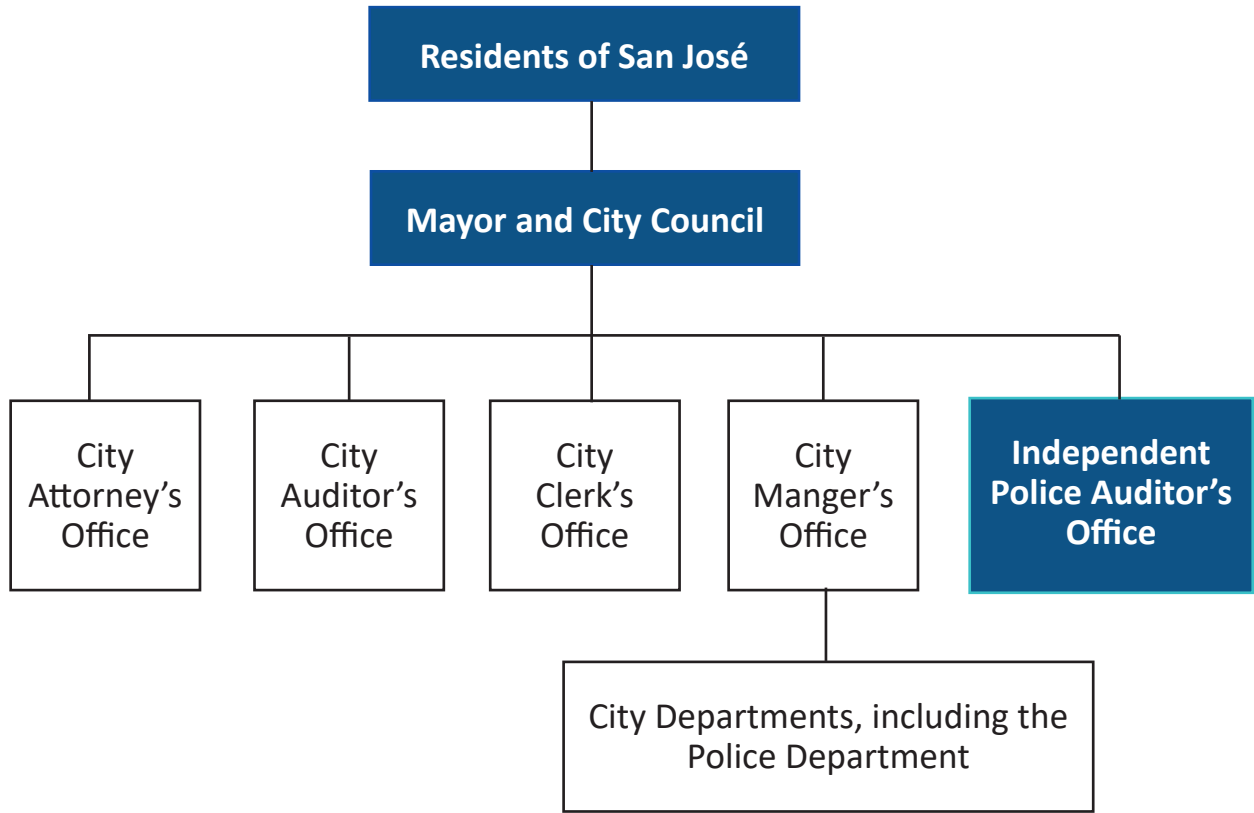


# 2020 IPA YEAR END REPORT



Office of the Independent Police Auditor  
City of San José

# City of San José Organizational Chart



## COVER ART

The artwork on the cover was selected from a serial exhibition entitled

### HOLDING THE MOMENT

This exhibition, sponsored by the City of San Jose's Public Art Program and the Norman Y. Mineta San Jose International Airport, offered local artists an opportunity to reflect and comment on of the global pandemic and the current challenging time.

We thank the Office of Cultural Affairs for their assistance in coordinating the use of these amazing pieces. More about the artworks in each of the artists' own words can be found on pages 128 of this report.

# 2020 IPA Year End Report



Issued June 2021

by

Shivaun Nurre

Independent Police Auditor

and Staff

[sanjoseca.gov/ipa](http://sanjoseca.gov/ipa)

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FACTS AT A GLANCE

OPENING SECTION

POLICE REFORM EFFORTS  
AND IPA PARTICIPATION

COMPLAINT STATISTICS

FORCE COMPLAINTS

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# FACTS AT A GLANCE



Received **269** complaints



Received **896** allegations



**23%** of complaints contained force allegations



**25%** of sworn officers received at least one complaint



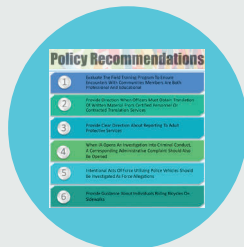
Audited **183** completed investigations



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



Outreach plan touched **2,344** community members



Issued **7** policy recommendations



Successful November 2020 Ballot measure expanded **IPA authority**

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# 2020

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## A YEAR OF RECKONING AND REFORM

For most of the world, 2020 was unlike any other year. For the IPA office, it was no different. On March 17, 2020, we were ordered to shelter-in-place. It was the first time in the nearly 30-year history of the IPA Office that we shut our doors to the public.

We found ways for the public to access our office through our online complaint form. We conducted our outreach events remotely, and our staff became exceedingly familiar with Zoom and Microsoft Teams. We were just getting comfortable with our new work-from-home routine when George Floyd was killed on the streets of Minneapolis on May 25, 2020.

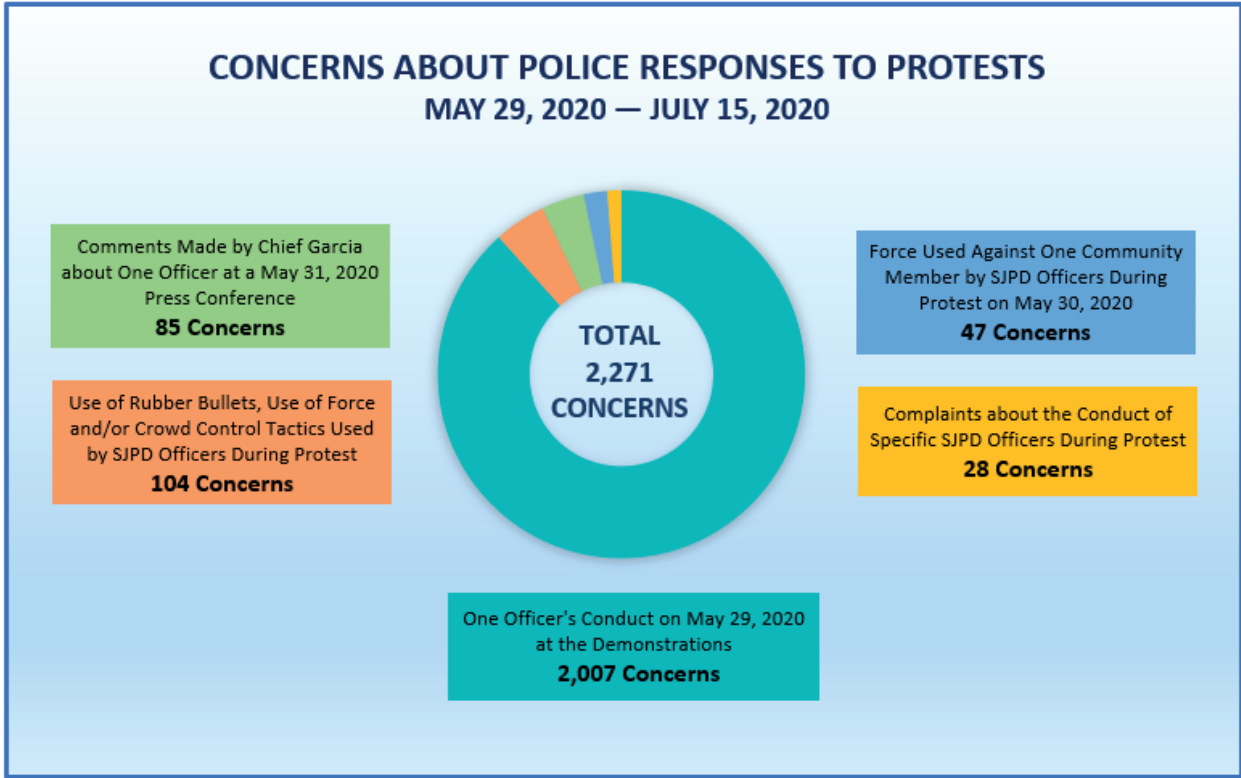
The country reacted and took to the streets. Protesters in San José demanding justice for George Floyd lined the Downtown area. While the pandemic spiraled, many residents watched the national news to see protesters on our local freeways.

Although some demonstrations were peaceful, chaos erupted at others. Demonstrators clashed with San José Police officers, and officers responded by deploying rubber bullets and tear gas. The impact of these deployments also affected onlookers who were witnessing or filming the events. A period of civil unrest had ensued. The City declared a state of emergency and imposed a nightly curfew.

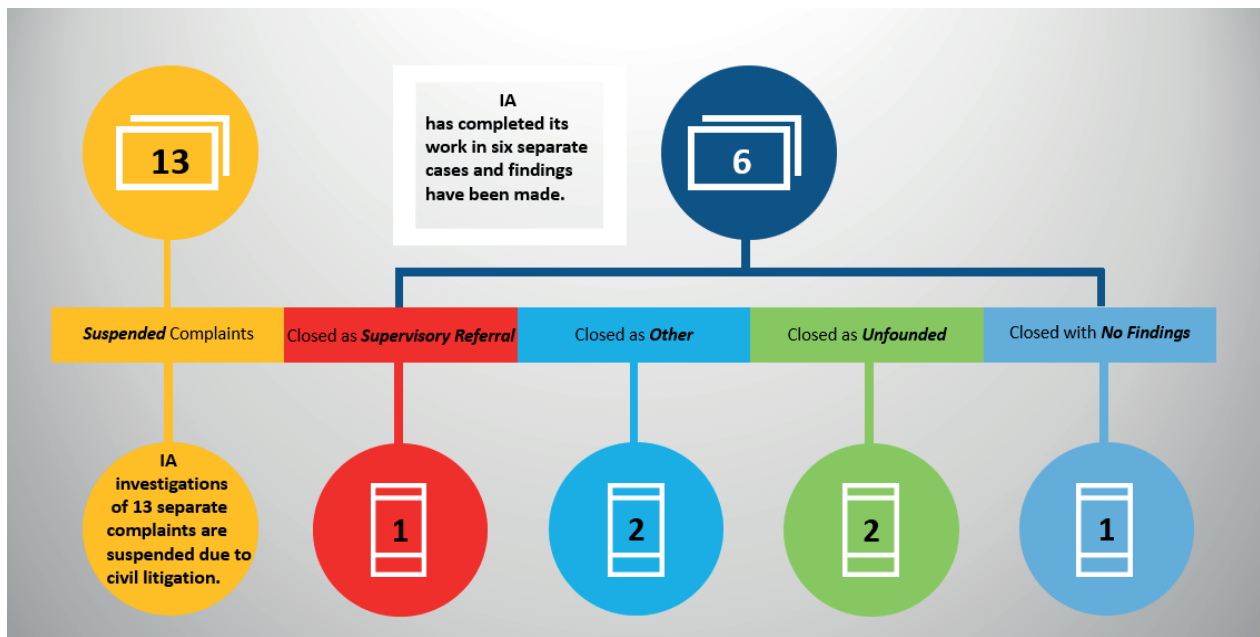
Between May 29, 2020 and July 15, 2020, hundreds of community members called the IPA or the Internal Affairs Unit office to express concerns over the officers' actions at the protests. Two thousand, two hundred and seventy-one was the combined total. This number does not include the number of people who contacted the Police Chief's office, the City Manager's office or the Mayor and Councilmembers.

The visual on the next page shows the influx of concerns following the period of civil unrest. *Concerns* are distinct from *complaints*. Concerns are expressions of disapproval about an officer's conduct or Department policy. For example, many people expressed disapproval about the words Chief Garcia used at a May 31, 2020 press conference.<sup>1</sup> Because these concerns about Chief Garcia's conduct on that date were duplicative, they were consolidated into one complaint. Likewise, the 47 concerns received about the force against one community member by SYPD officers during the protests on May 30, 2020 were consolidated into one complaint.

## CONCERNS ABOUT POLICE RESPONSES TO PROTESTS MAY 29, 2020 — JULY 15, 2020



The IPA and IA staff worked together to move these 2,271 concerns into enumerated complaints and to eliminate duplications of incidents. Nineteen complaints are classified in the shared IA-IPA database. The visual below reflects the current status of these complaints.<sup>2</sup>





## THIRTEEN SUSPENDED INVESTIGATIONS

California law directs that any investigation into officer misconduct must be completed and notice of discipline (if any) be given to an officer within a one-year period. There are several exceptions to the one-year rule. One exception states that if the investigation involves a civil litigation lawsuit in which the subject officer is named as a defendant, then the one-year time period shall be suspended while that civil lawsuit is pending.<sup>3</sup> Thirteen police misconduct complaints arising out the period of civil unrest are currently suspended due to lawsuits. Details regarding the findings and audits will be released in subsequent reports, as these cases close.



## ONE INVESTIGATION CLOSED AS SUPERVISORY REFERRAL

— IPA DISAGREED —

On June 4, 2020, a community member contacted the IPA and made the following complaint:

*I am writing to demand police officers in San José and the entirety of Santa Clara county abide by the county's pandemic regulations to wear face coverings. As protests pop up all over the city and the county . . ., it is of utmost importance that police officers wear masks to protect our population from the COVID-19 virus. Communities that are affected by police violence around the country are also disproportionately falling victim to COVID-19 and related health issues. Specifically, communities of color, especially black communities, are seeing higher rates of infection and much higher rates of death due to infection. .... Moreover, as activists take safety issues into account, many are requiring protest participants to wear adequate face masks and coverings, to protect the community as a whole. Police people need to be wearing these masks as well to protect our community and our county, one of the most heavily affected counties in the country.*

Based on the photographs provided by the complainant, the Internal Affairs Unit identified six subject officers. The investigation focused on the question of whether the officers violated policy/procedures by not wearing a face covering.

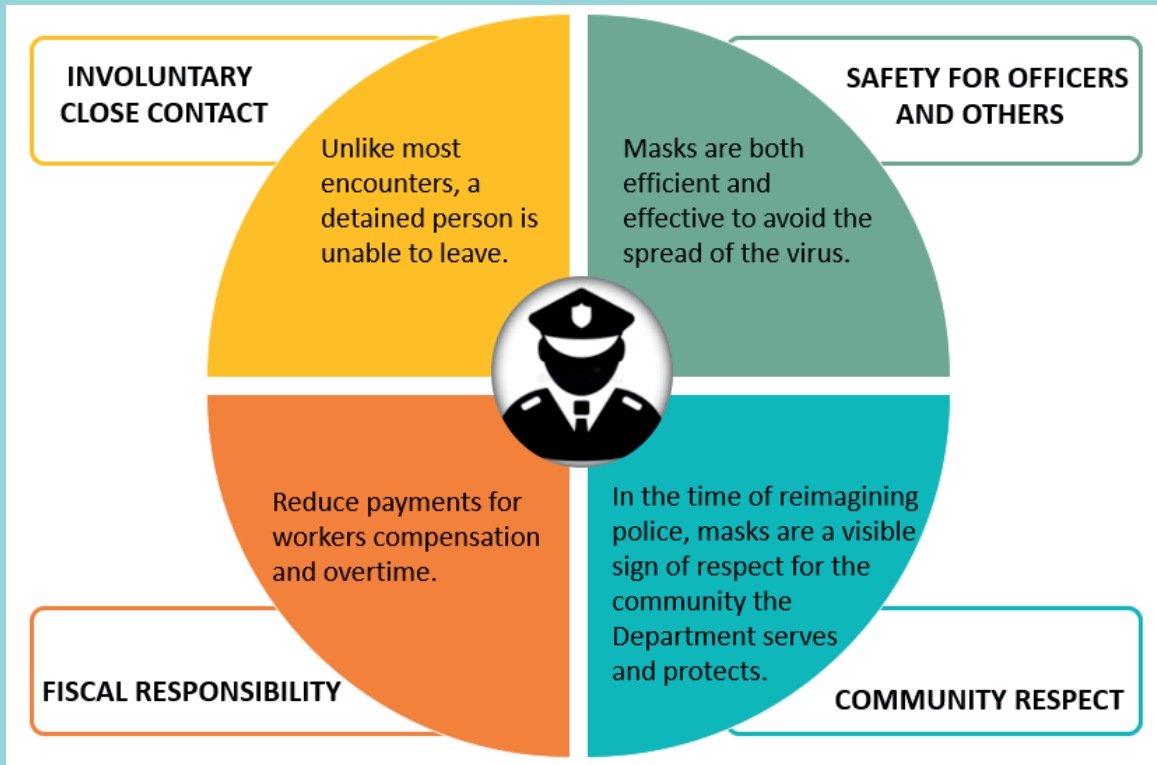
Internal Affairs concluded that the involved officers' failure to wear face coverings was a minor transgression and would not likely result in formal discipline if it was sustained. This allegation (Procedure-Face Covering) was classified as a Supervisory Referral.

As a result of this classification, each officer was counseled by their captain about the transgression and resulting impact(s). The Duty Manual states that having this counseling session about the transgression with the captain does not imply that the officer actually committed the transgression that forms the basis of the meeting.

The IPA contends that the failure of a police officer to wear a mask should not be classified as a supervisory referral. This conduct, if proven, should result in the lowest level of discipline, i.e., training. Repeated violations should result in progressive discipline. Our position was based not only on this June 2020 complaint, but on other similar complaints and IPA review of numerous body-worn camera video that showing officers not wearing masks during detentions and arrests.



During periods of mask mandates or public health directive requiring masks, it is imperative that SJPD officers comply during arrests/detentions and consensual encounters for four reasons.



## TWO CASES CLOSED AS UNFOUNDED

— IPA AGREED —

### ➤ **Motorcycle Incident:**

On June 4, 2020, a member of the community filed an online complaint alleging that an SJPD motorcycle officer stuck a young protestor and injured him. The complainant alleged that the protestor was not violent but merely running away when he was struck. The complainant also alleged that SJPD was responsible for a long delay in obtaining medical care for the protestor.

Internal Affairs interviewed the complainant and the motorcycle officer. The police report and the separate accident investigation was reviewed. Body worn camera and other video of the incident was reviewed. Motorcycle officers responded to the area of S. 4<sup>th</sup> St./San Fernando St. due to a report that people were breaking into the bank. At this time, the city residents were under a curfew order.

Two suspects were seen running from the area. The subject officer, along with other motorcycle officers, was traveling down the street. They intended to pass the suspects and form a perimeter by blocking their path. As the subject officer was traveling down the street, he lost sight of one suspect who was running down the sidewalk. His visual of the suspect's path was obscured by parked cars. Suddenly the suspect changed direction and ran out, from behind the back end of a parked car, into the street directly in front of the subject officer. Although the subject officer attempted an emergency braking maneuver, it appeared he was unable to avoid a collision with the pedestrian.

Internal Affairs determined the **force allegation** to be unfounded because the collision was a non-preventable traffic accident. The IPA agreed. The evidence gathered showed it was more likely than not that the suspect ran into the path of the motorcycle officer who lacked both time and distance to avoid a collision. There was no evidence that officer intentionally hit the suspect. Internal Affairs determined the **procedure allegation** (failure to summon medical care) to be unfounded. The IPA agreed with this finding. Body worn camera video shows a responding sergeant asking the suspect if the suspect *needed medical care or needed to go to the hospital*. The suspect shook his head no. The sergeant responded, *So you are denying medical attention*. The male replied, *I appreciate you guys*. The sergeant then advised dispatch that the male was refusing medical attention. The IPA closed the case as *Agreed*.

➤ **Allegedly Discourteous Officer:**

On June 2, 2020, an online complaint was submitted to the IPA. The complainant alleged that an officer participating in the police response to the demonstrations smiled and laughed at protestors. The person complained that the officer made eye contact with some persons and not with others. The complainant supplied the officer's badge number and a photograph. The allegation was Courtesy.

The IA investigation determined that the courtesy allegation was Unfounded. The IPA agreed. Because the complainant did not provide any additional details, IA watched all of the subject officer's BWC video captured for the incident date provided. The audio accompanying the video reflects that the officer did not use profanity or derogatory language. All officers at the protest were facing towards the crowd, thus no BWC video captured the subject officer's facial expressions. The photograph supplied by the complainant does not, by itself, support her claim that he was discourteous. Making eye contact with some persons and not with others, without additional evidence, does not show discourtesy or violate the Duty Manual. We agreed that a finding of unfounded was supported by a preponderance of the evidence gathered by IA.

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## ONE CASE AGAINST CHIEF GARCIA CLOSED AS NO FINDING — IPA AGREED —

Both the IPA office and the IA office received complaints regarding Chief Garcia's comments at a May 31, 2020 press conference following the local protests. At the conference, Chief Garcia spoke about the conduct of Officer Yuen.<sup>4</sup> Many persons believed Officer Yuen's conduct and demeanor were aggressive and rude. Chief Garcia responded by calling Officer Yuen a *good kid* who let his *emotions run high*. Public concern was that the Chief was not taking Officer Yuen's conduct seriously, nor the public's response to this conduct. These comments were perceived to indicate that a fair and thorough investigation could not take place if the Chief had already minimized Officer Yuen's conduct.

On July 18, 2020, this IA investigation was suspended due to civil litigation. In December 2020, Chief Garcia retired from the Department. This complaint was subsequently closed with no findings. Duty Manual C 1723 states that if the subject officer is no longer employed by SJPd before the completion of the investigation, the finding will be "no findings." The IPA agreed with this determination.



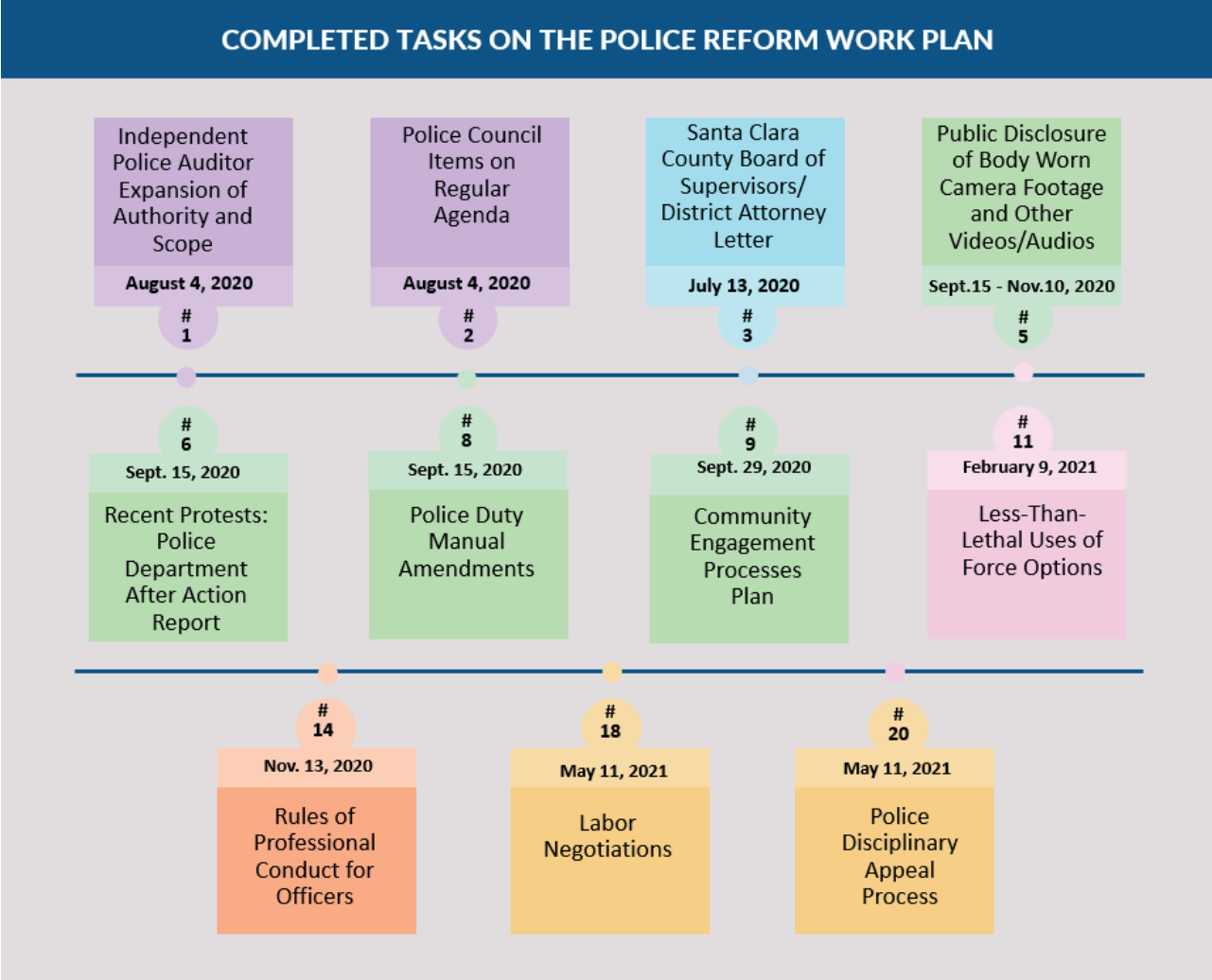
## TWO CASES CLOSED AS OTHER — IPA AGREED —

Two cases were closed as "other." In one case, the complainant alleged that SJPd officers had covered their BWC coverings with stickers. IA determined that it was another law enforcement agency, not SJPd, who engaged in this conduct. In the other case, IA determined that the allegations were duplicative of another complaint. The allegations were consolidated into one main complaint and the other was closed out.

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# POLICE REFORM EFFORTS AND IPA PARTICIPATION

In response to the local demonstrations in late May and early June, the Mayor and Councilmembers proposed a variety of police reform directives. A detailed Police Reforms Work Plan has been created. Some items have been completed and progress on the others is underway.<sup>5</sup> Tasks that have been completed, with associated dates, are:



The Police Reforms Work Plan, encompassing 20 separate items, is an ambitious project. Council has given direction to the IPA on four enumerated tasks.

# IPA POLICE REFORM TASKS

CITY COUNCIL DIRECTION



IPA COMMENTS

## Use of Force Review

Establish a process, consistent with that advocated by the Obama Foundations' My Brother's Keeper Alliance Mayoral Action Pledge, to review the San José Police Department's use of force policies, engage the community on proposed changes, seek the feedback of our community on the findings, and produce recommendations to reform those policies. This review should include recommendations to further align SJPD protocols with 21<sup>st</sup> Century Policing best practices.



Consultant CNA has been selected to conduct a Use of Force Review, including a review of 21st Century Policing best practices. It is anticipated that CNA's report will be finalized in Fall 2021.

Information about CNA, its approach and other reports - <https://www.cna.org/centers/ipr/jri/>

## Independent After Action Report

Produce an independent after-action report evaluating the San José Police Department's response to the civil unrest from May 29<sup>th</sup> to June 7<sup>th</sup> 2020. Among other things, the report should address deployment, equipment, training, staffing and tactical issues.



Consultant OIR Group has been selected to conduct the independent After-Action Report. It is anticipated that OIR Group's report will be finalized in Summer 2021.

Information about OIR Group, its approach and other reports - <https://www.oirgroup.com/>

## Independent Investigations of Police Misconduct

### RFP

Provide Council with specific recommendations for how the Independent Police Auditor (IPA) would take over investigations of police misconduct from SJPD's internal affairs.

The IPA, with the assistance of the City Manager's Office of Employee Relations (OER), issued an RFP to obtain a consultant to recommend how, if at all, to move part/all of police misconduct investigations out of Internal Affairs to another entity. It was determined to re-issue the bid with a longer timeframe for completion. The RFP will be open for bids from mid-May to mid-June 2021.

## Evaluate Role of IPA Advisory Council

### IPAAC

Direct the IPA to evaluate and provide recommendations for expansion of the duties and responsibilities of the current IPA Advisory Council, to include review of some of the IPA work, providing additional insight to the Office of the Independent Police Auditor and allowing for greater transparency.

IPA staff has done some preliminary research of oversight models that have a formal role for citizen involvement on a volunteer or stipend basis. These models range from high (ability to impact investigations), moderate (formal appointment with formal meetings and enumerated duties), limited (volunteers informally appointed with narrow duties) to none. IPA staff is reaching out to the many cities that have made changes to their volunteer groups over the past year for additional detail.

# NOTABLE ITEMS ON POLICE REFORMS WORK PLAN

## CITY COUNCIL DIRECTION



## IPA COMMENTS

### Internal Database: Police Officer History Database

Engage with the San José Police Officers' Association to either join an already established database that tracks officers with histories of misconduct and use of force or take leadership in creating one.

Note: Refer to Independent Police Auditor recommendation #2 from 2018.



As stated in our 2018 recommendations, the SJPD for years has looked solely at the police misconduct complaint process to identify officers exhibiting possible problem behaviors requiring corrective action. Best practice currently used by other jurisdictions take several factors into account to create a more complete picture of the officer's behavior. We anticipate that the creation of this officer history database will provide the Department with a more robust Early Warning System. SJPD is currently working with a vendor on a pilot project, analyzing several pieces of data to establish an effective early warning system.

### Body-Worn Camera Footage Audits

Return with a recommendation on a process for random audits of officer-worn body camera footage.



BWCs are a great addition to the Department. The camera video provides one method, among others, of capturing police interactions. Random audits of BWC video will help to identify trends and evaluate training. Officers spend many hours in training. It is beneficial to have a mechanism to determine whether the training is effective or whether other training models/content should be used. SJPD is currently working with potential vendors and establishing effective protocols for body-worn camera auditing.

## Police Officer Disciplinary Appeal Process

Provide Council with specific recommendations to reform the officer disciplinary appeal process—particularly after a termination decision—to either: (a) Identify and implement an alternative to binding arbitration for disciplinary appeals, and/or (b) Reform the process to enable greater accountability and transparency.



In May 2021, the City and the Police Officer’s Union (POA) agreed to an important measure relating to the transparency of the discipline arbitration process. Previously arbitration decisions were entirely confidential; this led to frustration when the Department could not explain to the staff or the public why an officer would be returned to work. Under the new agreement, those sworn officers who choose the arbitration process will agree that any arbitrator’s decision will be published. In addition, the agreement identifies a new process for selecting arbitration panels and allows retired judges to serve as arbitrators.

## IPA’S EXPANDED ROLE IN OFFICER INTERVIEWS



The 28-year road map to ask a question

1993

IPA Office Established. IPA can attend officer misconduct interviews.

2000

IPA can attend officer misconduct interviews and request the Sergeant ask the officer a question.

2021

IPA can ask a direct question of an officer about alleged misconduct.

2010

IPA can attend officer misconduct interviews and request the Sergeant ask the officer a question.

2005

IPA can attend officer misconduct interviews and request the Sergeant ask the officer a question.

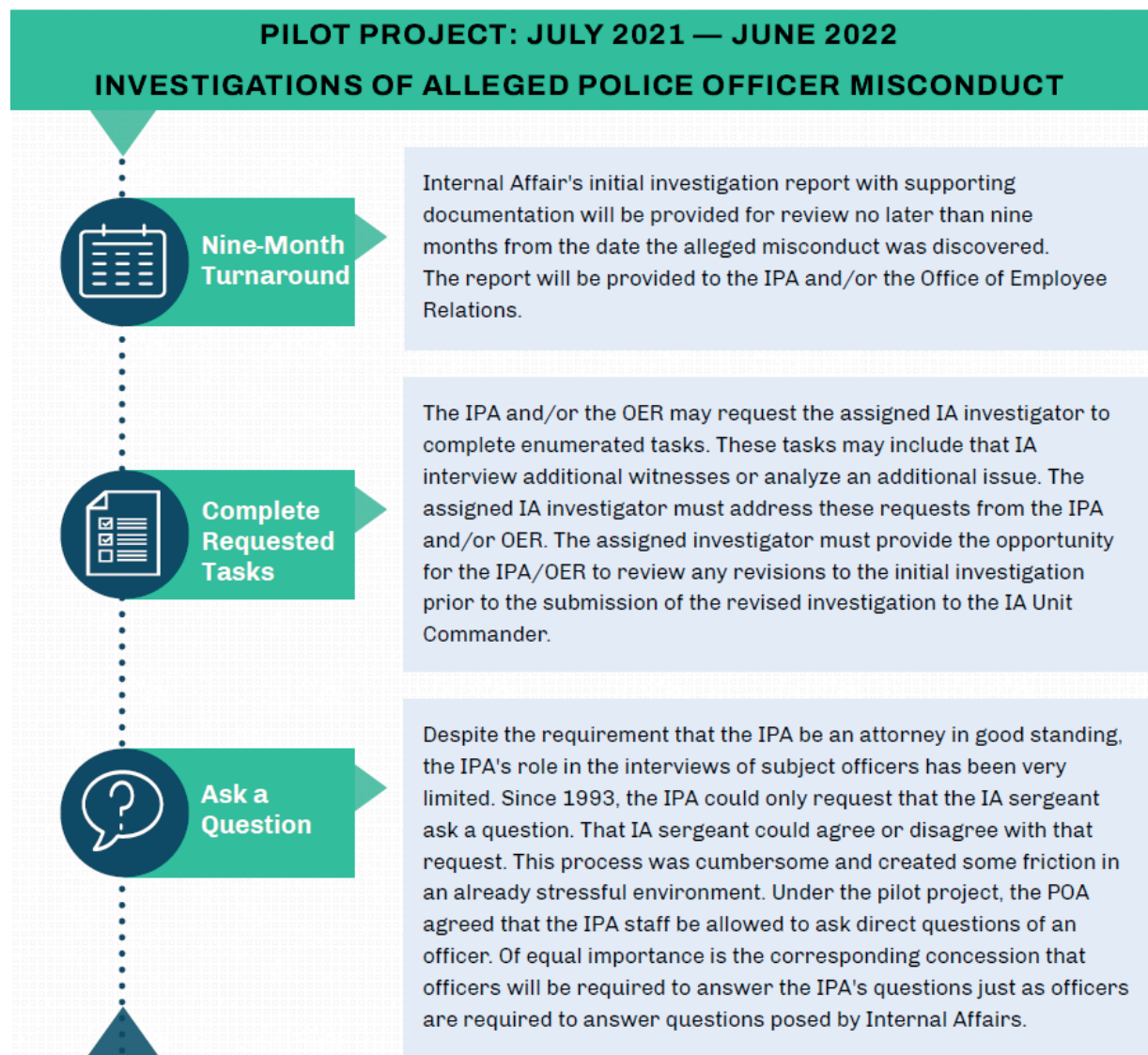


# ONE YEAR PILOT PROJECT

The Police Reforms Work plan directs the IPA and the City Manager to make recommendations on whether and how to move investigations of alleged police misconduct from Internal Affairs to another entity. A Request for Proposal to obtain a professional consultant has been issued.

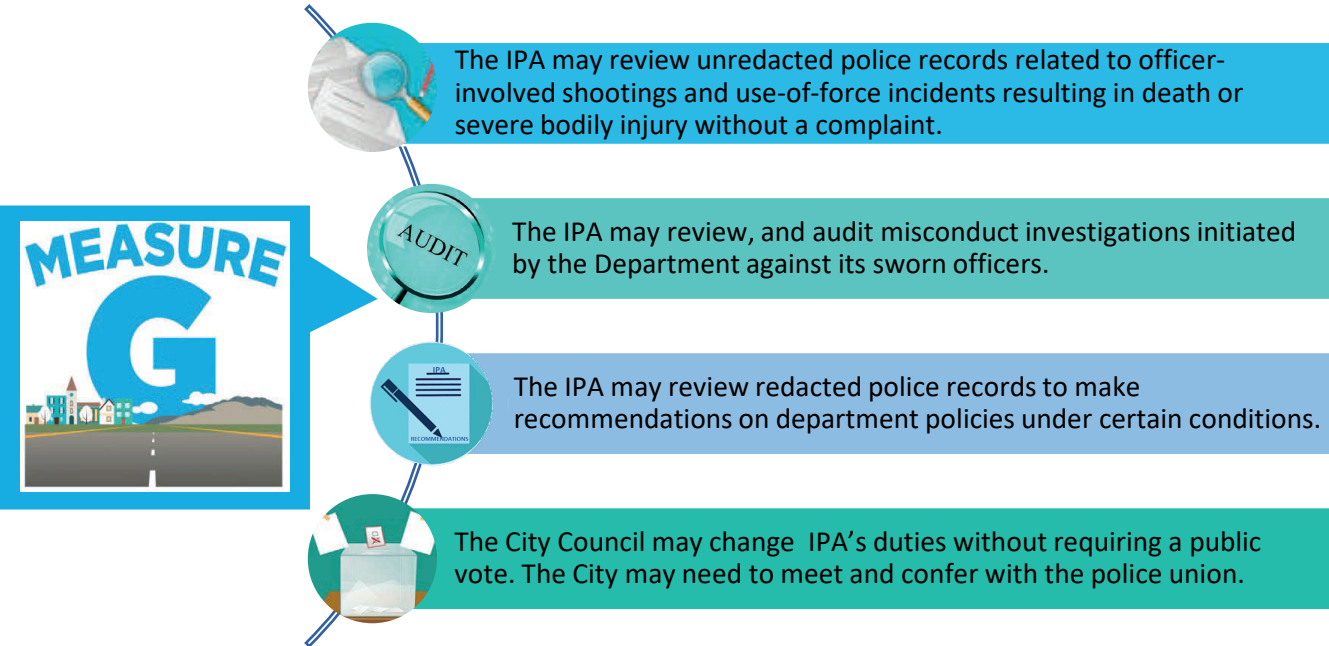
In May 2021, the City and the Police Officer’s Union (POA) agreed to a one-year pilot project regarding how investigations of alleged police officer misconduct are conducted. **Although this item was not on the police reform plan, this pilot project is a significant change to the current Internal Affairs process.** Both the IPA and the City Manager’s Office of Employee Relations (OER) will have access to pending investigations.

The pilot project will start July 1, 2021 and end June 30, 2022. During that timeframe, the IPA will assess how much, if any, these three changes result in increased confidence in the investigation of conduct complaints. Currently investigations of complaints are controlled by the Internal Affairs Unit; the IPA has no investigatory power.



# MEASURE G PASSES WITH 78% APPROVAL

The IPA office was made part of the City Charter in 1996. Throughout the subsequent years, the authority of the IPA remained unchanged – until November 4, 2020. On that date, 78 percent of San José voters approved of Measure G which among other things, expanded IPA authority. Effective in 2021, Measure G provides that:



## MOVING FORWARD

2013 marked the 25-year anniversary of our inception. At the time, we reflected upon the events leading up to our office's creation—the riots following Rodney King's death—and noted that the *King beating gave national exposure to the need for civilian oversight*. We are now given another opportunity to reflect on our history and envision our future. Rodney King exposed the need for civilian oversight and George Floyd reminded us that our work continues and change precipitates progress.

As the City starts to re-imagine public safety and explores opportunities for growth, the IPA office remains dedicated to the holding officers accountable through the complaint process and continues to work to instill public confidence in policing in San José.

**The IPA and staff thank the voters for their solid support and confidence in the role of our office. We will be working diligently to accommodate our new duties and responsibilities.**

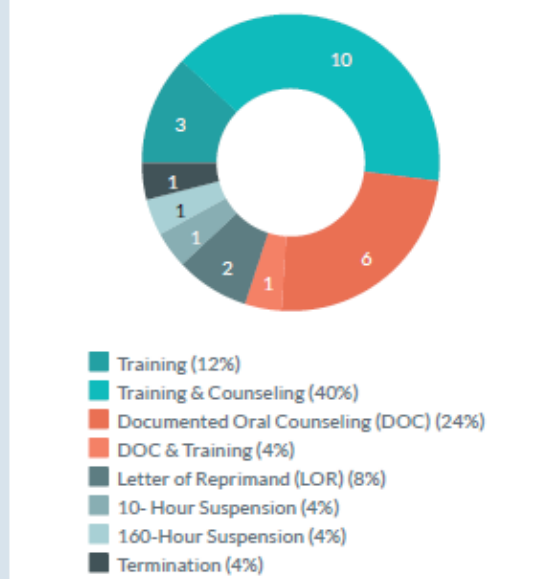
# Independent Police Auditor Statistics

## 2020

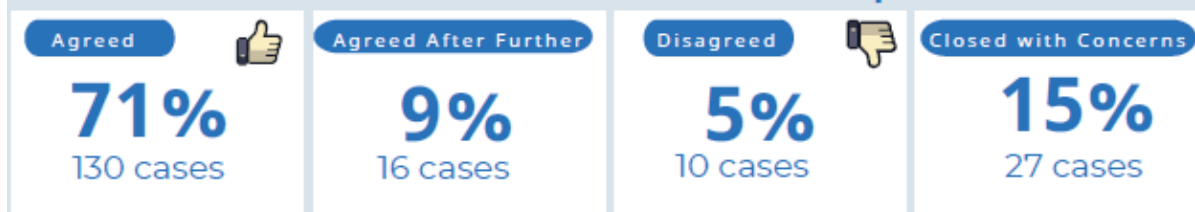
### Conduct Complaints Closed with Sustained Allegations



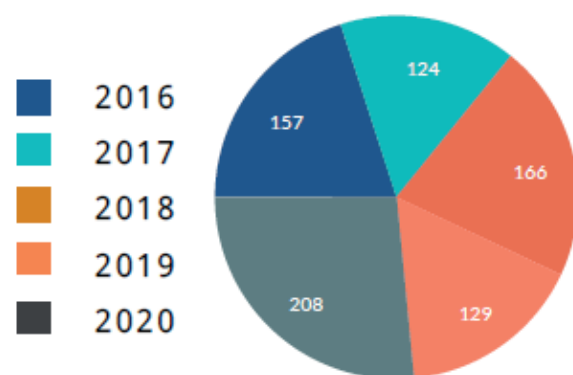
### Types of Discipline Imposed by Dept.



### IPA Audit Determinations in Closed Complaints



### IPA Intakes (2016-2020)

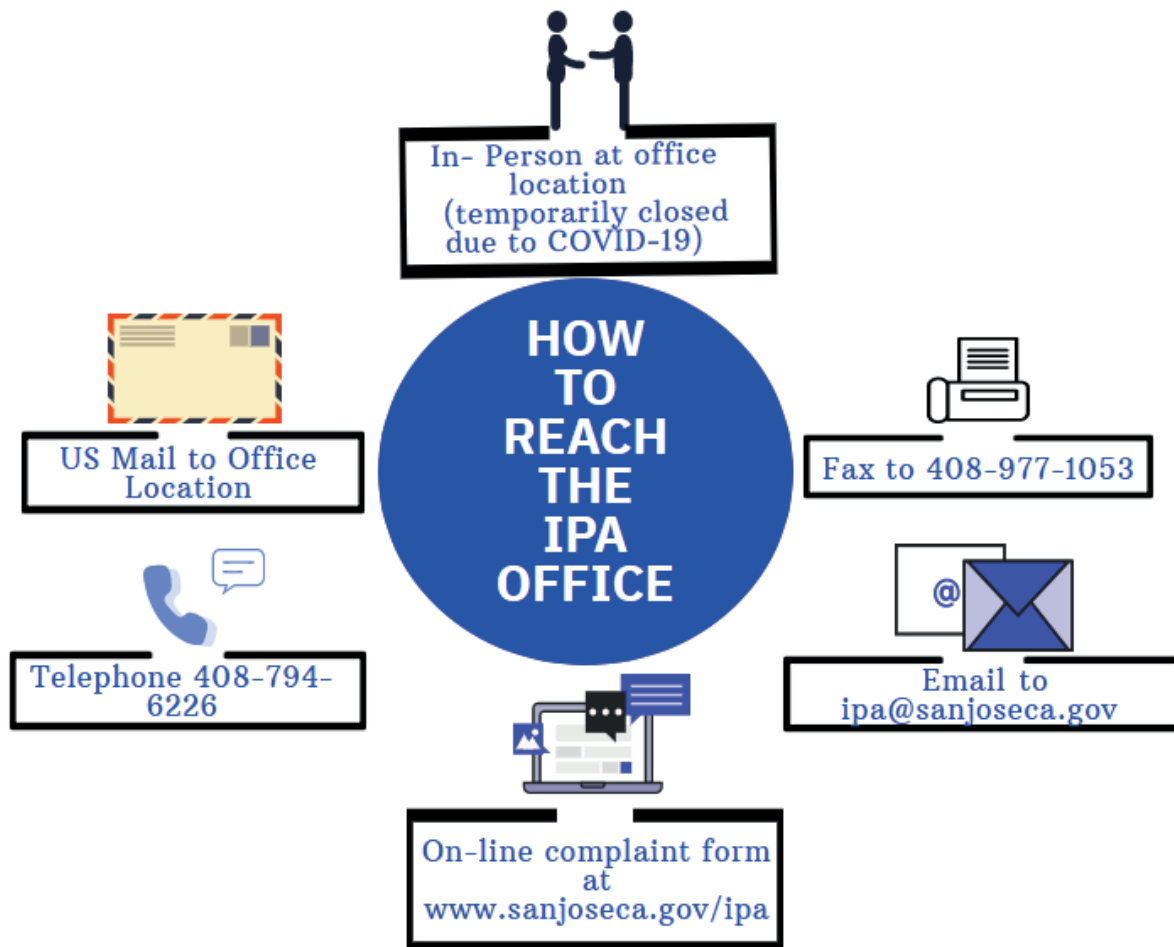


# COMPLAINTS RECEIVED AND CLASSIFIED

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The complaint process begins when a member of the public files a complaint about a San José Police Department (SJPD) officer(s) or an SJPD policy. Complaints can be filed either with the IPA or with the Internal Affairs (IA) Unit of the SJPD. Each year a majority of complaints (77% in 2020) are filed with the IPA 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.



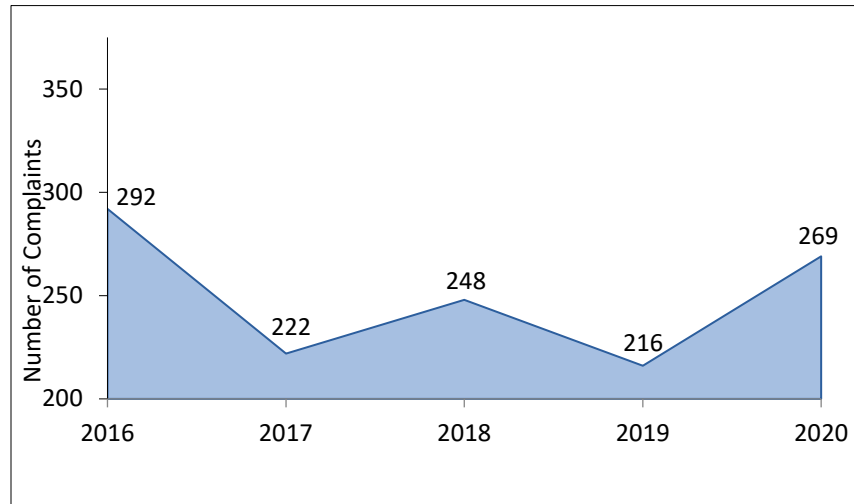
After obtaining consent, IPA staff or IA staff record complainants' statements to ensure that their descriptions are documented accurately. IPA staff review every contact to ensure that each concern about misconduct is captured and classified. The IPA staff sends an acknowledgment of receipt if contact information is provided. The complaint is then entered into a shared IA/IPA database. This initial process is called **intake**.

## Why Each Complaint Matters

<h3>Holding Officers Accountable</h3> <p>Every time a complaint is filed, the complaint must be reviewed by the Police Department, regardless of the alleged severity</p>	<h3>Counseling</h3> <p>If an officer receives too many complaints, the officer will receive mandatory Intervention Counseling by the Police Department to identify and correct problematic behaviors.</p>
<h3>Unbiased Review</h3> <p>IPA staff provides an unbiased review to ensure that the Police Department's investigations and analyses of the allegations are fair, thorough, and objective.</p>	<h3>Policy Changes</h3> <p>When civilians voice concerns about SJPD policies, the IPA has the unique opportunity to make policy recommendations to the Police Department. Many of our recommendations have had a positive impact on policing in the City.</p>
<h3>Trends</h3> <p>One way the IPA can determine if a certain police practice has become a trend in the community is if members of the public voice their concerns and file complaints.</p>	<h3>Mediation</h3> <p>Many times, complainants say they want to discuss their complaints directly with the officers. Mediation provides a confidential and respectful setting for both the complainant and the officer to discuss the incident candidly in the presence of a mediator.</p>

In 2020, a total of 269 complaints and concerns were received. This is a twenty two percent (22%) increase in the number of complaints and concerns received compared to 2019. The factors that influence the number of complaints received each year are difficult to measure. However, this year's civil unrest precipitated a spike in the number of persons contacting with our office as well as the IA Unit about officer misconduct.

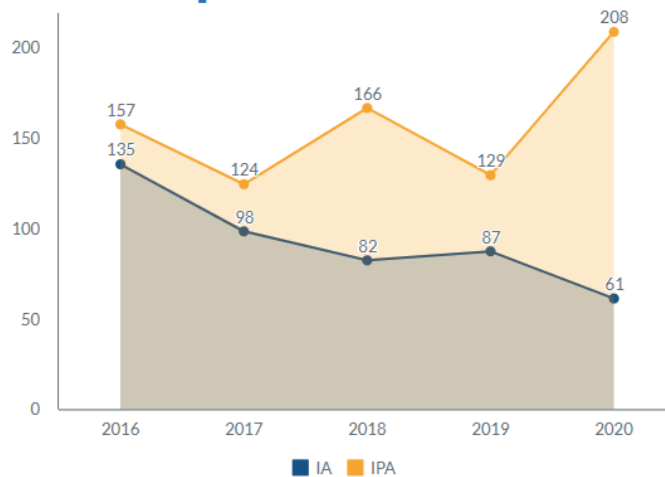
## Number of Complaints Received



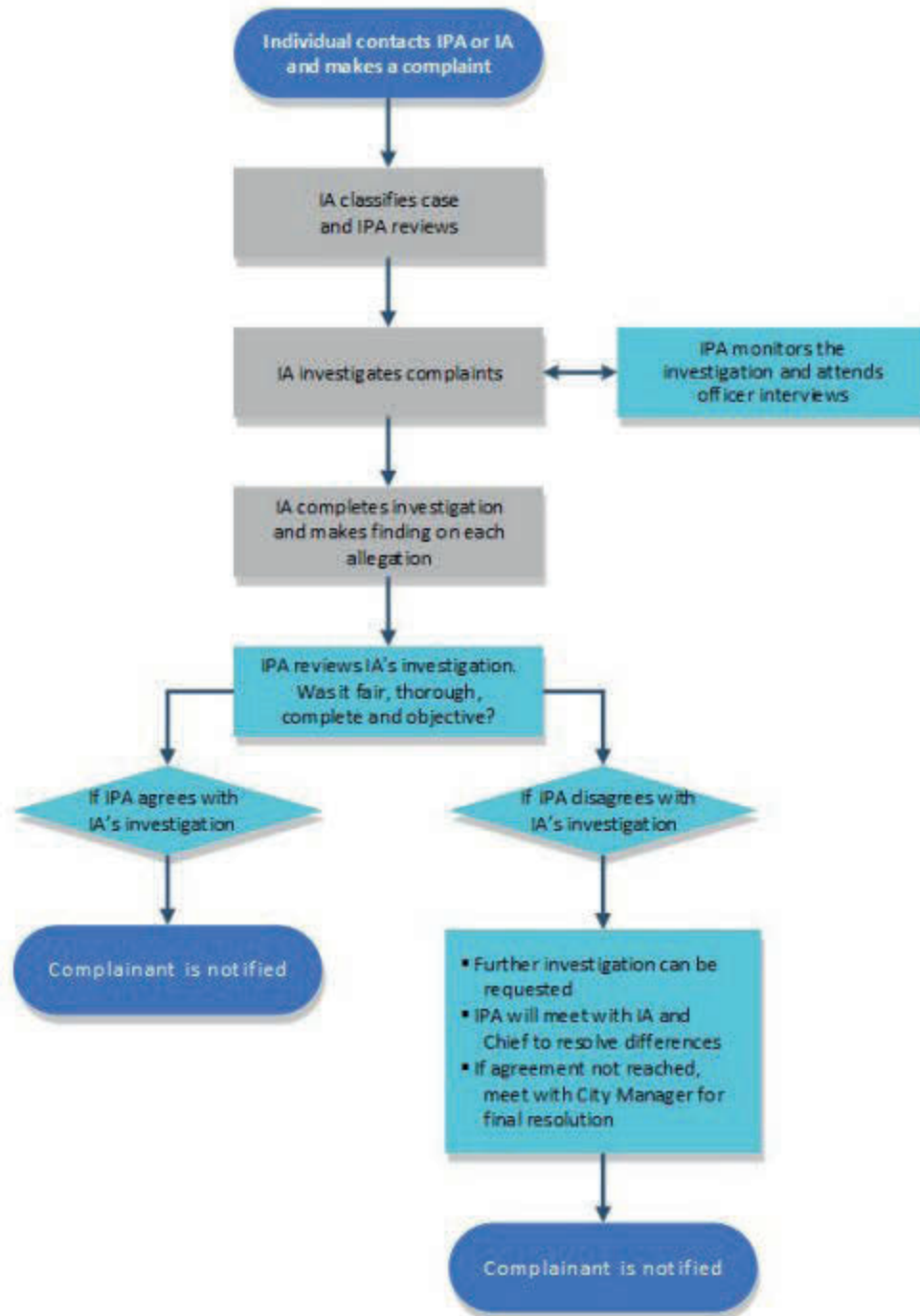
A complaint is (1) an allegation that an SJPD officer engaged in misconduct that is a violation of the Police Department’s or the City’s policy, procedures or the law or (2) an allegation that a Police Department policy, or lack of a policy, is inappropriate or invalid. Complaints fall into five classifications. The Police Department is ultimately responsible for classifying complaints based on the content of each and whether a full investigation is warranted. See page 19 for more information on classification.

Two hundred sixty-nine complaints (269) were received in 2020. The IPA determined that twenty (20) classified complaints were directly related to the period of civil unrest between May 29, 2020 through June 30, 2020.<sup>6</sup>

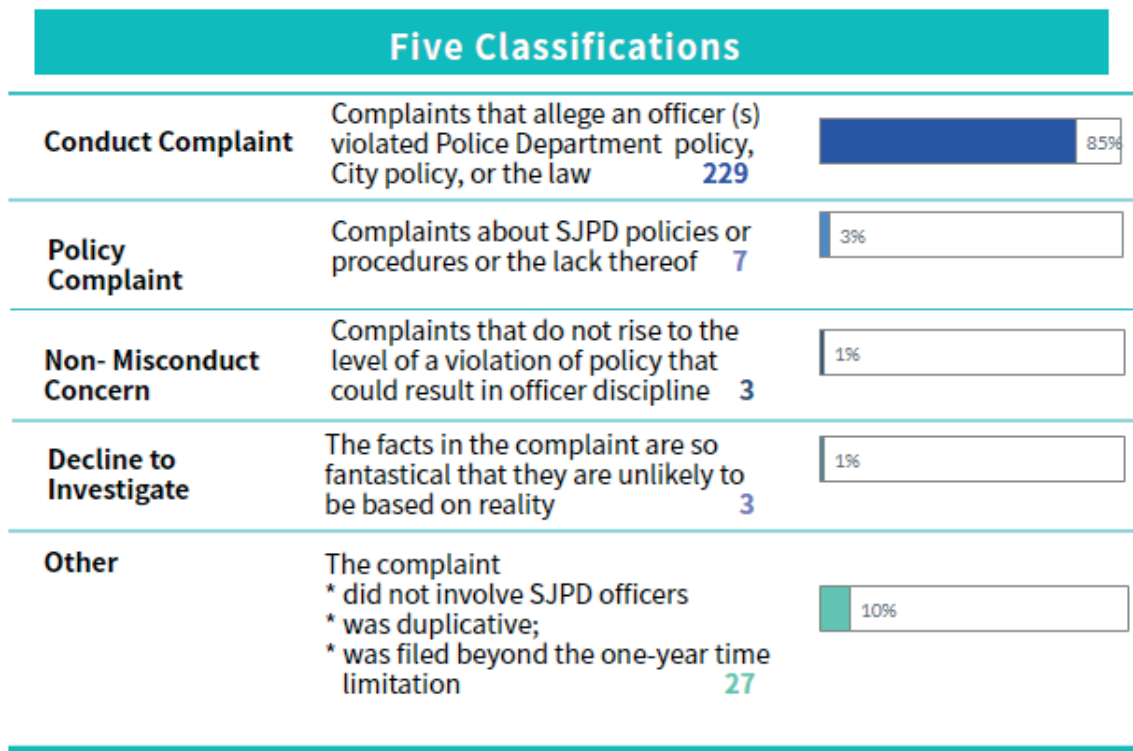
## Complaints filed with IPA Office vs. Complaints filed at IA



# The Complaint Process



Complaints fall into five classifications. The Police Department is ultimately responsible for classifying complaints based on the content of each and whether a full investigation is warranted. IPA staff reviews the Department’s decisions early in the process and can appeal if the classification is not appropriate.



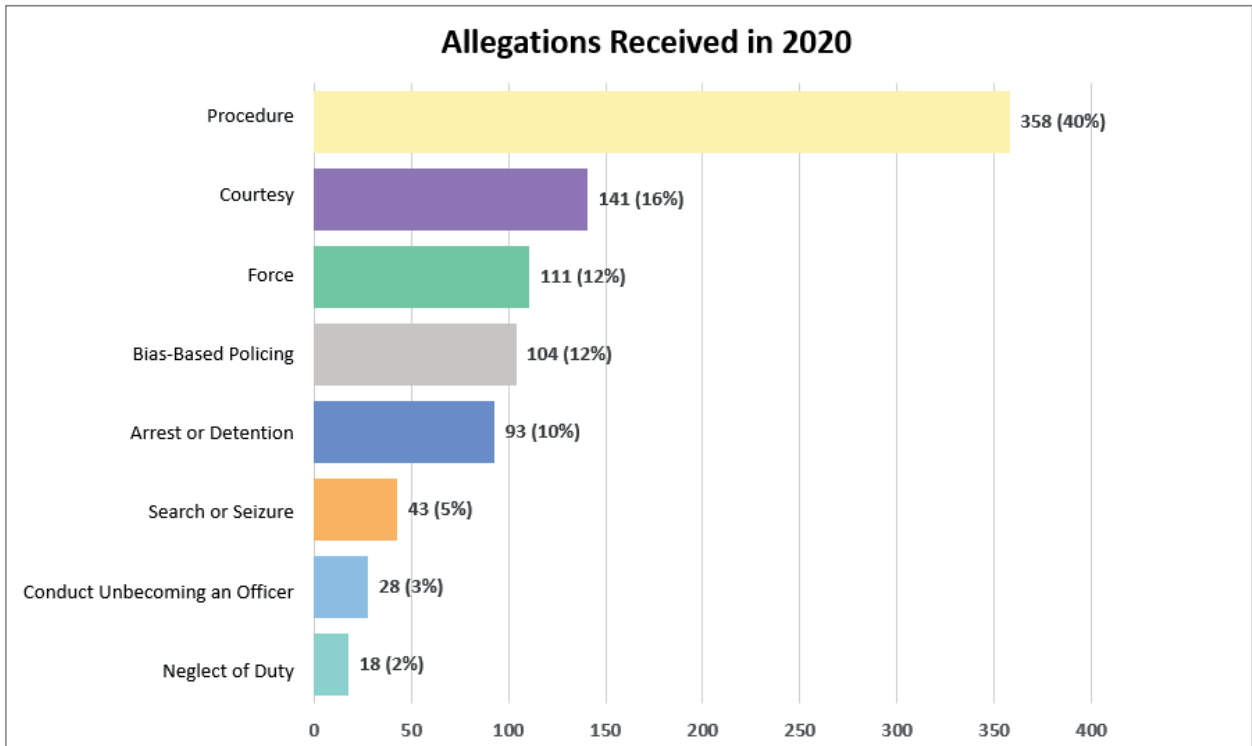
**Conduct Complaints** contain one or more allegations. An *allegation* is an accusation that an SJPD officer violated Police Department or City policy, procedure, or the law. The Department policies are listed in the SJPD Duty Manual. At the intake stage, these allegations are assertions whose validity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

Complaints filed in 2020 contained 896 distinct allegations. Both the total number of complaints received in 2020 increased as well as the number of allegations received. This means that complainants frequently raised multiple issues of concern in their individual interactions with police. Members of the public filed more allegations in 2020 than in any of the last five years. The IPA determined that twenty (20) classified complaints were directly related to the period of civil unrest between May 29, 2020 through June 30, 2020. Those complaints contained 38 allegations.<sup>7</sup>

Procedure allegations continue to be the most common allegation in Conduct Complaints over the past five years. More Procedure allegations (358) were filed in 2020 than in any of the last five years. Allegations of Bias-Based Policing increased nearly two-fold from 54 (7% all allegations) filed in 2019 to 104 (12% of all allegations) filed in 2020. Classified complaints directly related to the period of civil unrest contained three allegations of Bias-Based Policing.



ALLEGATIONS and their DEFINITIONS			
<p><b>PROCEDURE —</b></p> <p>An officer did not follow appropriate policy, procedure, or guidelines.</p>	<p><b>ARREST or DETENTION—</b></p> <p>An arrest lacked probable cause or a detention lacked reasonable suspicion.</p>	<p><b>FORCE —</b></p> <p>The amount of force the officer used was not “objectively reasonable,” as defined by SJPD Duty Manual section L 2602.</p>	<p><b>COURTESY —</b></p> <p>The officer used profane or derogatory language, was not tactful, lost his/her temper, became impatient, or was otherwise discourteous.</p>
<p><b>BIAS-BASED POLICING —</b></p> <p>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.</p>	<p><b>SEARCH or SEIZURE —</b></p> <p>A search or seizure violated the 4<sup>th</sup> Amendment of the United States Constitution.</p>	<p><b>CONDUCT UNBECOMING an OFFICER —</b></p> <p>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.</p>	<p><b>NEGLECT of DUTY —</b></p> <p>An officer neglected his/her duties and failed to take action required by policies, procedures, or law.</p>



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

**Public Document Library - P.C. 13650**

Penal Code 13650

On January 1st of 2020, California Senate Bill 978 modified Penal Code section 13650. P.C. 13650 now requires law enforcement agencies to post certain records on their websites. The records listed in the statute are: all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the California Public Records Act. The San Jose Police Department has compiled these documents in our P.C. 13650 library. Investigative, tactical, and security information has been redacted in accordance with existing law.

The statute requires that we post current records. Whenever a record is modified, updated, or replaced, the old record will be removed and replaced by the most current version. Instructional materials will be removed when they are no longer taught by the department.

Directory / Filename	Size
Academy_C200	423.02 MB
Academy_Police	49.89 MB
Continuing_Professional_Training	63.57 MB
Department_Orders	10.71 MB
Duty Manual	202.91 MB

**Memorandum**

TO: ALL SWORN PERSONNEL FROM: Edgardo Garcia, Chief of Police

SUBJECT: DUTY MANUAL REVISIONS 1.443 - 1.446 BODY WORN CAMERA DATE: June 25, 2020

Approved: \_\_\_\_\_ Memo # 2020-031

**BACKGROUND**

In 2015, the City of San Jose and the San Jose Police Officers' Association entered into an initial agreement approving the San Jose Police Department Body Worn Camera Policy. This comprehensive policy was a result of extensive research including: review of sample policies, related reports, law enforcement best practices, dialogue with Department stakeholders and ongoing external outreach. The policy took effect in July 2015 during the Body Worn Camera Field Test and Evaluation. The parties agreed to periodically revisit the policy to ensure best practices were being followed.

The San Jose Police Body Worn Camera Policy has been incorporated into the San Jose Police Duty Manual and will regulate the use and management of body worn cameras, the body worn camera evidence management system as well as related body worn camera video evidence.

**ANALYSIS**

Revisions to the Department's Duty Manual involving procedures pertaining to the use of Body Worn Cameras are reflected below. Additions are shown in purple and underline. Deletions are

## Information on Complainants

During the intake process, IA and the IPA office gather demographic data about complainants. In 2020, 70% 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 2020. The 2020 data is similar to that in 2019.



In 2018, we began to track those persons filing multiple complaints. Twenty-five individuals filed more than one complaint in 2020. Thus, 11% of citizen-initiated complaints in 2020 were filed by people who filed multiple complaints. This is a slight increase from multiple filers in 2019. 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 track this data to record the impact that complainants filing multiple complaints may have on our statistics. However, our policy will remain to accept every allegation of misconduct filed by a member of the public and assess its merits individually.



# INTERNAL AFFAIRS INVESTIGATIONS AND FINDINGS

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

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

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

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

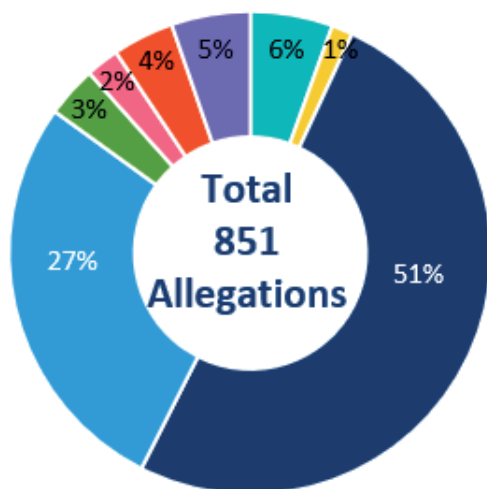


## FINDINGS and DEFINITIONS

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

<p style="text-align: center;"><b>SUSTAINED</b> — 47 allegations —</p> <p>The investigation proved that the alleged misconduct occurred.</p>	<p style="text-align: center;"><b>NOT SUSTAINED</b> — 12 allegations —</p> <p>The investigation did not have sufficient evidence to prove or disprove the alleged misconduct.</p>	<p style="text-align: center;"><b>EXONERATED</b> — 430 allegations —</p> <p>The investigation proved that the alleged acts occurred; however, those acts were justified, lawful and proper.</p>	<p style="text-align: center;"><b>UNFOUNDED</b> — 234 allegations —</p> <p>The investigation proved that the alleged misconduct did not occur, or that the subject officer was not involved in the alleged misconduct.</p>
<p style="text-align: center;"><b>NO FINDING</b> — 29 allegations —</p> <p>The complainant did not disclose necessary information needed for the investigation, or the complainant is no longer available to clarify important facts, or the subject officer is no longer employed by the Department.</p>	<p style="text-align: center;"><b>COMPLAINT WITHDRAWN</b> — 19 allegations —</p> <p>The complainant affirmatively indicates the desire to withdraw his/her complaint.</p>	<p style="text-align: center;"><b>COMPLAINT SUPERVISOR REVIEW</b> — 35 allegations —</p> <p>The allegation involves a minor transgression that the Department feels is best handling by referring that the matter to the subject officer's supervisor and chain of command.</p>	<p style="text-align: center;"><b>OTHER</b> — 45 allegations —</p> <p>Complaints filed outside the one-year time limitation as directed by the Office of the Chief of Police or cases not involving SJPD members</p>

## Dispositions of Allegations Closed in 2020



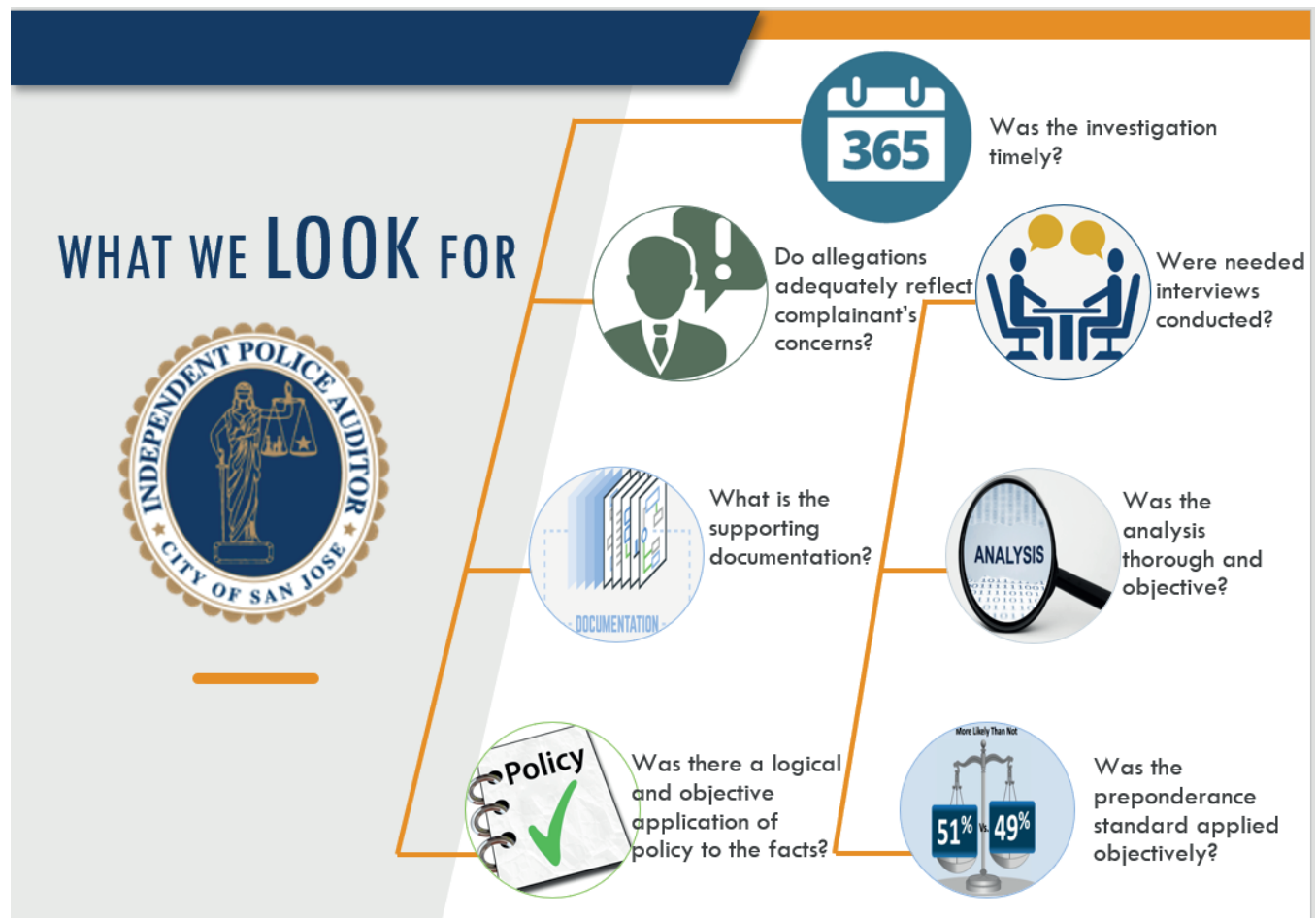
430	Exonerated
234	Unfounded
47	Sustained
45	Other
35	Complaint/Supervisor Review
29	No Finding
19	Complaint Withdrawn
12	Not Sustained

# IPA AUDIT OF CLOSED INVESTIGATIONS

After the Police Department completes its investigation and findings, it forwards all the materials to the IPA for audit. The IPA does not conduct additional investigation into the allegations. The IPA is required to audit all complaints with Force allegations and at least 20% of all other complaints. In 2020, the IPA audited all 62 force complaints and 121 non-force complaints - a total of 183 complaint investigations.

## IPA REVIEW OF IA'S INVESTIGATIONS IS FOUR-FOLD

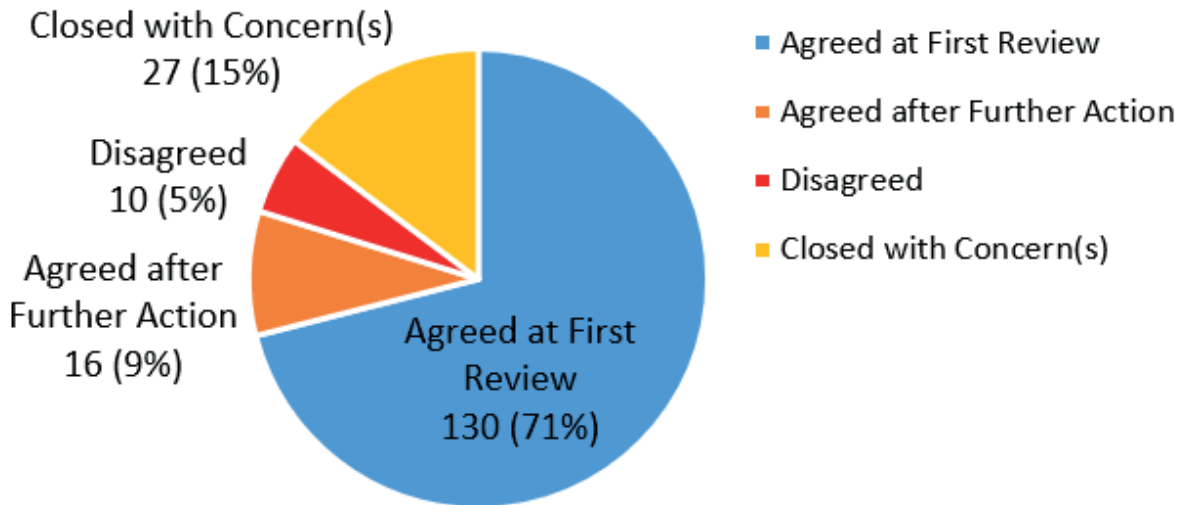
<b>#1</b> Was the investigation fair?	<b>#2</b> Was the investigation thorough?
<b>#3</b> Was the investigation complete?	<b>#4</b> Was the investigation objective?



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

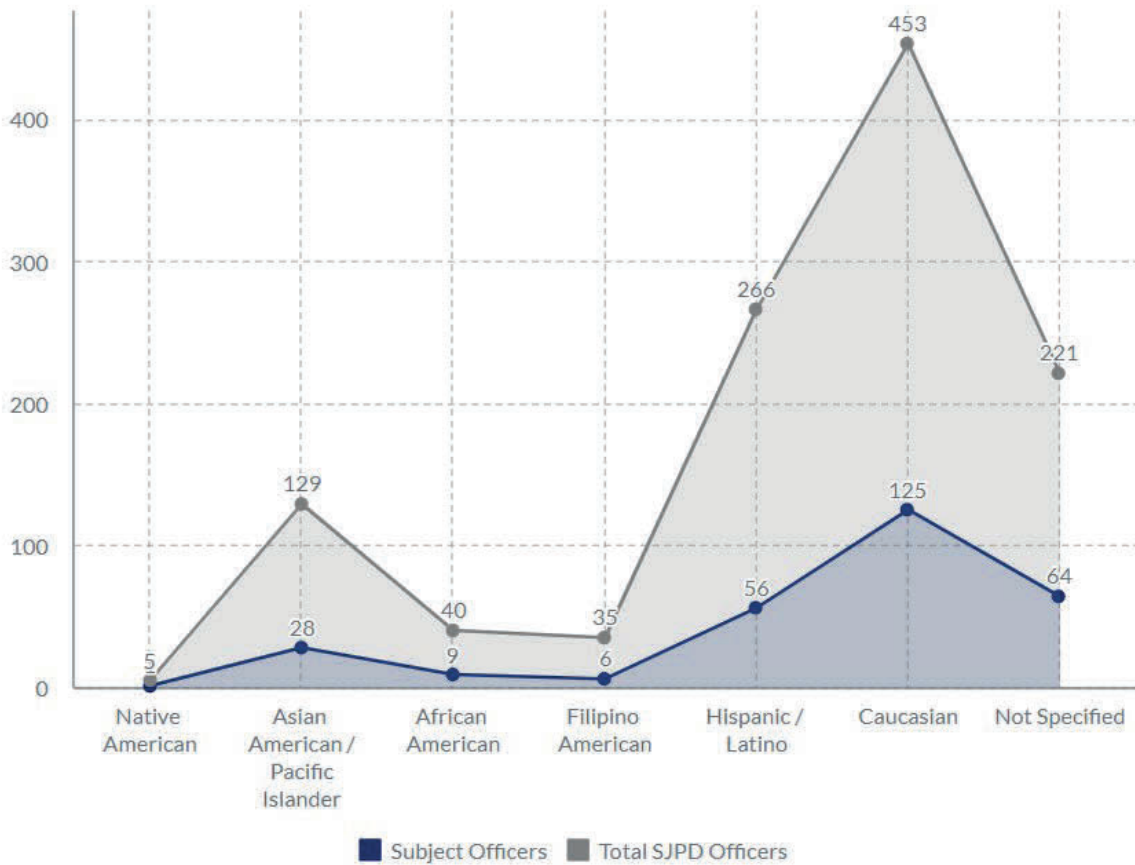
FOUR CATEGORIES OF IPA ASSESSMENT OF COMPLAINT INVESTIGATIONS	
<p><b>— Agreed at First Review —</b></p> <p>The IPA agreed that IA’s investigation was fair, thorough, complete and objective upon initial review.</p>	<p><b>— Closed with Concerns —</b></p> <p>The IPA had issues with IA’s investigation and/or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

The IPA agreed that the IA investigation was fair, thorough and complete in 80% of the cases closed in 2020. This percentage has remained approximately the same over the last three years.



## Information on Subject Officers

The SJPD provided demographic data about subject officers who were employed during the 2020 calendar year. The data relies on officers' self-reporting their ethnicities. The Police Department's data reveals that the number of subject officers who identify with a specific ethnicity continues to mirror the representation of ethnicities of the Department.

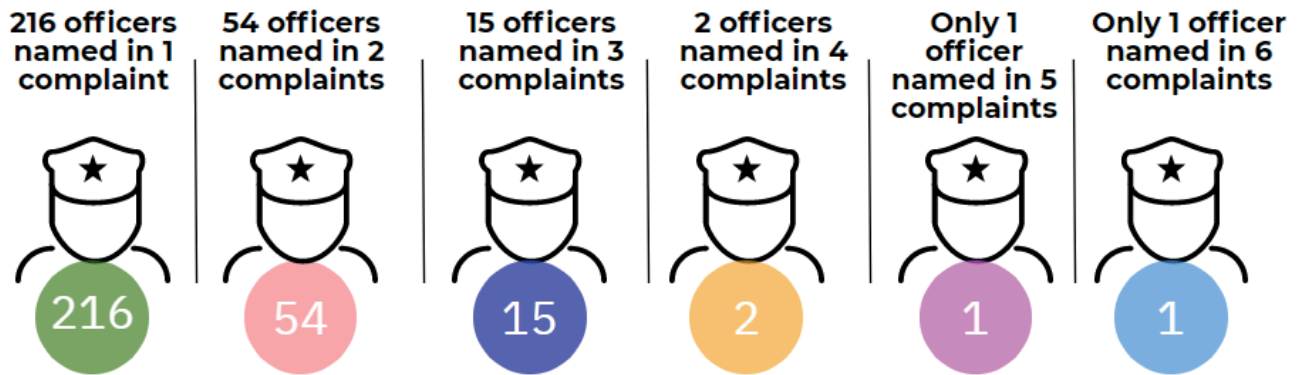




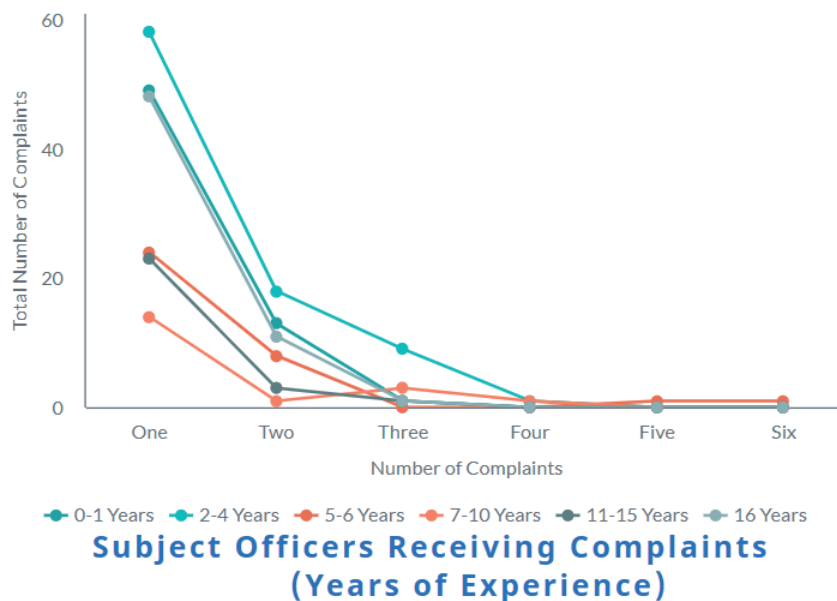
In 2020, the San José Police Department employed 1,149 sworn officers. Of these, 289 were named in one or more complaints. Each individual complaint may name one subject officer or multiple subject officers. A number of officers were named in multiple (two or more) complaints in 2020. Fifteen (15) officers were named three or more complaints; the corresponding number for 2019 was seventeen officers.

## 289 SJPD officers named in complaint(s)

**Each complaint may name one or multiple subject officers**

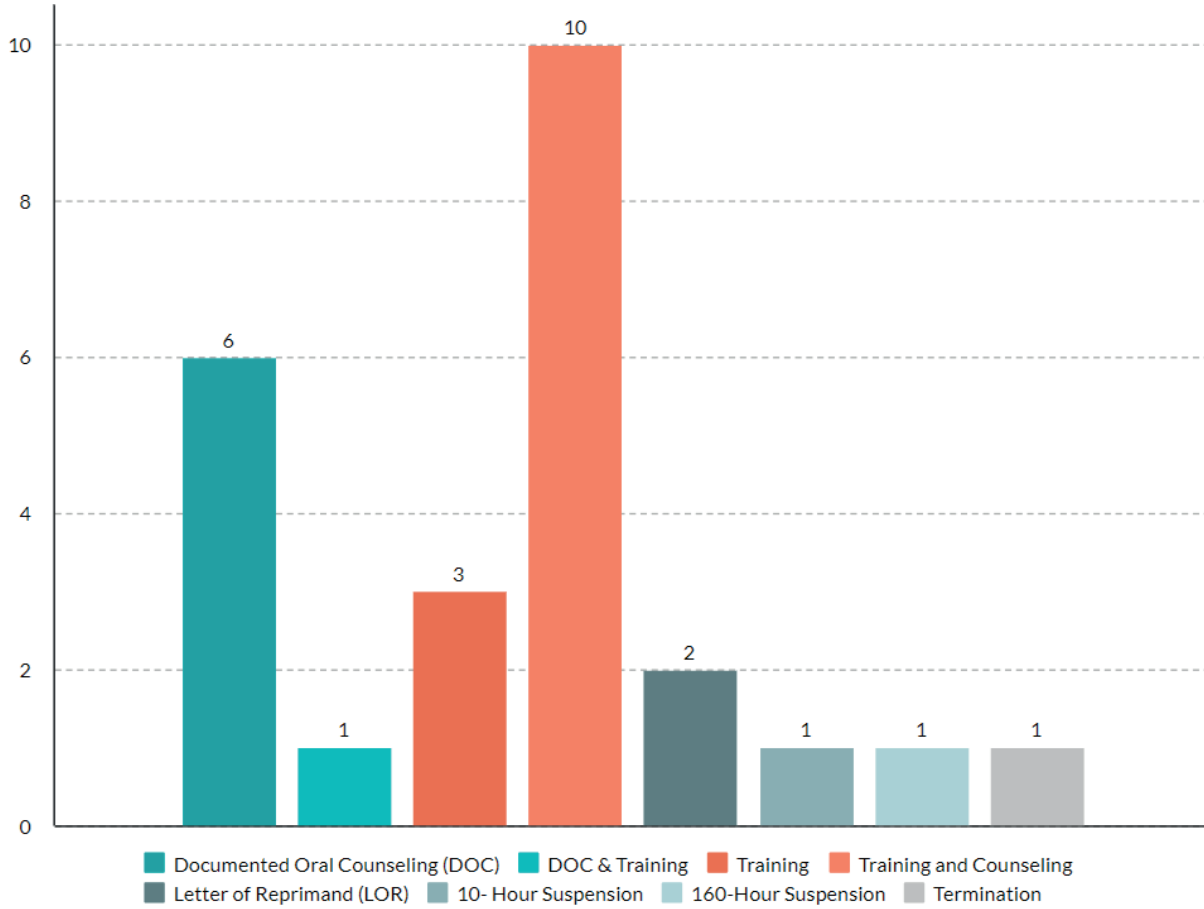


The majority of SJPD officers (75%) did not receive any complaints in 2020. We looked at the experience level of those officers who were named in complaints. Most of the officer named in complaints, regardless of how many years of experience, received between one and two complaints. It is infrequent that an officer is named in more than two complaints. However, in 2020, one officer was named in six complaints.



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

## Types of Discipline Imposed by Department

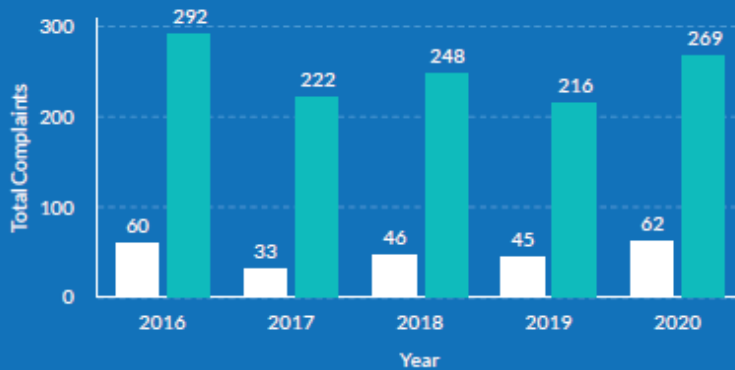


# Use of Force

Percentage of Complaints Received with at Least One Force Allegation



Force Complaints vs. Total Complaints



**62**  
Force Complaints Received

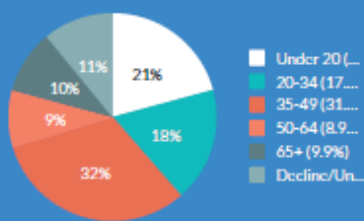


**111**  
Force Allegations Received



17 more Force complaints received in 2020 than 2019

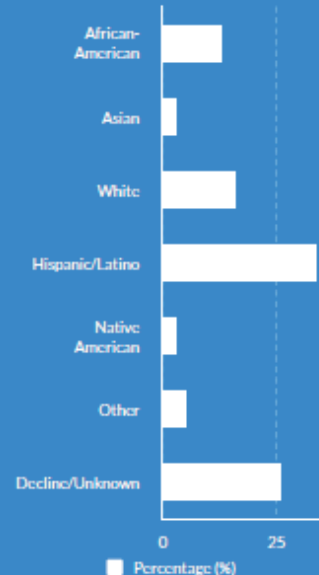
## AGES OF SUBJECTS OF FORCE



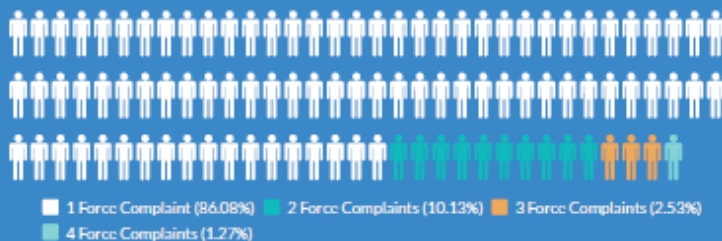
## SJPD FORCE POLICY CHANGES

- Officers have a duty to report excessive force
- Officers have a duty to intervene when witnessing excessive force

## ETHNICITIES OF SUBJECTS OF FORCE



## OFFICERS RECEIVING MULTIPLE FORCE COMPLAINTS



# FORCE COMPLAINTS

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, the San José City Code requires the IPA audit every IA investigation containing a force allegation.

The Supreme Court ruled in *Graham v. Connor*, 490 U.S. 386 (1989) that all force used by police officers must be objectively reasonable. The San José Police Department (SJPD) Duty Manual section L 2602 states that “objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force.”

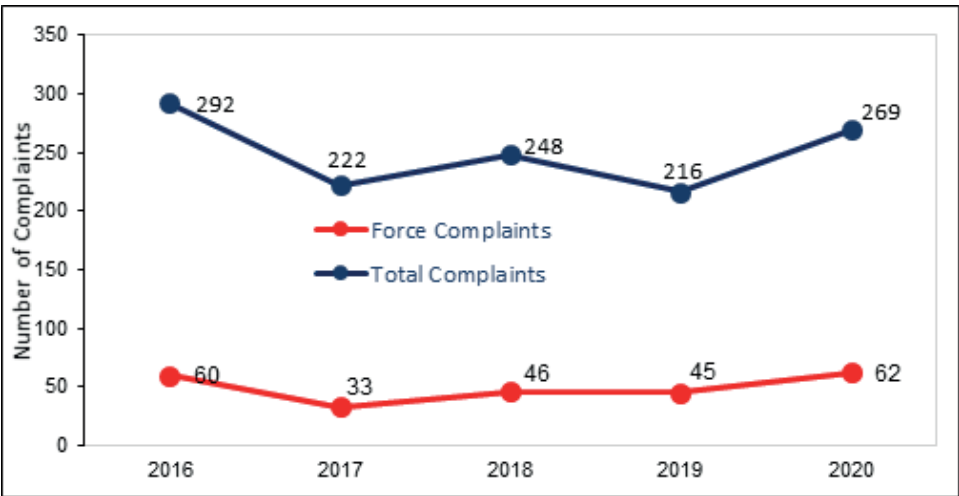
**The Internal Affairs’ investigation must answer these three questions:**

<b>#1</b>	<b>#2</b>	<b>#3</b>
Was the force response lawful?	Was the force response reasonable?	Was the force response within SJPD policy?

The investigation must examine all relevant factors, including:

1. The severity of the crime
2. The threat presented by the suspect
3. The resistance offered by the suspect

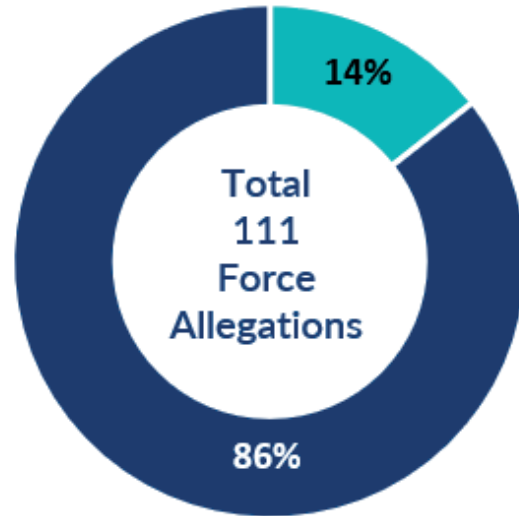
A Force Complaint is a complaint that includes one or more allegations of excessive force. Force complaints usually represent about 20% of all complaints filed.



## Force Complaints and Allegations Received During Civil Unrest

The visuals below reflect complaints about force used by SJPD during the period of civil unrest relative to force complaints not associated with civil unrest incidents. Eleven complaints contained 16 allegations that officers used excessive force during the civil unrest. For reporting purposes, the period of civil unrest started on May 29, 2020, and ended June 30, 2020.<sup>8</sup>

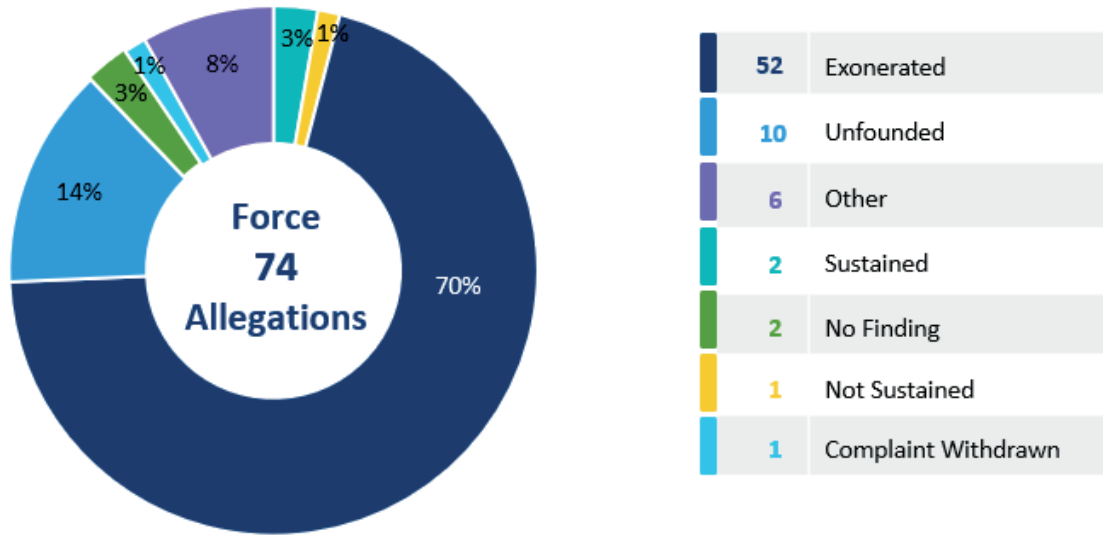
Year	Force Complaints Received As % of Total Complaints
2016	21%
2017	15%
2018	19%
2019	21%
2020	23% (Force Complaints Associated with Civil Unrest Included)
2020	19% (Force Complaints Associated with Civil Unrest Excluded)



<b>16</b>	Allegations received associated with Civil Unrest.
<b>95</b>	Allegations received not associated with Civil Unrest.

**74** allegations of excessive force were closed in 2020.  
**70%** were exonerated.

## Disposition of All Force Allegations Closed in 2020



The IPA collects data about the alleged types of force applications (baton, control hold, police canine, etc.). The total number of the alleged types of force applications is always greater than the total number of Force Complaints because there is often more than one type of force alleged in one complaint. There may also be more than one officer alleged to have used force in one complaint—one officer struck a complainant with a baton, and another officer utilized a takedown maneuver. This example illustrates two different applications of force by two officers in one complaint.

Additionally, an allegation of force may focus only on one application of one type of force or it may focus on multiple applications of force. Our review of the data showed that the 38 Force Complaints closed and audited in 2020 contained 54 alleged applications of force.

### Force Options: Selected Terms

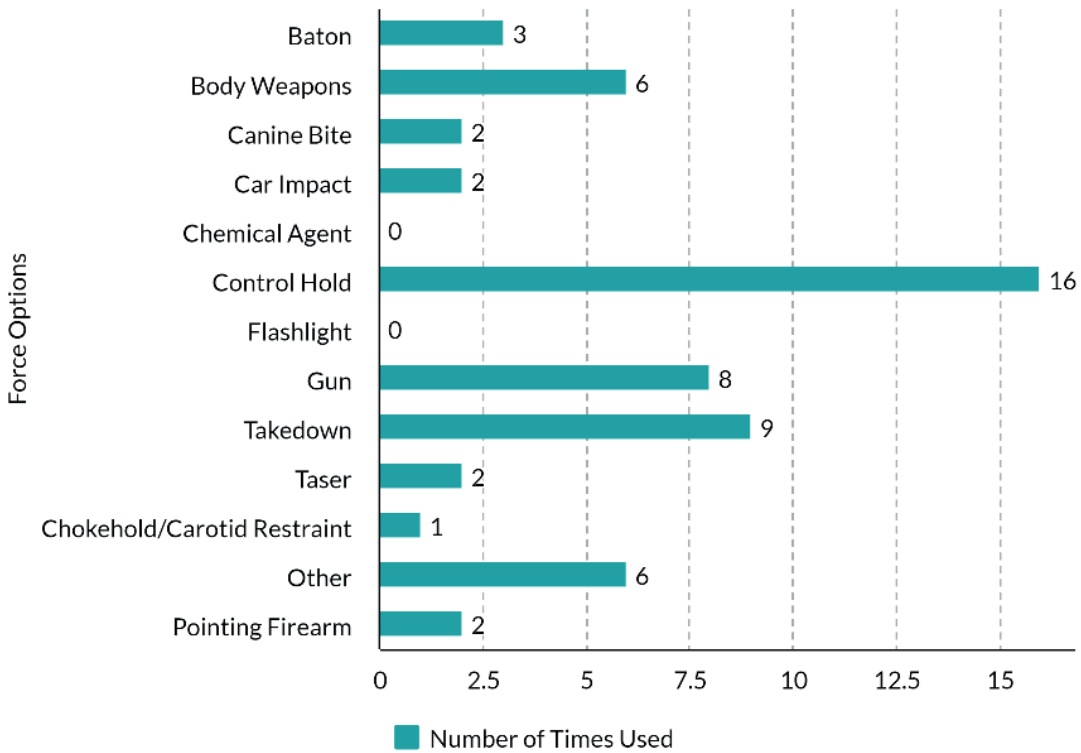
**Force:** SJPD Duty Manual section L 2603 describes force options ranging from mere physical contact (touching) to impact weapons, electronic control weapons (TASER) and deadly force. While the Duty Manual also lists voice commands as a force option, the use of voice commands usually does not provide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

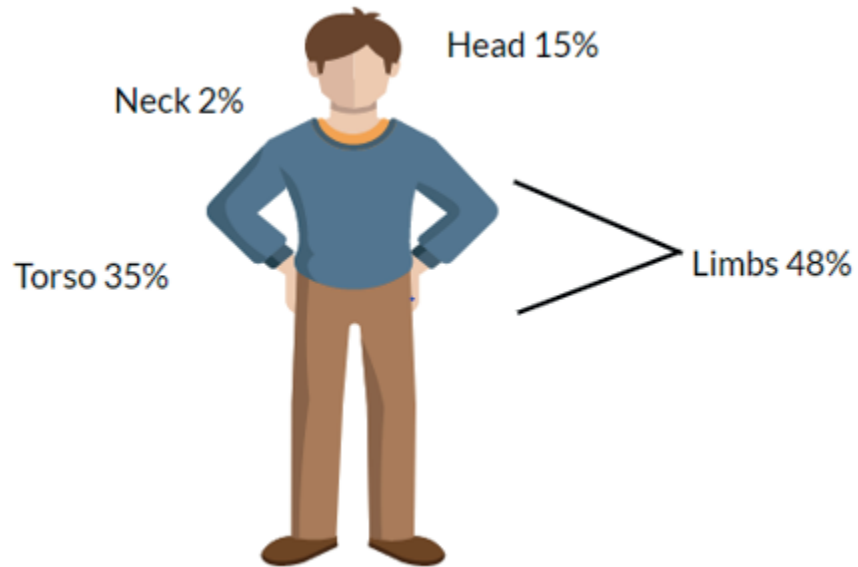
## Types of Alleged Force Applications Used in 2020



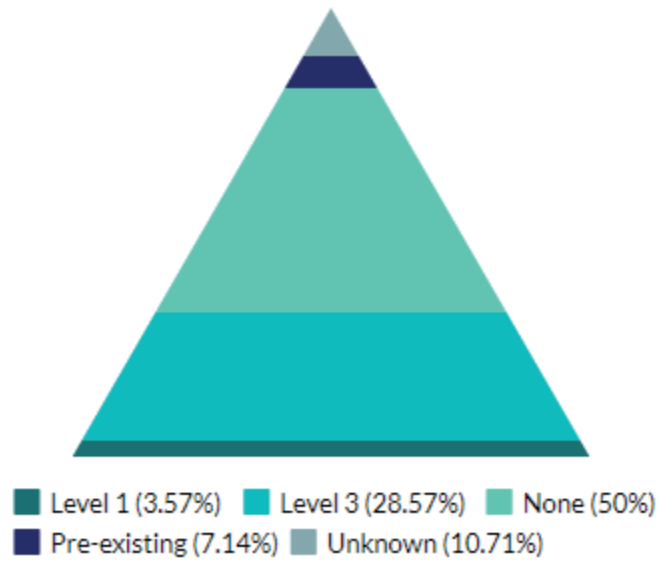
We track the level of injury sustained by civilians through six categories: Level I, Level II, Level III, none, pre-existing, and unknown. Level I contains the most serious injuries and Level III reflects the least serious injuries. Half of all allegations of excessive force did not result in an injury in cases closed in 2020.

LEVEL ONE INJURY	LEVEL TWO INJURY	LEVEL THREE INJURY
<ul style="list-style-type: none"> <li>Fatal injury</li> <li>Broken bones</li> <li>Compound Fracture</li> <li>In-patient hospital stay required</li> <li>Blood loss requiring transfusion</li> <li>Major concussion</li> <li>Loss of consciousness</li> <li>Debilitating chronic pain</li> <li>Damage to organ (other than skin)</li> <li>Effective tasings</li> </ul>	<ul style="list-style-type: none"> <li>Minor bone broken</li> <li>Major laceration requiring stitches</li> <li>Minor concussion</li> <li>Brief loss of consciousness</li> <li>Chipped or lost tooth</li> <li>Major abrasion</li> <li>Sprain</li> </ul>	<ul style="list-style-type: none"> <li>Bruising</li> <li>Minor laceration</li> <li>Minor abrasion</li> </ul>

## Location of Force Applications Alleged in Force Cases Closed in 2020



## Levels of Injury from Force Applications in 2020





# OFFICER-INVOLVED SHOOTINGS

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

## SJPD Officer-Involved Shooting Investigations & Review Panels

- **Criminal Process:** Every officer-involved shooting that results in death is subject to an investigation and review process. The Department's Homicide Unit and the Santa Clara County's District Attorney's office coordinate to conduct a criminal investigation which is then submitted to the Santa Clara County District Attorney.<sup>9</sup>
- **Administrative Process:** The Department's Internal Affairs Unit conducts a separate investigation of fatal and non-fatal incidents. This is an administrative investigation to determine whether the use of force was within Department policy. Until this year, the extent of the IPA's role in reviewing the administrative investigation depended upon whether a member of the public had filed a complaint about the incident. If so, the IPA would audit the Department's administrative investigation of the incident to assess whether it was fair, thorough, complete and objective.
- **Officer-Involved Incident Training Review Panel.** The Department also convenes a shooting review panel to determine whether a possible training, equipment or policy issue exists requiring closer examination. This panel does not determine whether the officer acted within policy. The Department holds these Officer-Involved Incident (OII) review panels within 90 days of fatal and non-fatal incidents. The IPA and IPA senior staff attend the OII review panels and can ask questions about training, procedures and equipment. These sessions provide the IPA with valuable information that can serve as the foundation for future policy recommendations.
- **Measure G,** passed in November 2020, allows the IPA to review unredacted records of officer-involved shootings without a complaint.

## **Significant policy changes around Use of Force came in 2020.**

Effective January 1, 2020, Government Code section 7286 outlined certain statewide use of force requirements for law enforcement agencies. It mandated that these requirements be adopted by January 1, 2021. SJPD's Duty Manual already included most of these elements but lacked guidance on an officer's affirmative duty to act during encounters involving excessive force.

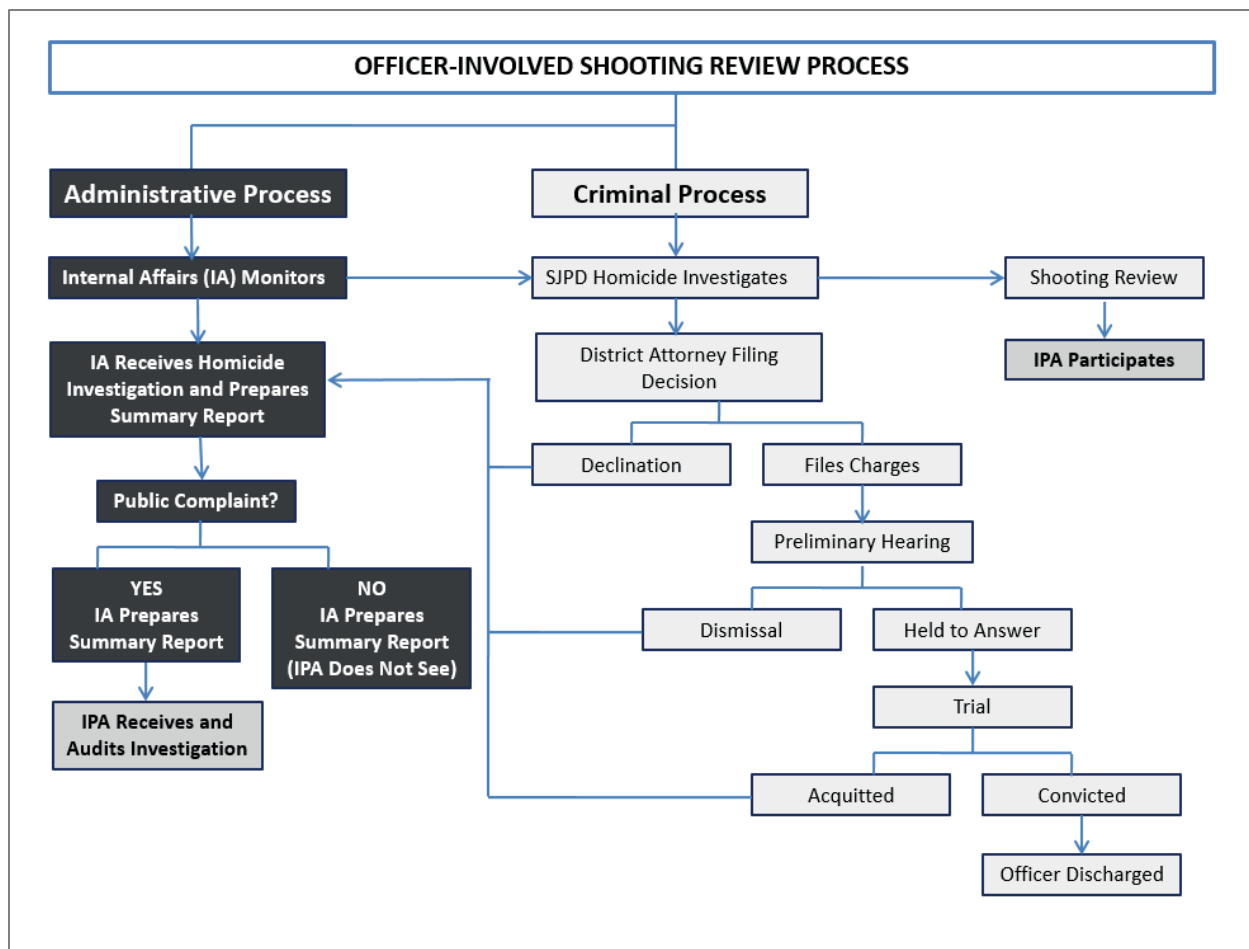


The duty to report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer. (Government Code section 7286(b)(3))



The duty to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject. (Government Code Section 7286(b)(8)).

Duty Manual section C 1402 now includes the verbatim language above. Moving forward, the IPA will be monitoring Department-Initiated investigations that capture these new requirements.



## Officer-Involved Shooting Incidents in 2020

<b>OIS No. 1</b>	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Injured
	Armed --	Metal Pipe
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	None Reported
	CIT on scene --	Yes
	Number of officers who fired weapon	1
	Involved officer(s) experience --	1 year

<b>OIS No. 2</b>	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	N/A (Not Injured/Not Deceased)
	Armed --	45 Cal. Handgun
	Prior convictions --	Yes
	On probation or parole --	Probation: Yes — Parole: No
	Known mental health history --	None Reported
	CIT on scene --	Yes
	Number of officers who fired weapon --	2
	Involved officer(s) experience --	12 years
<b>OIS No. 3</b>	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	Knife
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	Yes
	CIT on scene --	Yes
	Number of officers who fired weapon --	3
	Involved officer(s) experience --	12 years, 1 year, 19 years
<b>OIS No. 4</b>	Race of suspect --	Hispanic
	Gender --	Female (identified as male)
	Deceased or injured --	Injured
	Armed --	Vehicle
	Prior convictions --	Yes
	On probation or parole --	Probation: Yes — Parole: No
	Known mental health history --	None Reported
	CIT on scene --	Yes
	Number of officers who fired weapon --	1
	Involved officer(s) experience --	14 years
<b>OIS No. 5 Suspect #1</b>	Race of suspect # 1--	African American
	Gender --	Male
	Deceased or injured --	N/A (Not Injured/Not Deceased)
	Armed --	Vehicle
	Prior convictions --	Yes
	On probation or parole --	Probation: No — Parole: No
	Known mental health history --	None Reported
	CIT on scene --	Yes
	Number of officers who fired weapon --	1
	Involved officer(s) experience --	3 years

**OIS  
No. 5  
Suspect #2**

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Race of suspect #2--	African American
Gender --	Male
Deceased or injured --	N/A (Not Injured/Not Deceased)
Armed --	Vehicle
Prior convictions --	Yes
On probation or parole --	Probation: No — Parole: No
Known mental health history --	None Reported
CIT on scene --	Yes
Number of officers who fired weapon --	1
Involved officer(s) experience --	3 years

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# USE OF FORCE POLICY CHANGES



## Here are the most significant changes to SJPD's Use of Force policies in 2020:



### Chokeholds

Duty Manual section L 2628.1 was revised on June 9, 2020. It defines chokeholds and states that they "are prohibited regardless of whether they are applied using an officer's body part (e.g. hand, arm, knee, or foot) or with an inanimate object (e.g. flashlight or baton)." An exception remains for deadly force encounters.

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### Carotid Restraint

Duty Manual section L 2627 was revised on June 9, 2020. It differentiates between a chokehold and a carotid restraint and states that carotid restraints are "prohibited as an authorized control technique to overcome resistance and shall not be used for this purpose." An exception remains for deadly force encounters.

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### Projectile Impact Weapons

Duty Manual section L 2629.5 was revised on June 20, 2020. It prohibits the use of projectile impact weapons for crowd control and crowd dispersals. An exception remains for using a projectile impact weapon against a person "who is actively attacking an officer or another person or when an armed person poses a threat to officers or other persons." Officers are also reminded of their responsibility of accurate round placement and their duty to avoid striking unintended subjects and to consider alternate solutions if there is an unnecessary risk of hitting unintended individuals.

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### Chemical Agents

Duty Manual sections which relate to the use of chemical agents were revised on May 22, June 18, and October 30, 2020. The Department now uses a new version of OC spray -- SABRE Red Gel Formula. This has a higher OC concentration and is delivered in a gel stream which limits the risk of cross exposure/contamination.

The circumstances justifying their use remain unchanged as well as reporting requirements. There are new first aid procedures required after its use including a requirement to request emergency medical personnel for on-scene medical assessment.

The use of Chlorobenzylidene Malononitrile (CS) gas for crowd control purposes must now be approved by the Chief of Police, Assistant Chief of Police, or their designee.



### **Knock Notice Announcement**

Duty Manual section L 4803 and L 4805 were revised on September 16, 2020 to bring them into alignment with modern best practices, which requires officers to:

1. Knock
2. Identify oneself as a peace officer
3. Describe the purpose/authority to enter
4. Demand entry
5. Wait a reasonable amount of time before entering to allow the occupants to either voluntarily admit the officer or refuse to admit the officer.

Duty Manual section 4805 details when less than full compliance with L 4803 is permissible. This occurs when an exigency arises prior to or during the execution of the search or seizure. An officer must be able to point to specific facts at the time of entry which would lead a person of ordinary care to believe that compliance would result in imminent danger to the life of the officer or other innocent bystanders or unreasonably frustrate the arrest.

Officers should, at a minimum, announce themselves as being law enforcement officers while making entry to reduce the risk of violence. Exceptions to this requirement may occur in rare circumstances such as a hostage or active shooter scenario.



### **Video Footage Release**

Duty Manual section C 2205.1 was added on November 13, 2020 which requires the public release of body-worn camera footage or other City-generated video and audio clips regarding police incidents of extraordinary public interest despite any potential impact to ongoing criminal, administrative, or civil matters. "Incidents of extraordinary public interest" include, but are not necessarily limited to, those in which interactions between the police and the public result in significant outcry for an understanding of the known facts and circumstances that led up to the incident and how it unfolded, such as in major protests or controversial uses of force.



# INDEPENDENT POLICE AUDITOR COMMUNITY OUTREACH

# 2020

Presentations  
**21**

Meetings/Events  
**43**

## COMMUNITY OUTREACH 2020

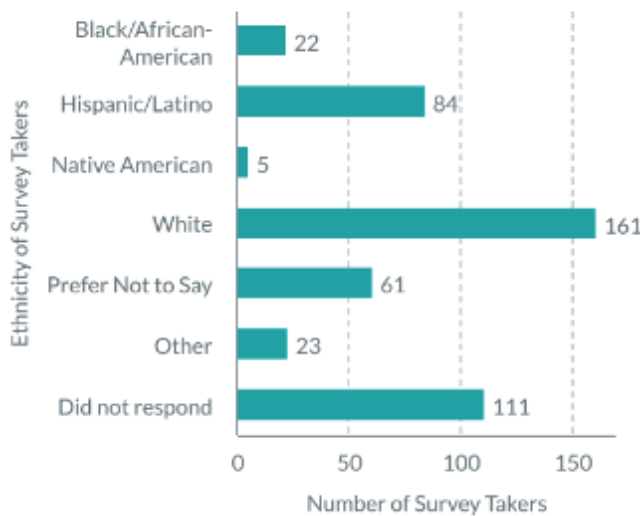
**+339%**

INCREASE IN  
SURVEY  
TAKERS

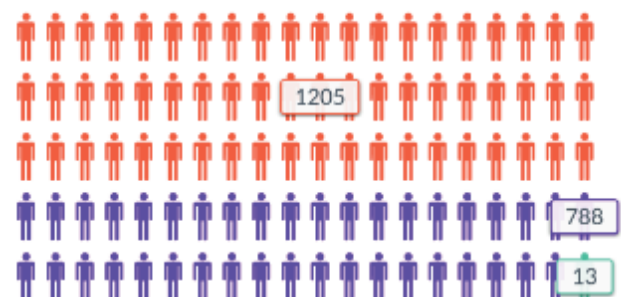


- Presentations (15.79%)
- Community Events/Meetings (32.33%)
- Meet & Greet/Material Distribution (3.01%)
- Media Mentions/Interviews (48.87%)

## 2020 COMMUNITY SURVEY



## COMMUNITY MEMBERS REACHED



- Presentations and Media (60.07%)
- Community Events and Meetings (39.28%)
- Meet & Greet/Material Distribution (0.65%)

## COMMUNITY OUTREACH

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**2020** was a year like no other and the IPA office's outreach efforts had to adjust accordingly. From March 2020 to present, like the rest of the City of San José, the IPA office suspended all in person outreach efforts and moved efforts to online meetings and use of social media.

In 2020, our outreach plan evolved; we began to pilot a more innovative approach to community

**The IPA is active on Facebook, Twitter, and Instagram. Like and/or follow us to get updates and information @SanJoseIPA**



engagement. We took the steps necessary to have a wider reach in San José and the IPA office began the process of incorporating technology to reach our residents leveraging a mix of traditional and technological community engagement tools (i.e. social media, informational flyers and updates) including a dedicated website [SJIPAengage](#) that makes more data accessible to the public.

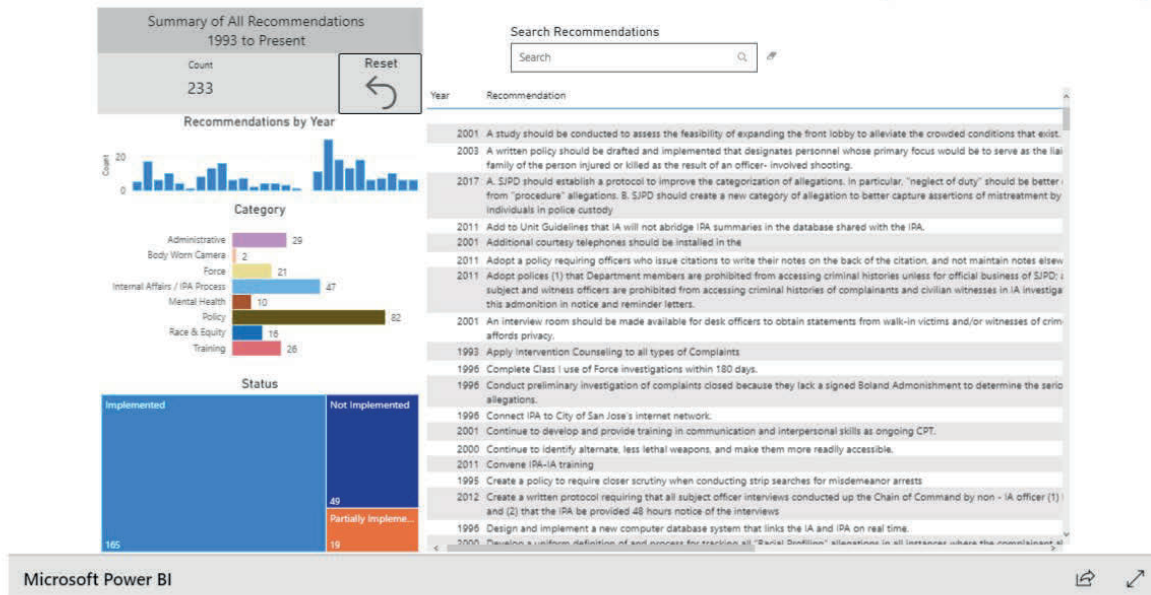
We created a Policy Dashboard which can be viewed on our City website. The purpose of the policy dashboard was to provide members of the public a more comprehensive and transparent

of the IPA recommendations and allow for residents to have an opportunity to see IPA work in an accessible and easy to read format.

The IPA office visualized data from policies dating back over 25 years and formatted into an easy to read and interactive format for the public to review and use.

*This policy dashboard is modified on a quarterly basis to reflect changes and updates.*

## INTERACTIVE DASHBOARD OF ALL IPA RECOMMENDATIONS (1993 TO PRESENT)



In 2020, the IPA office continued to use the SJI PAENAGE.COM site to collect community perspective on public safety. Since the inception of our 10-question community we collected over 700 surveys from respondents across San José and Santa Clara County. In 2021, we will be doing an analysis of the quantitative and qualitative data we collected.



## Community Connections

Despite the challenges of the pandemic and our limited ability to meet with community we were able to connect and present to over **2,100** San José residents. We also increased our visibility using social media and traditional media source.

IPA continues to meet with the public utilizing online meeting software and we continue to staff solicit public outreach opportunities to ensure that a diverse cross-section of the community learns of our services. <sup>10</sup> To request presentation from the IPA office individuals can call 408-794-6226 or email: [ipa@sanjoseca.gov](mailto:ipa@sanjoseca.gov).

## Independent Police Auditor Advisory Council

The Independent Police Auditor Advisory Council (IPAAC)<sup>11</sup> 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.

2020 IPA Advisory Council Members		
Name	Employer/Affiliation	Occupation
BJ Fadem	Law Offices of B.J. Fadem and Associates, APC	Attorney
Mydzung Bui	Santa Clara Unified School District	Educational-related mental health services coordinator
Otis Watson	New York Life Insurance	Agent
Vianni Garcia	Fresh Lifelines for Youth	Law Program Site Manager
Walter Hudson	Retired	Community Advocate
Derrick Sanderlin	MACLA	Sound Technician



# IPA POLICY RECOMMENDATIONS

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

## 2020 RECOMMENDATIONS

- 1 Implement a Policy Governing an Officer's Use of Social Media
- 2 Make RIPA Datasets Publicly Available and Provide an Annual Report
- 3 Clarify When an Officer Can Require Identification or Merely Request It
- 4 Clarify How Officers Should Use the Call-type *Gang-Related Designation*
- 5 Develop a Separate Policy Regarding High-Risk Car Stops
- 6 Develop a Mechanism for the Department to Obtain Results of Blood/Breath/Urine Tests
- 7 Open an Administrative Investigation When an Officer Is Named As a Defendant

# 1

## IMPLEMENT A POLICY GOVERNING AN OFFICER'S USE OF SOCIAL MEDIA

In June 2020, news organizations nationwide reported that four active San José police officers were placed on administrative leave as the Department launched an investigation into a “closed” Facebook group where racist comments and posts were made. There was swift and vocal reaction by Police Chief Garcia, San José Mayor Liccardo, and Santa Clara County District Attorney Rosen.

The Police Department has not moved quickly to implement a social media policy. In September 2009, Chief Davis issued a **memorandum** to Police Department personnel about the use of social networking sites. This document listed *guidelines* for officers to *consider* when posting information on social networking sites. These guidelines were never formalized into Department policy and thus expired after one year.

In September 2012, an SJPD officer issued the then-Mayor a citation for failing to use his turn signal. According to local media, after the officer publicized an image of the ticket on social media, *police officers and dispatchers cheered*.<sup>12</sup> Internal Affairs opened investigations regarding the conduct of those involved. Chief Moore chastised the officers but did not implement a social media policy.

In October 2013, an SJPD officer created a disparaging Facebook post critical of a Councilmember. Two other officers also posted or commented on Facebook about the initial post. Internal Affairs opened investigations regarding the conduct of these three officers. In November 2013, Chief Esquivel issued a **training bulletin**. The bulletin was a *reminder* to officers that improper conduct on social media may be subject to Department policies and procedures. The reminder in this bulletin was never formalized into Department policy and thus expired after one year.

In 2015, a SJPD officer was fired after tweeting violent messages. In 2016, an arbitrator ordered his reinstatement to the Department. Chief Garcia did not implement a social media policy.

In 2020, SJPD had no social media policy-- directives about social media given in prior years expired before being formally incorporated into the Duty Manual. Thus, the allegation brought against the four Facebooks officers was CUBO – conduct unbecoming an officer. In our experience, a sustained finding on CUBO is difficult to obtain. Given the prevalence of social media in today’s society, it would be prudent to have a policy so that officers are provided clear guidance about their use of social media on and off duty. The Department should classify a violation of that policy to be a procedure allegation unless the officer’s conduct is so egregious that it warrants additional analysis under a CUBO allegation.

In March 2021, Acting Chief Tindall added eight new sections to the Duty Manual governing Department members use of the Internet and social networking sites.<sup>13</sup>

## 2

### MAKE RIPA DATASETS PUBLICLY AVAILABLE AND PROVIDE AN ANNUAL REPORT

The Racial and Identity Profiling Act of 2015 (AB 953) requires all city and county local law enforcement agencies in California to collect perceived demographic and other detailed data regarding pedestrian and traffic stops. The data to be collected includes, among other things, the perceived race or ethnicity, gender, and approximate age of the person stopped, as well as other data, such as the reason for the stop, whether a search was conducted, and the results of any such search. Law enforcement agencies subject to this reporting requirement must report this data to the California Attorney General's Office every year, with specific reporting deadlines set forth in the statute.<sup>14</sup>

The Racial and Identity Profiling Board release a comprehensive annual report. The most recent report using data provided by SJPD and 14 other California law enforcement agencies was published in January 2021.<sup>15</sup> In January 2021, the Board also published a five-page Quick Facts sheet.

## RIPA | RACIAL AND IDENTITY PROFILING ADVISORY BOARD 2021 REPORT QUICK FACTS

### Actions Taken During Stop by Officers

Across all stops, the most common actions taken by officers were:



Officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more Black individuals than White individuals, despite stopping more than double the number of White individuals (1,322,201) than Black individuals (635,092).

Currently fifteen law enforcement agencies, including the San José Police Department, are mandated to provide RIPA data to the California Attorney General office annually. The Open Justice Project provides aggregate data on all reporting agencies and also separate data on individual agencies. However, given the amount of data, the download process is cumbersome.

<https://openjustice.doj.ca.gov/exploration/stop-data>

Nine of the 15 reporting agencies provide information about local data on their websites.<sup>16</sup> Five of the 15 provide links to data sets on local data on their websites. Accessing the data on these local sites is much easier.

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Los Angeles Sheriff - <https://lasd.org/transparency/bill953/>

San Diego Police Department - <https://data.sandiego.gov/datasets/police-ripa-stops/>

Long Beach Police Department - <http://www.longbeach.gov/police/about-the-lbpd/lbpd-stop-data/>

Oakland Police Department - <https://www.oaklandca.gov/resources/stop-data>

Sacramento Police Department - <https://www.cityofsacramento.org/Police/Transparency/Vehicle-Stop-Data-History-and-Information>  
[https://data.cityofsacramento.org/datasets/a8cb4c137c824e939dca586c6dc77da9\\_0](https://data.cityofsacramento.org/datasets/a8cb4c137c824e939dca586c6dc77da9_0)

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The IPA recommends that the San José Police Department post its RIPA data sets so that the public can access them. These posts should be on the SJPD's website or the San José City's Open Data Portal.<sup>17</sup> The Open Data Portal states:

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City of San José is committed to an open, honest, and effective government and strives to consistently meet the community's expectations for excellent services in a positive and timely manner, and in full view of the public. With the advancement in information technologies and the increasing ability to share data more easily across multiple platforms and online, appropriate leveraging of these tools to make information accessible and usable by the public can help improve public service delivery and fuel entrepreneurship and innovation. The Open Data Portal serves as means to implement the City's Open Data Policy and Open Data Community Architecture which is intended to help the City better utilize its data.

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Open Data is an important component of this commitment; through making its data publicly available and easily accessible, the City will empower the community to engage with government on a new level and stimulate new ideas, new services, and new economic opportunities. In addition, Open Data will provide a new platform to increase the sharing of information among City departments, improving the City's ability to deliver services to the community efficiently and effectively.

The benefits of open data are recognized worldwide.<sup>18</sup> Providing the San José local RIPA data sets will promote transparency. It will allow local researchers and high school/college departments to analyze the data from their own perspectives. Given the community interest in policing, we recommend that these local data sets be made available in a manner according to best practices.<sup>19 20</sup>



Many persons in our community do not know how to access or use open data portals. For those reasons, the IPA also recommends that the Department prepare an annual public report about the data including visuals and text. The City of Oakland provides an annual statistical overview of Oakland Police Department discretionary stop data of calendar year *to provide transparency through the sharing of the results and impacts of our actions*. <https://cao-94612.s3.amazonaws.com/documents/2019-Stop-Data-Annual-Report-6Oct20-Final-Signed-1.pdf>

Such a report will educate the public about police actions in our community, thus allowing them to better engage in discussions about the role of police in public safety. An example from the 2019 Oakland Report is below.

**Table 3 - Stop Reasons**

Race	Consensual Encounter & Search		Reasonable Suspicion		Probable Cause		Traffic Violation	
	Stops	%	Stops	%	Stops	%	Stops	%
Afr American	83	1%	1,076	14%	1,664	22%	4,353	58%
Hispanic	43	1%	383	10%	716	19%	2,543	67%
White	18	1%	133	6%	276	14%	1,215	76%
Asian	8	1%	59	8%	139	16%	751	71%
Other	2	0%	47	7%	74	12%	489	78%
<b>Total</b>	<b>154</b>	<b>1%</b>	<b>1,698</b>	<b>12%</b>	<b>2,869</b>	<b>20%</b>	<b>9,351</b>	<b>64%</b>

Race	Community Caretaking		Probation/ Parole		Truant/ Education Code		Grand Total
	Stops	%	Stops	%	Stops	%	
Afr American	188	3%	145	2%	7	0%	7,516
Hispanic	77	2%	42	1%	5	0%	3,809
White	18	2%	14	1%	1	0%	1,701
Asian	51	3%	7	0%	2	0%	991
Other	14	2%	1	0%	0	0%	627
<b>Total</b>	<b>348</b>	<b>2%</b>	<b>209</b>	<b>1%</b>	<b>15</b>	<b>0%</b>	<b>14,644</b>

### 3

## CLARIFY WHEN AN OFFICER CAN REQUIRE IDENTIFICATION OR MERELY REQUEST IT

We recommend that the SJPD Duty Manual clearly distinguish between (1) when an officer can **require** community members to identify themselves or produce identification documents and (2) when the officer may **only request** identification but not demand it.

Unlike other states, California does not have a stop and identify statute. California Vehicle Code section 12951 does require that those persons **driving vehicles** must have a valid driver's license in their possession and **must provide that license** to officers enforcing the provisions of the Vehicle Code. However, law enforcement cannot lawfully order a **passenger** to identify himself, absent reasonable suspicion that the passenger had committed a criminal offense.<sup>21</sup> This includes vehicle and pedestrian stops.

Officers may request voluntary consent to supply identification. That request should be in the form of a question,<sup>22</sup> not an order,<sup>23</sup> and be given under circumstances that avoid any implied or overt coercion. If the consent is a submission to an assertion of authority, threats, fear or retribution, then that consent is not voluntary.

Two complaints form the basis of this recommendation.

- In one complaint, a vehicle passenger asked why the subject officer wanted his identification. The subject officer documented that he informed the passenger that he was **required to identify** himself when requested by a police officer while he is an occupant in a vehicle detained under probable cause. In this case, the officer's insistence that the passenger identify himself was the reason why the District Attorney did not charge the passenger with resisting arrest.
- In the other case, the subject officer ordered a passenger out of a vehicle because the passenger was allegedly *aggressive* to his request for identification. The officer's BWC video showed the passenger was uninvolved, calm, and waiting in the passenger seat for the officers to complete their stop of the driver (a relative). The subject officer directed the passenger to sit on the bumper of the patrol vehicle and told him, *Just so you're aware, we have every right to identify everyone in that vehicle.* This is inaccurate. Officers may request identification from anyone in the vehicle during a lawful traffic stop. But they cannot demand it. The request may not prolong a lawful detention without reasonable suspicion that the passenger is involved in criminal activity.

For reference, the San Francisco Police Department's policy on this issue, General Order 5.03, subsection D INVESTIGATIVE DETENTIONS states:

REQUESTS FOR IDENTIFICATION. The refusal or failure of a person to identify himself or herself or to produce identification upon request of a police officer cannot be the sole cause for arrest or detention, except where the driver of a motor vehicle refuses to produce a driver license upon the request of an officer enforcing the Vehicle Code or the Traffic Code. Except in the case of a driver of a motor vehicle, a person's refusal or failure to produce identification is not unlawful, and an officer may not threaten a person with arrest solely for his or her refusal to identify himself or herself.<sup>24</sup>

Other cases and anecdotal accounts from outreach events underscore this concern. In sum, community members may perceive an officer's demand to identify themselves or provide identification as harassing, intimidating, and/or bias-based policing. To improve community relations, it is important that our officers know when identification can be required or only requested.

## 4

**CLARIFY HOW OFFICERS SHOULD USE THE CALL-TYPE  
GANG- RELATED DESIGNATION**

The IPA reviewed a complaint in which a suspect was arrested for being under the influence of a controlled substance. The suspect was not a validated gang member. The arresting officer, however, used the following designation for the *final case type* in the dispatch record:

11550G USE OF CONTROLLED SUBSTANCE, **GANG RELATED**

We were concerned about attaching a gang related designation in an arrest not related to gangs. We ask Internal Affairs for the basis upon which the subject officer labeled the event gang related.

The Internal Affairs Unit Commander responded after seeking input from various other units within SJPD.

- The **Research & Development Unit** confirmed there are no Duty Manual sections or official policies regarding type-changing calls or the *gang* designation for a call type.
- The **Violent Crimes Enforcement Team (VCET)** supervisor said they use the call-type *gang* designation recorded in the type-change for statistical and reporting purposes, as a way to track VCET activity. He speculated that a VCET officer who had prior knowledge of a person being a *validated* gang member could theoretically use a *gang* designation in the call-type, with no additional reason, but there should be some additional documentation regarding the reason for the use of the “*gang*” designation in the report or CAD. He admitted there was no official training about the use of the designation, even for VCET.
- The **Gang Investigations Unit (GIU)** commander explained the *gang* designation on calls might flag certain calls associated with an individual as being gang-related, but if there are no details regarding validation during the call then it is not useful in assisting in making a gang case.
- The **Crime Analysis** analyst said they use the *gang* designation for statistical purposes when reporting call-types for geographies to Command Staff, but do not dig into the individuals involved in the calls or even audit whether or not the calls should be considered *gang* calls or not. They simply pull the data.

The IA commander concluded:

**There is no training for officers as to when the gang classification is appropriate, so it is sometimes misapplied.** The classification itself is used for statistical purposes, but the call details and suspect details are not part of this analysis. Where the event details are

used to build a gang enhancement case, the type-changing of the event is irrelevant (except maybe as a starting point), since the relevant details must be in the report itself. **There is likely an opportunity for officer training with respect to the types of calls deserving of a *gang* designation.** (emphasis added)

The use of gang designations must be both appropriate and uniform. Thus, training and precise guidelines should be created. The current use of *gang related* for statistical purposes is dubious given that there has been no training on when to attach such a label. Data gathered and segregated by use of this label should be re-evaluated.

In March 2021, Acting Chief Tindall issued a Training Bulletin to align Department members with the best practices of when to use the CAD gang designation.<sup>25</sup>

## 5

## DEVELOP A SEPARATE POLICY REGARDING HIGH-RISK CAR STOPS

According to California POST Learning Domain 22, *high-risk stops*<sup>26</sup> are generally made when patrol officers believe that one or more of the occupants may (a) be armed (b) represent a serious threat to the officer, or (c) has committed a felony. Because high-risk stops usually involve police officers pointing weapons, community members may remember these encounters for a long time.

San José Duty Manual Section L 2212 contains the only reference to a *high-risk* car stop.

### L 2112 CAPTURE OF SUSPECTS:

*Revised 06-01-07*

Officers must strive to maintain tactical discipline at the conclusion of all pursuits in order to promote the safety of officers, citizens and suspects. Officers can best control the scene by following **common "high-risk" car stop procedures** consistent with fundamental tactical principles. Such principles include making use of available cover and concealment, attempting to control any escape routes the suspect(s) may use and attempting to order suspects to leave their positions of cover and concealment while officers maintain a position of advantage and safety. **[emphasis added]**

This sole reference to *high-risk* car stops appears in the chapter governing VEHICLE PURSUITS. This placement is very important because vehicle pursuits initiated by peace officers in California are highly regulated. These regulations were enacted after public concern about injury and death caused by such pursuits.<sup>27</sup> Governmental entities who seek immunity from liability for any injury, death or property damage arising from such pursuits must meet certain requirements<sup>28</sup>, including:

- The written policy must minimally address 13 subjects set forth in the statute
- Agencies must provide officers with *regular and periodic* annual training consistent with POST guidelines outlined in Vehicle Code § 17004.7(d).<sup>29</sup>
- Promulgation of the policy must include a requirement that all officers certify in writing they have received, read and understand the policy.

SJPD's vehicle pursuit policy L 2100 outlines numerous steps an officer must consider before initiating a vehicle pursuit. The initiating unit must notify Communications (L 2111). A sergeant must monitor the event and respond to the termination of the pursuit to *facilitate the stabilization of the incident and the capture of the suspects*. In short, given the **very high threshold** that must be met before an officer can **initiate a pursuit**, one can readily see why the policy would recommend officers using ***high-risk car stop procedures at the conclusion of all pursuits***.

What about *high-risk* stops that are not connected to a vehicle pursuit? The Duty Manual is deficient in this aspect. Not all *high-risk* car stops occur at the conclusion of a pursuit. Thus, clear direction should be given about the criteria for such stops. The criteria should include what level of risk warrants a *high-*

*risk* car stop, who should be notified, how the stop is recorded, and the role, if any, of a supervisor.<sup>30</sup> What should be done if the suspect flees? <sup>31</sup> These steps ensure that *high-risk* car stops are conducted with the officer's safety in mind. We also believe that conducting *high-risk* car stops should be documented <sup>32</sup> so that the Department knows who is engaging in such conduct, where and under what circumstances. This also provide a means to evaluate the basis for the stop.

Other law enforcement agencies have policies that govern *high-risk* car stops.<sup>33</sup> The California Commission on Peace Officer Standards and Training (POST) Learning Domain on Vehicle Pullovers devotes a chapter to *high-risk* car stops.<sup>34</sup>

We do not have an issue about SJPD conducting *high-risk* car stops if they meet a **defined threat assessment**, if they meet a **safety concern threshold**, are **documented**, and are conducted in accordance with **equality of enforcement** (Duty Manual section C 1305).

The IPA has reviewed two complaints received/closed in 2020 that raise concerns about *high-risk* car stops. These stops did not follow a vehicle pursuit.

- In one complaint, the subject officer conducted a high-risk car stop in the late afternoon of a sunny summer day. He said the suspect's car, which did not have a front license plate, failed to pull over immediately when the officer activated his lights and siren. The car pulled over approximately 20 seconds later. The subject officer said that the driver attempted to reach for something – possibly a weapon – from under the seat. However, he did not inform the officer sitting next to him that he would be conducting a high-risk stop nor the reasons for heightened danger. The officer did not ask the driver about weapons in the car. The officer did not search the car. The officer did not inform dispatch nor his sergeant that he was conducting a high-risk car stop.
- In another complaint, a reporting party called police to report that she and her grandson were in an argument; she would not allow him to take home a scooter. The grandson left her house. She indicated that he was in vehicle of a certain make and color with **two or three occupants – all Hispanic. The driver was Hispanic female with auburn hair**; the passengers were one or two Hispanic males. She said did not think that four persons would be in the vehicle. Officers were dispatched because the reporting party's grandson had an outstanding warrant for felony assault. With guns drawn, officers conducted a high-risk stop in the area on a vehicle with the same make and color. This vehicle was not speeding or evading the officers. This car had **four occupants**. This vehicle was **driven by a white male** and occupied by **an Asian male, a Hispanic male and a Hispanic female**. We had concerns that the officers did not follow the vehicle to better ascertain whether the occupants matched those provided by the reporting party before removing each at gunpoint.

In March 2021, Chief Mata made changes to the Duty Manual to ensure that a supervisor responds to all high-risk vehicle contacts and that these contacts are documented for further reference.<sup>35</sup>

## 6

**DEVELOP A MECHANISM FOR THE DEPARTMENT TO OBTAIN RESULTS OF BLOOD/BREATH/URINE TESTS**

The basis for this recommendation stems from a complaint filed in 2019. Officers stopped a Hispanic male who was on probation. He was searched and then his car was searched; no contraband was found. Officers then entered his residence and conducted a probation search. The primary officer arrested the suspect for a probation violation — being under the influence of drugs. The officer asserted that he observed these physical symptoms: flittering eyelids, fast pulse, and impaired balance (Rhombert test). The suspect consented to a blood draw. The test results, available some weeks later, showed the suspect's blood did not show any controlled substances. The IPA expressed some concern about the probable cause supporting the arrest to the IA Unit Commander. He replied:

In this case, [the subject officer] did not know the results of [the suspect's] blood test came back negative, and he seemed generally surprised. [Subject officer] did not know how to even check the results of an arrestee's blood test (CJIC). **A system where arresting officers were notified of negative blood test results would be beneficial to officers, as it could help provide feedback to their assessments.** However, there is currently nothing in place, and it is up to the officers to be proactive and check themselves.

We believe it would be beneficial to have the results of the blood/breath/urine tests provided to the Department. The Department could then determine whether and how to notify individual officers about the results. Since no results are currently provided, some officers may acquire a misplaced confidence that their assessment of physical symptoms are uniformly correct. Officers who repeatedly misinterpret physical symptoms may need additional training. Obtaining test results would also provide the Department data to determine if the training is effective and/or whether such assessments are perishable skills that require periodic retraining.

Likewise, it would be important for the Department to know the results of officers who serve as drug recognition experts. These are officers who have completed special training. If an officer is unable to determine whether a suspect is impaired by drugs, a DRE may be called to the scene. Drug Recognition experts conduct examinations of the persons arrested or suspected of drug-impaired driving or similar offenses. The DRE forms an *expert opinion* on (1) whether the person is impaired (2) is the impairment drug-related or due to some other factors, and (3) if the impairment is drug-related, and which category of drugs is the most likely source of the impairment.

Since no results are currently provided, some DREs may acquire a misplaced confidence in the reliability of their expert opinions. Obtaining test results would also provide the Department data to determine if the specializing training is effective.<sup>36</sup>



# 7

## OPEN AN ADMINISTRATIVE INVESTIGATION WHEN AN OFFICER IS NAMED AS A DEFENDANT

Law enforcement accountability is a system of checks and balances aimed at ensuring that police carry out their duties properly and are held responsible if they fail to do so. Such a system strives to uphold police integrity, deter misconduct, and enhance public confidence in policing.

Complaints lodged with the IPA or IA are not the only avenue for our community to voice their concerns about police conduct. Civil lawsuits in both state and federal courts also reflect allegations that officers engaged in misconduct. However, the Department currently does not have a system that initiates an administrative investigation when an SJPD officer is named in a lawsuit. We recommend that it does so in cases alleging misconduct by on-duty officers or alleging an off-duty officer engaged in misconduct under color of law. We recommend the Department explore best practices employed by other enforcement agencies in this regard.<sup>37</sup>

A civil suit does not result in any discipline of a police officer. Discipline can only be imposed by the Police Chief after an internal administrative investigation is complete.

In general, most police departments do not consider civil lawsuits in deciding whether to conduct administrative investigations. The verdict or settlement of such civil litigation has no effect on the result of an administrative disciplinary decision. Plaintiffs and the general public are often dismayed that named officers receive no discipline after misconduct has been established through the court proceedings and jury awards/settlements have been paid out by the city.

Why don't some plaintiffs file complaints with the IPA or IA? Plaintiffs may not know about the services of our office or they may lack confidence in the administrative complaint process. Attorneys representing the plaintiff in police misconduct cases may also instruct their client not to file a complaint with the Internal Affairs Unit because the attorney wants to control when and to whom his client makes statements. Because plaintiff attorneys generally operate on a contingency fee basis, they tend to choose the strongest cases to pursue; thus, some of the most egregious misconduct may not be investigated by Internal Affairs. Because IA is complaint-driven, no internal investigation will be initiated.

Most formal litigation filings contain sufficient information for IA to initiate investigations, even if the plaintiff's attorney does not allow the client to be interviewed.

Time is of the essence in this process. In California, investigations into officer misconduct generally must be initiated and completed within one year of the employing agencies' knowledge of the misconduct. (Peace Officer Bill of Rights Government Code section 3304(d)). A lawsuit against an officer would inform the Department that misconduct may have occurred, provided that the Department was

otherwise unaware. However, if the administrative investigation involved a matter in civil litigation, where the officer is named as a defendant, the one-year time period will be tolled while that civil action is pending. (Government Code section 3304(d)(6)). Thus, it behooves the Department to name the officer in an administrative investigation. The Department then can wait until the civil action is resolved before proceeding with its investigation. IA can utilize the information obtained during the lawsuit which may expedite their investigation.

However, if the Department does not name the officer in an administrative investigation and one-year passes, the Department forever loses its ability to discipline the officer no matter how slight that discipline might be. Exceptions to this rule may include an officer's misconduct during discovery or court proceedings, e.g., tampering with evidence, intimidating witnesses, or lying.

The Office of Community Oriented Policing Services (COPS) office of the U.S. Department of Justice issued a publication entitled *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*. It recommends:

Any lawsuit or claim that alleges misconduct, including those filed with another governmental or administrative agency, should be immediately brought to the attention of the agency's Internal Affairs unit or its equivalent. Unless the claim is investigated elsewhere within the agency's government, it should be processed as a complaint at intake.

A lawsuit alleging on-duty activities would ordinarily be served on the officer and employer, putting both on notice of the alleged facts. This is dealt with in an earlier section of this report. However, lawsuits regarding off-duty actions under color of authority may not only implicate employer liability but may reveal that an officer has violated agency rules regarding off-duty behavior.

(<https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf> at page 19)

There are three avenues to hold officers accountable for misconduct. Only one of the three results in officer discipline - an investigation conducted by the Department resulting in a sustained finding.



### Three Avenues of Police Officer Accountability



ALLEGED CRIMINAL CONDUCT

Criminal Process through District Attorney and Court

If criminal allegation is proven, judge may impose sentence



ALLEGED VIOLATION OF DEPARTMENT POLICY

SJPD Internal Affairs investigates misconduct allegations

If allegation is proven, Chief of Police may impose discipline



ALLEGED CIVIL MISCONDUCT

Goes through civil court process

If allegation proven, Court may award damages

## IPA AUDITS IN 2020 – A FOCUS ON TRANSPARENCY

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**W**hen 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 242 cases in 2020. The Office of the Independent Police Auditor audited 76%, or 183 of these cases. In 71% of our audits, we agreed with IA's initial conclusions and did not ask IA to undertake additional actions. In another nine percent of the cases, we agreed after IA took further actions that we recommended. Typical further actions included expanding IA's investigation, interviewing subject officers, and reexamining their analyses. The result was that we closed an audit as Agreed or Agreed After Further Action in 80% of our audits in 2020. In 20% 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 reexamine 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 officer 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 2020, 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 2020 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 José 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 offices and the reporting parties.

# AGREED AT FIRST REVIEW

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## Agreed at First Review — Case # 1

**Summary:** The complainant went to the SJPD Main Lobby to report a restraining order violation that had just occurred. The restrained party was in the SJPD parking lot (as directed by the responding SJPD officer) in violation of the order. The complainant alleged the officer spoke with the restrained party and released her instead of making an arrest.

**IA Conclusion:** Both parties had mutual restraining orders against each other, but the officer only took one party's statement. Documenting both statements presumably would have impacted the decision to file charges and against whom. IA came to a finding of Sustained for failing to conduct a complete investigation.

**IPA Conclusion:** The IPA determined the investigation was fair and complete. The IPA closed this case as Agree.

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## Agreed at First Review — Case # 2

The complainant alleged an officer responded to her residence and knocked on her door at 5:30 a.m. She believed this was an inappropriate time to discuss a call to SJPD by her landlord alleging she was tampering/vandalizing property. She believed the officer had a personal relationship with the landlord.

**IA Conclusion:** IA's investigation and analysis concluded the subject officer did not have any personal relationship with the landlord. There was no evidence on body-worn camera that the officer was anything but professional.

**IPA Conclusion:** IPA concluded the IA investigation was fair, objective, and thorough. The IPA closed the case as Agree.

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## Agreed at First Review — Case # 3

**Summary:** The complainant alleged that the subject officer was rude and did not listen to her during a call for service. The complainant alleged officers handcuffed her and gave her an ultimatum that if she did not go voluntarily to get a mental health evaluation, the officer would take her for the evaluation on an involuntary basis.

**IA Conclusion:** IA's investigation included a review of body-worn camera. The investigation concluded the subject officer was not rude, the use of handcuffs was within policy, and the contact was proper.

**IPA Conclusion:** The IPA reviewed policies and procedures and concluded that the IA's investigation was fair, objective, and thorough. The IPA closed the case as Agree.

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#### **Agreed at First Review — Case # 4**

**Summary:** The complainant called 911 to report an altercation between himself and his partner and requested an ambulance. The complainant says that responding officers did not offer to obtain a translator for him. The officers initiated a domestic violence investigation and then arrested his girlfriend. The complainant said that officers unlawfully arrested his girlfriend.

**IA Conclusion:** IA's investigation concluded that the complainant did not require a translator. He provided a statement in English to both officers on scene and during his complaint interview. Officers followed state policy regarding domestic violence allegations and their actions were within policy.

**IPA Conclusion:** The IPA reviewed the policies and procedures and concluded IA's investigation was fair, objective, and thorough. The IPA closed the case as Agree.

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#### **Agreed at First Review — Case # 5**

**Summary:** After the complainant was arrested for outstanding warrants, she was transported to a local hospital for medical treatment. After being medically cleared, the complainant was booked into jail. The following morning, the complainant reported to jail staff that she had been sexually assaulted by SJPD officers while at the hospital. The complainant was given a SART exam, an SJPD criminal investigation was initiated, and Internal Affairs was contacted. The complainant expanded her allegation to include a third SJPD officer, numerous nurses, and doctors at VMC.

**IA Conclusion:** The IA investigation included a review of the criminal investigation, interviews, and body-worn camera. Body-worn camera had been turned on throughout the interaction and the evidence conclusively proved officers were not involved in any sexual misconduct.

**IPA Conclusion:** The IPA audited the investigation and found it to be fair, objective, and thorough. The IPA closed the case as Agree.

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#### **Agreed at First Review — Case # 6**

The complainant's son passed away during a hit and run vehicle accident. The complainant alleged the officer who contacted her regarding her son's death was rude and failed to complete a thorough investigation.

**IA Conclusion:** IA concluded there was an extensive investigation into the death of the complainant's son. The IA Unit obtained and reviewed the audio recording between the subject officer and the complainant. The contacts between the officer and the complainant were respectful.

**IPA Conclusion:** IPA audited the investigation and found it to be fair, objective, and thorough. The IPA closed the case as Agree.

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### Agreed at First Review — Case # 7

**Summary:** The complainant alleged that she was working at a mall kiosk when she was approached by an SJPD officer in uniform. The officer said hello, asked her age and left. About an hour later, the officer returned, shook her hand, pulled her close, and said *give me a kiss*. The complainant pulled away and said *no*. The officer replied, *Oh, so no kiss?* He then told her that he would be retiring in eight days.

**IA Investigation:** The Department obtained video footage of the incident. The complainant can be seen pulling away from the officer immediately after what was presumably the kiss. The complainant also refused to kiss him back. While the officer could have been innocently, albeit misguidedly, mistaken as to whether the complainant wanted him to kiss her, it is apparent that she was not receptive to his advances. The fact that the complainant filed a complaint was evidence that the kiss was not consensual from her perspective. The Department concluded that, for the officer to contend otherwise, was disingenuous. The Department came to a finding of Sustained for the Conduct Unbecoming an Officer allegation.

**IPA Conclusion:** IPA determined the investigation was fair and complete. The IPA closed as Agree.

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### Agreed at First Review — Case # 8

**Summary:** A complaint was filed after officers were citing individuals in the Coyote Creek riverbed for trespassing. During a court hearing about these interactions, an officer testified that he regularly searches all individuals he encounters in the riverbed because they all carry guns and weapons. Body-worn camera video revealed that the officers ordered pedestrians walking on the sidewalk off the sidewalk and demanded identification, the reasons they were in the area, and told the pedestrians to show them any items in their pockets. These demands were not based on reasonable suspicion or probable cause. The judge ruled that at least one of the detentions was both unlawful and unduly prolonged. In addition, the search was not consensual or otherwise constitutional. All evidence was suppressed as a result of this officer's actions.

**IA Conclusion:** IA agreed with the judge—the detentions of pedestrians off the street were unlawful. IA came to a Sustained finding for the Arrest/Detention allegation.

**IPA Conclusion:** The IPA determined the investigation was fair and complete. The IPA closed this case as Agree.

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### Agreed at First Review — Case # 9

**Summary:** The complainant was arrested after a traffic stop. She alleged that during the arrest, the arresting officer counted her money on the back of the patrol car. She says the money should have been counted at jail and she should have been advised of the amount of money that was being booked.

**IA Investigation:** IA determined that an officer counted the cash, photographed it, placed a rubber band around it, and placed it into an evidence bag. The evidence bag was placed on the front seat of the patrol vehicle, and the officer documented in his report the amount of cash and his intention to book it into evidence.

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The officer followed Duty Manual section L 5200 *Warrantless Searches and Seizures of Vehicles* and L 5302 *Responsibility of Officers After Evidence is Taken into Custody* and booked into property. There are no policies mandating officers must count money in front of the party from whom it was seized.

Regarding the money not being listed on the booking sheet, the Santa Clara County Pre-Booking form only accepts property for safekeeping for people in custody at the jail. The jail then returns the property or currency to the person upon release. Property is separated into that which is evidence versus that which is not evidence of a crime. Evidence of a crime is retained by the Department until adjudication of the charges. IA came to a finding of Exonerated for the Procedure allegation.

**IPA Response:** IPA determined the investigation was fair and complete. The IPA closed the case as Agree.

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### **Agreed at First Review — Case # 10**

**Summary:** The complainant called SJPD stating that a specific truck consistently parked in the red zone in front of his house and had been there for three to four months. The complainant suspected that there was drug activity and prostitution happening in the house next door. He alleged that he called to report the car and the illegal activity 30-40 times, but no SJPD officer ever responded to his calls for service.

**IA Investigation:** IA reviewed all of the complainant's contacts with SJPD. The complainant called SJPD eight times within two months to report the car. He was told that although patrol officers have the authority to enforce parking laws, patrol officers could not respond to calls related solely to parking violations, due to high call volume. Instead, these calls were referred to the City's Parking Enforcement and Vehicle Abatement office. When he called the first time, the SJPD call taker explained to him Vehicle Abatement was not working due to the COVID 19 pandemic.

IA determined that the complainant called SJPD a month later to report his neighbor's truck was illegally parked in the red zone. Officers issued a parking citation. However, because the car was not blocking a driveway, causing a hazard, or interfering with the safe flow of traffic, it could not be impounded. The officers took the only enforcement action legally possible.

IA determined that officers responded to the residence next door to the complainant to investigate the alleged illegal activity and an arrest was made. The Internal Affairs investigation proved by a preponderance of evidence that officers did not neglect their duty with the complainants' calls for service.

**IPA Conclusion:** IPA determined the investigation was fair and complete. The IPA closed this case as Agree.

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### **Agreed at First Review — Case # 11**

**Summary:** The complainant read an online blog whose author detailed an officer's Facebook post from 2010. This post described how to use an artillery round as a roadside bomb to *fulfill your desire for jihad*. The officer included an aerial photograph of an explosion. He posted, *Does that mean they don't get*

*their 40 virgins? Maybe like 20 who just lost their virginity.* The complainant alleged that the comments indicated racial bias and adversely reflected upon the Department.

**IA Conclusion:** The Department came to a finding of Sustained for the Conduct Unbecoming an Officer (CUBO) allegation and agreed that the Facebook post adversely reflected upon the Department. However, the Department determined that there was no significant data to suggest the officer stopped more people who may be of the Muslim religion than other religions or ethnicities. The Department unfounded the Bias-Based Policing allegation.

**IPA Conclusion:** The IPA determined the investigation was fair and complete. The evidence supported a Sustained finding on CUBO. The evidence on the Bias-Based Policing allegation was not determinative.

The IPA closed as this case as Agree.

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### **Agreed at First Review — Case # 12**

**Summary:** The complainant read an online blog whose author described a current officer's Facebook post. The blog author identified the subject officer as the person posting two Facebook comments, *Black lives don't really matter* and *Hell, I would have pulled it over her face*. The context of the first post was unknown. The second post was an alleged response to an article from the Los Angeles Times newspaper about a woman who was forced to take off her hijab while in jail.

**IA Investigation:** The Department concluded that both posts adversely reflected upon the Department and came to a finding of Sustained for the Conduct Unbecoming an Officer allegation. The Department reviewed stop data but there was no significant data to suggest the officer stopped more people who may be Muslim or African- American. The Department came to a finding of Not Sustained for the Bias-Based Policing allegation, indicating that the investigation failed to prove by a preponderance of the evidence that the act or acts which provide the basis for the allegation made in the complaint occurred.

**IPA Conclusion:** The IPA determined that the investigation was fair and complete. The evidence supported a sustained finding on CUBO. The evidence on the Bias-Based Policing allegation was not determinative.

The IPA closed as this case as Agree.

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### **Agreed at First Review — Case # 13**

**Summary:** Complainant alleged that while he was having lunch in a park, an undercover police officer approached him and asked to buy drugs. The complainant did not have drugs and did not sell any to the officer. However, the officer found drugs next to him and arrested him. The complainant alleged that he was unlawfully searched and arrested.

**IA Conclusion:** Based on body-worn camera footage, the officer had a clear view of the individual having possession of a controlled substance. The complainant was using the controlled substance and was caught on the footage. Once the officer had a clear view of the complainant preparing to smoke drugs,

the officer had probable cause to arrest the complainant. After the complainant was arrested, the officer had a legal right to search the complainant incident to arrest.

**IPA Conclusion:** The IPA closed as Agree.

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#### **Agreed at First Review — Case # 14**

**Summary:** The complainant was contacted and arrested by officers soliciting prostitution. During the arrest, the complainant stated that he gave the arresting officers his driver's license and wallet. When the complainant was booked, he saw that his wallet was not booked with him. The complainant filed a complaint against the officers for failing to safeguard his wallet.

**IA Investigation:** After reviewing the pre-booking form, IA saw that there was no wallet noted. After review of the body-worn camera footage, it appears that the complainant had a wallet at the scene that had not been booked with the complainant's other property. During the interview of the arresting officer, the officer admitted to not booking the wallet, stating that he had mistakenly left the wallet at the scene. While the officer did not intentionally lose the complainant's property, the officer failed to follow policy requiring officers to secure property following an arrest.

**IPA Conclusion:** An allegation of failing to secure property was sustained. The IPA closed as Agree.

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#### **Agreed at First Review — Case # 15**

**Summary:** The complainant called 911 stating that he felt harassed and threatened online. The complainant alleged that instead of helping him investigate these threats, officers placed him on an improper psychiatric hold and did not allow him to take his personal affects (his guns) with him. Officers at the scene searched the complainant's home without a warrant and seized his firearms. The complainant alleged that the seizure of his weapons was unnecessary and that officers did not provide documentation to show that his firearms were seized. Additionally, the complainant believed the officers were biased based on his sexual orientation.

**IA Investigation:** Review of body-worn camera footage shows that when officers arrived at the scene, the complainant was exhibiting signs of mental health issues. Officers attempted to obtain further information from the complainant regarding the alleged harassment, but the complainant was unable to provide further information. The complainant acknowledged that he had some mental health issues. Officers also spoke with a family member at the scene. This person stated that the complainant had made statements threatening his safety and to the safety of others.

Based on these statements and the officer's interaction with the complainant, IA found that the psychiatric hold was justified. IA also concluded that the search of the home for weapons and subsequent seizure of weapons was proper. Lastly, the Procedure allegation of not being allowed to bring personal affects (gun) with him was exonerated. IA came to a finding of No Finding for the allegation of not being provided proper documentation of the seizure of his guns because the officer is no longer employed by SJPD. The complainant also alleged that officers made statements that he believed were biased based on his sexual orientation. After review of the body-worn camera footage as

well as interviewing the officers involved, IA came to a finding of Unfounded for the Bias-Based Policing allegation, since there was no evidence to support this allegation.

**IPA Conclusion:** The IPA reviewed all attached documentation of this case and closed this class as Agree.

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### **Agreed at First Review — Case # 16**

**Summary:** The complainant was woken up by someone breaking her fence, so she called 911. Responding officers found and contacted the individual who had broken the fence—the complainant’s neighbor. The officers determined that the neighbor was intoxicated and broke the shared fence between them. The complainant expressed frustration that the officers did not arrest her neighbor, nor did officers ask her if she wanted him arrested. Lastly, officers did not take statements or write a report.

**IA Investigation:** IA examined whether the officer failed to conduct a thorough investigation. Review of the body-worn camera footage showed that the officer did contact both parties and the intoxicated neighbor was released. The complainant’s husband then told the officers that he would contact the neighbor’s landlord to fix the shared fence. IA found that since neither the complainant nor her husband explicitly asked for the neighbor to be arrested, the husband stated he would take care of the fence, and that the neighbor had not committed any arrestable offense, the officers were not obligated to make an arrest or write a report.

**IPA Conclusion:** The IPA closed as Agree.

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### **Agreed at First Review — Case # 17**

**Summary:** The complainant walked into the SJPD Main Lobby to report a sexual battery. The complainant alleged that the officer was rude and attempted to dissuade him from filing a report. After the complainant insisted on filing a report, the officer took the report in the Main Lobby with other individuals there. The complainant was embarrassed at having to file a sensitive report within earshot of others. Also, the officer incorrectly listed the complainant as a different gender and race. The complainant alleged that the investigating detective did not complete a thorough investigation since he failed to correct this information or conduct further investigation. The complainant believed that the case was rejected by the District Attorney’s Office due to these errors.

**IA Investigation:** The officer from the lobby who took the original statement told IA that the mistakes made in the report were unintentional. IA exonerated the Procedure allegation of failing to conduct a proper preliminary sexual assault investigation against this officer. However, the Courtesy allegation was Not Sustained. The allegation against this officer for failing to provide a private location to initiate a sexual battery investigation was Sustained. The officer who was the sexual assaults detective is no longer employed by SJPD, so IA came to a finding of No Finding for allegations against this officer.

**IPA Conclusion:** The IPA closed as Agree.

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### **Agreed at First Review — Case # 18**

**Summary:** A man and his child were at the San Jose Airport returning home from a trip. Upon arrival, the man was met by SJPD officers who arrested him and took custody of his child. The complainant is the man's mother and alleges that officers should have waited to arrest him until she could come take custody of the child. She also alleges that officers should not have arrested her son in front of his young child, and officers were discourteous to her son when they told him to *shut up*.

**IA Investigation:** IA reviewed body-worn camera footage which showed that officers did not put the man into handcuffs in front of the child. Officers also allowed the man to call his mother to take custody of the child prior to the arrest. Footage did not show any officer using any language that would be considered discourteous or inappropriate towards the arrested individual. All Procedure allegations related to the arrest were Exonerated while the Courtesy allegation was Unfounded.

**IPA Conclusion:** The IPA closed as Agree.

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### **Agreed at First Review — Case # 19**

**Summary:** The complainant observed police activity. While observing the officers at the incident, the complainant noted that several of the officers were not wearing face masks.

**IA Investigation:** IA was able to locate the incident and found that several officers were not wearing masks and while not in direct contact with community members, IA came to a finding of Supervisory Referral.

**IPA Conclusion:** The IPA closed as Agree.

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# AGREED AFTER FURTHER ACTION

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## Agreed After Further — Case # 1

**Complaint:** The complainant was walking through a parking lot when an SJPD officer pulled up behind him in his patrol car, activated his lights, and ordered him to stop. The officer arrested the complainant for trespassing on private property—as he had been admonished by another officer about trespassing on the property seven months prior.

The complainant says that the arrest was improper because the parking lot was open to the public. After his arrest, his property was booked for safekeeping. The complainant believes he should have been able to give his belongings to his partner instead. The complainant alleges that he then asked for all of the officers' names and badge numbers, but none were provided to him.

**IA's Analysis:** IA attributed the Procedure allegation of failing to provide officer name and badge number to only one officer, but then stated that this officer was outside of the hearing range of complainant's voice. IA came to a finding of Unfounded for this allegation because the officer could not have willfully failed to provide name and badge number without hearing the request.

**IPA's Response:** The IPA provided Body-Worn Camera minute marks where the complainant made more than one request to obtain the names and badge numbers for other involved officers. Also, the IPA argued that the officer who did hear the request should have relayed the message to the officer.

**IA's Re-analysis:** IA argued that officers are held accountable to written policies in the Duty Manual. Unwritten or implied policies are problematic when enforcing discipline and can be a violation of the Peace Officer Bill of Rights. Duty Manual section C 1409 specifically uses the words "their" (adjective) and "themselves" (plural noun). IA re-affirmed a finding of Unfounded.

**Conclusion:** IPA closed the case as Agree After Further.

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## Agreed After Further — Case # 2

**Complaint:** The complainant was at a concert and complained that the music was too loud and wanted her ticket refunded. An SJPD officer working at the venue asked the complainant if she had tried using ear plugs to help with the noise. The complainant turned away from the officer and said, *Shut the f--- up.*

The officer told the complainant that her language and behavior were not acceptable and ordered her to leave. According to the officer, the officer touched the complainant's arm and her back to escort her up the stairs. According to the complainant, the officer grabbed her and put her arms around the complainant and threw her down onto the stairs. According to the officer, the complainant yelled, *Don't f---ing touch me!* and jerked away. She then fell on the stairs. The complainant then yelled at the officer, *You pushed me!*

Photos from the complainant showed that she sustained significant bruising. There were no witnesses in the stairwell to view the event. There were no cameras in the stairwell, nor was the officer wearing a

body-worn camera. The complainant alleges that the officer used excessive force and was also rude and dismissive.

**IA's Analysis:** IA came to a finding of Exonerated for the Force allegation against the officer. IA said that the complainant weighed more than the officer, and therefore believed it unlikely that the subject officer would have been able to throw the complainant down the stairs as she alleged.

**IPA's Response:** There were no witnesses to this event, no BWC, and no video footage from the stairwell. Although the officer might be smaller in stature, the officer is significantly younger and likely stronger than the complainant. Unlike the complainant, the officer has received training in the use of force options. The complainant had significant injuries from this event and the analysis from IA did not provide a basis to determine either persons' version of the events as more or less credible. Without weighing the complainant's credibility, the IPA argued that an Exonerated finding was not supported by the evidence.

**IA's Re-analysis:** IA agreed that the facts support a finding of "Not Sustained".

**Conclusion:** The IPA closed the case as Agree After Further.

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### **Agreed After Further — Case # 3**

**Complaint:** The complainant's ex-wife was placed on a 5150 hold. They share a child in common and have been in an on-going custody dispute. The complainant believes SJPD officers should have also arrested her on that day. The complainant alleged that the officers' arrest of his ex-wife would have stopped further abuse due to her mental illness.

**IA's Analysis:** IA closed this as "Other" because of the passage of time (the complaint was filed more than 14 months after the incident).

**IPA's Response:** The IPA requested that the case be closed as "No Finding" instead because the subject officer had retired. IA agreed.

**Conclusion:** The IPA closed the case as Agree After Further.

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### **Agreed After Further — Case # 4**

**Complaint:** The complainant was filming an interaction between an SJPD officer and an unknown female across the street. After the officer completed his interaction with the female, he noticed the complainant filming him. The officer crossed the street and paced his steps. The officer then placed him in handcuffs and accused him of violating the distance limits enumerated in a valid restraining order. The officer told the complainant that he was under arrest for a restraining order violation, and the complainant asked to speak to a sergeant.

A sergeant responded and spoke briefly to the complainant. The complainant filed this complaint alleging that his arrest was improper, the officer should have read him his Miranda rights, and that the sergeant did not have his BWC on.

**IA's Analysis:** IA concluded that the complainant's arrest was proper because he was in violation of the restraining order requiring him to stay at least 100 feet from any SJPD officers during the course of their duties and not harass the protected Department members. IA also came to a finding of Exonerated for the Procedure allegation of failing to activate BWC stating that the officer *forgot his BWC, [but] did not put himself in a position to have it activated under the duty manual policies...* Lastly, IA came to a finding of Exonerated for the failure to provide Miranda warnings to the complainant based on the assertion that there was no interrogation. Rather, he was just being informed of why he was being arrested.

**IPA's Response:** Regarding the arrest, the IPA stated that IA's analysis does not support the assertion that the officer was being harassed. The officer was not interviewed, so the claim of potential distraction was speculative. Second, the restraining order does not prohibit distracting behavior. The conduct must be so intense or prolonged that it rises to the level of harassment. The IPA also asked IA to confirm the accuracy of the officer's estimation of the distance underlying the alleged violation of the restraining order. Regarding the failure to activate BWC, the request for a sergeant falls under Duty Manual section L 4435 *When to Activate*. The rule requires activation when in response to complaints or calls for service. Regarding the requirement to give the complainant Miranda warnings, the IPA stated that the complainant was in handcuffs and questioning was sustained and coercive, therefore implicating Miranda.

**IA's Re-analysis:** IA agreed that the sergeant should have activated his BWC and closed this allegation with a Supervisory Referral. Regarding the estimation of the distance for the restraining order violation, IA measured the distance and it was, in fact, a clear violation of the restraining order. The officer was interviewed and said that the complainant was shouting and yelling, which is why he noticed him. Regarding the need for Miranda, IA likened the questioning by the officer to the questions asked by officers during a traffic stop-- *Do you know how fast you were going?* The officer here had probable cause to arrest and did not need a statement from the complainant.

**Conclusion:** The IPA closed this case as Agree After Further.

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### **Agreed After Further — Case # 5**

**Complaint:** The complainant alleged that she heard a noise coming from her yard in the early morning. Her adult son went outside and detained a man for attempting to steal his bike. The complainant called the police. Officers responded, detained, and questioned the suspect. The officers told the complainant that the suspect was homeless and mentally ill, so they could not arrest him. They could only take him to a shelter or psychiatric facility. The complainant was also allegedly told that she could not file a report because she was not the property owner. The officers explained the STOP program but did not take a report, arrest the suspect, offer/accept a citizen's arrest, or complete a follow-up investigation.

**IA's Analysis:** IA closed this case as Complaint Withdrawn. IA called the complainant three times to ask follow-up questions and the investigator told her that if she only contacted SJPD for assistance in getting



the suspect off of her property but never wanted him arrested, then that contradicts her previous statement to the IPA office where she complained officers never arrested him. This, therefore, negates her complaint.

**IPA's Response:** IA's recorded conversation of the complainant's withdrawal starts with a summary of their conversation in English and then ends with her withdrawal in Spanish. In Spanish, the complainant says, *Yo llamé la policía para que se lo llevaran porque estaba adentro de mi propiedad*. This translates into, *I called the police so that they would take him away because he was on my property*. She wanted him arrested. It made no sense why her son would have physically held the suspect until police arrived. IA should investigate this complaint.

**IA's Re-analysis:** IA re-analyzed and came to a finding of Sustained for failing to complete a thorough investigation. The Department determined that the officers knew that the elements of theft and trespass were met but failed to write a report, make an arrest, or ask the victim what she would like done. The Department also came to a Sustained finding for an officer failing to activate his BWC.

**Conclusion:** The IPA closed the case as Agree After Further.

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### Agreed After Further — Case # 6

**Complaint:** The complainant filed a complaint on behalf of his twin daughters who both live out-of-state. The complainant received a phone call from an unknown individual who accused his daughters of luring the caller's mother and stealing her purse at a location in San Jose. The complainant told the caller that she must be mistaken because his daughters don't live locally and were not here when the thefts occurred. Months later, the complainant received arrest warrants in the mail for each of his daughters. The police reports described two similar theft crimes. The SJPD Detective obtained two felony robbery *Ramey* arrest warrants for the complainant's daughters without ever attempting to contact them to ask any preliminary questions or take a statement.

The complainant alleged that the detective failed to conduct a thorough investigation which led to arrest warrants being improperly issued for the arrest of his daughters.

**IA's Analysis:** IA exonerated the Procedure allegation stating that *although it would make sense to reach out to the suspects... [the detective] opted not to contact the [complainant's daughters] as there is no Department policy procedure, rule or law that states officers shall contact suspects*. Further, contacting suspects is not always advisable because suspects may flee, alter their appearance, or change their plan of operation.

**IPA's Response:** Here, the amount of evidence proving the sisters were out of state at the time of the crime was so substantial that any attempt to contact them or investigate anything about them would have quickly led the detective to exclude them as suspects. It would have been obvious that they were misidentified. The IPA asked that the detective be interviewed to explain what facts he had to establish probable cause to seek an arrest warrant.

**IA's Re-analysis:** IA interviewed the detective and asked him about his investigatory steps. He detailed his interviews with the victims and the fact that the victim's daughter had found the twins' pictures on Facebook, leading her to believe they were the suspects. The detective never conducted an independent

investigation to corroborate this association. IA came to the same conclusion— *[The detective] opted not to contact the [twins] as there is no Department policy, procedure, rule or law that states officers shall contact suspects. In addition, [the] Judge and Deputy District Attorney believed there was sufficient probable cause to believe the twins daughters were responsible for the two incidents based on the information available at the time.*

**IPA's Response:** The IPA appealed this decision to the Chief of Police.

**Chief's Response:** The Chief came to a finding of “Sustained” for the detective’s incomplete investigation.

**Conclusion:** The IPA closed the case as Agree After Further.

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### **Agreed After Further — Case # 7**

**Complaint:** The complainant alleged that an SJPD officer pursued another driver at such an excessive speed without lights or sirens that the officer’s driving posed a significant danger to other drivers, pedestrians, and nearby residents. The complainant said that the driver of the car crashed into parked cars where children were playing.

**IA's Analysis:** IA reviewed the officer’s report (with photos), CAD, and the GPS logs. The GPS logs noted the time of day, officer’s speed, and the officer’s direction of travel at each time. The subject officer was not interviewed. IA exonerated the Procedure allegation against the officer for excessive speed without lights and sirens because the officer was *not* involved in a pursuit, so the rules surrounding pursuits (i.e., Duty Manual section L 2100 et seq) did not apply. IA stated that the officer was simply attempting to detain a motorist for excessive speeding. The analysis noted that, *if officers were barred from driving above the speed limit to contact violators in non-emergency situations, proactive police work would be nearly non-existent.* [emphasis added]

**IPA's Response:** The IPA acknowledged that the officer was not involved in a pursuit, so it is unclear where the officer’s authority for speeding lies. Duty Manual section L 2000 states that *the California Vehicle Code exempts emergency vehicles from the ‘Rules of the Road’ when in response to an emergency call, involvement in a rescue operation, or in the pursuit of a suspected violator of the law. However, due regard for the safety of all persons using the roadway will be exercised and emergency lights and siren used during the emergency response.* The exemption applies only if an officer is engaged in one of the three criteria listed; if so, lights and siren must be used. If his conduct does not fall within one of the three criteria, there is no exemption to following the “Rules of the Road.” The IPA asserted that none of the exceptions applied here, so the officers conduct appeared out of policy.

**IA's Re-Analysis:** IA stated that the officer was involved in a rapidly evolving situation where his actions turned from police enforcement to an emergency rescue. Therefore, it was reasonable for him not to activate lights and sirens since he was only speeding for 15 seconds to get to the scene of the crash.

**IPA's Response:** The IPA does not believe the preponderance of the evidence supported IA’s position that the subject officer increased his speed only **after** he saw a small cloud of smoke and then initiated an emergency response. The IPA appealed this decision to the Chief of Police.

**Chief's Response:** The Chief came to a finding of "Sustained" for the officer's excessive speeding.

**Conclusion:** The IPA closed this case as Agree After Further.

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#### **Agreed After Further — Case # 8**

**Summary:** A complainant stated that an SJPD officer was rude and discourteous to him during an interaction in front of a relative's home. The complainant also alleged the officer did not call for medical assistance when requested.

**IA Analysis:** IA concluded that both the Courtesy allegation and the Procedure allegation (failing to provide medical assistance) were Unfounded.

**IPA Response:** IPA requested IA provide a more thorough analysis of the allegedly rude and discourteous comments made by the officer.

**IA's Re-Analysis:** After additional review of the BWC and a transcribed account of the interaction, IA concluded that the comments made by the subject officer does not rise to the level of discourtesy.

**Conclusion:** The IPA closed the case as Agree After Further.

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#### **Agreed After Further — Case # 9**

The complainant's son was driving her car and he was cited for reckless driving and the vehicle was impounded. The complainant, the registered owner of the vehicle, went to SJPD to get her vehicle released. The officer explained to her that if the citation was dismissed, she would get her money back for the vehicle's tow storage. After the citation was dismissed by the court, the complainant returned to SJPD and was asked to pay the tow and storage fees. The complainant requested to speak with a sergeant and the sergeant assured the complainant she would be reimbursed for the cost. After waiting for some time for the reimbursement, the complainant was told there was a mistake and there would not be a reimbursement for the amount she had paid to get her vehicle released.

**IA Analysis:** IA initially exonerated the allegations associated with all officers involved.

**IPA Response:** The IPA requested that IA re-examine the California Vehicle Code and SJPD Duty Manual Policy regarding tows.

**IA Re-Analysis:** After a re-analysis of the CVC and the current SJPD tow policy, it was determined there were policy violations and IA came to Sustained findings.

**Conclusion:** The IPA closed the case as Agree After Further.

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### **Agreed After Further — Case # 10**

The complainant alleged an officer pulled up next to his home and walked over to a vehicle he had parked in his driveway. The subject officer asked the complainant if he could ask questions about the vehicle. The complainant said the officer could ask questions if the officer was interested in purchasing it. The officer looked under the hood, inside the vehicle, and asked about the paint. The complainant began to believe the officer was not interested in purchasing the vehicle but was conducting an investigation. He had concerns with the search of his vehicle and the fact the officer was inquiring to purchase a vehicle during his work hours.

**IA Analysis:** IA's investigation and analysis initially concluded the Search and Seizure allegation did not rise to the level a violation of department policy and reclassified the allegation to a *Non-Misconduct Concern*.

**IPA Response:** The IPA requested that IA re-examine the investigation and re-instate the Search/Seizure allegation and come to a finding.

**IA's Re-Analysis:** IA responded to the IPA's request with a more complete set of facts supporting IA's assertion that the officer was attempting to build rapport with the community in the area he was patrolling by asking about the vehicle. Facts provided to support the officer's efforts were (1) he had just completed a call in the vicinity, (2) he never conducted a records check of the vehicle or the owner, (3) the complainant did not provide any evidence that the vehicle was disturbed or "touched," and (4) the fact the officer was an enthusiast of this type of vehicle.

**Conclusion:** The IPA closed the case as Agree After Further.

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### **Agreed After Further — Case # 11**

Summary: The complainant alleged her young daughter had run away. She and her husband were looking for the girl when the complainant received a call from SJPd who had located her daughter. The complainant alleged that officers were rude to her, improperly detained her, lied to her and wrote an inaccurate police report. Officers who arrived at the incident location did speak with the daughter who alleged domestic abuse and the presence of firearms in the home. As the officers completed their investigation, they determined the house to be in an unlivable state and contacted Child Protective Services (CPS) to take custody of the child. The officers also briefly spoke with the owner of the home, a disabled elderly man.

**IA's Investigation:** IA's investigation properly addressed the complainant's concerns and its findings were appropriate.

**IPA's Concerns:** IA's initial investigation did not address the welfare of the disabled man. The IPA requested that IA determine if officers had contacted Adult Protected Services (APS).

**IA's Re-Analysis:** IA followed up on the IPA request. IA determined that officers at the scene did, in fact, contact APS to check on the welfare of the disabled man.

**Conclusion:** The IPA closed the case as Agree After Further.

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## Agreed After Further — Case # 12

**Summary:** The complainant stated her mother and adult brother live on a property that has multiple houses. The mother contacted the police because the adult son had vandalized her camera that she uses to monitor her property. When police arrived, she explained she had video of the adult son vandalizing the camera. The complainant alleged the officers did not conduct a proper investigation.

**IAs response:** IA's initial investigation concluded officers responded and talked to all parties involved, and their actions were within policy.

**IPA's response:** IPA had concerns with the completeness of the investigation and requested IA to examine whether or not officers investigated the vandalism.

**IA's Re-Analysis:** IA interviewed the subject officers and determined that the officers did not fully debrief one another regarding the statements provided by the parties. The officer who obtained an admission of vandalism did not provide that information to the other officers. Thus, no arrest was made. A Sustained finding was made against one officer.

**Conclusion:** The IPA closed this case as Agree After Further.

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## Agreed After Further — Case # 13

**Summary:** The complainant says that he reported to SJPD that an off-duty officer had assaulted him. He alleged that SJPD did not investigate the incident and the officer was not arrested. He also alleged that SJPD was covering up the incident because he was unable able to get a copy of the police report.

**IA Analysis:** IA determined that SJPD officers responded to the complainant's home and obtained a statement from the complainant who said that he did not want the officer arrested. Officers also obtained statements from witnesses. A few days after the incident, the complainant told SJPD that he *did* want to press charges. Due to the nature of the incident, a criminal investigation was conducted and sent to the District Attorney. The District Attorney declined to file charges. IA then conducted an administrative investigation including an interview of the subject officer. The Force allegation was Exonerated. The failure to provide the police report to the complainant was determined to be a Non-Misconduct Concern.

**IPA Response:** The IPA had concerns about the failure of providing the police report to the complainant who was the alleged victim in the encounter.

**IA's Re-analysis:** IA provided written protocol indicating when police reports of a sensitive nature are not automatically released. This response alleviated IPA concerns about whether the initial withholding of the police report was proper

**Conclusion:** The IPA closed the case as Agree After Further.

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## Agreed After Further — Case # 14

**Summary:** The complainant alleged that officers took her young son to Child Protective Services (CPS), used excessive force, unlawfully arrested her, and were discourteous.

**IA Analysis:** Review of the body-worn camera showed that officers responded to a welfare check call on an abandoned young boy. While the officers were speaking with the boy, his mother returned to the area. Officers then questioned her about the boy's care. One officer who took a primary role during the encounter spoke with both the mother and the son. This officer was exceedingly kind with the boy. However, his conduct toward the mother, who appeared to have mental health issues and/or a drug addiction, varied widely from calm and professional to irate and rude. During his interview, the officer stated that he used profanity as a tactic to get the complainant to snap out of her erratic behavior and deal with the welfare of her child. IA agreed with the officer's rationale and determined that the Courtesy allegation would be closed as a Supervisory Referral.

**IPA Response:** The IPA argued that IA needed to do a more in-depth analysis of the officer's rationale.

**IA's Re-Analysis:** After a re-analysis, IA determined that the Courtesy allegation would be Sustained. Because the officer appeared both quick to anger and to escalate his language, it did not appear that his words formed a calculated tactic.

**Conclusion:** The IPA closed the case as Agree After Further.

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## Agreed After Further — Case # 15

**Summary:** On June 2, 2016, the complainant was attending a Trump Rally at the Convention Center. As she exited the Convention Center, the complainant alleged that the officers forced attendees to take a longer route to their cars that brought attendees and protestors closer together. The complainant alleged that though there were a number of SJPD officers at the event, when protestors became violent towards attendees, officers did nothing to intervene or protect the attendees.

The complainant also alleged that an unknown officer pushed his baton in her back and pushed her into the protestors. The complainant alleged that an individual that was with her witnessed two elderly women get punched in the face in front of SJPD officers who did nothing to intervene. The complainant alleged that by officers not intervening quickly, further criminal behavior was incited.

**IA Conclusion:** The IA analysis reviewed narratives by multiple officers attached to the event. However, the complainant was unable to provide a more detailed description of the officer using the baton. Therefore, IA came to a finding of No Finding.

**IPA Conclusion:** Due to civil litigation, this case was not closed until late 2020. As settled in the civil litigation, all allegations except the allegation of Force were dropped. The IPA closed the case as Agree After Further due to the understanding that without additional information, IA would be unable to come to a different finding.

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# CLOSED WITH CONCERNS

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## Closed with Concerns — Case # 1

**Complaint:** The complainant, a Hispanic woman, was driving with her two young adult Hispanic sons in the backseat. An SJPD officer pulled them over and approached the vehicle. He greeted the occupants and immediately asked, *Is anybody on probation or parole?* He also asked if anyone in the car had been arrested in the past.

The complainant alleged that the officer engaged in bias-based policing because the first question was whether anyone was on probation or parole—a question she believed unlikely if the driver and occupants were White and was asked because of their ethnicity. The complainant believed the officer should have first asked for license, proof of insurance and registration and given the reason for the stop.

**IA's investigation:** IA agreed that asking a person if he is on probation or parole initially can be perceived as offensive. In this particular case, the officer was new and asked a series of questions he was taught in the Academy. IA speculated that a more seasoned officer would likely have asked basic questions first, such as: *do you know why you were stopped? do you have license and registration? may I see proof of insurance?* etc. IA confirmed that asking probation and parole status should not be used to initiate dialogue and recruits are not taught to establish rapport with detainees in this manner.

**IPA's response:** IA's rationale revealed that (1) asking parole status before anything else is offensive and (2) this does not comport with the Academy training provided to the officers. This provides some basis to believe the subject officer's conduct was offensive and did not comply with Academy training.

**Conclusion:** The IPA closed with concerns.

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## Closed with Concerns — Case # 2

**Complaint:** The complainant's teenage son and friends were contacted by SJPD officers in front of a store after a witness called alleging that the store employee had punched the son. The complainant alleged that the officers were unprofessional, and the officers failed to conduct a thorough investigation.

**IA's Analysis:** IA concluded that the investigation was thorough because the officers documented statements from each party, including witnesses, in a report and submitted it to the District Attorney for review.

**IPA's Response:** The IPA agreed with IA's findings, but remained concerned about the officers' failure to utilize the Language Access Plan. The subject who was identified as committing the battery stated that he did not speak English when the officers attempted to take his statement. Because he was an involved party, it was essential that the officers obtain a complete and accurate statement. Instead, the officer utilized the owner of the liquor store, who was more proficient in English, to translate.

**Conclusion:** The IPA closed with concerns.

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### Closed with Concerns — Case # 3

**Complaint:** The complainant says he was the victim of a road rage incident. The complainant called 911 and dispatch told him to stay where he was. The complainant was scared and told the dispatcher to have the officers meet him at his home. No officers came to his home to take a report. The next morning, the complainant called SJPD to have someone take a report, but he was told that it was too late. The complainant insisted that an officer come and take a report. He alleged that the responding officer who took the report was dismissive and did not take the report accurately.

The complainant called SJPD over a year after the incident to inquire about the status of the case. The complainant alleged that that the officer he spoke to was rude and very dismissive. He also alleged that the initial responding officers did not conduct a complete investigation.

**IA's Analysis:** IA came to a finding of "Other" for the allegations that the officers did not do a complete investigation when they responded to a 2018 incident. Too much time has passed between the incident and filing the complaint. The IPA agreed. However, IA exonerated the Courtesy allegation against the officer in 2020 based solely on the notes in his reports that did not indicate any rude behavior. However, the notes would likely not include his rude or dismissive tone. The conversation between the complainant and the officer was not recorded and there was no IA interview of the subject officer.

**Conclusion:** The IPA closed with concerns. It appeared there was insufficient evidence to prove or disprove the Courtesy allegation that occurred in 2020.

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### Closed with Concerns — Case # 4

**Complaint:** The complainant filed this complaint after officers contacted him in a parking lot and cited him for marijuana possession outside of a sealed container. He alleged officers were rude to him. The complainant also said that he contacted the courthouse to find out when he needed to appear, and he learned a report was never written.

**IA Investigation:** IA exonerated the Arrest/Detention allegation, came to a finding of Sustained for the Procedure allegation for failing to write a report, and came to a finding of Supervisory Referral for the Courtesy allegation.

**Conclusion:** The IPA closed this case with concerns because the IPA is concerned that some Courtesy allegations are being closed as sustained and others closed as Supervisory Referral without an explanation as to how the underlying facts differ. In this case, it is undisputed that the officer walked across a parking lot to tell the subject, *"I didn't rip you out of the car because I could have...I could have ripped you out of your f--king car ... so I need you to shut the f--k up."* Given that the other Courtesy allegations involving similar words have been Sustained, it is unclear why the Courtesy allegation in this complaint only lead to a Supervisory Referral.

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## Closed with Concerns — Case # 5

**The Complaint:** While he was driving, the complainant was stopped by two SJPD officers. The officers said he was stopped because he was on parole and had a warrant. The complainant agreed he was on parole but denied he had an outstanding warrant.

A short time later, one of the officers determined that the complainant did not, in fact, have an outstanding arrest warrant. Officers said a parole agent was called; the agent allegedly wanted the complainant placed on a parole hold. The complainant felt the officers convinced the parole officer to place a hold on him. The complainant was booked into jail for the parole hold.

**IA Investigation:** IA concluded that the vehicle stop was lawful based on the complainant's parole status. IA also asserted the parole hold was valid due to the complainant's behavior during the detention. Officers contacted state parole and spoke to an on-call parole agent. Officers outlined the context of the vehicle stop and the complainant's behavior. The authority to grant the parole hold lies solely with the parole agent, and the parole agent believed it was necessary for the complainant to be placed on a parole hold. The complainant was arrested and booked into the Main Jail.

**Conclusion:** The IPA closed this case with concerns because IA did not interview the parole agent who placed the hold on the complainant or the officer who contacted the parole agent. It would be critical to determine what descriptors the officer conveyed to the parole agent to describe the complainant to determine if the officer was accurate and truthful. Without this information, the investigation was not complete.

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## Closed with Concerns — Case # 6

**Summary:** The complaint followed an incident between the complainant and other members of her family—all of whom live next door to each other. These families have had an ongoing dispute for many years. At one point, each household member had a restraining order against the other household members.

SJPD was called because another member of the complainant's family alleged that the complainant violated the restraining order. Officers arrived and spoke to the complainant's husband. The complainant approached them and refused to comply with orders to step away. The complainant says that the officer unholstered his firearm while walking towards her and ordered her back. She walked back fearing that she may be shot. Among other things, the complainant complained about the officer's use of force when he unholstered his firearm and displayed it at her.

**IA Analysis:** IA exonerated the Force allegation stating that the officer unholstered his weapon to convey the seriousness of the situation, and in case she produced a weapon of her own. The subject officer stated in his IA interview that he never intended to use his firearm. He said that if unholstering his firearm failed to scare her into compliance, then he would have used another force option such as OC spray. The subject officer said that he was taught in the Academy to pull his gun out and keep it at his side if he found himself in a situation that could quickly turn volatile.

IA interviewed a training officer who confirmed that the subject officer's assertion was incorrect and not in the training curriculum. However, he stated that an officer may unholster his firearm when he has specific articulable facts to believe that deadly force may be necessary.

**Conclusion:** The IPA closed this case with concerns. Here, the IPA argued that none of the facts indicated that deadly force may be necessary. The officer stated that on the way to this call he was notified that *there may have been weapons inside the house*, but the officer never indicated in his report, his IA interview, or in a statement to other officers that he thought the complainant was armed during their interaction. The officer heard another officer tell the complainant not to touch him a few minutes earlier, but this was also not an indication that she was armed—rather, she was not compliant nor was she listening to commands. In this case, force may have been appropriate to gain compliance, but we believe a veiled threat of deadly force to scare her into compliance is out of policy.

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### Closed with Concerns — Case # 7

**Complaint:** The complainant stated that two people called the police and falsely reported that he had threatened to kill them. Multiple officers responded. Officers contacted the complainant and ordered him to sit down and not get up. The complainant alleged that after he stood up, the officer placed him in a chokehold. He said that he is disabled and is unable to sit for extended periods of time. The complainant alleged that he was unable to speak or breathe, sustained bruising all over his body and has ongoing pain in his shoulder.

The complainant alleged that the police report was misleading because officers failed to document the use of a choke hold. He also claimed that officers inaccurately described the complainant's actions [resistance] to justify the use of force. The police report says that the officer restrained the complainant from the upper chest area, but the complainant alleged that the force was an "arm bar choke hold," like the one used on Eric Garner.

**IA Analysis:** IA concluded that the subject officer did not use a chokehold or a carotid restraint based on (1) the officer's description of force in his report and (2) the officer's use of force captured on BWC. IA stated that this evidence and the force response report *abundantly demonstrated the control hold around the jaw line was not a choke hold, or a carotid restraint*. IA says that the BWC showed that the officer did not apply a carotid restraint because there was no connection between the encircling hand and the support hand, and therefore, the officer could not have applied constant pressure to the lateral sides to the complainant's neck consistent with the mechanism of a carotid restraint. IA also argues that the BWC showed that there was no choke hold because the officer never applied pressure to the front structures of the neck. Instead, according to IA, the officer had the bend of his inner elbow right up to the complainant's chin and no portion of his hands were against the trachea.

**IPA Concerns:** The officer who used applied this force *to the suspect's chin* was never interviewed. We have doubts as to whether the BWC clearly showed a lack of pressure to any part of the complainant's neck. Given the fragility of the key structures of the neck (e.g., bone, cartilage, artery, vein and trachea), using a control hold on the head at the jawline causes concern.

It remains unclear why, within such a short span of time, the officer decided to bring his arm under the complainant's jaw. Indeed, given the struggle and the proximity of the jaw to the neck, it would seem

questionable whether that method of control would be advisable. IA says that *the simultaneous motion of pulling back and upwards would open up the complainant's airway*. However, IA did not analyze whether the complainant's struggling would compromise the ability to keep the airway open. Of further concern is how it appears that the officer uses his control hold at the jaw line to pull the complainant over the back of the chair and onto the ground.

Also, the threat assessment appeared magnified. Officers arrested the complainant for delaying them in the performance of their duties, but at least five officers had been on scene and close to him for more than 30 minutes. During that time, the complainant argued with the officers from his sidewalk chair, periodically getting up and walking away from the officer, down the block and then back. From their positioning in the BWC video, no officers believed the complainant posed a safety concern until he refused to accept paperwork handed to him. Five officers go hands-on. Although there is a struggle, the on-going threat is not specified.

The IPA closed this case with concerns.

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### **Closed with Concerns — Case # 8**

**Summary:** Two SJPD officers were driving behind the complainant, a bicyclist, who rode through two stop signs without stopping—a violation of the vehicle code. The officers ordered the complainant to stop, but he sped off on his bicycle. One of the officers said that he recognized that the bicyclist was on parole. One officer got out of the patrol car to conduct a foot pursuit. The other officer continued in the patrol car following the complainant. He lost sight of him but drove onto the curb. The complainant collided with the patrol vehicle as it drove into the driveway, and he fell off his bicycle. This officer wrote in his report that he intentionally accelerated past the complainant's location to turn into the driveway to block his path. This led to the collision. Among other things, the complainant complained that officers intentionally used a police car to stop him, and he alleged such force was excessive.

**IA Analysis:** IA exonerated the Force stating that the officer's use of the patrol car to block the path of the fleeing suspect was a reasonable use of force, and not an act of legal intervention. The officers did not intend the collision; rather, the complainant lost control of his bicycle and unintentionally collided with the patrol car when he was trying to evade the officers.

**IPA Concerns:** The IPA closed this case with concerns. The BWC shows that the collision occurs as the patrol car turned into the driveway – meaning that the turning and the collision appear to be simultaneous. The IPA believes that there are no facts supporting an assertion that the complainant could have stopped in time or altered his course to avoid the contact.

Although IA states that the collision was caused by the complainant's failure to react and was not an act of legal intervention, an examination of the officers' actions in the reports show that the officer intended to and did drive his patrol car in the manner that he did. Although the consequence, the collision, was not intended, there is direct causation between the manner in which the officer intended to and did maneuver his car and the collision.

### **Closed with Concerns — Case # 9**

**Summary:** The complainant stated that he was in a hotel parking lot when he allegedly saw an SJPD vehicle speeding and trying to avoid the parking lot speedbumps. The complainant had an exchange with the officer, during which the officer allegedly used profanity towards the complainant. The officer then entered the hotel, and when he came out, he had a fruit cup. The complainant believed the officer received this as a gratuity, violating policy.

**IA Analysis:** IA came to a finding of Not Sustained for the Courtesy allegation but did not interview the subject officer. The IPA requested that the subject officer be interviewed, and IA agreed.

**Conclusion:** The IPA closed this case with concerns, telling IA that since the case had not yet been assigned to an IA sergeant, any subject officer interview would take place eleven months after the complaint was made. Too much time had lapsed to provide a meaningful review of the investigation.

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### **Closed with Concerns — Case # 10**

**Summary:** The complainant called SJPD due to on-going suspicious activity at his home-- neighbors were allegedly causing damage in his backyard. The responding officer mistook the complainant for someone with whom he had prior contact. The complainant alleged the officer was dismissive about his concerns, accused him of being on drugs, and had a bias against him because he mistook him for someone else. He further complained the officer was discourteous to him and failed to conduct a proper investigation. The officer suggested his children could be removed from his care if he was on drugs or suffering from a mental health issue. The complainant expressed concern about contacting police again for assistance.

**IA Analysis:** IA's investigation concluded the subject officer conducted a thorough investigation. Officers believed the complainant may have drug or mental health issues. IA further concluded that the officers did not threaten to remove the children.

**Conclusion:** The IPA closed this case with concerns. The IPA believes the subject officer should have contacted CPS to do an assessment of the children in the house if the officer thought drugs or mental health issues were present.

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### **Closed with Concerns — Case # 11**

**Summary:** The complainant was arrested after being involved in a hit and run vehicle accident. The complainant alleged that officers were rough on him and put the handcuffs on too tightly. The complainant left his property at the scene and believes that it was stolen by an unknown party.

**IA Analysis:** While the complainant did not overtly allege that SJPD may have taken his property, this is the inference based on his complaint. However, after review of the report and the body-worn camera footage, the preponderance of evidence showed that the property was not taken by SJPD or taken in front of them. IA came to a finding of Unfounded.

The Force allegation for handcuffing the complainant too tightly that led to injury was Unfounded. IA argued that the injury could have occurred during the accident and that the complainant did not complain in the moment that the handcuffs were too tight.

**IPA Conclusion:** The IPA closed this case with concerns. While the IPA agreed with the finding of Unfounded for the issue of the complainant's property, the IPA has concerns with the finding of Unfounded for the tight handcuffing. During review of the body-worn camera, the complainant could be heard stating that the handcuffs were tight. IA's assertion that the injury to the complainants' hand could not have happened after he had been handcuffed, but instead was a result of the hit and run was questionable.

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### **Closed with Concerns — Case # 12**

**Summary:** The complainant was driving his vehicle in the late afternoon of a sunny summer day. He noticed a police vehicle behind him, attempting to pull him over. He did not immediately pull over because he felt it was unsafe due to cars parked on the street but signaled that he was going to pull over. Once stopped, the complainant felt officers were discourteous during their verbal exchange while he was trying to explain why he did not immediately pull over. He felt the display of force by an officer who drew his gun during the vehicle stop was excessive. He felt he was stopped by the officers due to his ethnicity and because he was driving in a certain area of the city. He believed that the traffic stop was prolonged for a minor vehicle code violation of not having a front license plate.

**IA Analysis:** The investigation showed that the driver did not pull over immediately once officers signaled that he should stop. Body-worn camera footage did not provide a clear visual of the street, but there were many parked cars on the curb. The primary officer said he conducted a high-risk car stop because he felt the driver was evading and saw him reach under the seat for an item, potentially a weapon. The officer in the passenger seat was not interviewed. Body-worn camera footage reflects that this officer did not display his weapon.

**IPA's Response:** IPA requested additional information and investigation, which IA provided, but came to the same conclusion.

**Conclusion:** The IPA closed the case with concerns. The IPA believed that if the subject officer saw the driver reaching for a weapon, the reason supporting the high-risk car stop, the officer would have informed his partner sitting in the passenger seat. We also believed that if the subject officer saw the driver reaching for a weapon, he would have asked the driver about weapons in the car and/or searched the car. He did neither. The IPA submitted a recommendation on high-risk stops.

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### **Closed with Concerns — Case # 13**

**Summary:** The complainant, a Hispanic male, was stopped for having a cracked windshield. At the onset of the interaction, the complainant was asked to hand over his keys. His passenger was asked for her identification. When she went to her purse to get her identification, she was told to *stop* by another officer as he placed his hand on his weapon. The complainant asked to speak with a supervisor. After the request for a supervisor, the complainant alleged that officers yelled at him and added an additional

violation regarding modified exhaust. The complainant believed he was unfairly treated based on the officer's bias and the additional violation was added as retaliation for asking for a supervisor.

**IA Investigation:** The IA investigation focused its analysis entirely on the lawful reason for the stop [vehicle violation] but did not fully analyze the encounter in its entirety. The subject officer used informal language in his interaction (i.e., *dude, man, power down bro*) when addressing the complainant for the vehicle violation. IA's analysis did not provide an analysis addressing whether these word choices are inappropriate when speaking to an unfamiliar community member or reflect implicit bias.<sup>38</sup> The IPA requested further analysis of the officer's actions to determine whether bias influenced the officers' conduct at the scene. The officer's demand for the car keys was based on the officer's inaccurate entry of the license plate; the inaccuracy caused the return to be *no plate, not stolen*. The complainant asked for a supervisor once he felt he was being treated unfairly. He made four separate requests before a supervisor was called to the incident location, IA did not provide an explanation for the delay. The IPA also had concerns with officers' assertion that *they had a right to identify everyone in the car*. The IPA acknowledges that officers can ask for passenger identification, but they do not have the *right* to demand it absent a reasonable suspicion that the passenger is involved in criminal activity. IA did not provide a thorough explanation on how the Field Training Officer and recruit could make this assertion.

**Conclusion:** The IPA closed this case with concerns as it appeared that all doubts were resolved in favor of the officer.

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#### **Closed with Concerns — Case # 14**

**The incident:** The complainant witnessed an officer pulling an individual from a vehicle and later towing it. The complainant and two other bystanders began recording the interaction. The complainant alleged officers aggressively approached them by yelling and telling them to move to the sidewalk. The complainant felt the officer was discourteous while also mentioning a previous interaction the complainant had with another officer that resulted in serious injury.

**IA's Investigation:** IA concluded that the officer made a statement about the past interaction between the complainant and another officer to deescalate the situation and make the complainant rethink his actions with police.

**IPA's Response:** The IPA did not find the officer's statement tactful. The statement of the fact that the complainant had been injured during a previous encounter appeared more akin to a threat than a de-escalation tactic. The IPA was also concerned with IA's closing the Procedure allegation of towing the vehicle as a Supervisor Referral for an improper. We believe this mistake was not a minor transgression because it has a significant impact on those that have their vehicles seized improperly. Specifically, the financial ramifications can be a significant strain on an individual's financial resources from which they are unlikely to recover.

**Conclusion:** The IPA closed this case with concerns.

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### Closed with Concerns — Case # 15

**The Incident:** The complainant stated that officers showed up at a homeless encampment to conduct warrant checks. Officers arrived at a specific campsite. An adult female Pitbull that was restrained with a leash was on site. This dog had recently given birth and the litter was in the tent area. As the primary officer approached the tent area, the dog barked, appeared to move closer to the officer, and the officer discharged his weapon, killing the dog. Animal Control Services (ACS) responded to the scene and impounded the litter.

**IA's Response:** IA concluded that the officer's actions were within policy when he discharged his weapon. Animal Control Services and the officer followed policy in removing puppies and placing them in the care of ACS.

**Conclusion:** The IPA closed this case with concerns. It appeared to the IPA that the primary officer's attempt to enter the tent created the very peril that he then needed to extinguish. There was no call attached to this event. There was no indication that the tent's owner was doing anything illegal apart from unauthorized camping. Both officers were aware the dog was chained. Neither took any steps to assess the length of that chain. The primary officer stated that mother animals who have recently given birth are often very protective and will become very aggressive if they feel their offspring are in danger. We felt it unfortunate that the primary officer, knowing the tendencies of mother dogs, nonetheless decided to enter a tent for the purposes of *proactive policing*. Given the lack of a more compelling reason to enter the tent, we have concerns that his exercise of discretion was improper and his effort to avoid harm was careless.

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### Closed with Concerns — Case # 16

**Summary:** The complainant called 911 several times for assistance at her residential community because she was having a dispute with another resident. When the officer arrived, he allegedly treated her like a criminal. The complaint alleged that he told her to sit on the curb and would not listen to her. He initially intended to take her to EPS; however, he was directed by the Sergeant on scene to take her to jail instead. As they entered the jail, she stated that the officer slammed her against a plexi-glass and a concrete pillar. She was then transported to a local hospital for evaluation and was medically cleared. She alleged she was treated differently because of her mental health status.

**IA Investigation:** IA's investigation concluded that the officer was within policy during this interaction. IA also concluded there was no indication of bias based on the complainant's mental health status.

**Conclusion:** The IPA closed this case with concerns. The IPA had concerns with the deactivation of BWC at the jail in which an allegation of force was alleged. IA's analysis suggested that the Santa Clara County Jail policy requires officers to turn their cameras off while entering the facility, but IA never provided included this policy in their investigation. The IPA was also concerned with IA's analysis of the CIT training provided to officers and their ability to identify individuals dealing with mental health disorders.

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### Closed with Concerns — Case # 17

**The Incident:** The complainant, a Latino male, was traveling in a rideshare pool with other passengers of differing ethnicities. As the vehicle stopped to drop off a passenger, a loud voice yelled *do not get out of the car* as multiple officers appeared behind the car. After approximately ten minutes, officers approached the car with weapons drawn and ordered the driver to exit the vehicle with his hands up and walk backward toward the officers.

Next, the complainant was directed to exit the car in the same fashion. When he approached the officers, he asked if he was under arrest. The officers replied that he was only being detained but did not identify the reason for the detention. The complainant was pat searched, handcuffed, and put in the back of a patrol car. Officers asked for his PFN (Personal File Number: number assigned by the Department of Corrections), but the complainant did not know what the officer was talking about. Another officer came by and said, *we have the wrong guy*. The complainant believed he was profiled because of his ethnicity.

**IA Investigation:** IA concluded that this response was in line with the high-risk stop policy. IA stated that the car matched the description of a suspect's car who had an outstanding felony warrant for assault with a deadly weapon and lived nearby to this vehicle stop. IA also determined that the subject officer was not biased in this encounter.

**Conclusion:** The IPA closed this case with concerns. The IPA requested that IA re-analyze the use of force and to re-analyze the facts to support the high-risk car stop. The IPA continued to have concerns about the factor's officers used to justify both the stop and the manner of the stop. Although detentions may be made on more general descriptions than arrests, there still must be reasonable suspicion, i.e., facts under which a reasonable officer could suspect an individual has been, is, or is about to engage in criminal activity. The IPA concluded IA's analysis of the detention focused narrowly on those facts which tended to elevate the propriety of the stop while not acknowledging those facts which should have also been addressed in the evaluation. In sum, the IPA had concerns that discrepancies were resolved in favor of the officers.

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### Closed with Concerns — Case # 18

**Summary:** The complainant believed officers contacted her adult son because he is Black. The son was near a friend's RV parked in a residential area. During the interaction, an officer said that the subject made an admission of possessing a crack pipe. The subject denied making an admission; the complainant believed the officer was untruthful. He was arrested for unlawful possession of a small canister of mace and prescription pills.

**IA Investigation:** The responding officers were a Field Training officer and his recruit. They were driving in an area that had allegedly received public complaints about vehicles parked for extended time and illegal dumping. The recruit officers approached the male and asked him to talk. IA determined that no discussion of race was involved and comments regarding a pipe that was nearby did not rise to the level of misconduct. Further, IA concluded that the encounter was supervised by the Field Training officer to ensure proper policy was applied.



**Conclusion:** The IPA closed this case with concerns. The IPA requested further analysis and investigation leading up to the contact, the reason for the search, and length of time spent with the subject before initiating the arrest. Officers were not interviewed regarding their basis for the pat search, which led to the discovery of the mace. While possession of mace itself is not a crime, the subject had a prior felony conviction which prevented him from possessing this item. That conviction, however, occurred over 20 years earlier.

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#### **Closed with Concerns — Case # 19**

**The Incident:** The complainant was driving in a classic car with a passenger when he was pulled over by two SJPD officers for no front license plate. When the first officer asked for his license and registration, the complainant informed them that both were in the trunk and volunteered to retrieve them. The officer making the request did not appear to mind the complainant's exiting his vehicle to collect the documents. However, as he did so, the second officer on scene stepped in, ordered the complainant to come to the sidewalk where he was pat searched and questioned about where he was coming from and going. The first officer went to the passenger side of the car and asked the passenger for identification. When the complainant explained that it was a classic car which didn't have a front license plate, one officer made a comment similar to *well I guess you'll be drilling holes today*. The complainant stated that he could tell this was a recruit training exercise and the interaction was prolonged for training purposes, and he believed this was inappropriate.

**IA Investigation:** IA's investigation confirmed the officers on scene were a Recruit and Field Training Officer but concluded that their actions were within policy. Further, they stated that the pat search was reasonable for several reasons— 1) the complainant exited the vehicle without request, 2) the complainant was larger than both officers and 3) was wearing dark colored cargo pants with multiple pockets.

**IPA's Response:** The IPA requested that IA conduct further analysis specific to the Search/Seizure allegation. The initial stop was for a minor traffic infraction (no front license plate) at approximately 9:19 am and the complainant was calm and compliant throughout the interaction. The IPA's assessment was that IA did not adequately address whether the officers had a reasonable belief the complainant was armed and/or dangerous, as Duty Manual section L 5100 requires.

**Conclusion:** The IPA closed this case with concerns. First, the officer was not interviewed and thus there was no account from the officer about her belief that the complainant was armed or dangerous. Second, absent the officer's statement, the IPA did not find there was sufficient reason to conduct a pat search.

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#### **Closed with Concerns — Case # 20**

**Summary:** The subject officer located an unoccupied stolen vehicle in the parking lot of a shopping mall. The owner of the vehicle filed a complaint against the officer who authorized a car tow because (1) the complainant was not contacted prior to the vehicle being towed, (2) the report did not include the detail that the car battery was stolen and (3) the report did not document other damage to the vehicle. The owner also had to pay towing fees before he could regain possession of his vehicle.

**IA Investigation:** IA concluded the subject officer had the authority to tow the vehicle under the proper California Vehicle Code but acknowledged that the officers did not document the vehicle's inventory sufficiently.

**IPA's Response:** The IPA requested further analysis on the legal authority to tow the vehicle.

**Conclusion:** The IPA closed this case with concerns because the IPA's concerns regarding the analysis were not fully addressed. IA did issue a training bulletin to address discrepancies but did not acknowledge that the officer lacked authority to tow from private property. The IPA believed that IA's analysis failed to appreciate the significant towing costs the complainant paid to recover his vehicle

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### **Closed with Concerns — Case # 21**

**The Incident:** The complainant stated that she took her teenage son to the San Jose Police Department Main Lobby to file a domestic violence and sexual assault report. During the contact, the subject officer asked the teenager whether he was sure he wished to file a report and explained the long process. The officer provided the teenager and his mother with a card and told them to think about it. If they wanted, they could return to file a report. The teenager became upset and wished to leave because it was taking a long time at the Main Lobby. They left without filing a report.

However, three days later, the mother contacted the officer again. She again described the alleged crimes, including the fact that the alleged abuser was an adult significantly older than her son and provided officers with photographs of her child's injury. The complainant alleged that the officer failed to write police reports during both contacts.

In addition, the complainant felt the officer was biased toward her child because her son was a male victim. Approximately one month after the contact with the officer at SJPD Main Lobby, a missing person's report was filed listing the complainant's son as missing. The complainant called the officers several times and left voicemails. She alleged no one returned her calls.

**IA's Response:** IA reviewed camera footage, interviewed officers, and reviewed documents. IA concluded that the subject officer had enough information to create a report and should have done so. IA also concluded that the interaction did not indicate an unequal treatment against the victim due to his age/gender preference. Further, IA concluded that the officer's failure to return calls does not rise to the level of misconduct. IA also confirmed that the subject officer did follow the missing and exploited children process after being contacted by the National Center for Missing and Exploited Children (NCMEC) and a detective further reviewed the case in regard to the sexual assault allegations.

**IPA's Response:** The IPA requested further investigation and analysis for several reasons. First, the IPA acknowledged that nothing in the Duty Manual mandates an officer to return calls. However, given that the subject officer is mandated to complete an investigation, it is reasonable to return calls to develop the case. The IPA fails to understand why a reasonable officer assigned to the Missing Persons Unit would not return all of the calls from a mother whose son was reported missing.

The IPA appreciates that the County's Sexual Assault protocol has a **victim-centered, trauma-informed, and offender-focused in all aspects of response and services to sexual assault survivors** approach.

However, the reluctance of a minor who has alleged sexual assault and domestic violence by an adult should have no bearing on the Department's obligations to bring the case to the D. A.'s office.

**Conclusion:** The IPA closed this case with concerns.

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### **Closed with Concerns — Case # 22**

**Summary:** The complainant was 14 years old. She was accused of stealing a cellphone that she allegedly found and also of brandishing a knife when confronted by the phone's owner with the alleged theft.

Officers attempted to obtain a statement from the suspect, but when officers first attempted to do a pat search on the complainant, a physical altercation occurred between the complainant and the officers. The complainant was taken to the ground and handcuffed. The complainant was booked into Juvenile Hall for resisting arrest, battery on an officer, theft, and a probation violation.

**IA's Investigation:** IA's investigation and analysis concluded subject officers used minimal force and the officers' response was reasonable given the level of active resistance. IA also concluded all procedures and policies were followed regarding custodial interrogations. Once the minor was handcuffed, advised of her Miranda rights, and in the patrol car, the minor was not asked specific questions without counsel and the sergeant was within policy when interacting with the suspect.

**Conclusion:** The IPA closed this case with concerns. The IPA had concerns with the tactics and procedure used by officers when they initiated contact with the minor that resulted in a use of force on a 14-year-old. The IPA also had concerns about *any* questioning of a minor about the crime that would implicate the need of legal counsel. The IPA was also concerned about the officers' behavior toward the mother of the suspect and believed it to be discourteous, inappropriate, and unnecessary.

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### **Closed with Concerns — Case # 23**

**Summary:** Officers contacted the complainant while he was recording officers who were in the process of arresting his cousin. Officers yelled at the complainant to *back the f--k up* and pushed him backwards. When the complainant re-approached to continue recording, an officer slapped the phone out of the complainant's hands, yelled profanities, and knocked him to the ground as the complainant attempted to pick up his phone. The complainant alleged officers failed to read him his Miranda Rights and failed to provide the badge numbers of the officers involved when he requested.

**IA Investigation:** IA concluded that the complainant interjected himself at the scene, and his actions were a clear example of delaying officers in the performance of their duties (Penal Code 148). IA reviewed the body-worn camera footage. IA concluded that that the complainant charged at one of the officers. Thus, the officer was justified in slapping the phone out of the complainant's hand because it could have been used as a weapon. IA concluded that the officer had more than enough probable cause to make a Penal Code 148 arrest.

**Conclusion:** The IPA closed this case with concerns. IA quoted Duty Manual section L 2602.5 *Tactical Conduct* in its analysis but failed to apply the elements to the facts to show how any of the officers attempted to de-escalate the situation.

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### **Closed with Concerns — Case # 24**

The complainant lived with an elderly woman as a caretaker instead of paying rent. The complainant was contacted by the elderly woman's nephew and told to leave as the elderly woman did not own the property. If she refused to leave, he would call the police. The elderly woman told the complainant that she had a restraining order against her nephew and not to worry about him. Nevertheless, the nephew called the police to remove the complainant. The complainant alleged that responding officers failed to get an interpreter and thus, only heard the nephew's side of the story, not hers. The officers told her in English that the nephew could remove his aunt and the complainant from the property.

**IA Investigation:** IA concluded that the officer did not follow the Language Access Plan and should have provided a Spanish-speaking translator after the complainant requested one. However, IA concluded the subject officer did a proper response to a civil stand by, and his response was within policy. IA also concluded the subject officer was courteous in his interaction with all parties.

**Conclusion:** The IPA closed this case with concerns. We believe this encounter is a prime example of why officers should avoid rendering opinions about the rights of parties in civil disputes. The officers did not determine any of the parties' property rights. Given the facts gleaned from the investigation, it was highly probable that the elderly woman had some possessory interest in the residence. Without speaking to the nephew's mother or reviewing the alleged court order, the officer decided that the nephew owned the property and could proceed with evictions.

Also concerning is that the officer proceeded to run the complainant's vehicle registration (despite the car being properly parked) to obtain identifying information and allowed the nephew to take notes from the return information received from dispatch.

The officer's entire interaction appeared to be one-sided and in favor of the nephew. Not only did the officer fail to provide the complainant with a translator after she requested one, he spoke about her and the situation in front of the nephew knowing she was unable to understand.

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### **Closed with Concerns — Case # 25**

**Summary:** The complainant alleged that he was driving with his brother and a friend when they were pulled over by SJPD. He complied when officers told him to exit the car. Officers told him that the vehicle was stolen, but the complainant told the officers that he had purchased the car. Officers then demanded identification from the passengers, but the complainant's friend refused to provide it. Arrests were made and the vehicle was towed.

**IA Analysis:** IA determined that the officers' conduct was within policy. At the scene, the officers were able to determine that the complainant was the registered owner of the car.

**Conclusion:** The IPA closed this case with concerns. First, the officer insisted on obtaining identification from the passengers. His report states that any occupant in a detained vehicle is required by law to provide identification. The officer's belief is misplaced. Officers cannot demand identification of persons unless they have reasonable suspicion that the person has or is committing a crime. In this case, the officer's insistence that the passenger identify himself appeared to be the reasons why the District Attorney did not file a Penal Code 148 charge against the friend.

Second, the report documents that family members arrived on-scene. Nonetheless, the truck was towed. Duty Manual section L 5210 allows cars to be released to family members. No explanation was provided as to why this Duty Manual section was not followed.

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### **Closed with Concerns — Case # 26**

**Summary:** The complaint alleged that an officer lied in a police report when the officer stated that the complainant was involved in a hand-to-hand drug transaction with another person. The complainant stated that this was impossible because he was at work during the drug transaction.

**IA Analysis:** The IA investigation stated that the complainant did not provide a timecard or other proof that he was at work during the time of the drug transaction. In his IA interview, the subject officer said he was the only person who observed the complainant make a hand-to-hand drug sale. The officer was asked why he wrote his supplemental report approximately two weeks later after another officer completed the original report. The officer replied that he was in the process of obtaining a search warrant for the complainant's residence and was afraid the police report would become a public record. He believed if the report became a public record, it would tip off the complainant about the search warrant, which would jeopardize officer safety.

IA concluded that it was unable to prove if the officer saw the complainant conduct a hand-to-hand narcotics sale. There was no body-worn camera footage or independent witness. The officer was in plain clothes and not required to have his body-worn camera activated. The complainant said he was at work but never provided proof. Thus, according to IA, the investigation failed to disclose sufficient evidence to prove clearly or disprove the allegation made in the complaint.

**Conclusion:** The IPA closed this case with concerns. The lack of a contemporaneous police report was problematic given the allegation that the officer was the only person who allegedly witnessed and later documented a hand-to-hand sale. Unfortunately, the passage of time can make small but important details uncertain. In this case, there was much uncertainty about what the complainant was wearing. The situation makes credibility assessment difficult. The officer claimed that he wrote his supplemental report approximately two weeks after the incident because he was in the process of obtaining a search warrant for the complainant's residence and was afraid the police report would become public record. He believed if the report became public record, it would tip off the complainant about the search warrant.

The IPA fails to see how a police report could become a public record under this scenario. Police investigations are exempt from disclosure under the Public Records Act. (See Government Code section 6254(f) and Duty Manual Section C 2200 et seq.) The officer's hypothesis presupposes that a member of the public would make a request for the police report, receive the police report (highly unlikely) and inform the complainant. It was concerning that IA accepted the officer's hypotheses without an independent analysis.

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# DISAGREED

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## Disagreed — Case # 1

**Summary:** Complaint alleged San Jose Police officers were parked under an overpass sleeping. The anonymous complainant provided a patrol vehicle number and detail about the date and time. The complainant felt the officers were neglecting their duty.

**IA Analysis:** Using the vehicle number provided by the complainant, IA was able to identify the officer. IA interviewed the officer as well as reviewed his unit history report. The officer agreed that he was in the area at the time of the allegation and that he fit the description of the officer based on the anonymous complaint. However, the officer stated that many officers use that area for report writing and denied that he had been sleeping there. Based on the interview and the review of the officer's unit history of that day, the investigation came to finding of unfounded.

**IPA Response:** The IPA disagreed with the finding of unfounded as there was not a preponderance of evidence to show that the allegation had or had not occurred. The analysis had not taken into account whether or not the officer could produce any reports that he had written during that day and time. The IPA requested that reanalysis be done to see if the officer could provide these reports and therefore provide some evidence that the officer had not been sleeping.

**IA Re-analysis:** IA reanalyzed the case. The investigator was unable to obtain additional information from the complainant since the person was anonymous. IA's second analysis, however, still did not obtain additional information which would corroborate the statements made by the officer during his interview. The finding was changed to not sustained.

**IPA Conclusion:** IA's second analysis showed there was not enough evidence to prove or disprove that the officer was sleeping. However, IA had the ability to obtain additional documentation and did not do so. The IPA closed the case as Disagreed because the investigation was not thorough and complete.

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## Disagreed — Case # 2

**The Incident:** The complainant contacted IA on behalf of her young son. Her son and his uncle went to the store and while they were returning home, officers stopped their vehicle. Four officers arrived on scene, made her son get out of the back seat of the car, held his hands behind his back, squeezed his fingers, pat searched him. Officers directed both the uncle and complainant's son to sit on the curb. One officer then proceeded to tell her son about gang activity and shootings before letting them leave. The complainant felt her son's rights had been violated.

**IA Analysis:** IA concluded the detention was proper, not prolonged and there was no any indication of bias. IA further concluded that the officers' conduct during the detention was within policy.

**IPA Response:** Pat searchers are permitted only if officers reasonably believe that the detainee is armed and dangerous. The IA analysis provided no critical examination of the officer's assertion that the son

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was armed and dangerous. IA suggested that the minor could have been a recruit for gang membership and asserted that the uncle had gang *association*. When the IPA raised questions regarding this alleged *association*, IA determined that the uncle was not a validated gang member.

**IPA Conclusion:** The IPA disagreed about the basis for the curbside detention and the search of the son. We believed that the investigation and analysis of this was not thorough and complete; inconsistencies were resolved in favor of the officer. We closed this case as Disagreed.

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### Disagreed — Case # 3

**The Incident:** The complainant was driving home when he witnessed a patrol car make a U-turn and follow him. The complainant pulled over. He asked the officer to provide the reason for the stop. The officer replied the car's license plate was not fitted properly in the center back of the vehicle. The complainant explained the dealer who sold him the car placed the license in that location and questioned the legal basis for the officer's actions. The officer commanded the complainant to provide his identification. When the complainant continued to ask questions, the officer commanded him out of the car, handcuffed him, pat searched him, and directed him to sit on the curb. The driver's car door was open, and officers attempted to search the car. Officers informed him they were arresting him on a 148 (resisting arrest/delaying a police officer) and never cited him for the license plate. Officers refused to allow his family to pick up the car. The complainant felt the officers rude and indifferent to the cost of towing his vehicle.

**IA's Analysis:** IA concluded that the officers were in policy and made a lawful detention.

**IPA Response:** IPA requested further analysis applying the CA vehicle code section 5201 (A) and 25251 (a) (2).

**IPA Conclusion:** The IPA disagreed with the overall analysis. The IA analysis failed to support the stop based on an alleged violation of CA vehicle code section 5201 (A) and 25251 (a). This lack of support for the detention called into question the officers' conduct during the entire encounter. We closed this case as Disagreed.

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### Disagreed — Case # 4

**Complaint:** The complainant and his wife were divorcing. Both are native speakers of a specific non-English language. The complainant sent an allegedly threatening email in this specific language to his wife. The wife forwarded it to her attorney. The attorney asked her father who was familiar with this specific language to provide a translation of the email. His English translation of the email stated that the complainant wanted to kill the attorney. The attorney provided the email and her father's translation to SJPd. The complainant obtained a translation from a court certified interpreter. The interpreter provided an alternate translation of the email which did not mean "to kill." The complainant was arrested for criminal threats. The complainant said that his arrest was unlawful because it was based on an improper translation.

**IA's Analysis:** The investigation revealed that an SJPd officer tried to have the email translated by an officer certified in the specific language, but none was available. He then contacted the language line for

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an interpreter, but nobody was available. He concluded that the translation provided by the victim's father was accurate because the victim was an attorney. He submitted the report to the DA. The investigation showed that the case was forwarded to another SJPD officer for follow-up. This officer used multiple online translation tools, which provided alternative translations. He stated that he did not follow the Language Access Plan (LAP) because he needed a written document translated, rather than needing assistance translating an interview. IA concluded that the felony affidavit was accurate, and the arrest was proper. IA says that the Language Access Plan's mandate to use certified language professionals when contacting limited English speakers in the field is not applicable because this incident concerned an email (a written document), and not a member of the public in the field (oral communication).

**IPA's Response:** We believe that IA's assertion that the Language Access Plan (LAP) does not apply was incorrect. Section VI of the Language Access Plan is entitled Procedures for Providing Written Language Assistance. This section states *that the Department translates its vital documents into Vietnamese and Spanish and translates other documents when there are external and internal requests*. (Emphasis added.) Therefore, the LAP does control over written documents. Officers are required to request translation services and wait for the proper response. This procedure was not followed.

Online translation tools do not provide context of the words it is translating and therefore, the true meaning. Without the assistance of a qualified interpreter, the translation is, at best, a good guess. Officers can use on-line tools as a quick method for getting a general sense of the facts. But if the written words will be used to establish elements of a crime or form the basis of a search/arrest warrant, or a probable cause affidavit, those documents should be translated by certified SJPD personnel or contracted translation services. A mistranslation can result in the violation of a person's 4<sup>th</sup> Amendment right to be free of seizure and the 14<sup>th</sup> Amendment right to liberty.

**Conclusion:** The IPA closed as Disagree.

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## Disagreed — Case # 5

**Complaint:** The complainant was arrested for possession of drugs for sales. He alleged that he is disabled and needs a walker. He had been dropped off by a friend at the location where he was arrested. Officers transported him to jail. Upon arrival, the officers did not request a wheelchair to move him from the patrol car to the booking area. Instead, with the assistance of Sheriff deputies, he was carried into booking face-down by his limbs and placed on the ground on his stomach. Later, he was placed seated upright in a chair. Among other things, the complainant stated that the manner in which they transported him from the patrol car into jail was improper, and he should have been provided a wheelchair.

**IA's Analysis:** IA classified the allegation as a Non-Misconduct Concern employing the rationale that there is no SJPD Duty Manual section mandating officers to provide assistance devices (i.e. wheelchairs) to people who claim to be disabled.

**IPA's Response:** Although the Duty Manual does not provide specific direction, SJPD is bound by Title II of the Americans with Disabilities Act which requires officers to impose reasonable accommodations during a lawful arrest to people with disabilities. This reasonable accommodation theory *applies where police officers properly investigated and arrested a person with a disability for a crime unrelated to that*



*disability, [but] they failed to reasonably accommodate the person's disability in the course of investigation or arrest, causing the person to suffer greater injury or indignity in that process than other arrestees.* The IPA asserted that complainant met the ADA criteria of being disabled. Although he did not indicate he received any injury from this interaction, being carried by arms and legs and placed face-first on the ground certainly caused him greater indignity than other arrestees being brought into the jail. For these reasons, the Non-Misconduct Concern classification pertaining to this allegation is inappropriate and should be investigated and analyzed as a Procedure allegation.

**IA's Re-analysis:** IA agreed to investigate the allegation as a Procedure allegation. Under IA's second analysis, the allegation was exonerated. IA asserted that the complainant was purposely delaying officers in the performance of their duties and that officers accommodated him with the best of their abilities.

**IPA's Response:** IA's argument does not meet the standard. The ADA lays out the standard when arresting disabled arrestees, and SJPd was required to provide assistance to the complainant that ensured that he did not suffer greater indignity while being transported into jail than other arrestees. The complainant did not pose a safety risk; he was handcuffed so he posed no physical threat and he had no known mental health concerns. Providing him with a wheelchair while handcuffed to enter the jail would not have created a safety risk.

**Conclusion:** IPA closed as Disagreed.

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## **Disagreed — Case # 6**

**Complaint:** The complainant reported a domestic violence incident to SJPd. The case was submitted to the DA's office, but the DA did not file charges, citing lack of evidence. She called the DA's office stating that she had additional evidence; the DA staff told her to provide it to SJPd. The complainant alleged that she attempted to give the subject officer additional evidence, but he refused to take it. The same day, a Deputy District Attorney emailed the officer telling him that he needed to accept any new evidence that might assist the DA's office in filing charges. The following day, the officer emailed the Deputy District Attorney stating that the complainant said she was going to email him additional evidence, he would conduct a follow-up investigation and re-submit the case to the DA's office. The complainant says that she emailed the officer additional evidence, but the officer never replied to her. The case remained closed. She filed a complaint alleging that the officer failed to review the evidence she provided and submit it to the DA's office.

**IA's Analysis:** IA acknowledged that the officer violated Duty Manual section L 4203 *Definition and Scope of Investigative Process* and stated that the officer should receive a Supervisor Review rather than a Sustained finding for this procedure allegation because it fits the criteria under Duty Manual C 1723-- *an allegation involved a minor transgression [and is] best handled by bringing the matter to the attention of the subject member's chain of command and supervisor.*

**IPA's Response:** Although failing to open an email might initially be considered a minor transgression, the analysis does not consider all the facts. The Deputy District Attorney told the officer to collect evidence from the complainant and the complainant told him that she was emailing him evidence. He

should have been anticipating its arrival and looking for it. If a significant amount of time passed and he had not heard from her, he should have attempted to contact her. We disputed that the allegations in this case were merely a minor transgression of an officer's duties.

**Conclusion:** IPA closed as Disagreed.

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### **Disagreed — Case # 7**

The complainant filed this complaint after her two minor sons were in a fight at school with a group of older students and SJPD officers were called. One of her sons was taken out of class by two SJPD officers and interviewed in a room without any administrators, attorney, or his parents. He was allegedly told that if he pressed charges, he would also go to jail. The complainant was concerned about these tactics. When IA contacted the complainant and, the IA investigator asked if she would like to discuss her issues surrounding this event with the subject officer, and the complainant agreed. IA closed the case as "Complaint Withdrawn."

**IPA Response:** The IPA was concerned that the subject officer contacted the complainant. Such conduct could be perceived as dissuading the complainant from moving forward with the complaint process.

**IA's Response:** IA stated that the investigator was not dissuading the complainant from moving forward with the complaint process, but rather was clarifying the police investigative process.

**IPA Response:** Prior to June 2008, the misconduct complaint process included a classification called "inquiry." Inquiry complaints were those that, upon intake, were resolved without a full investigation. Resolutions were generally achieved by having the complainant speak with the officer's supervisor or, more rarely, the subject officer. The IPA had concerns about the inquiry complaint classification.<sup>39</sup> In January 2008, the City Council approved the City Manager's revisions to the misconduct complaint process. The Council acknowledged the concerns with the inquiry classification and it was removed.<sup>40</sup>

**IPA's Conclusion:** IPA closed as "Disagreed." It appeared that IA resolved this complaint using an obsolete process.

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### **Disagreed — Case # 8**

The complainant stated that officers used excessive force during his arrest when he was tased after he was already in handcuffs.

**IA's Analysis:** IA identified the subject officers, including the officer who used the taser in drive-stun mode. All of the subject officers were interviewed except the officer who used the taser. The BWC and surveillance footage all confirm that the complainant was handcuffed when the subject officer used the Taser in drive-stun mode. IA exonerated the Force allegation stating that the complainant was actively and violently resisting at the time of the taser deployment.

**IPA Response:** The IA analysis cited portions of Duty Manual section L 2614 which governs the use of the Taser and reporting requirements. However, this crucial section of L 2614<sup>41</sup> was absent and not used to analyze the facts. We requested additional investigation and analysis focused on whether both elements of section L 2614 were present when the Taser was deployed: (1) Did the handcuffed person display overtly assaultive, self-destructive or violently resistive behavior? If so, how? (2) Did the behavior reach a level where it could not be controlled by other readily available means?

**IA's Response:** IA stated that the rules governing the use of the Taser in the drive stun mode differ from that in the prong mode. IA also stated that the officer's report indicated the reasons the taser was used—he was still actively violently resisting. Each of the other three officers were interviewed and indicated the complainant was tased in drive stun mode because he was still actively resisting, kicking his feet at officers and because he had two sets of handcuffs on was still able to move around enough to gain access to a weapon (if he had one). The officer's report who used the taser, accounts from witnesses and other officers, were all consistent with the resistance seen on BWC. Therefore, an interview with the officer who deployed the taster would produce no new information.

**IPA's Response and Conclusion:** The officer who used the force is the officer who should be interviewed since it is this officer's point of view that triggered the use of force. IA does not know if new information would be produced because they refused to interview the officer. Also, missing from IA's analysis is the fact that the officer who deployed the taser wrote a supplemental report 382 days after the incident stating, *I recently became aware that my initial narrative was inconsistent with the footage from other officers' Body-Worn Cameras at the scene.* Absent an interview, we do not know how or when the officer became aware that the initial narrative in the report was inconsistent with the footage from other officers' Body-Worn Cameras. Further probing is required for a complete investigation.

**IPA Conclusion.** We disagreed because, absent this officer's interview, the investigation is not complete or thorough.

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## Disagreed — Case # 9

**Complaint:** On July 2016, SJPD officers were involved in an officer-involved shooting incident. A young man was shot and killed by two San Jose Police officers. The man's relatives questioned the police tactics. One year and 3 days after the fatal incident, the family filed a federal civil lawsuit. One year and 7 months after the fatal incident, the family filed a police misconduct complaint with the IPA. Two years and 11 months since the fatal incident, a federal jury returned a verdict in the civil case. The jury found that officers used excessive force when they shot the young man.

**IA's Analysis:** One day after the jury's verdict was announced, the Internal Affairs Unit indicated to the IPA that the police misconduct complaint filed would be closed as **other**. This explanation was provided, *The complainants waited 1 year and 7 months to file the complaint. After conferring with the IA Commander, we will be closing this case as other reported over a year after the incident.*

**IPA's Response:** The IPA acknowledged that Duty Manual Section C. 1738 gives the Police Chief the discretion to decline investigating allegations if the complaint is filed more than one year after the incident. The section states that the Chief's discretion should be exercised in a thoughtful and reasonable manner. The core determinative factor appears to be whether the passage of time prevents

a thorough, fair, complete, and efficient investigation of the facts. IA's decision presumed that the mere passage of time would prevent a thorough and complete analysis of the incident without describing the facts supporting its assertion. We contended that the passage of time would not thwart an investigation. The scrutiny that the incident had already received (including the District Attorney's report and the extensive discovery in the civil action) would ensure that the administrative complaint investigation could be conducted in a fair and complete manner despite the passage of time. Also, the timing on this decision was highly unusual. On the very date the complaint was filed, IA was aware the complaint was filed one year and 7 months after the incident. After receipt, it appears that the complaint was placed on *suspended* status for 1 year and 4 months. Then the decision to close as **other** was made the day after the jury verdict. The IPA appealed this determination to the Police Chief; he declined to re-open the complaint.

**Conclusion:** IPA closed as Disagreed.

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### **Disagreed — Case # 10**

Complaint alleged that an officer improperly impounded a car that she claimed was registered to her. She complained about the length of time the vehicle was held, that she was not informed after the vehicle was released and that she was denied a tow hearing.

**IA Analysis:** The investigation showed that the officer impounded the car on May 16, 2018; it was held as evidence pursuant to Vehicle Code section 22655.5. The officer released the hold on June 19, 2019 – 1 year and 1 month from the date of impound. The procedure allegations against the officer was closed as no findings due to his retirement during the pendency of the investigation.

**IPA Concerns:** The IPA agreed with the finding against the retired officer. The finding against the officer did not address the propriety of his conduct; it merely reflected that he had left the department. We disagreed, however, because IA's investigation failed to focus on the supervisor's conduct. During the early stage of the investigation, the IPA requested that the supervisor be added as a subject officer. He was not. Instead, the IA investigation stated that the supervisor's *minimal involvement in the investigation was a call to a DMV investigator in an attempt to encourage the DMV to reconsider their neutral stance on an obvious fraudulent title transfer.*

The police documents reflect that the named officer contacted the DMV investigative unit ten times between June 2018 and February 2019. Each time, the DMV reiterated that they would remain neutral because they could not determine that the transfer of the car had been done incorrectly or illegally. In February 2019, the supervisor documented that he spoke to a DMV investigation supervisor of a local DMV branch. She explained that the DMV would be take a neutral stance on the matter and let first owner handle the case through civil court and get an order for the DMV to put vehicle back into his name. The SJPD supervisor documented, *I explained to her, the dept policy regarding civil vs criminal and why we are still involved (never an agreement to purchase and original R/O never sold the vehicle) I stated to her that we would let the court process proceed on the civil side and return the vehicle to whoever the civil court award the vehicle to, since the vehicle was in police storage it was not accruing fees and could be returned when ordered to...*

We contend that the supervisor's involvement was not minimal. After he was unsuccessful in persuading the DMV to reconsider their neutral stance, he made an affirmative statement on behalf of the Department indicating the Department would keep the vehicle and return to the party deemed the owner by the civil court. After the supervisor made that representation, the vehicle continued to be held for approximately four months. It was returned not because the civil judge determined ownership but because the first owner was unsuccessful in pursuing two small claim cases against the second owner due to lack of proper service.

When the car was impounded the car in May 2018; it was held as evidence pursuant to Vehicle Code section 22655.5 which allows a peace officer to remove a vehicle under the specified circumstances.<sup>42</sup>

On February 2019, the vehicle was no longer being held as evidence of a public offense or crime under Vehicle Code section 22655.5. As the SJPD supervisor indicated, it was being held until the civil court determined ownership. The fact that there was no civil court hearing does not negate that fact that the vehicle was unlawfully held from February 2019 to June 2019. The legal authorization for the hold under Vehicle Code section 22655.5 expired on the day the vehicle was no longer held as evidence of a public offense or a crime. Duty Manual Section L 5400 states *Every reasonable effort is made to return property to its rightful owner*. This phrase, however, does not provide a legal basis for using the criminal legal proceedings to hold property for a civil case.

**IPA Conclusion:** The IPA closed this case as Disagreed.

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# ENDNOTES

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<sup>1</sup> News articles addressing Chief Garcia’s statements include:

<https://www.mercurynews.com/2020/06/04/san-jose-police-city-defend-use-of-force-at-protests-i-stepped-into-a-war-zone/>

<https://www.sfgate.com/local/editorspicks/article/Bay-Area-protests-updates-Oakland-protest-turns-15316845.php>

<sup>2</sup> One policy complaint has been forwarded to the Bureau of Field Operations (BFO).

<sup>3</sup> California Government Code section 3304

<sup>4</sup> See endnote #1 above for news articles addressing Chief Garcia’s statements.

<sup>5</sup> The most recent public version of the Police Reforms Work Plan is included at the end of this March 12, 2021 informational memo to City Council.

<https://www.sanjoseca.gov/Home/Components/News/News/2624/5167>

<sup>6</sup> See IPA’s July 30, 2020 report to City Council titled Police Misconduct Complaints Received During Period of Civil Unrest. Item 4.1 on August 18, 2020 Agenda.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> See Santa Clara County Police Chiefs’ Association *Officer Involved Incident Guidelines*. Adopted December 2016.

<https://www.sjpd.org/home/showpublisheddocument?id=282>

<sup>10</sup> 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?)
- 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?)

<sup>11</sup> In 2013, the Independent Police Auditor Advisory Committee changed its name to Independent Police Auditor Advisory Council.

<sup>12</sup> San José Mercury News Oct 18, 2012, *Police officers, dispatchers cheered San José mayor Chuck Reed’s ticket*. <https://www.mercurynews.com/2012/10/18/police-officers-dispatchers-cheered-san-jose-mayor-chuck-reeds-ticket/>

<sup>13</sup> [https://www2.sjpd.org/records/pc-13650\\_library/Department\\_Orders/2021-005%20DM%20Addition%20-%20C%202400%20Online%20Presence.pdf/](https://www2.sjpd.org/records/pc-13650_library/Department_Orders/2021-005%20DM%20Addition%20-%20C%202400%20Online%20Presence.pdf/) See Appendix C.

<sup>14</sup> Gov. Code, § 12525.5, subd. (a) –(g).

<sup>15</sup> <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>  
<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-quick-facts-2021-01.pdf?>

<sup>16</sup> Los Angeles Sheriff, Los Angeles PD, San Diego Sheriff, San Diego PD, San Francisco PD, Fresno PD, Long Beach PD, Oakland PD and Sacramento PD.

<sup>17</sup> <https://data.sanjoseca.gov/>

<sup>18</sup> <https://opendatahandbook.org/guide/en/why-open-data/>

<sup>19</sup> Currently the Open Data Portal has only one public safety dataset – Police Calls for Service.

<sup>20</sup> A 2002 report on open data supplies these guidelines. Making data open means (1) the data must be available for download at the incident level (2) providing the public with all of the information necessary to understand it (e.g., include a “data dictionary”), (3) the data is structured and machine readable, and that the public can inspect it without access to any special software (4) the data are de-identified before they are made publicly available.

*Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities.* Center for Policing Equity and NYU School of Law Policing Project 2002.

[https://policingequity.org/images/pdfs-doc/COPS-Guidebook\\_Final\\_Release\\_Version\\_2-compressed.pdf](https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf)

<sup>21</sup> *U.S. v. Landeros* (9th Cir. 2019) 913 F.3d 862

<sup>22</sup> E.g., *Please provide your name or I’d like to see your identification.*

<sup>23</sup> E.g., *Give me your name or Where’s your ID?*

<sup>24</sup> Revisions to this General Order was agenzized for review and discussion at the April 3, 2020 San Francisco Police Commission meeting. Proposed revisions can be found here:

<https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/DGO%205.03%20draft%201242020%20FINAL.pdf>

<sup>25</sup> [https://www2.sjpd.org/records/pc-13650\\_library/Training%20Bulletins/Training%20Bulletin%202021-008%20CAD%20Gang%20Designation.pdf/](https://www2.sjpd.org/records/pc-13650_library/Training%20Bulletins/Training%20Bulletin%202021-008%20CAD%20Gang%20Designation.pdf/) See Appendix E.

<sup>26</sup> Some jurisdictions refer to these as *felony car stops*.

<sup>27</sup> Despite strict regulations, compared with other states, California has the highest number of pursuit-related fatalities from 1996–2015. These fatalities include peace officers, occupants of pursued vehicle, occupants of other vehicles, and nonoccupants. Police Vehicle Pursuits, 2012-2013 U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics Brian A. Reaves, Ph.D., BJS Statistician Special Report NCJ 250545 May 2017.

[https://www.bjs.gov/content/pub/pdf/pvp1213.pdf?utm\\_source=The+Appeal&utm\\_campaign=95bf8e31b0-EMAIL\\_CAMPAIGN\\_2018\\_08\\_09\\_04\\_14\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_72df992d84-95bf8e31b0-](https://www.bjs.gov/content/pub/pdf/pvp1213.pdf?utm_source=The+Appeal&utm_campaign=95bf8e31b0-EMAIL_CAMPAIGN_2018_08_09_04_14_COPY_01&utm_medium=email&utm_term=0_72df992d84-95bf8e31b0-)

<sup>28</sup> California Vehicle Code section 17004.7

<sup>29</sup> See [https://post.ca.gov/Portals/0/post\\_docs/publications/Vehicle\\_Pursuit.pdf?ver=2019-07-16-141238-590](https://post.ca.gov/Portals/0/post_docs/publications/Vehicle_Pursuit.pdf?ver=2019-07-16-141238-590)

<sup>30</sup> Other factors may include responsibility of primary officer and cover officers, positioning of police vehicle and backup police vehicles, making contact, commands, removal of occupants, approaching and clearing.

<sup>31</sup> <https://archive.theincline.com/2018/08/06/what-police-officers-should-and-shouldnt-do-when-a-suspect-flees-from-a-felony-traffic-stop/>

<sup>32</sup> A notation in the CAD may be sufficient if the records can be searched.

<sup>33</sup> West valley Utah

<https://www.wvc-ut.gov/DocumentCenter/View/11639/WVCPD-Policy-Manual-Revised-110120?bidId=Bloomington, IL> <https://www.cityblm.org/Home/ShowDocument?id=18570>

Annapolis, MD <https://www.annapolis.gov/DocumentCenter/View/4845/E-06-Traffic-Stops-March-2007-PDF>

Columbia, MO <https://www.como.gov/police/wp-content/uploads/sites/16/2018/12/Policy-506.pdf>

See also Andrew Borrello, *Felony Car Stops: A Comparison of Two Widely Used Methodologies* Law and Order Vol 29, issue 12 December 2001 <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=192505>

<sup>34</sup> California Commission on Peace Officer Standards and Training (POST) Basic Course Workbook Series Student Materials Learning Domain 22 Vehicle Pullovers Version 3.2 Revised 2018 Chapter 3: High-Risk Vehicle Pullovers [https://post.ca.gov/portals/0/post\\_docs/basic\\_course\\_resources/workbooks/LD\\_22\\_V-3.2.pdf/](https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_22_V-3.2.pdf/) See Appendix F.

<sup>35</sup> [https://www2.sjpd.org/records/pc-13650\\_library/Department\\_Orders/2021-010%20DM%20Additions%20L%209020-9022%20-%20High-Risk%20Vehicle%20Contacts.pdf](https://www2.sjpd.org/records/pc-13650_library/Department_Orders/2021-010%20DM%20Additions%20L%209020-9022%20-%20High-Risk%20Vehicle%20Contacts.pdf)

<sup>36</sup> Attempts to validate the DRE protocol as a means of identifying impairment have been disputed, especially when the drug in question is marijuana. Courts in Rhode Island and Maryland forbid DRE police officers to testify as experts. The Minnesota Supreme Court has concluded that the DRE procedure “dresses up in scientific garb that which is not particularly scientific.” The New Jersey Supreme Court will soon decide whether DRE police officers’ expert opinions will be admissible.

<sup>37</sup> We appreciate that exceptions to a general policy may be warranted. For example, the Chief of Police is routinely named as a defendant in lawsuits. Absent unusual circumstances, an administrative investigation against the Chief need not be opened. Likewise, individual officers are often named defendants in lawsuit involving vehicle accidents. The Department already employs a process to determine unavoidable vs. avoidable vehicle accidents and impose discipline if warranted. This process may be another exception to a general policy.

<sup>38</sup> A recent study co-authored by Jennifer Eberhardt at Sanford shows racial disparities in police officer’ use of language. The researchers’ *novel technique demonstrated that ...black community members were 61 percent more likely than white resident to hear an officer say the least respectful utterances, such as informal titles like “dude” and “bro.”* Rob Voigt, Nicholas P. Camp, Vinodkumar Prabhakaran, William L. Hamilton, Rebecca C. Hetey, Camilla M. Griffiths, David Jurgens, Dan Jurafsky, and Jennifer L. Eberhardt, [Language from Police Body Camera Footage Shows Racial Disparities in Officer Respect](#), Proceedings of the National Academy of Sciences (2017).

<sup>39</sup> See 2006 IPA Year End Report pages 9-10.

<https://www.sanjoseca.gov/home/showpublisheddocument/10697/636663943484200000>

<sup>40</sup> See City Council agenda, January 28, 2008, item 8.2

<sup>41</sup> Section L 2614 states that *An officer shall not use a TASER against a handcuffed or secured person, absent overtly assaultive, self-destructive or violently resistive behavior that cannot reasonably be controlled by other readily available means.*

<sup>42</sup> Vehicle Code section 22655.5 states: (a) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle was used as the means of committing a **public offense**.



(b) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle is itself evidence which tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a **crime** has been committed.

Penal Code section 15 defines “a crime or public offense” as “an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:  
1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or, 5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.

# APPENDIX A – MEET IPA STAFF

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**Shivaun Nurre - IPA**

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



**Erin O'Neill - Assistant IPA**

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



**Eva Roa - Analyst I**

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



**Jessica Flores - Office Specialist II**

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



**Telina Barrientos - Senior Analyst and Community Engagement Coordinator**

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

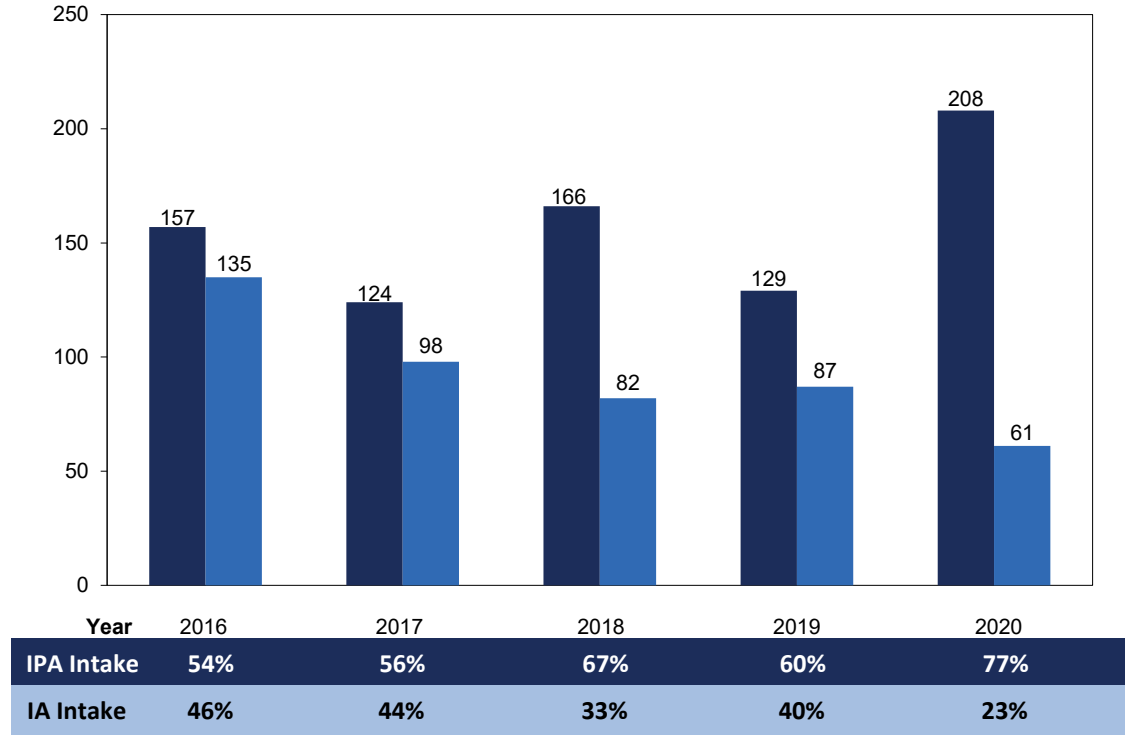


**Vivian Do - Senior Analyst**

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

# APPENDIX B – ADDITIONAL STATISTICAL INFORMATION

**Illustration A: IPA and IA Intakes — Five Year Overview (2016-2020)**



**Table 1: Allegations Received — Five Year Overview (2016-2020)**

Allegations Received	2016		2017		2018		2019		2020	
	#	%	#	%	#	%	#	%	#	%
Force	108	15%	68	12%	98	13%	100	12%	111	12%
Arrest or Detention	102	14%	52	9%	115	15%	123	15%	93	10%
Search or Seizure	38	5%	34	6%	32	4%	49	6%	43	5%
Bias-Based Policing	50	7%	54	9%	55	7%	54	7%	104	12%
Procedure	307	41%	251	44%	284	38%	337	42%	358	40%
Courtesy	109	15%	81	14%	87	12%	82	10%	141	16%
Conduct Unbecoming an Officer	17	2%	18	3%	34	5%	37	5%	28	3%
Neglect of Duty	11	1%	11	2%	43	6%	20	2%	18	2%
<b>Total Allegations</b>	<b>742</b>	<b>100%</b>	<b>569</b>	<b>100%</b>	<b>748</b>	<b>100%</b>	<b>802</b>	<b>100%</b>	<b>896</b>	<b>100%</b>

**Table 2: Dispositions of all Allegations Closed in 2020\***

Type of Dispositions	Dispositions of Allegations									
	AD	BBP	C	CUBO	F	ND	P	SS	Total	%
Sustained	4	0	3	4	2	0	33	1	<b>47</b>	<b>6%</b>
Not Sustained	1	1	4	0	1	0	5	0	<b>12</b>	<b>1%</b>
Exonerated	97	0	42	1	52	6	196	36	<b>430</b>	<b>51%</b>
Unfounded	1	74	53	22	10	4	70	0	<b>234</b>	<b>27%</b>
No Finding	1	3	4	2	2	0	16	1	<b>29</b>	<b>3%</b>
Complaint Withdrawn	2	1	3	0	0	3	8	2	<b>19</b>	<b>2%</b>
Complaint/Sup Review	0	0	1	0	1	0	33	0	<b>35</b>	<b>4%</b>
Other	5	5	7	4	6	0	18	0	<b>45</b>	<b>5%</b>
<b>Total Allegations</b>	<b>111</b>	<b>84</b>	<b>117</b>	<b>33</b>	<b>74</b>	<b>13</b>	<b>379</b>	<b>40</b>	<b>851</b>	<b>100%</b>

\* Excludes Department-Initiated Investigations

**Table 3: Complaints Closed with Sustained Allegations — Five Year Overview (2016-2020)**

Year	Conduct Complaints Sustained	Conduct Complaints Closed	Sustained Rate
2016	29	275	<b>11%</b>
2017	37	226	<b>16%</b>
2018	22	212	<b>10%</b>
2019	14	197	<b>7%</b>
2020	25	200	<b>13%</b>

**Table 4: IPA Audit Determinations in Closed Complaints — Five Year Overview (2016-2020)**

Audit Determination in Investigated Cases	2016		2017		2018		2019		2020	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	219	79%	196	83%	124	71%	133	84%	130	71%
Agreed after Further Action	26	9%	18	8%	35	20%	9	6%	16	9%
Disagreed	5	2%	10	4%	6	3%	6	4%	10	5%
Closed with Concern(s)	27	10%	12	5%	10	6%	11	7%	27	15%
<b>Total Complaints Audited</b>	<b>277</b>	<b>100%</b>	<b>236</b>	<b>100%</b>	<b>175</b>	<b>100%</b>	<b>159</b>	<b>100%</b>	<b>183</b>	<b>100%</b>

**Table 5: Location of Force Applications in Allegations Closed in 2020**

Locations of Force Applications	Number	%
Head	7	15%
Neck	1	2%
Torso	16	35%
Limbs	22	48%
<b>Total</b>	<b>46</b>	<b>100%</b>

**Table 6: Subject Officers Receiving Complaints in 2020 (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	49	58	24	14	23	48	216
2 Complaints	13	18	8	1	3	11	54
3 Complaints	1	9	0	3	1	1	15
4 Complaints	0	1	0	1	0	0	2
5 Complaints	0	0	1	0	0	0	1
6 Complaints	0	0	1	0	0	0	1
<b>Total Number of Officers Receiving Complaints</b>	<b>64</b>	<b>86</b>	<b>34</b>	<b>19</b>	<b>27</b>	<b>60</b>	<b>289</b>

**Table 7: Complaints Received by Individual Officers — Five Year Overview (2016-2020)**

Officers Receiving	2016	2017	2018	2019	2020
1 Complaint	200	176	207	189	216
2 Complaints	64	39	51	41	54
3 Complaints	14	7	6	15	15
4 Complaints	5	2	1	2	2
5 Complaints	1	1	1	0	1
6 Complaints	0	0	1	0	1
<b>Total Number of Officers Receiving Complaints</b>	<b>284</b>	<b>225</b>	<b>267</b>	<b>247</b>	<b>289</b>

**Table 8: Types of Force Applications in Allegations Closed from 2016 through 2020**

Type of Force	2016		2017		2018		2019		2020	
	# 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	9	7%	7	8%	6	8%	4	5%	3	5%
Body Weapons	30	23%	18	21%	7	10%	14	18%	6	11%
Canine Bite	7	5%	3	4%	2	3%	0	0%	2	4%
Car Impact	1	1%	1	1%	0	0%	1	1%	2	4%
Chemical Agent	0	0%	0	0%	0	0%	0	0%	0	0%
Control Hold	55	42%	25	30%	25	35%	26	33%	16	29%
Flashlight	1	1%	1	1%	1	1%	0	0%	0	0%
Gun	2 <sup>a</sup>	2%	2 <sup>b</sup>	2%	4	6%	4 <sup>c</sup>	5%	8	15%
Lifting up cuffs	1	1%	0	0%	0	0%	0	0%	0	0%
Takedown	21	16%	21	25%	14	20%	17	22%	9	16%
Taser	3	2%	5	6%	8	11%	2	3%	2	4%
Chokehold	0	0%	0	0%	1	1%	2	3%	1	2%
Other	0	0%	1	1%	3	4%	8	10%	6	11%
<b>Total</b>	<b>130</b>	<b>100%</b>	<b>84</b>	<b>100%</b>	<b>71</b>	<b>100%</b>	<b>78</b>	<b>100%</b>	<b>55</b>	<b>100%</b>

- a. In 2016, there were 2 complaints alleging gun-related force, neither involved use of a less lethal projectile.
- b. In 2017, there were 2-gun applications involved use of a less lethal projectile weapon.
- c. In 2019, there was 1-gun application involved use of a less lethal projectile weapon.

**Table 9: SJPD Findings for Force Allegations Closed — Five Year Overview (2016-2020)**

Disposition of Force Allegations	2016		2017		2018		2019		2020	
	#	%	#	%	#	%	#	%	#	%
Sustained	1	1%	0	0%	1	1%	0	0%	2	3%
Not Sustained	7	6%	6	7%	0	0%	2	1%	1	1%
Exonerated	92	79%	58	63%	73	76%	106	76%	52	70%
Unfounded	10	9%	20	22%	11	11%	18	13%	10	14%
No Finding	2	2%	4	4%	1	1%	5	4%	2	3%
Complaint Withdrawn	1	1%	1	1%	1	1%	0	0%	1	1%
Other	3	3%	3	3%	9	9%	8	6%	6	8%
<b>Total</b>	<b>116</b>	<b>100%</b>	<b>92</b>	<b>100%</b>	<b>96</b>	<b>100%</b>	<b>139</b>	<b>100%</b>	<b>74</b>	<b>100%</b>

**Table 10: Years of Experience of Officers with Sustained Findings in 2020**

Years of Experience	Total Officers with Sustained Findings	% of Officers with Sustained Findings							Total Sustained Allegations	Percent of Sustained Allegations
			AD	C	CUBO	F	P	SS		
0- 1+	2	6%	3	0	1	0	3	0	7	15%
2- 4+	16	48%	0	1	0	2	20	0	23	49%
5- 6+	2	6%	0	0	0	0	2	0	2	4%
7-10+	0	0%	0	0	0	0	0	0	0	0%
11- 15+	4	12%	1	1	1	0	2	0	5	11%
16+	9	27%	0	1	2	0	6	1	10	21%
	<b>33</b>	<b>100%</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>33</b>	<b>1</b>	<b>47</b>	<b>100%</b>

**Table 11: Officer-Discipline Imposed by the Department in 2019 and 2020**

Type of Discipline	2019		2020	
	# of Times	% of All Discipline	# of Times	% of All Discipline
Training	4	22%	3	12%
Training & Counseling	4	22%	10	40%
<b>All Training and/or Counseling</b>	<b>8</b>	<b>44%</b>	<b>13</b>	<b>52%</b>
Documented Oral Counseling (DOC)	6	33%	6	24%
DOC and Training	1	6%	1	4%
Letter of Reprimand (LOR)	2	11%	2	8%
<b>All DOC &amp; LOR</b>	<b>9</b>	<b>50%</b>	<b>9</b>	<b>36%</b>
10-Hour Suspension	1	6%	1	4%
160-Hour Suspension	0	0%	1	4%
<b>All Suspensions</b>	<b>1</b>	<b>6%</b>	<b>2</b>	<b>8%</b>
Termination	0	0%	1	4%
<b>Total Discipline Imposed</b>	<b>18</b>	<b>100%</b>	<b>25</b>	<b>100%</b>

**Table 12: Discipline Imposed on Officers by the Department (2016-2020)**

Type of Discipline	2016 # of Times	2017 # of Times	2018 # of Times	2019 # of Times	2020 # of Times
Training and/or Counseling	17	12	11	8	13
Documented Oral Counseling and/or Training	10	21	9	7	7
Letter of Reprimand	1	5	4	2	2
10-Hour Suspension	1	1	0	1	1
20-Hour Suspension	0	0	1	0	0
40-Hour Suspension	0	1	1	0	0
80-Hour Suspension	1	0	0	0	0
160-Hour Suspension	1	0	0	0	1
Settlement Agreement	1	1	0	0	0
Resigned before Discipline	0	0	1	0	0
Termination	0	0	0	0	1
<b>Total Discipline Imposed</b>	<b>31</b>	<b>41</b>	<b>27</b>	<b>18</b>	<b>25</b>

# APPENDIX C – SJPD DUTY MANUAL ADDITIONS: ONLINE PRESENCE

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## Memorandum

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**TO:** ALL DEPARTMENT PERSONNEL      **FROM:** David Tindall  
Acting Chief of Police

**SUBJECT:** DUTY MANUAL ADDITIONS:      **DATE:** March 5, 2021  
ONLINE PRESENCE

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APPROVED

Memo# 2021-005

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### BACKGROUND

In 2009, Chief Davis issued a Department memorandum regarding the use of social networking sites (2009-027). The directives contained in that memorandum were never added to the Duty Manual. Pursuant to Duty Manual section A 2304 TEMPORARY ORDERS, that memorandum expired twelve months after issuance. The purpose of this memorandum is to memorialize the Department's guidelines regarding the use of the Internet and social networking sites through an addition to the Duty Manual.

Employees should be aware that information posted online should be considered part of the public domain, and as such, the privacy of that information should not be assumed. There is no violation of Departmental policy in the mere act of maintaining a website or commenting on social networking sites and blogs. However, the Department has a right to regulate speech in certain circumstances which could result in discipline. For example, speech that adversely reflects upon the Department, impairs the working relationships of this Department, or inhibits the Department's ability to operate efficiently and effectively may be subject to discipline. Some examples of this may include material that would embarrass the Department, damage its reputation, strain community relations, inhibit recruiting, generate litigation, or interfere with successful prosecution.

### ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are show in *italics and underlined*.

**C 2400**      **ONLINE PRESENCE**  
*Added 03-05-21*

*The Department believes in the Internet's ability to establish, maintain, and strengthen relationships. By communicating and engaging with the public through an online presence, the Department is able to provide timely updates in critical events, recruit for employment positions within the Department, give the public a voice, and improve transparency. The purpose of this policy is to establish the Department's position on the use of the Internet. This policy is meant to address both current technologies.*



including social media, as well as continue to be applied as new technologies develop and emerge over time.

**C 2401**

**DEFINITIONS**  
Added 03-05-21

Defamatory Material – For purposes of this policy, defamatory material includes the intentional posting of material containing statements of fact that are false and which have a tendency to injure or cause harm to a person’s reputation. For example, false statements that accuse a person of criminal conduct are considered to be defamatory.

Derogatory or Offensive Material – For the purposes of this policy, derogatory or offensive material includes material disparaging to, detracting from, insulting to, or disrespectful of a class or group of people (e.g. a racial slur, ethnic slur, disparaging comment regarding a person’s national origin, gender, sexual orientation or gender identity, disability, age, religious or political beliefs, or other types of disparaging comments or images regarding a group or class of people).

Online Presence – For the purposes of this policy, Online Presence includes all websites, social media, photos, video, audio, blogs, vlogs, wikis, listservs, images, or any presence on the dark web.

The Department’s Online Presence are those authorized by the Chief of Police or their designee to represent the Department (e.g. the Department website or the Recruiting Unit Facebook page).

Personal Online Presence are those accounts created and/or maintained by individual Department members or groups of Department members that are personal in nature and not authorized by the Chief of Police or their designee.

Material – Any posted item including, but not limited to, written text, emoticons or emoji, photos, videos, audio, or images. Material includes items added to existing posts (e.g. a “like” or “boost” on another person’s post).

Post – Material published or shared on a website, social media, blog, vlog, wiki, listserv, on the dark web, or photo or video sharing site.

Sensitive Information – Any material that may be potentially damaging to an ongoing investigation, compromising of officer safety, discloses future Department activities (e.g. a warrant service), or compromises the identity of Department members. This includes all records and information that is created, maintained or retained by the Department where access, use, and dissemination of the records are regulated by the Department pursuant to the provisions of the Duty Manual and as authorized or required pursuant to State or Federal law. Sensitive information includes all records and information regulated pursuant to Duty Manual Chapters C 1900, C 2000, C 2100, and C 2200.

Sexually Explicit Material – For the purposes of this policy, sexually explicit material includes depictions or descriptions of sexual references, sexual acts, uncovered genitalia, or other nudity. Works of art or material of anthropological significance are not sexually explicit material.

**C 2402**      **AUTHORIZED DEPARTMENT ONLINE PRESENCE**  
Added 03-05-21

All Department Online Presence shall be approved by the Chief of Police or their designee. All Department Online Presence shall be administered by the Media Relations Unit, or as otherwise directed by the Chief of Police. For example, an online presence may be established and maintained by the Recruiting Unit or the Department Captains for the purposes of effective, timely, and transparent communication with the community.

All Department Online Presence shall adhere to applicable laws, regulations, and policies, including City policies on information technology, records management, and retention schedules.

All Department members are authorized to re-share or re-post authorized Department material on their Personal Online Presence.

**C 2403**      **PERSONAL ONLINE PRESENCE**  
Added 03-05-21

Department members are free to express themselves as private persons online but may not engage in speech that adversely reflects upon the Department, impairs the working relationships of the Department, or inhibits the Department's ability to operate efficiently and effectively. Some examples of this may include material that would embarrass the Department, damage its reputation, strain community relations, inhibit recruiting, generate litigation, or interfere with successful prosecution.

Department members are reminded that in-person cues (e.g. body language, eye contact, or voice inflection) help to provide context for communication. When these cues are absent, it may be easy to misunderstand the intentions behind material.

Department members are reminded that almost any statement or conduct by a police officer that calls into question the officer's credibility as a witness may be used at trial to either impeach that officer's testimony or cause them to be excluded from testifying.

**C 2404**      **PROHIBITIONS**  
Added 03-05-21

Department members shall not post any information online that would adversely reflect upon the Department, impair the working relationships of the Department, or inhibit the Department's ability to operate efficiently and effectively. This includes, but is not limited to:

- Posting Sensitive Information
- Posting Sexually Explicit Material
- Posting Defamatory Material
- Posting Derogatory or Offensive Material

**C 2405**      **MEDIA CAPTURED WHILE ON DUTY**  
Added 03-05-21

Department members are prohibited from sharing or posting any media (e.g. photos, audio, or video) captured on duty in their Personal Online Presence without authorization from the Media Relations Unit.

Department members are prohibited from capturing any enforcement-related or investigation-related media on their personal devices (e.g. personal cell phone).

Exception: In rare instances, Department members may capture media on their personal device when absolutely necessary, and a Department-issued device is unavailable or malfunctioning (e.g. while off-duty, using a personal cell phone to photograph a suspect during an in-progress event). In these rare cases, Department members shall notify their immediate supervisor as soon as practical that they captured media on their personal device. That media shall be uploaded to the Department's digital database pursuant to Duty Manual Section L 4423 DIGITAL EVIDENCE STORAGE. Upon upload, the media shall be deleted from the Department member's personal device and any secondary (cloud) storage or backup.

**C 2406**      **USE OF DEPARTMENT SYMBOLS**  
Added 03-05-21

Department members are prohibited from using Department symbols (e.g. badge, patch, "San Jose Police Department" labeling, or SJPD star) in their Personal Online Presence without authorization from the Media Relations Unit.

**C 2407**      **TIMELINESS**  
Added 03-05-21

The Department recognizes trends change in the social and political climate over time. Signs, symbols, or phrases may be adopted by entities fundamentally changing their meaning. When violations of this policy are historical, the Department will examine these violations in the context of a reasonable person's standard at the times in which they were posted.

In addition to the above, Officers are reminded of the following policies and excerpts associated to Online Presence.

**City Policy Manual Sections:**

- [Chapter 1.2.1 – Code of Ethics](#)
- [Chapter 1.6.2 – Personal Use of City Equipment](#)
- [Chapter 1.7.1 – Use of Email, Internet Services, and Other Electronic Media](#)
- [Chapter 1.7.5 – E-Government Policy](#)
- [Chapter 1.7.6 – Information Security Policy](#)
- [Chapter 1.7.7 – Web-Based Communications Policy](#)
- [Chapter 6.1.1 – Public Records Policy and Protocol](#)
- [Chapter 6.1.5 – Records Retention and Disposition](#)

# APPENDIX D – RIPA : RACIAL AND IDENTITY PROFILING ADVISORY BOARD 2021 REPORT QUICK FACTS

## RIPA | RACIAL AND IDENTITY PROFILING ADVISORY BOARD 2021 REPORT QUICK FACTS

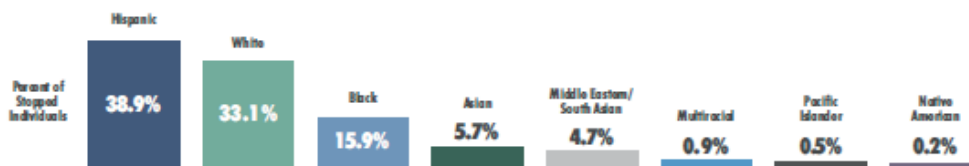
Between January 1, 2019 and December 31, 2019, the 15 largest law enforcement agencies in California collected data on nearly 4 million vehicle and pedestrian stops. RIPA defines a stop as a detention or search.

California Highway Patrol	San Diego County Sheriff's Department	Oakland Police Department
Los Angeles County Sheriff's Department	San Diego Police Department	Orange County Sheriff's Department
Los Angeles Police Department	San Francisco Police Department	Sacramento County Sheriff's Office
Riverside County Sheriff's Department	Fresno Police Department	Sacramento Police Department
San Bernardino County Sheriff's Department	Long Beach Police Department	San Jose Police Department

The full RIPA 2021 Report contains several different types of analyses that were designed to measure disparities in stop outcomes. They include descriptive breakdowns of various stop elements (e.g., reason for stop), a comparison to residential population data, an analysis of search discovery rates, an analysis of stop frequencies by daylight conditions, and an analysis examining rates of force used during stops. Please see the full report to review all analyses in detail.

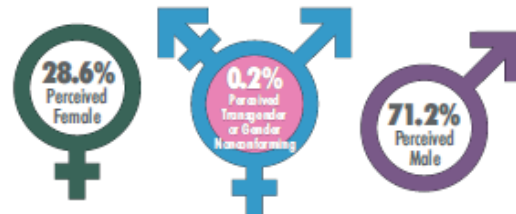
### Demographics of Stopped Individuals

The data presented below is based on officers' perceptions of stopped individuals.



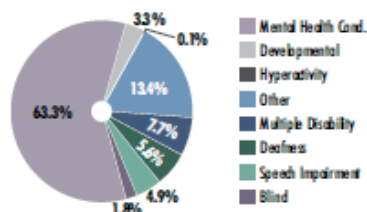
Officers perceived **26,382 (0.7%)** stopped individuals to be LGBT.

4.1% of stopped individuals were perceived to have limited or no English fluency.

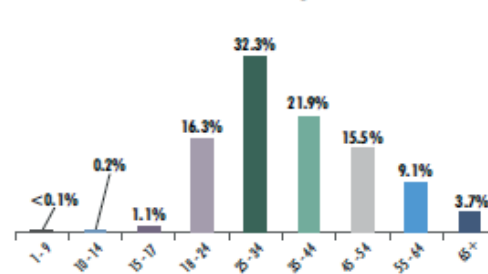


### Perceived Disability

Officers perceived 46,035 (1.2%) stopped individuals to have a disability. The below is a breakdown of the type of disabilities perceived by officers.



### Perceived Age

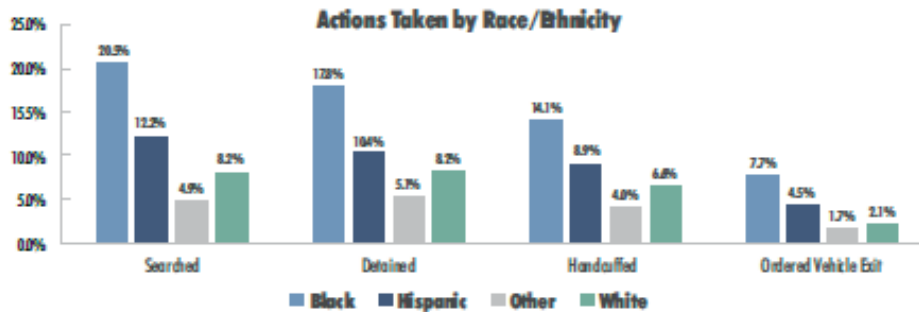


## Actions Taken During Stop by Officers

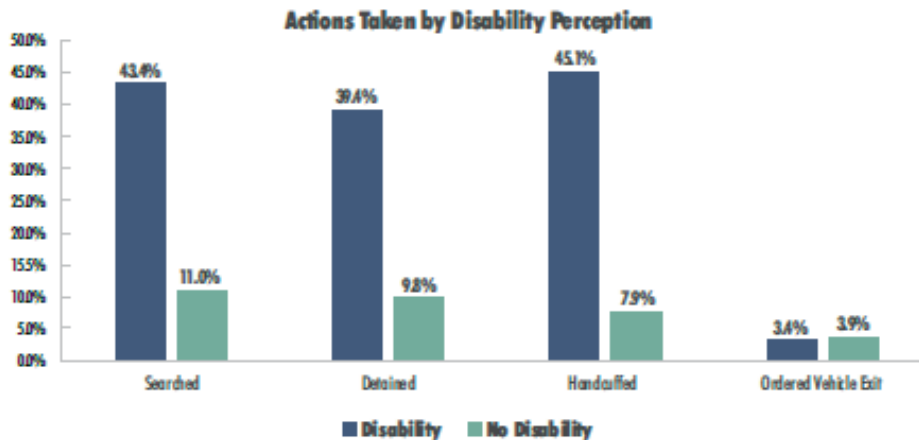
Across all stops, the most common actions taken by officers were:



Officers searched, detained on the curb or in a patrol car, handcuffed, and removed from vehicles more Black individuals than White individuals, despite stopping more than double the number of White individuals (1,322,201) than Black individuals (635,092).



Individuals whom officers perceived to have a disability were searched, detained on the curb or in a patrol car, and handcuffed at a higher rate than those perceived to not have a disability.



## Use of Force

Officers were more likely to use force against Black and Hispanic individuals compared to White individuals, whereas officers were less likely to use force on Asian and other individuals. Specifically, the odds of an officer using force during a stop were 1.45 times and 1.18 times greater for Black and Hispanic individuals, respectively, than White individuals. The odds of an officer using force during stops of Asian or other individuals were 0.83 and 0.93 times lower, respectively, compared to White individuals.

Odds of Officers Using Force Compared to White Individuals



## Overall Search and Discovery Rates

### Search Rates

Black individuals were searched **2.5 times** the rate of White individuals. Officers searched approximately 8% of White individuals. Officers searched a higher proportion of Black, Hispanic, and Multiracial individuals in comparison to individuals from other racial/ethnic groups.



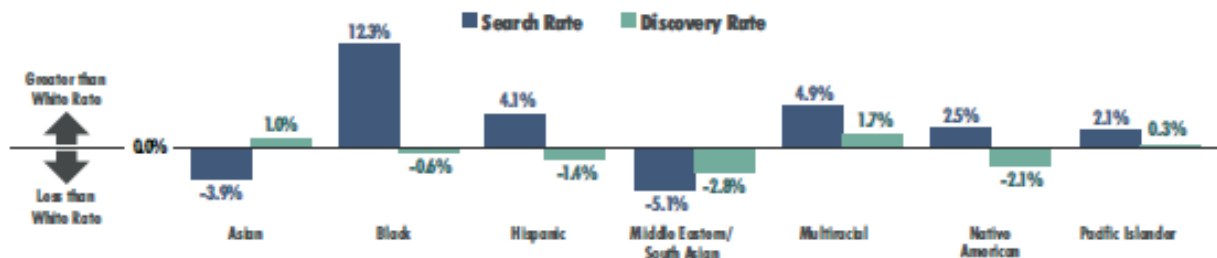
of stopped individuals were subject to a person or property search

### Discovery Rates

Search discovery rates refer to the proportion of searched individuals found to be in possession of contraband or evidence. Officers discovered contraband or evidence on **22.2%** of White individuals who were searched. Although Black, Hispanic, and Multiracial individuals were searched at a higher rate than White individuals, officers discovered contraband or evidence at a lower rate for these racial/ethnic groups in comparison to searches of White individuals.



of searched individuals were found to be in possession of contraband or evidence



## Search And Discovery Rates by Race/Ethnicity and Gender

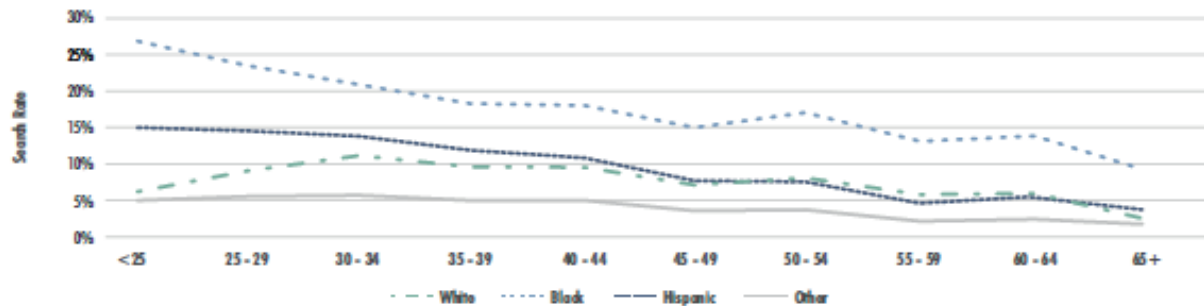
Overall, **transgender/gender nonconforming individuals** were searched **4.5 times** the rate at which officers searched (cisgender) females and **2.2 times** the rate at which officers searched (cisgender) males. Despite large differences in search rates, discovery rates for transgender/gender nonconforming individuals were similar to the discovery rates of cisgender individuals.



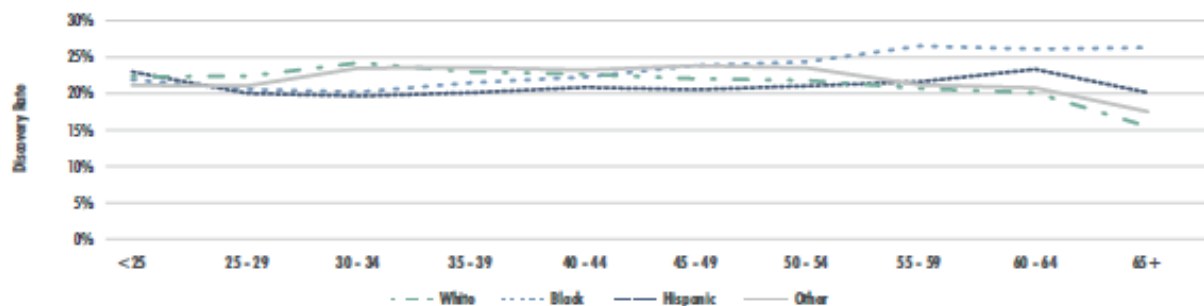
Within each gender group, Black and Hispanic cisgender males and cisgender females had higher search rates but lower discovery rates in comparison to White cisgender males and White cisgender females. Black and Hispanic transgender/gender nonconforming individuals had higher search and discovery rates than White transgender/gender nonconforming individuals.

## Search and Discovery Rates by Race/Ethnicity and Age

Overall, younger individuals were searched at a higher rate than older individuals with the highest search rate being for individuals between the ages of 25 to 29 (14.0%), and the lowest search rate being for individuals 65 years of age or older (3.6%). By race/ethnicity, White individuals between the ages of 30 and 34 were searched most frequently for White individuals, while Black and Hispanic individuals younger than 25 were searched most often for their respective racial/ethnic groups. Black individuals had higher search rates than White individuals in every age group. Officers searched a higher proportion of Hispanic individuals whom they stopped than White individuals for all age ranges younger than 50 years old.

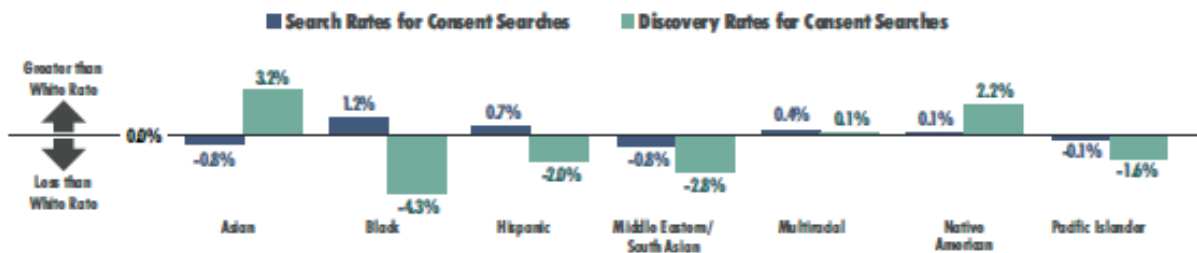


Discovery rates for Black individuals started out lower and increased with age, while discovery rates for Hispanic individuals were less variable across age groups. White individuals had the widest range in discovery rates across age groups.



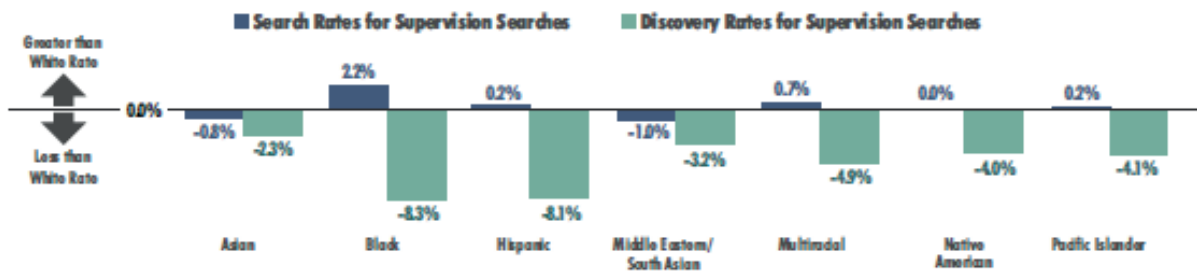
**Search and Discovery Rates for Consent Only Searches by Race/Ethnicity**

A consent only search is a search where an officer indicates that the only basis they had for performing a search was that the person consented to the search. Black, Hispanic, Multiracial, and Native American individuals had higher consent only search rates compared to White individuals (who were subjected to a consent only search in 1.2% of their stops). Despite Black individuals being searched under consent only searches at 2 times the search rate of White individuals and Hispanic individuals being searched at 1.6 times the search rate of White individuals, both Black and Hispanic individuals had lower discovery rates than White individuals (13.3%).



**Search and Discovery Rates for Supervision Searches by Race/Ethnicity**

California has multiple forms of state and local supervision which may allow an officer to conduct a search of that individual. Officers conducted searches on Black, Hispanic, Multiracial, and Native American individuals at a higher rate than White individuals where the only basis officers provided for the search was that the stopped individual had a search condition of supervision. Despite these higher search rates, all racial/ethnic groups of color had lower discovery rates for stops with these types of searches than White individuals.



Visit the RIPA Board website at <https://oag.ca.gov/ab953> for more information about the Racial and Identity Profiling Act. RIPA Board email: [AB953@doj.ca.gov](mailto:AB953@doj.ca.gov). To view the full 2021 RIPA Board Report, visit <https://oag.ca.gov/ab953/board/reports>.



# APPENDIX E – SJPD TRAINING BULLETIN: CAD GANG DESIGNATION

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## **SAN JOSE POLICE DEPARTMENT** **TRAINING BULLETIN**

**TO: ALL DEPARTMENT PERSONNEL**      **FROM: David Tindall**  
Acting Chief of Police

**SUBJECT: CAD GANG DESIGNATION**      **DATE: March 12, 2021**

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Bulletin# 2021-008

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San Jose Police Communications uses the suffix “G” as a CAD gang designation to identify events that are gang-related and/or gang-motivated. The appendix at the end of this Training Bulletin is a complete listing of the event type codes that may be used to identify gang activity.

The gang designated type codes are used for officer safety information, location information, and statistical purposes, not for gang validation. The purpose of this Training Bulletin is to align Department members with the best practices of when to use the CAD gang designation.

California Penal Code section 186.34 defines a “**criminal street gang**” as ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of certain crimes, who have a common identifying sign, symbol, or name, and whose members individually or collectively engage in or have engaged in a pattern of definable criminal activity.

A **gang-related** crime is any crime in which a gang member is the suspect, offender, or victim, regardless of motivation or circumstances. For example, a suspected gang member is arrested for domestic violence against their spouse.

A **gang-motivated** crime is any crime committed at the direction of, for the benefit of, or in association with a criminal street gang. For example, several suspected gang members violently attack a victim thought to be from a rival gang, and during the attack the suspects yell out their gang name.

The Gang Investigations Unit, in coordination with the California Department of Justice, maintains the **validation** of known criminal street gang members. The California Code of Regulations, Title 11, section 752.4 outlines the criteria used to designate a person as a validated gang member as follows:

- Admission
- Arrested for an offense consistent with gang activity
- Identified as a gang member by a reliable source
- Associating with documented gang members
- Displaying gang symbols or hand signs
- Frequenting a gang area or location
- Wearing gang clothing
- Having gang tattoos, scars, marks, or brands

ALL DEPARTMENT PERSONNEL  
SUBJECT: CAD GANG DESIGNATION  
March 12, 2021  
Page 2

For the purposes of gang validation, at least two of these criteria must be met. **Department members should use closing event types with the CAD gang designation “G” when the event is gang-related, gang-motivated, or when at least two of the gang validation criteria are present during the event.** Absent these criteria, Department members should not use the CAD gang designation with the closing event type.

Communications will continue to create events based on the best information available at the time. If a reporting party tells the call-taker there are gang members fighting at a location, the event may be created as a “415G.” However, upon contact and investigation, responding officers may determine the above criteria are not met. In that case, the event should be changed to a different final closing type (e.g. “415”).



David Tindall  
Acting Chief of Police

DT:SD:JG

Attachment: Appendix



ALL DEPARTMENT PERSONNEL

SUBJECT: DUTY MANUAL ADDITIONS: HIGH-RISK VEHICLE CONTACTS

March 26, 2021

Page 2

described in either a Narrative or Supplemental Report (Form 200-3A-AFR) in the case of a G.O., or in the Notes in the case of a Street Check.

**ORDER**

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.



Anthony Mata  
Chief of Police

AM:SD

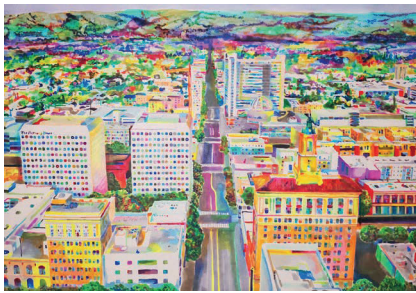
# APPENDIX G – COVER ART

## Cover Art from Holding the Moment Exhibition: San José Artists Reflect on COVID-19

COVID-19 changed lives everywhere -- locally, nationally, and internationally. In response, the City of San José's Public Art Program partnered with the Norman Y. Mineta San José International Airport to offer local artists an opportunity to reflect, comment, and on of this global crisis and the current challenging time. More than 327 submissions were received, and juried by a prominent panel of Bay Area artists and arts professionals. Ultimately 96 artworks by 77 San José artists were awarded a \$2,500 prize and a place in this six-month exhibition that was on view at the Norman Y. Mineta San José International Airport Terminal B from November 1, 2020 - June 1, 2021. The cover art here features ten of these pieces. Below are the artists' narratives.



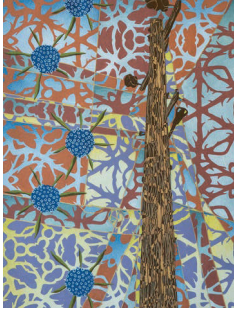
**Jorge Camacho | *Tough Times Tougher People*:** During the shelter-in-place order in March and April 2020 I noticed many more people than usual exercising outside. In response I used vacant storefront windows in Downtown San José as a canvas writing positive messages for the people passing by to see. The project was called "Hello Neighbors" and this window, "Tough Time Tougher People," was the first of many, all created for free (donations were accepted and greatly appreciated).



**Lila Gemellos | *Empty Santa Clara Street*:** An impressionist, colorful perspective of downtown San José, left unusually bare due to COVID's shelter-in-place orders.



**Judy Rookstool | *Vote*:** Voting is a fundamental tenet in the U.S.: however, Constitutionally-guaranteed voting was only for free white males until disenfranchised groups won that right. This ballot box shows wear with long use. It might have served for many elections, but it is now framed by danger. Foreign interference has threatened our election process. With recent postal restrictions and efforts at voter suppression in some states, the universal right to vote is at risk. Every vote is a voice heard.



**Heidi Alanzo | *Leading Lines*:** This artwork was painted while sheltering-in-place early on during the COVID-19 pandemic. Walks, permissible under the quarantine, eased my loneliness. The ever-present appearance of telephone poles remind me of what connects us to each other, not only physically, but also emotionally. For those at high risk with medical conditions, telephone, internet, and cellular communications have been our means of safely staying in touch with the world and family.



**Samuel Rodriguez | *Eres Esencial (Medical Workers)*:** A dedication to our Essential Workers during the COVID-19 pandemic.



**Jorge Camacho | *Change*:** One of the things I miss most from pre-COVID19 is working outdoors in public and interacting with the sounds and people of the city. After a few weeks of shelter-in-place, my good friends Justin Barreras, Corey Alexander, and I decided to have a socially distant paint session on the rooftop of a workspace in the SOFA District. The mural is a single word painted large enough to be seen from aircraft coming inbound from the south to San José Airport. "Change" is what everyone is experiencing right now; simply painting the word "Change" was appropriate.



**Julie Bovee | *Please Don't Smell the COVID Flowers*:** This piece highlights the disconnect between breathing to rejuvenate and fear of inhaling. When the pandemic first hit the news, I puzzled over the paradox of the striking images of the virus versus the ugliness of the pandemic it spawned. In a similar contradictory fashion, the red-streaked beauty of poison oak came to mind. With poison oak, the warning "look, but don't touch" is well known. I've made this virus visible as a meadow of virus flowers, and so the warning becomes "look, but don't breathe."



**Peter Moen | *Ray of Hope*:** We have dealt with the pandemic with courage. This painting embodies the hope that we share for the future. There is a crowd scene of diverse people in darkness on the side, but in the middle, they are in light. They are all looking toward the light, as I am looking in hope for the return to normal.



**Taylor DuBose | Contact:** No matter what life throws at us, we can rise to the challenges. Because of the COVID-19 shelter-in-place orders, we may not be able to see each other in person, but we're all still here, together. Keep in contact, keep that chin up, and keep your life movin'.



**Lacey A. Bryant | Waiting Room:** Feeling that time is passing so slowly and you've been waiting for- ever, longer than most, like a fish in a tank. A curiosity waiting to be seen, to be heard, to matter, to live. Globe unexplored. Window brilliant with possibility and the specter of death. Clock ticking ticking ticking.

To view the full image, please visit the exhibition or online: [www.sanjoseca.gov/HoldingTheMomentSJ](http://www.sanjoseca.gov/HoldingTheMomentSJ).



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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