



PUBLIC INTOXICATION TASK FORCE MEETING – SYNOPSIS

MEETING DATE: 1/29/09

MEMBERS: PETE CARILLO, MARC BULLER(on behalf of DOLORES CARR),RAUL COLUNGA, KATHY CORDOVA, EDWARD FLORES, MARY GREENWOOD, RAJ JAYADEV, ROSE LEE, SHEILA E. MITCHELL, JEFF MOORE II, ALFREDO MORALES, SHIVAUN NURRE, SKYLER PORRAS, VICTOR RODRIGUEZ, ROD SCHISLER, OTIS WATSON, JORGE WONG,WALTER WILSON

ABSENT:

CHAIR: DEBRA FIGONE, CITY MANAGER

STAFF: ROB DAVIS, CHIEF OF POLICE, NORBERTO DUENAS, DEPUTY CITY MANAGER, GEORGE RIOS, ASSISTANT CITY ATTORNEY

FACILITATOR: SHAWN SPANO

Welcome/Introductions

- Debra Figone called meeting to order at 6:09 p.m.
- Task Force members and staff introduce themselves (name and group affiliation); including their background. (Organization Roster is posted at www.sanjoseca.gov/publicintox.asp)
- Shawn Spano reviews agenda, handouts, highlights relevant background information on Council direction, the purpose of the Task Force and meeting format and structure.
- Ground Rules: speak candidly, listen openly, maximize participation, and avoid jargon.

Recap of January 15 Meeting

- Mr. Spano reviews the Synopsis for the January 15 meeting.
- Mr. Spano reviewed the Task Force parameters of Council's direction and encouraged the Task Force to address alternatives to 647(f) arrests.

Questions/Comments

How will the Task Force decide on which possible solutions will be brought to the City Council. Will there be a vote?

Will the Task Force solutions actually be implemented? Yes, the process for making decisions has yet to be determined. It will depend, in part, on the nature of the decisions, the level of agreement among the Task Force, and the extent to which the decisions reflect Council's direction.

Identifying the Nature of the Problem-(cont'd)

It is important for the Task Force to develop clear, specific plans for any information, research and analyses that are needed for the upcoming meetings. Task Force members received information that was requested at the January 15 meeting:

- "Official" definition of 647(f) arrest (Handout)

Questions/Comments:

- The 647 penal code has a number of sections; 647(f) was designed to deal with individuals that were habitually intoxicated
 - Does the San Jose Police Department take individuals arrested under 647(f) to Valley Medical Center instead of booking them at Jail? Task Force member understands that this action is clogging up the Emergency Room operations at Valley Medical.
 - What is the operational definition of a "safety risk" when determining whether to arrest someone under the 647(f) law?
- Review of Adult Criminal Procedure Handout : Marc Buller from the Santa Clara District Attorney's Office explains process for an individual once they have entered the criminal system (Handout)

Questions/Comments:

- Criminal Justice Information Control (CJIC) is a county criminal justice data collection repository, everything that happens in the Court process is tied to this system.
- Per County report, SJPD (2007) registered 3,792 (99.7%) misdemeanor bookings through the Department of Corrections and 11 (.29%) misdemeanor bookings released with citation (p. 28-29 of December 9, 2008 County Report)
- 10% of 647(f) arrests go to the Public Defender's Office
- A Task Force member asked if it can be implied that if the dismissal rate of 647(f) cases is high by the District Attorney's office; the DA's office is concluding that the police reports do not substantiate the arrest.
- Mr. Buller responded that this cannot necessarily be implied because in some cases the District Attorney's Office chooses not to pursue some 647(f) cases for reasons such as an individual is already being prosecuted for another, more severe, crime.

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- A Police Officer needs "probable cause" for an arrest versus "beyond a reasonable doubt" needed by the DA's Office for prosecution
- How many individuals that have been arrested do not have previous criminal records?
- Cause of the problem needs to be determined before solutions can be proposed.
- Task Force member feels that there is a direct correlation between 647(f) arrests and racial profiling. Another issue has to do with the culture of law enforcement.
- The problem is not the law, it is why people are getting arrested. Is there enough probable cause and is there enough information to prosecute the person?
- There is something wrong with the arrest process.
- Transparency is the only way the community will begin to trust law enforcement. This starts with the release of San Jose Police Department arrest records.

Review of 647(f) Arrest Form: San Jose Police Captain Gary Kirby explained the form and how officers use it in the field to the Task Force. Also notes that this form is a Santa Clara County form, not specific to the San Jose Police Department. (Handout)

- The form requires PD to observe and record specific behaviors when making arrest decisions (odor of alcohol, speech, walking ability, orientation).
- Changes made since November 18th council meeting:
 - a) Supervisor signature is now required on arrest forms.
 - b) Use of PAS (Preliminary Alcohol Screening Device) in the field.
- Possible future changes:
 - a) Require additional clarification and specifics to the narrative section of the form.
 - b) Record numerical PAS result.

Questions/Comment:

- Where do you think the failure occurs on the part of the police officer? Is it in the hiring process, training process? A: It's not clear that there is a failure, or if there is failure where the source of it is.
- Are there a specific number of years of service an officer has to have before they can teach courses/training? A: No, but the Department does look for knowledge and experience when selecting Training Officers.
- Officer's are human and have biases which have not been discussed. (Implicit Biases)
- One of the reasons San Jose was named the safest city was due in part to community policing, the Gang Task Force, and data collection which created accountability on the part of the San Jose Police Department.
- There is not enough justification on the police reports as to why a police officer decided to arrest an individual. SJPD should operationalize what it means to be a "danger to oneself and others."
- When you cite someone are you required to advise them of the Citizen Complaint process? A: No
- Is the officer mandated to do performance tests? A: No. The officers use their best judgment in the situation.
- Is it possible to get a printed read out of PAS results when given a citation? A: Not at this time given the current PAS devices that are being used. The department is seeking funding to update PAS devices that produce a written receipt.

- Are PAS results admissible in court? A: Only the printed results, not the results which are currently registered out in the field.
- Concern is that officers are using boiler plate language because they know that certain words will make the arrest appear valid.
- Task Force member expresses concern that they are losing focus. Need to stay focused on why this task force was put together; to find non-criminal sanctions and come up with objective criteria which would be required in 647(f) arrests.

Comparison of 647(f) processes among Santa Clara County Law Enforcement Agencies (handout): San Jose Police Lieutenant Laurence Ryan summarizes the handout, highlighting the processes and procedures that other cities follow in making 647(f) arrests.

Task Force Member Proposed Recommendations:

- Do not prosecute 647(f) arrests until an individual is booked for the 5th offense.
- Police officers should issue a fine when arresting under 647(f). The value of the fine/citation could be high to deter the behavior. Another option is for an Officer to call a taxi cab for the individual, and then bill him/her for the taxi ride.
- Decriminalize 647(f) arrests by releasing individual after they sober up.
- Refine and consistently apply criteria used by a Police Officer when arresting for 647(f)

The attached statement was read by and submitted for the Public Record by Task Force member Pete Carrillo (see attached document)

Requests for Information:

- 647(f) data from the Santa Clara District Attorney's Office that breaks down the arrest data to show how many people were cited and released vs. prosecuted.
- How many 647(f) cases come through the Santa Clara County District Attorney's Office?
- What percentage of 647(f) cases does the Santa Clara District Attorney's Office dismiss? Is this a strain on DA's Office resources?
- How many 647(f) arrestees have no prior arrests?
- A copy of the Police Department Training Manual section on 647(f) arrests.
- Statistics on SJPD ethnicity demographic breakdown.
- Penal Code 847(b)(2) is a penal code which allows for release in lieu of prosecution. What is the data on those arrests?

Public Comment:

- Police officers who file false police reports should be prosecuted.
- You must look at the raw data before you can come to a reasonable solution.
- San Jose Police Department arrest individuals to prevent public chaos. What does that mean?
- Why did you allow the police to speak for an hour (during the meeting)? You should allow the public to speak.

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- There needs to be a police review board to ensure police accountability.
- Presentations by staff only explain theory and are not based on reality and what is actually happening on the streets.
- Issue is officer harassment and attitude arrests.
- Task Force needs to address abuse of police power.
- Need to focus on a solution to this problem.
- Task Force must determine what the cause is before they can come up with a solution.
- Police are supposed to be serving the public and therefore the police department should distribute the requested data and statistics.

The following recommendations were received via e-mail from a member of the public on February 5, 2009:

- Officers could contact a family member or friend to take custody of the individual.
- In minor cases, officers could issue a citation (infraction) and the individual turned over to a responsible friend or family member (requires collaboration with the District Attorney's Office)
- As a long term strategy, the City and County should explore the possibility of reopening one or more sobering centers. The most logical location for this facility would be at the County Jail to be operated by the Sheriff's Department (Nevada model).
- Long term strategy: change in legislation at the state level that would also require a source of funding for the sobering centers (e.g. a small surcharge on each bottle of alcohol or alcoholic beverage sold in the state).

Closing: Next meeting will take place on February 26th 6:00 – 9:00 pm, at City Hall in Wing Rooms 118-120.

Concerns and/or questions can be emailed to Norberto.Duenas@sanjoseca.gov, please type "Public Intoxication Task Force" in the subject line. He can also be contacted at (408) 535-8180.

Meeting was adjourned at 9:27 pm

Attachment

Comments from Pete Carrillo To 647 F Taskforce- January 29, 2009

- I believe there is a credibility and trust issue between the SJPd, the city administration and the community at large. It is real, it is persistent and it is growing.
- Since this taskforce last met there have other questionable incidences on the part of the SJPd.
- I strongly believe that there is a leadership problem within the SJPd that is widening and going unchecked. We should not focus on the most recent incidence of police behavior - public intoxication arrests in the downtown- but rather we should look deeply at a pattern of police behavior over the last five years as it relates to the Latino community and people of color in general.
- There are far too many incidences of improper behavior- racial profiling, the Calderon family matter- all occurring under the watch of the current police chief. Why is that? This taskforce learned last week that the DA office is completely uninvolved when it comes to determining the “**validity of the arrests**” Why is that? Workload maybe an issue but the rights of people must be at the forefront of this discussion.
- This is a serious matter we addressing and it requires a serious discourse on our part and it may require serious remedies to fix the problem, however uncomfortable the remedies might seem.
- We need bold alternatives and far reaching solutions and in the spirit of the stated purpose of this Taskforce, I am therefore proposing the following recommendations for your consideration.

1. Moratorium on 647/F

It is my view that the serious questions of credibility and trust will not go away until the community begins to see that this taskforce and the city administration make it clear that we intend to get to the bottom of this inexcusable problem. The creation of the Taskforce is a good first step in the right direction.

Another significant and far reaching step we can take tonight is to recommend that the city council impose an immediate moratorium on the use of 647f. This action would be consistent with the general recommendation put forth last week by one of our Taskforce member. It will send a clear message that the city of San Jose is doing everything right now to stop racial profiling, stop arrests without proof of intoxication, and will ensure that a formal due process system within the legal system is instituted.

I recommend that the moratorium be for no less than 180 days.

2. Preliminary Alcohol Screening Standard

There should be an objective standard to determine whether the person is in a condition consistent with the language found in penal code 647f. **“in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way”**

I recommend that the threshold should be established at .25

3. Independent audit of Police data

There is significant concern regarding the need to have access to reports detailing the nature of each arrest. While I am sympathetic to the need for this information, my concern is that even if the city agrees to release this information, analyzing 4000 plus arrest records will be a daunting task and will take much longer than the life of this taskforce. I do however believe that for the longer term this data should be released to an independent third party not affiliated with the city of San Jose.

In this regard, I would propose that the Taskforce formally recommend to the city council that they “Request that the Joint Legislative Audit Committee (JLAC) initiate a Discretionary audit of the San Jose Police Department.

Discretionary audits are requested by members of the Legislature through the Joint Legislative Audit Committee (JLAC). There are two basic types of discretionary audits -- *performance and financial*. Both performance and financial audits can address compliance issues, which include determining whether an entity or program is complying with applicable laws and regulations and I would presume that the SJPD discretionary use of 647f falls into this category.

FYI: I wonder if the city can release the information while protecting the privacy of individuals. This can be done by the city using an identifying number to protect the privacy of citizens. I understand there is already precedent for this within the city when reporting data and client information for HUD grants and other city services.

4. There exists a Need to Consider changes to the penal code -647f

In speaking with several individuals whom I have high regard for and whose opinions I place high value, I am informed that changing the penal code may have unintended negative consequences and may lead to more serious charges being filed against those arrested.

This is NOT my intent at all.

I am however more than alarmed that the Police Chief cannot explain why Latinos are being arrested in disproportionate numbers and even more worrisome, the District Attorney has informed this taskforce that her office does not see the review of 647f cases as a priority and therefore her office is putting in jeopardy due process and review.

In my opinion there is something terribly wrong with this picture. There must be a stronger relationship between the SJPD and the DA's office, so that it is not left solely to the discretion of the police officer to determine whether an individual should be arrested for violation of a 647f.

I therefore recommend that the taskforce formally recommend to the city council that they immediately contact our Sacramento legislative delegation to engage their support to consider amending the 647f of the state penal code to among other things "compel the Santa Clara county District Attorneys office to review an adequate sample of those arrested for 647f to determine the **validity of those arrests and if there is a pattern of inappropriate arrests of Latinos people of color**. The penal code should be further amended to require quarterly reports filed with the Office of the Independent Auditor for their review and to the City Council for public discussion.

In addition and for the longer term I propose that the taskforce recommend to the city council that they request that the Assembly Committee on Public Safety convene a legislative hearing to take public testimony and to determine if further revisions to penal code 646f are necessary. The committee's primary jurisdiction is the California Penal Code. The hearing would be held in San Jose, with time being of the essence.

5. Police Review Board or Commission

The work of the office of the Independent Police Auditor has been commendable, but it is clear there are significant limitations, one of which is now apparent with regard to their inability to have access to the data in question and that is the 4000 plus 647f arrest.

The idea of a police review board is not a new idea in San Jose; however it has been several years since we have had a thoughtful dialogue regarding the pros and cons of having such a body. It may be time for the city council to revisit this idea.