration 3-L: Levels of Alleged Injuries

Level I	Level II	Level III
Fatal injuries	Minor bone broken	Bruising
Major bone broken	Major laceration requiring stitches	Minor laceration
Compound fracture	Minor concussion	Minor abrasion
In-patient hospital stay required	Brief loss of consciousness	
Blood loss requiring transfusion	Chipped or lost tooth	
Major concussion	Major abrasion	
Longer than brief loss of consciousness	Sprain	
Debilitating chronic pain		
Damage to organ (other than skin)		
Effective Tasings		

Illustration 3-M: Levels of Injury in Force Allegations Closed in 2018



Data from Force Complaints closed in 2018 show that allegations of the most serious, *Level I*, injuries accounted for just one incident resulting in a Force complaint. In another 22% of complaints that alleged force, moderate or *Level II* injuries were sustained. *Level III* injuries accounted for 19% of injuries described in Force complaints. The largest source of complaints came from incidents that resulted in no injuries, accounting for 41% of complaints.

2. Location of Force Applications in Allegations Closed in 2018

The IPA tracks which part of the body the complainant alleges was affected by the use of force. The IPA captures data for five areas of the body: head, neck, torso, limbs, and unknown. Illustration 3-N provides data showing the parts of the body that complainants reported were impacted by the use of force.

Illustration 3-N: Location of Force Applications in Allegations Closed in 2018

Locations of Force Applications	Number	%
Head	4	9%
Neck	1	2%
Torso	19	44%
Limbs	19	44%
Total	43	100%

The force alleged in a complaint can impact more than one body area. The IPA closely monitors the number of allegations of head injuries because force to the head has great potential to cause serious injury. In 2018, the IPA closed four complaints in which the complainant alleged an officer applied force to the complainant's head. This represented 9% of all closed Force complaints. The number and percentage of allegations about force to the head has steadily decreased from 37 (23%) in 2014 to four (9%) in 2018.

Illustration 3-O: Allegations of Force Applications to the Head 2014-2018

Year	Number	%
2014	37	23%
2015	35	24%
2016	15	16%
2017	15	20%
2018	4	9%

IV. Force Complaints and Allegations Closed

A. SJPD Findings for Force Allegations Closed in 2018

Illustration 3-P provides information about Department findings for each of the 622 Force allegations closed between 2014 through 2018. Each year, the Department has closed the majority of the Force allegations with a finding of Exonerated, meaning that their investigations determined that the level and the type of force used by the officers were found to be reasonable and justified.

- In 2018, 76% of Force allegations were closed as Exonerated. This is within the range of the prior five years from a low of 63% in 2017 to a high of 84% in 2015.
- From 2014 through 2018, three Force allegations were sustained
- The percentage of Force allegations closed as Not Sustained saw a notable decrease from 2017 (7%) to 2018 (0%). Not Sustained means that IA's investigation "failed to disclose sufficient evidence to clearly prove or disprove the allegation."

- The percentage of Force allegations closed as Unfounded also saw a notable decrease from 2017 (22%) to 2018 (11%). Unfounded means that IA's investigation conclusively proved ... that the act or acts complained of did not occur”

Illustration 3-P: SJPD Findings for Force Allegations Closed — Five Year Overview (2014-2018)

Disposition of Force Allegations	2014		2015		2016		2017		2018	
	#	%	#	%	#	%	#	%	#	%
Sustained	1	1%	0	0%	1	1%	0	0%	1	1%
Not Sustained	4	2%	0	0%	7	6%	6	7%	0	0%
Exonerated	141	77%	114	84%	92	79%	58	63%	73	76%
Unfounded	24	13%	12	9%	10	9%	20	22%	11	11%
No Finding	5	3%	8	6%	2	2%	4	4%	1	1%
Complaint Withdrawn	6	3%	1	1%	1	1%	1	1%	1	1%
Other	1	1%	1	1%	3	3%	3	3%	9	9%
Total	182	100%	136	100%	116	100%	92	100%	96	100%

B. IPA Audit Determinations

The IPA is mandated to audit all complaints with Force allegations. In 2018, the IPA audited 41 Force Complaint investigations. The IPA agreed with the Department in 25 (61%) of these cases after a first review. Sometimes after our initial review, we requested that Internal Affairs provide additional documentation, conduct additional interviews, or collect more evidence, and/or conduct a re-analysis of the facts and supporting rationales. Once the additional investigation or analysis was completed, we conducted a second review before issuing our audit assessment. If standards were now met, we closed the case with an assessment of Agree After Further. That was the conclusion in 13 (32%) of the Force Complaints. We had reservations about the Department's investigation or analysis in one case (2%) that we closed as Closed with Concerns. In two Force Complaints (5%) we concluded that the Department investigations were not complete or objective and closed the case as Disagreed.

Illustration 3-Q: IPA Audit Determinations of Force Complaints Closed in 2017 and 2018

IPA Audit Determination	Explanation of IPA Audit of the IA Investigation of Force Complaints	2017		2018	
		Audits	%	Audits	%
Agreed at First Review	IPA audit determined that the IA investigation was thorough, complete and objective.	36	73%	25	61%
Agreed after Further	IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	5	10%	13	32%
Closed with Concerns	IPA questioned the IA investigation and/or IA analysis.	7	14%	1	2%
Disagreed	IPA audit concluded that the IA investigation was not thorough, fair and objective.	1	2%	2	5%
	Total Force Complaints Audited	49	100%	41	100%

V. Officer-Involved Shootings

SJPD policy prescribes the circumstances when an officer may use lethal force, namely a firearm:

An officer may discharge a firearm under any of the following circumstances: . . . When deadly force is objectively reasonable in self-defense or in defense of another person’s life. (Duty Manual section L 2638.)

A. SJPD Officer-Involved Shooting Investigation Process

Criminal Process

Every officer-involved shooting that results in death is subject to a thorough investigation and review process as depicted in Illustration 3-S. As the illustration indicates, the Department’s **Homicide Unit conducts a criminal investigation** which is then submitted to the Santa Clara County District Attorney.²⁶ Historically, the District Attorney’s office presented the deadly force cases to a grand jury, however, the current District Attorney, Jeffrey Rosen, has had a policy of reviewing cases and then making the determination internally whether the officer-involved shooting was a crime. D.A. Rosen generally releases his decision with a press release and a detailed report outlining the evidence and analysis.²⁷

Administrative Process

In addition to the investigation conducted by the Homicide Unit, the Department’s Internal Affairs Unit conducts a separate investigation.²⁸ This is an administrative investigation to determine whether the use of force was within Department policy. If a member of the public files a complaint about the shooting incident, the investigation by Internal Affairs is provided to the IPA; the IPA then reviews and completes its audit of that investigation.

The extent of the IPA’s role and responsibilities about an officer-involved shooting depend upon whether a member of the public has filed a complaint about the incident. As shown in Illustration 3-R, if a member of the public files a complaint about an officer-involved shooting incident, the role of the IPA in reviewing that incident is more extensive because the IPA will audit the Department’s investigation of the incident.

26. For more detail on the process, see the Santa Clara County Police Chief’s Association document entitled *Officer-Involved Incident Guidelines* (2016) http://www.sjpd.org/boi/homicide/ois_faq.html

27. For example, see these links for the District Attorney’s press release and report regarding a fatal OIS that occurred on January 9, 2019.

<https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2018/T-NguyenOISReport.aspx> ;
https://gallery.mailchimp.com/67b7e799d5a6eb9ebdd19ac47/files/8cf6a7fc-8f76-40ee-b9af-cof9a3bf2fe7/OIS_Thompson_Nguyen_January_9.2018.pdf

28. The Duty Manual requires that the Internal Affairs Unit “conduct an investigation . . . (w)hen injury or death results from police use of deadly force.” (Duty Manual section L 2607.)

Illustration 3-R: Role of IPA in Officer-Involved Shooting Incidents

All Officer-Involved Shooting Incidents	Officer-Involved Shooting Incident Where a Public Complaint is Filed
IPA is notified of incident and can respond to scene and be briefed by IA Commander.	IPA is notified of incident, and can respond to scene and be briefed by IA Commander.
IPA can participate in the Officer-Involved Incident Training Review Panel. IPA is provided with pertinent documents to prepare for panel.	IPA can participate in the Officer-Involved Incident Training Review Panel. IPA is provided with pertinent documents to prepare for panel.
The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.	The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.
IPA NOT PRESENT	IPA can attend interviews of witnesses and any subject officers conducted by IA during the Department’s investigation of whether the force was within policy.
IPA CANNOT AUDIT	The Department investigation determines whether the officer acted within SJPD policy. The IPA audits the Department’s investigation to determine whether it was fair, thorough, complete and objective.
IPA CANNOT APPEAL	IPA can appeal the Department’s determination of whether the force was within policy to the City Manager.

Officer-Involved Incident (OII) Training Review Panel:

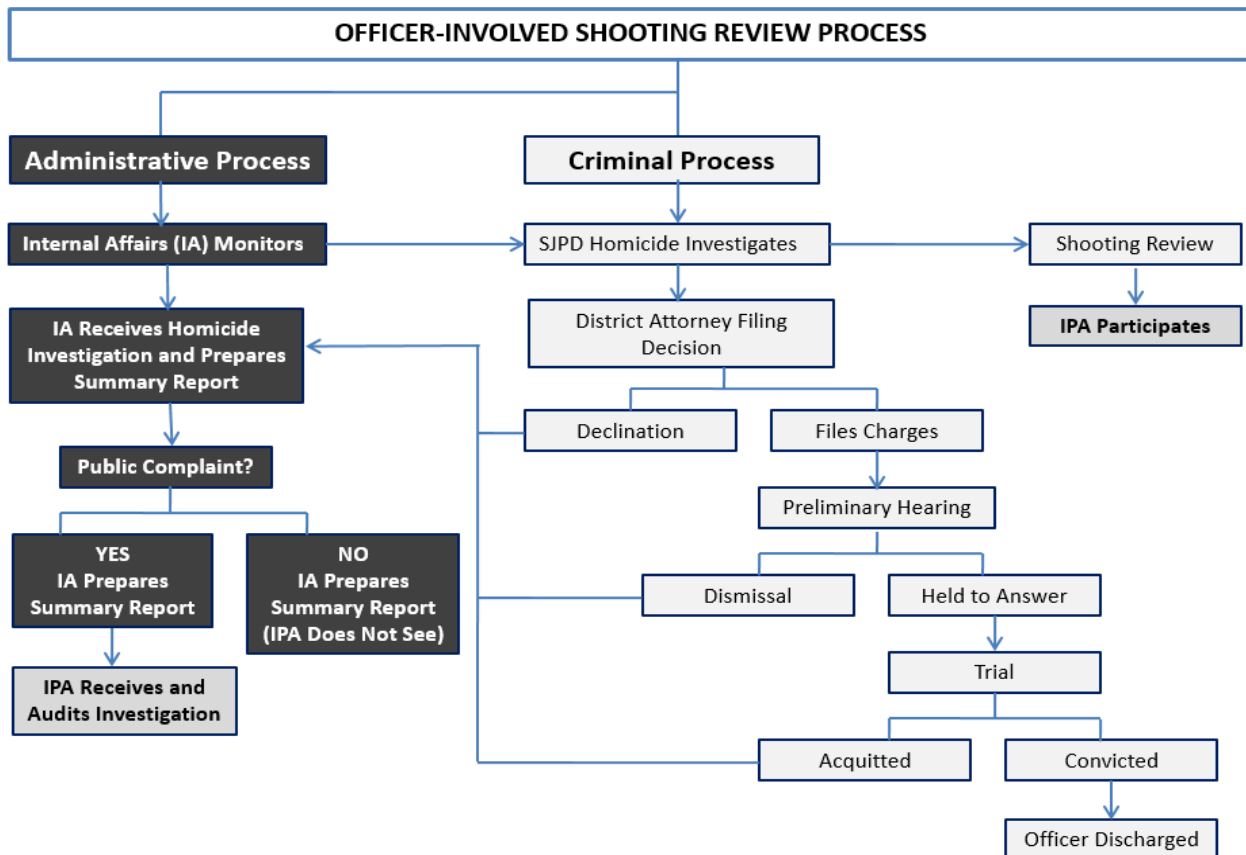
The Department also convenes a shooting review panel to examine whether the incident reveals that a possible training, equipment or policy issue exists requiring closer examination.

Duty Manual section L 2646 provides:

The Internal Affairs Unit Commander will convene the Officer-Involved Incident Training Review Panel within 90 days of the incident to determine and recommend any training that should be provided from what is learned about the incident. This meeting shall occur even though the District Attorney's Office has not issued its final report. Since the City Attorney participates in the OII Training Review Panel, these sessions are subject to the attorney-client privilege and thus the discussions are confidential.

Officer-Involved Incident Training Review Panel Presentation: Homicide Unit Investigators will present a factual synopsis of the incident and investigation to the Panel for the purpose of reviewing Department policy and procedures, training and tactics, officer safety, equipment and communication.

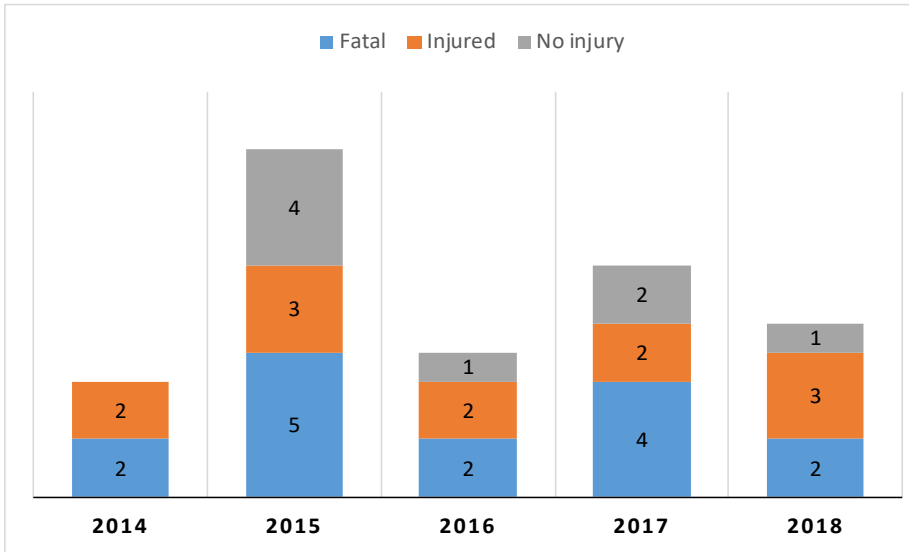
Since the implementation of the new policy, the Department has been holding Officer-Involved Incident (OII) review panels within 90 days of the incident. The IPA and the Assistant IPA attend the OII review panels and can ask questions about training, procedures and equipment. These sessions provide the IPA with valuable information that can serve as the foundation for future policy recommendations. The IPA and/or the Assistant IPA attended all four review panels that were held in 2018.



B. Officer-Involved Shooting Incident Statistics

The San José Police Department had five officer-involved shootings incidents (OIS) in 2018. This is a decrease from eight incidents that occurred in 2017 and a significant decrease from the 12 incidents in 2015.

Illustration 3-T: Injury level of Suspects involving in OIS incident 2014 to 2018



The data supplied by SJPd for 2018 showed that of the six suspects that were involved in the five OIS incidents, four were Hispanic. One of the incidents involved two suspects – one suspect was killed and the other was injured. In each incident, SJPd documented that a suspect was armed. According to SJPd, two of the six civilians who were involved in an officer-involved shooting incident had a history of mental illness that was known to the Department – namely as a result of prior calls for service or holds initiated by Welfare & Institutions Code section 5150. The five OIS incidents are summarized below.

OIS No. 1	Race and Gender of suspect --	Vietnamese/Male
	Deceased or injured --	Deceased
	Armed --	Axes, knives
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	Yes
	CIT on scene --	Yes
	Number of officers who fired weapon --	2
	Involved officer(s) experience --	19 years and 15 years
OIS No. 2	Race and Gender of suspect --	White/Female
	Deceased or injured --	Injured
	Armed --	Shotgun
	Prior convictions --	No
	On probation or parole --	No
	Known mental health history --	Yes
	CIT on scene --	Yes
	Number of officers who fired weapon --	1
	Involved officer(s) experience --	19 years

OIS No. 3	Race and Gender of suspect --	Hispanic/Male
	Deceased or injured --	Not Injured
	Armed --	Pistol
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	1
	Involved officer(s) experience --	21 years

OIS No. 4	Race and Gender of suspect --	Hispanic/Male
	Deceased or injured --	Injured
	Armed --	Pistol
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	1
	Involved officer(s) experience --	4 years

OIS No. 5	Race and Gender of suspect #1--	Hispanic/Female
	Deceased or injured --	Deceased
	Armed --	Vehicle
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	4
	Involved officer(s) experience --	6 years, 1 year, 1 year, 1 year

OIS No. 5	Race and Gender of suspect #2--	Hispanic/Female
	Deceased or injured --	Injured
	Armed --	No
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon --	4
	Involved officer(s) experience --	6 years, 1 year, 1 year, 1 year

CHAPTER FOUR

IPA POLICY RECOMMENDATIONS TO THE SJPD

When the electorate of the City of San José amended the City Charter in 1996 to create the IPA Office, they voted to include that the IPA recommend ways to improve how San José police officers perform their duties. The IPA has a unique perspective to make informed proposals to the Department based on our independent review of complaint investigations, information we learn from the public through community outreach, as well as our research on best practices from other jurisdictions.

Some recommendations suggest areas in which the Department’s policies could be improved (such as the implementation of a more robust Early Warning System—Recommendation #3), and others suggest new and significant policy changes based on emerging best practices around the country (such as the requirement for officers to document each time they points a firearm —Recommendation #1).

We made five recommendations in 2018; they are outlined below. We made ten recommendations in 2017; those are outlined in the appendix with information on current status.

#1— TRACK WHEN AN OFFICER POINTS A FIREARM AT A PERSON

The IPA recommends that the SJPD track and document when an officer points a firearm at a person as reportable force. This excludes unholstering or holding a firearm at the low-ready position.

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.*²⁹

A recent study³⁰ 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.

29. 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.

30. 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) See Cal. Code Regs. tit. 11, §999.226 (2017)].

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.

State regulations now 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.³¹

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*³² for the following reasons:

- 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
 - Seattle Police Department
 - Denver Police Department
 - Metropolitan Police Department in Washington, D.C.
 - New Orleans Police Department
- 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)
- Currently, an allegation that an SJPD officer improperly pointed his firearm is classified as a Force allegation within the Department's complaint process.

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

32. 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.

-
- 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.

The IPA acknowledges that some law enforcement agencies tracking firearm display do not classify such conduct as a use of force for a variety of reasons. We recommend that SJPD consider best practices in determining how SJPD should track firearm displays, including the notification and assessment of such conduct by an immediate supervisor.

#2 — IMPLEMENT A ROBUST EARLY INTERVENTION SYSTEM

The SJPD maintains an Early Intervention System designed to identify and address problem behavior. The Department tracks officers who receive multiple complaints in a twelve-month period. Those officers who are flagged under this system are provided with intervention counseling. The session provides an opportunity for supervisors and Command Staff to speak with the officer informally about personal and work-related issues.³³

For many years, the SJPD has looked solely at the police misconduct complaint process to identify officers exhibiting possible problem behaviors requiring corrective action. However, looking only at complaints may not provide a complete or accurate reflection of officer behavior, both individually and department-wide. Persons who encounter police misconduct might not file a complaint if they are unaware of the process or are afraid of officer retaliation if they complain. Alternatively, they may believe that the complaint process is ineffectual and express their concerns by filing a lawsuit. To provide a more complete picture of officer conduct, more factors must be assembled and examined than merely complaints.

Best practice currently used by other jurisdictions take several factors into account to create a more complete picture of the officer's behavior. Many agencies³⁴ use systems which capture more indicators of activity such as use of force reports, commendations, and civil lawsuits. The system establishes a threshold. Officers whose

33. Concerns classified as *Non-Misconduct Concerns (NMC)* are not tracked for this purpose.

34. These jurisdictions and their corresponding programs are: San Francisco Police Department's *Early Intervention System*, Denver Police Department's *Personnel Assessment System*, San Diego Police Department's *Early Identification and Intervention System*, Seattle Police Department's *Early Intervention System*, and Charlotte-Mecklenburg Police Department's *Early Intervention System*.

aggregate indicator activity exceeds the threshold are flagged for examination. The initial course of action for these agencies is generally an informal meeting between the officer and the immediate supervisor and/or additional training, mentoring or temporary re-assignment. This expanded system helps agencies (1) identify department trends and (2) identify officers whose activity is markedly different from other officers — which may indicate training or discipline issues.

The IPA recommends that the Department create a more robust early warning system by incorporating current best practices and then implementing such a system.

#3 — RECORD ALL INTERVIEWS AND INTERROGATIONS

In 2018, the IPA audited two cases involving school students who were questioned on school campus³⁵ by SJPD. In each case, the interview was not recorded. In each case, a complaint was filed criticizing the manner in which the student was questioned.

As we audited those cases, we found no Duty Manual section requiring an officer to record interviews or interrogations with juveniles at school. Due to the lack of a recording, the Internal Affairs investigations of these complaints were forced to rely on the memories/credibility of the officers, witnesses and suspects. If a recording had been made, the questions as to whether Miranda warnings were given or whether the interrogation was coercive would have been answered more readily and with a higher degree of confidence.

Given the ready access to recording devices and the importance of accurately capturing questions/answers, the IPA recommends that officers be required to digitally record interviews or interrogations with juveniles at school. Use of the video and audio should be recommended if the officer is equipped with Body Worn Camera (BWC). If the officer is not equipped with BWC, the officer should be equipped with and use an audio recording device. This directive would apply to regular on-duty officers who respond to school incidents, school resource officers, and to those officers working at schools via the Secondary Employment Program.

Expanding this concern to a broader level, we found no Duty Manual section requiring an officer to digitally record interviews or interrogations of all interviews of suspects, victims and witnesses, regardless of age. Duty Manual Section L 4513 Recording of Statements [revised 09-18-15] only discusses surreptitious recordings. Duty Manual Section L 4500 Interviews/Interrogations does not require officers to make digital recordings. Given the ready access to recording devices and the importance of accurately capturing questions/answers, the lack of such directive seems dated. Thus, the IPA recommends that that officers be directed to digitally record interviews or interrogations of all interviews of suspects, victims and witnesses, regardless of age.

#4 — PROVIDE PROGRESS REPORT ON 2017 UTEP RECOMMENDATIONS

In 2012, IPA Judge LaDoris Cordell recommended that the Police Department adopt a policy requiring officers to document when they make a stop and require an individual to sit on the curb, handcuff them, or place them in the back of a police car for the purposes of a limited detention.³⁶

35. One student attended a high school; the other attended a middle school.

36. San José Independent Police Auditor's *2011 IPA Year End Report*. <http://www3.sanjoseca.gov/ipa/reports/11ye.pdf>

In September 2013, SJPD implemented a new policy to better document officer activities during limited detentions.³⁷ That policy included documenting curbside sitting, handcuffing, or placing persons in a police vehicle during self-initiated pedestrian and vehicle stops.

In February 2016, SJPD hired experts at the University of Texas at El Paso (UTEP) to conduct a statistical analysis of limited detention data and provide recommendations to address and reduce disparities in limited detention actions. The study,³⁸ released the following year, was based on data collected by SJPD for 30 months from September 2013 through March 2016.

The UTEP Study reflected a notable effort by the Department to engage in self-assessment and to establish benchmarks of stop data practices for the period 2013-2016.

The UTEP Study provided recommendations in three areas: Data Collection/Analysis, Training and Community Engagement. The introduction to the recommendation section stated:

The recommendations below are offered in that same spirit of openness and are designed to provide the City of San Jose, its police department, and its community stakeholders with suggestions for how to reduce actual or perceived racial and/or ethnic bias in police decision-making and provide fair and constitutional policing to San Jose residents and visitors.

The IPA recommends that the Department provide, in some written format, a public report/memo outlining what steps have been taken to implement each of the six UTEP recommendations.

Data Collection and Analysis

- Recommendation 1

The SJPD should consider implementing the data collection recommendations found in Appendix B and contracting with an outside analysis team on an annual or semi-annual basis to analyze the data for aggregate patterns of racial/ethnic disparity.

- Recommendation 2

The SJPD should consider developing the capacity, either internally or through a contracted analysis team, to identify racially or ethnically disparate stop patterns by individual officers and to proactively address such patterns if they emerge through early intervention and training.

Training

- Recommendation 3

The SJPD should evaluate and adopt evidence-based training for improving police-citizen interactions and reducing the influence of discriminatory factors, such as race and ethnicity, in contacts with citizens.

37. See San José Police Department Duty Manual, Section L 5108-Documenting Limited Detentions During Self-Initiated Pedestrian and/or Vehicle Stops.

38. Michael R. Smith, J.D., Ph.D., Jeff Rojek, Ph.D., Caleb Lloyd, Ph.D., The University of Texas at El Paso Center for Law and Human Behavior and Robert Tillyer, PhD, The University of Texas at San Antonio, *San Jose Police Department Traffic and Pedestrian Stop Study* (January 18, 2017).

Community Engagement

- Recommendation 4
The SJPD should disseminate the executive summary from this report widely and post the entire report on its website. SJPD leaders should meet with community groups and other stakeholders to review the key findings and answer questions from community members
- Recommendation 5
The SJPD should develop and disseminate better and more relevant information about crime patterns and trends in the city, including citizen calls for service, and how those patterns intersect with race and ethnicity. . . . These crime and race/ethnicity patterns may not be well-understood by some community stakeholders in San José, yet they are highly relevant to who the police stop and arrest for certain crimes in certain areas of the city. The SJPD should develop the capacity to produce analyses of race/ethnicity, crime, and calls for service data for distribution and discussion with community members.
- Recommendation 6
Assuming the SJPD continues to collect and analyze stop data, it should produce an annual or bi-annual report that outlines the findings from its yearly analyses and discusses its ongoing efforts (training, policy-approaches, accountability efforts) to reduce racial and ethnic disparities in its contacts with citizens.

#5 — INSTALL SURVEILLANCE CAMERAS IN EVIDENCE ROOM AT SUBSTATION

The San José Police Department's substation is currently used for police training; it is not used to deploy sworn officers. However, when the substation becomes fully activated, the IPA recommends that a video surveillance system be installed before any evidence is placed into the evidence room. The system should be installed and positioned to record perimeter doors and interior doors. Such security protects the evidence, the chain of custody, the officers, and the Department.³⁹

39. POST Law Enforcement Evidence & Property Management Guide [Guideline #3.6]
<http://lib.post.ca.gov/Publications/Evidence-Property%20Management%20Guide.pdf>

CHAPTER FIVE

COMMUNITY OUTREACH

Community outreach is a core function of the Office of the Independent Police Auditor. Using a multi-faceted approach, we strive to educate as many members of the public as possible about the complaint process and the role of the IPA.

IPA staff solicit public outreach opportunities to ensure that a diverse cross-section of the community learns of our services. We base our decisions concerning whether or not to accept an invitation or to solicit an opportunity on the following factors:

- Location of event (Is it in San José or the immediate surrounding area? Are the participants likely to live, work, attend school or visit San José? Is it a “hot spot” area where SJPD officers frequently interact with the public?)⁴⁰
- Audience size (Does the event have ten or more attendees?)
- Target groups (Are participants likely to be people of color, immigrants, youth and/or young adults?)
- Staff availability (What is the current IPA staff workload? Will there be sufficient staffing levels at our office?)
- Length of event (If it is a presentation, will we have 30 minutes or more to present?)
- Council District (Have we had a presence in each district this year?)



40. “Hot spot” locations used by the IPA were identified based on information obtained from (1) the SJPD Research and Development Unit in 2012 regarding areas from which the largest number of requests for SJPD services originated and/or the areas at which SJPD officers initiated the largest number of stops (pedestrian or vehicle), and (2) the Mayor’s Gang Prevention Task Force, a coalition of local residents, government leaders, school officials, community and faith-based organizations, and local law enforcement.

I. Outreach Overview

The IPA office participated in 128 outreach activities and reached 3,649 members of the public in 2018. IPA outreach activities include participation in community events, presentations to the public, and media interviews.

Each year, some of our community outreach is directed to residents of particular neighborhoods by participating in events and meetings in 2018 such as:

- National Night Out
- Community resource fairs
- Senior walks
- Door-to-door meet and greets.

Illustration 6-A: Attendees at IPA Outreach Activities in 2018

Outreach Activities	Events	% of Total Events	Attendees	% of Total Attendees
IPA Presentations	24	19%	581	16%
Community Events/Meetings	84	65%	3,032	83%
Meet and Greets & Material Distribution	20	16%	36	1%
Outreach Totals	128	100%	3,649	100%

A. Presentations

Presentations by the IPA and staff are the most effective means to accurately and thoroughly convey the purpose and functions of the IPA office. Most presentations happen in small groups of about 10-25 participants. The small groups give time to address specific questions and collect feedback about the IPA office services, community concerns regarding policing, and strengthen connections to community. In 2018 the IPA office gave 24 presentations reaching 581 individuals.

B. Community Events/Meetings

Community events and meetings differ from IPA presentations. At presentations, we talk to audiences about the work of the IPA office. At community events, we engage with attendees on a one-to-one basis or are introduced to large groups of attendees. We also attend monthly meetings with community and neighborhood groups. Community events and meetings are opportunities for the IPA and staff to understand local concerns, answer questions about the IPA office, and connect with other government agencies and community-based organizations in order to support the residents and visitors of the City of San José. The number of community events and meetings we attended in 2018 was 84 and the number of individuals reached was 3,032.

The IPA also took part in local and regional meetings and events to educate the public and law enforcement at events hosted by the City of San José Human Services Commission, the Black Leadership Kitchen Cabinet, and the LaRaza Roundtable. Additionally, the IPA staff actively took part in National Night Out by attending events in City Council Districts 2, 3, 4, 5, and 10.

C. Outreach to Impacted Populations in 2018

The IPA has a strong commitment to reaching diverse groups of individuals who may benefit from the services of the IPA office. People of color and youth have been the subject of focused IPA outreach efforts for several years. In 2018, we continued to reach out to these communities and expanded our efforts to reach out to other impacted communities such the immigrant, mental health and homeless populations. To ensure that we are reaching these populations, we focus much of our outreach activities in these communities and to those who provide assistance and services to these populations. For example, in 2018 we held targeted community forums at Grace Baptist Church, met with agencies serving the homeless, and presented to community schools, and youth organizations.

II. Outreach by City Council District

Starting in 2000, the City Council asked the IPA to provide outreach information by City Council district. Although it is impossible for us to identify the City Council district of each person who attended an IPA event, we provide a breakdown of outreach event locations by district for this Report. As in prior years, much of IPA outreach in 2018 was in District 3 – the district that includes City Hall and the downtown area. District 3 is a popular location for city-wide events and draws attendees from other City Council districts.

Illustration 6-B: IPA Outreach by City Council District -- 2018

District	Number of Events
1	3
2	10
3	47
4	4
5	22
6	11
7	17
8	5
9	3
10	3
*Outside City limits	3

*Events, meetings, and presentations that did not occur in San José but involved attendees who are likely to reside or conduct business here.

D. Meetings with City Officials and Participation in City Events

While meetings with city officials and participation in City events are technically not community outreach, we believe that IPA communication with our government officials is very important. Throughout 2018, the IPA met regularly with the Mayor, City Council members, City Council appointees, and San José Police Department (SjPD) Command staff. IPA staff also attended City meetings, including Agenda Review meetings and meetings of the Public Safety Finance Strategic Support Committee.

III. IPA Publications

Each year the IPA office distributes informational materials at resource fairs, presentations, and community events. They are available online at www.sanjoseca.gov/ipa. IPA publications include the following:

- *A Student's Guide to Police Practices* (Guide)
- IPA Year End Reports to City Council
- Brochures describing IPA functions and the complaint process
- Information cards (wallet-sized) providing IPA contact information and a brief description of IPA services

The IPA staff distributed our *Frequently Asked Questions about the IPA Office* (FAQ) handout in English, Spanish and Vietnamese at our outreach events. You can find the FAQ in Appendix F of this Report as well as on our website at www.sanjoseca.gov/ipa.

Available on the IPA website www.sanjoseca.gov/ipa are IPA outreach materials such as the Guide, Year End Reports, information about the complaint process, and general information about civilian oversight of law enforcement. Under the section *News & Announcements*, one can find links to current IPA developments, announcements and events. The IPA office has a Facebook page listed as, *Office of the Independent Police Auditor, San José*, where we also provide ongoing information to the public and we consistently provide updates on our Twitter page <https://twitter.com/sanjoseipa>.

IV. Independent Police Auditor Advisory Council

The Independent Police Auditor Advisory Council (IPAAC)⁴¹ was established in 1999. The group has two functions: (1) promote community awareness of the services offered by the IPA office, and (2) advise the IPA office about police-related issues and concerns that arise in San José. The support, advice, and insights offered by the IPAAC are integral to the success of the IPA. In addition to attending quarterly meetings, members assisted the IPA with community outreach. IPAAC members also participated at various locations during National Night Out.

In 2018, our IPAAC had several committee members complete their commitment and cycled off, allowing for new members to begin their tenure with the IPAAC.

41. In 2013, the Independent Police Auditor Advisory Committee changed its name to Independent Police Auditor Advisory Council.

2018 IPA Advisory Council Members

Name	Employer/Affiliation	Occupation
Mydzung Bui	Santa Clara Unified School District	Educational-Related Mental Health Services Coordinator
Norma Callender	Self-employed	Semi-retired Independent Paralegal
B.J. Fadem	Law Offices of B.J. Fadem & Assoc., APC	Attorney
Che Hammond	Roku, Inc.	Software Engineer
Walter Hudson	Retired	Community Advocate
Anthony King	Sacred Heart Community Services	Community Advocate
Yvonne Maxwell	Ujima Adult and Family Services	Executive Director
Vianni Garcia	Fresh Lifelines for Youth	Law Program Manager
Hilbert Morales	El Observador	Publisher-Emeritus
Panteha Saban	Santa Clara County Public Defender's Office	Attorney
Otis Watson	Comerica Bank	Banking/Financial Services
Sarah Webb	Law Foundation of Silicon Valley	Attorney
Megan Wheelehan	Law Foundation of Silicon Valley	Attorney



CHAPTER SIX

IPA AUDITS IN 2018 — A FOCUS ON TRANSPARENCY

When we perform an audit of a complaint, we assess whether the investigation and analysis by Internal Affairs into the alleged police misconduct were conducted in a fair, thorough, and objective manner. We then close each audit in one of the following ways:

- Agreed
- Agreed After Further Action
- Closed with Concerns
- Disagreed

Internal Affairs closed 212 cases in 2018. The Office of the Independent Police Auditor audited 83%, or 177 of these cases. In 69% of our audits, we agreed with IA's initial conclusions, and did not ask IA to undertake additional actions. In another 22% of the cases, we agreed after IA took further actions that we recommended. Typical further actions included expanding IA's investigation, re-interviewing a witness about an unresolved issue, and reexamining their analyses. The result was that we closed an audit as Agreed or Agreed After Further Action in 91% of our audits in 2018. In just 16% of our audits we disagreed or had concerns about IA's investigations and/or analyses.

The Agreed After Further closings are especially significant because they reveal not only the open and respectful lines of communication that exist between the Office of the IPA and IA, but also the credibility of our office that our recommendations are frequently implemented. Additionally, when IA undertakes further action on these cases, their subsequent investigations are more thorough and their analyses have greater objectivity. In some instances, we persuaded IA to change their findings to ones more favorable to the subject officers than IA's initial findings. Conversely, there were instances where IA persuaded us that their conclusions were appropriate after we asked IA to re-examine their analyses.

Transparency is critical to maintaining the public's trust in the work of the IPA office. The better that the public understands our role in the complaint and audit processes, the more willing the public will be to seek the services of our office, should the need arise. However, the laws governing confidentiality limit our ability to be transparent. Complaints and investigations of complaints are considered part of an officer's personnel file. Disclosure of the contents of personnel files are prohibited by state law except in limited circumstances. Thus, we are prohibited by law from revealing to the public the identities of complainants and the identities of officers investigated for alleged misconduct. We also cannot disclose the discipline, if any, imposed upon officers deemed to have engaged in misconduct. A breach of confidentiality is a serious matter that can result in criminal prosecution.

In an effort to promote transparency about our audit process, while strictly adhering to the requirements of confidentiality, this Report presents summaries of all of the cases that our office audited in 2018 in which we Agreed After Further, Closed with Concerns, and Disagreed. We have "sanitized" these summaries so that the

identities of the complainants and subject officers are protected from public disclosure. Similarly, this Report includes summaries of a sample of cases in which we agreed with IA's investigations and conclusions without asking IA to take further action.

Our goal in providing this information about our audits is to ensure that the public understands that independence and objectivity are an integral part of the work of the Independent Police Auditor. The cases that we audited in 2018 and that are described in the following summaries, demonstrate that the IPA's civilian oversight audit process, while it can always be improved, does work.

To reiterate, our case reviews are not independent investigations of the alleged facts. The Internal Affairs Unit conducts the investigation of the alleged misconduct. The IPA audit focuses narrowly on whether that investigation and analysis was fair, thorough, complete and objective.

Unless noted otherwise, the word *officer/s* in the summaries refers to sworn police officers employed by the San Jose Police Department. Body-Worn Camera video is listed as *BWC video*. The term *CAD* refers to Computer-aided Dispatch which is a log of all of the events from the moment the police are called, until the moment they leave. The information is logged by dispatch as it is being relayed by the officers and the reporting parties.

Agreed at First Review

Agreed at First Review Case #1

The complainant stated that she was walking in a local park and saw five officers talking to a group of homeless people. The complainant approached them and said, "I'm just here to see what's going on." An officer said, "They're being detained in the park for being here after hours, and so are you." The complainant believes these officers were trying to show their authority by detaining her. The complainant contacted a higher-ranking officer and stated her belief that she was being detained unlawfully. A higher-ranking SJPD officer arrived. The complainant says that the higher-ranking officer agreed that this situation was mishandled and believed her detention was improper. The complainant alleged that these officers were discourteous and demeaning towards the homeless people. One officer said that homeless people leave trash and the businesses don't want them around. The complainant believes that there was no need for so many officers approaching these homeless people without any reason. She also complained about her detention as well as the homeless peoples' detention.

IA Conclusion:

IA exonerated the Detention allegations of the homeless people as well as the complainant because all were violating the municipal code section which prohibits being in the park after dark. IA concluded the officers were not rude. The officers addressed all people as "sir" or "mister" and explained the purpose of the contact. An officer stated that people who sleep in the park leave trash, and that is why the officers were asking people to leave. Lastly, IA determined that multiple officers attached to the event because there were no other competing calls at the time and to provide support for officer safety concerns.

IPA Agreement and Rationale:

The IPA agreed that the investigation was fair, thorough, and objective.

Agreed at First Review Case #2

The complainant alleged that her car was improperly towed. An officer allegedly informed her that the vehicle was towed because it was part of an investigation. The complainant stated that she purchased the vehicle about four weeks ago from a private party and had the car registered in her name. She alleged that the officer who towed her car did not complete a proper investigation prior to towing her car.

IA Conclusion:

IA exonerated both Procedure allegations, concluding that the tow was proper and the investigation leading up to the tow was also proper. The officer was investigating an alleged stolen vehicle and although the complainant believed she had recently purchased the vehicle lawfully, the officer learned that the person she bought the car from stole the vehicle from the lawful owner. The tow was proper to continue the investigation.

IPA Agreement and Rationale:

The IPA agreed that the investigation was fair, thorough, and objective.

Agreed at First Review Case #3

The complainant stated that he was at a park sleeping in his car at night. Two officers approached him and asked him to step out of his car. He refused and asked for a supervisor. He did not believe that there was a reason to stop him. The complainant stated that he was working on his bike earlier that day. There was a ball bearing on the floor of his car in plain view to the officers. One of the officers asked him if that was a “BB” from a BB gun. The complainant said it was just a ball bearing. The officer said, “That makes me think that there is a weapon in the car, so we need to search the car.” The officers found a BB gun and arrested him. He believes his initial detention, the search of his car, and his arrest were all unlawful.

IA Conclusion:

IA exonerated all allegations. The complainant was properly detained because he was sleeping in his car in a park at night—a municipal code violation. He displayed objective symptoms of being under the influence of drugs. An officer also found BB gun pellets in plain view inside the car. It was proper for officer to direct the complainant to exit his car so that officers could conduct field sobriety tests. Once it was determined that he was under the influence, the officers arrested the complainant and searched his car pursuant to the arrest.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed at First Review Case #4

The complainant was at a gas station at 3:00am. He called 911 to report that subjects were threatening him and that he saw a handgun. He alleges that the responding officers failed to perform a complete investigation because the officers only said that they would look for the suspects. The officer allegedly refused to look at video surveillance footage.

IA Conclusion:

IA exonerated the allegation of an inadequate investigation. The officer arrived on scene and asked the complainant for a description of the involved vehicle. The complainant never provided the description and seemed confused. The officers asked the gas station attendant if he saw anyone suspicious with a gun, but the attendant denied seeing this. When the officers tried to get more information from the complainant, the complainant avoided answering their questions. At their IA interviews, the officers said that they did not review any video footage at the gas station because they did not believe a crime had occurred. The officers left the scene telling the complainant that they would be on the lookout for suspicious suspects.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed at First Review Case #5

The complainant said that she has had ongoing issues with a homeless family that loiters near the entrance/exit of the mobile home park where she lives. The complainant alleged that she has had to call the police on multiple occasions due to this family's violence. Most recently, the complainant stated that one of the homeless people tried to intentionally hit her with their car. This caused her to fall down and injure her back.

She called SJPD and an officer responded. When the complainant described what happened, the officer was very rude to her. The officer allegedly told her that she is the only person who calls to report issues with this family. He said that officers drive by the area but never see the family. The officer allegedly told her that she was either intentionally lying or imagining things. Lastly, the officer said that it costs the city a lot of money each time they come out, and therefore she should not waste resources. The officer then allegedly left without investigating.

The complainant filed this complaint based on the officer's rude conduct and the failure to investigate the incident.

IA Conclusion:

IA interviewed the officer who reported canvassing the neighborhood and located witnesses whose statements did not support what the complainant reported. IA properly exonerated the Procedure allegation for failing to conduct a complete investigation. The officer denied making any rude comments to the complainant and there were no independent witnesses or evidence (including BWC video) to corroborate her story. IA properly weighed the complainant's credibility and came to a finding of Unfounded for the Courtesy allegation. During the investigation, IA also noted that the officer failed to activate the BWC. Therefore, IA added a Procedure allegation for failure to activate the BWC.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed at First Review Case #6

The complainant stated that he was in a fight with his sister the day before his encounter with officers. They were in a verbal fight and she threw a cup at him. The next day, they started fighting again. He ended up pushing his sister. She pulled his hair and broke his glasses; then she called SJPd.

Two officers arrived and took each party's statements. The officers asked the complainant if he had any anxiety, depression or any other mental diagnosis. He replied that he had anxiety.

Allegedly, the officers told him that they were going to go to the doctor and get new glasses. In fact, the complainant was placed on a 72-hour mental health hold. While in the back of the patrol car, his mom tried to give him glasses and money so that he could get back home. The officers wouldn't allow her to do this and directed her to step away from him. Two officers held his mother back and the complainant alleged that that the officers used excessive force with her. She received bruises and hurt her back. She was handcuffed and had pain in both wrists.

The complainant complained about the force used on his mother and stated that the officers lied by saying he was going to see a doctor and get glasses.

IA Conclusion:

IA exonerated the force used on the complainant's mother stating that the officers only used a firm grip control hold on the complainant's mother. The appearance of bruising on the woman's arms and wrists did not indicate that the force was excessive. IA concluded that these injuries may have been exacerbated by the complainant's age, her medical conditions, and any medications she was taking. IA also exonerated the Procedure allegation for lying to the complainant and telling him he was going to the doctor to get new glasses. BWC video showed that the officers told the complainant that he was going to be taken to a doctor and speak with a professional based on his mental health issues and because he was also a danger to his sister. BWC video also showed that an officer asked the complainant's mother to retrieve his glasses prior to the transport to jail, but when his mother said that the glasses were broken, an officer told her that "they'll get him new ones down there." This statement occurred after the complainant had been placed in the patrol car with the doors and windows closed. This statement was reasonable and accurate and did not misrepresent the place or purpose of the transport.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed at First Review Case #7

The complainant stated that SJPd officers responded to her apartment after she and her boyfriend were involved in a physical altercation. The complainant told officers she and her boyfriend were arguing and they

both shoved each other. The complainant said the officers told her she had a red scratch mark on her neck however she did not see it. She filed this complaint because she believes that her boyfriend was improperly arrested for domestic violence.

IA Conclusion:

IA exonerated the Arrest/Detention allegation. Officers responded to the apartment after a neighbor called 911 that reported they heard a male beating up a female. A second caller reported that they could hear a male and female screaming. Based on the appearance of a scratch on the complainant's neck and her boyfriend's statement that they were in a verbal argument and he bumped her with his chest which lead to her pushing him back, the officers determined that her boyfriend was the dominant aggressor. Based on this information, the officers had probable cause to make an arrest.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed at First Review Case #8

The complainant called police to report that her husband refused to turn down his loud music. The complainant believed the responding officers were rude and lectured her. She complained the officers unlawfully arrested her husband for domestic violence. She believed the officers engaged in bias-based policing based on her gender, and alleged the officers automatically assumed her husband was the suspect because he is male and she is female.

IA Conclusion:

IA unfounded the Courtesy allegation because BWC video showed that the officers were not discourteous. IA also unfounded the Bias-Based Policing allegation because there was no evidence that the officers made any decision based upon the gender of the complainant or the suspect. IA exonerated the Arrest/Detention allegation because during the investigation, the officers determined that the suspect grabbed onto the complainant's hand causing her injury. This conduct provided probable cause to make an arrest.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed at First Review Case #9

The complainant stated that he was collecting voter signatures outside a big-box store. The store manager called the police to complain about his conduct. The complainant alleged that the responding officer was "aggressive" by placing his hand on his gun and "tapping" it with his finger. The officer placed him in handcuffs. The complainant believed the officer did not complete a proper investigation by giving him the opportunity to leave. He believed the officer was discourteous by staring at him and tapping his finger with his gun.

IA Conclusion:

IA determined that the allegation of the officer placing his hand on his gun was a Non-Misconduct Concern.

BWC video showed that the officer seemed to be resting his hand there during the duration of the call; that conduct did not reflect a violation of the Duty Manual. IA exonerated the Procedure allegation for failing to complete a proper investigation by giving the complainant the opportunity to leave. BWC video showed that officers arrived because the store manager asked the complainant to leave multiple times because he was blocking the store entrance, but he refused. The officers gave him a significant amount of time (90 minutes) and provided many opportunities to move locations or face arrest. The complainant persisted in his refusal to move. Finally, he was placed in handcuffs and arrested. Given this substantial amount of time and options to leave, the officers conducted a full investigation and made a proper arrest.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed at First Review Case #10

The complainant stated that he took his dog to a local park. The complainant got into his vehicle with his dog and was getting ready to leave when he was approached by two police officers. He stated that he had started the engine and his music was on and he had not even had a chance to close his door when he was contacted.

He stated the officers ran his name over the radio and then told him they were not issuing him a citation. He alleged that he was improperly stopped and detained.

IA Conclusion:

IA exonerated the Arrest/Detention allegation based on BWC video. The video showed officers approaching the complainant and telling him that he was playing his music too loud. The officers asked for identification. When the officer asked the complainant if he had been drinking, the complainant replied, “a little bit.” He was told several times why he was being detained—for playing his music too loud (a violation of the vehicle code which was displayed on a sign in the park), and also so that officers could determine if he was able to drive safely. After conducting a records check, the officers told the complainant that he was free to leave. IA concluded that this detention was proper.

IPA Agreement and Rationale:

The IA investigation was fair, thorough, and objective.

Agreed After Further

Agreed After Further Case #1

Complainant called the IPA Office about a traffic stop, search and a citation. Complaint alleged that the traffic stop was based on bias, that excessive force was used when he was removed from the vehicle, and that the officers' search of his person was improper. Complainant stated that he was permitted to possess medical marijuana and thus alleged it was improper for the officers to search his car, issue a citation for possession of marijuana, or confiscate his marijuana.

Ten allegations were identified. The IPA agreed with IA's analysis on all allegations except those related to the marijuana.

IA Conclusion:

IA's analysis concluded that the search of the car was justified because an officer stated that he smelled burnt marijuana coming from the car and that, at the scene, the complainant admitted to having marijuana. The complainant was properly cited under Vehicle Code section 23222(b) which prohibits a driver from having open containers of marijuana. The officers properly confiscated the marijuana because it was illegal for the driver to have an open container.

IPA Disagreement:

The IPA noted several factual discrepancies regarding the car search; there were facts indicating that the officers searched the car to look for registration. The assertion that the officer cited the driver because he had open containers was tested because the officer's contemporaneous report did not document an open container; only during the interview did the officer mention this crucial fact. Further, on the date of the incident, open containers were not prohibited under Vehicle Code section 23222(b). We questioned the propriety of the confiscation because the authority to do so provided by IA was not mentioned by the officer who took the action.

Outcome:

After the IPA appealed its disagreement to the Department, a re-analysis was conducted. Exonerated findings on the allegations pertaining to the citation for transporting marijuana and seizing the marijuana were changed to Sustained. The IPA closed our review as Agreed After Further.

Agreed After Further Case #2

Complainant filed his complaint approximately fourteen months after the incident. An officer ordered the complainant to stop because he was riding his bike without a required light. Complainant refused to stop and alleged that an officer then tackled him off his bike. There was a scuffle between the Complainant and officers. Complainant alleged the officers used excessive force, including a TASER and kicks to his head and face.

IA Conclusion:

Even though fourteen months had passed between the incident date and the filing of the complaint, IA initially classified this case as a *Conduct Complaint*. Later in the process, it was classified as *formal* which generally means that that officers would be interviewed. However, no interviews were conducted and the case was closed as Other. No detail was provided about the basis for that closure.

IPA Disagreement:

The IPA was concerned about the lack of transparency supporting the decision to close this case as Other. Pursuant to Duty Manual section C 1738, the Police Chief has discretion to close a case if it is filed untimely but that discretion cannot be exercised in an arbitrary fashion. The IPA could not recall another case that was classified as *formal* but then closed as Other.

Outcome:

This case was appealed to the City Manager. During that appeal, the Department agreed to provide a brief rationale supporting its decision. Once that rationale was provided, the IPA agreed that the Chief's discretion was properly exercised.

Agreed After Further Case #3

Complainant contacted the IPA's office to file a complaint about an interaction with police in an alley. Complainant alleged that he was only approached and detained by police because he is Hispanic. He complained the officers pointed their handguns at him, used unnecessary force while he was handcuffed, improperly searched him, and were discourteous.

The IPA concerns are limited to the allegation that officers pointed their handguns at him.

IA Conclusion:

The IPA concluded that IA's investigation of the complaint was thorough and complete, except its analysis of the allegation regarding pointing handguns. IA had closed this allegation as a *Non-Misconduct Concern* which is *an issue that does not rise to the level of a violation of Department/City policy, procedure, rules, regulations, or the law.* (Duty Manual Section C 1706)

IPA Disagreement:

The IPA asserted that the alleged conduct, pointing guns, should be reinstated, and re-examined under those Duty Manual sections which govern use of force and tactical conduct.

Outcome:

IA agreed that the alleged conduct, pointing a gun at a person, would be investigated as a Force allegation. IA re-examined the BWC video of the incident. It showed only one officer with a gun drawn and that gun was held in the low ready position. The IPA and IA agreed that holding a gun at the low ready was different from pointing a gun at a person. The Force allegation was closed as Unfounded. The IPA closed our review as Agreed After Further.

Agreed After Further Case #4

The complainant, a victim of a sexual assault, went to the SJPD Main Lobby to file a police report. Once there, the officer who assisted him in the main lobby allegedly was rude and failed to afford him a private setting in which to make a report. The complainant approached the counter to speak with the officer and attempted to be discrete while keeping his voice low. The officer asked in a loud voice if he was the victim. When the complainant replied that he was, the officer took a clipboard, placed it on the desk and said that he would conduct the interview “right here—right now.” The complainant responded that his recounting the details of the incident warranted more privacy than in the public lobby. The officer replied that if he needed privacy and discretion, the complainant could call the police from the street.

IA Conclusion:

IA interviewed the officer, who claims that he did not remember the incident. IA came to a finding of Not Sustained on allegations of Procedure, Bias-Based Policing, and Courtesy.

IPA Disagreement:

The IPA had concerns that IA did not apply the preponderance of the evidence standard while analyzing this Courtesy allegation.

Outcome:

During this investigation and deliberative process, the officer retired. IA later came to a finding of No Finding—a finding for officers who are no longer with the Department and can no longer be subject to discipline. The IPA closed this case as Agreed After Further

Agreed After Further Case #5

The complainant’s teenage son stole her vehicle. Once he was found, the car was towed. The complainant’s son was cited for auto theft and transported to a shelter because he was a runaway. When the complainant retrieved her vehicle from the tow yard, she noticed that her son’s backpack containing marijuana and a scale were still inside. She complained that officers should have seized the marijuana prior to towing the vehicle.

IA Conclusion:

IA concluded that the officers were within their discretion not to issue a citation for the marijuana or seize it. However, IA concluded that the officer was not within policy for failing to activate his BWC.

IPA Disagreement:

IA did not address the lack of vehicle inventory prior to the tow and failed to provide an analysis of the amount of marijuana in the vehicle which would determine whether or not the officer used his discretion appropriately in deciding not to issue the citation.

Outcome:

IA agreed to investigate this as a Procedure allegation and the Department came to a finding of Sustained. IA

also added allegations to two officers for failing to activate their body-worn cameras. The IPA closed the case as Agreed After Further.

Agreed After Further Case #6

Complainant alleged that he was sitting at a bus stop with his bicycle when SJPD officers detained him. They moved him away from the bus stop and away from his bicycle. He asked the officers if someone would go retrieve his bike, and the officers said that they would. However, during the detention, and while separated from his bicycle, it was stolen. His complaint alleged that the officers did not secure his bike as they should have since they separated him from it. He also alleged that officers treated him in this manner because he is African-American.

IA Conclusion:

IA interviewed the officers and exonerated the allegation of removing him from his bike. IA asserted that that removing the suspect from the bus stop was reasonable so that the officer could conduct their investigation out of the roadway and traffic. IA came to a finding of Unfounded for the Bias-Based Policing allegation.

IPA Disagreement:

The IPA had concerns with the analysis of removing the complainant from the location of the detention since the officer claimed to have moved him 100 yards. This is much further than needed for a proper preliminary investigation. Removing a suspect too far from the initial location may turn a lawful detention into an arrest.

Outcome:

Upon further review of the BWC video, the officer misspoke and intended to say 100 feet. This amount is more reasonable, and the IPA closed this case as Agreed After Further.

Agreed After Further Case #7

Complainant stated that his home had recently been broken into three times in one weekend. He called SJPD. When officers arrived, they found two homeless people in the complainant's basement. The officers gave them a warning and told them to leave. The complainant contacted an elected official and asked why they were not arrested. The official forwarded these concerns to SJPD for review.

IA Conclusion:

The Department determined that the responding officers should have taken a report for trespass and vandalism. It also determined that the officers should have documented in their report that the complainant requested a citizen's arrest and the officer declined to make one. The Department believed that the complainant's actions at the scene demonstrated an intent to have the suspects arrested and came to a finding of Sustained for three Procedure allegations.

IPA Disagreement:

The IPA had concerns that IA's investigation was not objective because of the connection between the complainant and the elected official. The IPA was concerned that IA gave the complainant's perception of the

event more credence and applied an unusually high level of scrutiny to the officers' conduct.

Outcome:

IA reiterated that the complainant's connection was not the reason it found the officer to have been out of compliance with procedure. IA reiterated its conclusion that a reasonable officer would have recognized the complainant's frustrations and would have offered the option of making a citizen's arrest. The IPA closed the case as Agreed After Further.

Agreed After Further Case #8

Complainant contacted the IPA office to file a complaint. She alleged that her recreational vehicle (RV) was improperly towed, was not entered into a tow database system and that she did not receive any paperwork for the tow. She alleged the officer was rude and did not provide her with his name and badge number. The complaint allegations were Procedure and Courtesy.

IA Conclusion:

The IA investigation and analysis of the enumerated allegations was thorough and complete. Both allegations were closed as Exonerated.

IPA Disagreement:

During its audit process, IPA staff reviewed the intake interviews of the complainant. It appeared that the complainant described a situation in which an officer treated her differently due to her mental health status. The IPA asked that a Bias-Based Policing allegation be added and analyzed.

Outcome:

IA reviewed the intake interview a second time. IA's analysis of the intake showed that the complainant felt she was treated differently because of the economic status, not because of her mental health status. Economic status is not a protected class so there was no basis upon which to add a Bias-Based Policing allegation. The IPA agreed with this conclusion.

Agreed After Further Case #9

An anonymous complainant alleged that an officer routinely went home during work hours and parked in a red zone. The officer lived in a condominium complex. The complainant also alleged that the officer's patrol car was left unattended often for hours at a time multiple days per week. The complainant stated that the patrol car was frequently parked in the "no parking zone."

IA Conclusion:

IA initially exonerated one Procedure allegation for the above complaint, stating that it was reasonable for the officer to be at his residence during his shift on the dates alleged by the complainant.

IPA Disagreement:

The IPA responded, stating that IA improperly narrowed the complainant's complaint to the four dates he/

she took photos of the patrol car and did not analyze the officer's pattern and practice of leaving his beat, as alleged by the complainant. At the IPA's request, IA added three Procedure allegations for: spending part of his patrol shift at his residence, using the correct codes placing himself out of service while at his residence, and parking in a no parking zone on private property thereby creating a hazardous situation. These three added allegations were exonerated. IA added a Procedure allegation for the officer's failure to receive his supervisor's permission to leave the assigned beat. IA determined this allegation as Not Sustained.

The IPA found IA's response to the IPA's concerns to be unsatisfactory. IA interviewed witnesses and the officer but continued to defend the officer's continuous departure from his assigned beat by stating "there are specific times officers must follow the letter of the policy outlined in the Duty Manual and other times they must follow the spirit of the policy...in this incident, [the officer] followed the spirit of the policy." The IPA again voiced concerns about this analysis.

Outcome:

The Department agreed to re-analyze the allegations and came to findings of Sustained for two Procedure allegations of "leaving the beat" and "leaving the police vehicle." The IPA closed the case as Agreed After Further.

Agreed After Further Case #10

Complainant loaned her car to her grandson and he was pulled over by an officer because a tail light was out. Complainant insisted that the car's tail light was functional because she had just recently had work done on her car. Complainant alleged that the officer's search of the vehicle was improper because the officer did not have consent or probable cause. She also alleged that the only reason her grandson was stopped was because of his race (Hispanic).

IA Conclusion:

IA exonerated the search of the vehicle based upon the automobile exception, which states that an officer may conduct a warrantless search of any part of a vehicle if there is probable cause to believe that evidence of contraband may be in that portion of the vehicle. During the encounter, the grandson admitted to having a pipe in the car; this admission justified the officer's search of the car. IA came to a finding of Unfounded for the Bias-Based Policing allegation because the complainant provided no articulable facts to support her assertion.

IPA Disagreement:

The IPA asserted that the grandson admitted to possessing the pipe only after the officer threatened to tow the car. The IPA asked for additional analysis focusing on whether the officer had grounds to tow the car under the Department's 2011 directive on towing procedures. A car tow would have provided a separate basis for the officer to search the car. The IPA also questioned IA's evaluation of the Bias-Based Policing allegation because that evaluation did not include an assessment of credibility.

Outcome:

IA provided additional analysis. The officer had the authority to tow the car because the grandson had

multiple convictions of driving on a suspended license. Complainant's credibility was questionable given that her description of her interaction with the officer was significantly different from that captured on the BWC video. The additional analysis also pointed out that the officer was unable to see the race of the driver until the driver was pulled over. With this additional analysis, the IPA agreed that the investigation was fair and complete. We closed our review as Agreed After Further.

Agreed After Further Case #11

The complainant, over age 85, filed this complaint alleging that officers improperly placed her on a 72-hour mental health hold. Complainant was receiving in-home care from a local service provider. This provider received a concerning voicemail from the complainant in the middle of the night. The provider called SJDP and officers responded to the complainant's house to conduct a welfare check. The officers evaluated her and placed her on a 5150 stating that she was "gravely disabled."

IA Conclusion:

IA exonerated this allegation and held that the 72-hour mental health hold was proper as the complainant was gravely disabled due to a mental impairment.

IPA Disagreement:

Based on BWC video, the IPA argued that the complainant did not appear to meet the criteria of "gravely disabled" as she was capable of providing for her basic needs of food, clothing, and shelter. Also, it did not appear that the responding officers made a cross-report to Adult Protective Services, as required in the Duty Manual for instances of elder or dependent adult abuse, neglect or endangerment which occur in a private home.

Outcome:

IA agreed with the IPA's assessment. The officer clarified in his interview that the complainant was a danger to herself based on statements made at the scene, and checking the "gravely disabled" box was an error. IA maintained that a finding of Exonerated was proper for the mental health hold. IA added a Procedure allegation for failing to make a cross-report to APS and made it a *Supervisory Referral*. The IPA closed this case as Agreed After Further.

Agreed After Further Case #12

Complainant filed a complaint regarding an incident at her home. Officers initially responded to the residence for a medical emergency involving the complaint's son. Officers questioned the residents about the medical emergency and drug use. The officers left the home but quickly returned. Once officers had left, the son tried to harm himself with a knife. Intending to place the son on a 72-hour mental health hold, an officer handcuffed him and escorted him to a car. The son suddenly kicked at an officer and officers responded with force. When complainant tried to intercede, an officer approached and used force while handcuffing her. Officers entered the home and seized complainant's phone to get information about drug deals. Complainant provided consent to search the phone. The son was transported to jail and charged with battery on an officer. Complainant was arrested for interference with the officers' investigation.

IA Conclusion:

IA investigated and analyzed 17 separate allegations against seven officers. The allegations were Force, Arrest/Detention, Search, Procedure, Courtesy, and Bias-Based Policing.

IPA Disagreement:

The IPA raised concerns on the analysis of eight allegations.

Outcome:

Additional analysis requested by the IPA was provided. Exonerated findings on two Procedure allegations were changed to Sustained. These allegations covered the activation/deactivation of BWC and failure to submit a required force response report. The IPA closed the case as Agreed After Further.

Agreed After Further Case #13

Complainant filed a complaint regarding an encounter between her son and officers. The son and three of his friends stole a car. When police pursued the car, the boys ran into her apartment. She said that officers spent several hours trying to get the boys out of the house. When her son exited, he was ordered to crawl towards the officers. She alleged that the officers used excessive force when they arrested her son.

IA Conclusion:

IA examined two allegations, Force and Procedure. The investigation showed that the complainant's son and his friend led the police on a pursuit in a stolen car. After the car crashed, all four juveniles fled into an apartment and barricaded themselves inside. All four suspects were presumed to be armed with firearms. The suspects surrendered after five hours. Officers dragged complainant's son from the point at which he stopped crawling to a safe location; this conduct resulted in injuries. One officer stated that he used a firm grip on the son's arm to pull it from underneath his body and apply handcuffs. This officer did not document this force. The Department concluded that this use of force (pulling on the arm) was an exception to the general rule that force must be reported.

IPA Disagreement:

The IPA disputed the conclusion that the officer's pulling of the arm was an exception to reportable force. The IPA asserted that the level of force used and whether that force caused a complaint of pain warranted additional analysis.

Outcome:

Additional analysis was provided which supported the Department's conclusion that the officer was not required to report the force. The IPA agreed with this decision given the additional analysis.

Agreed After Further Case #14

The complainant said that several officers came to her house to serve an arrest warrant for her brother. She and her child exited their bedroom and asked the officers what was going on. Complainant was handcuffed

and sat on the couch. The child was placed with the complainant's sister, who was also seated on the couch. An officer with his police dog entered the house and the police dog bit the child in the back. The complainant filed a complaint about the dog bite, the officers' entrance into the house, and handcuffing her.

IA Conclusion:

IA exonerated the detention and the entrance into the house. IA sustained the Force allegation of failing to use due care to avoid unnecessary risk of injury to a person who was not the subject of an apprehension.

IPA Disagreement:

The IPA agreed with above findings, but the IPA did not think that the initial IA investigation correctly examined the use of the police dog under the applicable Duty Manual sections which describe tactical conduct and de-escalation.

Outcome:

After much discussion between the IPA and the IA Commander, the IPA closed the case as Agreed after Further.

Agreed After Further Case #15

Complainant and a co-worker had some issues at the workplace. One day, the complainant parked her car in the parking lot of the workplace. An officer who was also in the parking lot contacted complainant and allegedly mentioned the co-worker. According to the complainant, the co-worker told her that the officer was a friend. Complainant alleged that the officer stayed in his patrol car in the parking lot for three hours. She felt intimidated. Allegedly, the officer left only after building security requested the officer to leave. Her complaint was that the officer improperly did a records check on her car and that the officer remained in his car in the parking lot for an extended period of time. The allegations were Procedure and Neglect of Duty.

IA Conclusion:

IA did not interview the officer. IA contacted the co-worker; she denied being friends with the officer. IA verified that the officer did not perform a records check on the complainant's vehicle. Thus, the Procedure allegation was closed as unfounded. However, the officer's daily log indicated that he was not active for approximately four hours on the morning of the encounter with the complainant. To address this extended time period, IA asserted that the patrol officers are responsible to deter crime and that the officer had jurisdiction to patrol the parking lot. IA asserted that the lot was County property and had posted signs allowing SJPD to enforce parking and traffic regulations.

IPA Disagreement:

The IPA disputed IA's assertion that the officer was doing enforcement action in the County parking lot. Contrary to IA's description, the lot signage stated that the County parking lot was subject to the County's parking and traffic regulations. The sign referenced the Sheriff's Department and County Parking Patrol. County Ordinance states that the County (primarily the Sheriff) is charged with enforcement of parking regulations in the county lots. Furthermore, even if SJPD officers were allowed to enforce parking/traffic in

this parking lot, there was no evidence that the officer actually did any enforcement actions. There was no evidence that he ran any license plates, issued any citations, or deterred any crime. Thus, we contended that the investigation failed to address complainant's concern that the officer remained parked in his patrol car for over three hours.

IA responded to IPA concerns by asserting that the officer was completing specialized unit incident report(s) while parked in the parking lot. This assertion was based on conversations between IA and two supervisors assigned to the specialized unit.

The IPA requested additional information to test IA's assertion including the names of the two supervisors, and all incident reports completed by the officer on the incident date. Such information was warranted to determine if IA had gathered available evidence and if the investigation was fair, complete and objective.

Outcome:

IA did not supply the requested supporting documents. However, it was determined that the neglect of duty alleged would be best addressed by closing it as *Supervisory Referral*. The IPA closed its review as Agreed After Further.

Agreed After Further Case #16

Complainant contacted IA regarding an incident that had occurred previously that day. He was contacted by Officer 1 who instructed him to put his cigarette out in the dirt. Among other things, Complainant alleged that he was detained and handcuffed for no reason (Arrest/Detention). Complainant stated that Officer 1 issued him a citation for throwing cigarette ash on the ground. Complaint alleged the citation was improper because he was following the officer's direction to put cigarette out. (Procedure) Complainant also alleged that Officer 1 retaliated against him by issuing the citation because, during the encounter, complainant said he would file an IA complaint. (Procedure).

IA Conclusion:

IA obtained the CAD, the crime report, and the body-worn camera video. The investigation showed that, on the incident date, Officer 1 was working under the direction of Supervising Officer 2. IA interviewed Officer 1. IA did not interview Supervising Officer 2 because he had retired from SJPD employment.

IA concluded that Officer 1 had the authority to detain and handcuff the complainant because of several factors. Those factors included that the encounter occurred at night, the sobriety of the two men, one man had gang related tattoos, and that Officer 1 saw burnt ambers falling to the ground (a violation of California Vehicle Code section 23111). Given the totality of the circumstances, IA contended that it was reasonable for Officer 1 to detain and handcuff the complainant. This Detention allegation was exonerated.

To address the claim of a retaliatory citation, IA considered whether Officer 1 *engaged in equality of enforcement when he cited the complainant for a vehicle code violation*. IA deemed this allegation to be Unfounded. During his interview, Officer 1 denied any retaliatory intent or action. Although the complainant told Officer 1 that he was going to file an IA complaint against him before he issued the ticket, that statement

had no bearing on the officer's decision to cite the complainant. Officer 1 explained the complainant was the only person he observed definitively smoking and asking. The IA analysis concluded, *after reviewing Officer 1's BWC footage, there was **no evidence** that would suggest Officer 1 cited the complainant out of retaliation.* [emphasis added]

IPA Disagreement:

The IPA conceded that the officer had cause to detain the two males to confirm or dispel whether the males were drinking in public, smoking marijuana, and/or had committed a violation of California Vehicle Code section 23111. However, at this point Officer 1 did not appear to have probable cause to arrest on the Vehicle Code violation because the officer did not yet know the elements of the offense. Officer 1 only learned about the elements from Supervising Officer 2 approximately one hour after the detention started. During an investigative detention, handcuffing is allowed for officer safety reasons. However, the IA analysis did not provide any facts or supporting rationale addressing officer safety concerns. The IPA noted that the IA analysis failed to address issues with the application of Vehicle Code Section 23111 and whether he discarded the substance at the direction of any officer. Lastly, the IPA directed IA's attention to specific remarks between Supervising Officer 2 and Officer 1 that were captured on the BWC video. The chronology and the contents of the remarks countered IA's initial contention that **no evidence** supported the retaliation allegation. Thus, the investigation warranted additional analysis to be thorough and objective.

Outcome:

IA did additional analysis. The finding on the allegation of equality of enforcement was changed from Unfounded to Exonerated. The preponderance of the evidence indicated Officer 1 issued the citation at the direction of Supervising Officer 2. The IPA agreed with this re-analysis.

Agreed After Further Case #17

Among other things, Complainant alleged that, during a traffic stop, the officer used profanity and offensive language, unnecessarily pointed a gun at him, and searched his car without cause. IA added an allegation regarding the officer's failure to activate his body-worn camera at the outset of the encounter.

IA Conclusion:

IA closed the Courtesy allegation as Not Sustained. Because the officer's BWC unit was not activated, there was not sufficient evidence to prove or disprove the allegation that the officer used profanity.

During his interview, the officer explained his efforts to activate BWC and his belief that his efforts had been successful. When he realized the camera had not been activated, he took corrective action. The allegation was deemed exonerated.

IA closed the Search allegation as exonerated. The statements of both the complainant and the officer indicated that the driver's actions deviated from that conduct generally anticipated during such a stop. Based on that conduct, the officer believed the driver was attempting to arm himself. The officer pointed his weapon

at the complainant and gave commands. Then the officer did a pat search for weapons of the complainant and a brief search of the car for weapons; he did not search for contraband. IA closed the allegations of Search and Force (pointing firearm at a person) as exonerated.

IPA Disagreement:

Due to the lack of BWC video during the crucial initial phase of the encounter, the IPA requested that IA conduct additional analysis including examining the relative credibility of the officer and the complainant and the impact that examination might have on the findings. The IPA also requested additional examination of the officer's failure to activate BWC.

Outcome:

IA conducted additional analysis as requested. The IPA closed the case as Agreed After Further.

Agreed After Further Case #18

The complainant filed this complaint after officers arrived in response to a disturbance at her house. Her brother and his ex-girlfriend were in a fight. When officers arrived, the complainant was in a fight with her brother's ex-girlfriend. Complainant wanted to file a report against the ex-girlfriend for spitting at her, attempted assault, and trespass. Officers documented her statement in the body of the report but titled the complainant as a "Witness" instead of a "Victim." Because of this label, she was unable to get a copy of the police report (only victims may get a copy of police reports) at the SJPD Main Lobby. Complainant needed the police report in order to obtain a restraining order against the ex-girlfriend.

IA Conclusion:

IA exonerated this Procedure allegation, concluding that due to the limitations in the reporting system, a person can only have one designation as a "Victim," "Suspect," "Arrestee" or "Witness."

IPA Disagreement:

The IPA noted that Duty Manual section C 2206 states that the Department is **required** to disclose specified police records to victims of a crime and any person suffering property damage or loss as the result of a criminal incident. The IPA suggested that two reports should have been written and filed since there were two separate suspects in two separate altercations.

Outcome:

IA re-iterated that the system currently only allows an officer to list one type of victim, and it was not the fault of the responding officer since these are the limitations of the current system. However, since the complainant is described as the victim in the body of the report, records staff should have released the report to her. The IPA closed this case as Agreed After Further.

Agreed After Further Case #19

The complainant filed this complaint alleging that she spoke with an officer in the SJPD Main Lobby on a specific date and the officer with whom she spoke did not take a report.

IA Conclusion:

IA initially concluded that the specified officer did, in fact, write a report for the complainant but on a different date. Therefore, IA concluded that the complainant must have had the date wrong.

IPA Disagreement and Outcome:

The IPA had concerns about this conclusion because not enough facts were provided to support it.

Outcome:

IA noted that the issues the complainant was reporting, whether or not the date was accurate, were not, in fact, crimes. Therefore, not taking a report would not be misconduct. The IPA closed this case as Agreed After Further.

Agreed After Further Case #20

After reading a newspaper article, complainant contacted the IPA office to file a complaint. The article described an encounter with SJPD and a male suffering from mental illness. During the encounter, the suspect held a relative against her will and made verbal threats about causing significant property damage. Many officers responded. Local streets were closed. After the relative was able to escape, officers left without arresting the suspect. Later that evening, the man went to his neighbor's house and forced his way inside. He threatened to kill the resident if she did not give him the keys to her car. The man was chased through many different jurisdictions and was ultimately caught and arrested by CHP. The complainant stated that the officers should have arrested the man after the relative escaped. Such conduct would have avoided the ensuing robbery and chase.

IA Conclusion:

The IA analysis concluded that, although SJPD undoubtedly had the authority to detain the suspect, *they were not required to force the confrontation*. IA asserted that the officers' decision not to contact the suspect and investigate further was based on the totality of the circumstances outlined in Duty Manual Section L 2602.5 Tactical Conduct. The Procedure allegation was closed as exonerated.

IPA Disagreement:

The IPA asserted that the investigation was not fair, thorough, or complete. Not one officer was interviewed and thus the analysis relied on assumptions about tactics. Interviews were necessary to explain the elements of tactical conduct. The IPA also asserted that additional analysis was warranted under those Duty Manual sections entitled Discretionary Judgment (C 1100, C1101, and L 2202) and The Decision not to Arrest (L 2825).

Outcome:

IA conducted an interview of the on-scene officer with knowledge of tactics. Additional analysis was completed. The finding remained Exonerated. The IPA agreed that the final investigation was thorough and complete.

Agreed After Further Case #21

Complainant, a manager of a local daycare facility, complained about an encounter with officers. Officers visited the daycare to investigate an alleged sexual assault of a minor. Among other concerns, an officer allegedly took photographs of the business without consent.

IA Conclusion:

IA's investigation showed that the owner/manager initially gave consent for officers to photograph certain areas of the business. However, she did not want the officers to photograph other areas. When officers pressed her on this point, she called another person related to the business. That person gave consent.

IPA Disagreement:

There was no BWC video of the encounter at the business. Thus, exploring the credibility of the various participants was warranted. The IPA asserted that the investigation was not complete or thorough without an interview of the person who allegedly gave consent. That person could provide additional information to support IA's finding.

Outcome:

IA contacted the owner/manager. She provided sufficient information upon which to base a finding of Exonerated on the allegation. IPA agreed with the additional analysis and findings.

Agreed After Further Case #22

The complainant was in a dispute with his tenant. The tenant called SJPD after alleging that the complainant was throwing her possessions out. Two officers arrived. The complainant alleged that the responding officers were aggressive, intimidating, and discourteous.

IA Conclusion:

IA concluded that the officers were not discourteous in their interactions as they did not use any course or profane language.

IPA Disagreement:

The IPA stated that IA did not analyze other factors, such as tone and body language when analyzing the Courtesy allegation. The IPA also noted that officers entered the residence without asking for permission. Rather, officers said "Let's step inside." The IPA asked that a Search/Seizure allegation be added.

Outcome:

IA analyzed the Search allegation and came to a finding of Exonerated, stating that the officer had implied consent from the landlord to enter the residence. IA also exonerated the Courtesy allegations after analyzing the officer's language, tone, and body language. The IPA closed as Agreed After Further

Agreed After Further Case #23

Complainant filed a complaint regarding an encounter between her teenage son and an officer. The officer,

working a secondary school assignment, interrogated the son for potentially sending a photograph of his genitals to a female student from his social media account. The son denied sending the photograph and indicated that another person had access to his account. The complainant stated that the son eventually gave a false confession because the interrogation was allegedly coercive. A few days later, the person responsible for sending the photograph confessed. He had the password to the son's social medial account and used it. Among other things, the complainant alleged that her son was unlawfully cited (Arrest/Detention), that the officer improperly interrogated her son leading to a false confession (Procedure), that the officer failed to complete a thorough investigation before issuing the citation (Procedure) and that the officer used profanity during the interrogation (Courtesy) .

IA Conclusion:

IA reviewed the police report and interviewed the officer. IA also interviewed the school's principal and vice-principal who were both present during the interrogation. There was no audio or video of the interrogation. IA determined that the officer had probable cause to believe a crime had been committed and thus had the authority to interview the minor. IA also determined that the officer did not threaten or coerce the minor into a false confession. IA concluded that the officer had the authority to issue a citation after he finished a complete investigation. He cited the minor who confessed to the crime. IA accepted the officer's assertion that exploration and documentation of any exculpatory evidence would be the responsibility of another Department member. IA sustained the Courtesy allegation because the officer acknowledged swearing during the interrogation and the administrator stated the officer used profanity.

IPA Disagreement:

The IPA disputed IA's analysis and contended that the interrogation was coercive. The IPA provided case law that focused on those elements to be applied when evaluating interrogations of minors and requested a re-analysis applying those elements to the facts. The IPA also contended that the officer should not have issued the citation without conducting follow-up on the other possible suspect. At a minimum, the officer should have documented in his report that (1) the recipient of the message had doubts that the owner of the account had sent the offensive photograph and (2) that the minor told the officer that another person had access to his account.

Outcome:

After IA conducted a re-analysis, it determined that the interrogation was likely coercive and that the officer did not conduct a thorough investigation. The Exonerated findings on two Procedure allegations were changed to Sustained, and the IPA closed as Agreed After Further.

Agreed After Further Case #24

The complainant filed a complaint alleging that an officer failed to conduct a thorough investigation of an alleged assault between herself and her disabled brother's caretaker. Each party accused the other of assault. The complainant gave the officer names of witnesses and said that the apartment complex had video camera footage that would corroborate her story. The officer asked her to have the witnesses call him and asked her to retrieve the video footage.

IA Conclusion:

IA interviewed the officer who stated that each time he spoke with the complainant, their conversation was at least 40 minutes long. He claims that she became repetitive in her statement. She became upset when he requested that she provide witness phone numbers and hung up on him. The complainant did not give full witness names and phone numbers, and the officer did try to contact the witnesses for whom he had contact information. IA stated that if the complainant believed it was necessary for the officer to contact her brother directly, then she should have provided him with her brother's name and phone number.

IPA Disagreement:

The IPA had concerns that the officer did not make efforts to take an in-person statement from the complainant's disabled brother who witnessed the incident.

Outcome:

IA responded that the officer was on modified duty and was unable to go into the field to conduct in-person interviews. The IPA and the IA Commander discussed these issues and the IPA Agreed After Further.

Agreed After Further Case #25

The complainant stated that he was inside the local cathedral praying while seated in a special chair reserved for clergy use only. A church security guard asked him to leave. The complainant refused to leave the chair and the guard called SYPD. Two officers responded and told the complainant to leave. The complainant stood up from his chair and held a tennis racket in front of his body. An officer pointed his Taser at the complainant and warned him that he would be tased. The officer deployed his Taser. The prongs did not attach to the complainant's body, but rather to his jacket. The complainant hit the prongs with his tennis racket. Both officers took the complainant to the ground. The complainant allegedly failed to cooperate with officer and was resistive. An officer, therefore, punched the suspect on the back of his head twice. The complainant continued resisting, so the officer tased the complainant. When the complainant continued resisting, the officer tased him once more. The complainant complained about the officers' use of force.

IA Conclusion:

IA exonerated the Force and concluded that the officers used objectively reasonable force in order to affect the arrest, prevent escape, and overcome resistance.

IPA Disagreement:

The IPA had concerns about IA's investigation because it did not conduct an interview of the complainant or the officers and did not accurately analyze the Force allegation under the appropriate force policy.

Outcome

IA agreed to interview the officers. IA also attempted to contact the complainant to conduct a follow-up interview, but he could not be located. Based on IA's further investigation and analysis, the IPA closed the case as Agreed After Further.

Agreed After Further Case #26

The complainant was sleeping in his car at night in the parking lot of a shopping mall when he was approached by two officers. The officers asked the complainant to open his door and exit his car. He complied. An officer asked him if he had anything illegal in the car and the complainant said that he had “a little ceremonial bullet” inside an empty mini vodka bottle. He was then arrested for felon in possession of ammunition. The complainant believed that his detention and his arrest were improper.

IA Conclusion:

IA concluded that the detention and arrest were proper. The officer stated in his report that his initial reason for contacting the complainant was sleeping in his vehicle—a municipal code violation. The arrest was proper based on the complainant being a felon in possession of ammunition.

IPA Disagreement:

The IPA stated that the officer’s interpretation of the municipal code was incorrect—people are only prohibited from sleeping in trailers or house cars. Thus, the detention and subsequent search were improper.

Outcome:

IA responded that the officers’ initial contact with the complainant was a consensual encounter, and since the officer noted in his report that they smelled marijuana in his car, the detention was lawful. The officers insisted that they saw the bullet in plain view, which led to a lawful search of the car since he admitted to being a prior felon. The IPA closed as Agreed After Further.

Agreed After Further Case #27

Complainant contacted IA regarding an incident involving a co-worker. The co-worker was an African-American employee at the school where the complainant also works. The complainant alleged that an officer approached her co-worker while the co-worker was eating lunch in her parked car near the school where she works. Complainant alleged that the contact was racially motivated.

IA Conclusion:

IA closed the Bias-Based Policing allegation as Unfounded. IA did not interview the officer. Instead, IA examined the subject officer’s BWC video of the brief encounter. According to IA, the video showed that the officer did not make any statements or take any action against the co-worker based on her race.

IPA Disagreement:

The IPA noted that Bias-Based Policing allegations are inherently difficult to investigate. However, without an interview of the officer, it is impossible to determine the officer’s motives for his conduct, and whether that conduct included bias. The IPA asked for an interview of the officer to determine his reason(s) for making contact and to assess the basis for other comments the officer said during the encounter.

Outcome:

IA conducted an interview of the officer and provided additional analysis of the allegation. The IPA closed as Agreed After Further.

Agreed After Further Case #28

The complainant alleged that he was at a small convenience when the store clerk would not sell him beer he wanted to purchase. Nevertheless, the complainant exited the store with the beer. He stated that the store clerk and a bystander followed him out of the store. The clerk took the beer and went back inside the store while the bystander hit the complainant several times and then drove away. Two SJPd patrol cars responded. The complainant said that he did not know that they were police vehicles because they did not have their lights and sirens activated. The complainant alleged that he was tased by an officer without any verbal commands or warnings. The complainant alleged that the police report was inaccurate in that it incorrectly described his conduct as showing pre-assaultive indicators.

IA Conclusion:

IA initially made the Procedure allegation of writing an inaccurate report a *Non-Misconduct Concern* and exonerated the other two allegations.

IPA Disagreement:

The IPA asked that the allegation about an inaccurate report be restored and investigated. The description of the complainant's conduct is significant because that may impact an officer's justification to use force. Thus, the description of pre-assaultive behavior must be accurate.

Outcome:

IA agreed and made this a Procedure allegation. It was investigated and BWC video corroborated the officers' description of pre-assaultive indicators. Therefore, the IPA closed the case as Agreed After Further.

Agreed After Further Case #29

Complainants contacted the IPA about an encounter with officers. They alleged that officers improperly searched their home (Search), damaged their vehicle (Procedure), detained them and other residents without cause (Arrest/Detention), pointed their firearms (Force) and took photographs of complainants and minor children (Procedure)

IA Conclusion:

Although IA did not interview officers, BWC video was reviewed. The analysis concluded that the officers' conduct was exonerated. The event involved the coordination and execution of several search warrants and arrest warrants. Several specialized police units assisted in the event.

IPA Disagreement:

The IPA requested that, given the complexity of the case, officers be interviewed. The IPA requested additional investigation and analysis on whether officers were motivated by bias in handcuffing some persons at the

scene and not other persons, the duration of the detention, and whether adequate translation services were provided. The IPA also requested additional examination of the officers' photographing persons including the documentation of photographs and whether consent was required.

Outcome:

IA provided additional analysis. The IPA closed as Agreed After Further.

Agreed After Further Case #30

Complainant stated that he got into a verbal argument with his girlfriend. Someone called the police. Two officers entered the apartment. The complainant picked up his daughter, a toddler, and walked into a back bedroom. He knew he had outstanding warrants and delayed in providing his identifying information to the officers. As he was reaching for his birth certificate, one officer allegedly grabbed his hand and "bent it back." Although he was holding his child tightly, the other officer pulled the child from his arms. Complainant alleged that his child was screaming and that her body *popped* when she was pulled from his arms. His complaint was about the force used on his child.

IA Conclusion:

IA interviewed the girlfriend; she said her daughter cried because she was scared, not because of injury. IA reviewed BWC video and officer reports and determined that both officers had physical contact with the child. IA concluded that the removal of the child from her father's arms did not constitute force as defined by the SJPD Duty Manual. IA also determined that removing the child de-escalated the situation and prevented a possible violent confrontation. The Force allegations against both officers were deemed Unfounded.

IPA Disagreement:

The IPA asserted that the conduct constituted force. The officers used force by pulling on the child while her father was holding onto her. Given that force was used, the finding of Unfounded was not supported by the evidence. IA also needed to determine whether the force met the threshold of *reportable force*. In making this determination, IA needed to consider that child toddler may have been crying because the pulling action to remove her from her father's arms was painful in addition to being scary.

Outcome:

IA provide additional analysis. The Unfounded findings on the Force allegations were changed to Exonerated. The IPA agreed that, with the additional analysis, the investigation was fair and complete.

Agreed After Further Case #31

The complainant parked his van on a city street in front of his friend's apartment complex. He was unloading groceries when he was contacted by two officers. The officers told him to put his groceries down and started questioning him. The complainant insisted that he did not do anything wrong and the officers had no explanation as to why they stopped him. He believes that the stop and detention were racially motivated.

IA Conclusion:

IA exonerated the Arrest/Detention allegation and came to a finding of Unfounded for the Bias-Based Policing allegation.

IPA Disagreement:

The IPA had concerns whether the IA investigation was thorough and complete. Neither officer was interviewed.

Outcome:

IA agreed to interview the officers. After further analysis by IA, the IPA closed the case as Agreed After Further.

Agreed After Further Case #32

The complainant alleged that he was sitting in a car that a friend had loaned him at night in the parking lot of a park—a municipal code violation. Two SJPD patrol officers spotted the complainant in the vehicle. After the officers ran the license plate, they determined that the vehicle was stolen. Officers asked the complainant repeatedly to get out of the car, but he refused. Instead, the complainant started to slowly drive his car forward. The officers called for backup. More officers arrived. Complainant was warned that the officers would use force if he did not comply with their commands to stop and exit the vehicle. The complainant again refused and officers used significant force to get him out of the car. Force options included Taser, control holds, and body weapons. He was ultimately arrested. Complainant alleged that his initial detention was improper and the officers used too much force during the arrest.

IA Conclusion:

IA exonerated allegations of Arrest/Detention and Force.

IPA Disagreement:

The IPA reviewed BWC video and asserted that the details surrounding the force could not be made out. Therefore, the IPA requested that IA conduct officer interviews.

Outcome:

IA did not conduct officer interviews, but more detail from BWC video was provided and alleviated the IPA's concerns. Therefore, the IPA closed the case as Agreed After Further.

Agreed After Further Case #33

The complainant filed a complaint alleging that over the last year, she was improperly placed on multiple 72-hour mental health holds. She described one incident in which an officer improperly displayed a Taser at her. IA determined that the complainant lives with her elderly parents and there have been multiple calls for service to the family's home.

IA Conclusion:

IA exonerated the allegation for improper mental health holds and the IPA agreed.

IPA Disagreement:

The IPA noted that a responding officer did, in fact, display his Taser at the complainant and did not document this action in the CAD, as required in the Duty Manual. Also, an officer noted in the report that the complainant's elderly father had allegedly been physically abused by the complainant—which was the very reason for the call for service. The Duty Manual requires a cross-report to Adult Protective Services, but the officer did not do this.

Outcome:

IA agreed to address these two concerns as *Supervisory Referral*, and the IPA office closed the case as Agreed After Further

Agreed After Further Case #34

The complainant, who was currently in custody, alleged that an officer was not following procedure when interacting with a witness. The complainant alleged that the officer knew that this witness had previously lied under oath and did not record any statements of this witness, even though it was the only witness against him. Finally, the complainant alleged that the officer failed to preserve an exculpatory 911 call or explore potential evidence, such as confessions made by other suspects.

IA's Conclusion:

IA came to a finding of Unfounded for the Procedure allegation of utilizing an unreliable witness.

IPA Disagreement:

The IPA had concerns with the analysis on the allegation of utilizing an unreliable witness. There were not enough facts to support the conclusion.

Outcome:

IA re-analyzed this issue and determined that the person identified by the complainant as a witness has never, in fact, been used as a witness. The IPA closed this case as Agreed After Further.

Agreed After Further Case #35

The complainant called SJPd because he believed that his adult son had stolen four of his guns that he keeps in his safe in his home. The complainant told the responding officers that, if they needed to look inside the safe, to alert him and he would provide the combination. He told them not to ask his wife because she is not familiar with the safe. An officer did, in fact, open the safe (which was unlocked). The complainant filed this complaint alleging that it was improper for the officers to open the safe when he directed them to alert him first. He also said that the officers did not provide an orange incident card with their badge numbers on it.

IA Conclusion:

IA exonerated both the Search and the Procedure allegations.

IPA Disagreement:

The IPA had concerns about the analysis surrounding the allegation of the officer not providing an incident card when requested.

Outcome:

IA clarified that incident cards are not handed out for every call for service—they are handed out if requested or if there is a reason to provide a case number so that a citizen may follow-up with a case. The IPA closed the case as Agreed After Further.

Agreed After Further Case #36

The complainant says that her ex-boyfriend was at her home to pick up his personal property and move out. He brought with him a female friend. The complainant called SJPd for a civil standby and to verify the female's identity. She believed it was her right not to have certain people on her property so wanted the officers to verify if this person was who she thought it was. Two officers responded and the complainant alleged that responding officers were rude and dismissive.

IA Conclusion:

IA came to a finding of Unfounded for the Courtesy allegation.

IPA Disagreement:

The IPA agreed with this assessment but believed that IA should have added and analyzed a Neglect of Duty allegation because the complainant stated that the officers failed to take appropriate enforcement action by enforcing trespass laws against the female friend.

Outcome:

IA re-examined the facts and allegations made in the complainant's intake interview and determined that a Neglect of Duty allegation was not proper. After this analysis, the IPA closed the case as Agreed After Further.

Closed with Concerns

Closed with Concerns Case #1

An officer was working at the airport. A TSA agent requested the officer “standby” and provide security when she informed the complainant that the Border Crossing Card he possessed would not allow him access to enter the boarding area of the airport. The officer complied. During the interaction, the officer took possession of the Border Crossing Card and asked the complainant where he obtained the card. The Complainant informed the officer it was obtained at the U.S. Consulate from his country of origin. The officer informed the complainant he was going to destroy the card and he needed to leave the premises or be arrested. The complainant left and his Border Crossing Card was not returned.

IA Conclusion:

IA identified two allegations (1) Arrest/Detention – whether the officer stopped and detained the complainant thus, preventing him from going through the checkpoint and (2) Procedure – confiscating the complainant’s Border Crossing Card. The finding on the Arrest/Detention allegation was Unfounded; the finding on the Procedure allegation was Unfounded.

IPA Concerns:

The IPA believed the investigation was adequate and the findings were supported by the evidence. The IPA’s concerns focused on the officer’s involvement with TSA matters. Duty Manual A 2816 states, the role of airport officers is to... “support and enforce the Transportation Security Administration (TSA)’s mandated airport Security Program.” The officer does not have training, knowledge, or jurisdiction to question the complainant on immigration matters such as the authenticity of a Border Crossing Card. Most concerning was the statement made by a witness that alleged the officer tried to contact federal immigration officers to verify the complainant’s immigration status. This conduct seemed to counter the Department’s public assurances that SJPD officers will not be involved in general immigration matters.

Closed with Concerns Case #2

Complainant contacted the IPA office to file a complaint. He alleged that an officer improperly allowed a fake officer to interrogate him (Procedure). He alleged that officers improperly arrested him (Arrest/Detention) and used excessive force (Force).

IA Conclusion:

IA obtained the police report, the CAD, all BWC video and video from a stationary camera at the Main Jail. IA interviewed the officer. All allegations were deemed exonerated.

IPA Concerns:

Body-Worn Camera video showed that the officer placed his hand on the complainant’s arm and used a firm grip to move the complainant from the patrol car to the sally port door at the main jail. As he does so,

complainant cries out in pain. In general, use of a firm grip without a complaint of pain is an exception to reportable force. In this incident, the officer felt the complainant was faking his pain. There was substantial evidence to support the officer's opinion. The IPA believed, however, that officers should refrain from determining the source of pain. If there is a complaint of pain simultaneously with force, the more prudent option is to document that use of force. Such documentation protects the officer and the department.

Closed with Concerns Case #3

Complainant contacted IA to make a complaint. She alleged that an officer failed to conduct a proper investigation (Procedure) and improperly cited her (Arrest/Detention). She also alleged that the officers improperly took her cell phone (Search/Seizure).

IA Conclusion:

IA's investigation showed that the complainant was cited for making a false report of an *emergency*. Complainant called 911 and stated that a tenant in the next-door room had threatened her with violence. Dispatch informed the responding officers that the complainant had made multiple 911 calls (8 calls) in the past several hours. At the scene, officers spoke with the complainant, the landlord, and the tenant. Both the landlord and the tenant provided information that cast substantial doubt on the complainant's version of events. The officers determined that the complainant did not meet the threshold required to place her on a 72-hour mental health hold. Officers were aware that the complainant had made multiple 911 calls that day and many calls over the past year. None of these calls reflected an emergency. The officers issued the citation hoping that such action would influence the complainant to discontinue her misuse of the 911 system. The officers took the cell phone as evidence. All allegations were deemed exonerated.

IPA Concerns:

A person violates Penal Code section 148.3, Falsely Reporting an Emergency, only if the person knows that the report is false. Given her mental health history, the IPA contended that it was highly likely that the complainant truly believed that her housemate had threatened her. If she believed that threats had been made, then she did not know that her report was false and thus her conduct did not violate the Penal Code. While we acknowledged that the complainant's grasp of reality was not steady, we had concerns about citing her for reporting something she believed did occur. Penal Code section 148.3 is a valuable tool to punish those who make prank calls, trigger an unmeritorious police response, or desire to harm others by making a report that the caller knows to be false. We contend those facts were not present during this encounter. Thus we also had concerns about the officers' taking the complainant's phone. The report indicates that the phone was taken "as it was an instrumentality of the crime." However, the details captured in BWC video would establish the operative facts needed in a prosecution. Thus, the confiscation of the phone itself was problematic.

Closed with Concerns Case #4

Complainant contacted the IPA to make a complaint regarding an interaction with an officer. She alleged that the officer failed to enforce a protective order (Neglect of Duty). The order protected her and her granddaughters from the restrained party.

IA Conclusion:

IA pulled pertinent documents and reviewed BWC video. The officer was interviewed. The officer stated that dispatch advised him that there was no restraining order on file. The BWC video reflected that the grandmother was worried because the restrained party was calling her son. The son was not a protected party. Thus, the officer did not take any enforcement action on that date. The officer told the grandmother to follow up on the restraining order and to request that her son be added. After this complaint was filed, SJPD communications discovered errors that prevented dispatch from locating the restraining order in the system (the order contained no birth dates and names were misspelled).

IPA Concerns:

The IPA's concerns focused on the fact that officers had been dispatched to grandmothers house several times regarding the restrained party. However, it appeared that officers did not attempt to locate the restraining order in any of the prior events. If officers are investigating a violation of a restraining order, it is vital that they have access to the actual order.

Closed with Concerns Case #5

The complainant filed this complaint after he believed his RV was towed improperly. He says that his RV broke down and he was trying to repair it while it was parked on a public street. Officers came by and gave him an orange 72-hour warning that he needed to move his RV. Officers came back 20 minutes later and towed the RV. He thought the tow was improper, the officers were rude, and the officers improperly refused him access to the RV to retrieve his belongings after notifying him that it would be towed.

IA Conclusion:

IA concluded that the tow was proper based upon expired registration (over 6 months and 1 day) and the officers conduct was not discourteous. Regarding the inability to retrieve property, BWC video corroborated that the complainant was emotional and left the scene without asking to access his property.

IPA Concerns:

The IPA had concerns about the investigation of the Courtesy allegation. The IPA directed IA to that portion of the BWC video where an officer can be heard asking the complainant where he was from. Complainant replied that he was from the Eastside. The officer laughed and said, "Well go back to the Eastside, my friend, stay out of here...they're gonna call every single time...and that causes problems for us."

IA stated that the officer was simply familiar with parts of the city that had more calls for service from neighbors than others, and even if it was in poor taste, it did not rise to the level of misconduct.

The IPA closed this case "with Concerns."

Closed with Concerns Case #6

Complainant contacted the IPA regarding two different incidents in which an officer arrested him. Complainant alleged that Officer 1 completed an inaccurate police report and improperly placed him on a mental health hold. Complainant alleged that Officer 2 conducted an unlawful arrest, was discourteous and repeatedly turned his body worn camera on/off in an effort to conceal his misconduct.

IA Conclusion:

IA concluded that all allegations were either Unfounded or Exonerated. The evidence showed that one officer removed his BWC unit from his uniform and placed it on the patrol car's dashboard; this footage captured the complainant's actions/words while he was handcuffed and sitting in the back seat. IA indicated that it was common for officers to take their BWC unit off of their uniform and point them toward an individual in the backseat of a patrol car to film the suspect while doing paperwork and driving to jail. IA also indicated that this option is presented during the BWC training.

IPA Concerns:

We had concerns about behavior that is trained and common but appears to be contrary to the actual policy. The current BWC policy states *officers shall utilize the device in accordance with the provisions of this policy and uniformed officers should wear the camera on their uniform*. We suggested that if the filming of persons in the backseat is important and if that effort is done most efficiently and effectively by moving the BWC unit to the dashboard, then that option be formally recognized in the BWC policy.

Disagreed

Disagreed Case #1

The complainant filed a complaint regarding an incident that occurred at the location of a business that he alleges that he still partially owns. The other owners of the property state that the complainant no longer has any interest in the property. When these owners caught the complainant trying to enter the property, they called SJPD. Complainant alleged that the responding officer was rude to him. The officer called the complainant “loopy,” and said that he was in “fantasy land.” When the complainant tried to give a statement, the officer allegedly said, “I don’t care.”

IA Conclusion

The Courtesy allegation was closed as exonerated. Department stated that the complainant seemed out of touch with reality and the officer was trying to steer the conversation back to the subject at hand.

IPA Disagreement

The IPA did not believe that the investigation was thorough or objective. The IPA closed this case as Disagreed.

Disagreed Case #2

The complainant lived with her adult grandson. An officer phoned and told her that officers were detaining her grandson at a nearby gas station; they were going to arrest him. They offered to let her retrieve his belongings from his car at the gas station and she accepted. Soon after she started driving there, she was pulled over by an officer. He allegedly said she was speeding and she claimed she was not. He asked her for her license and went back to the patrol car for about 20 minutes. He then came back and told her to go home.

When she again explained she was supposed to go to meet officers at the gas station, the officer replied, “No, you’re supposed to go home, but a specialized police unit is at your house, so you can’t go in.” She went to a neighbor’s house, who explained that minutes after the complainant left her house in her car, officers from a specialized police unit went into her house.

While she was outside her home, an officer told her that they needed keys to open a safe she kept in her bedroom closet. She gave him the keys to the safe; inside the safe were two heirloom guns belonging to her late husband. Officers allegedly spent hours in her home. After they completed the search, her house was allegedly completely torn apart. She alleged that officers were disrespectful in handling sentimental items. The officers entered through the front door and also the sliding back door. Both doors were damaged and currently are unable to be locked.

IA Conclusion

The complaint contained numerous allegations. IA conducted an extensive investigation surrounding this incident. Ultimately, IA exonerated all of the allegations, stating that the officers’ conduct comported with the law and the SJPD Duty Manual.

IPA Disagreement

The IPA concerns focused on two allegations. The IPA disputed IA's analysis and finding of Exonerated for the complainant's prolonged vehicle detention which intentionally kept her away from her house. The vehicle stop was 22 minutes, which the IPA argued was a detention without legal justification after the vehicle stop investigation (*ostensibly for a speeding violation*) had ended. IA disagreed that the length of the detention was too long and stated that the length of time for this traffic stop was reasonable.

The IPA also took issue with IA's analysis and finding of Exonerated for damaging the front door to the complainant's house during the execution of the search warrant. The complainant alleged that she would have provided the keys to the house. Instead, officers used a breaching shotgun which destroyed the door. IA maintained that officers complied with the Duty Manual requirement of utilizing the "least amount of damage" to make entry. IA said that officers always assume that others are inside the residence and had to "balance the safety of officers conducting the entry with the time it would take to locate keys and try them on the door."

The IPA disagreed with the Department's positions on both of these issues and closed the case as Disagreed.

Disagreed Case #3

A civil standby was requested by the complainant to help him facilitate his moving out of his residence. The complainant alleged the responding officer was rude and discourteous at the scene and believed the officer displayed bias toward him because of his ethnicity.

IA Conclusion:

Body-Worn Camera video was reviewed and an interview of the officer was conducted. IA concluded the evidence demonstrated the officer's tone and word choice were within policy and there was no evidence of bias-based policing.

IPA Disagreement:

The IPA disagreed with the investigation and analysis of the Courtesy allegation. The Department's characterization of the evidence was inconsistent with the evidence presented, specifically the body worn camera. IPA office believes the evidence demonstrated inconsistencies in the analysis of the evidence and the officer's interview. Additionally, the analysis focused on one limited exchange between the complainant and the officer and not the entire encounter.

Disagreed Case #4

The complainant stated that an unknown male showed up at his house and accused him of damaging the door of a house across the street. This male [an off-duty officer] *flashed* his badge and told the complainant that if he did not give him \$200 cash, he would tow all his cars and kick him out of his housing. The complainant denied breaking the door but offered to pay the off-duty officer with a check. The off-duty officer only wanted cash.

There were two CUBO allegations and one Procedure allegation.

IA Conclusion:

The IA investigation revealed that a relative of the officer told him that he believed his home had been burglarized. The home was unoccupied at the time due to a pending sale of the property. The officer went to the home and confirmed that an unauthorized person had entered. The officer located evidence of the identity of a possible suspect. The officer used public-accessible websites to find the phone number of the suspect. After speaking briefly with the suspect, the off-duty officer accessed a restricted database to find the address of the suspect. The next day, the officer, off-duty and in plainclothes, went to the suspect's house and contacted him. Another officer, also off-duty and in plainclothes, went with him. The officer asked the suspect to pay \$200 for the damages to his relative's property. The officer refused to take a check; he wanted cash only. When the suspect went inside to get the cash, the officer decided to contact dispatch and ask for patrol officers to respond. Officers arrived and conducted an investigation. They determined that a crime had been committed and arrested the suspect for burglary.

The suspect provided a statement at the scene but did not respond to request for follow-up interviews. The officer was interviewed. IA pulled the relevant documents. Body-worn camera footage captured by the responding on-duty officers was examined. There was no BWC video from the two off-duty officers. An audit of the restricted database confirmed that the officer accessed the records of the suspect.

IA concluded that the off-duty officer should not have investigated a burglary at a home owned by his relative. Such conduct violated the Duty Manual Section that governs conflicts of interest.⁴² Thus, one Procedure allegation was Sustained.

One CUBO allegation was closed as No Finding. The allegation encompassed three elements: (1) did the officer use his position as an officer to threaten the suspect (2) did the officer attempted to extort money from the suspect, and (3) did the officer use profanity toward the suspect. IA determined that there were multiple unresolved questions that only the suspect could answer. Without the suspect's cooperation, the investigation could not make a determination on these three elements.

The other CUBO allegation was exonerated. This allegation addressed whether the officer improperly accessed a police database to obtain the suspect's identifying information, including his home address. IA determined that the officer *had every right as a sworn peace officer per 832 of the California Penal Code, to investigate the crime of burglary, regardless of his familiar connection to the victim of the crimes*. IA stated that, since the officer was investigating the burglary, he could conduct follow-up investigation by accessing the database for suspect identification.

IPA Disagreement:

The IPA disagreed with the exonerated finding regarding accessing the police database. IA's assertion that merely because of his status, the officer had "every right" to investigate the crime of burglary regardless of his familial connection to the victim was not logical. Although the Penal Code recognizes a wide breadth of authority to peace officers, the employing agency has the power to circumscribe the exercise of that authority

⁴² Duty Manual Section C 1450 states (in part) *Department members shall not engage in enforcement, investigative or administrative functions that create conflicts of interest or the appearance of conflicts of interest, either on or off-duty.*

per agency policy and procedures. SJPD's Conflict of Interest policy, C 1450, prohibits investigative tasks done by officers who have a conflict of interest which vitiates any "right" an officer might otherwise claim. It is imperative to uphold conflict of interest policies vital to maintaining public confidence in the police and thwarting internal corruption. Given the Conflict of Interest policy, the officer could not investigate the crime of burglary because his relative was the victim of the crime. Given that the officer could not investigate the crime, he could not access the police database to obtain the suspect's identifying information, including his home address. Also, IA did not critically examine the officer's credibility for accessing the police database. We contended that the preponderance of the evidence showed that the officer accessed the police database to assist him in maneuvering a private resolution for a relatively small property claim at the behest of his relative. When the desired resolution proved problematic, SJPD was called.

We also disagreed that the other CUBO allegation was closed with No Findings due to the absence of needed information. The other officer who was present during the initial contact at the suspect's home was not interviewed by IA. The fact that a percipient witness was not interviewed cast doubt on the impartiality of the investigation.

Disagreed Case #5

The complainant, who lives in an apartment with her adult daughter, called the police to report that her daughter was mentally ill and needed to be placed on 72-hour mental health hold.⁴³ However, responding officers placed the complainant on a 72-hour mental health hold instead of her daughter. Among her six allegations, the complainant claims that the officers improperly placed her on the 72-hour hold.

IA's Conclusion:

IA determined that the officers acted properly when placing the complainant on the 72-hour hold. The investigation showed that responding officers spoke with the complainant and her daughter. The daughter told responding officers that the complainant often forgets things and then gets mad at her. She said something was wrong with her mother and that her mother slapped her. The complainant said that the daughter had been yelling and breaking things in the house, wouldn't leave the apartment, and that she hit her daughter once and then her daughter hit her back.

The analysis showed that the complainant had called police multiple times within the past year complaining about noises from an upstairs apartment. In several of those calls, officers contacted the tenants upstairs who denied making any noise. In his IA interview, the officer who placed the complainant on the 72-hour hold, said that he concluded that the complainant had some type of mental illness based on his prior interaction with her responding to her noise complaints. He further concluded that she was *hearing voices* and described her as *very frantic* and deflecting questions. He also felt she was a danger to others because she had hit her daughter.

43. California Welfare & Institutions (W&I) Code section 5150 allows for the temporary, involuntary psychiatric hold of a person who, as a result of a mental disorder, is a danger to themselves, a danger to other persons, or *gravely disabled*. Once placed on the hold, the person must be evaluated within 72 to determine whether he/she can be released or remain confined under W& I section 5250.

IPA Disagreement:

The IPA disagreed with the exonerated finding regarding placing the complainant on a 72-hour hold. We do not believe the Department's investigation was complete, thorough, objective, and fair because the officer should have asked the mother if she had any mental health issues, if she was taking medication for mental health issues, or if she had ever been evaluated or treated by a mental health professional. It appeared that the officer formed an opinion based primarily on a few prior contacts with her and the daughter's statements about the complainant's mental condition and violent behavior. The BWC video also reflected a different scenario. In the IPA's opinion, the exonerated finding was not adequately supported by the evidence.

Disagreed Case #6

The complainant had a romantic relationship with the son of an officer. The complainant reported a domestic violence (DV) incident between herself and her ex-boyfriend to SJPD. A DV restraining order against the ex-boyfriend was generated. The complainant alleged that the officer assisted his son (her ex-boyfriend) in evading service of the DV restraining order. The complainant also alleged the officer improperly accessed information from a restricted police database.

IA Conclusion:

IA interviewed the officer and reviewed database access. IA concluded the officer improperly accessed the Department's controlled database; a Procedure allegation was Sustained. IA determined that the evidence conclusively proved the officer did not assist his son in evading the service of the domestic violence restraining order.

IPA's Disagreement

The IPA agreed with IA's analysis that the officer improperly accessed restricted police databases. However, due to the gravity of this conduct, we contended that the allegation should have been classified as CUBO and not Procedure. We asserted that IA's investigation was not thorough or complete because the questioning of the officer failed to capture pertinent details about his conduct. Furthermore, the IPA requested adding a separate CUBO allegation to address issues with the officer's honesty revealed during his first and second interviews. The request was denied.

Disagreed Case #7

Complainant filed a complaint with the IPA alleging, among other things, that officers illegally entered her residence to arrest her grandson and officers used excessive force during the arrest.

IA's Conclusion:

IA reviewed the records of the incident and interviewed both officers and complainant's grandson. The officers responded to complainant's residence because, earlier in the day, her grandson allegedly attacked and took personal items from another person.

SJPD determined that the grandson lived at the complainant's house. Upon arrival, officers asked complainant and her adult daughter to meet them outside and asked questions about the grandson and his location. The

grandson, who was still inside the house, failed to respond to orders to exit. Officers then entered with a police dog. The dog located the grandson and bit him. Officers then handcuffed the grandson and took him to the hospital for treatment. He was arrested for strong arm robbery, assault and receipt of stolen property.

IA exonerated the officers' entrance into the residence based on two separate theories: (1) fresh pursuit and (2) implied consent to enter. IA also exonerated the officers' use of the police dog (Force) as reasonable given the grandson's past criminal record and his failure to voluntarily exit the house.

IPA Disagreement:

The IPA disagreed with IA's investigation regarding entry into the home. We did not believe the Department's investigation was complete, thorough, objective, and fair because the investigation did not establish that the officer had *direct or circumstantial evidence indicating that the perpetrator was in active flight or soon would be*.⁴⁴

Complainant told officers at the scene that her grandson was so drunk that he had passed out and there was no other indication in IA's supporting documentation or interviews that officers believed Complainant's grandson was in active flight or soon would be.

We also disputed the finding that entry was proper under the implied consent theory. The investigation showed that that officers asked for, and received, consent to enter to contact or talk with the grandson, but not to enter and arrest him. Thus, we believe that the consent obtained failed to cover the scope of the officers' actions.

Disagreed Case #8

The complainant was riding his bicycle in the early evening when he was stopped by an officer for not having a forward-facing bike light. The complainant complied with the stop and the search but expressed concern regarding the reason for the search for a minor traffic violation. The officer searched him, lifted his jacket, found a weapon that was secured in a case in a holder, and arrested the complainant. The complainant's case was later dismissed by the court.

IA Conclusion:

The Department concluded the officer articulated facts that documented officer safety concerns, thus providing a basis for the search.

IPA Disagreement:

The officer's statements did not clearly articulate safety concerns that would authorize the officer to **exceed** the scope of the pat search by lifting the complainant's jacket and removing the case and weapon from the complainant's body. The officer's explanation that he felt a firm object was not sufficient to further the pat search and the officer exceeded the scope of the search as outlined by Duty Manual section L 5101 Cursory Searches ("frisks"). The local court dismissed the criminal case citing the scope of the search. The IPA found that all doubts were resolved in favor of the officer and the analysis was not fair and objective.

44. *People v. Williams* (1989) 48 C3 1112, 1138. *People v. Lopez* (1979) 99 CA3 754, 766. *In re Jessie L.* (1982) 131 CA3 202, 214.

Disagreed Case #9

The complainant alleged that an SJPD patrol car was blocking the roadway. As the complainant drove past the patrol car, the complainant yelled out a discourteous comment at an officer. He was pulled over shortly after by the same officer he yelled at and was issued a citation for a vehicle code violation. The complainant believed the traffic stop was initiated because he yelled at the officer and believed it was an unlawful detention. After the incident concluded, the officer refused to give back the complaint his driver's license in a timely and professional manner.

IA Conclusion:

The Department reviewed BWC video and interviewed the officer. The Department concluded the officer was within policy and the detention was lawful. The officer's professionalism was investigated and analyzed; it was determined the conduct did not rise to the threshold of discourtesy required by Duty Manual section C 1308.

IPA Disagreement:

The IPA asserted that IA's analysis did not address discrepancies in the officer's statements about the reason for the stop. IA's analysis of the officer's professionalism was not comprehensive, and all doubts were improperly resolved in favor of the officer. IPA requested further investigation and analysis. IA declined; therefore, IPA disagreed on the basis the analysis was not fair objective and thorough.

Disagreed Case #10

Complainant filed a complaint on behalf of her son who was injured during an arrest. She alleged that the arresting officers used unnecessary force when arresting her son.

IA's Conclusion:

IA obtained and reviewed the police report and the BWC video. IA interviewed the two officers.

The investigation showed that officers responded to a disturbance call at a board and care home. The reporting party stated that a tenant was threatening her and other tenants and ultimately assaulted her. Initially two officers responded to the home and contacted the suspect. The suspect did not comply with verbal orders and resisted arrest. One officer used his Taser and another officer used his baton. Additional officers responded to the home and were able to take the suspect into custody. The use of the baton resulted in a compound/open fracture to the suspect's lower leg. He was hospitalized as a result of this injury. The suspect was arrested for battery, battery on an officer and resisting arrest.

The IA investigation showed that one officer deployed his Taser twenty (20) times during the encounter with the suspect. This includes the initial activation that caused the suspect to fall and then nineteen (19) subsequent activations. After the encounter, a responding supervisor asked the officer how many time he activated his Taser. He replied six to seven times.

IA determined that the Taser use was reasonable based on the suspect's level of intoxication and physical resistance to the officers' lawful commands. The suspect pulled away and struck one officer. Given the

suspect's display of strength and violence, the officer was wary of going hands-on and determined that the TASER would be the most effective option.

IPA Disagreement:

The IPA contended that the Department's investigation was not complete, thorough, objective, and fair. The Department's Duty Manual section L 2614 governing Taser use is lengthy and requires an analysis of several elements. However, we believe that the Department's investigation did not adequately apply each of those elements to the facts. The Department should have provided a more in-depth analysis on whether (1) the TASER was used for shortest period of time reasonably necessary to take the subject safely into custody, (2) if, after three initial applications, each subsequent application of the device, analyzed separately, was warranted, (3) whether the officer was aware that use of a Taser on highly agitated individuals may pose increased health risks to that person and (4) whether the Taser was used on the subject when he was exhibiting only passive noncompliance.

The Department's investigation showed that, the officer told his supervisor at the scene that he activated his Taser six to seven times. This tends to show that he was entirely unaware of the number of activations or he was not truthful.

In his interview, the officer mentioned the suspect's non-compliance several times. The BWC video depicts several instances in which the Taser is activated because the suspect, who is lying on the ground, would not comply with commands to *turn around*.⁴⁵ The IPA asked the Department to examine these activations to determine whether each were consistent with policy. IA's analysis should have evaluated those Taser applications that appeared to be used on the suspect when he was exhibiting passive noncompliance.

The officer's statements show that he believed the suspect was highly agitated, under the influence of drugs, and had mental health issues, but the investigator did not ask the officer questions about the part of the Taser policy that governs dealing with highly agitated suspects or his knowledge of Excited Delirium.

The IPA closed this matter as Disagreed because the investigation was not complete, thorough, objective, and fair based on the foregoing.

45. We also asked that IA review whether the suspect had the capacity to comply. The repeated commands of *turn around* do not reflect what the officers wanted. The officers wanted the suspect to lie flat on his stomach. However, the officers repeatedly yelled at the suspect to *turn around* and infrequently ordered him to *turn over*.

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 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

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 A

SAN JOSE MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSE CITY CHARTER §8.09

SAN JOSE MUNICIPAL CODE CHAPTER 8.04

OFFICE OF THE INDEPENDENT POLICE AUDITOR

8.04.010 Duties and responsibilities.

In addition to the functions, powers and duties set forth elsewhere in this code, the independent police auditor shall have the duties and responsibilities set forth in this section.

- A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
1. The minimal number of complaints to be reviewed annually are:
 - a. All complaints against police officers which allege excessive or unnecessary force; and
 - b. No less than twenty percent of all other complaints.
 2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.
 3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.
 4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.
- B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of officer involved shootings.
- C. Community function
1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
 2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.
- D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:
1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.
 2. Analyze trends and patterns.
 3. Make recommendations.

E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer.

(Ords. 25213, 25274, 25922.)

8.04.020 Independence of the police auditor.

A. The police auditor shall, at all times, be totally independent and requests for further investigations, recommendations and reports shall reflect the views of the police auditor alone.

B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in section 8.04.010, above.

(Ord. 25213.)

SAN JOSE CITY CHARTER §809

OFFICE OF THE INDEPENDENT POLICE AUDITOR

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

Added at election November 5, 1996

§ 809.1. Independent Police Auditor; Power of Appointment

- (a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a “professional” or “technical” employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996

APPENDIX B

CALIFORNIA PENAL CODE §8.32.5 AND §8.32.7

§ 832.5. Citizen's complaints against personnel; investigation; retention and maintenance of records; removal of complaints; access to records

- (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.
- (2) Each department or agency that employs custodial officers, as defined in section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of section 832.
- (b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.
- (c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with section 6250) of Division 7 of Title 1 of the Government Code) and section 1043 of the Evidence Code.
- (1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.
- (2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of section 3304 of the Government Code.
- (3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.
- (d) As used in this section, the following definitions apply:
- (1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.
- (2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

California Penal Code §832.7

§ 832.7. Confidentiality of peace officer records: Exceptions

(a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to section 1043 of the Evidence Code.

APPENDIX C

FREQUENTLY ASKED QUESTIONS ABOUT THE IPA OFFICE

What is the IPA?

The Independent Police Auditor (IPA) is a City Council appointee whose office does mainly three things: (1) takes in complaints from members of the public about San José police officers; (2) makes sure that the Department of the SJPD investigates those complaints thoroughly and fairly, and (3) recommends improvements to SJPD's policies and procedures.

Why does the Office of the IPA matter?

The Office of the IPA matters because, by auditing the investigations into claims of police misconduct to ensure that those investigations are fair and thorough, it helps keep SJPD accountable to the communities it serves. The work of the Office of the IPA has resulted in improved police policies. For example, because of the IPA, SJPD officers must follow better rules about how to treat a person who is:

- watching an officer in the field (i.e. onlooker policy)
- hurt by an officer
- suspected of being drunk in public
- asking for an officer's name or badge number
- filing a Conduct Complaint.

Is the IPA part of the police department? Why should I trust the IPA?

No, the IPA is not part of the police department. The IPA answers to the Mayor and the City Council. The Chief of Police answers to the City Manager.

You should trust the IPA because the IPA is independent. The IPA is free to agree or disagree with the decisions of the SJPD.

What can I do if I think an SJPD officer did something wrong?

One of the things you can do is file a Conduct Complaint with the IPA.

What is a Conduct Complaint?

A Conduct Complaint is a statement from you explaining why you think an SJPD officer broke one (or more) of the rules that the officer has to follow, and requesting that the officer's conduct be investigated by the SJPD. The rules are in the SJPD Duty Manual.

What if I don't know which rule the officer may have violated?

There are many rules officers have to follow and you don't need to know them all. If you have a question about whether a certain kind of behavior by an officer is against the SJPD rules, you can contact the IPA to ask.

Does it matter whether I file a Conduct Complaint?

Yes, it does matter. By speaking out about a possible problem with an officer, you are alerting the SJPD leadership about ways to improve the SJPD.

Also, the IPA looks for trends in Conduct Complaints. When we identify patterns, we make recommendations to the SJPD for improvements.

Do I have to know the officer's name or badge number?

No, you don't. While it's useful information, if you don't have that information, you can still file your complaint.

Can I file a complaint with the IPA against an officer who is not with the San José Police Department?

No. The Office of the IPA can only process your complaint if it is about an SJPD officer. Complaints about officers employed by other law enforcement agencies cannot be filed with the IPA.

Who can file a Conduct Complaint with the IPA?

Any member of the public can file a Conduct

Complaint about a SJPD officer. You can file a Conduct Complaint about something that happened to you, or about something that happened to somebody else. You can live in San José or outside the city. You can be a U.S. citizen, or you can be an immigrant – with or without papers. IPA staff are fluent in English, Spanish, Vietnamese. You can be a young person or you can be an adult.

You can also file a complaint if you are a defendant in a criminal case; but if the case is related to the complaint you want to tell us about, we recommend that you talk to your lawyer first.

How do I file a complaint?

You can file a complaint in writing (email, mail, fax, or hand delivery), or by talking to us about it by phone or in person. We have a form that you can fill out if you prefer to file your complaint this way. You can be anonymous if you want, although it will be harder to investigate and prove your complaint. If you file in writing, we will need to reach you if we have any questions about your complaint.

What happens after I file a Conduct Complaint?

When the Office of the IPA receives your complaint, we identify specific allegations that you have made against the officer(s). Then we forward your complaint to Internal Affairs (IA) for investigation. The IPA does not investigate any complaints. Unlike the IPA, IA is a part of SJPD. IA investigates all Conduct Complaints. As part of IA's investigation, you and any witnesses may be contacted for more information about the incident. If you claim that you were injured by an officer, you might be asked to sign a release of medical records. IA may obtain documents about the incident from the SJPD, and may interview the subject officer(s) and any witness officers. The IA investigation can take from several months to a year.

When the investigation is finished, the Department issues a finding for each allegation. The possible findings are Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other. Based on these findings, the SJPD decides whether or not to discipline the subject officer(s).

The IPA gets involved again at this stage. The IPA audits the Department's investigations and findings. The IPA and staff review the investigations by the Department to ensure that those investigations are **thorough, objective, and fair**. Sometimes the IPA agrees with the findings and sometimes the IPA disagrees. When there is a disagreement, the IPA can discuss the matter with IA. Sometimes this causes the Department to re-open the investigation or change its findings. The IPA can also bring the disagreement to the attention of the Police Chief and the City Manager. You can read the IPA's Year-End Report for more details about the complaint process.

After the entire process is over and your case is closed, you will get a letter in the mail telling you the findings of the investigations.

Will I have more problems with the police if I file a Conduct Complaint?

The SJPD has strict rules that prohibit officers from retaliating against complainants.

Is the process fair to the officers?

Yes, we believe that it is. The Peace Officers Bill of Rights (POBR) is a state law that provides many protections to officers during this process. These protections include the right to have a representative present during misconduct investigation interviews, the right to an administrative appeal, and the right to review and respond to adverse comments in the officer's personnel file. POBR also places restrictions on how interviews of police officers are conducted and timelines in which investigations must be completed.

What if I don't have a Conduct Complaint against an individual officer, but I don't like a pattern I see with the police?

You can file a policy complaint. Policy complaints are not requests for individual officers to be investigated and disciplined. Instead, they are requests that the SJPD change its policies or procedures or adopt new ones. You can file a policy complaint with the Office of the IPA.

What if an officer did a good job and I want to give him or her a compliment?

You can submit compliments with Internal Affairs at SJPD by calling 408-277-4094 or by going to the SJPD website: <http://www.sjpd.org/COP/IA.html>

Can you tell me what happened to the officer about whom I complained?

No, we can't. Because we must follow very strict confidentiality rules, we are not allowed to give you any information about this. In fact, it is against the law for us to talk about this with any member of the public.

What if I think that the police should have to pay me money because of what they did to me? Can the IPA help me with this?

No, we can't. This complaint process looks only at possible officer discipline. You should seek the advice of a lawyer about other remedies.

I have been charged with a crime. Will filing a complaint affect the criminal case against me?

No. The complaint you file with us is completely separate from your criminal case. The IPA cannot advise or represent you on any legal matter.

As a community member, how can I be supportive of the IPA Office?

You can help us spread the word by inviting us to give presentations in your communities. Also, the IPA Advisory Council (IPAAC) is a group whose purpose is to promote community awareness of the services offered by the IPA office and inform the IPA office about police-related issues and concerns that arise within the San José community. You can visit the IPA website to learn more about this group and how you can get involved.

APPENDIX D

UPDATE ON STATUS OF 2017 IPA RECOMMENDATIONS

IPA RECOMMENDATIONS	SJPD RESPONSE	IPA COMMENTS
<p><u>Recommendation #1: Crisis Intervention Training</u></p> <p>SJPD should require officers to undergo periodic refresher Crisis Intervention Training. Such training should address relevant updates to the policy manual (including de-escalation), developments in best practices, and changes in available community-based resources and services.</p>	<p>To provide SJPD officers with a periodic refresher, the Department's CIT Coordinator plans on putting together a bi-monthly training bulletin on different mental illnesses along with resources, etc. to provide to Department members.</p>	<p>In progress</p>
<p><u>Recommendation #2: Transportation of Individuals with Psychiatric Disabilities</u></p> <p>The Duty Manual should provide guidance to officers that, under normal circumstances, an individual who is resisting being detained for a 5150 W&I commitment for psychiatric evaluation – for individuals who pose an immediate threat of harm to themselves or others because of a psychiatric disability – should be transported to Emergency Psychiatric Services, not to the jail. The policy should make clear that officers should, whenever appropriate, exercise their discretion to decline to cite and/or arrest the individual for the crime of resisting or obstructing police in the discharge of their duties and provide for transportation by emergency/fire services rather than by police.</p>	<p>The SJPD will work to create a training bulletin for officers to reiterate the Department's philosophy on handling situations with persons suffering from mental illness. In situations where the officer is trying to place the individual on a 5150 hold and the only possible crime associated with the incident is resisting, delaying, or obstructing arrest (148 PC), then officers will be encouraged to transport the subject, or facilitate a medical transport of the subject, to EPS, rather than the County Jail, when practical. If the subject suffering from mental illness also engages in criminal activity or physically assaults an officer (69 PC), then the option of booking the subject into the county jail and notifying the jail staff that the subject needs a medical evaluation will be available to the officers.</p>	<p>Implementation verified. Training Bulletin issued July 2019.</p>

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Recommendation #3: Providing Mental Health Resources

SJPD should require in the Duty Manual that officers provide information, such as pamphlets, regarding available and accessible mental health resources to individuals who are experiencing mental health crises or who may have other mental health needs but who do not meet the criteria for an involuntary mental health hold.

The San José Police Department agrees more information should be provided to officers regarding the mental health resources available to individuals who are experiencing mental health crises or who may have other mental health needs, but who do not meet the criteria for an involuntary mental health hold. The Crisis Management Unit will work with Research and Development to create a training bulletin for the officers.

Implementation verified.
Training Bulletin issued May 2019 outlines information on the County's Mobile Crisis Response Team (MCRT) created to assist officers in handling situations involving individuals in mental health crisis.

Recommendation #4: Language Access

A. The Duty Manual should incorporate the SJPD Language Access Plan (LAP), with the modifications described below.⁴⁶

B. SJPD officers who make contact with LEP individuals should document in the CAD the steps taken to comply with providing language assistance, as outlined in Section V and Subsection B of the LAP. Any failure to follow these steps due to an exigency should also be documented. These steps include (modified from the current LAP):

1. The officer identifies the language of the LEP person through that person's self-identification of their language or identifying the language by using the "I Speak" proficient form.

The SJPD developed an elaborate Language Access Plan. The current Duty Manual section regarding the Language Access Plan will be expanded upon to reflect the greater detail contained in the stand-alone Language Access Plan.

Implementation verified.
Duty Manual revision issued September 2018.

⁴⁶ If SJPD asserts that the LAP is not triggered during relatively minor encounters, such as infractions or relatively minor misdemeanors, that assertion should be memorialized so as to promote transparency and avoid unintended consequences.

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2. When the officer requests an interpreter, the dispatcher shall contact an on-duty certified interpreter. Dispatch can search, either in the CAD or via radio inquiry, those sworn department members who are language certified and their language of proficiency. Once a certified officer agrees to respond to interpret, the dispatcher will place them on the event.

3. Only if a qualified on-duty officer is not available to assist, the officer shall then call the contracted language interpretation services for the SJPD and follow the enumerated steps for oral interpretation.

SJPD should ensure that the policy on language access provides that officers shall not, other than in exigent circumstances, use family, friends, or bystanders for interpretation. (Language Access Plan, Section V, Subsection B, Number 3.) The policy should be revised as follows: "Other than exigent circumstances, Department members ~~should avoid using~~ shall not use family, friends or bystanders for interpretation. Using family, friends, or bystanders to interpret could result in a breach of confidentiality, a conflict of interest, or inadequate interpretation. Barring exigent circumstances, Department members ~~should~~ shall not use minor children to provide interpreter services."

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Recommendation #5: Receiving Reports of Sexual Violence

The Duty Manual should clearly address the report-taking process for sexual assault reports made at the Police Administration Building (PAB). The policy should require and outline clearly a trauma-informed process that supports privacy and dignity for the individual making the report.

The Department has a Main Lobby Procedural Manual which states Sexual Assault victim interviews “most likely will be conducted in the Witness Center.” This procedural manual will be modified to contain the word “shall” and will incorporate the use of the on-call Sexual Assault investigator, when practical.

Implementation verified.
The Main Lobby Procedures Manual revised February 2019.

Recommendation #6: Community Policing and Procedural Justice

A. SJPD should provide a definition, consistent with best practices, of “Community Policing” in the Duty Manual so that officers have more specific guidance regarding officers’ “community policing” responsibilities identified in the Duty Manual. See Duty Manual sections A 2806 (Deputy Chief of Police); A 2808 (Captains); A 2810 (Lieutenants); A 2812 (Sergeants); A 2814 (Police Officers). Such guidance may

- i. set forth a broad framework of understanding the significance of and approach to community policing,
- ii. address specific examples of ways in which officers may engage in non-enforcement activities, such as attending community events; providing information about various programs and activities the Department undertakes; or developing contacts with community leaders and residents, and

Community policing is a philosophy based upon establishing collaborative community partnerships between the Department, community, and other stakeholders to solve community concerns. As there are a seemingly endless number of ways to create partnerships, the Department does not list, nor could it list, every possible method in the Duty Manual. Having said that, the Department is committed to creating a culture of community policing and has embraced the philosophies of 21st Century Policing, Procedural Justice, and Fair and Impartial Policing. A review of the Department’s vision statement will be conducted and elements of these philosophies will be incorporated, as we deem appropriate.

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iii. cohere ways – many of which are addressed in various places throughout the Duty Manual – in which officers can practice community policing as part of their enforcement interactions, such as crisis intervention (L 2602.5; L 9002), de-escalation (L 2602.5), responsiveness to the community (C 1307), courtesy (C 1308), equal treatment (C 1305-1306), mediation, crime prevention (S 1500, et seq.), and procedural justice (see below).

B. SJPD should consider incorporating into the Duty Manual concepts of procedural justice, and should require adherence to such concepts, including those identified in SJPD's own "21st Century Policing" goal relating to procedural justice training, <http://www.sjpd.org/COP/21st.html>: "(1) Treating people with dignity and respect, (2) Giving individuals a 'voice' during encounters, (3) Being neutral and transparent in decision making, and (4) Conveying trustworthy motives."

Recommendation #7: Internal Affairs – Classifying Allegations of Misconduct

A. SJPD should establish a protocol to improve the categorization of allegations. In particular, "Neglect of Duty" allegations should be better distinguished from "Procedure" allegations.

A. The Department disagrees with this recommendation and disagrees that the definitions of Neglect of Duty and Procedure are vague. As identified and defined by the IPA above, a Procedural allegation is based on the complainant's alleged violation of Department and/or City policies, procedures, or guidelines by a Department member. Neglect of Duty cases are

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B. SJPD should create a new category of allegation to better capture assertions of mistreatment by officers of individuals in police custody.

more serious in nature and not only involve a potential violation of Department and/or City policies or procedures, but also include state or federal law. Many times, the Office of the Chief makes this determination based on the information and evidence known at the time the allegation is brought to the Department's attention. This is often done by reviewing Body Worn Camera footage or other investigative means in determining the severity of the alleged conduct.

B. The Department disagrees with this recommendation "SJPD should create a new category of allegation to better capture assertions of mistreatment by officers of individuals in police custody."

The mistreatment of individuals in-custody is a serious allegation and well defined within the Department's Duty Manual. As identified by the IPA above, SJPD Duty Manual Section C 1304 specifically details "Treatment of Offenders." The examples provided by the IPA (failure to render medical assistance, denying use of a bathroom, and destroying personal property) could fall under Duty Manual Section C 1304 – Treatment of Offenders, or in more serious cases, C 1710 – Neglect of Duty, and/or C 1404 – Conduct Unbecoming an Officer. Should an investigation of an allegation(s) determine serious or extreme mistreatment of any individual, potential criminal exposure could result.

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Should the IPA have a question or concern about the categorization of alleged misconduct, they should bring this to the attention of the Internal Affairs commander or the Chief of Police, as they do now.

Recommendation #8: Internal Affairs Investigations
– Standard of Proof and Weighing Witness Credibility

A. The Duty Manual (C 1723) and Internal Affairs Unit Guidelines should be revised to require that Internal Affairs investigations apply the “preponderance-of-the-evidence standard” and therefore determine whether it was “more likely than not” that the alleged conduct occurred. The standard should be applied to both citizen complaints and Department Initiated Investigations (DIIs).

B. Any language in the Duty Manual or Internal Affairs Unit Guidelines that implies a modification of the preponderance-of-the-evidence standard should be removed. Additional modifiers imply an application of a different standard of proof (i.e., clear and convincing evidence, beyond a reasonable doubt, etc.). Specifically:

- a. The modifier “conclusively” should be deleted from the definition of “unfounded”: “Unfounded (U): The investigation conclusively proved either that the act or acts complained of did not occur, or that the

A. The Department agrees with the IPA that the language in the Duty Manual and Internal Affairs guidelines should be consistent in that the standard of proof used in these administrative investigations is the preponderance of evidence standard.

B. The Department does not agree with this recommendation. The proper standard of proof in an administrative investigation is the preponderance of evidence standard. The fact that the identified modifiers, “clearly” and “conclusively” are used in the Findings categories refers to the administrative investigation and does not change the standard of proof as no other standard is applied in these types of investigations.

8A: Implementation verified.
Duty Manual Revision issued May 2019 requires the application of the preponderance of evidence standard.

8B: Implementation verified.
Duty Manual Revision issued May 2019 removes text that might imply modification to the preponderance of evidence standard.

IPA RECOMMENDATIONS

Department member named in the allegation was not involved in the act or acts which may have occurred.”

b. The modifier “clearly” should be deleted from the definition of “Not Sustained”: “Not Sustained (NS): The investigation failed to disclose sufficient evidence to prove ~~clearly~~ or disprove the allegation made in the complaint.”

c. The modifier “clearly” should be deleted from the definition of “sustained”: “Sustained (S): The investigation disclosed sufficient evidence to prove ~~clearly~~ the allegation made in the complaint.”)

C. Internal Affairs Unit Guidelines should direct IA investigators to, and provide guidance on how to properly, assess witness credibility and clearly articulate their analysis. Guidelines should make clear that an allegation can be sustained or unfounded even in the absence of witnesses or video evidence, i.e., in “he-said/she-said” cases.

D. Guidelines should clarify that the fact that a witness is a friend, family member, or colleague of a party does not automatically render that witness’s testimony lacking in credibility; IA investigators should receive guidance on properly assessing witness credibility based on a variety of factors, such as (non-exhaustive list) consistent or inconsistent statements, recollection, ability to see or hear or otherwise become aware of the subject of the testimony, corroboration, etc.

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C. The Department disagrees with this recommendation. Internal Affairs investigators are hand picked by the Office of the Chief of Police and have attained the rank of sergeant. Most, if not all, of these investigators have extensive investigative experience and are well versed in the ability to assess witness credibility. Witness credibility is essential in any investigation, especially an administrative investigation where the preponderance of evidence standard is utilized to determine officer misconduct.

This issue has been discussed at length with previous Independent Police Auditors. The same assessment of credibility must continue to be evaluated for both civilian and sworn witnesses during investigations to ensure a complete, thorough, fair, and objective investigation.

D. Refer to C above.

IPA COMMENTS

IPA RECOMMENDATIONS	SJPD RESPONSE	IPA COMMENTS
<p><u>Recommendation #9: Body-Worn Cameras</u></p> <p>SJPD should revise its policies to require officers assigned to the Police Administration Building (PAB) to activate their body-worn cameras (BWC) during interactions with members of the public, particularly when such officers are receiving victim or witness reports regarding a possible crime.</p>	<p>The San Jose Police Department agrees with this recommendation. Our Department policy on Body Worn Cameras (BWCs) is currently being revised to include the activation of BWCs by Main Lobby personnel while “assisting a visitor or member of the public while assigned to the Main Lobby.”</p>	<p>In progress</p>
<p><u>Recommendation #10: IPA Review of Draft SJPD Policies</u></p> <p>SJPD should create a policy requiring that any significant proposed changes to policy (including bulletins and other guidance to officers) should be sent to the Office of the IPA prior to finalization/issuance. Sufficient time should be provided to the IPA so that, should analysis be required, the IPA may analyze the draft policy, provide feedback, and engage in meaningful discussions with SJPD.</p>	<p>If feasible, the Department agrees to include the Office of the Independent Police Auditor when changes are being made to the policies regarding the Internal Affairs process. The SJPD does not agree with memorializing this procedure.</p>	



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

Judge Teresa Guerrero-Daley, former Independent Police Auditor, designed this logo.

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