# 2017 IPA Year End Report

## Office of the Independent Police Auditor
## City of San José

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# 2017 IPA Year End Report

Issued May 2018

by

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# The Office of the Independent Police Auditor

### Creation of the Office of the Independent Police Auditor

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

In the 24 years that the IPA office has existed, there have been six Independent Police Auditors: Teresa Guerrero-Daley (1994-2005); Barbara J. Attard (2005-2008); Shivaun Nurre, Interim IPA (2009-2010); Judge LaDoris Cordell (Ret.) (2010-2015); Shivaun Nurre, Interim IPA (2015); Walter Katz (2016); Shivaun Nurre, Interim IPA (2017); and Aaron B. Zisser, the current IPA, appointed in October 2017.

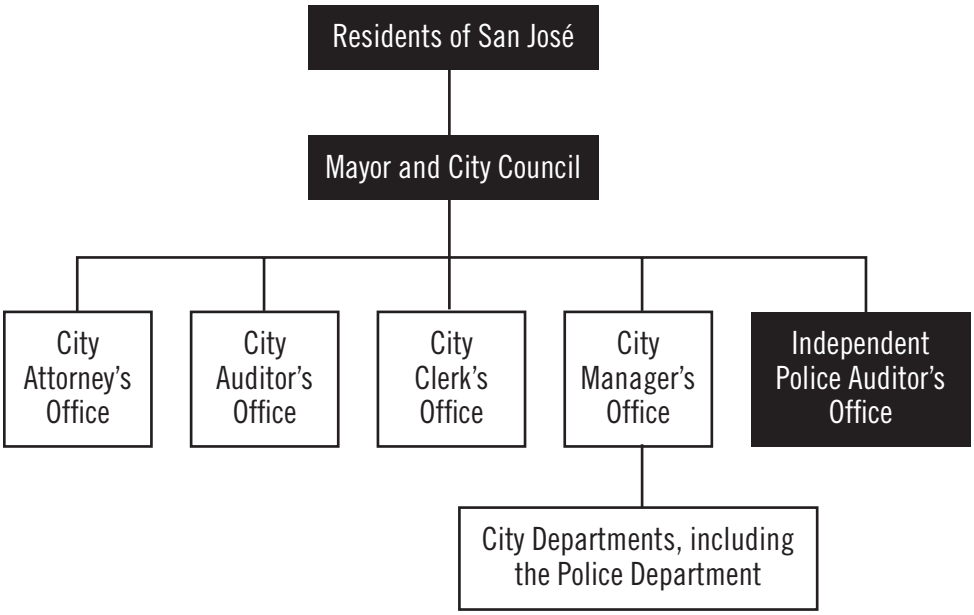
### Mission of the Office of the Independent Police Auditor

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

### Independence of the Police Auditor

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

# City of San José Organizational Chart



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# Chapter 1: Introduction – Letter from the IPA

Dear San José Community,

We routinely hear from community members: What is any of your work actually going to change? For me, as the new IPA – I started in October 2017 – this is the central question. Now helming an agency that is often criticized as being "toothless" to accomplish any real change, I have a background – as a former U.S. Department of Justice (DOJ) civil rights attorney – that had allowed me to apply enormous resources, access, and authority to ensure broad-based systemic reforms in response to constitutional concerns.

Especially as a South Bay native, I am just as committed to furthering real change at SJPD, though civilian oversight simultaneously lacks the enforcement power and access of DOJ, on the one hand, and benefits from ongoing collaboration with SJPD, City leaders, and community stakeholders, on the other hand.

### Transparency, accountability, *and change* at SJPD

The cliché about independent civilian oversight of police is that it seeks transparency and accountability. While those may be laudable ends in and of themselves, more is nonetheless required. Civil rights work does not end at exposing or identifying the problem – presenting and implementing solutions is the more challenging task.

Ultimately, transparency and accountability both serve as vehicles for substantive change in an agency. While disciplining an individual officer provides some measure of justice and can improve that officer's conduct going forward, the police agency and its leadership should be identifying common issues among officers and making necessary changes to policy and training. And while transparency can win trust among community members, it can also provide tools for the public to advocate for improvements. After all, the IPA office audits Internal Affairs investigations and reports publicly at least every year, but we also issue policy recommendations, based on our own observations and what we learn from our community engagement, aimed at broader systemic change in police practices.

### Arm's-length collaboration

Of course, the IPA office has to work differently than the U.S. Department of Justice to accomplish needed reforms. There is more need for collaboration with the police department, but it must be, as I often say, "arm's-length collaboration." The San José Police Department is not an agency in constitutional crisis like the various agencies my DOJ colleagues and I tended to encounter. In some ways, SJPD is not only not in crisis but is in fact a leader in promoting community trust and policies directed at ensuring constitutional policing practices. As a native of the South Bay – born in San José and raised in Campbell – I am proud of the police department and the City's commitment to meaningful oversight and reforms. It is incumbent on us at the IPA office to ask lots of questions of and listen closely to the in-house experts: the police officers and leadership.

Still, the job of the IPA office is to identify areas of concern or areas for improvement, communicate our concerns and those of the community, and work towards solutions. That means tough, uncomfortable, honest

conversations with SJPD officials, City leaders, and community members. It means showing up at SJPD's worst moments, while trying to acknowledge SJPD's progress and successes.

### Changes to IPA practices

In addition to bringing experience with scrutinizing government agencies, I worked most recently as a consultant for oversight agencies. So I also came into the IPA position with ideas about how to improve the IPA office's own practices, always with the goal of making the IPA office as effective as possible at serving its aims of accountability, transparency, and substantive improvements in SJPD practices as they relate to ensuring constitutional and fair treatment of San José residents and visitors. Among the changes I have made are how we have structured and presented this annual report. I hope this new structure enhances the way we promote accountability, transparency, and actual change in police policies and practices.

**Accountability:** We are making sure we utilize all of the tools in our tool belt. While we always seek to exercise our authority respectfully, it is important that we use the full range of our authorities. This includes:

- Appealing any disagreements we end up having with IA about their investigations to the Chief of Police and any disagreements with the Chief of Police to the City Manager.
- Ensuring officer-involved shootings receive the attention and scrutiny they deserve, including responding to the scene for in-person SJPD briefings and conducting community outreach following an officer-involved shooting. Such attention is especially important in light of the impact of these incidents on San José families and the broader community and the extent to which SJPD's investigations and our office's auditing require confidentiality.
- Participating meaningfully and candidly in the ongoing conversation about how much oversight SJPD should be subject to with respect to the accountability process, including IA investigations of officer-involved shootings and investigations of possible officer misconduct that did not come to the attention of SJPD by way of a citizen complaint.

**Transparency:** We have also taken steps to strengthen our role in ensuring transparency by the SJPD. These steps include:

- Recommending additional IPA authorities that are in line with national best practices on broad access to records, including body-worn camera footage, as a means of conducting systemic reviews to identify trends and policy issues. We are also seeking a formalized role in reviewing proposed or draft SJPD policy changes.
- Modernizing and expanding our outreach with the goal of reaching more people and speaking to the issues that matter most to the community.
- Modernizing and restructuring our annual reports. This year's annual Report will have a dedicated website that makes it much easier to navigate looks quite different from previous years' reports. We have restructured the Report to address various substantive topic areas of interest to the community. The Report weaves in relevant case examples, data, and policy recommendations as they relate to each substantive topic.

**Change:** Which brings us to the final piece of the oversight process: the change itself. I hope this new approach to our reporting allows readers to better understand how the IPA office's efforts, including the recent changes in our approach, moves the needle toward more and more constitutional and respectful policing.

Sincerely,

Aaron B. Zisser

# Chapter 2: Executive Summary

This annual Report identifies *some* of the issues of interest to the community. We do not purport to address every important topic. Indeed, we plan to take on new issues future reporting. Nor do we pretend that we fully address those issues that we do cover in this report. We have limited access to information and limited resources. In some cases, we are starting the conversation and plan to continue and build on it in the next report or reports. But the lack of all relevant information should not keep us from presenting what we do have and continuing to ask questions to flesh out the discussion in the future.

### IPA community engagement and auditing process

In Chapters 3 and 4, we provide an overview of the IPA's functions, including our efforts to enlist the views and concerns of community members and our process for reviewing citizen complaints and the Internal Affairs Unit's investigation of such complaints.

Our office has conducted extensive and varied community outreach and engagement with the goals of (1) informing people about the availability of the complaint process to address concerns they may have about an officer's conduct, (2) listening to people about their experiences with SJPD and their suggestions about how to improve SJPD's practices, and (3) building trust within the community so that we can continue to partner on important issues. Our outreach informs our policy recommendations and discussions with police and City leadership.

While complaints are down, complaints about arrests and force are down even more, while complaints about – and the number of sustained findings of officer misconduct in cases involving – searches and bias-based policing are up. Officer discipline is up overall.

### Use of force

We address a number of important developments in SJPD's use-of-force policies and practices in Chapter 5 of this Report:

- **Complaints:** Complaints regarding force are down dramatically, though much of this decline may track the overall decline in use of force during the same general period of time.
- **SJPD's publication of data on use of force:** Chief Garcia rolled out a new data dashboard for the public to learn about various facets of SJPD's use-of-force practices. While this is an enormously positive undertaking, greater transparency is required regarding the limitations of the data. Some findings from the dashboard include:
  - SJPD has a much lower rate of using force overall than the average among other jurisdictions employing the same type of data analysis, but injuries, including serious injuries, make up a larger percentage of the force that is used. This is probably largely attributable to the fact that SJPD officers use impact weapons and projectile weapons more frequently than officers in other jurisdictions analyzed using the same protocol (as a percentage of force incidents).

- The data on racial disparities in uses of force is mixed, though force is used on African Americans and Latinos at overall higher rates than on Whites as compared to the demographic representations in San José.

- **Officer-involved shootings:** Finally, after a dip in 2016 in the number of officer-involved shootings (five such incidents) – 2015 saw a recent high of 12 such incidents – SJPD officers were involved in eight such incidents in 2017, half of them fatal, five involving persons of color, and all but two involving no weapon or weapons other than a firearm. Six of the shootings involved persons with a history of mental health needs. We identified the fact that SJPD has not been issuing required public annual memos regarding lessons learned from such shootings in terms of policies, equipment needs, and training needs.
- **New policy on review of serious uses of force:** In our 2016 annual report, we recommended that SJPD implement a policy requiring review by high-level Command staff of serious uses of force. In October of 2017, SJPD implemented just such a policy.
- **De-escalation practices:** Under a 2016 policy, SJPD officers are required to take measures to de-escalate situations and avoid the need to use force. In our auditing of IA investigations, we are reviewing IA's attention to this requirement and officers' compliance.

### Crisis intervention / interactions with individuals with psychiatric disabilities

We conducted substantial outreach to learn about the various ways that local agencies address the needs of individuals with psychiatric disabilities who become involved with SJPD. The need for attention to this set of issues was highlighted by the comparatively high number of officer-involved shootings in 2017 that involved individuals with a history of mental health needs. We encountered cases involving allegations of excessive force, improper use of involuntary mental health holds, rude conduct, and bias-based policing.

SJPD is making important progress on ensuring its officers receive crisis-intervention training to reduce negative interactions based on assumptions or misunderstandings about this population, but, by the end of 2017, a third of officers had not undergone this critical training.

Of the ten policy recommendations we issued this year, three of them relate to SJPD interactions with individuals experiencing mental health crises or in need of mental health services and are detailed in Chapter 6 of this Report. These include:

1. For individuals requiring psychiatric evaluation because they may pose a danger to themselves or others, SJPD should transport them to the emergency psychiatric hospital, not to jail, even when such individuals commit the crime of resisting officers' efforts to detain them for such an evaluation.
2. SJPD should ensure that officers receive periodic follow-up crisis intervention training.
3. SJPD should provide individuals they encounter in the field with a guide that lists various mental health agencies and resources.

We continue to study other possible policy recommendations on this issue.

### Equal treatment: Race, language access, and sex

Bias-based policing can manifest both in

officers' identification and treatment of suspects and in decisions about which people to protect.

- **Race/national origin:** This year saw a case that closed with a number of sustained findings relating to officers' failure to provide language assistance services and bias-based policing, and we summarize this case in Chapter 7. San José communities are also rightly concerned about whether SJPD cooperates with federal immigration officials, and it would behoove SJPD to clarify its policies. The Report also includes a recommendation that SJPD incorporate the Language Access Plan into its Duty Manual and make some modifications to the policy to ensure officers access meaningful translation services.
- **Gender-based violence:** This Report (Chapter 8) includes a policy recommendation regarding the proper way in which officers should receive reports of sexual violence. Domestic violence has been a topic of interest, and SJPD has cut back its enforcement and support services due to the loss of outside funding. Staffing is a significant challenge – just three specially dedicated sworn officers handle thousands of cases each year. We encountered cases in which officers fail to properly respond as required to domestic violence cases.

### Arrest, detention, search, and seizure

Allegations of misconduct that have constitutional contours merit particular attention. Sustained allegations of unlawful arrests or detentions remain, as in previous years, at zero. Meanwhile, 2017 saw an increase in sustained allegations for unlawful search and seizure. Given the gravity of this conduct, we summarize a number of cases in Chapter 9.

### Community policing

Community policing is one of the key focuses of modern policing and seeks to build trust between police and communities. We discuss a number of issues in Chapter 10.

- **Defining "community policing":** "Community policing" can mean a lot of different things: outreach, procedural justice, crisis intervention, implicit bias training, and a myriad of other concepts and initiatives. This Report includes a policy recommendation that SJPD clarify for its officers the responsibilities involved in engaging in community policing. While SJPD has prioritized community events, everyday interactions between officers and members of the public under strained circumstances require equal focus.
- **Staffing:** Foremost among the various ingredients, however, is adequate staffing. 2017 was a significant year in terms of SJPD's ability to get its staffing back up to where it needs to be. In addition to having public safety implications, short-staffing also undermines officers' ability to take time to get to know the community, to engage in non-enforcement activities that are aimed at building trust and goodwill with community members.
- **Policing in schools:** SJPD also rolled out a significant new policy and series of memoranda of understanding with school districts regarding the proper role of school resource officers: to address crime, not school discipline issues. This is commendable and in line with some of our 2016 policy recommendations. It will be important for SJPD to measure the impact of these new policies. SJPD did not adopt our 2016 recommendation about enhanced training for school resource officers.

- **Juvenile crime:** There has also been concern among some stakeholders that violent juvenile crime has spiked. It is critical that SJPD leadership accurately characterize the problem so as not to unnecessarily incite fear that may lead to unwarranted rollbacks in successful efforts to promote interventions for youth that reduce recidivism.
- **Courtesy:** Finally, as we do every year, we received complaints regarding officers' failure to engage with community members in a courteous fashion, and SJPD sustained some of these allegations.

### Neglect of duty

A new complaint/allegation classification protocol implemented by the new IPA has resulted in more accurate data on the number of complaints related to officers' failure to take enforcement action or to investigate an alleged crime. A policy recommendation seeks to reinforce and institutionalize this change.

A number of such cases resulted in sustained findings, including in cases involving police responses to domestic violence and a hate incident. We detail several cases in Chapter 11.

### Systemic issues

Many of the issues discussed in Chapters 1-11 include systemic issues that underlie in-the-field interactions between police and members of the public. These include the early intervention system (Chapter 4); transparency in the form of SJPD's important roll-out of its data dashboard on uses of force and public reports memorializing the shooting review panels held within 90 days of each officer-involved shooting (Chapter 5); training for officers on how to engage with individuals experiencing a mental health crisis (Chapter 6) and on how to engage with youth (Chapter 10); resources for pro-active enforcement efforts to address domestic violence (Chapter 8); staffing levels (Chapter 10); and the need for new or clarified policies on a range of issues.

We also discuss, in their own chapters, the following underlying systems that can help SJPD continue to improve in its efforts to ensure constitutional policing:

- **Accountability procedures:** The IPA office is especially well-positioned to recommend improvements to the Internal Affairs investigations process, and this Report (Chapter 12) includes a policy recommendation regarding application of the proper standard of proof and the proper approach to weighing witness credibility. We also discuss examples of cases in which we conveyed concerns to IA about the quality of its investigation or analysis, as well as examples of those rare instances in which we had to appeal to the Chief because IA did not make the requested changes to its investigation or analysis. Both processes – conveying concerns and appealing – have proven meaningful. The IPA office has had concerns in 17% of IA investigations overall and 27% of IA investigations of use-of-force complaints.
- **Body-worn cameras:** We discuss, in Chapter 13, the frequency with which cases that come to our office for review involve officers who have not properly activated, or who have improperly de-activated, their body-worn cameras, which are an essential tool in ensuring accountability. This Report includes a policy recommendation that body-worn cameras should be activated in the SJPD lobby when officers are interacting with members of the public.

- **Scope of independent oversight:** The community has led substantial public dialogue about the scope of the IPA office's authority and whether the IPA office should have additional authority to review Internal Affairs of officer-involved shootings, other critical incidents, and other cases even when the conduct at issue has not been the subject of a citizen complaint. The IPA office has issued recommendations in previous years on these same topics. There is also discussion about whether our office should be able to access a broader set of records and data about use-of-force incidents and other police interactions as a means of conducting systemic reviews to identify trends, patterns, and policy issues. The Report (Chapter 14) includes a policy recommendation regarding the IPA office's access to draft SJPD policies so that we can provide feedback before SJPD issues a final policy.

# Chapter 3: IPA Community Engagement

## A. Introduction

A core function of the Office of the Independent Police Auditor (IPA) is our community engagement. The IPA office pursues community engagement for a number of inter-related reasons and through various methods. In this Chapter, we discuss the various purposes and goals of our outreach and engagement efforts, the tools or methods of such engagement, a special initiative on building community trust in policing, who we reach, and how we use the feedback we receive from community members.

## B. Purposes

The IPA office's community engagement strategy utilizes several approaches to reach out into the community to:

1. Provide City of San José residents knowledge and information about the role of the IPA and the complaint process;
2. Create space and opportunity to listen to community needs about police oversight for the purpose of developing meaningful recommendations – and engage in discussions with City and SJPD leadership – that support more constitutional and respectful policing and stronger community-police relations; and
3. Build meaningful relationships and trust with the community.

## C. Methods

Each year, the IPA office receives numerous invitations to provide presentations to the community and to participate in local events.

In addition, IPA staff solicit public outreach opportunities to ensure that a diverse cross-section of the community learns of our services. We base our decisions 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 in, or visit San José?
- 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 the office?
- Council District. Have we had a presence in each district this year?

Our efforts to engage the community are often adapted to support the best possible interaction with members of the community. We develop and lead listening sessions, town halls, and other forums to hear from the community regarding oversight and policing. We also have small meetings with advocacy groups and other organizations representing various concerns and constituencies.

In addition to the Office of the IPA engaging the community through our multifaceted approaches of presentations, events, meet and greets, and social media, we also enlist the support of the Independent Police Auditor Advisory Council (IPAAC). The IPAAC was established in 1999. The group has two functions:

1. Promote community awareness of the services offered by the IPA office, and
2. Advise the IPA office about police-related issues and concerns that arise in San José.

The support, advice, and insights offered by the IPAAC are integral to the success of the IPA. In addition to attending quarterly meetings, members assist the IPA with community engagement and policy recommendations.

### D. Community Trust in Policing

In 2016, the Office of the Independent Police Auditor was selected as the recipient of a community grant from the Silicon Valley Community Foundation and the 49ers. The grant sought to further engage the community and help identify possible solutions to build stronger trust between community and police.

The IPA office's first step in this process was to gather community feedback from the community. In January 2017, the Office of the Independent Police Auditor brought together community and police, holding a forum at the Mexican Heritage Plaza. The forum began with an opening from 49ers CEO Jed York, the Independent Police Auditor, and San José Police Chief Eddie Garcia. Subsequent panels included former 49ers player Torrey Smith, Professor Harry Edwards, and representatives from the community. The forum ended with community breakout sessions led by facilitators to discuss community policing concerns and solutions.

Throughout 2017, the Office of the Independent Police Auditor has continued to meet with members of the community. In October 2017, the Office of the IPA, alongside local law enforcement – including Chief Garcia – participated in a community panel at San José State University. The conversation addressed both national and local policing and oversight issues. Moving into 2018, the Office of the IPA will continue to gather data on concerns and solutions to address community feedback. The Office of the IPA is looking to implement some solutions identified during these community dialogues.

### E. Who we reach

In October 2017, the Office of the IPA welcomed Aaron Zisser to the position of Independent Police Auditor. In the first few months of Mr. Zisser's tenure as IPA, he participated in all areas of community engagement from television and news article interviews, introductory meetings with community groups, listening sessions with families impacted by officer-involved shootings, community dialogues, IPAAC meetings, distributing pamphlets, tabling, presentations on the IPA office to local agencies, meetings with youth, as well as attendance at several cultural and city events.

**Impacted communities and youth:** The IPA has a strong commitment to reaching diverse

groups of individuals who may benefit from the services of the Office of the IPA. Our focused outreach to immigrants and communities of color represented the majority of the IPA outreach activities. Engagement strategies included resource tabling, presentations, attendance at community meetings, meetings with advocacy organizations and affinity groups, and door-to-door meet-and-greets. In 2017, we participated in events held at the Mexican Consulate, community schools, and youth organizations, and we attended a variety of community events. Additionally, IPA staff actively took part in National Night Out by attending events in City Council Districts 2, 3, 5, and 10.

**City officials:** While meetings with City officials and participation in City events are technically not community outreach, we believe it is critical for us to hear from officials who have been elected to represent the concerns of their constituents. Throughout 2017, the IPA met regularly with the Mayor, City Council members, the City Manager, the Chief of Police, and other officials.

### F. Feedback from engagement efforts

In 2017, the Office of the IPA participated in over **140** presentations and events, reaching **5,889** individuals in the community. Our presentations provide an overview of the IPA office, including information about the complaint processes, and general information about constitutional rights and responsibilities. Our survey analysis found that 84% of community members surveyed were learning about our office or mission for the first time. And 98% indicated that they learned more about the complaint process and the appropriate way to file a complaint. Participants reported the most important part of the presentations were:

- *"learning how and why you can complain about police and how to properly talk to our officers."*
- *"[IPA office] coming out and letting us the community know there is somewhere we can go if we have a bad experience with the police."*
- *"The learning experience of what we as the commu*nity can do to improve the outcome of interactions with the police officer."

Presentation surveys demonstrate engagement efforts are supporting one of the IPA's goals – to provide community with information about the Office of the IPAs mission. In addition to providing the community access to information about the Office of the IPA, the IPA office representative listens to community participants about their personal experiences with police, concerns, and views on policing in their neighborhoods. The opportunity to listen, take in community feedback, and apply that to the IPA's policy considerations and discussions with SJPD and City leadership continues to be an essential part of the office's work.

# Chapter 4: Overview of IPA Auditing Process and Statistics

This Chapter discusses the Independent Police Auditor's (IPA) role in the complaint process. Information about the types of cases received, the classification of cases, findings reached, officer discipline, and the audit process is detailed.

It helps to understand the complaint and investigation process to best make sense of the statistics drawn from those complaints made or closed in 2017. Terms like "complaints," "allegations," and "findings" can appear interchangeable, but they all refer to a part of the process that begins when a person files a complaint with either the IPA or the police department. (The terms can also be found in the glossary at the end of this Report.)

The process includes the following steps:

1. Intake: This year saw a 24% decrease in complaints received compared to 2016. Complaints serve numerous purposes.
2. Classification of allegations: Arrest/Detention allegations and Force allegations decreased by 49% and 37%, respectively, compared to 2016.
3. Internal Affairs investigation: The IPA can participate in interviews.
4. SJPD findings: 2017 marked the highest rate of sustained complaints in many years and saw a number of serious allegations that resulted in sustained findings.
5. IPA's audit: The IPA audited all Force complaints and 79% of all other complaints.
6. Appeal process: The IPA can appeal to the Chief of Police those cases in which we disagree with IA's investigation or analysis.
7. Officer discipline: There were 41 instances of officer discipline in 2017 resulting from investigations of citizen complaints, up by more than a third since 2016. Two suspensions resulted, though other officers received serious discipline in cases generated not by citizen complaints but as "Department Initiated."

### A. Step One: Intake

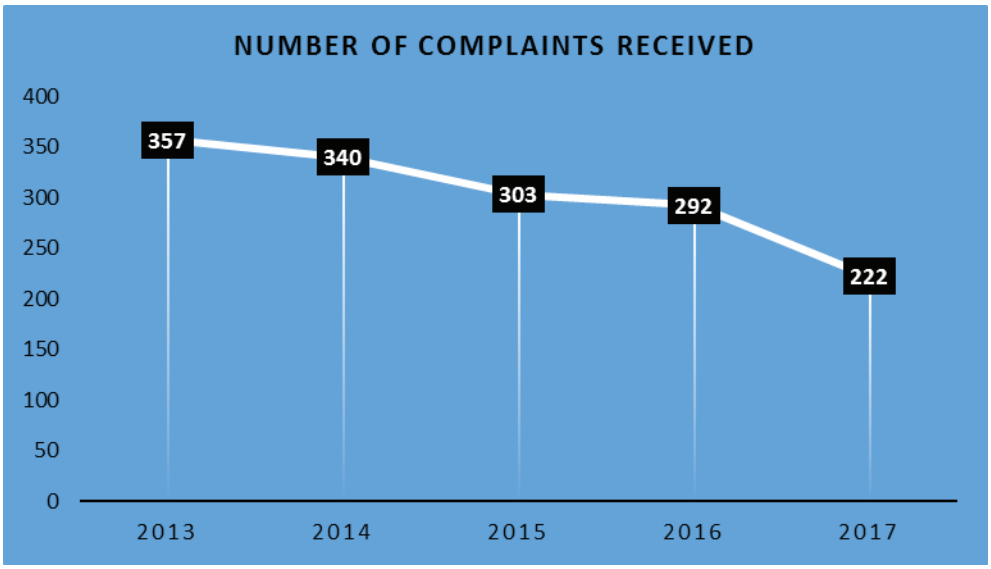
The complaint process begins when a member of the public files a complaint about a San José Police Department (SJPD) officer(s) or an SJPD policy.

- Complaints can be filed either with the IPA or with the Internal Affairs (IA) Unit of the SJPD.
- Complaints or concerns may be filed in person or by phone, fax, email, or postal mail with either office.
- Anyone can file a complaint regardless of age, immigration status, or city of residence.
- Members of the community may file complaints even if they do not have a direct connection to the incidents or the persons involved.
- Complainants may also remain anonymous.

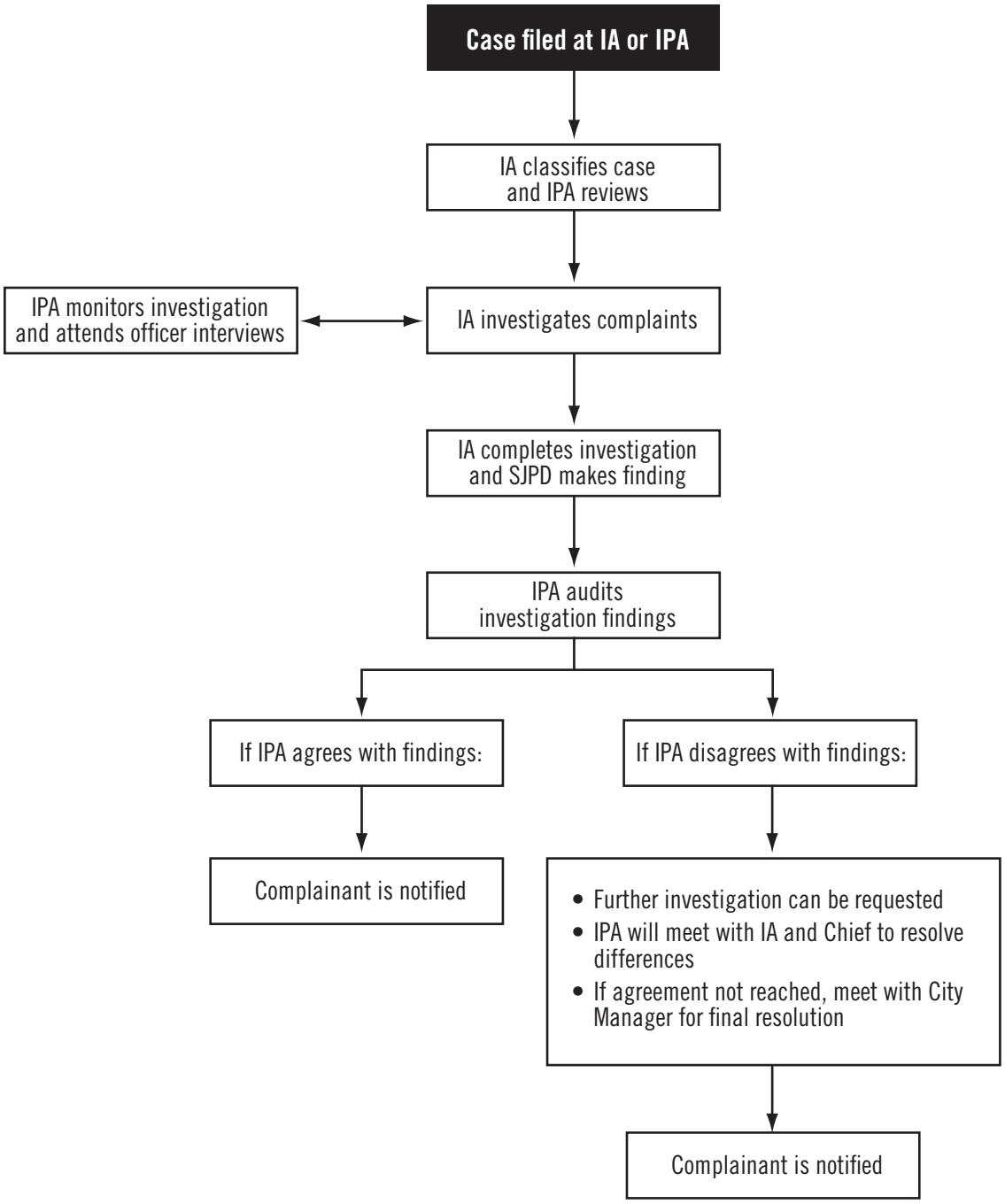
In 2017, 222 complaints and concerns were received. This was a 24% decrease in the number of complaints and concerns received compared to 2016 and the lowest number of complaints received in more than five years.

Illustration 4-A depicts the total number of complaints received in the past five years. The factors that influence the number of complaints received each year are difficult to measure.

**Illustration 4-A: Complaints Received — Five-Year Overview (2013-2017)**

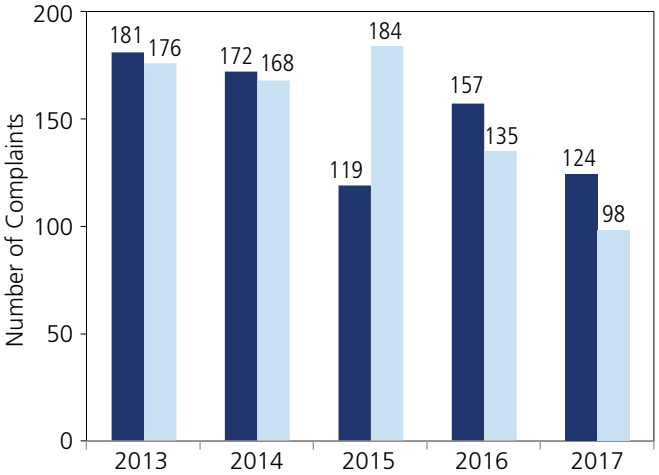


**Ilustration 4-B: Complaint Process**



In 2017, 56% of complainants brought their complaints and concerns directly to the IPA office, while the remaining 44% contacted IA.

**Illustration 4-C: IPA and IA Intakes — Five-Year Overview (2013-2017)**




| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| IPA Intake | 51% | 51% | 39% | 54% | 56% |
| IA Intake | 49% | 49% | 61% | 46% | 44% |

## i. Why each complaint matters

Complaints serve a number of important purposes, even when the complaint does not result in a sustained finding against the subject officer(s).

- **Holding Officers Accountable:** Every time a complaint is filed, the complaint must be reviewed by the Department, regardless of the alleged severity.
- **Unbiased Review:** IPA staff provide an unbiased review to ensure that the Department's investigations and analyses of the allegations are fair, thorough, and objective.
- **Trends:** One way the IPA can identify trends that point towards problematic police practices is if members of the public speak up about their concerns and file complaints.
- **Mediation:** When a complainant expresses a desire to discuss their complaints directly with the officer, mediation provides a confidential and respectful setting for both the complainant and the officer to discuss the incident candidly in the presence of a mediator. Both the Internal Affairs Unit and the Office of the IPA must agree that mediation is appropriate, and the complainant must be willing to withdraw the complaint. One mediation was conducted in 2017.
- **Policy Changes:** When civilians voice concerns about SJPD policies, the IPA has the unique perspective and opportunity to make policy recommendations to the Department. Many of our recommendations have had a positive impact on policing in the City.
- **Intervention Counseling:** If an officer receives a certain number of complaints in a 12-month period, or a certain number of similar allegations, the officer will receive mandatory Intervention Counseling by the Department to identify and correct problematic behaviors.

**Intervention Counseling Definition and Policy**

The Intervention Counseling Program is used as an "early warning system" to track police officers with significant complaint histories for the purpose of identifying potential problems and providing guidance. To receive Intervention Counseling, the subject officers must have received the following:

1. Five or more Conduct Complaints and/or Department-Initiated complaints within a 12-month period.

2. Three or more Conduct Complaints and/or Department-Initiated complaints containing the same allegation within a 12-month period.

3. "Unfounded" cases are excluded.

During Intervention Counseling, the subject officers meet with the Deputy Chief of their assigned Bureau, the IA Unit Commander, and their immediate supervisor for an informal counseling session. This session involves a review of the complaints against the subject officer, whether sustained or not, in an attempt to assist the officer with identifying potential deficiencies. No formal record is made of the substance of this counseling session.

Notably, most Bias-Based policing allegations are closed with a finding of "Unfounded." In 2017, 86% of Bias-Based Policing allegations were closed as "Unfounded."

## ii. Officer complaint rates

In 2017, 225 officers were named in Conduct Complaints – 22% of all SJPD officers. Of these officers, most (176 or 78% of officers receiving complaints) received only one complaint. But 49 officers received multiple complaints, down from 84 in 2016. Of the 49 receiving multiple complaints in 2017, 39 subject officers received two complaints (17% of officers receiving complaints). Ten subject officers were named in three or more complaints in 2017.

Illustration 4-D provides a five-year overview of complaints received by individual officers. This data reflects only those complaints in which individual officers are identified by name either by the complainant or through the IA investigation process. There were 36 Conduct Complaints received in 2017 in which officers could not be identified ("Unknown" officers).

**Illustration 4-D: Complaints Received by Individual Officers — Five-Year Overview (2013-2017)***

| Officers Receiving | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| 1 Complaint | 218 | 205 | 198 | 200 | 176 |
| 2 Complaints | 53 | 58 | 49 | 64 | 39 |
| 3 Complaints | 18 | 11 | 19 | 14 | 7 |
| 4 Complaints | 9 | 8 | 6 | 5 | 2 |
| 5 Complaints | 0 | 3 | 2 | 1 | 1 |
| **Total Number of Officers Receiving Complaints** | **298** | **285** | **274** | **284** | **225** |

* Subject officer names are not retained in complaints classified as Non-Misconduct Concern, Policy, or Withdrawn.

### iii. Demographics of complainants

**Illustration 4-E: Complaints Received in 2017 — by Complainant Ethnicity***

| Ethnicities From Complainant Intakes | Total Complainants # | Total Complainants % | % of San José Population** |
|---|---|---|---|
| African American | 32 | 14% | 3% |
| Asian American/Pacific Islander*** | 17 | 7% | 32% |
| Caucasian | 44 | 19% | 29% |
| Hispanic/Latino | 71 | 31% | 33% |
| Native American | 6 | 3% | 1% |
| Other | 4 | 2% | 2% |
| Decline/Unknown | 54 | 24% | 0% |
| Complainant Responses | 228 | 100% | 100% |

* Information on ethnicity of complainants is obtained during intake and from voluntary surveys.
Not all complainants reside within the City of San José; however, all complainants are members of the public.
** Source: U.S. Census Bureau, Census 2010
*** For the purpose of this illustration, Filipino and Vietnamese are included in Asian/Pacific Islanders.

It is important to note that the ethnicity of the complainant does not always indicate the ethnicity of the subject of the officer interaction. Many times complainants are parents of the subjects or anonymous observers of a police interaction. We discuss the race of individuals on whom force is used in Chapter 5 (Use of Force).

### B. Step Two: Classification

An allegation is a person's accusation that a member of the SJPD violated Department or City policy, procedure, rules, regulations, or the law. Only Conduct Complaints contain allegations. There are eight types of allegations: Procedure, Search or Seizure, Arrest or Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, and Neglect of Duty. A Conduct Complaint can have more than one allegation.

A total of 569 allegations were included in the complaints received in 2017. This number is down from 742 in 2016, tracking almost precisely the same percentage drop in complaints.

Procedure allegations continue to be the most common allegation in Conduct Complaints over the past five years. Arrest/Detention allegations decreased by 49% in 2017, and Force allegations decreased by 37%. Courtesy and Procedure allegations were also down.

**Illustration 4-F: Misconduct Allegations**

**MISCONDUCT ALLEGATIONS RECEIVED IN 2017**

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

- 251 allegations (44%)
- **Example:** A complainant went to the Main Lobby at SJPD to file an assault report. He alleges that the officer refused to take the report.

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

- 81 allegations (14%)
- **Example:** An SJPD officer was involved in a traffic altercation with a complainant on the freeway and admitted to using profanity towards the complainant.

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

- 68 allegations (12%)
- **Example:** A complainant's wife called SJPD when her husband intentionally ingested an unknown number of prescription pills. Once officers arrived, he exited the house and was tased and shot with a less-lethal projectile.

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

- 52 allegations (9%)
- **Example:** A complainant was pulled over during a traffic stop and ultimately arrested for an outstanding warrant. She believes the arrest was improper.

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

- 34 allegations (6%)
- **Example:** A complainant was arrested in his house for possession of a controlled substance for sale. He says his house was improperly searched because officers did not have a search warrant, and an exception to the warrant requirement did not apply.

**Bias-Based Policing:** An officer engaged in conduct based on a person's race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

- 54 allegations (9%)
- **Example:** A complainant was stopped for a vehicle infraction and was ultimately arrested and his car towed. The complainant believes he was initially pulled over because he is Latino.

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

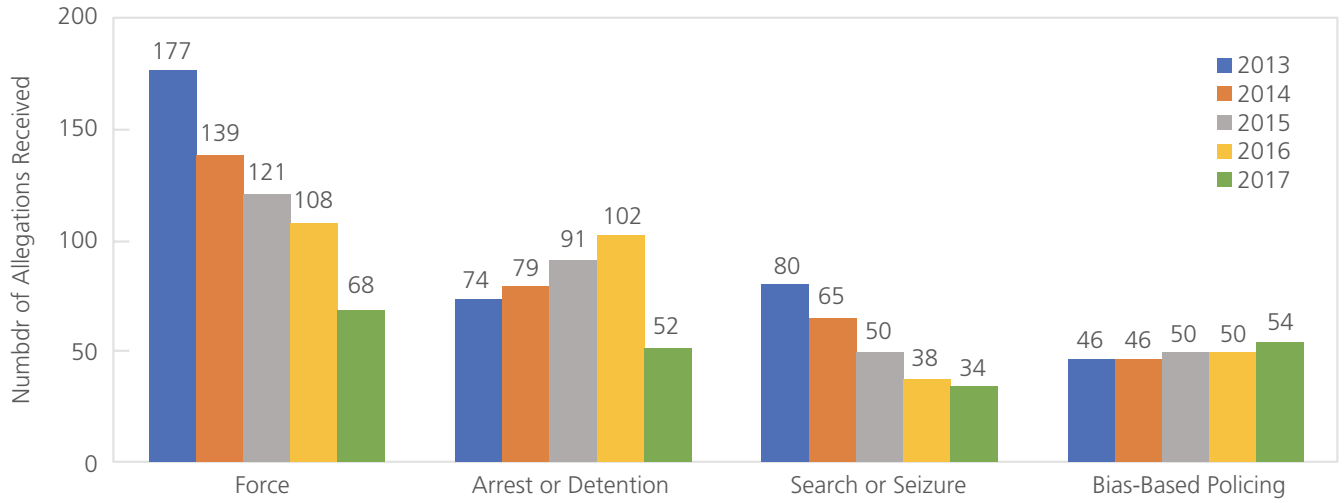
- 11 allegations (2%)
- **Example:** A complainant requested that an officer arrest a trespasser, and the officer declines to make the arrest or document the request for an arrest.

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

- 18 allegations (3%)
- **Example:** Complainant states that an officer wrote a letter to a judge regarding a defendant's sentencing. The letter included inflammatory language and identified the sender as a police officer. The complainant found this to be a misuse of his authority as a police officer.

Illustration 4-G depicts the frequency of Force, Arrest/Detention, Search/Seizure, and Bias-Based Policing allegations over the last five years.

**Illustration 4-G: Allegations Received — Five-Year Overview (2013-2017)**




## C. Step Three: The Department investigation

After intake and classification, IA is responsible for investigating all Conduct Complaints. The IPA office does not investigate complaints. IA investigations include the review of body-worn camera footage and all relevant documentation, such as police reports, medical records, photos, and the Computer-Aided Dispatch (CAD)[1] records. IA may also conduct follow-up interviews with the complainants, witnesses, and officers. The evidence is then analyzed in light of relevant SJPD Duty Manual policies and procedures.

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

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

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

## D. Step Four: Department makes a finding

In each complaint, the Department must make a finding of whether or not the alleged misconduct occurred. Findings are based on an objective analysis using the "preponderance of the evidence" standard. The standard is met and a Sustained finding is made if the evidence indicates that it is more likely than not that the officer committed a violation of the Duty Manual. Illustration 4-H lists and defines each of the findings and gives the number of each finding in 2017. Many findings made in 2017 are based on complaints from the prior year.

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

**Illustration 4-H: Findings for Misconduct Allegations Closed in 2017**

| FINDINGS FOR MISCONDUCT ALLEGATIONS |
| --- |
| **Exonerated:** "The act or acts, which provided the basis for the allegation or complaint, occurred, however, the investigation revealed they were justified, lawful, and proper."[2] This means that the officer engaged in the conduct and the conduct was within policy.<br>• **Result:** The officer cannot be disciplined when there is an Exonerated finding. However, the officer may be required to undergo counseling or training.<br>• 319 allegations (46%) were closed as Exonerated in 2017. |
| **Not Sustained:** "The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint."<br>• **Result:** This finding does not result in officer discipline. However, the officer may be required to undergo counseling or training.<br>• 74 allegations (11%) were Not Sustained in 2017. |
| **Sustained:** "The investigation disclosed sufficient evidence to prove clearly the allegation made in the complaint." This means that the Department determined that the officer engaged in misconduct.<br>• **Result:** This finding results in officer discipline.<br>• 71 allegations (10%) were Sustained in 2017. |
| **Unfounded:** "The investigation conclusively proved either that the act or acts complained of did not occur, or that the Department member named in the allegation was not involved in the act or acts, which may have occurred." This means that the IA investigation concluded that the alleged misconduct never happened.<br>• **Result:** The officer is not disciplined.<br>• 167 allegations (24%) were Unfounded in 2017. |
| **No Finding:** "The complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject Department member is no longer employed by the Department before the completion of the investigation." This means that the complainant did not provide sufficient information for IA to investigate, or the officer is no longer employed by SJPD.<br>• **Result:** The officer is not disciplined.<br>• 22 allegations (3%) were closed with No Finding in 2017. |
| **Withdrawn:** "The complainant affirmatively indicates the desire to withdraw his/her complaint." This means the complainant decided not to pursue the complaint.[3]<br>• **Result:** This finding does not result in officer discipline.<br>• 20 allegations (3%) were Withdrawn in 2017. |
| **Other:** Allegations were closed as Other when SJPD declined to investigate because of a delay of years from the date of the incident to the date of filing or because the officer who allegedly engaged in the misconduct was employed by another law enforcement agency, and not by SJPD.<br>• **Result:** No officer is investigated, and the officer name is removed.<br>• 24 allegations (3%) were closed as Other in 2017. |

[2]All definitions in quotations in this table are from the 2018 Duty Manual § C 1723.

[3]IPA staff routinely follows up to ensure that the complainants' decisions to withdraw their complaints are entirely voluntary.

### i. How allegations were closed after IPA audit

In 2017, the Department investigated and closed 275 conduct complaints containing 697 allegations. Of these allegations, the Department closed 71 (10%) with findings of sustained. A finding is Sustained when Department concludes that the investigation disclosed sufficient evidence to clearly prove that the alleged misconduct occurred.

Fifty-eight of the 71 sustained findings in 2017 (82%) were for Procedure violations of the Duty Manual. These include a broad range of conduct, including improper activation or de-activation of body-worn cameras, failure to conduct an investigation, or failure to make an arrest – new classification protocols will categorize some of this conduct as Neglect of Duty.

The remaining 13 sustained findings were for misconduct related to Courtesy (7), Bias-Based Policing (2), and Search/Seizure (4). This is the first time in the history of the IPA office that two allegations of Bias-Based Policing have been sustained.

The only person who can issue a Sustained finding is the Police Chief. Therefore, if IA determines that the investigation has disclosed sufficient evidence to clearly prove the allegation, it sends the investigation to "Findings and Recommendation." At this stage, the Lieutenant in the subject officer's chain of command receives the case. He/she reviews the complaint and the IA investigation and may or may not re-interview the subject officer. The Lieutenant comes to a finding and sends it up the subject officer's chain of command. Each supervisor recommends appropriate discipline, and the Chief ultimately imposes discipline.

Illustration 4-I lists the number of allegations closed by SJPD in 2017 and their respective findings.

**Illustration 4-I: Dispositions of Allegations Closed in 2017**

| Type of Dispositions | Dispositions of Allegations | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | AD | BBP | C | CUBO | F | ND | P | SS | WP | Total | % |
| Sustained | 0 | 2 | 7 | 0 | 0 | 0 | 58 | 4 | 0 | **71** | **10%** |
| Not Sustained | 0 | 1 | 24 | 0 | 6 | 0 | 40 | 3 | 0 | **74** | **11%** |
| Exonerated | 70 | 0 | 26 | 2 | 58 | 1 | 138 | 24 | 0 | **319** | **46%** |
| Unfounded | 3 | 55 | 44 | 4 | 20 | 0 | 41 | 0 | 0 | **167** | **24%** |
| No Finding | 1 | 1 | 3 | 0 | 4 | 0 | 12 | 1 | 0 | **22** | **3%** |
| Complaint Withdrawn | 0 | 2 | 1 | 0 | 1 | 0 | 16 | 0 | 0 | **20** | **3%** |
| Other | 2 | 3 | 1 | 1 | 3 | 0 | 13 | 0 | 1 | **24** | **3%** |
| **Total Allegations** | **76** | **64** | **106** | **7** | **92** | **1** | **318** | **32** | **1** | **697** | **100%** |

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

## ii. The sustained rate

The **Sustained Rate** is the percentage of closed Conduct Complaints that contain at least one allegation with a Sustained finding. In 2017, 37 (16%) closed Conduct Complaints had an allegation with a Sustained finding. This is a significant increase in the Sustained Rate compared to 2016, in which 11% of closed conduct complaints had an allegation with a Sustained finding. In fact, this is the highest Sustained Rate since at least 2008.

**Key Statistic**

**16% of citizen complaints closed in 2017 resulted in sustained findings against an officer, the highest Sustained Rate since 2008.**

**Illustration 4-J: Complaints Closed with Sustained Allegations — Five-Year Overview (2013-2017)**

| Year | Conduct Complaints Sustained | Conduct Complaints Closed | Sustained Rate |
|---|---|---|---|
| 2013 | 18 | 202 | **9%** |
| 2014 | 25 | 253 | **10%** |
| 2015 | 19 | 304 | **6%** |
| 2016 | 29 | 275 | **11%** |
| 2017 | 37 | 226 | **16%** |

Over the last five years, there have been 217 sustained allegations. Procedure allegations (168) accounted for 77% of the sustained findings. Courtesy (21) and CUBO (16) allegations were the basis, respectively, for 10% and 7% of the sustained findings. This is the first year that SJPD has sustained multiple Bias-Based Policing allegations.

There has also been a notable and significant increase in sustained Procedure allegations. We attribute the increase in all sustained allegations, including Procedure, to the implementation of body-worn camera. Camera footage has minimized the room for interpretation of the facts.

**Illustration 4-K: Types of Sustained Findings by the Department (2013-2017)***

| Year | Type of Allegations Sustained | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | AD | BBP | C | CUBO | F | ND | P | SS | Total |
| 2013 | 0 | 0 | 3 | 5 | 0 | 0 | 27 | 0 | 35 |
| 2014 | 0 | 0 | 6 | 3 | 1 | 0 | 31 | 1 | 42 |
| 2015 | 0 | 1 | 3 | 7 | 0 | 0 | 20 | 1 | 32 |
| 2016 | 0 | 0 | 2 | 1 | 1 | 0 | 32 | 1 | 37 |
| 2017 | 0 | 2 | 7 | 0 | 0 | 0 | 58 | 4 | 71 |
| | **0** | **3** | **21** | **16** | **2** | **0** | **168** | **7** | **217** |

* Excludes Department-Initiated Investigations

## E. Step Five: IPA audit

After the Department completes its investigation, conducts an analysis, and makes a finding, it forwards the written report to the IPA for audit. The IPA audited 236 complaints in 2017. The IPA is required to audit all complaints with Force allegations and at least 20% of all other complaints. In 2017, the IPA fulfilled this requirement by auditing all completed investigations containing Force allegations (49 complaints) and 79% of all other complaints. IPA staff review various issues during the audit to determine if the Department's investigations and analyses were fair, thorough, and objective.

**Illustration 4-L: Issues Reviewed During IPA Audit**

| ISSUES REVIEWED DURING IPA AUDIT | |
|---|---|
| Timeliness / tolling | Was the investigation completed in a timely manner? |
| Classification | Was the case properly classified? |
| Presence/absence of allegations | Do the listed allegations adequately capture the concerns voiced by complainant? |
| Presence/absence of supporting documentation | If pertinent, did the investigator obtain and review documentation such as:<br>CAD (SJPD Computer-Aided Dispatch logs)<br>◦ Medical records<br>◦ Photographs<br>◦ Police reports/citations<br>◦ TASER activation logs<br>◦ Use of force response reports<br>◦ Body-worn camera footage |
| Presence/absence of interviews conducted by Internal Affairs | Witnesses — what efforts were taken to identify and contact witnesses?<br>Witness officers — what efforts were taken to identify and interview officers who witnessed the incident?<br>Subject officers — what efforts were taken to identify and interview subject officers? |
| Presence/absence of logical objective application of policy to the facts | What is the policy/Duty Manual section that governs the conduct in question?<br>Is this authority applicable to the case or is other authority more pertinent?<br>Does the analysis apply all the factors set forth in the authority to the facts? |
| Presence/absence of objective weighing of evidence | What weight was given to officer testimony? Why?<br>What weight was given to civilian testimony? Why?<br>Does the analysis use a preponderance standard?<br>Does the analysis logically address discrepancies? |

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

- **Agreed** with the Department's investigation of the case after initial review (in 2017, 196 (83%) of audited cases),
- **Agreed After Further** action, such as receiving from IA a satisfactory response to an IPA inquiry or request for additional clarification or investigation (in 2017, 19 (8%) of audited cases);
- **Closed with Concerns**, which means the IPA had issues with the Department's investigation and/or analysis, but the concerns did not warrant a formal disagreement (13 (6%) of audited cases); or
- **Disagreed**, meaning the IPA determined that the Department's investigation and/or analysis were not thorough, objective, and fair (8 (3%) of audited cases).

We discuss this process in additional detail in Chapter 12.

### F. Step Six: IPA appeal process

The new IPA has a different approach to the audit process in that the "Closed with Concerns" determination will no longer be used. Instead, the IPA will push back with the IA Lieutenant regarding any deficiencies identified with an IA investigation, then take it to the Chief as an appeal if the Lieutenant disagrees with the IPA. If the IPA disagrees with the Chief, he will appeal to the City Manager. Ultimately, if the IPA disagrees with the City Manager, he will close the case as "Disagree." We discuss the number and outcomes of our appeals in Chapter 12 (Accountability Process). Appeals account for a small percentage of cases.

### G. Step Seven: Officer discipline

Officers who receive sustained findings are subject to discipline by the San José Police Department. By 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.

The IPA office receives information about the recommended discipline and has initiated a practice of addressing concerns with the level of recommended discipline. Ultimately, the Chief decides what discipline to impose, and there is no established appeal process for instances in which the IPA disagrees with the level of discipline imposed.

There were two complaint investigations resulting in serious discipline. One officer was suspended for ten hours and another officer was suspended for 40 hours.

According to SJPD data regarding the outcomes of investigations of citizen complaints, 15 officers received training and/or counseling, 18 officers received documented oral counseling, zero officers received documented oral counseling and training, and five officers were given letters of reprimand. The number of incidents leading to discipline increased in 2017.

**Illustration 4-M: Total Discipline Imposed on Officers by the Department (2013-2017)**

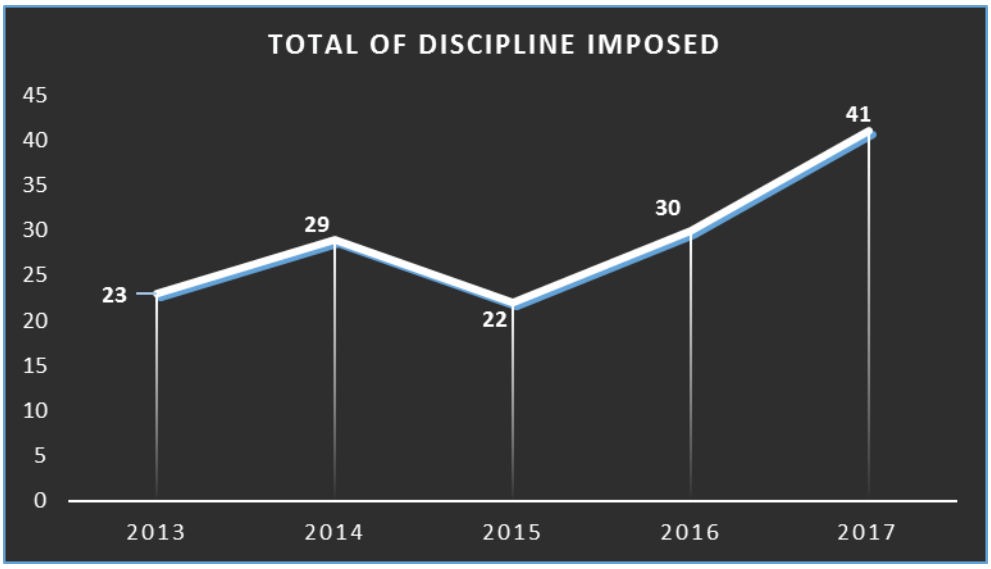



**Illustration 4-N: Officer Discipline Imposed by the Department in 2016 and 2017**

| Type of Discipline | 2016 | | 2017 | |
|---|---|---|---|---|
| | # of Times | % of All Discipline | # of Times | % of All Discipline |
| Training | 2 | 7% | 3 | 7% |
| Training & Counseling | 15 | 50% | 12 | 29% |
| **All Training and/or Counseling** | **17** | **57%** | **15** | **37%** |
| Documented Oral Counseling (DOC) | 9 | 30% | 18 | 44% |
| DOC and Training | 1 | 3% | 0 | 0% |
| Letter of Reprimand (LOR) | 1 | 3% | 5 | 12% |
| **All DOC & LOR** | **11** | **37%** | **23** | **56%** |
| 10-Hour Suspension | 0 | 0% | 1 | 2% |
| 20-Hour Suspension | 1 | 3% | 0 | 0% |
| 40-Hour Suspension | 0 | 0% | 1 | 2% |
| 80-Hour Suspension | 1 | 3% | 0 | 0% |
| **All Suspensions** | **2** | **7%** | **2** | **5%** |
| Settlement Agreement | 0 | 0% | 1 | 2% |
| **Total Discipline Imposed** | **30** | **100%** | **41** | **100%** |

Over the last five years, discipline was imposed after 145 incidents of misconduct. Discipline has ranged from the relatively minor, such as training and/or counseling, to the severe, such as suspension and termination.

**Illustration 4-O: Discipline Imposed on Officers by the Department (2013-2017)***

| Type of Discipline | 2013 # of Times | 2014 # of Times | 2015 # of Times | 2016 # of Times | 2017 # of Times |
|---|---|---|---|---|---|
| Training and/or Counseling | 15 | 20 | 16 | 17 | 12 |
| Documented Oral Counseling and/or Training | 2 | 6 | 3 | 10 | 21 |
| Letter of Reprimand | 2 | 1 | 0 | 1 | 5 |
| 10-Hour Suspension | 0 | 0 | 1 | 0 | 1 |
| 20-Hour Suspension | 0 | 1 | 0 | 1 | 0 |
| 40-Hour Suspension | 0 | 1 | 0 | 0 | 1 |
| 80-Hour Suspension | 0 | 0 | 0 | 1 | 0 |
| 120-Hour Suspension | 1 | 0 | 0 | 0 | 0 |
| 160-Hour Suspension | 1 | 0 | 0 | 0 | 0 |
| Settlement Agreement | 0 | 0 | 0 | 0 | 1 |
| Termination** | 2 | 0 | 2 | 0 | 0 |
| **Total Discipline Imposed** | **23** | **29** | **22** | **30** | **41** |

* Data provided by SJPD

** Included Transfers, Resignations, Settlement Agreements, and Terminations

Throughout this report, we summarize cases we review as part of our auditing of complaint investigations. We do not include in those case summaries a description of the discipline imposed. This omission is the result of legal direction to protect confidential information under state law. We regret the need for this vagueness, as the community would benefit from greater information about what conduct leads to what level of discipline. Other oversight agencies do provide this type of information. So, too, does the City, though the information includes investigations that were "Department Initiated," not just investigations initiated by citizen complaints[4] (it also includes civilian staff throughout the City, not just police officers). The summaries of the incidents provided by the City are also quite vague and, in at least one case, do not fully capture the allegations involved. That said, the report indicates that nine officers received suspensions – ranging from ten hours to 160 hours – whereas only two received suspensions resulting from investigations of citizen complaints.

In light of the fact that only two suspensions resulted from investigations of citizen complaints – note that the City's report includes many more suspensions of police officers, mostly from "Department-Initiated Investigations" rather than citizen complaints – we decided it would be more beneficial to the community for us to include more detailed summaries without the discipline rather than very vague summaries that include the discipline issued. Sufficed to say, the suspensions issued correspond to cases involving serious allegations.

[4]http://www.sanJoséca.gov/DocumentCenter/View/75369.

# Chapter 5: Use of Force

## A. Introduction

SJPD took an important step in 2017 to publish comprehensive data on its use-of-force incidents, allowing our office and the public to measure SJPD's performance in this regard as never before. The data shows that SJPD uses reportable force less than other agencies but that a larger percentage of its uses of force result in injuries, including serious injuries. The data also suggests that there may be some racial disparities with respect to the outcomes of use-of-force incidents.

Officer-involved shootings increased in 2017 from 2016, and three-quarters of the shootings involved individuals with a history of mental illness.

While a less important measure than the use-of-force data published by SJPD – that may just as easily be used to detect the community's trust in our office and the accountability procedures in place to address use of force – citizen complaints regarding use of force were down dramatically in 2017, following a years-long decrease. None of the cases we closed in 2017 involved sustained allegations that were categorized as Force allegations, though we encountered a number of cases in which officers received discipline for force-related failures, including documentation or supervisory review of the use of force.

A new SJPD policy – largely in response to a 2016 IPA policy recommendation – marks another major development in how SJPD reviews serious uses of force at the Command level, though it is important to evaluate the impact of the new policy.

## B. Methodology

In addition to the data dashboard on use of force incidents that SJPD rolled out in early 2018, we use our access to officer reports, other records, and body-worn camera footage in Internal Affairs cases and as part of our participation in the shooting review panels – held within 90 days of each officer-involved shooting to evaluate not individual officer misconduct but possible policy, equipment, or training needs – to learn about SJPD's use-of-force practices. We are required to audit every IA investigation of a citizen complaint that makes a Force allegation. The IPA and Assistant IPA may also participate in IA's interviews during its investigations, and the IPA has participated in a number of interviews related to use-of-force cases.

The IPA also may respond to the scene of each officer-involved shooting to receive an immediate briefing from the IA Commander, and the current IPA is prioritizing this practice. The IPA has also made it a priority to meet with families directly impacted by officer-involved shootings and to review the public reports issued by the District Attorney's Office regarding every fatal officer-involved shooting.

## C. Discussion

### i. SJPD's use-of-force statistics

In its 2015 Year-End Report, the Office of the Independent Police Auditor noted that the Department had not provided statistics on the force used by its officers since 2008, despite the fact that officers were required to complete forms documenting such force. The IPA recommended that the Department resume

publishing its Force Response Report for the benefit of the Council and the community.

In January 2018, the SJPD released its Public Web Portal on Use-of-force Data. This innovative site, developed in partnership with Police Strategies, LLC, currently provides data on force used by SJPD officers from 2015 through 2017. Interactive web tools allow the user to select and review data in three separate categories: (1) time and location of force incidents, (2) types of force tactics used, and (3) suspect characteristics and charges.

### a. Reliability of the data

Although the community was generally impressed with the amount and accessibility of the data, there remain some lingering issues about the methodology behind the numbers.

**Reliance on officers' reports:** The data derives entirely from officers' reports describing the incidents and the amount of force used. In particular, the analysis attempts to draw conclusions about the proportionality of the use of force by assessing both the threat level and the type or severity of the force used. But the threat level is determined based on the officer's own perception.

The reliability of the data, however, could be tested by an independent review. The IPA, for example, has suggested that a third party be able to sample body-camera footage from force incidents, to ensure they align with officer accounts. Chief Garcia indicated that he welcomed the questions that the new portal would generate.

**Other concerns:** Other shortcomings include that, under some limited exceptions (Duty Manual section L 2644), not all force is "reportable," so the least serious uses of force do not show up in the data, and that some reportable uses of force are not reported.

We encountered a number of cases in which either an officer did not adequately document his or her use of force or a supervisor did not conduct the required review of the reported use of force. These cases highlight that data that relies entirely on the officers' own reports requires further analysis before any conclusions can be drawn from it.

**Case Summary**[5]

**Allegations: Force, Procedure, Courtesy**

Police contacted a couple – a boyfriend and girlfriend – in a parking lot. The owner of a local business claimed that they were breaking into a car. Officers ordered both persons to lie down on the ground prone. The female did not comply and instead sat down on the pavement. Allegedly, one officer knocked her over until she was lying on her stomach. The same officer grabbed her head and "banged" her head on the ground. The officer ordered her to "get the fuck on the ground." She also said the officer told her to "shut up" multiple times. The female was later released at the scene.

The complaint alleged the use of force was improper and that officers made rude comments (Courtesy).

IA determined that one Courtesy allegation (profanity) was exonerated and the other ("shut-up") was unfounded. One Force allegation (knocking the female to the ground) was exonerated; the other Force allegation (hitting the female's head on the ground) was "not sustained."

During the course of the force investigation, attention was focused on the supervisor's response to the force. Duty Manual section L 2605 mandates that a "supervisor personally respond to evaluate and actively participate in the investigation of the factual circumstances of a subordinate officer's use of reportable force." In his interview, the supervisor acknowledged that he was contacted by his subordinate regarding the force used during the incident. The supervisor stated that he did not respond because of other higher priority matters and because the officer's use of force was minimal.

This Procedure allegation was sustained.

**Case Summary**

**Allegations: Force, Procedure**

The complainant alleged that he was "beaten up" by officers when he was arrested. He acknowledged that he was nervous and under the influence of methamphetamine at the time, so he ran from the officers, ignored their commands, and hid in the bushes. He stated that he was tased and hit over the head with an unknown object during the arrest. He blacked out and woke up at the hospital.

After investigating, IA deemed the force allegations to be exonerated.

During the course of the investigation, attention was focused on the supervisor's use of force. During the incident, two officers used the Taser. The officers' supervisor punched complainant in the face while taking him into custody. Duty Manual section L 2604 mandates that "officers will notify a supervisor, without unnecessary delay, when reportable force is used." And Duty Manual section L 2605 mandates that a "supervisor personally respond to evaluate and actively participate in the investigation of the factual circumstances of a subordinate officer's use of reportable force." A supervisor cannot conduct a review of his/her own use of force. In his interview, the supervisor stated that he did investigate the Taser force by the two officers who reported to him. However, he did not think that he needed to contact his own supervisor regarding the punches that he delivered.

Two Procedure allegations were sustained, one based on L 2604 and the other on L 2605.

The IPA had concerns about the analysis of the force allegations, particularly on the analysis of multiple taser activations by two officers simultaneously. We closed the case "with concerns."

[5]Where we discuss particular cases, the term "officer" is used to identify any sworn member of SJPD, regardless of rank. When we identify an officer as "Officer [Initial]," the initial is assigned randomly and does not necessarily correspond with the officer's true initial. Due to confidentiality requirements and legal guidance, we do not include in the case summaries information about the discipline issued.

### b. Preliminary findings

Despite its inevitable limitations, the data dashboard provides a number of useful insights, including comparisons – between San José and the other jurisdictions that utilize the same dashboard system and analytical process – overall uses of force, regarding injuries resulting from force incidents, types of weapons used, and the racial demographics of those individuals on whom force is used. While SJPD's overall use of force is below average, certain types of more serious injuries are higher.

We continue to examine the dashboard to extract key data points of interest to the community, and we welcome requests or suggestions regarding which issues warrant analysis.

**Overall rates:** SJPD's overall use-of-force rate – use-of-force incidents per 1,000 persons – is half that of the average among the other jurisdictions. SJPD's use-of-force incidents per arrest are the same as the average among the other jurisdictions. While incidents were down in much of 2016, they returned to previous rates in 2017 – in the discussion below, we compare these rates to the number of Force complaints filed with the IPA and Internal Affairs.

**Injuries**: SJPD sees more serious injuries than the other participating jurisdictions.

- The suspect injury rate and officer injury rate are 50% higher than in the other participating jurisdictions.
- Injuries from canine bites are 37% higher for SJPD than the average among the other jurisdictions employing this same analysis tool.
- SJPD's rate of fractures is five times higher.

On the other hand, SJPD also stands out because unconsciousness is six times less likely than in the other jurisdictions utilizing this analysis tool.

**Weapons**: SJPD is above average in its officers' use of impact and projectile weapons as a percentage of all force incidents.

**Case Summary**

**Allegations: Force, Procedure, Courtesy**

An employee of an apartment complex contacted the police due to his concern about the complainant's attempt to enter one of the units. The complainant acknowledged that he was not formally on the lease. Several officers responded. The complainant told them that he was late in taking his medication and asked if he could go to the police station until his family could pick him up. When the officers denied him this request, the complainant asked the police to call an ambulance because he had a medical condition and was feeling stressed.

The complainant stated he attempted to walk to the ambulance because he was having difficulty breathing. The officers did not want him to contact the ambulance personnel. Officers grabbed his arms and placed him against a wall. The complainant inexplicably began hitting his head against the wall. When officers attempted to restrain him, the complainant became resistive.

One officer pointed a Taser at him; the officer ordered the complainant to stop or he would get tased. Other officers then took him to the ground and held him on the ground using their body weight.

The complainant said that the officers used unnecessary force, were discourteous, and acted improperly by displaying their Tasers.

The first two allegations were closed as exonerated. The analysis concluded that the officer's display of the Taser was proper. A Procedure allegation, however, was closed as sustained.

Under Duty Manual section L 2614, however, "[o]fficers that display the TASER in an attempt to gain compliance from a subject will ensure there is a note in the CAD event indicating the "TASER was displayed." The officer failed to adequately report the Taser display.

**Race disparities:** The data dashboard cannot be used to break down types of weapons or injuries by race. The dashboard is actually broken into three separate dashboards, and the one that includes race also includes "maximum resistance by suspect," "crime type," "crime level," and other demographics (age, sex, etc.).

That dashboard also provides information on the "most serious charge referred" following a use-of-force incident, broken down by race. Assault on an officer resulted in 22.9% of all incidents as the most serious charge. Others include "obstructing" (10%), assault (9.1%), and drugs (7%). Of the 629 reported force incidents in 2017, "no charges" was the most serious charge referred in 6.8% of incidents.

- While Whites accounted for just 22% of all force incidents, they accounted for 37% of incidents in which "no charges" were referred.
- White suspects were considerably more likely to leave the incident with "no charges" – that was the most serious charge referred in 11.4% of incidents involving White suspects, a rate that is 81% higher than for Blacks and more than 159% higher than for Latinos.
- Whites were more likely to show defensive or aggressive resistance than Latinos in these incidents in which "no charges" were referred. We caution that the level of resistance reported relies on the subjective perception of the officer and that officer's decision about how to report the incident.
- Every White suspect for whom "no charges" was the most serious charge referred went to the hospital, while 7% of Latinos, 17% of Blacks, and 20% of Asians went to jail.

**Key statistic**

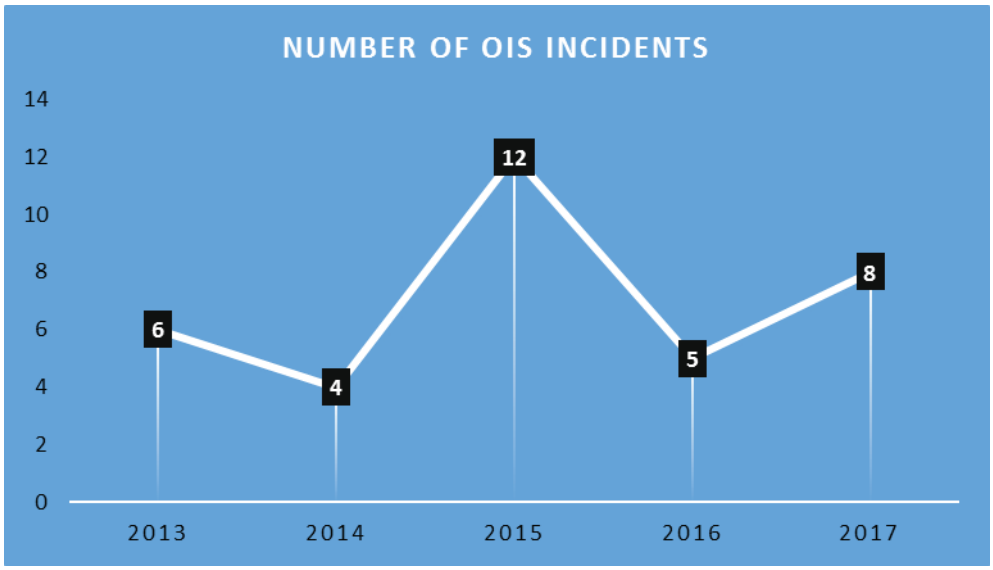
**White suspects were reportedly more than 2.5 times more likely than Latinos and 81% more likely than Blacks to leave a use-of-force incident with "no charges" referred.**

## ii. Officer-involved shootings

While we respond to the scene, participate in the 90-day review panels, and review other information about officer-involved shootings, the IPA office's insights into such incidents are limited. First, we receive very few citizen complaints regarding officer-involved shootings and therefore audit very few IA investigations of such incidents. Second, Duty Manual section L 2646 mandates that the Chief of Police provide, on an annual basis, a public summary of the Panel's deliberations and recommendations to the Mayor and City Council.[6] These annual summaries have not been provided. We urge the Department to produce a summary reflecting panel reviews conducted in 2017 and to ensure that timely reports are made public each year. Chief Garcia has indicated that SJPD will issue these reports.

2017 saw a relatively high number of officer-involved shootings, though 2015 marked the peak in recent years.

**Illustration 5-A: Number of Officer-Involved Shooting Incidents (2013-2017)**




Most of the officer-involved shootings involved persons of color, individuals with histories of mental health treatment, and individuals armed with something other than a firearm. Most of the incidents involved officers with substantial experience on the job. In each case, either the officer was found to not have violated policy or the investigation is pending.

[6]Duty Manual section 2646 states, in pertinent part: "On an annual basis, the Chief of Police will provide a public summary in narrative format to the Mayor and City Council that will summarize the Panel's deliberations and recommendations. This summary will not identify individual officers or other involved persons."

**Illustration 5-B: Officer-Involved Shooting Incidents in 2017**

| | | |
|---|---|---|
| **OIS No. 1** | Race of suspect -- | White |
| | Gender -- | Male |
| | Deceased or injured -- | Injury |
| | Armed -- | Vehicle |
| | Known mental health history -- | Yes |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon | 3 |
| | Involved officer(s) experience -- | 24,22,21 |
| **OIS No. 2** | Race of suspect -- | Asian |
| | Gender -- | Male |
| | Deceased or injured -- | Injury |
| | Armed -- | Knife |
| | Known mental health history -- | Yes |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon -- | 1 |
| | Involved officer(s) experience -- | 5 |
| **OIS No. 3** | Race of suspect -- | Asian |
| | Gender -- | Male |
| | Deceased or injured -- | Deceased |
| | Armed -- | Knife |
| | Known mental health history -- | Yes |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon -- | 1 |
| | Involved officer(s) experience -- | 14 |
| **OIS No. 4** | Race of suspect -- | White |
| | Gender -- | Male |
| | Deceased or injured -- | Deceased |
| | Armed -- | Handgun |
| | Known mental health history -- | Yes |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon -- | 1 |
| | Involved officer(s) experience -- | 16 |
| **OIS No. 5** | Race of suspect -- | Black |
| | Gender -- | Male |
| | Deceased or injured -- | No injury |
| | Armed -- | Handgun |
| | Known mental health history -- | Yes |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon -- | 1 |
| | Involved officer(s) experience -- | 16 |
| **OIS No. 6** | Race of suspect -- | Hispanic |
| | Gender -- | Male |
| | Deceased or injured -- | Deceased |
| | Armed -- | Axe |
| | Known mental health history -- | Yes |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon -- | 1 |
| | Involved officer(s) experience -- | 2 |

| | | |
|---|---|---|
| **OIS No. 7** | Race of suspect -- | White |
| | Gender -- | Male |
| | Deceased or injured -- | No injury |
| | Armed -- | Vehicle |
| | Known mental health history -- | No |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon -- | 1 |
| | Involved officer(s) experience -- | 2 |
| **OIS No. 8** | Race of suspect -- | Hispanic |
| | Gender -- | Male |
| | Deceased or injured -- | Deceased |
| | Armed -- | No |
| | Known mental health history -- | No |
| | CIT on scene -- | Yes |
| | Number of officers who fired weapon -- | 1 |
| | Involved officer(s) experience -- | 11 |

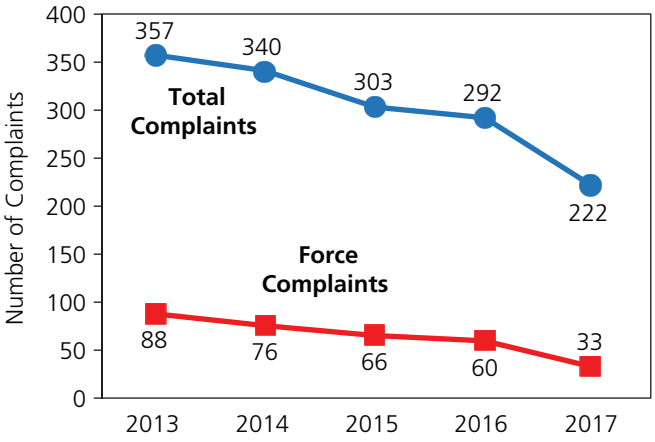
## iii. Citizen complaints

The data dashboard provides a much more comprehensive view of SJPD's use-of-force practices, but the data on citizen complaints provides additional insights, particularly regarding community trust in the IPA and Internal Affairs process.

### a. Number and disposition of Force complaints and allegations

The number of Force allegations received through the intake process has declined steadily over the past five years from 177 in 2013 to 68 in 2017 – a 62% decrease. The number of Force Complaints[7] received has decreased by the same percentage from 88 in 2013 to 33 in 2017. But the decrease was especially dramatic from 2016 to 2017: Force complaints went down by 45%, and Force allegations went down by 37%. Total complaints went down by a comparatively smaller rate: 24%.

**Illustration 5-C: Force Complaints Received Relative to Total Complaints Received — Five-Year Overview**




While a range of factors may contribute to this drop in Force complaints, the trend in use-of-force incidents corresponds somewhat with a similar trend in Force complaints filed. Force allegations dropped by a slightly smaller percentage, indicating that those Force complaints received included a larger average number of Force allegations than Force complaints filed in 2016.

[7]A complaint contains one or more allegations. A Force Complaint is a complaint that includes one or more allegations of improper use-of-force by a San José police officer.

**Illustration 5-D: Fore Allegations Received — Five-Year Overview (2013-2017)**

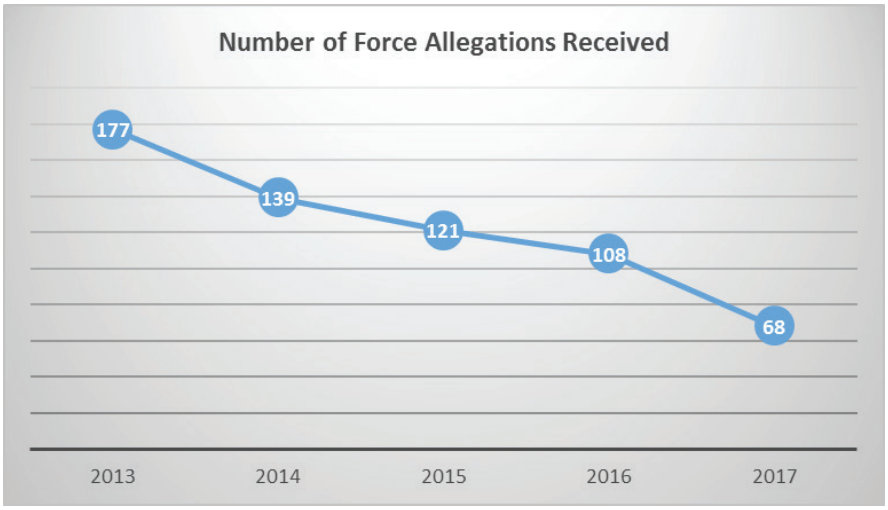
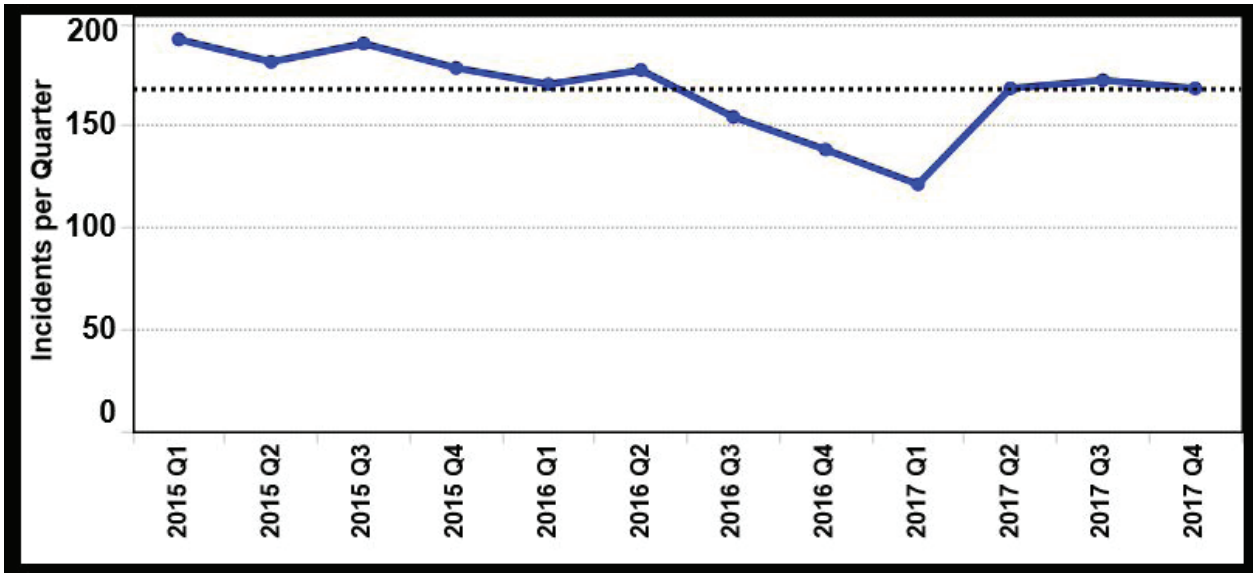



**Illustration 5-E: SJPD Data Dashboard on Use of Force**




Fifteen percent (15%) of all complaints received in 2017 were Force Complaints. The percentage of Force Complaints relative to all complaints received has steadily declined over the past five years from 25% in 2013 to 15% in 2017.

**Illustration 5-F: Complaints Received Relative to Total Complaints Received (2013-2017)**

| Year | Total Force Allegations | Total Force Complaints | Total Number of Complaints | Force Complaints As % of Total Complaints |
|---|---|---|---|---|
| 2013 | 177 | 88 | 357 | 25% |
| 2014 | 139 | 76 | 340 | 22% |
| 2015 | 121 | 66 | 303 | 22% |
| 2016 | 108 | 60 | 292 | 21% |
| 2017 | 68 | 33 | 222 | 15% |

## b. Ethnicity of subjects of force in citizen complaints

Because anyone can file a complaint, the demographics of complainants may not reflect the demographics of the persons upon whom police are allegedly using force. The IPA reviewed the 49 Force Complaints closed in 2017 to determine the ethnicities. This detailed information was gleaned from police reports, citations, and/or medical records. We could identify the race and ethnicities of 35 individuals against whom force was allegedly used, the gender of these persons, and their ages. As we have consistently observed in prior years, Latinos and African-Americans are over-represented in force-related complaints relative to their representation in the city's population.

**Illustration 5-G: Ethnicity of Subjects in Force Allegations Closed in 2017**

| Ethnicities | Number of persons | Percentage of total persons | Percentage of San José Population* |
|---|---|---|---|
| African American | 4 | 11% | 3% |
| Asian American/Pacific Islander | 3 | 9% | 32% |
| Caucasian | 6 | 17% | 29% |
| Hispanic/Latino | 14 | 40% | 33% |
| Native American | 1 | 3% | 1% |
| Other | 0 | 0% | 2% |
| Decline/Unknown | 7 | 20% | 0% |
| **Total persons** | **35** | **100%** | **100%** |

* Source: U.S. Census Bureau, Census 2010

The racial demographics of those on whom force is used in the incidents reported in citizen complaints are similar to those reported in the SJPD's own data dashboard, though the summary report of the data reported in the dashboard indicates that no disparity based on race exists when comparing the incidence of force and the incidence of arrests.

**Illustration 5-H: Ethnicities of Subjects Reflected in SJPD Dashboard of Use of Force Incidents 2017**

| Ethnicities | # of persons | Percentage of total persons | Percentage of San José population* |
|---|---|---|---|
| Hispanic | 340 | 54% | 33% |
| White | 140 | 22% | 29% |
| Black | 96 | 15% | 3% |
| Asian | 47 | 7% | 32% |
| Native American | 3 | 0% | 1% |
| Unknown | 3 | 0% | 0% |
| | **629** | **98%**** | **98%**** |

** Source: U.S. Census Bureau, Census 2010

** Percentages do not total 100%

### iv. New SJPD policy on Command-level review of serious uses of force

In October 2017, SJPD announced a new policy that was directly responsive to a 2016 IPA recommendation that SJPD's Command staff review all serious uses of force. We reiterate our earlier recommendation that the new policy requiring Command-level review of serious uses of force also include in their purview officers' de-escalation efforts.

**IPA policy recommendation:** In its 2016 Year-End Report, the Office of the Independent Police Auditor pointed out that the SJPD treated all uses of force, regardless of severity, exactly the same. This one-size-fits-all approach hampered the Department's ability to analyze use-of-force trends, including data arising from significant use-of-force incidents. Also, it appeared that significant use-of-force incidents did not come to the attention of SJPD management unless a misconduct complaint was filed. The data suggested that there were numerous uses of force where serious injuries occurred but those injuries were unknown to anyone but the involved officers, their immediate supervisor, and perhaps a Lieutenant.

The IPA recommended that SJPD modernize its use-of-force accountability process, including categorizing force so that increasingly more review is applied by higher levels of the command staff depending on the severity of the force.

**New SJPD policy:** In 2017, the Department announced that it had significantly changed Department protocol on the review of force used by its officers. The new policy identified four categories of force based on the type of force option used or the resulting injury. Immediate supervisors would continue to be responsible for assessing incidents in which the use of force causes only a minor injury or complaint of pain.

Now, however, Command officers would be directly involved in the investigation and review of incidents in which the use-of-force results in non-minor injuries. The policy dictates that command officers personally respond to the incident scene and sets specific timelines in which force investigations must be submitted. Higher categories of force will receive greater scrutiny by the Department's chain of command.

**De-escalation:** Part of the IPA's 2016 recommendation was that SJPD examine officers' efforts at de-escalation as part of the Command-level review. SJPD's response to that portion of the recommendation was that the

new policy need not explicitly require review of de-escalation efforts because the Duty Manual's de-escalation requirements would be incorporated into the new policy. Our office does not have access to the Command staff's memoranda memorializing the reviews under the new policy, so we cannot substantiate whether de-escalation is included in the process.

**Illustration 5-I: Categories of Use-of-Force**

| CATEGORIES | USE-OF-FORCE |
|---|---|
| CATEGORY I | Any use-of-force not covered by the other categories that causes a minor injury or a complaint of pain |
| CATEGORY II | TASER deployments<br>impact weapons (not to the head),<br>OC (pepper) spray,<br>projectile impact weapons (where up to 4 rounds strike the suspect) |
| CATEGORY III | • Impact weapon or projectile impact weapon strikes to the head (intentional and accidental),<br>• projectile impact weapon (where more than 4 rounds strike the suspect), kicks to the head,<br>• Two or more officers deploy less-than-lethal force (O.C., projectile impact weapons, or TASER) on one suspect,<br>• Four or more officers use reportable force on one suspect,<br>• Force resulting in bone fracture,<br>• Canine apprehension (dog bite),<br>• Carotid restraint applied,<br>• Force resulting in suspect's loss of consciousness,<br>• Hospital admission as a direct result of the force |
| CATEGORY IV | Deadly force – That force which the user knows would pose a substantial risk of death or serious bodily injury |

# Chapter 6: Crisis Intervention / Interactions with Individuals with Psychiatric Disabilities

## A. Introduction

Properly addressing the needs of individuals with psychiatric disabilities or other mental health needs has long been a challenge for police departments across the country, and 2017's officer-involved shootings illustrate this challenge all too acutely – six of the eight officer-involved shootings involved individuals with psychiatric disabilities or other mental health history. SJPD has taken proactive steps over recent years to ensure that its officers are trained and prepared to address the needs of this population, though only two-thirds of officers had received crisis-intervention training (CIT) by the end of 2017.

Below we will discuss the most common complaints received regarding interactions with the mental health community: use of force, improper mental health holds, and rude officer conduct. A Bias-Based Policing complaint regarding disability-based bias was also sustained (a second such sustained complained related to race/national origin and is discussed in Chapter 7 of this Report). Individuals may feel officers make unfair negative assumptions about them based on their mental health disability.

We used these complaints as well as our outreach efforts to make three recommendations regarding how officers should interact with individuals with psychiatric disabilities. They address the following issues:

1. The lack of information regarding mental health resources provided to those with mental health needs but who do not meet the criteria for a 72-hour involuntary mental health hold.
2. Some individuals being detained for a 72-hour involuntary mental health hold unsurprisingly resist arrest, resulting in their transportation to jail rather than to Emergency Psychiatric Services.
3. The lack of refresher CIT training for officers who may have received their initial training many years ago.

## B. Methodology

We sought to learn about this important set of issues from various sources of information.

**Auditing:** IPA staff flagged many cases that were closed in 2017 that involved a complainant who had psychiatric disabilities or other mental health needs.

**County services:** Additionally, IPA staff conducted significant outreach to better inform any policy recommendations regarding the mental health community. In our own efforts to understand the logistical dynamics of how a person with any kind of behavioral health need navigates the system, our staff toured Emergency Psychiatric Services at Valley Medical Center and spoke with the nurse manager.

IPA staff also toured Santa Clara County's Office of Re-entry Services and spoke with the office's Director, Javier Aguirre. This office was established to be a "one stop shop" for former inmates re-entering the community from jail or prison. The office has partnered with more than 75 community-based organizations, faith-based organizations, and County departments in order to provide services regarding housing, healthcare, mental health resources, legal assistance, and more.

IPA staff later met with the Crisis Continuum Community Partners at Uplift Family Services, California's largest behavioral health provider for children and their families.

**SJPD's CIT unit:** Lastly, the IPA and staff met with SJPD's Crisis Intervention Unit. We learned about the extensive work they do to ensure that all new SJPD recruits, Field Training Officers (FTOs), and the entire department get mandatory CIT training. The Unit also provided our office with helpful data on CIT calls and training.

## C. Discussion

### i. Use of force

Excessive use of force is one of the most common complaints regarding police interactions with individuals with psychiatric disabilities or other mental health needs, and officer-involved shootings disproportionately involve individuals experiencing a mental health crisis. While SJPD is rolling out CIT training for all its officers, more than a third of officers remain untrained in CIT. We are hopeful that with mandatory CIT training to all officers, and with the Department adopting our recommendation that officers receive CIT refresher training throughout their careers, officers will be better prepared to interact with the mental health community and more comfortable using alternative tactics to de-escalate encounters and avoid the use of force.

**Officer-involved shootings:** Unpredictable encounters with law enforcement can quickly escalate into a deadly encounter – one in four officer-involved shootings nationwide involve those with psychiatric disabilities or other mental health needs. In San José, nearly one third of the officer-involved shootings over the last ten years involved someone with a psychiatric disability or other mental health history.[8] In 2017, the San José Police Department had eight officer-involved shootings (OIS). Six of these incidents, or 75%, involved civilians who had psychiatric disabilities or a history of mental health treatment.

**Illustration 6-A: Officer-Involved Shootings in 2017 Involved Individuals with History of Mental Health Concern**

| Number | History of Mental Illness? | CIT at Scene? | Injury/Death |
|---|---|---|---|
| 1 | Yes | Yes | Injury |
| 2 | Yes | Yes | Injury |
| 3 | Yes | Yes | Deceased |
| 4 | Yes | Yes | Deceased |
| 5 | Yes | Yes | No Injury |
| 6 | Yes | Yes | Deceased |
| 7 | No | Yes | No Injury |
| 8 | No | Yes | Deceased |

**Key Statistic**

**75% of officer-involved shootings in 2017 involved individuals with a history of mental health concerns.**

This is an increase from last year; one of the five OIS's included a civilian who had a history of psychiatric disabilities.

Most people with psychiatric disabilities, in times of severe crisis, do not respond to traditional methods of policing – loud commands, orders for immediate compliance, etc. This population often requires officers to speak slowly and calmly and slow down the communication. We hope to see an increased commitment to tracking and evaluating the effectiveness of the current CIT training.

**CIT training:** The OIS data highlights the importance of CIT training. The primary means of mitigating the risk of unnecessary or excessive force or rude or short-tempered

[8]https://www.mercurynews.com/2017/09/30/police-clinicians-look-to-shift-mental-health-response-burden-away-from-officers/

behavior (see discussion below) when interacting with people with psychiatric disabilities is more crisis-intervention training. In 2017, SJPD received 4,182 calls for service that required CIT-trained officers to respond.

**Key Statistic**

**More than 1/3 of SJPD officers had not yet received crisis-intervention training by the end of 2017.**

Although CIT training has been at SJPD since 1998, Chief Garcia only implemented it as a mandatory course for all officers in 2015. This step is commendable, and the Department is making steady progress in ensuring all officers receive this training. The total number of officers receiving CIT training in 2017 was 153, and the total number of officers who had received training overall is 630. Unfortunately, this means more than a third of the police force still had not received CIT training by the end of 2017.

Additionally, we noted in our 2016 recommendations that there currently is no mechanism to measure the effectiveness of CIT training. As we also noted, a report that was prepared for the Berkeley Police Department in 2010 stated that "data collection/program evaluation is consistently the weakest part of CIT programs."[9] SJPD responded that they intend to collect data to evaluate its program's effectiveness but have not yet begun that process.

**Refresher training:** All new officers receive CIT training in the academy. But in an urgent time of crisis where officers are not dealing with people who are in a rational frame of mind, and split-second decision-making can mean the difference between life and death, is a one-time offering of 40 hours of training really enough? If an officer receives this training in the academy, he/she likely will need a refresher course once he/she gets more experience on patrol and more experience dealing with various populations. Some officers received CIT training many years ago. Therefore, we believe it is important to have on-going CIT training throughout an officer's career.

**Policy Recommendation 1: Crisis Intervention Training**

SJPD should require officers to undergo periodic refresher Crisis Intervention Training. Such training should address relevant updates to the policy manual (including de-escalation), developments in best practices, and changes in available community-based resources and services.

**SJPD RESPONSE:** To provide SJPD officers with a periodic refresher, the Department's CIT Coordinator plans on putting together a bi-monthly training bulletin on different mental illnesses along with resources, etc. to provide to Department members.

### ii. Improper mental health holds

Section 5150 of the Welfare & Institutions Code (5150) authorizes police officers and other professionals to place individuals on an involuntary 72-hour psychiatric hold in a psychiatric facility. In order for this hold to be lawful, a person must, as a result of a mental health disorder, be: 1) a danger to himself/herself, 2) a danger to others, or 3) gravely disabled. This practice raises other issues, including where the individual is transported and whether other resources would be more effective or appropriate.

**Decision to place a hold:** Oftentimes, complainants do not believe they meet the above criteria and therefore allege the hold was improper. Conversely, family members may believe officers failed to act when an individual clearly met the above criteria, thereby putting the individual and others at risk.

[9] Jeff Shannon, "Crisis Intervention Team, A Report with Recommendations." June 2010. http://www.berkeleyside.com/wp-content/uploads/2014/04/BPD-CIT-Proposal.pdf

**Case Summary**

**Allegation: Improper 5150 Mental Health Hold**

A complainant went to the hospital for a back injury. Once discharged, she was sitting in a wheelchair in the lobby. She tried to hit a nurse and started screaming profanities at the hospital staff. She was wheeled out to a bus stop outside of the hospital. Once she got out of the wheelchair, she started walking into traffic. The hospital security guard was able to pull her back to the sidewalk.

Police arrived and the complainant admitted to being on medication but said that she had not taken her medication for a while. Based on these facts, the SJPD officers believed the complainant was a danger to herself and placed her on a 5150 mental health hold. The complainant argued that this hold was improper. Based on the information above, however, IA determined that the subject officers properly concluded that the complainant was a danger to herself.

**Case Summary**

**Allegation: Failure to Place 5150 Mental Health Hold**

A complainant stated that SJPD responded to her house on six different occasions within four months. Each call was made in response to a mental health crisis concerning her adult son. The officers came out to her house but never placed her son on a 5150 hold. The complainant believes that this response was improper. The complainant believed that based on her son's erratic actions while off his medication for schizophrenia, mixed with his drug use, he was a danger to himself and others.

IA concluded that although the complainant's son had a mental illness, he was not a danger to himself, a danger to others, or gravely disabled. Therefore, he did not meet the requirements of an involuntary 5150 mental health hold. IA came to a finding of "Exonerated" for each allegation.

Our office tracks the issue of mental health hold complaints closely. An officer's ability to place someone on an involuntary hold is a powerful tool that comes with additional consequences for the patient. That is why each officer's discretion and application of the facts of each case to the elements of the 5150 requirements are so important.

**Transportation to jail:** Duty Manual section L 9005 ("Transportation of mentally ill patients") provides: "In criminal cases in which the suspect will be booked into County jail, the criminal process takes precedence over the psychiatric evaluation" for individuals subject to a 5150 W&I commitment. We have learned through discussions with stakeholders, and our own auditing of IA investigations, that it is not at all uncommon for resisting arrest to constitute the sole basis for transport to jail rather than to Emergency Psychiatric Services (EPS).

In particular, there is no guidance on whether simply resisting being detained for a 5150 commitment – which is *involuntary* – should constitute a crime that renders the individual eligible or appropriate for booking and, often, further involvement with the criminal justice system. In light of the likelihood that an individual who is deemed to pose an imminent threat to himself or others because of a mental health condition may also be exhibiting behaviors that are resistant or hostile towards officers, officers should assess whether the resistance is criminal or, indeed, the result of the present underlying mental health crisis.

Jail is far from the ideal place in which to receive mental health-related services. In the last few years, there has been extensive scrutiny, including lawsuits, of the jail regarding how inmates with mental health needs are treated. Families with a loved one who is experiencing a mental health crisis may be dissuaded from calling for assistance because of the risk that the individual will be taken to jail rather than to EPS and become further involved in the criminal justice system.

**Policy Recommendation 2: Transportation of Individuals with Psychiatric Disabilities**

The Duty Manual should provide guidance to officers that, under normal circumstances, an individual who is resisting being detained for a 5150 W&I commitment for psychiatric evaluation – for individuals who pose an immediate threat of harm to themselves or others because of a psychiatric disability – should be transported to Emergency Psychiatric Services, not to the jail. The policy should make clear that officers should, whenever appropriate, exercise their discretion to decline to cite and/or arrest the individual for the crime of resisting or obstructing police in the discharge of their duties and provide for transportation by emergency/fire services rather than by police.

**SJPD RESPONSE:** The SJPD will work to create a training bulletin for officers to reiterate the Department's philosophy on handling situations with persons suffering from mental illness. In situations where the officer is trying to place the individual on a 5150 hold and the only possible crime associated with the incident is resisting, delaying, or obstructing arrest (148 PC), then officers will be encouraged to transport the subject, or facilitate a medical transport of the subject, to EPS, rather than the County Jail, when practical. If the subject suffering from mental illness also engages in criminal activity or physically assaults an officer (69 PC), then the option of booking the subject into the county jail and notifying the jail staff that the subject needs a medical evaluation will be available to the officers.

**Lack of information about available resources:** The behavioral health system can be complicated. Many people who have a diagnosed psychiatric disability know their symptoms and understand where they need to go to get help if a mental health episode occurs. However, many times, these patients do not have the means to transport themselves and request the assistance of SJPD to transport them to the hospital or EPS, though they may not meet the criteria for a 5150 hold. They are left with no information or other resources to address their immediate or ongoing needs.

**Case Summary**

**Allegation: Failure to transport to EPS**

A complainant stated that he was homeless and schizophrenic. He called 911 and requested an ambulance to take him to the hospital or Emergency Psychiatric Services (EPS) because he was hearing voices and needed to see a doctor. An officer responded but cancelled dispatch's request for an ambulance and refused to transport the complainant in his patrol car to EPS. The officer said he was "not a taxi."

The complainant was arrested a few days later for refusing to leave a business after being asked. The complainant said that he was hearing voices and was unable to physically move. After the complainant was arrested and booked into jail, jail staff transported the complainant to EPS. The complainant alleged that had he been transported to EPS as originally requested, he could have avoided being arrested.

IA concluded that since the complainant did not meet the 5150 criteria during his initial call for service, the officer acted appropriately when he did not provide the complainant transportation to EPS. Since there is no Duty Manual section currently guiding officers towards any other course of action, IA came to a finding of "Exonerated." The IPA agreed for the same reason but developed a recommendation based on this incident (see below).

**Policy Recommendation 3: Providing Mental Health Resources**

SJPD should require in the Duty Manual that officers provide information, such as pamphlets, regarding available and accessible mental health resources to individuals who are experiencing mental health crises or who may have other mental health needs but who do not meet the criteria for an involuntary mental health hold. SJPD should work with the County's behavioral health agency, other providers, and appropriate advocacy organizations to assemble a resource list for inclusion in materials provided to individuals in the community.

**SJPD RESPONSE:** The San José Police Department agrees more information should be provided to officers regarding

the mental health resources available to individuals who are experiencing mental health crises or who may have other mental health needs, but who do not meet the criteria for an involuntary mental health hold. The Crisis Management Unit will work with Research and Development to create a training bulletin for the officers.

### iii. Bias-based policing and rude officer conduct

Another common complaint we receive from those who have psychiatric disabilities is that officers are rude and discourteous in their interactions. Sometimes officers are characterized as being short-tempered and talking to people "like they're crazy." Individuals may feel that an officer is making assumptions about them – that none of what they are saying is true or based in reality, that they are being difficult, that they are dangerous – because of their disability.

**Case Summary**

**Allegation: Rude Officer Conduct and Bias-Based Policing (Mental Disability)**

The complainant called SJPD stating that she had been having ongoing issues with her neighbor in her apartment complex. The officer responded and spoke to the complainant. The officer raised his voice and said, "You're a nosy busy body. Mind your own business. Stay in your apartment." Before leaving, the officer walked by the other neighbor and said, "I don't care if you have throwing knives. She's crazy." The complainant called IA and alleged that the officer was discourteous.

Body-worn camera footage corroborated the complainant's allegations of the officer's discourteous conduct and further revealed that the officer told the other neighbor, in reference to the complainant, "She's crazy." IA agreed that the officer's tone of voice, demeanor, and word choice were unprofessional. The Department came to a "Sustained" finding for the Courtesy allegation and added a Bias-Based Policing allegation for making derogatory statements about the complainant's perceived mental disability. IA also sustained the Bias-Based Policing allegation.

**Case Summary**

**Allegations: Courtesy and Inadequate Investigation**

The complainant was involved in a verbal dispute with another woman at St. James Park regarding their relative positions in a bread line. The complainant alleged that the other woman called her an insulting name, so the complainant responded by slapping her. The other woman then hit the complainant with a shopping cart. SJPD officers arrived, and the complainant was arrested. She complained that officers did not properly investigate or take witness statements that would have proven she was not the primary aggressor. The complainant also stated that she told one of the officers that she had "mental issues" and that the officer responded, "So do I."

The IA investigation resulted in sustained findings against the officers for the Courtesy allegation and a Procedure allegation for the lack of investigation.

# Chapter 7: Equal Treatment: Race and Language Access

## A. Introduction

2017 saw more sustained cases of Bias-Based Policing – two such cases – than any other year in recent years. Despite an overall drop in complaints, the number of bias-based policing allegations received and their percentage relative to other allegations have steadily increased over the past five years. SJPD cooperation with federal immigration officials is also of great concern in the community, and we both commend SJPD for its outreach to immigrant communities throughout San José and are actively engaging SJPD to regarding whether its written policy reflects its practice of non-cooperation with federal deportation efforts.

Under Federal law, the Department is required to establish a plan providing direction for officers to follow when interacting with persons who have limited English proficiency. The Department created a Language Access Plan to meet those requirements.[10] We have encountered cases in which either officers violate the requirements or provide inadequate services that are nonetheless consistent with policy, thus highlighting the need for an improved policy.

## B. Methodology

The IPA office reviews IA investigations of alleged Bias-Based Policing and denial of language access, or translation, services. We also focus much of our community outreach and engagement on communities of color and immigrant communities, who share their experiences and concerns with us. (We discuss concerns about possible racial disparities in use-of-force in the section of this Report on use of force.)

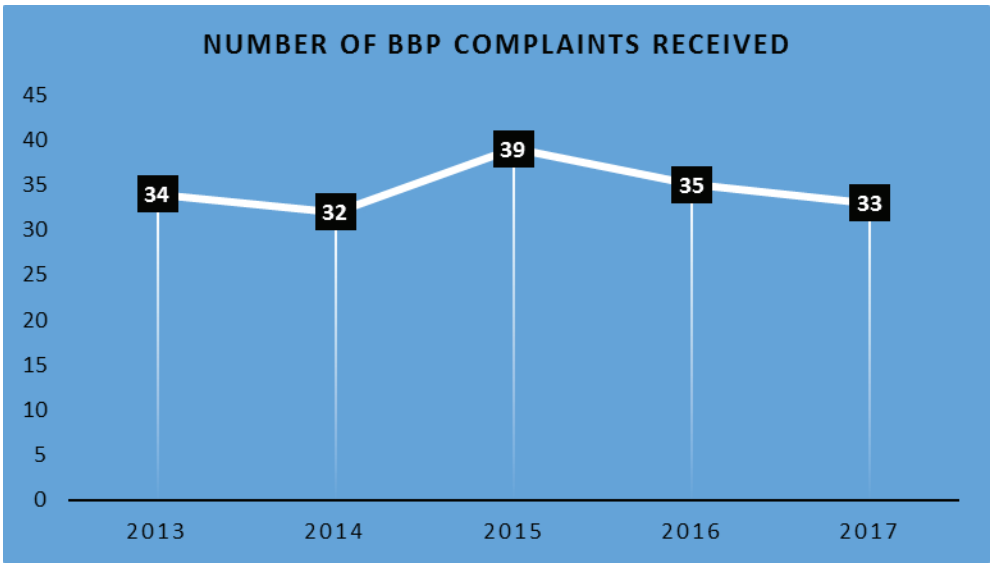
## C. Discussion

### i. Bias-based policing

While complaints overall have gone down considerably, the number of complaints alleging Bias-Based Policing has remained steady, and the number of allegations increased slightly.

[10]http://www.sjpd.org/Records/LEP.html

**Illustration 7-A: Bias-Based Policing (BBP) Complaints Received (2013-2017)**




The number of bias-based policing allegations closed as sustained has increased, and the number closed as not sustained has remained steady. Although the numbers are not dramatic, the significance is. The use of Body-Worn Camera footage and the willingness of the investigating officers to critically examine statements, credibility, and motive have, perhaps, been factors toward a better approach to these difficult cases.

Most bias-based policing allegations, 88%, are closed as unfounded. This data is not surprising because departments rarely find against the officer when citizens accuse them of racial profiling.[11] We also acknowledge that SJPD has ensured that nearly every officer has received Fair and Impartial Policing training. Because these cases are difficult to prove, however, we are currently studying the impact of the routine "unfounded" outcome in these cases on the Department's Early Intervention System, which involves non-disciplinary interventions with officers who receive five complaints, or three of the same type of allegation, within a 12-month period. "Unfounded" allegations are excluded, however.

**Illustration 7-B: Dispositions of Bias-Based Policing Allegations (2013-2017)**

| Type of Dispositions | Dispositions of Bias-Based Policing Allegation | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | Total | % |
| Sustained | 0 | 0 | 1 | 0 | 2 | **3** | **1%** |
| Not Sustained | 0 | 2 | 1 | 1 | 1 | **5** | **2%** |
| Exonerated | 0 | 0 | 0 | 0 | 0 | **0** | **0%** |
| Unfounded | 38 | 29 | 47 | 53 | 55 | **222** | **88%** |
| No Finding | 3 | 1 | 4 | 4 | 1 | **13** | **5%** |
| Complaint Withdrawn | 0 | 1 | 1 | 1 | 2 | **5** | **2%** |
| Other | 0 | 1 | 0 | 0 | 3 | **4** | **2%** |
| **Total Allegations** | **41** | **34** | **54** | **59** | **64** | **252** | **100%** |

[11]LAPD found no bias in all 1,356 complaints filed against officers. http://www.latimes.com/local/lanow/la-me-ln-lapd-biased-policing-report-20151215-story.html. U.S. Department of Justice, COPS study An Assessment of the San Francisco Police Department Oct. 2016. Finding #29 Allegations of biased policing by community members have not been sustained against an officer in more than three years. https://ric-zai-inc.com/Publications/cops-w0818-pub.pdf

Nonetheless, IA sustained a Bias-Based Policing allegation in two cases in 2017. We discuss one of those cases here and the other below, as it also involved an allegation of the denial of translation services.

**Case Summary**

**Allegations: Bias-Based Policing, Courtesy, and Procedure**

The complainant, a Black male, was riding his bike to work in the early morning hours when he was pulled over for not having a front bike light. The complainant immediately put his hands up. Officers had the complainant push his bike away and then approached them. When the complainant asked officers about their conduct, one officer responded that, because of the Black Lives Matter movement, officers needed to be more concerned for their safety.

As the interaction proceeded, another officer commented to the complainant that it was good he was working, as a lot of people just sit around waiting for a check from the government. The complainant believed the comment was based on a stereotype about Black people relying on welfare. The complainant described officers' tone of voice and response to his questions as rude and discourteous.

As the interaction was coming to an end, the complainant indicated he was going to file a complaint. The BWC footage documented the lead officer directing the newer officer to write a citation to "cover you." The complainant believed that he was treated unfairly and that the interaction was based on race.

Without interviewing any of the three subject officers, IA deemed all allegations unfounded – meaning that their investigation conclusively proved that the acts complained of did not occur. The IPA pushed back on the analysis supporting those findings.

IA's analysis failed to address one key fact – that the complainant was Black. IA did not critically examine whether race was a factor (in whole or in part) for the officer who brought up Black Lives Matter or "hands up-don't shoot" in his conversation with the complainant, a Black man. The IPA noted that we did not have concerns about the officer referring to his experience and "recent incidents" regarding assaults on police officers, but we did have concerns when he used highly polarizing incidents associated solely with Black men to do so.

IA agreed to re-analyze this allegation and interviewed the officer. The allegation was once again deemed unfounded.

IA asserted that the second officer's comment regarding the complainant working was made when the complainant indicated he was employed at a store. IA's analysis failed to address the circumstances of the situation. The complainant was a Black man being detained, riding a bike to work (out of necessity), and was homeless. It is thus unclear why the officer would find it appropriate to commend the complainant's employment at a store and yet mention individuals receiving government assistance. The analysis also failed to address the general stereotype that Black persons are more likely to be on government assistance than other ethnicities.

IA agreed to re-analyze this allegation and interviewed the officer. The officer stated that was unaware of the stereotype that receiving government benefits was associated with African Americans. He never intended that his comment be understood as "racial rhetoric." The allegation was once again deemed unfounded.

The IPA requested that IA add an allegation to determine whether the first officer acted properly when he issued a citation. We had concerns that the citation was improperly issued because the complainant mentioned that he would file a complaint. IA agreed to add a procedure allegation. It determined that issuing the citation was within the officer's discretion. The allegation was closed as exonerated.

The IPA closed this complaint as disagree. We contended that the re-analysis failed to support the findings of unfounded.

Finally, we are actively engaged regarding concerns that many in the community have regarding the extent of SJPD's collaboration with federal immigration officials. SJPD has publicly committed to not cooperating with ICE's *civil* enforcement, which ICE conducts through its Enforcement and Removal Operations (ERO) unit and which focuses entirely on violations of immigration laws. And the Chief of Police has conducted extensive outreach to reassure immigrant communities.

However, SJPD continues to work with ICE's *criminal* enforcement efforts through ICE's Homeland Security Investigations (HIS) unit. This unit investigates crimes – not civil immigration violations – by citizens, residents, and undocumented immigrants. These crimes include money laundering, human trafficking, transnational gang activity, and other serious crimes.

We have initiated discussions with the Chief of Police regarding whether the Duty Manual policy could be further clarified to indicate this important distinction and enumerate the limits of SJPD cooperation with federal authorities, particularly those limitations required under the California Values Act (SB 54), which was signed into law in October 2017 and took effect January 1, 2018. For now, the only change recently made to the relevant Duty Manual policy, L 7911, is to delete the provision that *requires* SJPD cooperation with immigration authorities – but no changes were made indicating what, if any, additional prohibitions on officer conduct arose from the new state law. The policy nonetheless does indicate some prohibited conduct:

> [M]embers of the Police Department will not initiate police action where the primary objective is to discover that the person is an undocumented immigrant or to discover the status of the person under civil immigration laws. Otherwise law-abiding, undocumented immigrants should not fear arrest or deportation for coming forward to members of the Police Department to report a crime as a victim or a witness. At the same time, the Department will continue to cooperate with the U.S. Immigration and Customs Enforcement in matters involving serious crimes, the protection of public safety, and as required by statute, federal regulation, or court decisions.
>
> The policy of the Police Department in relation to undocumented immigrants is as follows:
>
> - Officers will not detain or question a person for the purpose of discovering either the person's citizenship or status under civil immigration laws.
> - Officers will not detain or arrest any person on the basis of the person's citizenship or status under civil immigration laws.

We will continue to closely study this pressing set of issues and analyze whether additional guidance should be included in the Duty Manual in light of SB 54.

### ii. Language access

Currently, Duty Manual section C 1317 states that "Department members *will take reasonable steps* to provide language assistance services to Limited English Proficient individuals whom they encounter or whenever an LEP individual requests language assistance services in accordance with the Department's Language Access Plan" (emphasis added). These 36 words are the only guidance

provided in the Duty Manual. However, the Department's Language Access Plan,[12] referred to in the section, is an 11-page document that provides detailed guidance on how to provide language assistance.

The importance of having services readily available is reflected in the number of 911 calls placed that required translation assistance. In 2017, 15,076 calls made to 911 were made with translation services; 73% (11,069) required Spanish translation and 18% (2,684) required Vietnamese translation.

Through the auditing process, the IPA has reviewed several cases in which the officer(s) claimed to have undertaken *reasonable* steps and yet did not properly arrange for an interpreter when language assistance was required. In some cases, the officers declared that the person's language skills did not create a barrier. In other cases, officers turned to the individual's family members, other officers, or witnesses to provide translation services. In some instances, officers assert that there was an exigency so that they need not have followed the LAP.

**Case Summary**

**Allegations: Failure to Provide Translator and Bias-Based Policing**

Officers responded to a home regarding an alleged battery. The altercation stemmed from a dispute over returning a house key in exchange for a rental deposit. Allegations included that the officers racially profiled the landlord because she was Vietnamese, refused to listen to her account of what happened, and did not get a Vietnamese translator after the landlord requested one several times.

**Failure to Provide Translator**

This allegation was deemed sustained against both officers. Although Officer X initially called for a Vietnamese-speaking officer, he cancelled the request when a neighbor arrived on scene and began translating. The landlord did not feel that the neighbor was properly conveying her side of the story and asked again for a translator. At one point, the neighbor himself indicated that a Vietnamese-speaking officer should come. The landlord was so desperate for translation help she called 911 to request a Vietnamese-speaking officer.

The officers acknowledged the procedure to assist with LEP citizens. Although the officers may have felt that the landlord did, in fact, understand English, she repeatedly asked for translation and the officers relied on the neighbor to translate. There were no exigent circumstances. Officers should have accessed the service provider for the Language Assistance Plan.

**Bias-Based Policing**

This allegation was deemed sustained against Officer X. The BWC footage revealed Officer X describing the landlord using several unflattering racial stereotypes related to Asians before he saw her and subsequently using other stereotypes related to Asians. The analysis noted that his decisions during the interaction appeared to be "very one-sided." The officer handcuffed the landlord, threatened jail, and forced her to return a rental deposit to her tenant during a civil dispute. The landlord's statement was not included in the officer's written report, although she clearly made a statement at the scene.

The allegation against Officer Y was initially "unfounded." The IPA believed this initial analysis failed to consider some BWC footage that could tend to show bias. And the investigation overlooked Officer Y's willing participation in the dialogue that seems to validate his own beliefs regarding Officer X's biased statements. The IPA requested, and IA agreed, that additional analysis was warranted. IA then returned a finding of "not sustained" against Officer Y.

[12] http://www.sjpd.org/Records/Language_Access_Plan-Public.pdf

**Case Summary**

**Allegation: Failure to Provide Translator**

A reporting party contacted SJPD and requested service. A child was wandering in the neighborhood unsupervised. Responding officers had contact with multiple persons at the scene. The child's relative spoke limited English and was watching an infant. Officers approached several neighbors with questions; one neighbor who only spoke Spanish enlisted her teenage daughter to translate.

It was determined that the child's relative had an outstanding warrant. Officers told him to hand the infant to the mother. Force was used when it appeared to the officers that he was hesitating. The child's mother was arrested for battery on an officer and resisting arrest.

The mother complained that officers did not provide a translator and used a neighbor for translation. She stated that the officers discriminated against her. The child's male relative complained that he was kicked by the officers while he was holding the infant.

The allegation was not sustained against two officers, neither of whom spoke Spanish. The IA analysis acknowledged that two neighbors helped the officers by translating English into Spanish. The analysis stated that "the Language Access Policy does not preclude officers from using family, friends, or bystanders for interpretation, but rather states that department members should avoid such."

**Internal Affairs' analysis:** The analysis failed to note that the LAP allowed family or friends to translate only in exigent circumstances, and there was no description of exigency. The analysis failed to critically examine one officer's assertion that "he communicated easily with [the individual] in English." This seems unlikely if he was simultaneously using the neighbor to translate. Another officer claimed that he "did not have any problems communicat[ing] with the mother in English and did not see a need for a translator." In assessing the credibility of this statement, IA did not consider that the mother states she cannot converse in English, that one of the witnesses stated that the mother only speaks Spanish, that she spoke only Spanish to the officers during the incident, and that another witness said she translated for the mother during the encounter.

IA did not provide a re-analysis. Instead, it asserted that not every interaction with an LEP individual would require a translator. If so, "it would mean that every field contact involving LEP persons to include pedestrian and traffic stops, would require a translator."

The IPA responded that, as currently written, the LAP protocol does apply to pedestrian and traffic stops. If SJPD considered the protocol burdensome, then the IPA recommended that the LAP plan be revised. However, it appeared that officers made no attempt to follow the general procedures outlined in the LAP, and obtaining translation services via telephone does not seem especially difficult. Thus it appeared that officers failed to avoid using a bystander to translate.

The case discussed above illustrates that as currently worded, it is unclear if it is compulsory for officers to avoid using family, friends, or bystanders for interpretation. For example, language stating that officers "should avoid" using family, friends, or bystanders for interpretation services, or stating that the officer "may then call" the contracted language interpretation services, is ambiguous. In the absence of clearer direction, officers may believe it is reasonable to use non-certified officers, family members, or strangers to provide interpretation. We also recommend that officers should never turn to minors for translation services.

**Policy Recommendation 4: Language Access**[13]

A. The Duty Manual should incorporate the SJPD Language Access Plan (LAP), with the modifications described below.[14]

B. SJPD officers who make contact with LEP individuals should document the steps taken to comply with providing language assistance. Any failure to follow these steps due to an exigency should also be documented. These steps include (modified from the current LAP):

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

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

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

C. SJPD should ensure that the policy on language access provides that officers shall not, other than in exigent circumstances, use family, friends, or bystanders for interpretation. The policy should be revised as follows: "Barring exigent circumstances, Department members ~~should~~ shall not use minor children to provide interpreter services."

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

Clear communication among officers and residents creates trust and fosters better safety in our community. The Language Assistance Plan is a vital tool toward better communication. Given that the City has devoted specialized resources toward language assistance, and that tapping into those resources appears relatively easy,[15] we urge the Department to ensure its officers are complying with the LAP.

[13]See the entire text of the policy recommendation in Chapter 15.

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

[15]See the "Limited English Proficiency Video" on SJPD's website http://www.sjpd.org/Records/LEP.html

# Chapter 8: Equal Treatment – Sex

## A. Introduction

It is imperative that SJPD officers take gender-based violence seriously. A series of US DOJ "pattern or practice" investigations of police agencies addressed this concern under the Equal Protection Clause of the U.S. Constitution and under other federal law. This is an area the IPA office is continuing to study, but we have identified some initial concerns.

- Our auditing highlighted a couple issues with how SJPD receives reports of sexual violence, leading us to make two policy recommendations.
- SJPD reported the loss of funding and short staffing in the Family Violence Unit of SJPD, leading to the scaling back of some enforcement efforts and support services. Just two officers and one sergeant are tasked with investigating domestic violence cases, of which there were more than 3,300 in Fiscal Year 2016-2017, the majority of them felonies.

## B. Methodology

We routinely review citizen complaints and Internal Affairs investigations regarding SJPD officers' handling of reports of domestic violence; track which complaints pertain to a domestic violence incident; have reviewed relevant SJPD reports; attended a recent City Council study session on domestic violence (after the reporting period) that addressed, among other things, SJPD's enforcement against domestic violence; and have had some initial discussions with City stakeholders regarding their concerns and questions. We met with SJPD officials who direct the domestic violence enforcement work – including the Deputy Chief, Captain, and Lieutenant – to better understand the data, the implications of the recent loss of outside funding for SJPD efforts against domestic violence, and the availability of other resources.

## C. Discussion

### i. Sexual violence

Regarding sexual violence, we reviewed an investigation that is still pending but that involved an individual's attempt to report a sexual assault. As discussed in Chapter 13 on Body-Worn Cameras, this case prompted one of our policy recommendations regarding activation of body-worn cameras when a member of the public makes a report in the police administration building about an assault.

The same case prompted a second policy recommendation. The SJPD main lobby procedure manual provides a process for taking a sexual assault report at the Police Administration Building (PAB): "The dignity of the victim is of the utmost importance. The victim interview most likely will be conducted in the Witness Center. If possible, a second officer should be present during the interview. Advise the on-duty PPC Supervisor when using the Witness Center. During normal business hours, notifications must be made with SAIU [Sexual Assaults Investigation Unit]."

Duty Manual sections R 1201 and R 1202 address reporting criteria but do not address the specific context of sexual assault reporting at PAB, an environment that may be noisy, chaotic, impersonal, and not conducive to sensitive discussions or privacy. Reconciling the process and policy between the main

lobby procedure manual and Duty Manual will support consistency and provide the individual making the report greater privacy and sense of dignity.

**Policy Recommendation 5:**

**Receiving Reports of Sexual Violence**

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

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

We will continue to study this issue. We note that SJPD has reported an increase in reports of rape: 571 reports in 2017, compared to 451 in 2016. The number of reported rapes in 2017 is twice the number reported in 2012. Other violent crimes have increased, but not at nearly the same rates. Still others have actually decreased over recent years.[16]

## ii. Domestic violence

Domestic violence cases come up more often – 23 complaints closed[17] in 2017 involved domestic violence – and there is currently relatively robust discussion among City stakeholders regarding enforcement efforts to combat domestic violence. The number of complaints our office closed is up from 2016 (18 complaints, or 6% of all complaints) and just below the peak in 2015 (24 complaints), though it represents a larger percentage of the total complaints closed in 2017 (10%) than in 2015 (8%).

**Illustration 8-A: Complaints IPA Closed Involving Domestic Violence (2013-2017)**

| Trend | 2013 # | 2014 # | 2015 # | 2016 # | 2017 # |
|---|---|---|---|---|---|
| Domestic Violence | 19 | 12 | 24 | 18 | 23 |

Reports of domestic violence are also up, and three of the 28 homicides in Fiscal Year 2016-2017 involved domestic violence. Nonetheless, SJPD reported recently its need to cut back some of its proactive policing efforts to combat domestic violence and support services offered to survivors.

**Key Statistic**

**10% of citizen complaints closed in 2017 arose from a domestic violence incident.**

Several cases involving domestic violence calls resulted in sustained findings against SJPD officers.

**Case Summary**

**Allegation: Failure to Take a Report of a Violation of a Restraining Order**

The complainant had a Domestic Violence Restraining Order against her ex-husband that required him to stay 300 yards away from her house. The complainant lived across the street from a shopping center, which she alleged is a maximum of 50 yards away from her house. She saw her husband at the store across the street from her house and therefore believed him to be violating the restraining order. She called SJPD, and an officer arrived. The officer then called the complainant's ex-husband, who admitted to being at the shopping center but said he was not there to see the complainant. The officer told the complainant that, because the shopping center was open to the public, her ex-husband could legally be there. The officer refused to take a report. Duty Manual section L 1404 states that a report must be taken whenever there is a violation or an alleged violation of a domestic violence restraining order.

[16] http://www.sjpd.org/CrimeStats/crimestats.html.

[17] The IPA office identifies "trends" in each case at the completion of the IA investigation, not when the complaint first comes in. Therefore, we track the number of cases closed, not the number received.

**Case Summary**

**Allegations: Failure to Investigate and Take a Report**

The complainant called 911 in the afternoon to report a domestic violence incident involving himself and his girlfriend, with whom he lived and had children. The complainant informed dispatch that his girlfriend had slapped him and scratched his face but that he did not require medical attention and that he and his girlfriend were separated and not currently fighting. He also informed dispatch of a firearm in the residence, though he indicated it was not used during the incident.

Officers were dispatched to other priority calls and could not respond to the complainant's call for service. More than five hours after the 911 call, dispatch called the complainant and informed him of the extended delayed police response. More than two hours later, the subject officer called the complainant and told him the police were on the way and apologized for the delayed response.

The complainant stated he told the officer it was late, the kids were asleep, and his girlfriend had left. He told the officer there was no point for the police to show up because there was no one to talk with and he already gave his statement. He said he just wanted to be sure there was a record of him calling and reporting the incident. The officer told him if he wanted to, he could file a report at a later date.

The officer stated she gave the complainant the option of coming outside to talk, but she said that he refused. The officer did not ask specific questions about the incident and did not confirm if the elements of a domestic violence crime had occurred. She did not explain the option of an Emergency Protective Restraining Order.

IA found – and the chain of command concurred – that the officer did not conduct an "appropriate investigation," as required under policy and state law in any report of domestic violence. The officer should have gone to the residence rather than merely call and should have asked questions about the incident. Going to the residence would have allowed the officer to confirm whether there were visible physical injuries. The presence of the firearm in the home was another significant factor that IA cited. The officer also should have taken a report of a domestic violence incident.

## SJPD funding for proactive enforcement and support services

In November 2017, SJPD submitted its annual report to the City Council's Public Safety Committee describing its numerous efforts but also acknowledging that, due the loss of outside funding it had been receiving, in September 2017 it had to cut back on some of the proactive enforcement efforts it had been taking and on support services provided to survivors. Staffing challenges have also limited the Family Violence Unit's capacity in these regards.[18]

**Funding for investigations of domestic violence:** SJPD reported that it has had to scale back much of its proactive investigative work due to the loss of nearly $900,000 in outside funding (emphasis added):

> During Fiscal Year 2016-2017, the [federal] OVW grant funded a prearrest program in which investigators from the [SJPD Family Violence] Unit worked overtime to procure and serve domestic-violence related arrest warrants. The investigators compiled a list of suspects from their existing case load, conducted a threat assessment of each suspect, prepared an arrest operation packet, and served the warrants. . . . Beginning in July 2016 and running until the end of the grant, September 2017, thanks to the OVW grant funding, Unit investigators conducted 40 domestic violence restraining order arrest warrant operations. These operations resulted in investigators procuring 251 domestic-violence related arrest warrants and made 137 arrests. **The Unit has not continued with the pro-arrest program since the funding ended.** Staff will look for other grants in order to continue with this

[18] http://sanJosé.granicus.com/MetaViewer.php?meta_id=731335

program in the future.

To be clear, it appears the Unit would have addressed these cases even without the outside funding; the benefits of the outside funding were twofold: (1) the cases were investigated more expeditiously and (2) the District Attorney's Office and the court had agreed to address these cases expeditiously, as well.

**Funding for services for survivors of domestic violence:** SJPD has been similarly unable to continue some of the support services it provided to survivors, again as a result of the cessation of an outside grant (emphasis added):

> In addition, the Unit was able to use the OVW grant to fund two YWCA domestic violence advocates at the new Family Justice Center Courthouse. . . . These two advocates assist victims with counseling services, safety planning, financial aid, restraining order acquisition, emergency housing, and other referrals.
>
> The OVW grant also provided funding for a domestic violence advocate to be located at the Family Violence Center to assist victims with the same services provided at the Family Justice Center Courthouse. However, Next Door Solutions (NDS), which held the contract to staff the advocate position at the Family Violence Center had a difficult time staffing the position, and as a result, the position was vacant from September 23, 2016 until the end of the grant period.
>
> The advocate positions serve an important role and deliver a multitude of services to domestic violence victims. **The funding for the grant funded positions ceased at the end of the OVW grant on September 30, 2017. The Police Department applied for, but was not awarded, additional grant funding beyond September 30, 2017.** Staff is looking for additional sources of funding or other means to continue funding advocate services at the Family Justice Center Courthouse.

The YWCA has assigned a part-time advocate to the courthouse, and the Family Violence Unit maintains an advocate at its offices, though victims still need to take the additional step of going to the courthouse to file for a restraining order. Because the SJPD's advocate is housed at the Family Violence Unit, the advocate also does not accompany victims to court, which, by contrast, the advocates at the courthouse were able to do.

**Short staffing:** The Domestic Violence detail, which is one of three teams within the Family Violence Unit, consists of a sergeant and two officers/investigators, including the one female officer assigned to the Family Violence Unit. Each of the officers reportedly carries a caseload of about 140 cases. The detail handled more than 3,300 "received" cases in Fiscal year 2016-2017, though many of these cases are handled primarily by the responding patrol officer before being handed off to the Family Violence Unit for final review and packaging and some of the cases do not become full investigations. In the first six months of 2017, SJPD received 1,624 domestic violence cases:

- 52% of these cases were initially categorized as felonies under Penal Code 273.5(a).
- 30% of the domestic violence cases came in initially as violations of a restraining order.
- 121 cases involved serious bodily injury or a weapon.

**Key Statistic**

**The SJPD Domestic Violence team consists of a sergeant and two officers – they handled over 3,300 cases in Fiscal Year 2016-2017.**

In the November 2017 report, SJPD also reported that the Unit's short-staffing has adversely impacted its investigations and outreach efforts:

> The delivery of services would be improved and more time could be spent on each case with more personnel. . . . While the Unit's investigators and advocates provide excellent service for victims after a case is received, heavy caseloads prevent the investigators from having time do proactive outreach and education to the community on all types of family violence (domestic violence, elder abuse, dependent adult abuse, and child abuse). Department staff has limited time for outreach, but continues to explore ways to build on the existing outreach, education, and training the Unit offers to the community regarding domestic violence prevention and other family violence issues.

The Department has requested additional civilian staff to help manage the paperwork and triaging process.

The IPA office supports this request, though we also urge SJPD to assess whether it can shift an additional sworn officer to the Domestic Violence detail.

# Chapter 9: Arrest, Detention, Search, and Seizure

## A. Introduction

As with other allegations, Arrest/Detention and Search/Seizure allegations (and complaints) are down in 2017, following a several-year trend, though Arrest/Detention allegations are down by a much larger percentage than Search/Seizure allegations. However, more Search/Seizure allegations were sustained in 2017 than in the previous four years combined.

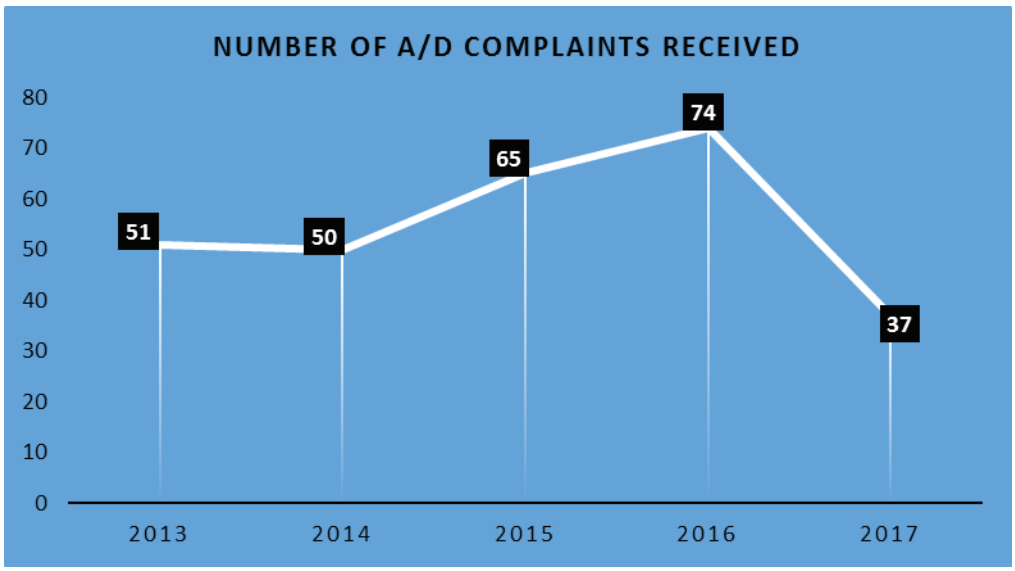
## B. Methodology

Allegations regarding Arrest/Detention or Search/Seizure make up a significant portion of the total allegations we receive through the citizen complaint process.

## C. Discussion

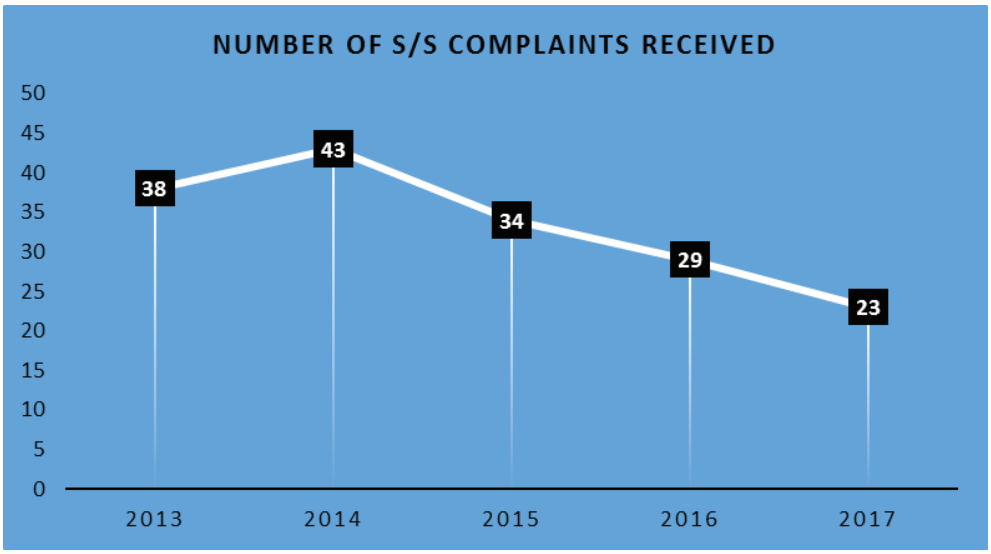
**Complaints and allegations:** Complaints and allegations of Arrest/Detention and Search/Seizure fell in 2017, though Search/Seizure allegations made up a larger percentage of total allegations this year compared to last year. In fact, complaints alleging Arrest/Detention fell by half since 2016.

**Illustration 9-A: Arrest/Detention (A/D) Complaints Received (2013-2017)**




Search/Seizure complaints fell, too, though less dramatically.

**Illustration 9-B: Search/Seizure (S/S) Complaints Received (2013-2017)**




The decrease in number of allegations generally tracked the decrease in the number of complaints (which can include multiple allegations):

- Arrest/Detention allegations are down by nearly half from 2016 (52 versus 102)
- Arrest/Detention allegations had been going up each year since 2014, and 2017 marks the first decrease in that period.
- Search/Seizure allegations fell by just four (34 versus 38) and are up as a proportion of total allegations.
- Search/Seizure allegations have dropped steadily over the last five years.

**Illustration 9-C: Arrest/Detention and Search/Seizure Allegations Received (2013-2017)**

| Allegations Received | 2013 | | 2014 | | 2015 | | 2016 | | 2017 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | # | % | # | % | # | % | # | % | # | % |
| Arrest or Detention | 74 | 9% | 79 | 10% | 91 | 13% | 102 | 14% | 52 | 9% |
| Search or Seizure | 80 | 10% | 65 | 8% | 50 | 7% | 38 | 5% | 34 | 6% |

**Sustained allegations:** 2017 saw significantly more sustained Search/Seizure allegations than any year in the last five years:

- Remarkably, four Search/Seizure allegations were sustained in 2017, compared to one in 2016 and one in 2015, despite a much higher number of closed Search/Seizure allegations in 2016 (49) and 2015 (70) than in 2017 (32).
- The four sustained allegations in 2017 occurred in two cases – two officers (and thus two allegations) in each case.

**Illustration 9-D: Dispositions of Search/Seizure Allegations Closed — Five-Year Overview (2013-2017)**

| Type of Dispositions | Dispositions of Search or Seizure Allegation | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | Total | % |
| Sustained | 0 | 1 | 1 | 1 | 4 | **7** | **2%** |
| Not Sustained | 1 | 3 | 3 | 7 | 3 | **17** | **6%** |
| Exonerated | 50 | 60 | 48 | 36 | 24 | **218** | **74%** |
| Unfounded | 11 | 3 | 8 | 0 | 0 | **22** | **7%** |
| No Finding | 2 | 6 | 5 | 4 | 1 | **18** | **6%** |
| Complaint Withdrawn | 1 | 4 | 0 | 0 | 0 | **5** | **2%** |
| Other | 1 | 0 | 5 | 1 | 0 | **7** | **2%** |
| **Total Allegations** | **66** | **77** | **70** | **49** | **32** | **294** | **100%** |

No Arrest/Detention allegations were sustained in more than five years, though one of the case summaries below involves a sustained allegation of an improper citation that was categorized as a "procedure" violation (the same case also involved a sustained allegation for an improper search, also categorized as a "procedure" violation).

**Illustration 9-E: Dispositions of Arrest/Detention Allegations Closed — Five-Year Overview (2013-2017)**

| Type of Dispositions | Dispositions of Arrest or Detention Allegation | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2016 | 2017 | Total | % |
| Sustained | 0 | 0 | 0 | 0 | 0 | **0** | **0%** |
| Not Sustained | 1 | 1 | 0 | 2 | 0 | **4** | **1%** |
| Exonerated | 43 | 81 | 75 | 78 | 70 | **347** | **85%** |
| Unfounded | 1 | 2 | 6 | 3 | 3 | **15** | **4%** |
| No Finding | 2 | 4 | 9 | 3 | 1 | **19** | **5%** |
| Complaint Withdrawn | 1 | 2 | 0 | 1 | 0 | **4** | **1%** |
| Other | 1 | 0 | 5 | 10 | 2 | **18** | **4%** |
| **Total Allegations** | **49** | **90** | **95** | **97** | **76** | **407** | **100%** |

**Case Summary**

**Allegations: Warrantless Search of Residence and Seizure of Property**

SJPD officers responded to a residence for a welfare check. The reporting party stated that a woman was in the residence and being held there against her will by a male armed with a machete.

Once the officers arrived at the house, they knocked on the door and a male answered the door. The officers detained the male as well as the female, who was inside. The female told the officers that she had been inside the residence for five days and the male had beaten her, strangled her, and threatened to kill her. The female also immediately handed the officers a bag of narcotics that she alleged the male told her to hide for him.

Officers saw a machete in plain view between the couch and the wall. An officer then looked for more weapons under couch cushions, under furniture, and in containers. Another officer picked up a notebook that was in plain view on the couch, thinking that it would indicate drug transactions.

IA concluded that both the search of the apartment for more weapons and the search of the complainant's notebook were improper. The search of the apartment required consent, a search warrant, or another search authority, such as probation or parole. Regarding the notebook, the officer needed legal authority to conduct the search. Although the notebook was in plain view, the contents of the notebook were not.

IA came to a "Sustained" finding for the two officers regarding the Search/Seizure allegations.

This case highlights the public safety implications of unconstitutional searches and seizures, as officers risk having important evidence of criminal conduct excluded from a prosecution, thus potentially weakening or even undermining the case.

**Case Summary**

**Allegations: Search of Residence and Improper Handling of Civil Dispute**

Officers responded to investigate an assault and battery incident between a landlord and her tenant. Officer A spoke with the tenant, who initially indicated she did not wish to press charges but wanted her $650 deposit back. Officer A later spoke with the landlord, who filed the complaint, telling her she can either return the deposit money to the tenant or go to jail for assault and battery. The tenant then changed her mind and told him she would want to press charges if she did not receive her deposit back.

Officer A allowed the landlord to go inside her house to retrieve the rental deposit – she began to make a check out for the deposit. Officer A entered the house through the closed front metal screen door without knocking and/or announcing himself. Officer A insisted that the landlord had to pay cash rather than write a check. The officers placed her into custody for assault and battery – he and Officer B handcuffed her and placed her in Officer A's patrol car. Officer A indicated the deposit needed to be returned in the form of cash. A neighbor brought over the money, the tenant indicated she no longer wished to press charges, and the landlord was un-handcuffed and released.

While the allegations of Arrest/Detention were not sustained against the officers, Officer A was found to have not followed proper procedure in handling a civil dispute, including by becoming involved in how the deposit should be paid back. Both officers were also found to have unlawfully entered the home by either failing to knock and announce or entering without a legal justification, e.g., consent or a warrant.

**Case Summary**

**Allegations: Seizure of and Citation for Medical Marijuana During Traffic Stop**

Officers conducted a vehicle stop, and the complainant, who was driving the vehicle and had a passenger inside, filed a complaint that alleged, among other violations, that he should not have been issued a criminal citation for possession of medical marijuana and that officers should not have seized his marijuana. IA found that the citation and seizure were improper under a Duty Manual section prohibiting citation or arrest for possessing or transporting small amounts of medical marijuana.

The officer did not doubt the complainant's claim that the marijuana was for medical purposes and never asked the driver to produce a medical marijuana ID card. The officer later claimed that he cited the driver for having an open container of marijuana and using marijuana in a manner that endangered others, though the citation did not identify the laws prohibiting such conduct and did not indicate these concerns.

# Chapter 10: Community Policing

## A. Introduction

The San José Police Department's command staff regularly engages the community. The Duty Manual makes mention that all officers should engage in community policing. However, it fails to provide a sufficient definition for such activities. SJPD employs various community engagement strategies aimed at building trust between the community and the police. These events include Coffee with a Cop, media and community meetings, and coaching youth sports.

Officers in the field have significant contact with the community but do not have clear guidelines on how to engage the community in non-enforcement interactions.

How police engage with youth – both in the schools and out – is a key measure of community policing. The IPA's 2016 recommendation on schools and police addresses concerns highlighted in complaints and research in adolescent development. In 2017, an MOU between the San José Police Department and the local high schools addressed many of the recommendations but did not address all recommendations, including requiring SJPD school officers to have mandatory specialized training to work as a school resource officer.

Police interactions with youth is of particular immediate interest in light of current concerns about a potential spike in juvenile crime and the risk of rolling back successful intervention and criminal diversion efforts.

Finally, simple discourtesy also undermines community-police trust and gave rise to a number of sustained allegations in 2017.

## B. Methodology

Our auditing provides insights into police interactions with community members, including whether officers engage respectfully and utilize their training. The IPA office reviewed data from the County Probation Department and our complaint data, and reviewed the community engagement efforts conducted by San José Police Department. In addition to the above data reviewed, the IPA office reviewed the newly launched San José Police Data Dashboard to help facilitate a discussion about the most serious contacts between San José Police and youth and school campuses. We also discussed school policing with the Chief of Police and met with the SJPD captain who oversees various elements of SJPD's community policing efforts, including school policing, the Crime Prevention Unit, Community Service Officers, the Field Training program, and various special projects. Finally, and critically, we conduct extensive outreach to youth in schools and other contexts to enlist their views on policing.

## C. Discussion

### i. SJPD community outreach events

In 2011, the San José Police Department had to eliminate their community services division due to a decrease in budget. SJPD moved forward with outreaching to the community with its limited resources and utilized its Crime Prevention Unit to help support community outreach efforts, such as attending neighborhood meetings, helping educate community members about neighborhood

watch, and participating in National Night Out events. Over the last several years, the Crime Prevention Unit and command staff have worked to reinvent community engagement through new programs, such as Coffee with a Cop and other events and community oriented services directed at increasing public safety and building trust in the community.

SJPD continues to implement new and innovative approaches to engage the community.

- In 2017, SJPD piloted a community engagement program in District 10 - *Hoffman Via Monte Area*. The short-term program sought to increase police presence and trust, decrease blight, and build a stronger and safer neighborhood. The leadership team on this project was recognized during the State of the City Address in February 2018 for their innovative approach.
- Other engagement strategies used in 2017 included the consistent presence of the Chief of Police at community meetings and events, including the IPA Community Forum held in January 2017 and events in fall 2017 hosted by groups representing communities of color.
- Command staff have consistently attended neighborhood meetings and community events throughout the city. Officers have also attended some of these events.
- SJPD has enlisted studies of its stops and its use of force and made this data public.
- SJPD engages its Community Advisory Board, which includes community leaders from organizations that represent communities of color and at times have been openly critical of SJPD.

Documented San José Police Department Community Outreach Events include:

- March - Coffee with a Cop in the Eden neighborhood
- June - Coffee with a Cop in the Evergreen neighborhood
- September - Coffee with a Cop in the Santee neighborhood
- October - Community Trust in Policing at the Foundation for Hispanic Education
- October - African American Community Services Agency Mediated Town Hall at SJSU
- November - Emmanuel Baptist Church Service at the Substation
- November - Flag Football Coaching at the Boys and Girls Club on Cunningham Av
- December - Shop with a Cop at the Target on Coleman
- December - Coffee with a Cop in Alviso

Building trust between law enforcement and the community is essential to maintaining public safety and effective policing. The Office of the IPA acknowledges SJPD is working to build trust with the community. It is critical the Department continue to consider the audiences for engagement and consider using BEST practices outlined by the 21st century policing task force, such as building "community capital."

**21st Century Policing Implementation Guide:** "Trust and legitimacy grow from positive interactions based on more than just enforcement interactions. Law enforcement agencies can achieve trust and legitimacy by establishing a positive presence at community activities and events, participating in proactive problem solving, and ensuring that communities have a voice and seat at the table working with officers."[19]

[19]The President's Task Force on 21st Century Policing: Implementation Guide: http://noblenational.org/wp-content/uploads/2017/02/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Implementation-Guide.pdf

Although it is important to reach all parts of the community, it is also valuable to measure the efforts, not just in numbers but in sentiment. It would benefit the Department and the community if the Department engaged with segments of the community that already have low trust with law enforcement. A "feedback loop" is critical to ensuring that the community understands the purposes and outcomes of the engagement efforts.

**21st Century Policing Implementation Guide:** "Be sure that the implementation mechanism adequately represents groups most affected by law enforcement and those who have the capacity, authority, and resources to make the changes proposed happen. Err on the side of inclusion when designing implementation strategies. . . . Set up a method to measure and monitor what is taking place. Be sure to include a feedback loop that can identify unintended consequences in order to be responsive to community concerns. Transparency and regular communication are essential to this process. Keeping the community and all key stakeholders informed about progress and key learnings can build trust and increase collaboration."

### ii. Officers' interactions with community members in the field

Community policing has become a major focus nationally. SJPD has been depleted in terms of its staffing, however, and low staffing has been a barrier to robust community policing as part of officers' everyday patrol duties. As SJPD begins staffing up again, there may be renewed opportunities for this type of positive officer interaction with community members.

The Duty Manual does not explain what "community policing" entails. It simply provides that an officer or sergeant "[a]ctively participates in the Department's community policing efforts." To the extent that aspects of community policing are included in the Duty Manual, such activities are not identified as part of a community policing framework and are scattered among various sections of the Duty Manual. SJPD provides "procedural justice" training to all its officers, and content and concepts from that training could likely be incorporated into policy.

**Policy Recommendation 6: Community Policing and Procedural Justice**[20]

SJPD should provide a definition, consistent with best practices, of "Community Policing" in the Duty Manual so that officers have more specific guidance regarding officers' "community policing" responsibilities identified in the Duty Manual. Such guidance may (i) set forth a broad framework of understanding the significance of and approach to community policing, (ii) address specific examples of ways in which officers may engage in non-enforcement activities, and (iii) cohere ways in which officers can practice community policing as part of their enforcement interactions, such as crisis intervention, de-escalation, responsiveness to the community, courtesy, equal treatment, mediation, crime prevention, and procedural justice.

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

In other Chapters of this Report, we address police interactions with Limited English Proficient individuals, persons of color, individuals experiencing a mental health

[20]See the entire text of the policy recommendation in Chapter 15.

crisis, and other populations. We also discuss de-escalation. All these interactions, when executed properly, are a part of community policing. Officers receive training on Community Policing, Fair and Impartial Policing, Procedural Justice, and Crisis Intervention. SJPD has begun to assign officers to a beat for one year rather than for six months, so that officers can better get to know the neighborhoods and residents. Community Service Officers and the civilian Crime Prevention Unit specialists supplement officers' in-the-field efforts to build trust and relationships in the community.

More run-of-the-mill interactions can also be frustrating but nonetheless demand professionalism and tact. In 2017, we closed 106 courtesy allegations, seven which were sustained.

**Illustration 10-A: Dispositions of Courtesy Allegations Closed in 2017**

| Type of Dispositions | # of Courtesy Allegations Received |
|---|---|
| Sustained | 7 |
| Not Sustained | 24 |
| Exonerated | 26 |
| Unfounded | 44 |
| No Finding | 3 |
| Complaint Withdrawn | 1 |
| Other | 1 |
| **Total Allegations** | **106** |

**Case Summary**

A complainant was a passenger in his cousin's car when his cousin was stopped by SJPD. The complainant said he was unlawfully arrested for being under the influence of a controlled substance and possession of marijuana for sales. Additionally, on the way to jail, the complainant alleges that the officer was discourteous when he used profanity while speaking with his partner about an earlier call they both attended. IA agreed, stating that the officer's profanity was unprofessional.

IA came to a sustained finding for the Courtesy allegation and the IPA agreed

**Case Summary**

A female complainant was walking early in the morning, and two officers detained her to investigate her for possible prostitution. The complainant was argumentative, so one of the officers used profanity by saying, "Don't start that bullshit with me." The complainant filed this complaint alleging that the officer was discourteous. IA agreed, stating that the officer's use of profanity to control the situation was improper and unnecessary.

IA came to a sustained finding for the Courtesy allegation and the IPA agreed.

**Case Summary**

The complainant and his landlord were in a verbal dispute. An officer responded to the scene – a three-story apartment complex where the apartment front doors open up to a common carport area. The officer told the parties that their matter was a civil dispute. The complainant told the officer that he was calling a supervisor and started walking away. The officer replied, "Alright, baby." The complainant walked to the end of the carport and started walking up the stairs to the second story. Both parties continued to yell at each other and the officer repeatedly called the complainant a "baby" in front of a growing number of witnesses. The complainant alleged that the officer was discourteous.

The Department came to a finding of "Sustained" for the courtesy allegation.

**Case Summary**

Two officers conducted a vehicle stop. After some uneventful moments during the encounter, the front passenger unexpectedly exited the vehicle and entered a nearby home. A third officer arrived on scene. At some point, the front passenger emerged from the home and became argumentative with the officers. Her brother then exited the home and became argumentative with the

officers. The driver also became argumentative and physical with officers.

The third officer tried to explain to the female passenger the reason for the stop and the continued investigation. He stated to her that she and her brother could go to jail for interfering with the stop and suggested she take him inside the house. She took offense to the suggestion and told him he could not say that to her. The officer replied, "I can say whatever the fuck I want."

**Case Summary**

Officer C was traveling on the highway in an unmarked police car when he became involved in a traffic altercation with the complainant. The complainant was traveling slower than the flow of traffic. The complainant alleged that he and the officer engaged in non-verbal communications while on the freeway. The officer passed the complainant, traveling at speeds up to 75 MHP in a 65 MPH one. Both parties swore at each other. The officer claimed the use of profanity was necessary to de-escalate the situation.

### iii. Youth diversion

Data indicates that youth aged 14-24 tend to have significant contact with police. However, the 2016 Santa Clara County Probation department's annual report concluded that juvenile citations are decreasing and indicates the decrease is likely attributable to juvenile justice reforms.[21] How SJPD employs force on youth, addresses youth crime, and polices in schools has a significant impact on broader efforts to divert youth from the criminal justice system and engender trust in the community.

**Use of force:** The SJPD data dashboard on use-of-force incidents in 2017 indicates:

- Youth under the age of 18 represented 7% (or 46 incidents) of the overall reportable force incidents.
- Of those 46 force incidents involving youth under the age of 18, 65% were misdemeanors, despite efforts to divert youth involved in lower-level crime.
- 41% of the incidents involved juvenile females.

**Key Statistic**

**65% of the uses of force in 2017 that involved youth occurred in the context of a misdemeanor crime.**

One question that arises from this data is what other possible de-escalation tactics could have helped avoid force being used on a minor, especially in cases of lower-level offenses. Also curious is the high percentage of juvenile females in cases involving force, considering males in general have a much higher number of contacts with law enforcement and overall have more force interactions with law enforcement.

The data, although helpful, does not provide enough detail, especially as it relates to the juvenile population.

**Juvenile crime:** 2018 has begun with much attention to juvenile crime and concerns that juvenile crime, particularly violent crime, may be spiking. There has been robust discussion among various local agencies, including SJPD, the District Attorney's Office, County Probation, and the Public Defender's Office regarding what the data actually shows. SJPD has expressed concerns about the violent crimes committed by juveniles but has also maintained they will continue to follow the policies and reforms that have been set in place.

This is an issue we are actively discussing with SJPD and community stakeholders and for which we will have additional information in

[21]Santa Clara County Juvenile Probation 2016 annual report: https://www.sccgov.org/sites/probation/Documents/JPD%20Services%20Annual%20Report_2016_FINAL.pdf

future reports. The data is complicated, and it is important that SJPD carefully study the issue before making public statements that could undermine important reform efforts aimed at reducing recidivism among youth and preventing incarceration.

**Schools:** Police interactions in the schools affect both students and their families. SJPD has taken important steps to build greater trust of officers assigned to schools and ensure these officers do not overstep and take on the role of administrators or disciplinarians.

The new SJPD data dashboard on use of force indicates there were nine incidents in which officers used force in 2017. It further indicates that seven of those incidents took place during school hours. However, it is difficult to ascertain key information about these incidents, such as:

- Whether a school resource officer was involved
- Whether the incident involved a student who attended the school
- How many officers used force during the incident
- Whether the force resulted in injury

The Office of the IPA received one complaint regarding a school-based incident involving a minor.

**Case Summary**

**Allegation: Force**

The complainant drove his daughter to school to pick up some of her school work she had completed in her class. The daughter was informed that she was no longer enrolled as a student and she would have to wait until classes were dismissed to obtain her school work. School staff called the campus safety officer to apprehend the daughter for disrupting classes. Allegedly, the staff person saw the daughter "flipping off" the students in other classrooms after she left the main office.

When the daughter entered the classroom to pick up her school work, the teacher gave her permission to take her work. About two minutes later, according to the teacher, the SJPD officer came into the classroom and took the daughter out of the classroom by one arm. The daughter attempted to break free from the officer's control. The officer applied a takedown to obtain compliance. The daughter alleged that the officer placed her in a chokehold before performing the takedown. The daughter allegedly sustained bruises, scratches, and a swollen knee. She was cited for trespassing and delaying arrest. The complainant alleged the officer used excessive force on his daughter.

In response to the IPA's recommendation following the complainant's withdrawal of his complaint, the complaint was re-opened and the officer was interviewed. The officer described the call he received from the school as "frantic." The officer said that the daughter was not being vocal but "by her mere presence, she was disturbing the class" because the teacher had to stop her lesson to interact with the daughter. The officer felt he could resolve this with a low-level warning. However, once they walked outside, the daughter became physically resistive. The officer determined that she was in violation of trespassing on school grounds.

He braced her against the wall and told her to "calm down." She responded with verbal abuse and tried to kick him. In order to gain control and place her into handcuffs, the officer said that he picked her up and "gently set her down on the ground." Once she was on the ground, he placed a knee on her upper back and called another officer for assistance in placing handcuffs on her. The officer stated he did not have a supervisor come to the scene because it was not reportable use of force.

IA determined that the officer acted appropriately. The analysis acknowledged significant discrepancies in the force descriptions provided by the daughter and the officer.

In 2016, the Independent Police Auditor issued a policy recommendation on SJPD's School Resource Officer Program. The policy recommendation was developed because

of national attention on school resource officers as part of the broader set of concerns regarding the "school to prison pipeline" disproportionately impacting youth of color,[22] the role of officers on school campuses, and complaints stemming from on-campus police interactions. A local investigation documented that San José Police Department responded 1,745 times to a local school district in one year and that, in many instances, officers were called in simply to manage discipline issues.[23]

The IPA recommendations laid out a six-point guideline that included, among other things:

- Developing a MOU with the school districts
- Enhancing training for school-based officers, including trauma-informed approaches to working with adolescents
- Data collection
- Supplying schools with complaint forms[24]

In 2017, SJPD entered into MOUs with the local high school districts to address the role of and limitations on officers on school campuses. The MOU's primary focus is ensuring that officers will not be involved in student disciplinary matters. However, the MOU and related Duty Manual policy omit items we recommended, including mandatory enhanced training for officers on trauma-informed practices and data collection. The IPA has discussed with the Chief the challenges around data collection, but the Chief has noted that the existing data collection method may help SJPD identify schools that should be prioritized.

We reiterate last year's recommendation and encourage the SJPD to track the impact of the new policy and MOUs and to direct extra training and other supports to officers at schools where more arrests, uses of force, citations, and other similar incidents are occurring (see Appendix A). We appreciate that it would not be feasible to track this data for all 280 schools, but we suggest SJPD conduct some analysis on at least some sample number of schools.

[22]The Right to Remain a Student: How California School Policies Fail to Protect and Serve: 2016 ACLU of California; https://www.aclunc.org/docs/20161019-the_right_to_remain_a_student-aclu_california_0.pdf

[23]Data from US Department of Education for school year 2011-2012; https://www.nbcbayarea.com/investigations/School-District-Called-Police-on-Students-1745-Times-in-Single-School-Year-330015791.html

[24] IPA 2016 Annual Report; https://www.sanJoséca.gov/DocumentCenter/View/69768

# Chapter 11: Neglect of Duty

## A. Introduction

Generally, independent oversight of police is associated with ensuring against over-policing. However, the IPA office receives a significant number of complaints alleging that officers under-police, that is, that police fail to investigate an alleged crime or fail to take action in response to a crime. Examples include the alleged failure to arrest a domestic abuser or the failure to investigate a reported crime.

That said, the IPA office will be better positioned going forward to track this type of issue, as we have improved our process for ensuring the proper categorization of allegations. It appears, preliminarily, that it is rare for an allegation of this type to be sustained, and officers have substantial discretion in most instances as to whether to make an arrest or take other enforcement action. Even so, we have identified several sustained cases in 2017.

## B. Methodology

Almost immediately upon being installed as the IPA, Mr. Zisser identified that many allegations are classified as "procedure" allegations rather than as "neglect of duty." New procedures have been implemented to ensure proper categorization of these allegations.

**Under-classifying allegations:** In fact, "neglect of duty" was a seldom-utilized category, making it very difficult to track the incidence of this type of complaint or misconduct. In each year 2013-2016, the IPA office received between zero and 11 allegations categorized as "neglect of duty." In 2016, the 11 allegations – the highest number during that period 2012-2016 – all arose out of the same incident: SJPD's alleged failure to protect attendees at a Trump campaign event from anti-Trump protestors. Only one closed allegation was categorized as "neglect of duty" (the officer was exonerated).

**Illustration 11-A: Neglect of Duty Allegations Received (2013-2017)**

| Allegations Received | 2013 | | 2014 | | 2015 | | 2016 | | 2017 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | # | % | # | % | # | % | # | % | # | % |
| Neglect of Duty | 7 | 1% | 7 | 1% | 0 | 0% | 11 | 1% | 11 | 2% |

The definitions of these terms in the SJPD Duty Manual are vague. "Neglect of Duty" is defined as an instance in which an officer "neglected his/her duties and failed to take action as required by Department and/or City policies or procedures and/or state or federal law." Typically, such conduct has been combined with the "Procedure" category, defined as "[a]n allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures or guidelines."

The distinction is important for data purposes. In particular, there is substantial community interest in ensuring that police fulfill their primary mission: public safety.

**New procedures:** In contrast, in 2017, 11 allegations, contained in nine complaints, were categorized as neglect of duty; all but one of these allegations came in during the

three months of 2017 after Mr. Zisser started as IPA. The increase is largely due to the fact that Mr. Zisser implemented a new screening protocol to ensure that allegations are properly categorized.

**Policy Recommendation 7: Internal Affairs – Classifying Allegations of Misconduct**[25]

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

**SJPD RESPONSE:** The Department disagrees with this recommendation and disagrees that the definitions of Neglect of Duty and Procedure are vague. As identified and defined by the IPA above, a Procedural allegation is based on the complainant's alleged violation of Department and/or City policies, procedures, or guidelines by a Department member. Neglect of Duty cases are more serious in nature and not only involve a potential violation of Department and/or City policies or procedures, but also include state or federal law. Many times, the Office of the Chief makes this determination based on the information and evidence known at the time the allegation is brought to the Department's attention. This is often done by reviewing Body Worn Camera footage or other investigative means in determining the severity of the alleged conduct.

## C. Discussion

We identified a small number of sustained cases that could be considered "neglect of duty" cases, though no cases formally categorized as "neglect of duty" were sustained – only one such case was closed for all of 2017. The frequency with which this type of allegation is found to be exonerated or unfounded is attributable to various factors, including the discretion afforded officers in the field to determine whether arrest or other enforcement action is appropriate.

**Sustained cases:** While no allegations formally categorized as "neglect of duty" were sustained in 2017, we identified some cases that could be considered "neglect of duty." These include the two cases discussed in Chapter 8 (Equal Treatment: Sex). As discussed above, we are working closely with IA to ensure proper categorization in the future.

**Case Summary**

**Allegation: Failure to Take a Report on a Hate Incident**

At approximately 11:00 am, the complainant was confronted by another man who began to yell at him. The man asked him if he was American and why he was not driving an American car. The man told the complainant to go back to where he came from. The man also said multiple times, "Do you think I will beat you up?" The complainant called 911, described the encounter, and indicated the man was threatening him. There was a delay in response by officers, and the complainant was advised to wait for officers at his home. At almost 5:00 pm, officers went to the complainant's home but did not take a report.

The Hate Crime Policy provides that officers are required to take an informational crime report regarding any "non-criminal act directed at any person or group, motivated in whole or in part, by the victim's actual or perceived race, color, religion, ancestry, national origin" or other classifications. Such an act occurs "when a bias exists towards a person . . . with the apparent intention to . . . [h]arass, intimidate, retaliate, or create conflict." Reports are to be taken because of the potential for recurrence or escalation.

**Case Summaries – Investigating Accidents**

**Allegation: Failure to Investigate Injury Accident**

The complainant witnessed an accident in which a truck struck a bicyclist, who was transported to the hospital. The complainant indicated that officers did not respond to take a report. Several witnesses called 911 to report the accident and indicated the bicyclist was injured. The bicyclist also

[25]See the entire text of the policy recommendation and of SJPD's response in Chapter 15.

indicated to Dispatch that his ribs hurt.

The subject officer met with the bicyclist at the hospital emergency room. The bicyclist reported experiencing pain in his foot resulting from being run over by a vehicle's tire. The bicyclist indicated he did not want a report because he had the driver's information and was only concerned about his bicycle. The officer indicated to IA that neither he nor any other officers responded to the scene of the accident itself.

The Duty Manual requires an investigation and a report when an accident occurs, causes an injury, and results in immediate hospitalization. IA found that the officer did not conduct an investigation or file a report.

**Allegation: Failure Take a Report of a Non-Injury Accident**

The complainant came to the SJPD main lobby to request a report regarding a non-injury traffic collision that had occurred earlier in the day. The officer did not provide her with any paperwork or information to document the accident.

**Case Summaries – Citizen's Arrest**

**Allegation: Failure to Make a Citizen's Arrest**

The subject officer responded to a call regarding a disturbance at a hotel. The security guard told the officer that he had encountered an intoxicated individual in the hotel and attempted to remove the person from the hotel. The individual struck the security guard in the face.

When the officer arrived, he found the individual handcuffed and being detained by the security guard. The guard told the officer he wished to make a citizen's arrest.

The officer documented the report but did not indicate that the guard wished to press charges, nor did he indicate that the guard wished to make a citizen's arrest. The officer did not cite or arrest the individual, who was released to a friend.

**Allegation: Failure to Make a Citizen's Arrest**

A landlord alleged that her tenant punched her on the side of her cheek. The landlord told the officer that she wanted to press charges against the tenant for the assault. When the officer spoke to the tenant, the tenant denied hitting the landlord and alleged that he was, in fact, the victim. He showed the officer two scratches on his face that he received from the landlord and alleged that the landlord went into the office and hit herself in the face. The tenant said that he wanted to press charges against the landlord for assault. Ultimately, the officer cited the tenant for assault and did not cite or arrest the landlord

Duty Manual section L 3503 states that if an officer decides not to arrest a person after requested, the officer must document the allegations and factual circumstances bearing on the officer's determination to refuse to make the arrest. The Department came to a finding of "Sustained" for failing to accept a citizen's arrest and/or documenting the reasons for refusing to accept the citizen's arrest.

**Exonerations or "unfounded" cases:** We readily acknowledge critical challenges that SJPD and its officers face that may hinder their ability to make all the arrests or respond to all the reports of crime that community members may expect them to. First, staffing levels. Allegations often relate to the claim that officers never respond at all or respond untimely to a call for service.

Second, officers are tasked with navigating the line between under- and over-policing. They are asked to exercise discretion in decisions regarding whether to arrest an individual, to avoid unnecessarily entangling an individual in the criminal justice system. Such crimes can involve low-level drug crimes, youth engaged in non-violent criminal activity, the homeless, or individuals with a psychiatric disability. The community simultaneously expects officers to be compassionate and sensitive to individual circumstances and wants officers to be responsive and enforcement-oriented.

In fact, officers are granted significant discretion in many circumstances and often simply have to articulate their rationale for deciding against enforcement.

# Chapter 12: Accountability Process

## A. Introduction

The IPA office's core oversight function is to review Internal Affairs' investigations. We have routine interaction with the IA unit and review hundreds of IA investigations. We reported concerns in a number of cases and were able to resolve our concerns in most of those cases. The Chief has been receptive to our concerns in the small number of cases we have had to appeal from IA to the Chief.

The kinds of issues we identified ranged from the completeness of the investigation to the failure to identify or properly interpret the applicable policies. We have issued a policy recommendation to ensure IA properly evaluates witness credibility and other evidence.

## B. Methodology

We have ongoing opportunities to speak with IA officials about individual cases, issues that come up periodically in multiple cases, and IA's approach and perspective. The IPA is permitted to sit in on IA's interviews of officers as part of the IA investigation, and the IPA has done this in a number of cases.

The primary means by which the IPA office measures IA's performance, however, is through our auditing of IA investigations. Each case goes through at least two reviews:

i. First, one of the four members of the IPA office's auditing team reviews the completed IA investigation, including officers' reports, the IA write-up, body-worn camera footage, recordings of interviews, and other documentation.

ii. Then, that member of the IPA office staff presents his or her initial impressions to the rest of the auditing team, including the IPA. The team provides feedback, asks questions, and may review relevant portions of body-worn camera footage, officers' reports, and IA's write-up.

In those cases in which we have concerns regarding some aspect of the IA investigation, the IPA will often discuss those concerns with the IA Commander.

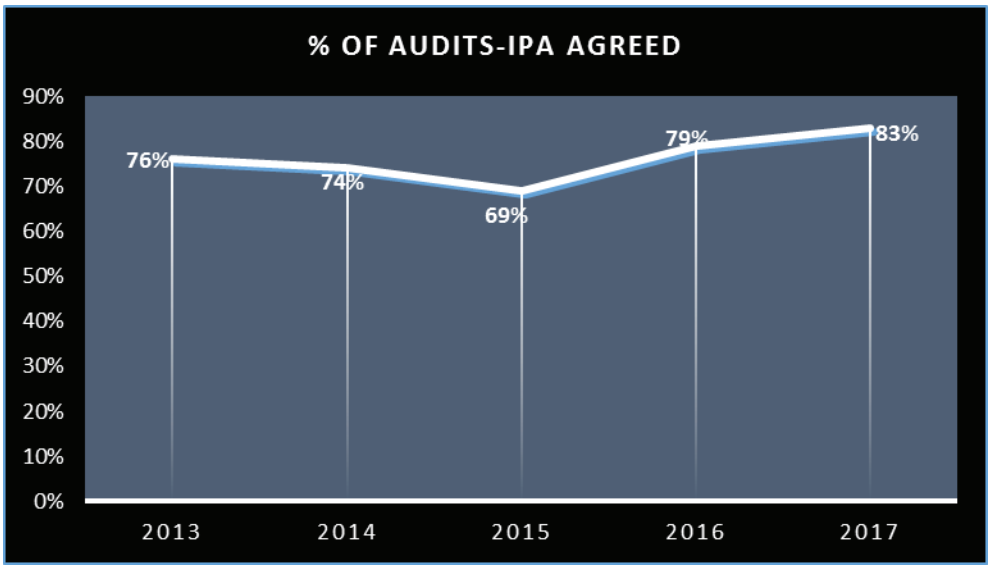
As a result of this significant access and multi-layered review, the IPA office learns a great deal about IA's operations and performance.

## C. Discussion

The majority of the time, we notify IA that we have not identified any material concerns with the conduct of the investigation. However, in 17% of cases we audited in 2017, we identified "concerns" with the IA investigation or IA's analysis, though this percentage goes up when looking only at Force complaints.

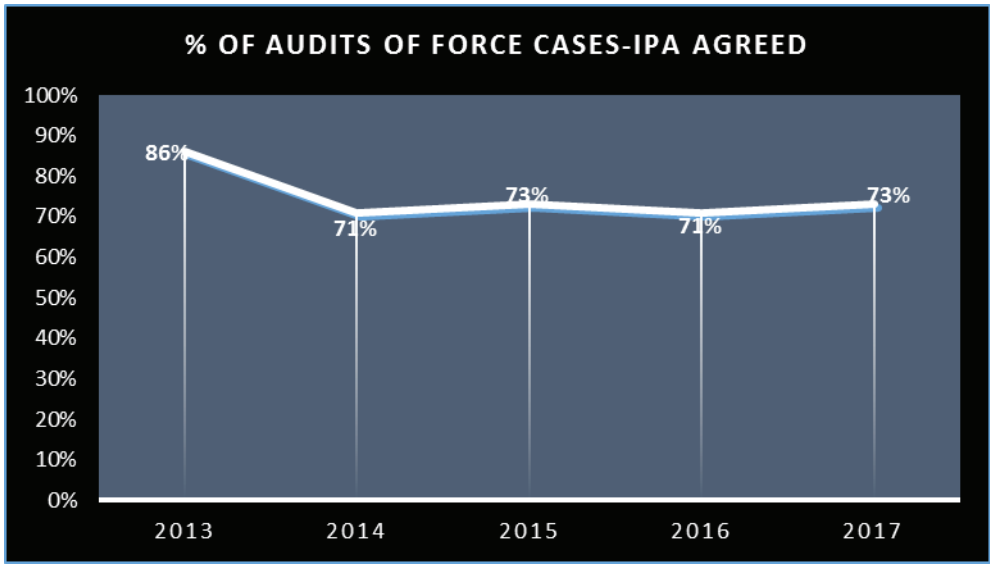
A more important measure is how often IA responds to our concerns by conducting further investigation or clarifying their analysis. Under the new IPA, this data is easier to collect, as every case in which there are "concerns" prompts a "concerns memo," which will result in either a "rebuttal" from IA or additional IA investigation or analysis. IA has been very receptive to our concerns and has made changes in their investigation or analysis in the vast majority of cases in which we had expressed "concerns."

**Illustration 12-A: Percentage of Audits the IPA Agreed with SJPD — Five-Year Overview**




The IPA office tends to express concerns about IA's investigation regarding use-of-force cases more often than it does in other cases.

**Illustration 12-B: Percentage of Audits of Force Complaints the IPA Agreed with SJPD — Five-Year Overview**



### i. IA investigation

Concerns related to the thoroughness or completeness of the IA investigation in some cases include:

- IA did not complete necessary interviews
- IA did not gather all necessary records
- Improperly framed interview questions
- Omitted interview questions
- Failure to investigate some of the allegations

**Case Summary**

**Allegation: Withdrawing Service Weapon**

**IPA Concern: Accuracy in Characterizing Body-Worn Camera Footage**

The complainant sped through a traffic light, and an SJPD officer followed him to a residence. Despite officers' commands to stop, the complainant and his passenger nevertheless got out of the car and started walking from the driveway towards the house. The complainant and his passenger then exited the house as the first back-up officer arrived.

An officer asked the complainant to show him his hands, and the complainant complied. That officer nonetheless then removed his gun from its holster and held it alongside his right leg. The complainant alleged, among other things, that the officer improperly displayed his firearm.

IA initially indicated that the officer claimed during his interview with IA that the complainant did not comply with the order to show his hands and that the officer therefore withdrew his weapon. The IPA communicated to IA that body-worn camera footage seemed to indicate quite clearly that the complainant immediately complied with the command to show his hands to the officer. In response, IA amended its investigation to include an acknowledgment that the complainant did in fact comply with the order to show his hands. IA also provided additional analysis explaining that, even with the complainant's immediate compliance with the order, the officer's withdrawal of the firearm was still appropriate under the totality of the circumstances.

**Case Summary**

**Allegation: Failure to Investigate Injury Accident**

**IPA Concern: Identifying Additional Subject Officer**

While the complainant was walking in an intersection, he was hit by a car. He complained that the officer who prepared the report failed to conduct a proper investigation because he did not document insurance details, did not determine the accident cause, did not check for the existence of video surveillance, and did not reference the vehicle code section directing drivers to yield the right to way to pedestrians.

One of the responding officers was tasked with writing the report. It was his responsibility to ensure that the report was complete and complied with all Duty Manual requirements. The report completed by this officer was incomplete. The Procedure allegation was sustained.

However, the IA investigation failed to examine whether one of the other officers also had responsibility for the report. The IPA identified this omission.

The complaint was re-opened and the second officer was named as a subject officer. IA sustained a Procedure allegation against the second officer, and the IPA closed this case as agreed after further.

### ii. IA's analysis

Concerns related to IA's analysis in some cases include:

- Failure to evaluate the evidence against the applicable Duty Manual section
- Failure to apply the correct standard of proof or failing to properly weigh the credibility of witnesses
- Mis-application of the correct Duty Manual section or other applicable standard

**Case Summary**

**Allegation: Improper Use of Chokehold**

**IPA Concern: Applying Deadly-Force Analysis**

The complainant described several types of force, including a choke hold. The analysis identified a number of Duty Manual sections pertaining to use of force. The force allegation was deemed exonerated. IA's rationale was that, in light of the threat posed by the complainant, even if Officer D *inadvertently choked the complainant*, the force used would still be reasonable because the situation *could have escalated into a deadly force encounter*. Officer D attempted to de-escalate the incident and apply the carotid restraint.

The investigation failed to identify and apply Duty Manual sections L 2627 Use of Carotid Restraint and L 2628.1 Chokehold Use Prohibition; both sections require a deadly-force analysis. Per L 2628.1, a chokehold may only be used by an officer as a deadly-force option. A chokehold can only be used if deadly force can be used, *not where the situation could have, but has not yet, escalated into a deadly-force encounter*. This threshold for chokehold use is higher than that governing the use of the carotid restraint, which allows the restraint if deadly force may become objectively reasonable. The analysis on the use of the chokehold, however, must include an examination on whether the officer *was authorized to use deadly force at the moment*.

IA agreed to re-open and re-analyze the case. It applied the heightened standards demanded by the applicable sections governing the use of carotid restraints and chokeholds. The finding remained exonerated but the finding was now supported by an analysis of the facts and the applicable policies.

**Case Summary**

**Allegation: Failure to Take Report of Violation of Domestic Violence Restraining Order**

**IPA Concern: Identifying the Applicable Policy**

The complainant had a Domestic Violence Restraining Order against her ex-husband that required him to stay 300 yards away from her house. The complainant lived across the street from a shopping center, which she alleged is a maximum of 50 yards away from her house. She saw her husband at the store across the street from her house and therefore believed him to be violating the restraining order.

She called SJPD, and an officer arrived. The officer then called the complainant's ex-husband, who admitted to being at the shopping center but said he was not there to see the complainant. The officer told the complainant that, because the shopping center was open to the public, her ex-husband could legally be there. The officer refused to take a report.

Initially, IA stated that, because the complainant's ex-husband did not show a willful disregard for the restraining order, a violation did not occur and therefore a report was unnecessary. However, the IPA pointed to Duty Manual section L 1404, which states that a report must be taken whenever there is a violation or an alleged violation of a domestic violence restraining order. IA agreed and came to a finding of "Sustained" for the Procedure allegation, and the IPA agreed after further.

**Policy recommendation:** We also routinely encounter cases in which IA does not make a determination one way or the other in "he-said/she-said" cases, that is, those cases where the only evidence is the statements by the officer and the complainant who alleges mistreatment by the officer. IA often uses the "Not sustained" finding in such cases.

Under a preponderance-of-the-evidence standard, assessments of witnesses' credibility may be a determining factor, as the smallest amount of evidence can tip the scale one way or the other. IA investigators also often indicate that the lack of "independent witness" testimony along with the lack of video evidence requires a "not sustained" finding. In many of these cases, IA has not conducted an assessment of the parties' or third-party witnesses' credibility. IA investigators often appear quick to discount a witness's statement

because that witness is determined to be not "independent" because of some relationship to a party.

To some degree, we cannot fault IA for their approach. The Duty Manual should reflect the standard of proof applied to officer misconduct investigations. Currently the Duty Manual only refers to the correct standard of proof with respect to CSOs. The SJPD website indicates that Internal Affairs employs the preponderance-of-the-evidence standard. Language in the Duty Manual and other guidance requiring that IA "clearly" or "conclusively" prove a set of facts creates ambiguity as to the proper standard of proof.

**Policy Recommendation 8: Internal Affairs Investigations – Standard of Proof and Weighing Witness Credibility**[6]

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

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

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

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

**SJPD RESPONSE:**

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

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

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

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

D. Refer to C above.

### iii. IA's responsiveness to concerns

As discussed above, IA routinely accepts our recommendations for additional investigation or analysis. In some cases in which we disagreed with the investigation, our disagreement was not with IA but with the subject officer's chain of command, which, based on the chain of command's own investigation or analysis, sometimes disagrees with IA's recommendation to sustain an allegation. We discuss here the appeals that were submitted since the new IPA, Mr. Zisser, started in the role. We focus on these appeals because Mr. Zisser has implemented a different protocol for appeals.

- Mr. Zisser appealed four cases to the Chief in which IA had been notified of the IPA's concerns during the last quarter of 2017. That represents 40% of the cases in which the IPA had concerns during that quarter.
- None of the appealed cases regarding concerns sent in the last quarter of 2017 required further appeal to the City Manager; all were resolved through discussion with the Chief, and the IPA "agreed after further."
- Three of the four appeals in the final quarter of 2017 resulted in findings of misconduct.

**Cases appealed to the Chief of Police in 2017:**

| Allegations | Outcome of Appeal to Chief |
|---|---|
| Courtesy | IPA agreed with Chief's rationale supporting IA's "exonerated" finding |
| Citation and seizure | Chief reversed Findings and Recommendation; findings sustained – other findings unchanged |
| Inventorying seized vehicle | IA added subject officer and sustained allegation; case closed in 2018 as "agreed after further" |
| Discipline proceedings still pending | Sustained findings resulted from appeal. |

**Case Summary**

**Allegation: Citation for Medical Marijuana**

**IPA Concern: Proper Application of Duty Manual Policy**

The complaint alleged that, following a traffic stop, officers should not have seized medical marijuana discovered in the vehicle and should not have issued a citation for possession of marijuana. Because the SJPD Duty Manual prohibits officers from citing or arresting for possession of medical marijuana, IA recommended that the allegations be sustained; the chain of command disagreed.

The basis for the disagreement appeared to be some confusion around the law under which the driver was cited. The officer cited the driver for possession and only later indicated he cited the complainant for "open container." However, at the time of the incident, the law under which the officer cited the driver did not cover open container. More importantly, nothing in the officer's citation or narrative indicated the concern was open container, and the officer acknowledged that he had no basis for disbelieving the driver's claim that the marijuana was medical marijuana.

The appeal resulted in sustained findings for the citation and seizure. (These were categorized as "Procedure" violations, and the IPA office was satisfied with this categorization in light of the fact that it was the Duty Manual, not the law, that prohibited this type of citation and seizure.)

It should be noted that the IPA office had initial concerns regarding IA's investigation or analysis of some – though not all – of the other allegations, including search of the vehicle. But these other concerns were resolved through discussions with the Chief and IA.

**Case Summary**

**Allegation: Failure to Inventory Contents of Stolen Vehicle**

**IPA Concern: Adding Allegations**

In an appeal made in 2017 but resolved in 2018, the complainant alleged that her car was stolen by her son and that when she retrieved the vehicle from the tow yard, his marijuana was still in the car. The IPA sent a concerns memo that, among other things, recommended adding an allegation regarding improper inventorying of the contents of the vehicle. The Chief agreed that IA should have addressed the inventory procedure, and, in early 2018, IA ultimately added a subject officer and sustained the allegation against the officer.

**Case Summary**

**Allegations: Bias-Based Policing, Language Access, Search/Seizure, Arrest/Detention**

**IPA Concerns: Adding Allegations and Analysis**

Officers responded to investigate an assault and battery incident between a landlord and a tenant. IA sustained a number of findings against the officers, including bias-based policing and improper handling of a civil dispute in the case of Officer L and failure to provide a Vietnamese translator in the case of both officers.

On other allegations – of Arrest/Detention on the part of both officers and Bias-Based Policing on the part of Officer M – that IA did not sustain, the IPA had concerns regarding the analysis. The Chief of Police directed that further analysis be provided – including a discussion of Officer M's conduct as it related to the alleged Bias-Based Policing, which had been omitted in the initial IA investigation. The additional analysis likewise resulted in not sustaining the allegations.

The IPA also requested that IA address additional allegations, including Search/Seizure for both officers. The Chief directed the addition of the Search/Seizure allegations, and the investigation sustained those allegations.

### iv. Discipline

The IPA office historically has not weighed in on SJPD's discipline decisions in misconduct cases. Therefore, there is no data as to how often SJPD accepted our concerns as they might relate to discipline or whether SJPD provided an adequate explanation as to how it arrived at the discipline imposed in a case. Accordingly, this year we discuss discipline in greater detail in Chapter 4, as part of the discussion regarding the complaint,

investigation, and auditing process.

It should be noted that Internal Affairs does not make any decisions regarding discipline; rather, the subject officer's chain of command recommends discipline in a "sustained" case, and the Chief of Police makes the final decision as to whether to accept or modify the recommended discipline.

We are currently evaluating how to improve our reporting on discipline, as well as how to address discipline in our auditing process for individual cases.

# Chapter 13: Body-Worn Cameras

## A. Introduction

Technology has changed policing in recent years, with the most important advancement being the implementation of body-worn cameras (BWC). In the IPA's 2011 Annual Report, the IPA recommended that the Department should "equip all officers with state-of-the-art cameras and establish procedures for their use." The Department adopted this recommendation, and by July 2016, all patrol officers were equipped with body-worn cameras.

The policy, Duty Manual sections L 4435-4436, dictates that officers must activate their camera at the beginning of an encounter with a citizen and may deactivate their camera at the end of an encounter.

The use of body-worn cameras has proven to be invaluable. Evidence produced by the cameras can be viewed by IA and IPA staff during the investigation and audit process. In some cases, IA will add an allegation when the investigator notices that the officer has failed to activate his or her camera. We attribute at least part of the increased sustained rate in 2017 to the implementation of BWCs.

## B. Methodology

The only manner in which IPA staff is able to view BWC footage and raise concerns to the Department is through the audit process. This can occur as we prepare for participation in IA's interviews or after the completed IA investigation during the IPA audit. We also view the BWC footage associated with every officer-involved shooting, even if no citizen complaint has been submitted.

## C. Discussion

### i. Impact of implementation of body-worn cameras

We have seen the presence of body-worn camera footage have a significant impact on the findings, as the room for interpretation of facts is minimized. The importance of body-worn cameras has led us to believe more officers, not only the officers on patrol, should be equipped with these cameras (see recommendation below).

The sustained rate in 2017 was 16% – the highest rate since the first year of the IPA office's operations. Similarly, 10% of all allegations were sustained. In 2016, 5% of allegations were sustained, and in 2015, 4% of allegations were sustained.

We credit implementation of the BWC with many of those sustained findings. The high quality and clarity of the camera footage has led to a better determination of the facts of each case. The body-worn camera footage shows the interaction from start to finish and often shows any context necessary to conclude whether or not the officer was, in fact, discourteous or whether force was excessive – of course, disagreements between IA and the IPA office will still occur. It is critical that officers properly activate – and keep activated – their BWCs.

### ii. Failure to activate body-worn camera

Overall, it appears that most officers in the cases we have reviewed have complied with the BWC policy and have activated their camera when required. However, this is not always the case, and the lack of Body-Worn

Camera evidence can present an issue. In these instances, where the officer did not activate his camera and should have, Internal Affairs has proactively added a Procedure allegation for failing to activate his/her Body-Worn Camera or failing to properly document or justify the de-activation. In other words, a citizen complainant need not allege this issue for it to be investigated.

**Case Summary**

**Allegation: Failure to Activate BWC**

A complainant alleged that a person whom she has had on-going problems with tried to intentionally strike her with his car. She was not injured, but she called the police to investigate and take a report. The complainant alleged that the responding officer was discourteous and failed to complete a thorough investigation.

The IA investigation revealed that the officer failed to activate his Body-Worn Camera during the incident. The complainant would not have known this fact, so IA proactively added a Procedure allegation for failure to activate Body-Worn Camera and came to a finding of "Sustained." IA exonerated the allegation of failing to complete a complete investigation and came to a finding of "Unfounded" for the Courtesy allegation

In other instances, officers have not activated their cameras, but policy does not require the activation. Therefore, their conduct is completely within policy. We find it important that interactions in the Main Lobby be documented on Body-Worn Camera, especially because many times officers speak with victims and witnesses of crimes.

Current practice does not require BWC activation unless there is a disturbance in the PAB. The Duty Manual requires only that *patrol* officers activate their BWC, though the Duty Manual instructs officers to do so when taking victim and witness statements. The Office of the IPA has encountered cases in which BWC footage would be helpful in assessing a complaint regarding the conduct of an officer assigned to the Police Administration Building (PAB). BWC footage of the statement can also be useful to investigators following up on the victim or witness report.

**Policy Recommendation 9: Body-Worn Cameras**

SJPD should revise its policies to require officers assigned to the Police Administration Building (PAB) to activate their body-worn cameras (BWC) during interactions with members of the public, particularly when such officers are receiving victim or witness reports regarding a possible crime.

**SJPD RESPONSE:** The San José Police Department agrees with this recommendation. Our Department policy on Body Worn Cameras (BWCs) is currently being revised to include the activation of BWCs by Main Lobby personnel while "assisting a visitor or member of the public while assigned to the Main Lobby."

# Chapter 14: Scope of Independent Oversight

## A. Introduction

San José has shown genuine commitment to independent civilian oversight and the Office of the IPA, and San José finds itself in the midst of a robust and nuanced discussion about whether and how to modify the office's authority. In 1996, the citizens of San José voted to place the Office of the IPA into the City Charter. San José was the first auditor model in the United States. In 1996, the San José Auditor model was considered both innovative and effective.

While this model remains strong, although the passage of time has revealed its strengths and weaknesses. Some jurisdictions with the auditor model of oversight have incorporated innovative improvements to enhance community-police trust and increase the benefits of oversight.

Although the auditor model has proved generally successful in the past, recently the community has become increasingly vocal about expanding the scope of IPA authority. The IPA office has made recommendations in recent years regarding an expanded role in reviewing IA investigations.

Most recently, the City Council held a study session to discuss various areas for possible expansion of the IPA's authority, the IPA made recommendations regarding various areas of expanded scope of authority, and there appear to be areas where community advocates and SJPD can find common ground to improve the IPA's oversight.

## B. Methodology

The IPA office has unique insight into which of its areas of authority are critical and where additional access or authority may be beneficial. We also have routine interactions with SJPD officials and seek to understand where the proper limitations on oversight should be. Finally, and most critically, we hold frequent discussions with community members and community organizations, and we participate in community-led town hall discussions. Through these dialogues, we learn a great deal about what kind of oversight the community believes would enhance transparency, accountability, and trust in policing and the oversight process.

## C. Discussion

### i. Prior IPA recommendations

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

### ii. Community events

**January 2017:** The IPA office led a successful **community town hall** event on January 21, 2017. The event was attended by a diverse group of community stakeholders and members. Speakers for the morning panels focused on the themes of Setting the Vision, the Community's Voice and Community Expectations of Oversight/Transparency.

Attendees participated in break-out discussion sessions guided by professional facilitators. Local news coverage[27] highlighted key themes, which included improving relations through conversations and dialogue, increasing the awareness of the IPA's oversight role in the community, and acknowledging gaps in trust between law enforcement and the community.

In January 2017, PACT led a meeting with 300 community members, faith leaders, public officials, and law enforcement officials. IPA Walter Katz participated. The event focused on independent oversight of law enforcement and understanding/dismantling structural racism. The program included training, testimonies, and small group dialogues. Mayor Liccardo, Councilmember Peralez, and Councilmember Carrasco made public commitments to exploring expansion of the IPA role.

**September 2017:** In the Fall, PACT led a second meeting focused on police transparency and accountability in San José. Newly appointed IPA Aaron Zisser attended along with Chief Garcia, other SJPD officials, several San José city councilmembers, and hundreds of community members. As with the earlier session, the program included, training, testimonies, and small group dialogues. Councilmembers committed to holding a study session to educate the City Council about the various models that have proven to provide strong oversight.

### iii. City Council study session, January 2018

Building upon Council direction and community meetings, on January 16, 2018, the City Council held a study session to discuss the existing framework of the Office of the Independent Police Auditor (IPA), as well as other possible authorities that may enhance or strengthen the existing auditor framework. The IPA office led the study session, a panel of oversight practitioners provided a broader context, and the Chief of Police offered valuable insights. Public comments provided important community perspective about how oversight contributes to trust in the police. Some examples include:

- There is strong community support for expanded oversight.
- SJPD has traded pioneership – implementing one of the early oversight models – for leadership – it has not updated its model. It has lost its leadership status.
- SJPD leadership claims to not be an agency in crisis, but that does not mean that we should not do more.
- Officer-involved shootings should receive additional scrutiny from an independent outside agency.
- Some community members, particularly those who have loved ones who have been shot by officers, do feel that the Department is in crisis. (At least two commenters expressed this sentiment.)
- The best time to evaluate whether additional oversight is appropriate is when we are strong. The purpose is to build trust.

**IPA presentation at study session:** The IPA's initial presentation was restricted to exploring a limited expansion of the current auditor model. Current IPA roles and responsibilities encompass outreach, reporting, policy making, and review of complaints of officer misconduct. Areas identified for possible expansion of IPA authority were:

- Auditing: The IPA reviews the police misconduct investigations completed by the Internal Affairs Unit. The Internal Affairs

[27] https://www.mercurynews.com/2017/01/21/san-José-scholars-city-leaders-49ers-unite-to-tackle-police-race-issues/

Unit conducts other investigations to which the IPA lacks access. These investigations include Department-Initiated Investigations and administrative investigations of officer-involved shooting incidents. A limited expansion would provide for IPA review of all investigations conducted by the IA Unit.

- Records: The IPA has access to those records (e.g., police reports, body-worn camera footage, dispatch records) that are attached to and support the police misconduct investigations completed by the Internal Affairs Unit. Broader access to records on all use-of-force incidents would allow for systemic review of force patterns and trends, leading to better informed policy recommendations about use of force.

The IPA included leaders from the oversight agencies in Denver and BART; these experienced professionals provided insight on how a broader scope of the auditor model has functioned in their respective jurisdictions.

The length of the session – five hours – reflected the keen interest of both San José elected officials and the community in oversight. Attendees, including the councilmembers, were provided a comprehensive overview of the scope and limitations of the current model. The Mayor and councilmembers engaged in extended questioning of the IPA and the Chief. Many of the attendees waited until 10 p.m. to voice their impressions about police, oversight, trust, and transparency.

**IPA's recommendations:** A broader discussion was broached during the question and answer period with councilmembers. Although that conversation recognized that effective oversight in San José must reflect local culture and circumstances, it also acknowledged that, given San José's status as the nation's 10th largest city – along with the context of a national dialogue about policing and community trust – it behooves us to examine national trends and best practices.

When asked about what elements of police oversight have been viewed as most efficacious, the IPA noted that Sam Walker, perhaps the leading U.S. expert on oversight, has stated that the robust inspector general model is the best practice. Nevertheless, the IPA asserted that San José should continue the basic framework of an auditor model with the incorporation of additional key components, namely:

- Broad access to records, including, but not limited to, use of force;
- Input into the development of/changes to SJPD policies; and
- Audit authority of all investigations conducted by Internal Affairs, not just investigations of citizen complaints.

The IPA also suggested further study regarding the possibility of adopting a citizen commission and incorporating elements of other models, including the Inspector General model, which is considered the most robust and encompasses most police functions, including policies/procedures, training/recruitment/hiring, records/practice, data collection/analysis, and accountability (misconduct investigations/discipline); it may also include limited investigatory authority.

**Chief Garcia's remarks at study session:** Chief Garcia was candid in his reaction. He provided a list of proactive measures he has introduced to improve SJPD operations. He opined that while his Department was committed to professionalism, changes should not be imposed by mandate.

Still, he was receptive to the IPA having oversight of the Department-Initiated

investigations. He was also willing to discuss the nature and scope of oversight regarding OIS cases. He voiced concerns about the IPA having broad access to records. Those concerns were not on an operational level but instead focused on the potential impact of such a change on officers' willingness to be proactive, morale, and productivity.

### iv. Review of SJPD policies

Even before the Study Session, the IPA and Chief Garcia had discussed the possibility of providing the IPA with the opportunity to provide feedback on draft SJPD policies before they are finalized. The IPA broached this because of an important policy that SJPD issued prior to the IPA having an opportunity to study it.

**Policy Recommendation 10:**
**IPA Review of Draft SJPD Policies**

SJPD should create a policy requiring that any significant proposed changes to policy (including bulletins and other guidance to officers) should be sent to the Office of the IPA prior to finalization/issuance. Sufficient time should be provided to the IPA so that, should analysis be required, the IPA may analyze the draft policy, provide feedback, and engage in meaningful discussions with SJPD.

**SJPD RESPONSE:** If feasible, the Department agrees to include the Office of the Independent Police Auditor when changes are being made to the policies regarding the Internal Affairs process. The SJPD does not agree with memorializing this procedure.

# Chapter 15: 2017 Policy Recommendations and SJPD Responses

### Recommendation #1: Crisis Intervention Training

SJPD should require officers to undergo periodic refresher Crisis Intervention Training. Such training should address relevant updates to the policy manual (including de-escalation), developments in best practices, and changes in available community-based resources and services.

**RATIONALE:** We understand that the full roll-out of a 40-hour CIT training for all officers is not yet completed. Nonetheless, SJPD can and should proceed, on a parallel track with the full initial training, with a less robust version of CIT training as a refresher course. This way, those officers who may have taken the CIT training several years ago, and therefore may not be required to take the full 40-hour training, will still have the opportunity to get up to speed.

**SJPD RESPONSE:** To provide SJPD officers with a periodic refresher, the Department's CIT Coordinator plans on putting together a bi-monthly training bulletin on different mental illnesses along with resources, etc. to provide to Department members.

### Recommendation #2: Transportation of Individuals with Psychiatric Disabilities

The Duty Manual should provide guidance to officers that, under normal circumstances, an individual who is resisting being detained for a 5150 W&I commitment for psychiatric evaluation – for individuals who pose an immediate threat of harm to themselves or others because of a psychiatric disability – should be transported to Emergency Psychiatric Services, not to the jail. The policy should make clear that officers should, whenever appropriate, exercise their discretion to decline to cite and/or arrest the individual for the crime of resisting or obstructing police in the discharge of their duties and provide for transportation by emergency/fire services rather than by police.

**RATIONALE:** Duty Manual Section L 9005 ("Transportation of mentally ill patients") provides: "In criminal cases in which the suspect will be booked into County jail, the criminal process takes precedence over the psychiatric evaluation" for individuals subject to a 5150 W&I commitment. However, the Duty Manual does not specify which criminal cases involving such individuals should qualify them for booking into the jail. In particular, there is no guidance on whether simply resisting being detained for a 5150 commitment – which is *involuntary* – should constitute a crime that renders the individual eligible or appropriate for booking and, often, further involvement with the criminal justice system. In light of the likelihood that an individual who is deemed to pose an imminent threat to himself or others because of a mental health condition may also be exhibiting behaviors that are resistant or hostile towards officers, officers should assess whether the resistance is criminal or, indeed, the result of the present underlying mental health crisis. We have learned through discussions with stakeholders that it is not at all uncommon for resisting arrest to constitute the sole basis for transport to jail rather than to EPS.

Jail is not the ideal place in which to receive mental health-related services. In the last

few years, there has been extensive scrutiny, including lawsuits, of the jail regarding how inmates with mental health needs are treated (disclosure: IPA Aaron Zisser consulted in 2016 for the Blue Ribbon Commission on the jail's operations and produced a report that, among other things, addressed concerns regarding mental health services in the jail).

Families with a loved one who is experiencing a mental health crisis may be dissuaded from calling for assistance because of the risk that the individual will be taken to jail rather than to EPS and become further involved in the criminal justice system. Building trust in the community has crime prevention and enforcement benefits, as well.

**SJPD RESPONSE:** The SJPD will work to create a training bulletin for officers to reiterate the Department's philosophy on handling situations with persons suffering from mental illness. In situations where the officer is trying to place the individual on a 5150 hold and the only possible crime associated with the incident is resisting, delaying, or obstructing arrest (148 PC), then officers will be encouraged to transport the subject, or facilitate a medical transport of the subject, to EPS, rather than the County Jail, when practical. If the subject suffering from mental illness also engages in criminal activity or physically assaults an officer (69 PC), then the option of booking the subject into the county jail and notifying the jail staff that the subject needs a medical evaluation will be available to the officers.

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### Recommendation #3: Providing Mental Health Resources

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

**RATIONALE:** SJPD officers routinely make contact with individuals experiencing mental health crises. Although many of these individuals express a desire to be transported by SJPD to Emergency Psychiatric Services (EPS) for mental health evaluation and assistance, unless these individuals meet the strict criteria laid out in W&I §5150 (gravely disabled or a danger to self or others), SJPD will not transport them to EPS.

The IPA is aware that addressing mental health needs in the community entails significant challenges and requires a collaboration among County, City, and private agencies. Police officers are often left to address such needs on their own. The IPA is also aware that requiring officers to transport all individuals who request transportation to EPS is impracticable and an unreasonable use of resources. Within the current constraints and in light of structural challenges, it is prudent for SJPD officers to offer information regarding mental health resources to those they encounter who are in need of some form of assistance. SJPD should work with the County's behavioral health agency, other providers, and appropriate advocacy organizations to assemble a resource list for inclusion in materials provided to individuals in the community.

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

to create a training bulletin for the officers.

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**Recommendation #4: Language Access**

A. The Duty Manual should incorporate the SJPD Language Access Plan (LAP), with the modifications described below.[28]

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

1. The officer identifies the language of the LEP person through that person's self-identification of their language or identifying the language by using the "I Speak" proficient form.
2. When the officer requests an interpreter, the dispatcher shall contact an on-duty certified interpreter. Dispatch can search, either in the CAD or via radio inquiry, those sworn department members who are language certified and their language of proficiency. Once a certified officer agrees to respond to interpret, the dispatcher will place them on the event.
3. Only if a qualified on-duty officer is not available to assist, the officer shall then call the contracted language interpretation services for the SJPD and follow the enumerated steps for oral interpretation.

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

**RATIONALE:**

A. Currently, Duty Manual section C1317 states that "Department members *will take reasonable steps* to provide language assistance services to Limited English Proficient individuals whom they encounter or whenever an LEP individual requests language assistance services in accordance with the Department's Language Access Plan." (Emphasis added.)

The LAP's language is similar, but it states that "Department members *will provide* language assistance services to LEP individuals whom they encounter or whenever an LEP individual requests language assistance services." (Emphasis added.)

The rules in the Duty Manual and the LAP surrounding when an officer is required to provide language assistance are inconsistent. For ease of understanding, the Duty Manual should clearly incorporate the LAP in the body of the Duty Manual.

B. Through the auditing process, the IPA has reviewed several cases in which the officer(s) did not arrange for an interpreter when requested or failed to assess whether the person encountered is an LEP individual. In

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

these cases, although the officer(s) professed to using reasonable steps to provide oral translation, the conduct failed to comply with the LAP chronology and/or there were no exigent circumstances.

C. As currently worded, is unclear if it is compulsory for officers to avoid using family, friends, or bystanders for interpretation. Discretionary language should be avoided. For example, language stating that officers "should avoid" using family, friends, or bystanders for interpretation services, or stating that the officer "may then call" the contracted language interpretation services is ambiguous. This will more fully inform the officer as to what "reasonable steps" they are required to take during field encounters with LEP individuals. In the absence of such direction, officers believe it is reasonable to use non-certified officers, family members, or strangers to provide interpretation.

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

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**Recommendation #5: Receiving Reports of Sexual Violence**

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

**RATIONALE:** The SJPD main lobby procedure manual provides a process for taking a sexual assault report at PAB: "The dignity of the victim is of the utmost importance. The victim interview most likely will be conducted in the Witness Center. If possible, a second officer should be present during the interview. Advise the on-duty PPC Supervisor when using the Witness Center. During normal business hours, notifications must be made with SAIU [Sexual Assaults Investigation Unit]."

Duty Manual Sections R 1201 and R 1202 address reporting criteria but do not address the specific context of sexual assault reporting at PAB, an environment that may be noisy, chaotic, impersonal, and not conducive to sensitive discussions or privacy. IA investigations often focus on the Duty Manual and do not necessarily examine whether SJPD procedure manuals apply, making procedures inconsistent. Reconciling the process and policy between the main lobby procedure manual and Duty Manual will support consistency and provide the individual making the report greater privacy and sense of dignity.

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

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**Recommendation #6: Community Policing and Procedural Justice**

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

A 2814 (Police Officers). Such guidance may

i. set forth a broad framework of understanding the significance of and approach to community policing,

ii. address specific examples of ways in which officers may engage in non-enforcement activities, such as attending community events; providing information about various programs and activities the Department undertakes; or developing contacts with community leaders and residents, and

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

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

**RATIONALE:** The Duty Manual does not explain what "community policing" entails. It simply provides that an officer or sergeant "[a]ctively participates in the Department's community policing efforts." Sections pertaining to command staff are similarly vague. Community policing has become a major focus nationally. SJPD has prioritized community outreach and engagement, but it is not always clear whether officers are expected to engage in this type of outreach; understandably, it is often command staff who engage in this type of outreach. To the extent that aspects of community policing are included in the Duty Manual, such activities are not identified as part of a community policing framework and are scattered among various sections of the Duty Manual.

SJPD has also been depleted in terms of its staffing, and low staffing has been a barrier to robust community policing at the officer level. As SJPD begins staffing up again, there may be renewed opportunities for this type of positive officer interaction with community members.

SJPD provides "procedural justice" training to its officers, and content and concepts from that training could likely be incorporated into policy.

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

**Recommendation #7: Internal Affairs – Classifying Allegations of Misconduct**

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

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

**RATIONALE:**

A. The definitions of these terms in the SJPD Duty Manual are vague. Historically, very few allegations have been categorized as "Neglect of Duty," defined as an instance in which an officer "neglected his/her duties and failed to take action as required by Department and/or City policies or procedures and/or state or federal law." Typically, such conduct has been combined with the "Procedure" category, defined as "[a]n allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures or guidelines." "Procedure" is now an aggregate of disparate types of conduct; it puts alleged conduct such as failure to respond to a call for service, delay in responding to a call for service, and failure to properly investigate an alleged crime in the same pool as allegations regarding improperly filling out paperwork or technical failures during an interaction in the community. For data purposes and trend analysis, such disparate types of allegations should not be subsumed within a single category.

B. We also observed a number of allegations that, while categorized as "Procedure" violations, are in fact serious allegations of mistreatment of individuals in custody. Examples include: failure to render medical assistance, denying use of a bathroom, and destroying personal property. Such alleged misconduct should be distinguished and tracked separately from "Procedure" allegations. Physical or psychological mistreatment may exceed discourtesy. See, e.g., Duty Manual Section C 1304, Treatment of Offenders ("To offend a police officer's personal feelings is not a crime. A citizen will not be mistreated physically or psychologically, nor will the processes of booking and charging be delayed as a means of punishing an offender or gaining revenge.").

**SJPD RESPONSE:**

A. The Department disagrees with this recommendation and disagrees that the definitions of Neglect of Duty and Procedure are vague. As identified and defined by the IPA above, a Procedural allegation is based on the complainant's alleged violation of Department and/or City policies, procedures, or guidelines by a Department member. Neglect of Duty cases are more serious in nature and not only involve a potential violation of Department and/or City policies or procedures, but also include state or federal law. Many times, the Office of the Chief makes this determination based on the information and evidence known at the time the allegation is brought to the Department's attention. This is often done by reviewing Body Worn Camera footage or other investigative means in determining the severity of the alleged conduct.

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

The mistreatment of individuals in-custody

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

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

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

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

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

a. The modifier "conclusively" should be deleted from the definition of "unfounded": "Unfounded (U): The investigation ~~conclusively~~ proved either that the act or acts complained of did not occur, or that the Department member named in the allegation was not involved in the act or acts which may have occurred."

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

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

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

D. Guidelines should clarify that the fact that a witness is a friend, family member, or colleague of a party does not automatically render that witness's testimony lacking in credibility; IA investigators should receive guidance on properly assessing witness credibility based on a variety of factors, such as (non-exhaustive list) consistent

or inconsistent statements, recollection, ability to see or hear or otherwise become aware of the subject of the testimony, corroboration, etc.

**RATIONALE:**

A. The Duty Manual should reflect the standard of proof applied to officer misconduct investigations. Currently the Duty Manual only refers to the correct standard of proof with respect to CSOs. The SJPD website indicates that Internal Affairs employs the preponderance-of-the-evidence standard.

B. Language requiring that IA "clearly" or "conclusively" prove a set of facts creates ambiguity as to the proper standard of proof.

C. Under a preponderance-of-the-evidence standard, assessments of witnesses' credibility may be a determining factor, as the smallest amount of evidence can tip the scale one way or the other. IA investigators also often indicate that the lack of "independent witness" testimony along with the lack of video evidence requires a "not sustained" finding. In many of these cases, IA has not conducted an assessment of the parties' or third-party witnesses' credibility.

D. IA investigators often appear quick to discount a witness's statement because that witness is determined to be not "independent" because of some relationship to a party.

**SJPD RESPONSE:**

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

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

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

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

D. Refer to C above.

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**Recommendation #9: Body-Worn Cameras**

SJPD should revise its policies to require officers assigned to the Police Administration Building (PAB) to activate their body-worn cameras (BWC) during interactions with members of the public, particularly when such officers are receiving victim or witness reports regarding a possible crime.

**RATIONALE:** Current practice does not require BWC activation unless there is a disturbance in the PAB. The Duty Manual requires only that

*patrol* officers activate their BWC, though the Duty Manual instructs officers to do so when taking victim and witness statements and provides for exceptions where such individuals wish for privacy. Section L 4439. The Office of the IPA has encountered cases in which BWC footage would be helpful in assessing a complaint regarding the conduct of an officer assigned to the PAB. BWC footage of the statement can also be useful to investigators following up on the victim or witness report.

**SJPD RESPONSE:** The San José Police Department agrees with this recommendation. Our Department policy on Body Worn Cameras (BWCs) is currently being revised to include the activation of BWCs by Main Lobby personnel while "assisting a visitor or member of the public while assigned to the Main Lobby."

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### Recommendation #10: IPA Review of Draft SJPD Policies

SJPD should create a policy requiring that any significant proposed changes to policy (including bulletins and other guidance to officers) should be sent to the Office of the IPA prior to finalization/issuance. Sufficient time should be provided to the IPA so that, should analysis be required, the IPA may analyze the draft policy, provide feedback, and engage in meaningful discussions with SJPD.

**RATIONALE:** In October 2017, SJPD issued a significant new policy on command-level review of serious uses of force. The IPA had issued recommendations regarding such a policy in 2016, and the new policy reflected significant portions of those recommendations. However, there were also key differences between the IPA's recommendations and the new policy, and the IPA was not consulted prior to finalization of the policy. While there were extenuating circumstances that arguably justified issuing the policy without the IPA's final review, the process highlighted the challenges posed by such a process. While we were generally comfortable with the policy, we nonetheless requested that a different process occur in the future. The Chief readily agreed to consult with the IPA on key policies that affect our office, but it is important to codify this in policy so that the practice is sustained across subsequent administrations.

**SJPD RESPONSE:** If feasible, the Department agrees to include the Office of the Independent Police Auditor when changes are being made to the policies regarding the Internal Affairs process. The SJPD does not agree with memorializing this procedure.

# Glossary

**Agreed** (IPA determination): A complaint is closed as "agreed" if the Independent Police Auditor (IPA) determines that the the Department investigation of a complaint was thorough, objective, and fair.

**Agreed After Further** (IPA determination): A complaint is closed as "agreed after further" if the IPA determines that the Department investigation of a complaint was thorough, objective, and fair after additional inquiry and/or investigation.

**Allegation**: a person's accusation that a member of the SJPD violated Department or City policy, procedure, rules, regulations, or the law. Only Conduct Complaints contain allegations. There are eight types of allegations: Procedure, Search or Seizure, Arrest or Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, and Neglect of Duty. A Conduct Complaint can have more than one allegation. When IA finishes a Conduct Complaint investigation, IA issues a finding on each allegation.

**Arrest or Detention** (an allegation): an arrest lacked probable cause or a detention lacked reasonable suspicion

**Audit**: the process the IPA uses to decide if a Conduct Complaint investigation by the Department was thorough, objective and fair

**Bias-Based Policing** (an allegation): An officer engaged in conduct based on a person's race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability. The SJPD changed its definition of Bias-Based Policing in February 2011 to clarify that this form of misconduct can occur at any time during an encounter between an officer and another person, not only when the encounter begins.

**CIT**: see Crisis Intervention Training

**Classification**: a decision about whether an issue or complaint raised by a member of the public about an officer is a Conduct Complaint, a Policy Complaint, or a Non-Misconduct Concern. Classification is an IA determination; the IPA can appeal the classification determination through the appeal process.

**Closed With Concerns** (IPA determination): A complaint is "closed with concerns" if the IPA questioned the Department investigation and/or the Department analysis. The complaint is closed without an Agree or Disagree determination. The IPA first implemented this determination in 2010.

**Complainant**: any member of the public who files a complaint

**Complaint**: an expression of dissatisfaction that contains one or more allegations of police misconduct

**Complaint process**: the sequence of events that begins when a person files a complaint, continues when the Department investigates the complaint and issues findings, and concludes when the IPA audits the investigation and issues a determination

**Conduct Complaint** (a classification): a statement from any member of the public that alleges that a SJPD officer broke one (or more) of the rules he or she must follow, and requesting that the officer's conduct be investigated by the SJPD

**Conduct Unbecoming an Officer** (an allegation): an officer's on or off-duty conduct could reflect adversely on the SJPD or that a reasonable person would find the officer's on or off duty conduct unbecoming a police officer

**Courtesy** (an allegation): an officer used profane or derogatory language, wasn't tactful, lost his/her temper, became impatient, or was otherwise discourteous. This definition went into effect in October 2010. Previously, only an officer's use of profane words, derogatory language or obscene gestures was considered misconduct.

**Crisis Intervention Training (CIT)**: a 40-hour training program that teaches officers how to better address situations involving persons who are experiencing a mental or emotional crisis, or who have a developmental disability, thus reducing the possibility of the officers using force to gain control of the situation

**Department-Initiated Investigation**: an investigation into a misconduct allegation that is initiated by someone within the SJPD, and not by a member of the general public

**Disagreed** (IPA determination): A complaint is closed as "disagreed" if the IPA determines that the Department investigation of a complaint was not thorough, objective, or fair.

**Documented Oral Counseling**: a form of officer discipline

**Duty Manual, the**: a book of rules that each SJPD officer must follow. An officer's failure to abide by the rules in the Duty Manual can result in discipline. The Duty Manual is a public document and can be viewed on the SJPD website.

**Exonerated** (finding): the officer engaged in the conduct described by the complainant, and the officer's conduct was justified, lawful, and proper

**Finding**: When a misconduct investigation is finished, IA makes a finding for each allegation. The possible findings are Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other.

**Force** (an allegation): the amount of force the officer used was not "objectively reasonable"

**Force Case**: a Conduct Complaint that includes one or more allegations of improper use of force by a San José police officer(s)

**IA**: see Internal Affairs

**Independent Police Auditor (IPA)**: a City Council appointee who leads the office that takes complaints from the public about SJPD officers, audits investigations of those complaints, and makes recommendations to improve police practices and policies

**Independent Police Auditor Advisory Council (IPAAC)**: adult volunteers selected by the IPA to promote community awareness of the services offered by the IPA office and inform the IPA office about police-related issues within the San José community

**Intake**: the first step in the process of filing a complaint

**Internal Affairs (IA)**: the unit within the SJPD that investigates allegations of officer misconduct

**IPA**: see Independent Police Auditor

**Letter of Reprimand**: a form of officer discipline

**Misconduct**: an act or omission by an officer that is a violation of policy, procedure, or law

**Neglect of Duty** (an allegation): an officer neglected his/her duties and failed to take action as required by policy, procedure, or law

**No Finding** (finding): the complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject officer is no longer employed by the SJPD before the completion of the Department investigation

**Non-Misconduct Concern** (classification): a concern expressed by a member of the public about an officer's conduct that the Department determines does not rise to the level of a violation of policy, procedure, or law or that would not result in officer discipline

**Not Sustained** (finding): The Department investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

**Officer-involved shooting**: an incident that involves an officer's discharge of his or her firearm

**Other** (finding): when SJPD declines to investigate because of too long a delay from the date of the incident to the date of filing, or because the officer was not a SJPD officer, or because a duplicate complaint exists

**Police Officer's Association (POA)**: the bargaining unit (union) that represents SJPD police officer interests

**Policy Complaint** (classification): complaints from the public about SJPD policies or procedures

**Procedure** (an allegation): an officer did not follow appropriate policy, procedure, or guidelines

**Search or Seizure** (an allegation): a search or seizure violated the 4th Amendment of the United States Constitution

**Sustained** (finding): the investigation disclosed sufficient evidence to clearly prove that the allegation about the conduct of the officer was true

**Sustained rate**: the percentage of Conduct Complaints (not allegations) that results in a finding of Sustained for one or more allegations

**TLC**: see Independent Police Auditor Teen Leadership Council

**Unfounded** (finding): The investigation conclusively proved either that the act or acts complained of did not occur, or that the officer named in the allegation was not involved in the act or acts, which may have occurred. This means that the Department investigation concluded that the acts never happened.

**Withdrawn** (finding): the complainant expressed an affirmative desire to drop the complaint.

# Appendix A: Status of 2015 Year End Report Recommendations

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #1: Resume publishing the Department's Force Response Report annually, and preferably quarterly, for the benefit of the Council and the community. Related data should also be published as open data and included in the City of San José's developing open data initiative.** | The Department considers this recommendation fulfilled. SJPD contracted with an outside vendor, Police Strategies LLC, to analyze all 2015-2017 use of force incident reports. Police Strategies LLC published a report (January 2018) containing an analysis of the Department's use of force data; this report is available on SJPD.org. The Department also posted interactive, public-facing dashboards containing the Department's use of force data on SJPD.org. The report and dashboards will be updated periodically, as additional use of force reports are analyzed. | We continue to urge SJPD to issue quarterly reports on its use-of-force data. The dashboard is a very useful tool, but SJPD has the expertise to summarize and identify key findings in the data. |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #2: Review encampment clean up procedures to assure that the homeless are afforded the same rights to their property regardless of whether an encampment is found on public or private land. Strengthen coordination with other public entities and impacted private stakeholders, such as the Union Pacific Railroad. Provide training to its officers so that they are aware of the rights of the homeless to their property when encampments are cleaned up wherever they are found.** | The SJPD is no longer responsible for the personal property of homeless individuals during encampment clean-ups, as the responsibility has since been transferred to the Homelessness Response Team. The role of SJPD during these clean-ups is to provide on-site security for the Homelessness Response Team. Officers who work the encampment clean-ups are advised of their role by the SJPD homeless encampment coordinator, Sgt. Rick Tomlin, prior to working the assignment. | The IPA office is conducting substantial outreach to the homeless community. We routinely hear complaints about the ongoing role of SJPD in the sweeps of homeless encampments and will study the possibility of additional policy recommendations. |
| **Recommendation #3: Additional training for dispatchers on informing callers when and how to file complaints with Internal Affairs as well as the Office of the Independent Police Auditor.** | Dispatch provided roll call training to all personnel regarding the recommended topic. | |
| **Recommendation #4: Re-organize policy section L 1313 into two subsections – the first which deals with civil disputes in general and the second which specifically covers the circumstance of property recovery. Provide additional training to its force so that officers are aware of their role during the recovery of personal property by civilians.** | The SJPD Duty Manual Section L 1313 was updated on 03/24/15 to address this matter. | |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #5: Issue policy that requires officers to cite non-licensed drivers 14 and under instead of merely warning them.** | The Department disagrees with mandating officers to cite all juvenile drivers age 14 and under, who are at fault in traffic collisions. There may be instances where it is in the best interest of justice and/or in the best interest of the juvenile and the community for an officer to issue a warning to a juvenile instead of a citation. The officer at the scene of the accident should be given the discretion to cite the juvenile or issue a warning. | |
| **Recommendation #6: SJPD staff tasked with enforcing business/ sellers permits issued pursuant to state law or the city's municipal code should be trained to distinguish those permits and the corresponding expiration dates, if any.** | Over the past several months, the Permits Unit has acquired all new personnel, who have been trained on licenses, permits, expiration dates, and renewal dates. Permits Unit personnel work with the City Attorney's Office to ensure they are adhering to the municipal code and state laws. Additionally, the Permits Unit is in the process of acquiring software that will track expiration dates. | |

# Status of 2016 Year End Report Recommendations

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #1 & #2 — Policy Briefs:**<br>**These two recommendations were in the form of policy briefs from former IPA Mr. Walter Katz. These policy briefs covered (1) head strikes with impact weapons and (2) positional asphyxiation. Both of these policy briefs are included in the IPA's Year End Report and were discussed at the June 27th City Council Meeting.** | | |
| **Recommendation #3 — Initiation of Allegations of Force:**<br>**The SJPD Duty Manual should be amended to place an affirmative duty on personnel to report any allegation of unreasonable force to a supervisor. The supervisor, in turn, should be obligated to report the allegation to Internal Affairs.** | The Department is in the process of reviewing the Duty Manual for possible revisions regarding this recommendation. | The IPA is in discussions with SJPD regarding specific changes to the existing policy. |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #4 — Vehicle Blocking Maneuver/Tactical Parking:**<br>**Review SJPD training and policy to determine whether the risks of a broad tactical parking policy outweigh the benefits and determine appropriate policy as a result of the review. Additional training requirements should also be considered.** | The Department is in the process of reviewing its policy and training to determine whether the risks of a broad tactical parking policy outweigh the benefits. The Department will determine an appropriate policy after the review is completed. | The IPA office urges SJPD to address this policy recommendation, which has been pending for a year. |
| **Recommendation #5 — Crisis Intervention Team Data Collection & Assessment:**<br>**The SJPD should consult with other agencies, researchers and organizations which have expertise in CIT to develop a data collection/program evaluation process. Such collection and evaluation should be ongoing to continuously assess the effectiveness of CIT implementation.** | The Department agrees with this recommendation. Over the past year, the CIT coordinator has: 1) visited another major city to conduct a site review of their Mental Evaluation Unit, 2) contacted a local agency to determine how that agency tracks mental health calls and evaluates the effectiveness of their response, 3) attended the California CIT conference to learn the best practices of the industry, and 4) has maintained dialogue with the National Alliance on Mental Illness (NAMI), as this organization is at the forefront of mental illness issues. | The IPA office has reviewed some of the data that SJPD already collects and has met with the CIT coordinator to discuss SJPD's progress on implementing our recommendation. SJPD collects data on CIT-related calls for services but does not track the outcome of those calls. The CIT coordinator described additional research she has conducted and is currently undertaking.<br><br>We are concerned that the pace of implementing this important recommendation results in part from the very small staffing of the mental health unit and encourage SJPD to supplement the CIT coordinator's resources. |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #6 — Officers on School Campuses: Recommendation #6A: The SJPD should identify which officers regularly work on school campuses and provide additional training for that group. The training should include these components (a) development of the adolescent brain (b) trauma-informed approaches to interacting with students going through temporary crisis, and (c) additional training in Crisis Intervention Training for Youth with appropriate measurement of its effectiveness.** | All Department members who have not already received Crisis Intervention Team (CIT) training will be receiving the training in the near future. CIT training provides Department members with the knowledge and skills to effectively deal with adults and adolescents with disabilities, mental illness, and people going through an emotional crisis. As for providing additional training to officers beyond CIT training, it is the Department's position that even specialized training would never give the officers an expertise equal to that which a trained psychologist possesses. The Department believes each school should be responsible for employing a psychologist on campus to assist officers in dealing with adolescents. | While the IPA office is pleased with SJPD's revised policy on school policing and its MOUs with San José's school districts to ensure officers do not engage in student discipline, we are disappointed that those changes to not include required additional training for school liaison officers. We encourage SJPD to revisit this decision. |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #6B: The SJPD and the school liaison office should collect and maintain data on contacts/ detentions, actions taken and outcomes, use of force, citations issued and arrests made by school campus officers.** | The Department, in collaboration with the Juvenile Probation Department (JPD) and the District Attorney's office, has developed a diversion program to reduce the number of citations and arrests of students, as well as to better serve minority youth who are disproportionally comprising the juvenile justice system. In lieu of citing/arresting juveniles for minor offenses committed on campus, school officials now coordinate with JPD to provide juveniles with school-based services. The Department will re-assess this recommendation in a year after the effectiveness of the diversion program is determined.<br>The Crime Analysis Unit (CAU) can retrieve data on force, arrests, and citations for the School Liaison Unit upon request, but does not have the staffing to perform this process on an ongoing basis for each of the 280 schools in San José. This process would be time intensive and, due to current CAU staffing levels, the recommendation is not feasible. | The IPA has discussed data collection with Chief Garcia. It appears that much of the data the IPA office recommended is already collected. We encourage SJPD to publish this data with respect to at least some schools. |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #6C: IPA contact information and complaint forms should be available to each campus that has SJPD officers assigned to the school.** | The Department recommends that the Independent Police Auditor (IPA) conducts school outreach and works directly with schools to provide this information.<br>One of the prior IPAs, Judge Cordell, disseminated the book "Know your Rights" to students and created the Teen Leadership Council to enhance outreach among school aged youth. The current IPA should continue to conduct outreach to schools independent of the Police Department.<br>The School Liaison Unit shall encourage the schools to forward any police related complaints to Internal Affairs, the IPA, or the School Liaison Unit program supervisor. The School Liaison Unit will message this to school administrators at the beginning of each school year. | |
| **Recommendation #6D: Any MOU with school districts should include provisions that the receipt of any complaints by school staff about officer conduct should be forwarded to the School Liaison Officer (SLO) program supervisor. The School Liaison Officer, IA or the IPA will provide such complaints to the other two entities upon receipt.** | As part of the Department's current Internal Affairs process, if either IA or the IPA receive a complaint regarding an officer, the other entity is notified. Additionally, the supervisor in the officer's direct chain of command is notified. The Department will not notify the School Liaison program supervisor, as a personnel investigation is confidential in nature; confidentiality standards regarding complaints are detailed in Penal Code 832.7. | |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #6E: SJPD policy should mandate that handcuffing and arrest of students on campus should take place in a private setting if reasonably possible.** | Duty Manual Section L 3007 MINORS AT SCHOOLS already exists and states, "In order to avoid possible embarrassment to children and their parents, uniformed officers should not interrogate nor take youngsters into custody at school except in emergency situations." | |
| **Recommendation #6F: That SJPD, relevant school districts, and the City of San José should consider creation of an expanded SLO program wherein dedicated officers are assigned to one or more school campuses as their primary responsibility rather than as secondary employment.** | The Department does not concur with this recommendation. Due to current staffing levels, this recommendation is not feasible. | |
| **Recommendation #7 — Uses of Force Accountability**<br><br>**Recommendation #7A: Policy should be clear that sergeants who use or direct force should not conduct a use of force investigation. Current policy is vague and some supervisors believe that if they use of force, they can self-investigate. Policy should be amended that a supervisor has a duty to notify his or her supervisor of the use of force incident.** | The Department concurs with this recommendation. Duty Manual Section L 2604 GENERAL RESPONSIBILITY WHEN FORCE IS USED was revised to include the statement, "Department members will notify the next rank above them in their chain of command without unnecessary delay, when reportable force is used." Additionally, Duty Manual Section L 2605 SUPERVISOR'S RESPONSIBILITY was also revised to include the statement, "A supervisor who was involved in the use of force incident or who directed force to be used may not conduct the force investigation. In such situations, an uninvolved supervisor shall respond and conduct the investigation." | |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #7B: Current policy allows an officer to review Body Worn Camera (BWC) footage prior to writing his or her report. Involved officers should not be allowed to view BWC or other video footage prior to providing their initial narrative or statement about the use of force. Once they have written their report or provided a statement, an officer should be allowed to view the footage and add any additional information learned through the viewing while clearly stating that the additional information was learned from the footage rather than the officer's recollection. As part of any force evaluation or complaint investigation, investigators should specifically ask if the involved officer viewed any video footage prior to providing a statement.** | The Department does not concur with this policy recommendation. Our recently drafted BWC policy allows officers to access BWC footage prior to their initial statement or narrative regarding a use of force, with the exception of an Officer-Involved Incident, as defined in the County-wide Officer-Involved Incident Protocol. Our Department's BWC policy was vetted by numerous stakeholders, including the City Attorney's Office, and aligns with most California law enforcement agencies' BWC policies.<br><br>Likewise, the Department does not concur with the recommendation of prohibiting officers from viewing other video footage prior to providing their initial statement or narrative. An officer may review other forms of evidence (photos, CAD, 9-1-1 recordings, statements of witnesses, etc.) prior to providing a narrative or statement and they should also be allowed to review other versions of video footage (surveillance video). Allowing an officer to access footage prior to his/her statement or narrative allows for greater accuracy in the documentation of the incident.<br><br>Lastly, the Department agrees that investigators should specifically ask if involved officer(s) viewed any video footage prior to providing a statement, which is already common practice for our Internal Affairs investigators. | |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #7C: At present, SJPD policy does not classify use of force by the weapon used or injury sustained. The recommendation is that the SJPD create three tiers of force. The least serious tier should be for force which leaves no visible injury or complaint of pain, and the use of OC spray. The second or middle tier should include use of TASER, impact weapons, and uses of force that lead to injuries or a complaint of pain, and minor bone fractures. The third tier should be for serious uses of force, such as loss consciousness, impact weapons to the head, kicks to the head, bone fractures, and hospital admissions. Force in the various tiers should be investigated and evaluated differently.**<br>**• Force in the first tier should be investigated by the officer's supervisor and evaluated by the chain of command up the officer's captain unless a violation of the Duty Manual is suspected.**<br>**• Force in the second tier should also be evaluated by the officer's supervisor, but the evaluation of the force should occur at a higher level in the chain of command at the Bureau level.** | The Department agreed a more robust process of investigating and reviewing use of force was necessary. The Department worked with the previous IPA, Walter Katz, and Police Officer's Association (POA) to devise a best practices policy for the Department to further enhance supervisory oversight and review of force. On 10/18/17, the Department implemented a categorized use of force policy which requires greater supervisory review of use of force incidents, including review up the chain of command for more significant use of force incidents. | SJPD has indicated it will review the new policy within six months. |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| • The IPA recommends that SJPD create a Force Investigation Team, which investigates all use of force in the third tier. Such force incidents should then be evaluated by an executive force review panel. The panel would determine if the acts appear to have been in policy. If it appears that an officer was not acting in policy, the matter should be referred to Internal Affairs for further investigation, in necessary. Such a process is practiced by other large law enforcement agencies in California, including the Oakland Police Department, the Los Angeles Police Department, and the Los Angeles Sheriff's Department. | | |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #7D: The evaluation of all use of force by chain of command or review panel should include an assessment of pre-force tactics, the use of de-escalation techniques, where practicable, and the presence and use of crisis intervention trained officers. Such an evaluation is not focused on whether misconduct occurred but whether best practices and tactics were applied to the situation.** | The Department concurs with this recommendation. Duty Manual Section L 2602.5 TACTICAL CONDUCT was created to address pre-force tactics to include the statement, "Department members shall consider the following relevant tactical considerations in any situation where an officer reasonable believes that the use of physical force is or may become necessary":<br>• Core Transaction<br>• Level of Urgency<br>• Threat Assessment<br>• Cover, Concealment, Distance, and Time<br>• Crisis Intervention Team | The IPA has no way of reviewing ensuring that the Command review process includes a review of de-escalation efforts. If SJPD does in fact incorporate de-escalation into this review process, we see no reason for SJPD not to explicitly include this requirement in the new policy. |
| **Recommendation #7E: The IPA have access to and audit all third tier use of force investigations for objectivity, thoroughness, and fairness regardless of whether a complaint is filed.** | This recommendation is outside the scope of the IPA's role and responsibilities per the City Charter. | |

| IPA RECOMMENDATION | SJPD RESPONSE | IPA COMMENTS |
|---|---|---|
| **Recommendation #7F: The SJPD should invest in force analysis software and other data tools so that use of force data can be evaluated by Department decision-makers down to shift, district, beat and officer level. At a minimum, such tools should allow analysis of the time, location, day of week, involved units and other similar factors.** | The Department agreed with this recommendation. SJPD purchased a Police Force Analysis System from Police Strategies LLC. The third-party company reviewed SJPD's use of force reports from 2015 to 2017 and extracted over 150 variables from the reports. The variables were analyzed using algorithms developed from evaluation criteria outlined in the United States Supreme Court case of Graham v. Connor, 490 U.S. 386 (1989). A report of Police Strategies' findings on SJPD's use of force incidents was published and posted on SJPD.org. Additionally, SJPD released public facing dashboards containing its use of force data on SJPD.org. | As we have indicated in other venues, we urge SJPD to be clear about the limitations of the review that was conducted, including the reliance on officers' own narratives about the incidents. Some conclusions or findings, particularly those regarding proportionality of the use of force and the threat level that the use of force is directed at counteracting, require additional review and should be considered only preliminary hypotheses. |

# Appendix B: IPA 2017 Community Outreach Activities

| Date | Name | Type | District | Location/Notes |
|---|---|---|---|---|
| 7/13/2017 | Ice Cream Social & Resource Fair | Meeting/Event | 1 | Cypress Community Center |
| 10/17/2017 | Community Member | Meeting/Event | 1 | O.W. |
| 3/1/2017 | (FLY) Fresh Lifelines for Youth | Presentation | 2 | Oak Grove High School |
| 3/1/2017 | (FLY) Fresh Lifelines for Youth | OMD | 2 | Oak Grove High School |
| 3/28/2017 | Girl Scouts: Got Choices | Presentation | 2 | Oak Grove High School |
| 4/17/2017 | Mexican Consulate | Meeting/Event | 2 | Mexican Consulate |
| 4/26/2017 | Career Day at Bernal Middle School | Presentation | 2 | 6610 San Ignacio Ave |
| 6/12/2017 | Mexican Consulate | Meeting/Event | 2 | Mexican Consulate |
| 7/10/2017 | Mexican Consulate | Meeting/Event | 2 | Mexican Consulate |
| 8/1/2017 | National Night Out | Meeting/Event | 2 | Hayes Mansion |
| 8/7/2017 | Mexican Consulate | Meeting/Event | 2 | Mexican Consulate |
| 10/2/2017 | Mexican Consulate | Meeting/Event | 2 | 302 Enzo San José |
| 10/18/2017 | Oakgrove High School | OMD | 2 | Oak Grove High School |
| 11/13/2017 | Mexican Consulate | Meeting/Event | 2 | Mexican Consulate |
| 11/16/2017 | (FLY) Fresh Lifelines for Youth Edge School | Presentation | 2 | Edge School |
| 12/4/2017 | Mexican Consulate | Meeting/Event | 2 | Mexican Consulate |
| 1/24/2017 | Sport, Activism & Social Change: From Words to Action | Meeting/Event | 3 | SJSU Hammer Theatre |
| 2/2/2017 | IPAAC Meeting | Meeting/Event | 3 | IPA Office |
| 2/8/2017 | Mayor's Gang Prevention Task Force | Meeting/Event | 3 | CET Center for Employment & Training |
| 2/9/2017 | Public Defender's Office | OMD | 3 | Public Defender's Office Juvenile Unit |
| 2/17/2017 | Horace Mann (read in) | Meeting/Event | 3 | Horace Mann Elementary |
| 2/22/2017 | City Hall | OMD | 3 | City Hall |
| 3/1/2017 | (FLY) Fresh Lifelines for Youth | Presentation | 3 | Snell High School |
| 3/15/2017 | City Hall | OMD | 3 | City Hall |
| 3/30/2017 | SCCOE County of Santa Clara Office of Education | OMD | 3 | SCC Office of Education |
| 4/12/2017 | Mayor's Gang Prevention Task Force | Meeting/Event | 3 | Center for Employment Training |
| 5/10/2017 | Mayor's Gang Prevention Task Force | Meeting/Event | 3 | Center for Employment Training |
| 5/10/2017 | East San José Carnegie Branch Library | OMD | 3 | East San José Carnegie Branch Library |
| 5/25/2017 | Veteran's Town Hall Meeting | Meeting/Event | 3 | 304 N. 6th Street |
| 6/7/2017 | Mayor's Gang Prevention Task Force Youth Violence Forum | Meeting/Event | 3 | Roosevelt Community Center |
| 6/7/2017 | Roosevelt Community Center | OMD | 3 | Roosevelt Community Center |
| 6/8/2017 | Youth Conference | Meeting/Event | 3 | City Hall Rotunda |
| 6/22/2017 | Viva Parks | Meeting/Event | 3 | Roosevelt Park |

| Date | Name | Type | District | Location/Notes |
|---|---|---|---|---|
| 8/1/2017 | National Night Out | Meeting/Event | 3 | St. James Park |
| 8/10/2017 | Reginald Swilley Community Member | Meeting/Event | 3 | The Alameda |
| 8/16/2017 | First Presbyterian Church | Meeting/Event | 3 | First Presbyterian Church 49 N. 4th St. |
| 8/24/2017 | IPAAC Meeting | Meeting/Event | 3 | IPA Office |
| 9/6/2017 | Miguel Alvarado Community Member | OMD | 3 | Recovery Café |
| 9/19/2017 | Martin Luther King Library | OMD | 3 | MLK Library |
| 9/21/2017 | Library - Biblioteca | OMD | 3 | 921 S. First St |
| 9/21/2017 | Washington United Youth Center | OMD | 3 | 921 S. First St #B |
| 9/27/2017 | First Presbyterian Church | Meeting/Event | 3 | 49 N. 4th Street |
| 10/3/2017 | (PACT) People Acting In The Community Together | Meeting/Event | 3 | IPA Office |
| 10/10/2017 | (PACT) People Acting In The Community Together | Meeting/Event | 3 | IPA Office |
| 10/11/2017 | D.A. SCC District Attorney's Office | Meeting/Event | 3 | District Attorney's Office |
| 10/16/2017 | Community Members | Meeting/Event | 3 | IPA Office |
| 10/19/2017 | (IPAAC) Independent Police Auditors Advisory Committee | Meeting/Event | 3 | IPA Office |
| 10/20/2017 | Cindy Chavez | Meeting/Event | 3 | Supervisor's Office |
| 10/20/2017 | (MHAP) Mental Health Advocacy Project | Meeting/Event | 3 | Law Foundation |
| 10/23/2017 | African American Community Service Stay Woke & Wake Up | Meeting/Event | 3 | SJSU UnionTheatre |
| 10/28/2017 | Public Defender | Meeting/Event | 3 | IPA |
| 10/28/2017 | Working Partnerships | Meeting/Event | 3 | 101 E Santa Clara St. |
| 10/28/2017 | (SIREN) Services, Immigrants Rights, & Education | Meeting/Event | 3 | Downtown |
| 10/28/2017 | (ACLU) Chapter American Civil Liberties Union | Meeting/Event | 3 | San José |
| 10/28/2017 | 100 Black Women | Meeting/Event | 3 | San José |
| 10/28/2017 | SURJ Sacred Heart Showing Up For Racial Justice | Meeting/Event | 3 | San José |
| 10/28/2017 | Peace and Justice Center | Meeting/Event | 3 | San José |
| 10/28/2017 | Vietnamese American Roundtable | Meeting/Event | 3 | San José |
| 11/7/2017 | Community Member | Meeting/Event | 3 | IPA Office |
| 11/15/2017 | (ACLU) American Civil Liberties Union Chapter | Presentation | 3 | 1180 Coleman Ave. |
| 11/15/2017 | On The Table | Meeting/Event | 3 | Social Policy Coffee Shop |
| 11/15/2017 | Raza Lawyers | Presentation | 3 | Taqueria Corona |
| 11/16/2017 | (AACSA) African American CommunityService Agency | Meeting/Event | 3 | AACSA |
| 11/17/2017 | Public Defender | Meeting/Event | 3 | Café Devine |
| 11/22/2017 | JOP | Meeting/Event | 3 | Vito's Trattoria |
| 12/4/2017 | (PACT) People Active In The Community Together | Meeting/Event | 3 | IPA Office |
| 12/7/2017 | (BLKC) Black Leadership Kitchen Cabinet | Meeting/Event | 3 | VTA |
| 2/13/2017 | Berryessa Citizens Advisory Council | Meeting/Event | 4 | Berryessa Community Center |

| Date | Name | Type | District | Location/Notes |
|---|---|---|---|---|
| 9/25/2017 | PACT | Meeting/Event | 4 | Bible Way Church |
| 10/24/2017 | (PACT) People Acting In The Community Together | Presentation | 4 | |
| 11/2/2017 | Black Leadership Kitchen Cabinet | Meeting/Event | 4 | Bible Way Christian Center |
| 11/7/2017 | (BLKC) Black Leadership Kitchen Cabinet | Meeting/Event | 4 | Bible Way/IPA |
| 1/21/2017 | Community Trust in Policing Forum | Meeting/Event | 5 | Mexican Heritage Plaza |
| 2/14/2017 | (FLY) Fresh Lifelines for Youth | Presentation | 5 | Hank Lopez Community Center |
| 3/7/2017 | Mt. Pleasant Elementary School | OMD | 5 | Mt. Pleasant Elementary School |
| 3/29/2017 | Lucy Rivera | OMD | 5 | 1726 Hillmont Ave S.J. |
| 4/12/2017 | Clean Slate | Presentation | 5 | Hank Lopez Community Center |
| 4/28/2017 | SJ Works Graduation | Meeting/Event | 5 | National Hispanic University |
| 6/9/2017 | Tropicana Center | OMD | 5 | Tropicana Center |
| 6/14/2017 | Aptitud Community Academy | Meeting/Event | 5 | Goss |
| 8/1/2017 | National Night Out | Meeting/Event | 5 | Emma Prusch Park |
| 8/2/2017 | Clean Slate Program | Presentation | 5 | Hank Lopez Community Center |
| 8/3/2017 | Job Corp | Presentation | 5 | Job Corp East Hills |
| 8/9/2017 | Mayor's Gang Prevention Taskforce | Meeting/Event | 5 | 4600 Hyland Ave |
| 8/22/2017 | Job Corp 2 | Presentation | 5 | East Hills Job Corp |
| 9/27/2017 | Dr. Roberto Cruz-Alum Rock Library | OMD | 5 | 3090 Alum Rock Ave. |
| 11/8/2017 | Mayor's Gang Prevention | Meeting/Event | 5 | St. John Vianney Catholic Church |
| 11/8/2017 | Somos Mayfair | Meeting/Event | 5 | Somos Mayfair |
| 11/15/2017 | Clean Slate | Presentation | 5 | Hank Lopez Community Center |
| 12/13/2017 | Mayor's Gang Prevention Task Force | Meeting/Event | 5 | East Hills Dr |
| 3/12/2017 | Stone Church of Willow Glen | Meeting/Event | 6 | Stone Church of Willow Glen |
| 3/17/2017 | Girl Scouts: Got Choices | Presentation | 6 | Lincoln High School |
| 3/23/2017 | Girl Scouts: Got Choices | Presentation | 6 | Willow Glen High School |
| 4/14/2017 | Senior Walk Valley Fair | Meeting/Event | 6 | Valley Fair |
| 10/16/2017 | Coalition for Justice & Accountability | Presentation | 6 | 2400 Moorpark Ave |
| 10/17/2017 | Community Member | Meeting/Event | 6 | DeBug |
| 10/18/2017 | (FLY) Fresh Lifelines for Youth Grove High School | Presentation | 6 | Del Mar |
| 10/25/2017 | Bench Bar Media | Meeting/Event | 6 | Three Flames Restaurant |
| 10/28/2017 | Momentum | Meeting/Event | 6 | Momentum 2001 The Alameda |
| 10/28/2017 | De Bug | Meeting/Event | 6 | De Bug |
| 11/20/2017 | Late Night Basketball: City of San José Parks & Rec | Presentation | 6 | Bascom Community Center |
| 11/20/2017 | Bascom Community Center | OMD | 6 | Bascom Community Center |
| 2/13/2017 | (FLY) Fresh Lifelines for Youth | Presentation | 7 | Andrew Hill |
| 2/16/2017 | Opportunity Court | Meeting/Event | 7 | Connexion Story Rd |
| 2/24/2017 | La Raza Roundtable | Meeting/Event | 7 | Center for Training & Careers |

| Date | Name | Type | District | Location/Notes |
|---|---|---|---|---|
| 2/25/2017 | Black History Month | Presentation | 7 | Seven Trees Community Center |
| 3/16/2017 | Opportunity Court | Meeting/Event | 7 | Conxion |
| 3/17/2017 | ConXion | OMD | 7 | 749 Story Rd #10 |
| 4/26/2017 | Girl Scouts: Got Choices | Presentation | 7 | Andrew Hill High School |
| 4/28/2017 | La Raza Roundtable | Meeting/Event | 7 | Center for Training & Careers |
| 5/18/2017 | Opportunity Court | Meeting/Event | 7 | ConXion |
| 5/19/2017 | Senter Coin-Op Laundromat | Meet/Greet | 7 | 2310 Senter Rd |
| 5/19/2017 | Senter Coin-Op Laundromat | Meet/Greet | 7 | 2266 Senter Rd |
| 5/19/2017 | DMV San José | Meet/Greet | 7 | 2222 Senter Rd. |
| 5/19/2017 | El Sonorense | Meet/Greet | 7 | Tropicana Shopping Center |
| 5//26/17 | La Raza Roundtable | Meeting/Event | 7 | Center for Training & Careers |
| 6/30/2017 | La Raza Roundtable | Meeting/Event | 7 | Center for Training & Careers |
| 7/28/2017 | La Raza Roundtable | Meeting/Event | 7 | Center for Training & Careers |
| 8/4/2017 | Department of Motor Vehicles | Meeting/Event | 7 | DMV Senter Rd |
| 9/21/2017 | Opportunity Court | Meeting/Event | 7 | 749 Story Rd |
| 9/29/2017 | La Raza Roundtable | Meeting/Event | 7 | Center for Training & Careers |
| 10/2/2017 | (FLY) Fresh Lifelines for Youth | Presentation | 7 | Andrew Hill High School |
| 10/27/2017 | La Raza Roundtable | Meeting/Event | 7 | Conxion |
| 11/13/2017 | (FLY) Fresh Lifelines for Youth | Presentation | 7 | Snell Alternative School |
| 11/15/2017 | (FLY) Fresh Lifelines for Youth - Snell Cohort B | Presentation | 7 | Snell & Capitol |
| 11/17/2017 | La Raza Roundtable | Meeting/Event | 7 | ConXion |
| 3/2/2017 | Alpha Charter School | OMD | 8 | Overfelt High School |
| 6/8/2017 | Senior Walk | Meeting/Event | 8 | Eastridge Mall |
| 6/20/2017 | Viva Parks | Meeting/Event | 8 | Welch Park |
| 9/27/2017 | Evergreen Library | OMD | 8 | 2635 Aborn Rd. |
| 10/19/2017 | FLY Alpha School | Presentation | 8 | Overfelt High School Campus |
| 2/11/2017 | State of the City | Meeting/Event | 10 | Gunderson High School |
| 2/24/2017 | Senior Walk | Meeting/Event | 10 | Oakridge Mall |
| 8/1/2017 | National Night Out | Meeting/Event | 10 | Almaden Hills United Methodist Church |
| 10/5/2017 | Black Leadership Kitchen Cabinet | Meeting/Event | 10 | Santa Clara County Water District |
| 10/28/2017 | (NAACP) National Assoc. For The Advancement of Color People | Meeting/Event | 10 | Santa Clara Water District |
| 2/6/2017 | Firehouse Community Panel | Meeting/Event | ocl | Santa Clara University Vari Hall |
| 2/15/2017 | (FLY) Fresh Lifelines for Youth | Presentation | ocl | Cal Hills High School |
| 11/9/2017 | PACT Annual Leadership Luncheon | Meeting/Event | ocl | Santa Clara Convention Center |
| 11/14/2018 | Cambrian Branch Library | OMD | 9 | Cambrian Library |
| 11/30/2017 | Regional NACOLE Conference | Meeting/Event | OCL | Denver Colorado |

# Appendix C

## San José Municipal Code Chapter 8.04 and San José City Charter §8.09

## SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04

### OFFICE OF THE INDEPENDENT POLICE AUDITOR

**8.04.010 Duties and responsibilities.**

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

A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

1. The minimal number of complaints to be reviewed annually are:
   a. All complaints against police officers which allege excessive or unnecessary force; and
   b. No less than twenty percent of all other complaints.

2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.

3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.

4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.

B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of officer involved shootings.

C. Community function.

1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.

D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:

1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.

2. Analyze trends and patterns.
3. Make recommendations.

E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer.
(Ords. 25213, 25274, 25922.)

**8.04.020 Independence of the police auditor.**

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

B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in section 8.04.010, above.
(Ord. 25213.)

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# SAN JOSÉ CITY CHARTER §809

## OFFICE OF THE INDEPENDENT POLICE AUDITOR

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

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

(b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
(c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.
*Added at election November 5, 1996*

**§ 809.1. Independent Police Auditor; Power Of Appointment**

(a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a “professional” or “technical” employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.

(b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.

(c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

*Added at election November 5, 1996*

# Appendix D

## California Penal Code §832.5 and §832.7

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

(a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of section 832.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with section 6250) of Division 7 of Title 1 of the Government Code) and section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) “Unfounded” means that the investigation clearly established that the allegation is not true.

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

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# California Penal Code §832.7

**§ 832.7. Confidentiality of peace officer records: Exceptions**

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

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

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

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

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

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

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

# Appendix E:
# IPA Statement of Values

## *Office of the Independent Police Auditor*

## STATEMENT OF VALUES

I acknowledge that as a member of the staff of the Office of the Independent Police Auditor for the City of San José, I am expected to demonstrate the highest standards of personal integrity and honesty in all activities and in all settings in order to inspire public confidence and trust in the Office. My conduct in both my official and private affairs must be above reproach and my standards, views and behavior will comply with the following values:

1. **Integrity:** Demonstrate the highest work ethic; be honest and accountable.

2. **Independence:** Perform work that is free from actual influence or the appearance of influence of any individual or group; adhere to the No-Gift Policy of the Office.

3. **Confidentiality:** Understand and appreciate the critical importance of confidentiality to the Office; demonstrate unwavering adherence to the rules of confidentiality at all times.

4. **Respect:** Treat everyone fairly and be considerate of diverse views.

5. **Objectivity:** Be equitable, fair and neutral in the evaluation of complaints and issues considered by this Office.

6. **Professionalism:** Be committed to the mission of the IPA Office; refrain from making statements which may be viewed as compromising the independence and integrity of the IPA Office, its work, and its staff.

*Adopted July, 2010 – IPA and Staff*

# Appendix F: Frequently Asked Questions

**What is the IPA?**

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

The IPA is Aaron B. Zisser, who has a staff of five people.

**Why does the Office of the IPA matter?**

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

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

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

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

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

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

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

**What is a Conduct Complaint?**

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

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

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

**Does it matter whether I file a Conduct Complaint?**

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

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

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

No, you don't. While it's useful information, if

you don't have that information, you can still file your complaint.

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

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

### Who can file a Conduct Complaint with the IPA?

Any member of the public can file a Conduct Complaint about a SJPD officer. You can file a Conduct Complaint about something that happened to you, or about something that happened to somebody else. You can live in San José or outside the city. You can be a U.S. citizen, or you can be an immigrant – with or without papers. You can be a young person or you can be an adult.

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

### How do I file a complaint?

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

### What happens after I file a Conduct Complaint?

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

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

The IPA gets involved again at this stage. The IPA audits the Department's investigations and findings. The IPA and his staff review the investigations by the Department to ensure that those investigations are **thorough, objective, and fair**. Sometimes the IPA agrees with the findings and sometimes the IPA disagrees. When there is a disagreement, the IPA can discuss the matter with IA. Sometimes this causes the Department to re-open the investigation or change its findings. The IPA can also bring the disagreement to the

attention of the Police Chief and the City Manager. You can read the IPA's Year-End Report for more details about the complaint process.

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

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

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

**Is the process fair to the officers?**

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

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

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

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

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

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

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

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

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

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

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

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

You can help us spread the word by inviting us to give presentations in your communities. Also, there is a group who advises the IPA: IPAAC (IPA Advisory Council). You can visit the IPA website to learn more about the IPAAC and how you can get involved.

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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**Concerns about a San José Police Officer?**
**¿Problema con un oficial de policía de San José?**
**Bạn có vấn đề với cảnh sát San José?**

**Call 408.794.6226**
**Llame al 408.794.6226**
**Hãy gọi 408.794.6226**

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

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