

San Francisco Bay Area Rapid Transit District

300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688



COMMITTEE MEETING AGENDA

Monday, May 10, 2021

4:00 PM

via Teleconference Only.

BART Police Citizen Review Board

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

NOTICE OF MEETING AND AGENDA
BART POLICE CITIZEN REVIEW BOARD

May 10, 2021
4:00 p.m.

A regular meeting of the BART Police Citizen Review Board (BPCRB) will be held on Monday, May 10, 2021, at 4:00 p.m.

Please note, pursuant to Governor Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate, public participation for this meeting will be via teleconference only.

Presentation materials will be available at least 72 hours prior to the BPCRB meeting at <https://bart.legistar.com/Calendar.aspx> (click on "Agenda").

You may listen to the Meeting by calling 1 833-827-2778 and entering access code 482 520 79#.

We strongly encourage public comments to be submitted via email. You may submit comments via email to CitizenReviewBoard@bart.gov using "public comment" as the subject line. Your comment will be provided to the Board and will become a permanent part of the file. Please submit your comments as far in advance as possible. Emailed comments must be received before 1:00 p.m. in order to be included in the record.

Individuals may also be given an opportunity by the moderator to speak on any item on the agenda by calling (833) 827-2778 and entering access code 482 520 79# in advance of the item. Public comment will be limited to three (3) minutes per person. Your phone will be muted until you are called upon.

AGENDA

1. Call To Order
 - a. Roll Call.
 - b. Pledge of Allegiance.
2. Introduction of Pedro Babiak, New BPCRB Member for District 1.
3. Announcement from April 12, 2021, Closed Session, if any.
4. Approval of Minutes of the Meeting of April 12, 2021. For Discussion and Action.
Attachments: [Approval of Minutes of the Meeting of April 12, 2021](#)
5. Chief of Police Report. For Discussion and Action.
 - a. BART Police Department's Monthly Reports for March 2021.**Attachments:** [BART Police Department's Monthly Reports for March 2021.](#)
6. Independent Police Auditor's Report. For Discussion and Action.
 - a. Office of the Independent Police Auditor (OIPA) Monthly Report for April 2021.**Attachments:** [Office of the Independent Police Auditor \(OIPA\) Monthly Report for April 2021.](#)
7. Discussion of Lexipol Policy 419 - Fare Evasion. (Continued from the April 12, 2021 BPCRB meeting). For Discussion and Action.
Attachments: [Lexipol Policy 419 – Fare Evasion.](#)
8. Discussion of Policy Standing Committee Updates. For Discussion and Action.
 - a. Lexipol Policy 300 - Use of Force.
 - b. Lexipol Policy 402 - Bias-Based Policing.**Attachments:** [Lexipol Policy 300 – Use of Force.](#)
[Lexipol Policy 402 – Bias-Based Policing.](#)
9. Request for Internal Affairs Report #2020-008 (OIPA#20-01) to be Scheduled for a Future Closed Session (Chair Rizk's Request). For Discussion and Action.
10. Public Comment. (Limited to 3 minutes per speaker.) (An opportunity for members of the public to address the BPCRB on matters under their jurisdiction and not on the agenda.)

11. Closed Session.

a. To Consider Public Employee Discipline/Dismissal/Release in OIPA Case #20-20. Govt. Code §54957.

All BPCRB closed session votes will be announced at the beginning of the next regular meeting.

12. Adjournment.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

Pursuant to Govt. Code §54953.5, the audio recording of the open session portions of this public meeting shall be subject to inspection pursuant to the California Public Records Act (CPRA). Requests for information under the CPRA should be filed with the BART Office of the District Secretary.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
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BART Police Citizen Review Board Meeting Minutes
Monday, April 12, 2021

A regular meeting of the BART Police Citizen Review Board (BPCRB) was held Monday, April 12, 2021, convening at 4:04 p.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate. The meeting was called to order by Chairperson David Rizk; Mag Tatum, Recording Secretary.

Chairperson David Rizk gave instructions on the virtual meeting, accessing the presentation materials online, Public Comment, and Members' remarks.

1. Call to Order.

The regular meeting was convened at 4:04 p.m. by Chairperson David Rizk.

Members Present:

Members Erin Armstrong, Todd Davis, Christina Gomez, Pete Longmire, Kenneth Loo, Les Mensinger, Laura Pagey, George Perezvelez, Darren White, William White, and David Rizk.

Absent:

None.

The Pledge of Allegiance was recited.

2. Introduction of Laura Pagey, New BPCRB Member for BART Police Associations.

Chairperson Rizk introduced Laura Pagey, the New BPCRB Member for BART Police Associations. Member Pagey commented and provided a brief introduction.

Member Todd Davis and Christina Gomez entered the meeting.

3. Approval of Minutes of the Meetings of March 8, 2021 (Special) and March 8, 2021 (Regular).

Member Mensinger moved that the Minutes of the Meetings of March 8, 2021 (Special) and March 8, 2021 (Regular) be approved. Member Armstrong seconded the motion, which carried by a unanimous roll call vote. Ayes – 7: Members Armstrong, Longmire, Loo, Mensinger, Perezvelez, W. White, and Rizk. Noes – 0. Abstain – 1: Member Pagey. Absent – 3: Members David, Gomez, and D. White.

4. Chief of Police's Reports.

a. BART Police Department's Monthly Reports for February 2021.

Chief of Police Ed Alvarez presented the BPD Monthly Reports for February 2021. The reports were discussed.

Member Darren White entered the meeting.

5. Independent Police Auditor's Report.

a. Office of the Independent Police Auditor (OIPA) Monthly Report for March 2021.

Independent Police Auditor Russell Bloom presented the OIPA Monthly Report. The report was discussed.

6. Discussion of Lexipol Policy 419 - Fare Evasion.

Chairperson Rizk presented the Lexipol Policy 419 - Fare Evasion. The report was discussed and continued to a future meeting.

7. Implementation of Standing Subcommittee on BART Citizen Oversight Model. (Member Perezvelez's Request)

Chairperson Rizk presented the Implementation of the Standing Subcommittee on BART Citizen Oversight Model and selected Members George Perezvelez and William White as Co-Chairs. The item was discussed.

Chair Rizk moved that the Standing Subcommittee on the BART Citizen Oversight Model be created and approved. Member Mensinger seconded the motion, which was carried by a unanimous roll call vote. Ayes – 9: Members Armstrong, Davis, Gomez, Longmire, Mensinger, Pagey, Perezvelez, W. White, and Rizk. Noes – 0. Abstain – 0. Absent – 2: Members Loo and D. White.

8. Implementation of Ad Hoc Working Group on Fare Evasion (Chair Rizk's Request).

Chairperson Rizk presented the Implementation of the Ad Hoc Working Group on Fare Evasion. The item was discussed.

Chairperson Rizk moved that the Ad Hoc Working Group on Fare Evasion, including non-BPCRB members, be created and approved. Member Davis seconded the motion, which was carried by a unanimous roll call vote. Ayes – 9: Members Armstrong, Davis, Gomez, Longmire, Mensinger, Perezvelez, D. White, W. White, and Rizk. Noes – 0. Abstain – 1: Member Pagey. Absent – 1: Member Loo.

9. Public Comment.

Chair Rizk called for general Public Comment. Aleta Dupree and Director Robert Raburn addressed the Board.

10. Closed Session.

a. To Consider Public Employee Discipline/Dismissal/Release in OIPA Case Numbers #20-19 and #20-23. Govt. Code §54957.

Chairperson Rizk announced that the Board would enter closed session under Item 10-A (Public Employee Discipline/Dismissal/Release in OIPA Case Numbers #20-19 and #20-23) of the Regular Meeting agenda and that the closed session votes, if any, would be announced in open session at the beginning of the next regular BPCRB meeting.

11. Adjournment.

The Meeting adjourned at 5:23 p.m.

BART POLICE DEPARTMENT



March 2021 MONTHLY REPORT



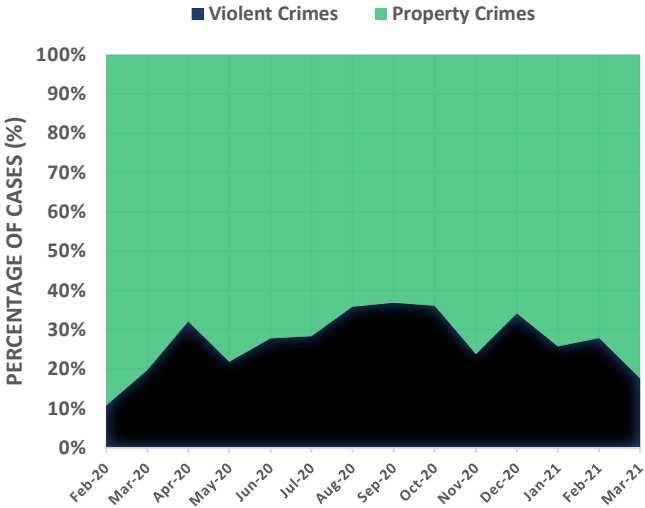
Bay Area Rapid Transit Police Department

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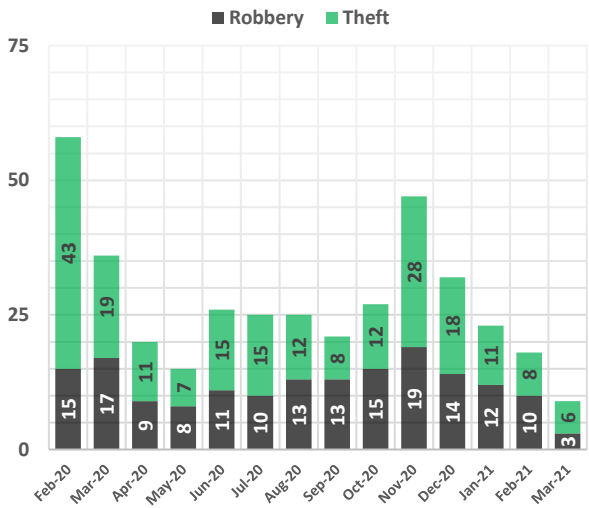
March 2021 Performance Measurement Review - **Systemwide**

PART 1 UCR Crime	2015	2016	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	1	1	0	3	2	0	0	0	-%
Rape	3	4	8	3	7	5	2	0	-100%
Robbery	161	232	290	345	378	252	82	41	-50%
Aggravated Assault	73	93	125	130	112	95	23	10	-57%
Violent Crime Subtotal	238	330	423	481	499	352	107	51	-52%
Burglary (Structural)	4	12	15	18	16	12	6	0	-100%
Larceny & Auto Burglary	2,325	2,217	2,593	2,565	3,177	1,038	541	156	-71%
Auto Theft	480	480	420	348	247	100	48	12	-75%
Arson	0	1	4	4	4	4	2	0	-100%
Property Crime Subtotal	2,809	2,710	3,032	2,935	3,444	1,154	597	168	-72%
TOTAL	3,047	3,040	3,455	3,416	3,943	1,506	704	219	-69%

PART 1 CRIME OVERALL



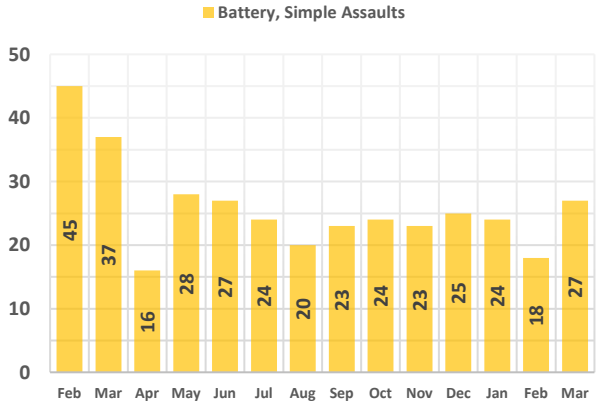
ELECTRONIC THEFT



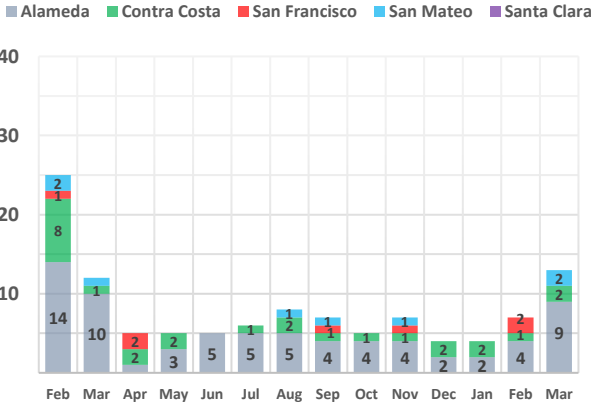
Part 1 Crimes: Top Five Stations

March 2021 A50/BFS E30/ATS A10/LMS R60/RIS M90/DCS
Full Year 2020 A30/COS A20/FVS M60/TFS M50/SSS A60/HAS

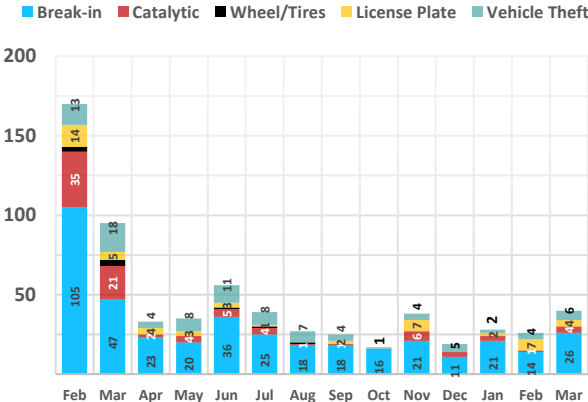
BATTERY & ASSAULT ON BART



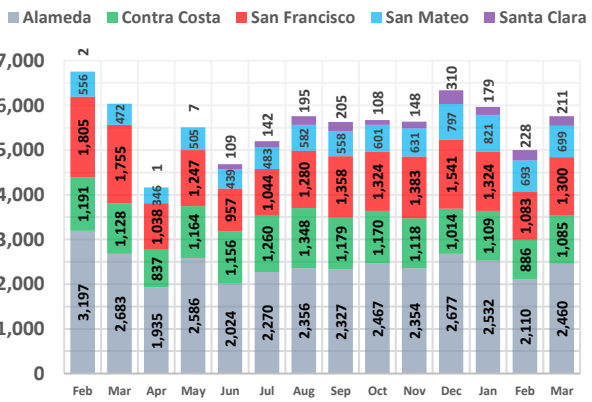
BICYCLE THEFT



VEHICLE CRIME



CALLS TO DISPATCH



Preface: The data is retrieved from the BART Police Database and remains unaudited until corrections. Numbers may differ from the reported data in the Uniform Crime Reporting (UCR) program.

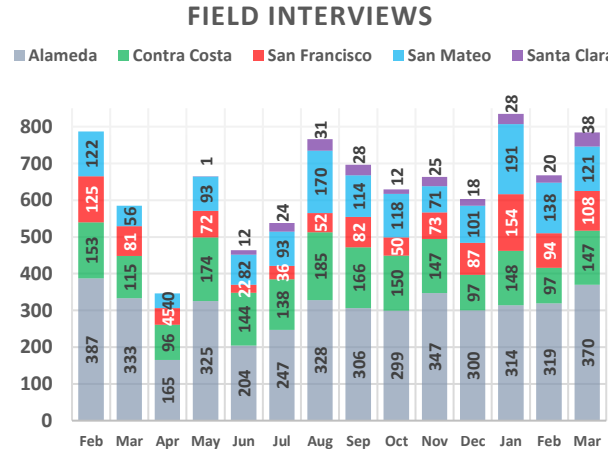
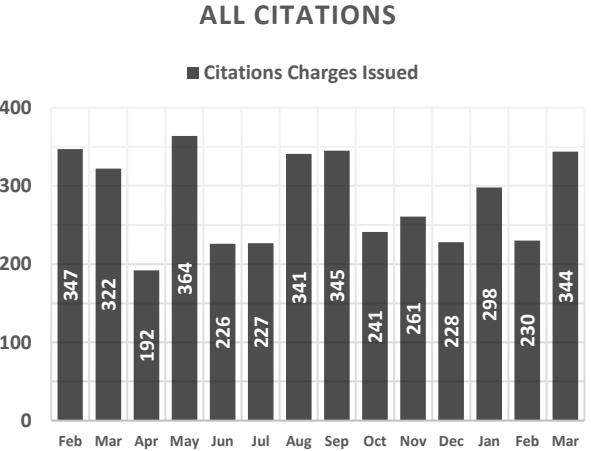
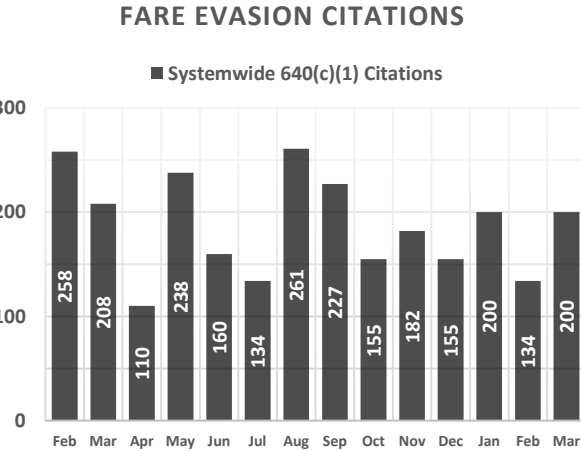
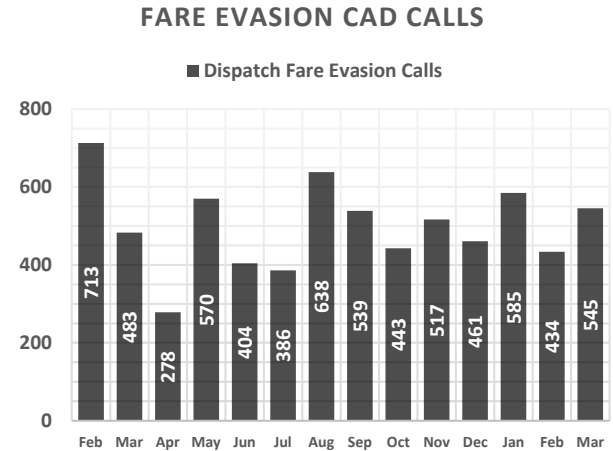
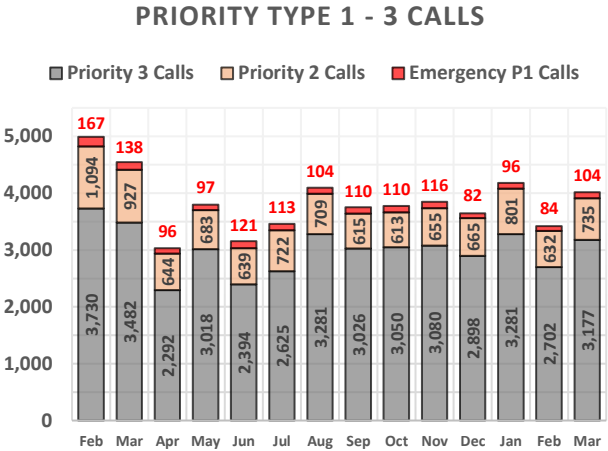
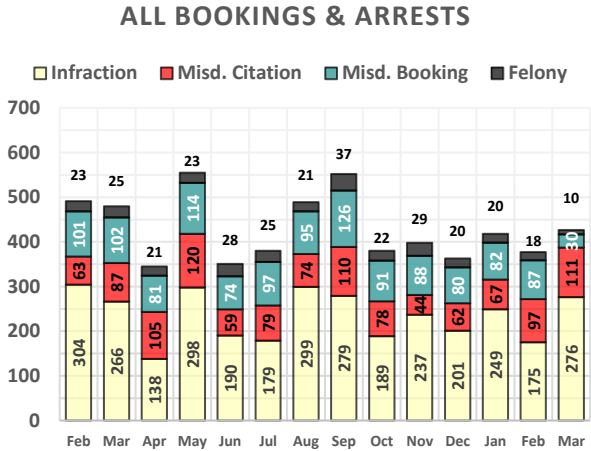
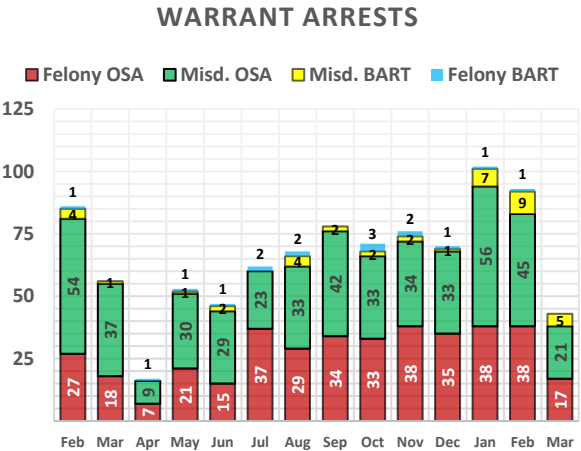
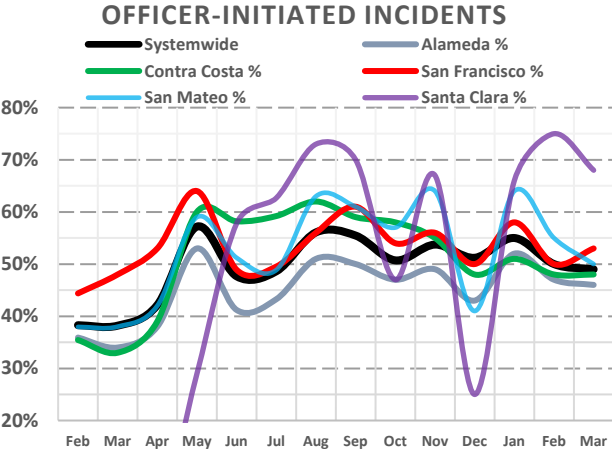
Late reporting, the reclassification or unbounding of crimes, can affect crime statistics. Overtime costs are projected numbers. Information in the on the Performance Measurements are subject to change.



Bay Area Rapid Transit Police Department

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March 2021 Performance Measurement Review - **Systemwide**



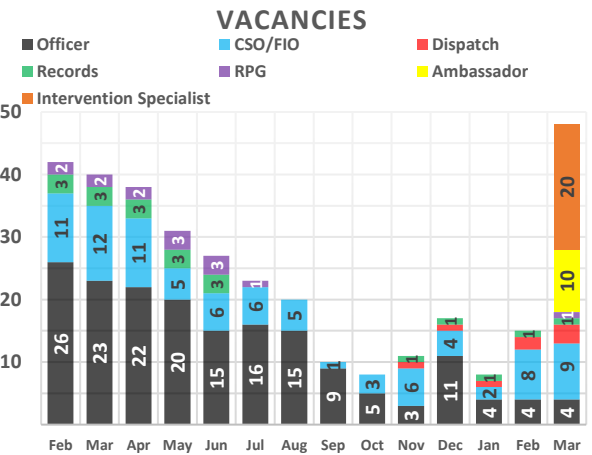
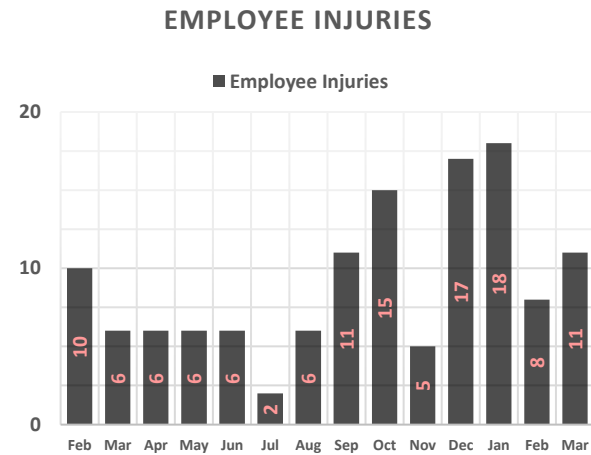
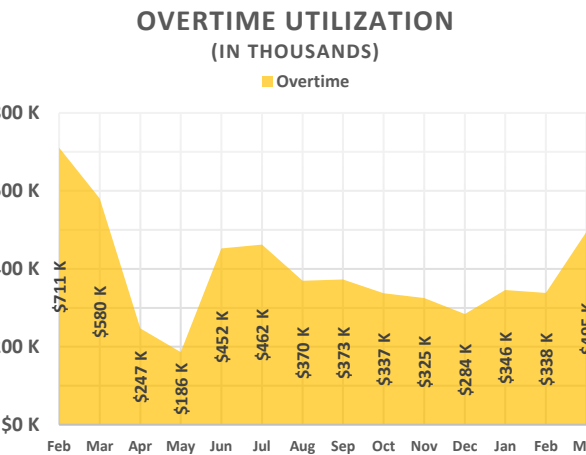
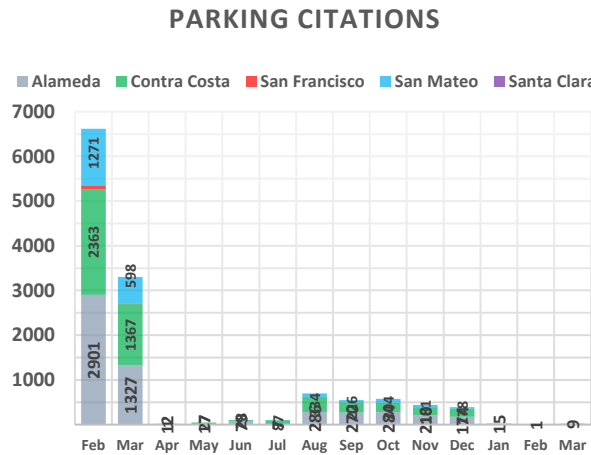
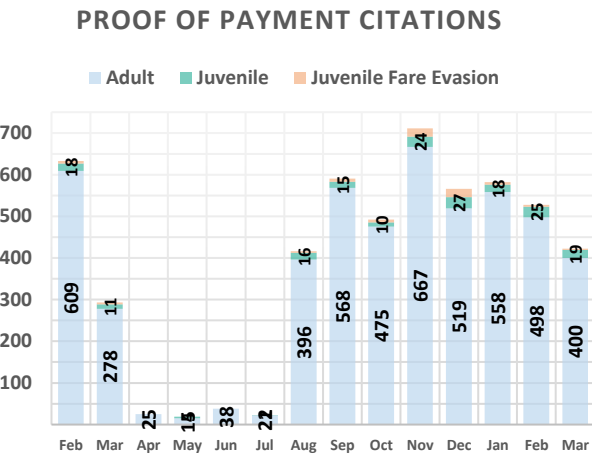
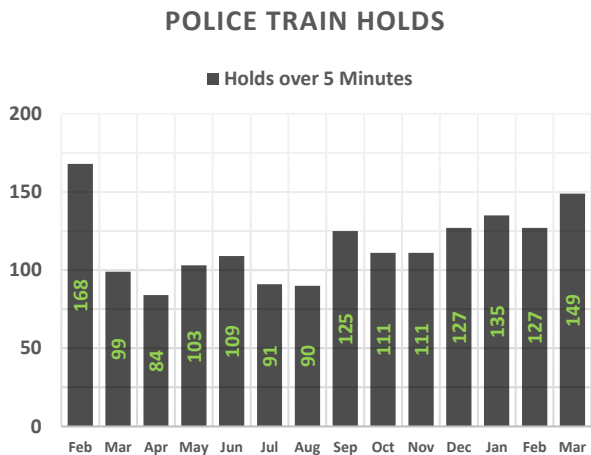
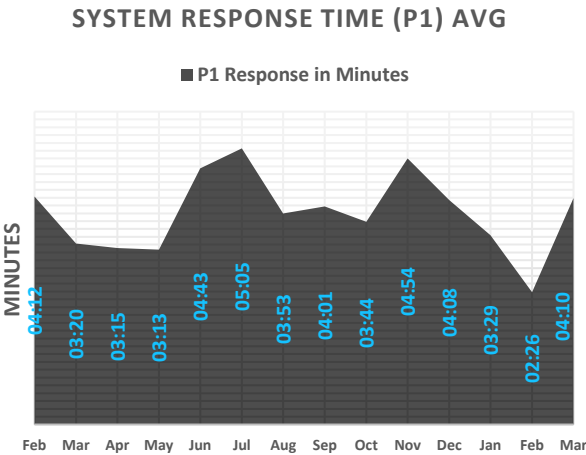
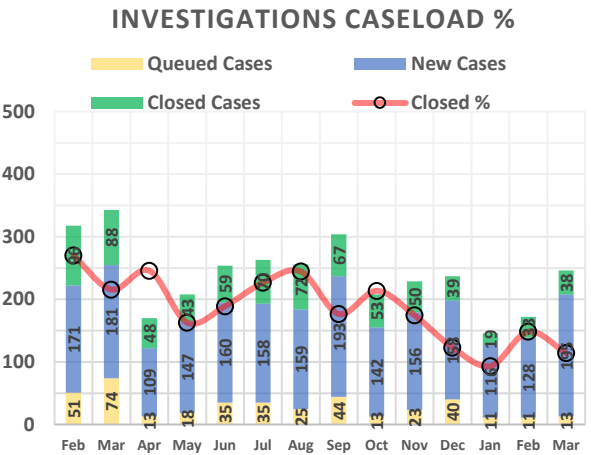
Preface: The data is retrieved from the BART Police Database and remains unaudited until corrections. Numbers may differ from the reported data in the Uniform Crime Reporting (UCR) program. Late reporting, the reclassification or unbounding of crimes, can affect crime statistics. Overtime costs are projected numbers. Information in the on the Performance Measurements are subject to change.



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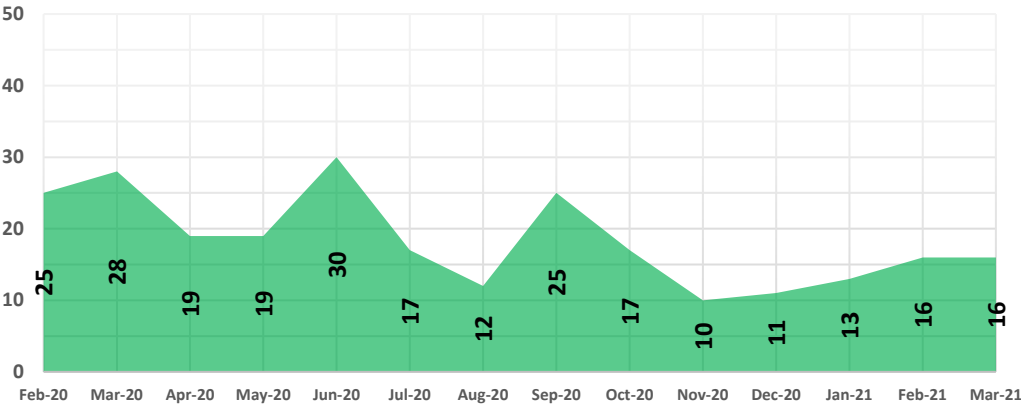


Bay Area Rapid Transit Police Department

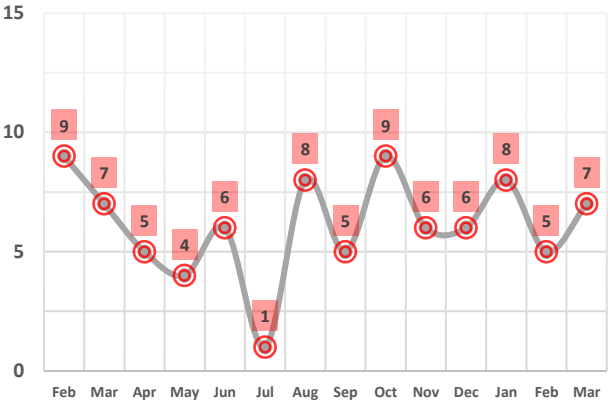
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March 2021 Performance Measurement Review - **Systemwide**

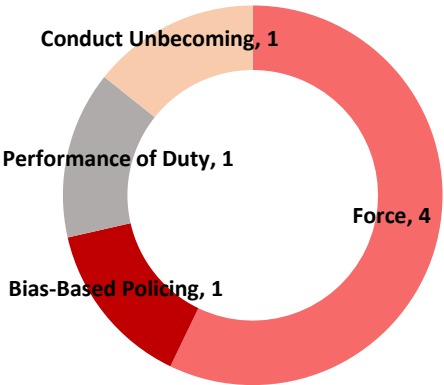
AB716 - PROHIBITION ORDERS



INTERNAL AFFAIRS COMPLAINTS

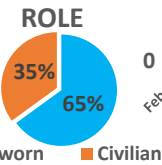
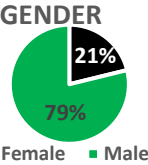
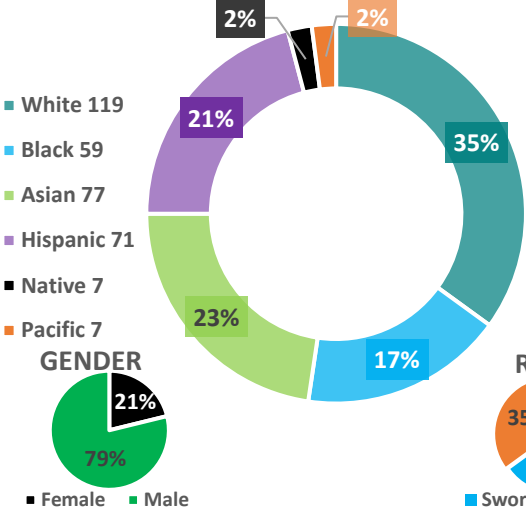


IA COMPLAINTS RECEIVED¹

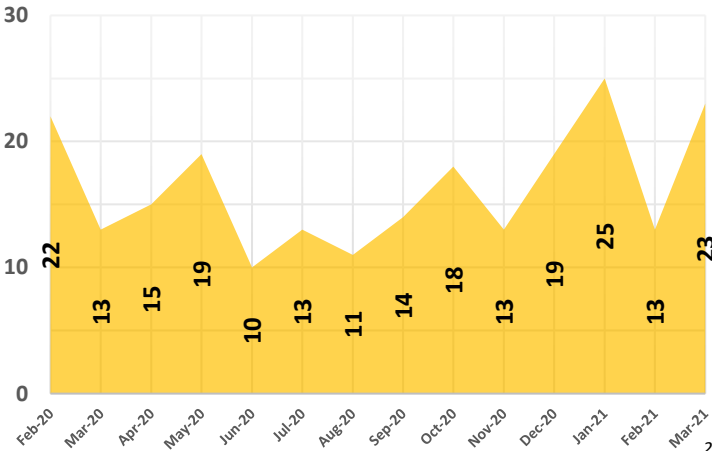


1: Each incident could contain more than one allegation. This chart reflects the most significant allegation per

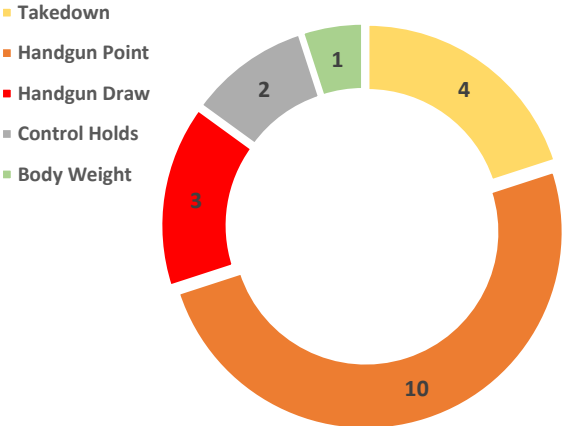
DEPARTMENT ETHNIC DIVERSITY



USE OF FORCE INCIDENTS

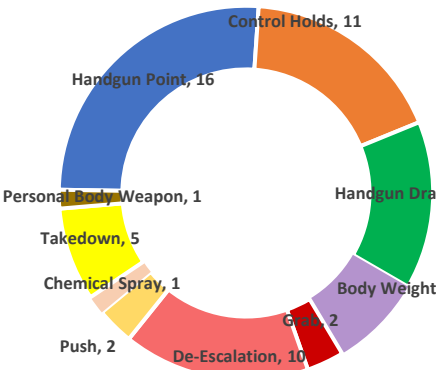


INCIDENT FORCE OPTIONS USED²



2: Some incidents involved the use of multiple force options. If two officers involved in the same incident used the same force option, this data would reflect both officers. As an example, if two officers used control holds in the same incident, this data would reflect two separate control holds.

TYPES OF FORCE USED³



3: Each incident could contain more than one force option. This chart reflects most significant force options used per incident.



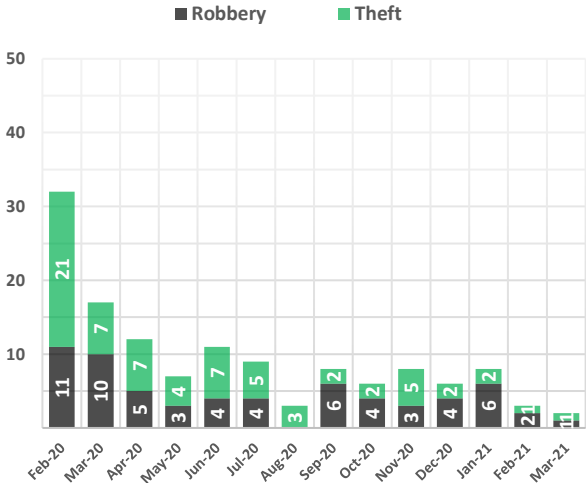
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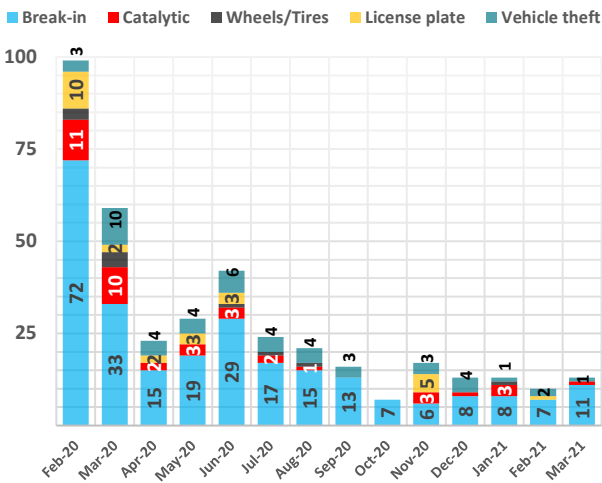
March 2021 Performance Measurement Review - Alameda County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	2	1	0	0	0	-%
Rape	6	3	2	3	2	0	-100%
Robbery	191	211	229	122	54	16	-70%
Aggravated Assault	73	87	52	54	12	4	-67%
Violent Crime Subtotal	270	303	284	179	68	20	-71%
Burglary (Structural)	8	11	13	9	5	0	-100%
Larceny & Auto Burglary	1,471	1,262	1,634	577	310	65	-79%
Auto Theft	266	201	149	56	24	4	-83%
Arson	2	3	5	2	1	0	-100%
Property Crime Subtotal	1,747	1,477	1,801	644	340	69	-80%
TOTAL	2,017	1,780	2,085	823	408	89	-78%

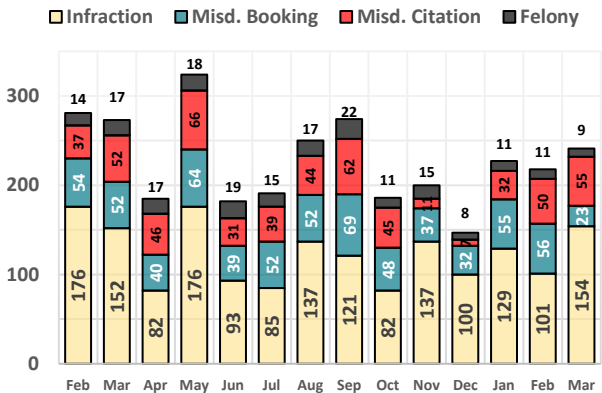
ALAMEDA ELECTRONIC THEFT



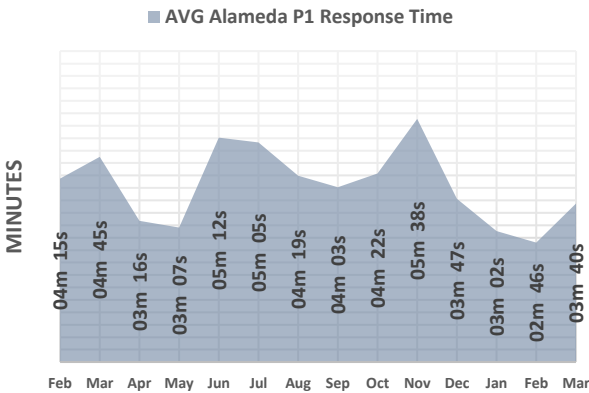
ALAMEDA VEHICLE CRIME



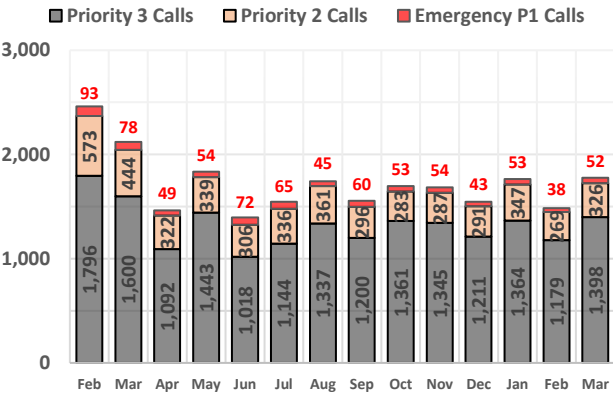
ALAMEDA ARRESTS & CITATIONS



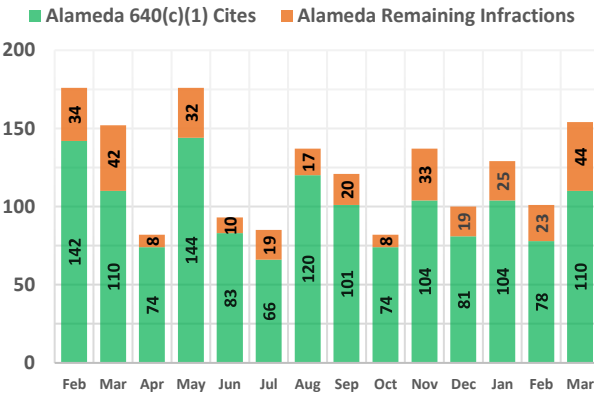
RESPONSE TIME (P1) AVG



ALAMEDA PRIORITY 1 - 3 CALLS



ALAMEDA FARE EVASION



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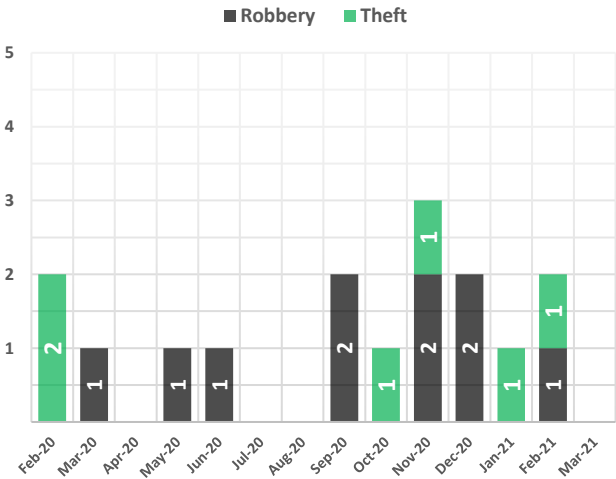
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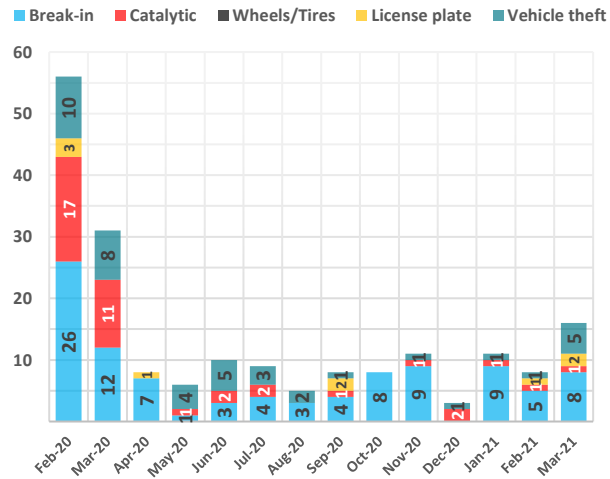
March 2021 Performance Measurement Review - Contra Costa County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	1	0	0	0	0	-%
Rape	1	0	4	0	0	0	-%
Robbery	35	29	34	23	7	7	0%
Aggravated Assault	23	20	23	17	4	5	+25%
Violent Crime Subtotal	59	50	61	40	11	12	+9%
Burglary (Structural)	2	1	2	1	0	0	-%
Larceny & Auto Burglary	675	669	592	202	117	40	-66%
Auto Theft	134	124	81	40	23	7	-70%
Arson	3	1	0	0	0	0	-%
Property Crime Subtotal	814	795	675	243	140	47	-66%
TOTAL	873	845	736	283	151	59	-61%

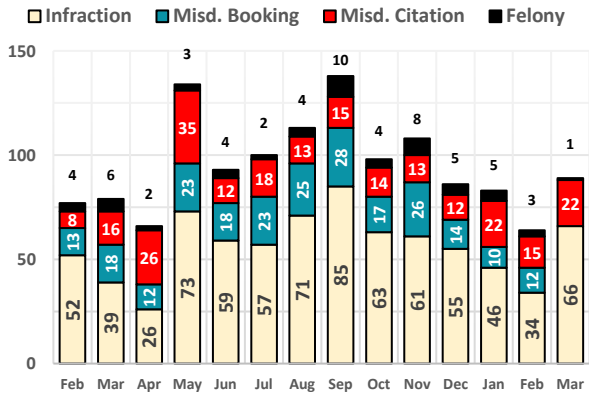
CONTRA COSTA ELECTRONIC THEFT



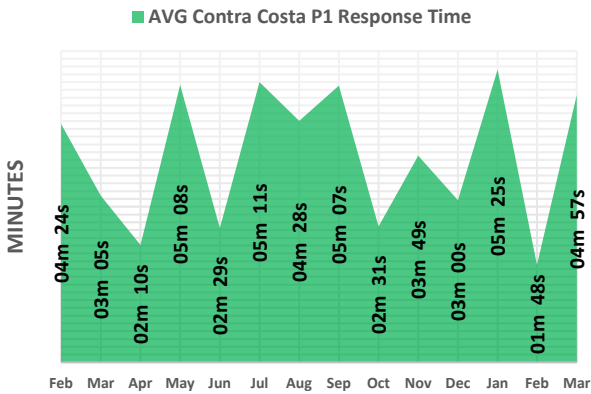
CONTRA COSTA VEHICLE CRIME



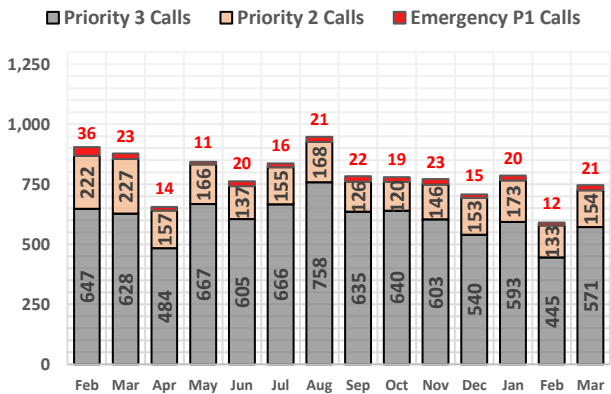
COCO ARRESTS & CITATIONS



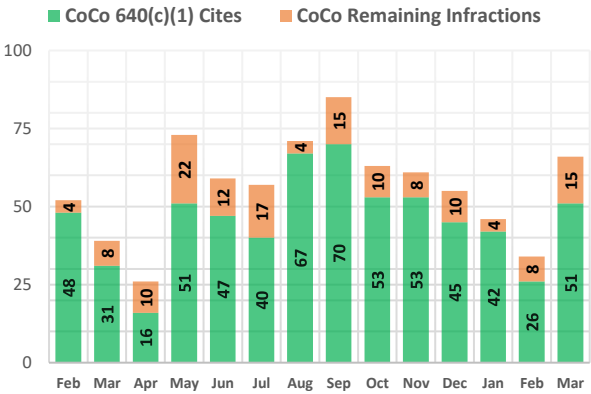
RESPONSE TIME (P1) AVG



COCO PRIORITY 1 - 3 CALLS



COCO FARE EVASION



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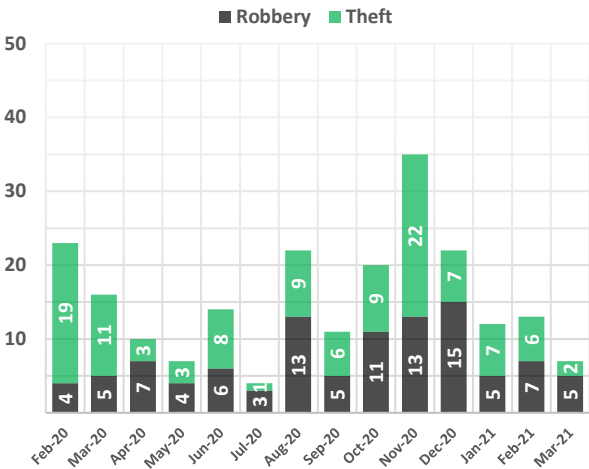
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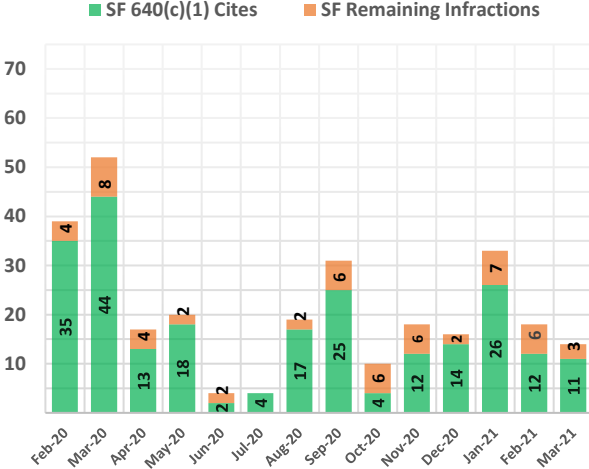
March 2021 Performance Measurement Review - San Francisco County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	0	0	0	0	0	-%
Rape	0	0	0	4	0	0	-%
Robbery	49	97	104	101	17	16	-6%
Aggravated Assault	23	18	28	19	5	2	-60%
Violent Crime Subtotal	72	115	132	124	22	18	-18%
Burglary (Structural)	5	6	4	1	1	0	-100%
Larceny & Auto Burglary	244	473	619	200	92	27	-71%
Auto Theft	2	1	1	0	0	0	-%
Arson	0	0	0	1	0	0	-%
Property Crime Subtotal	251	480	624	202	93	27	-71%
TOTAL	323	595	756	326	115	45	-61%

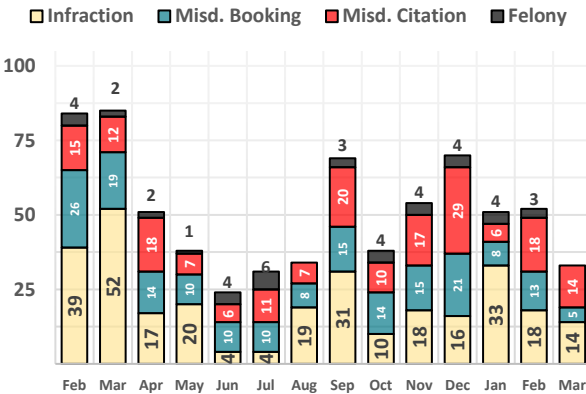
SAN FRANCISCO ELECTRONIC THEFT



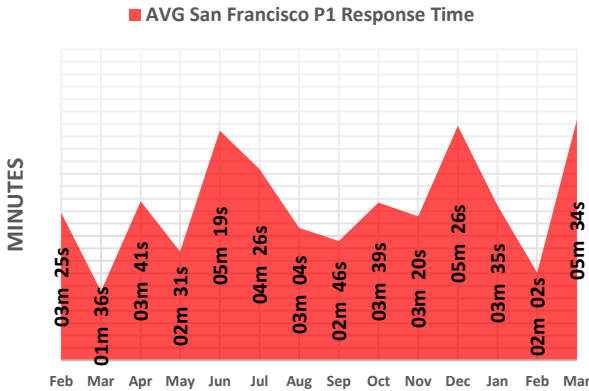
SAN FRANCISCO FARE EVASION



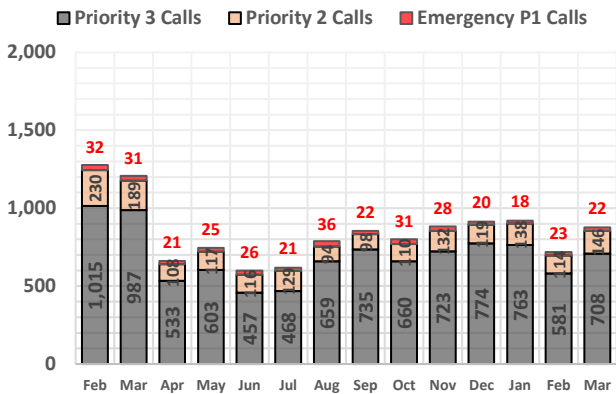
SF ARRESTS & CITATIONS



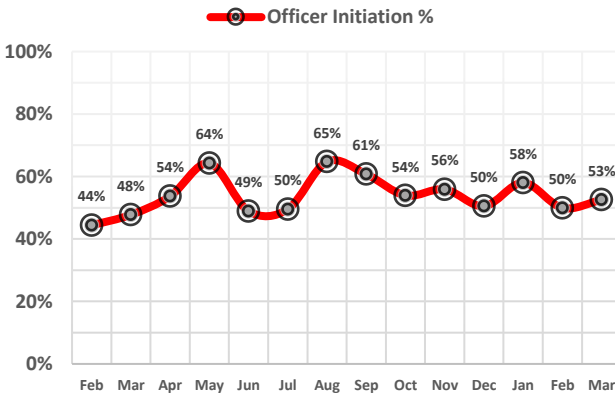
RESPONSE TIME (P1) AVG



SF PRIORITY 1 - 3 CALLS



SF OFFICER-INITIATED INCIDENTS



Preface: The data is retrieved from the BART Police Database and remains unaudited until corrections. Numbers may differ from the reported data in the Uniform Crime Reporting (UCR) program.

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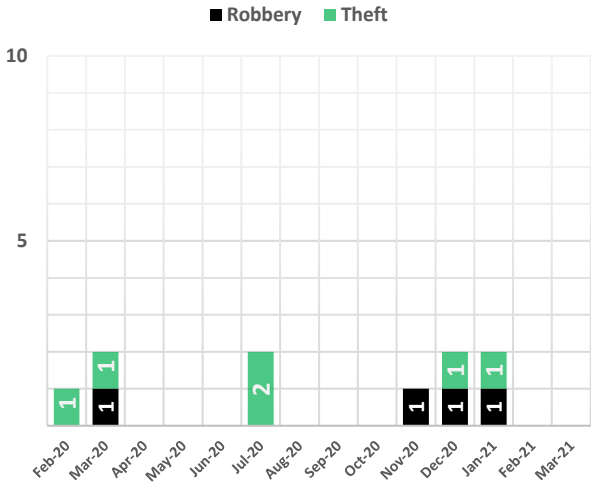
Bay Area Rapid Transit Police Department

101 8th St, Oakland, CA, 94607 (510) 464-7000 www.bart.gov/police

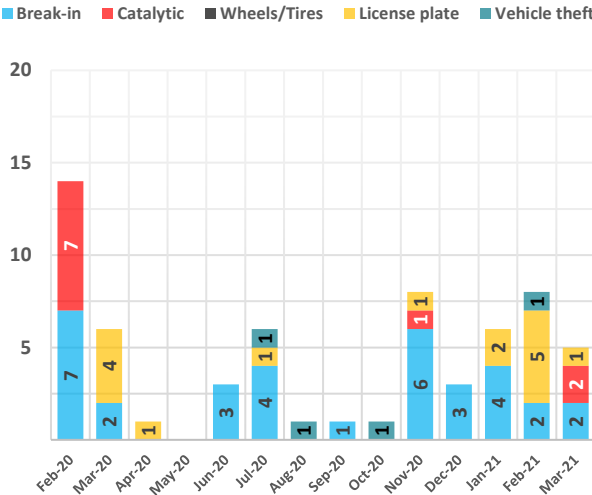
March 2021 Performance Measurement Review - **San Mateo County**

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2019	YTD 2020	PCT %
Homicide	0	0	0	0	0	0	-%
Rape	1	0	1	1	0	0	-%
Robbery	15	8	13	6	4	2	-50%
Aggravated Assault	6	5	8	4	2	2	0%
Violent Crime Subtotal	22	13	22	11	6	4	-33%
Burglary (Structural)	0	0	0	1	0	0	-%
Larceny & Auto Burglary	208	161	332	75	38	24	-37%
Auto Theft	18	19	13	4	1	1	0%
Arson	0	0	0	1	1	0	-100%
Property Crime Subtotal	226	180	345	81	40	25	-38%
TOTAL	248	193	367	92	46	29	-37%

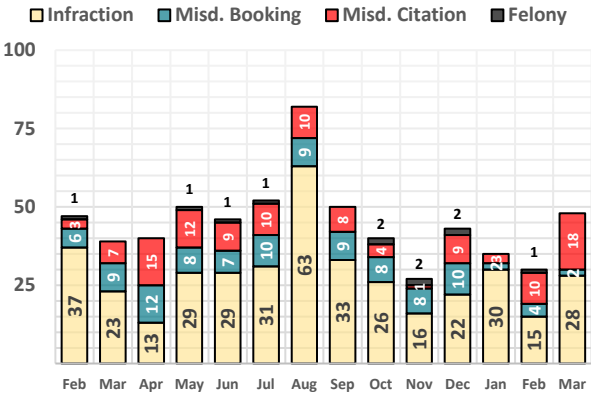
SAN MATEO ELECTRONIC THEFT



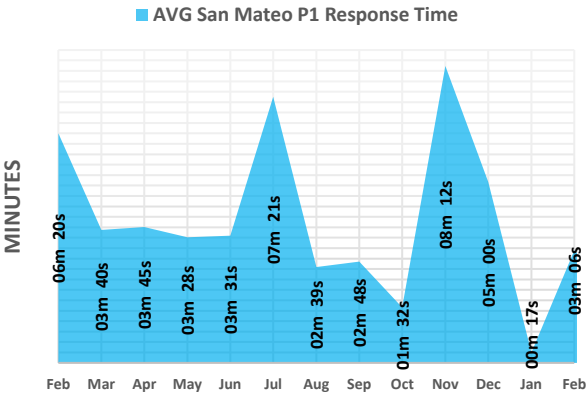
SAN MATEO VEHICLE CRIME



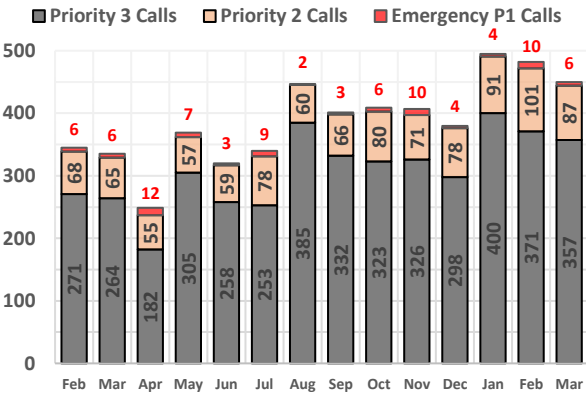
SMC ARRESTS & CITATIONS



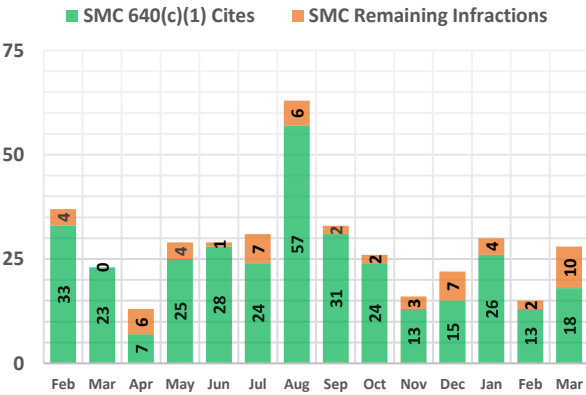
RESPONSE TIME (P1) AVG



SMC PRIORITY 1 - 3 CALLS



SMC FARE EVASION



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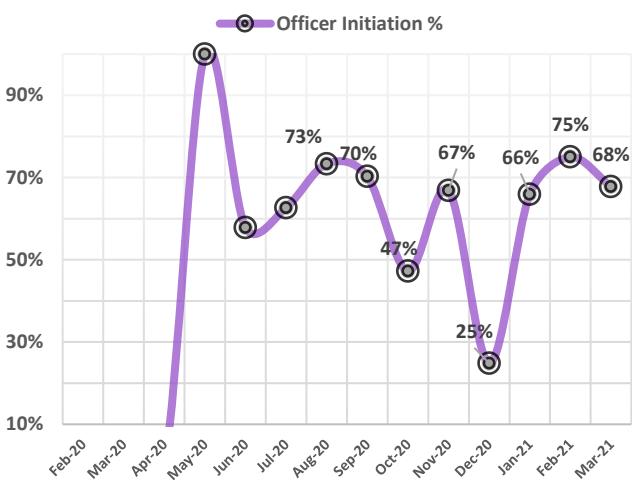
March 2021 Performance Measurement Review - Santa Clara County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	-	-	-	-	0	0	-%
Rape	-	-	-	-	0	0	-%
Robbery	-	-	-	-	0	0	-%
Aggravated Assault	-	-	-	1	0	0	-%
Violent Crime Subtotal	0	0	0	1	0	0	-%
Burglary (Structural)	-	-	-	-	0	0	-%
Larceny & Auto Burglary	-	-	-	1	0	0	-%
Auto Theft	-	-	-	-	0	0	-%
Arson	-	-	-	-	0	0	-%
Property Crime Subtotal	0	0	0	1	0	0	-%
TOTAL	0	0	0	2	0	0	-%

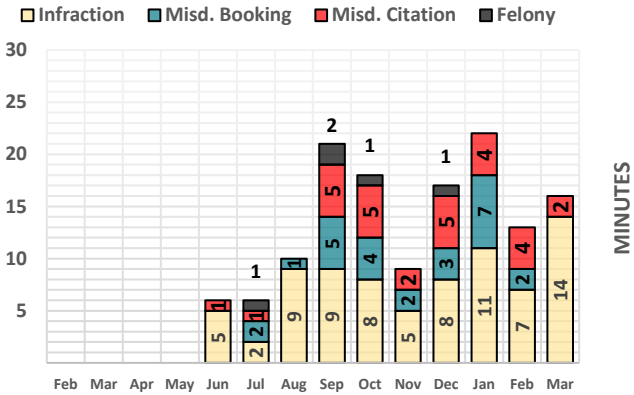
SANTA CLARA ELECTRONIC THEFT



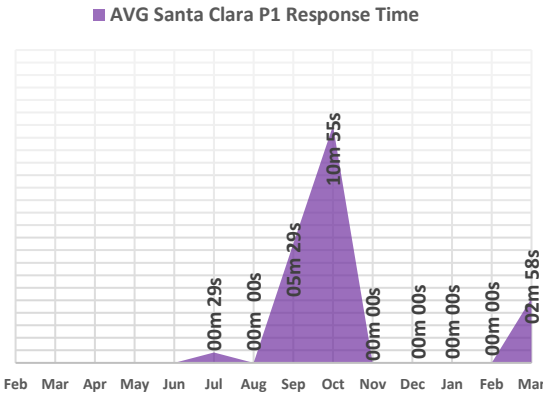
SCC OFFICER-INITIATED INCIDENTS



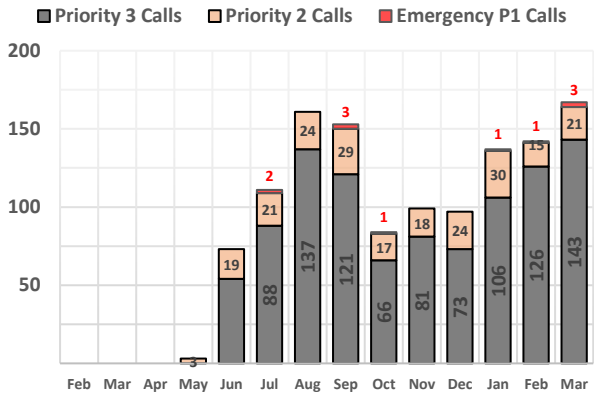
SCC ARRESTS & CITATIONS



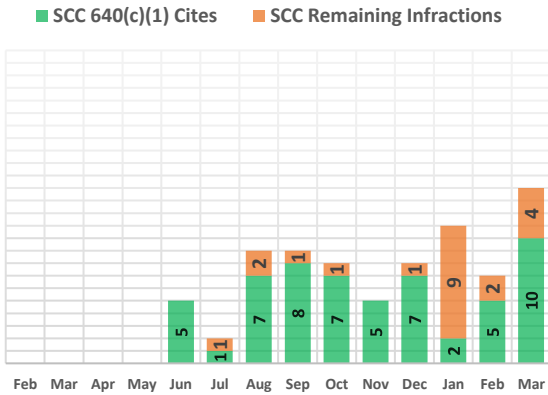
RESPONSE TIME (P1) AVG



SCC PRIORITY 1 - 3 CALLS



SCC FARE EVASION



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BART Police Department - Office of Internal Affairs

Investigation Log

IA#:	DATE OCC'D	DATE REC'D	ALLEGATION	MISC	INVESTIGATOR	STATUS	5 Month Date	Due Date
IA2018-001	1/3/2018	1/3/2018	Force (OIS)		Lt. Salas	Tolled	6/4/2018	
IA2018-060	7/22/2018	7/23/2018	Service Review		Lt. Salas	Tolled	12/23/2018	
IA2020-017	2/15/2020	2/15/2020	Force		Sgt. Spears	Tolled	7/16/2020	2/15/2021
IA2020-035	4/26/2020	4/26/2020	BBP,CUBO, Axon	Formal/Admin Investigation	Lt. Salas	In Progress	9/25/2020	4/26/2021
IA2020-036	Unk	4/30/2020	Arrest/Detention, POD, Axon	OIPA Intake #20-17	Lt. Salas	In Progress	9/29/2020	4/30/2021
IA2020-037	Unk	4/30/2020	POD	OIPA Intake #20-18	Sgt. Mavrakis	In Progress	10/3/2020	4/30/2021
IA2020-042	6/2/2020	6/3/2020	CUBO, Force, BBP		Sgt. Mavrakis	In Progress	11/2/2020	6/3/2021
IA2020-044	6/4/2020	6/5/2020	CUBO, Courtesy, Policy/Procedure	Retained By OIPA #20-19	OIPA	In Progress	11/4/2020	6/5/2021
IA2020-046	6/8/2020	6/8/2020	BBP, CUBO		Sgt. Mavrakis	In Progress	11/7/2020	6/8/2021
IA2020-047	6/11/2020	6/12/2020	CUBO	Clear by Video	Sgt. Mavrakis	In Progress	11/11/2020	6/12/2021
IA2020-048	7/23/2020	7/23/2020	Force		Sgt. Mavrakis	In Progress	12/22/2020	7/23/2021
IA2020-051	8/18/2020	8/21/2020	BBP		Sgt. Spears	Pending Approval	1/20/2021	8/21/2021
IA2020-056	8/29/2020	8/31/2020	CUBO		Sgt. Mavrakis	In Progress	1/30/2021	8/31/2021

IA2020-057	8/12/2020	8/27/2020	CUBO	Retained By OIPA #20-22	OIPA	In Progress	1/26/2021	8/27/2021
IA2020-058	9/2/2020	9/3/2020	Force, CUBO	Retained By OIPA #20-23	OIPA	In Progress	2/2/2021	9/3/2021
IA2020-059	9/4/2020	9/4/2020	POD, Policy/Procedure	L10	Sgt. Spears	Pending Approval	2/3/2021	9/4/2021
IA2020-060	9/9/2020	9/11/2020	POD, CUBO, Force, Policy/Procedure		Lt. Salas	In Progress	2/10/2021	9/11/2021
IA2020-061	9/9/2020	9/17/2020	CUBO, Courtesy, Axon		Lt. Salas	In Progress	2/16/2021	9/17/2021
IA2020-062	5/21/2020	9/17/2020	Bias Based Policing, CUBO		Sgt. Spears	In Progress	2/21/2021	9/17/2021
IA2020-063	9/18/2020	9/18/2020	Arrest/Detention - Handcuffing, CUBO, Search/Seizure, Axon		Sgt. Spears	In Progress	2/22/2021	9/18/2021
IA2020-065	9/14/2020	9/14/2020	Force, CUBO, POD		Lt. Salas	In Progress	2/13/2021	9/14/2021
IA2020-066	9/17/2020	9/18/2020	Force, CUBO, Bias, POD, Axon		Sgt. Spears	In Progress	2/17/2021	9/18/2021
IA2020-069		10/14/2020	POD	Retained By OIPA #20-26	OIPA	OIPA Investigation	3/15/2021	10/14/2021
IA2020-070	10/20/2020	10/21/2020	Force, Arrest/Detention, Search/Seizure	OIPA Intake #20-28	Lt. Salas	In Progress	3/22/2021	10/21/2021

IA2020-071	10/15/2020	10/16/2020	Courtesy, POD	S.R.	Sgt. Spears	In Progress	3/17/2021	10/16/2021
IA2020-075	10/23/2020	10/23/2020	BBP, Courtesy	Possible Admin Closure	Sgt. Spears	In Progress	3/24/2021	10/23/2021
IA2020-076	10/27/2020	10/29/2020	Arrest/Detention, CUBO, POD, Axon		Sgt. Spears	In Progress	4/3/2021	10/29/2021
IA2020-077	10/16/2020	11/9/2020	Force, Arrest/Detention, CUBO	Retained By OIPA #20-29	OIPA	In Progress	3/16/2021	11/9/2021
IA2020-078	11/3/2020	11/13/2020	CUBO	Possible Clear by Video	Sgt. Spears	In Progress	4/3/2021	11/13/2021
IA2020-079	11/9/2020	11/9/2020	POD	Admin Closure	Sgt. Spears	In Progress	4/9/2021	11/9/2021
IA2020-080	9/14/2020	10/26/2020	Arrest/Detention, BBP		Sgt. Spears	In Progress	2/14/2021	10/26/2021
IA2020-081	11/18/2020	11/18/2020	Policy/Procedure		Lt. Salas	In Progress	4/19/2021	11/17/2021
IA2020-082	11/17/2020	11/17/2020	BBP, CUBO		Sgt. Mavrakis	In Progress	4/19/2021	11/17/2021
IA2020-083	11/19/2020	11/19/2020	Force, Axon		Sgt. Spears	In Progress	4/20/2021	11/19/2021
IA2020-085	11/27/2020	11/30/2020	CUBO, Axon	Inquiry	Lt. Salas	In Progress	5/1/2021	11/30/2021
IA2020-086		11/25/2020	POD, Axon		Lt. Salas	In Progress	4/26/2021	11/25/2021

IA2020-087			Awaiting Information	Inquiry	Lt. Salas			12/31/1900
IA2020-089	12/15/2020	12/15/2020	Force		Sgt. Spears	In Progress	5/16/2021	12/15/2021
IA2020-090	12/11/2020	12/13/2020	CUBO	S.R.	Sgt. Mavrakis	In Progress	1/12/2021	12/13/2021
IA2020-091	11/29/2020	11/29/2020	Force		Sgt. Mavrakis	In Progress	4/30/2021	11/29/2021
IA2020-092	11/24/2020	11/30/2020	Arrest/Detention	Inquiry	Sgt. Mavrakis	In Progress	12/30/2020	11/30/2021
IA2020-096	12/29/2020	12/29/2020	Force		Sgt. Mavrakis	In Progress	5/30/2021	12/29/2021
IA2021-001	1/2/2021	1/2/2021	Arrest/Detention		Sgt. Mavrakis	In Progress	6/30/2021	1/2/2022
IA2021-002	1/2/2021	1/4/2021	BBP, CUBO		Sgt. Mavrakis	In Progress	6/5/2021	1/4/2022
IA2021-003	9/11/2019	1/7/2019	Force Axon		Sgt. Mavrakis	In Progress	6/8/2021	1/7/2020
IA2021-004	1/5/2021	1/5/2021	Force		Sgt. Spears	In Progress	6/6/2021	1/5/2022
IA2021-005	1/20/2021	1/22/2021	POD		Sgt. Mavrakis	In Progress	6/6/2021	1/22/2022
IA2021-006	1/20/2021	1/20/2019	Force		Sgt. Mavrakis	In Progress	6/21/2021	1/20/2020
IA2021-007	1/26/2021	1/26/2021	Force, Arrest/Detention, Policy/Procedure	OIPA Intake #21-02	Sgt. Spears	In Progress	6/27/2021	1/26/2022
IA2021-008	1/8/2021	1/11/2021	Unk	Admin Closure	Lt. Salas	In Progress	6/12/2021	1/11/2022
IA2021-009	1/13/2021	2/4/2021	Force, CUBO		Sgt. Spears	In Progress	7/6/2021	2/4/2022

IA2021-010	2/14/2021	2/16/2021	Force		Sgt. Spears	In Progress	7/16/2021	2/16/2022
IA2021-011	2/14/2021	2/14/2021	POD	Admin Closure	Sgt. Mavrakis	In Progress	7/16/2021	2/14/2022
IA2021-012	2/17/2021	2/17/2021	Force, CUBO, BBP		Sgt. Spears	In Progress	7/19/2021	2/17/2022
IA2021-013	2/16/2021	2/16/2021	Force		Sgt. Mavrakis	In Progress	7/18/2021	2/16/2022
IA2021-014	2/25/2021	3/1/2021	Force		Sgt. Spears	In Progress	7/31/2021	3/1/2022
IA2021-015	3/1/2021	3/1/2021	BBP		Sgt. Spears	In Progress	8/1/2021	3/1/2022
IA2021-017	3/14/2021	3/14/2021	Force		Sgt. Spears	In Progress	3/16/2021	3/14/2022
IA2021-018	3/16/2021	3/16/2021	Force	Possible Clear by video	Sgt. Mavrakis	In Progress	8/15/2021	3/16/2022
IA2021-019	3/19/2021	3/19/2021	CUBO		Sgt. Mavrakis	In Progress	4/18/2021	3/19/2022
IA2021-020	3/30/2021	4/1/2021	Force		Sgt. Spears	In Progress	8/29/2021	4/1/2022
IA2021-021	4/1/2021	4/1/2021	Force		Sgt. Mavrakis	In Progress	8/31/2021	4/1/2022
IA2021-022	4/2/2021	4/2/2021	POD		Sgt. Mavrakis	In Progress	9/1/2021	4/2/2022
IA2021-023	4/1/2021	4/1/2021	Courtesy		Sgt. Spears	In Progress	8/31/2021	4/1/2022
IA2021-024	4/3/2021	4/3/2021	Bias Based Policing		Sgt. Spears	In Progress	9/2/2021	4/3/2022

BART Watch - 2021

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Crime in Progress	7	14	11										32
Disruptive Behavior	163	183	213										559
Drug Use	61	62	85										208
Human Trafficking	0	1	1										2
Illegally Parked Vehicle	1	1	1										3
Aggressive Panhandling	4	9	4										17
Report a Crime Tip	5	9	6										20
Robbery/Theft	4	4	5										13
Sexual Assault/Lewd Behavior	5	2	3										10
Suspicious Activity	26	30	28										84
Unattended Bag or Package	4	4	5										13
Unsecure Door	2	2	1										5
Vandalism	9	12	12										33
Welfare Check	28	35	46										109
Total	319	368	421	0	0	0	0	0	0	0	0	0	1,108
Text-a-Tip	1031	913	965										2,909

Total Downloads: **91,868**



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

April 2021

Issue date: May 10, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **April 1, 2021 through April 30, 2021.**¹

(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	11
Informal Complaints ⁷	0
Administrative Investigations	2
Inquiries ⁸	0
TOTAL	13

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	3
BART Police Department	8
TOTAL	11

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2021, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-04) (IA2021-027)	Officer #1: • Arrest or Detention • Performance of Duty	OIPA initiated an investigation.	34
2 (OIPA #21-06) (IA2021-030)	Officers #1-4: • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer • Performance of Duty	OIPA initiated an investigation.	24
3 (OIPA #21-07) (IA2021-031)	Officer #1: • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer	OIPA initiated an investigation.	21

During April 2021, **8 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-021)	Officer #1-2: • Force	BPD initiated an investigation.	39
2 (IA2021-022)	Officer #1: • Performance of Duty	BPD initiated an investigation.	38
3 (IA2021-023)	Officer #1: • Courtesy	BPD initiated a Supervisor Referral. ¹⁰	39
4 (IA2021-024)	Officer #1: • Bias-Based Policing	BPD initiated an investigation.	37
5 (IA2021-025)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated a Supervisor Referral.	33
6 (IA2021-026)	Officer #1: • Bias-Based Policing • Performance of Duty	BPD initiated an investigation.	32
7 (IA2021-028)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	27
8 (IA2021-029)	Officer #1: • Performance of Duty	BPD initiated an investigation.	25

During April 2021, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-032)	Officer #1: • Performance of Duty	BPD initiated an investigation.	21
2 (IA2021-033)	Unknown Officer(s): • Performance of Duty (Evidence Handling)	BPD initiated a Service Review.	19

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2021, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-42) (IA2020-044)	Officer rudely and improperly required complainant to wear face covering and harassed complainant in retaliation for filing a misconduct complaint.	Officer #1: • Policy/Procedure – Exonerated • Courtesy – Exonerated • Conduct Unbecoming an Officer – Unfounded	339	307
1 (OIPA #20-23)* (IA2020-058)	One officer improperly detained complainant and did not de-escalate to avoid using force. Two officers used excessive force and improperly searched complainant's property and both officers' conduct was based on complainant's race. One supervisor failed to conduct a required review of the use of force and arrived at the scene displaying an offensive image on a facemask.	Officer #1: • Policy/Procedure (De-escalation) – Sustained • Arrest or Detention – Exonerated Officers #1-2: • Force – Exonerated • Search/Seizure – Exonerated • Bias-Based Policing – Not Sustained Officer #3: • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Exonerated	249	217

* This case was presented to the BPCRB as required on April 12, 2021. Though the BPCRB voted to agree with OIPA's findings and recommendations, the case remains on Internal Affairs' list of open investigations pending database entry by BPD or resolution of any appeal that may be lodged by the Chief of Police. The Chief is allowed up to 45 days after approval by the BPCRB to decide whether to appeal OIPA findings.

During April 2021, **6 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-036)	Officers improperly detained complainant based on a false report and officers refused to address the complainant's concerns about the false reporting. One officer did not properly document the contact.	<p>Officers #1-5:</p> <ul style="list-style-type: none"> • Performance of Duty (Response to False Report) – Unfounded • Performance of Duty (Intake – False Report) – Exonerated <p>Officers #1-4</p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated <p>Officer #1:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Sustained 	375	357
2 (IA2020-035)	Officer was verbally aggressive and unprofessional, knocked complainant's items to the ground and used racial slurs and two officers did not properly document a law enforcement contact. Supervisor failed to intercede and address complaints of misconduct.	<p>Officer #1:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer (Knocking Object) – Unfounded • Performance of Duty – Sustained • Conduct Unbecoming an Officer (Verbal) – Sustained • Policy/Procedure (AXON Camera) – Sustained • Policy/Procedure (AXON Camera) – Not Sustained <p>Officer #2:</p> <ul style="list-style-type: none"> • Performance of Duty – Sustained <p>Officer #3:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Not Sustained 	379	361
3 (IA2020-037)	Officers did not properly address complainant's request to make an arrest and did not review available information or collect a statement from complainant. One officer did not properly document a law enforcement contact.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> • Performance of Duty – Exonerated <p>Officer #2:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Exonerated 	375	355

4 (IA2020-051)	Employee improperly contacted complainant based on complainant's race.	Employee #1: • Bias-Based Policing – Unfounded	262	242
5 (IA2021-023)	Officer was unprofessional during interaction with complainant.	Officer #1: • Courtesy – Supervisor Referral	34	21
6 (IA2021-025)	Officer was hostile and unprofessional during interaction with complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	33	12

During April 2021, **2 Informal Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-071)	Officers did not properly address a reported crime.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral Officer #3: • Conduct Unbecoming an Officer – Released from Duty Prior to Finding	206	188
2 (IA2020-090)	Officer was unprofessional during interaction with complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	148	124

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) †	Classification of Sustained Allegation(s)	Action Taken
1	Officer was verbally aggressive and unprofessional and did not properly document a law enforcement contact. Supervisor failed to intercede and address complaints of misconduct.	Officer #1: • Performance of Duty • Policy/Procedure (AXON Camera) Officer #2: • Performance of Duty	Officer #1: Oral Counseling ¹¹ Officer #2: • Oral Counseling
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Oral Counseling
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion ¹²
4	Officer was involved in preventable traffic collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Letter of Discussion
6	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Letter of Discussion
7	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Letter of Discussion

†Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	65
Investigations Reviewed During Current Month	15†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period generated one recommendation for additional investigation related to a use of force that is currently under review by BPD as part of the Department's Supervisor Use of Force review process. OIPA recommended that the contact be investigated by Internal Affairs to ensure a thorough and complete analysis of the force applications. Internal Affairs has now initiated an investigation.¹³

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee." (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹² Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹³ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.

Fare Evasion / Proof of Payment Enforcement

419.1 PURPOSE AND SCOPE

The purpose of this policy is to establish uniform procedures for the legal detention of individuals suspected of fare evasion and proof of payment violations on the BART system.

419.2 POLICY

It shall be the policy of the BART Police Department to vigorously enforce transit specific crimes including fare evasion and proof of payment violations. Violators should be ejected from the paid area after being contacted for fare evasion or proof of payment violations.

419.2.1 APPLICABLE LAWS FARE EVASION ENFORCEMENT

The California Penal Code for fare evasion used by officers of the BART Police Department is California Civil Code 2188: A passenger who refuses to pay his fare or to confirm to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. All fare persons in the BART system without valid fare are subject to ejection from the system under this authority.

California Penal Code 640(c)(1): Evasion of the payment of a fare of the system. For purposes of this section, fare evasion includes entering an enclosed area of a public transit facility beyond posted signs prohibiting entrance without obtaining valid fare, in addition to entering a transit vehicle without valid fare.

Upon a first or second violation, this offense~~The offense~~ is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment.

Upon a third or subsequent violation, this offense may be charged as a misdemeanor punishable by a fine of not more than \$400 or by imprisonment in a county jail for a period of not more than 90 days, or by both that fine and imprisonment.

For adult proof of payment violations:

BART Ordinance 2017-2.5.1: An adult's failure to present a valid exit-coded ticket when requested by a BART police employee is an infraction.

Upon a first or second violation, within a 12-month period, this offense is punishable by a civil administrative citation and fine of not more than \$120 or 8 hours of community service.

BART Ordinance 2017-2.5.2: Upon a third violation, within a 12-month period, this offense is punishable by a criminal infraction citation and a fine of not more than \$250 and up to 48 hours of community service.

BART Ordinance 2017-2.5.1: Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

For juvenile fare evasion violations:

Pursuant to California Penal Code 640(g), a minor may not be charged with an infraction or misdemeanor violation of PC 640(c)(1).

BART Ordinance 2017-3: Minors who are observed entering or exiting the system without using a valid ticket may be assessed an administrative penalty not to exceed \$60.

BART Ordinance 2017-3.5: Minors who are observed entering or exiting the BART system without using a valid ticket may be subject to ejection from the BART system.

In lieu of an administrative citation being issued for a violation of this ordinance, a warning may be given to the minor. Record of any previous warning will be retained by the Bay Area Rapid Transit police department.

For juvenile proof of payment violations:

BART Ordinance 2017-2.5.1: A juvenile's failure to present a valid exit-coded ticket when requested by a BART police employee is an infraction punishable by a civil administrative citation and fine of not more than \$60 or up to 8 hours of community service.

BART Ordinance 2017-2.5.1: Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

For all proof of payment violations:

BART Ordinance 2017-2.3(a): Individuals in the paid area of the station or on a BART train are required to present a valid exit-coded ticket when requested by the District. Individuals who fail to present proof of payment shall be in violation of this ordinance. This violation is an infraction.

BART Ordinance 2017-2.3(b): Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance. This violation is an infraction. Officers should issue criminal infraction citations for these violations when summoned to assist Fare Inspection Officers with a person in violation of BART Ordinance 2017-2.3(b).

~~The aforementioned penal code does not, absent probable cause to suspect fare evasion, authorize police officers to ask persons to display their ticket for validation. Officers shall not use civil codes as probable cause to ask persons to display their ticket for validation.~~

419.2.2 FARE EVASION VIOLATION DEFINED

Fare evasion violations occur when an individual is seen illegally entering or exiting the paid area. Fare evasion citations and arrests require witnessing the illegal entry / exit. When a person has been seen illegally entering or exiting the paid area, an officer should detain the person for a fare evasion violation and not a proof of payment violation.

Illegal entry / exit of the paid areas of the BART system includes the following:

- Jumping over a fare gate or barrier
- Forcing a fare gate barrier to open
- Entering or exiting through an emergency exit door or service gate
- Entering or exiting a fare gate without using a ticket (piggybacking)
- Using an elevator without processing a valid ticket immediately before entering or after exiting the paid area

Specific intent is not required to establish the elements of California Penal Code 640(c)(1).

~~travels or attempts to travel on the BART system without payment of the required fare. Fare evasion can be reflected in a variety of ways:~~

- ~~• A person who jumps over the fare gate.~~
- ~~• A person who walks closely behind another person, who is using a valid ticket, through a fare gate before the fare gate closes (piggybacking).~~
- ~~• A person who enters/exits the station from an elevator from the free to paid area/paid to free area with intent to avoid paying fare.~~
- ~~• A person who enters/exits through the emergency gate from the free to paid/paid to free area with intent to avoid paying fare.~~

419.2.3 PROOF OF PAYMENT VIOLATION DEFINED

Proof of payment violations occur when an individual is in the paid area of the system and is subject to a ticket inspection by a Fare Inspection Officer or is detained by a Police Officer for criminal conduct. If a person is unable or unwilling to show valid proof of payment, they are in violation of the proof of payment ordinance and may be issued a citation pursuant to the Proof of Payment ordinance. Proof of payment violators shall not be issued citations for violations of PC 640(c)(1).

BART Ordinances are not currently enforceable in Santa Clara and San Mateo Counties. If a person is detained in the paid area of a station in those counties and it is determined they do not possess a valid BART ticket, they should be ejected from the paid area (California Civil Code 2188). A proof of payment citation may not be issued in this circumstance. If an officer on-views a fare evasion violation in these counties, the officer may elect to issue a citation for California Penal Code 640(c)(1). Officers may not issue citations for PC 640(c)(1) for a person who is found to be in the system without proof of payment.

419.3 PROOF OF PAYMENT ENFORCEMENT PROCEDURES BY POLICE OFFICERS

Police officers may utilize the Proof of Payment Ordinance as an enforcement tool during the normal course of their duties. Officers may not utilize the Proof of Payment Ordinance as part of a consensual contact. Requests for proof of payment require probable cause of a criminal violation before an officer requests proof of payment.

Police officers may ask a person inside the paid are of the BART system to show proof of payment under the following types of circumstances:

1. When an officer has reasonable suspicion to detain a person for any criminal violation, the officer may ask the involved suspect(s) to provide proof of payment.
2. When conducting a welfare check or other consensual contact, officers may ask routine questions to develop probable cause for a proof of payment violation. The questions may include the following when applicable:
 - What is the person's destination?
 - Does the person know their current location? Is the current location on the normal route to the stated destination?
 - Where did the person enter the system?
 - How long has the person been in the system?

Responses to these questions may assist the officer in developing reasonable suspicion that

the subject may not have a valid ticket in their possession.

3. Any person who remains on an out of service train, after announcements are made for passengers to off-board, is in violation of PC 369i(b) and officers may ask to see proof of payment.

All persons who are found to be in the system without proof of payment should be ejected from the system.

419.3.1 ENFORCEMENT PROCEDURES BY FARE INSPECTION OFFICERS

Fare Inspection Officers shall enforce District Ordinances pertaining to proof of payment violations in compliance with the current FIO policies and procedures manual.

419.4 FARE EVASION REPORTS FROM BART EMPLOYEES

Every officer who responds to a call for service reported by any BART District employee regarding any report of a fare evasion or the misuse of a discount ticket shall contact the BART employee who reported the incident, and ask the BART employee who reported the incident whether he/she wants the subject(s) suspected of fare evasion or the misuse of a discount ticket placed under citizen's arrest for fare evasion or the misuse of a discount ticket before making a disposition of the case . This includes requesting via dispatch that the BART employee arrive at the location where the officer has the suspect(s) detained for fare evasion or the misuse of a discount ticket to in order make a positive identification before making a disposition of the case.

If the officer is unable to locate and detain the suspected fare evader and/or misuse of discount ticket user at or near the scene, then it will not be necessary to contact the BART employee.

~~419.2.3—CONSENSUAL ENCOUNTER, REASONABLE SUSPICION, AND PROBABLE CAUSE~~

~~The following are the most common definitions of consensual encounter, reasonable suspicion, and probable cause:~~

~~(a) **Consensual Encounter:** A consensual encounter is a contact between an officer and an individual which is strictly voluntary. The key element is that the person remains~~

Fare Evasion

~~totally free to leave or not cooperate. An officer does not need any objective reason or justification for initiating this type of contact.~~

~~(b) — **Reasonable Suspicion:** Reasonable suspicion to detain a suspect exists if officers were aware of specific facts that reasonably indicated the person was in the process of committing a crime, or was wanted for a completed crime. It is based on objective facts. Reasonable suspicion is the level of proof necessary for a temporary detention.~~

~~(c) — **Probable Cause to Arrest:** Although some courts continue to cite the old definition which requires an "honest and strong suspicion", the trend is toward incorporating the new "fair probability" standard; i.e. probable cause to arrest exists if there is a fair probability that the suspect committed the crime. Probable cause is the level of suspicion required to make an arrest.~~

~~419.2.4 FARE EVASION/MISUSE OF DISCOUNT TICKET REPORTS BY BART EMPLOYEES~~

~~Every officer who responds to a call for service by any BART District employee regarding any report of a fare evasion or the misuse of a discount ticket will contact the BART employee who reported the incident, and ask the BART employee who reported the incident whether he/she wants the subject(s) suspected of fare evasion or the misuse of a discount ticket placed under citizen's arrest for fare evasion or the misuse of a discount ticket before making a disposition of the case. This includes requesting via dispatch that the BART employee arrive at the location where the officer has the suspect(s) detained for fare evasion or the misuse of a discount ticket to in order make a positive identification before making a disposition of the case. If the officer is unable to locate and detain the suspected fare evader and/or misuse of discount ticket user at or near the scene, then it will not be necessary to contact the BART employee.~~

~~419.3 — LEGAL ISSUES REGARDING FARE EVASION CONTACTS~~

~~With the exception of passes and vouchers issued by the District or other electronic payment methods, BART customers are required to have a valid ticket with at least a minimum value (currently \$1.75) to enter the paid areas of BART.~~

~~Persons obviously attempting to evade fare payment of fare such as using the emergency gate without authorization, jumping the fare gates, or piggybacking are subject to being cited for fare evasion under the Penal Code.~~

~~Aside from these obvious examples, there are other situations where a person in the paid area may be cited for fare evasion. Generally, in these contacts the person was brought to the attention of police by a station agent or in the course of an unrelated police contact. One of the key issues in less obvious cases of fare evasion is determining when a person in the paid area can be required to show that he/she has a valid ticket.~~

~~Based on recent research and review with the local District Attorney offices in the four counties in which BART serves, sections of the California Civil Code, which include 2186-2188, shall not be used as the basis for establishing reasonable suspicion to detain or probable cause to arrest~~

Fare Evasion

~~persons within the BART system. Officers should not require persons to show their fare ticket, unless that officer has already established reasonable suspicion or probable cause regarding fare evasion or any other criminal activity.~~

~~Facts are needed to establish both reasonable suspicion and probable cause. Sometimes one fact is sufficient and sometimes it takes a combination of facts. Hunches, instincts, or unsupported conclusions are inadmissible. An officer's subjective feelings or beliefs are immaterial. Specific facts are needed to justify your suspicion and must be articulated in the police report.~~

~~Examples where a person should not be required to show his/her ticket include:~~

- ~~• Entering the paid area (without using an authorized method) to use the restroom, buy a newspaper, or use a pay phone~~
- ~~• Waiting in the paid area for an extended period of time~~
- ~~• Inspection of fare tickets during station or train sweeps~~
- ~~• Arbitrarily asking to see a person's ticket while he/she is in the paid areas~~

~~Without more facts, a crime has not occurred in the above examples. In order for the officer to develop cause to detain a person, the officer has to be patient and observe the actions of the person to gather more facts. A person who uses the emergency gate to enter the station, buys a newspaper, then proceeds directly to the platform may be detained for fare evasion.~~

~~Arbitrarily asking to see someone's ticket may give the perception of profiling. Officers should only ask to see a person's fare ticket after determining that they have reasonable suspicion or probable cause.~~

~~It is not automatically fare evasion for a person to lose his or her BART ticket. The District has policies in place which permit for the payment of fare in this type of situation. The officer would have to investigate the circumstances further to develop facts in order to make a determination that a fare evasion has occurred.~~

~~419.4.1 Officers must have reasonable suspicion or probable cause to believe that the person has committed some crime or infraction in order to detain and arrest someone and to check his or her ticket. Ultimately, officers should be guided by their training and experience in determining whether reasonable suspicion or probable cause exists for contacting an individual within the paid area.~~





Differences exist between documents.

New Document:	Old Document:
Lexipol 300 - Current	Lexipol 300 - Old
17 pages (53 KB)	17 pages (314 KB)
5/6/2021 05:06:43	5/6/2021 05:06:43
Used to display results.	

[Get started: first change is on page 1.](#)

No pages were deleted

How to read this report

-  indicates a change.
-  indicates deleted content.
-  indicates pages were changed.
-  indicates pages were moved.

Use of Force

300.1 PURPOSE AND SCOPE

The BART Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible. This Department policy builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 and is more restrictive than the constitutional standard and state law. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public's trust.

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, non-biased, and reasonable manner.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a).

Explicit Bias - Conscious belief or attitude toward a specific social group that may lead an individual to act in discriminatory ways.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code § 7286(a)).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Use of Force

Implicit Bias - Unconscious belief or attitude toward a specific social group that may lead an individual to unknowingly act in discriminatory ways. People are generally unaware of their implicit biases and may even hold contradictory conscious beliefs.

Legitimate law enforcement objective - Effect a lawful arrest, detention, or search; overcome resistance or prevent escape; prevent the commission of a public offense; in defense of others or in self-defense; gain compliance with a lawful order; to prevent a person from injuring himself/herself.

Minimal amount of force necessary - The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

Non-deadly Force - Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious bodily injury shall be considered non-deadly force.

Personal Body Weapons - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.

Proportionality - Considers whether a particular use of force is proportionate and appropriate to the totality of the circumstances, and requires officers to consider whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy.

Reasonable Belief - An objective belief determined by the facts and circumstances reasonably available to the officer at the time (on-scene and without hindsight) and viewed from the perspective of a reasonable peace officer in the same situation, guided by the principles set forth in this policy.

Reasonable Force - An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time.

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)).

Totality of the circumstances - All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force. Retreating for a tactical advantage should be considered and utilized, when feasible and appropriate.

Officers shall not use force with bias, based upon: race; ethnicity or nationality; religion; sex, sexual orientation; economic status; age; cultural group; disability; or affiliation with any other similar identifiable group.

Use of force against vulnerable populations (such as, without limitation, children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective. It is recognized that the above may not be readily apparent or known to the officer. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

The Department recognizes that transparency and accountability in the use of force is essential to preserving the trust of the community and to maintaining professional standards. This policy therefore requires rigorous reporting and review of all instances of the use of force.

300.2.1 DUTY TO INTERCEDE

A use of excessive force by law enforcement personnel is a matter of serious concern to the community, and even a single instance of excessive force may critically undermine public trust in the Department. Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.2 DE-ESCALATION TECHNIQUES

Officers shall use de-escalation techniques whenever feasible and appropriate: to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s). Use of de-escalation techniques must allow for the fact that officers are often forced to make split-second decisions, with limited information, and in circumstances that are tense, uncertain and rapidly evolving.

- (a) Officers shall, when feasible, continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.
- (b) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
 - 1. Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
 - 2. Officers should consider a variety of options, including lesser force or no force options.
 - 3. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others.
 - 4. Officers shall not intentionally and unnecessarily escalate and/or create a need to use force.
 - 5. Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical,

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.

6. Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use force.
- (c) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or Crisis Intervention techniques.

Establishing Communication - Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

Supervisors conducting a use of force investigation will indicate de-escalation as a force option in BlueTeam whenever de-escalation was attempted or used in an incident.

300.2.3 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

300.2.4 DUTY TO REPORT EXCESSIVE FORCE

Any employee who observes a law enforcement officer or another employee use force that potentially exceeds what the employee reasonably believes to be necessary shall promptly report these observations to a supervisor as soon as feasible.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

There are circumstances in which a force option may be legally justified under the principles set forth in *Graham v. Connor*, but the use of that force option may not be appropriate, warranted, and/or necessary.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

This policy builds upon the broad principles in *Graham v. Connor* by adding additional, more restrictive factors upon which an officer's use of force shall be evaluated. These factors should be considered when determining whether to apply force (as time and circumstances permit), and in evaluating whether an officer has used reasonable force.

Additional factors set forth by case law and by this Policy:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The feasibility, efficacy, and safety of alternative lesser or non-force options, including the availability of de-escalation techniques that might reduce or eliminate the need to use force, or prevent injuries to the subject, the public and the officer(s).
- (c) Whether the force option is proportionate and appropriate to the totality of the circumstances, and whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy.
- (d) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (e) The conduct of the officer prior to the use of force. Specifically, did the officer violate policy and unnecessarily escalate the situation to a use of force.
- (f) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (g) The effects of drugs or alcohol.
- (h) Subject's mental state or capacity, including any apparent/known mental health issues.
- (i) Proximity of weapons or dangerous improvised devices.
- (j) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (k) The availability of other options and their possible effectiveness.
- (l) Seriousness of the suspected offense or reason for contact with the individual.
- (m) Training and experience of the officer.
- (n) Potential for injury to officers, suspects and others.
- (o) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (p) The risk and reasonably foreseeable consequences of escape.
- (q) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (r) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (s) Prior contacts with the subject or awareness of any propensity for violence.

Use of Force

- (t) Any other exigent circumstances.
- (u) Officers must strive to use the minimal amount of force necessary.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.2 PERSONAL BODY WEAPONS

Personal body weapon strikes, punches, lifts or kicks for which the officer has received department-approved training, may be used when the officer reasonably believes that the use of such force appears necessary to further a legitimate law enforcement purpose.

Personal body weapon strikes, punches, or kicks to the rear of the head, neck or spine are prohibited. The only exception to this prohibition would be under exigent circumstances when deadly force is justified and reasonable.

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent

Use of Force

a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Department for this specific purpose.

300.3.4 RESTRICTIONS ON THE USE OF A CHOKE HOLD/CAROTID RESTRAINT

Officers of this department are not authorized to use a choke hold or carotid restraint. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe. Carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person. (Government Code § 7286.5).

300.4 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a(5)(c)(1)(B)).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the

Use of Force

present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. It is also noted that in many circumstances, disabling the driver of a vehicle may increase the potential for harm to bystanders and/or the officer.

- Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
- Officers shall not intentionally and unnecessarily move into the path of an approaching vehicle to create their own exigent circumstance.
- Officers should not shoot at any part of a moving vehicle in an attempt to disable the vehicle.
- Officers shall not discharge a firearm at a moving vehicle or its occupants when there are other reasonable means available to avert the threat.
- Officers shall not discharge a firearm from a moving vehicle when there are other reasonable means available to avert the present threat.
- Officers may only shoot at a moving vehicle under exigent circumstances, when the driver and/or occupants are targeting others with the intent to cause great bodily injury or death and there are no other reasonable means available to avert the threat.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the officer does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If the officer reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

Whenever an officer draws/deploy a firearm during the performance of his/her duties to defend, detain or take any person into custody (the suspect is contacted or arrested, the officer is present and is within potential sight of the suspect), it is considered a use of force and an account of the incident must be made in a police report. The officer should include in the narrative of the report how the weapon was used in the incident, as well as the justification for such action. The documentation of how the weapon was used should include information on how the weapon was presented. The

Use of Force

officer must notify a supervisor as soon as practical, and the supervisor will complete a Use of Force Investigation with accompanying documentation as outlined in this policy.

Whenever an officer draws/deploys a firearm during the performance of his/her duties in the presence of others, but does not use the firearm to defend, detain or take any person into custody (the suspect is not contacted or arrested), it is not considered a use of force and an account of the incident must be made in a police report.

Whenever an officer draws/deploys a firearm during the performance of his/her duties not in the presence of others, it is not considered a use of force and no documentation is required. An example of that type of incident would include, but is not limited to, the search of an empty building or car where no person is contacted during the search.

To the extent reasonable under the circumstances, officers shall consider their surroundings and potential risks to bystanders before discharging a firearm

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

Supplemental reports will be completed by personnel who are present when force is used by another officer. Officers have a duty to report all pertinent facts known to them.

All police reports, inclusive of any supplemental reports, involving the documentation of a use of force must be reviewed and approved by a supervisor prior to the employee going off duty.

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following any Level 2, 3, or 4 application of force. Levels of force and the respective reporting, investigation, documentation, and review requirements are defined in section 300.5.2.

All use of force must be documented in a police report and reviewed by a supervisor.

300.5.2 USE OF FORCE INVESTIGATION, DOCUMENTATION, AND REVIEW

Upon receiving notification of a use of force, a supervisor who was not involved in the use of force incident, will determine the level of investigation and documentation.

The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements. Incidents will be categorized as Level 1, Level 2, Level 3, or Level 4.

Level 1: Documentation in a Police Report Only

Level 1 Incident Parameters:

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

- (a) Subject allowed him/herself to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.
- (b) Officer used any of the following, and the circumstances of the application would lead a reasonable officer to conclude that the subject did not experience more than momentary discomfort:
 - 1. Control holds/pressure point application
 - 2. Leverage
 - 3. Grab
 - 4. Bodyweight
 - 5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
- (c) Officer used any of following:
 - 1. TASER/LLIMs Deployed (no activation) ▲
 - 2. ▲ Drawn/deployed firearm, but no suspect contacted or arrested
- (d) Subject has no visible injury due to interaction with officer.
- (e) Subject has no complaint of injury or continuing pain.
- (f) Subject does not indicate intent to pursue litigation.
- (g) Subject was not rendered unconscious due to interaction with officer.
- (h) No allegation of misconduct against officer, regarding force.
- (i) Entirety of the contact was captured on audio and video, inclusive of the buffering period.

Level 1 Incidents should be documented by an officer in an appropriate police report, citation, Field Interview, and/or CADS entry. Supervisors will review police report narratives for approval.

Level 2: Use of Force

Level 2 Incident Parameters:

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.
- (c) Entirety of the contact was captured on audio and video, inclusive of the buffering period.
- (d) Officer's use of force was limited to the following:
 - 1. Any takedown, that did not appear to cause more than momentary discomfort.
 - 2. Firearm drawn/deployed but not fired, suspect contacted

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

3. Control hold, pressure point, leverage, grab, and/or bodyweight, and the application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of the involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist with a brief summary.

Witness statements from fire and medical personnel are not required under the following circumstance: an officer assists medical personnel to restrain and/or secure a subject to a gurney for medical transport in a non-criminal detention (i.e. 5150 or 5170 detention), and all of the following conditions are met:

- (a) The officer only used force options limited to the following: grab, hold, leverage, and/or bodyweight.
- (b) No subject injury or complaint of continuing pain due to interaction with officer.
- (c) No allegation of misconduct against officer, regarding force.
- (d) Entirety of the contact was captured on audio and video, inclusive of the buffering period.
- (e) The unit number for the fire and medical personnel is obtained.

Level 3: Use of Force

Level 3 Incident Parameters:

- (a) Would have otherwise been classified as a Level 2, except one or more of the following apply:
 1. Suspect injury or complaint of injury or continuing pain due to interaction with officer.
 2. Allegation of misconduct against officer, regarding force.
 3. Entirety of the contact was not captured on audio and video, inclusive of the buffering period.
- (b) The use of force is Level 3 if the officer used any of the following force options:
 1. Any takedown, that appears to have caused more than momentary discomfort.
 2. TASER Activation/LLIMS Activation
 3. Chemical Agents/Munitions
 4. Impact Weapon Strikes
 5. Personal Body Weapons
 6. Police canine deployment resulting in injury

Use of Force

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist. The supervisor will also complete a Use of Force Investigation Report narrative for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation. Use of Force involving police canines will be documented and reviewed additionally per Policy 318.

Level 4: Use of Deadly Force

Level 4 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Or any force likely to cause death or serious bodily injury

An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to Policy 310.

300.5.3 EMPLOYEES WHO USE FORCE WHILE ON A SPECIAL ASSIGNMENT

When a BART Police employee has a use of force as defined in this policy, the use of force must be reported to a BART Police supervisor and investigated in accordance with this policy.

When two or more BART Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor should also be present.

300.5.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Division Policy.

300.6 MEDICAL CONSIDERATION FOLLOWING A USE OF FORCE

Prior to booking or release, and as soon as possible under the circumstances, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed. Officers should pay particular attention to vulnerable populations, including but not limited to, children, elderly persons, pregnant individuals and individuals with physical, mental and developmental disabilities, whose vulnerabilities could exacerbate the impact or risk of injury.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another

Use of Force

officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage nearby if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

An uninvolved supervisor should respond to the scene of a Level 2, Level 3, or Level 4 use of force. The supervisor is expected to do the following:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Ensure that arrestees and witnesses are interviewed, and that the interviews are audio/video recorded. If the arrestee invokes their Miranda rights at any point, all interrogation shall cease as outlined per case law.
 1. Officers should take recorded suspect and witness statements related to all criminal charges as appropriate, including the circumstances involving the use of force. These statements will be documented in the crime report. If the responding supervisor conducts the interview, then the supervisor should document the statement in the crime report.
 2. In addition to the statement taken for the criminal report, supervisors conducting the use of force investigation should seek a voluntary statement regarding the use of force from suspects who have not invoked their Miranda rights. The interview should be audio/video recorded. If the statement contains information that is relevant to the criminal case but is not covered in the primary crime report, the supervisor will document the interview in a supplemental crime report.
 3. In the event that force is used on an individual with no criminal charges (i.e. psychiatric detentions), then the responding supervisor should interview the detainee regarding the use of force.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

4. In all cases, the responding supervisor should identify themselves as a supervisor to the arrestee/detainee. If the subject makes an allegation of misconduct, the supervisor will receive and forward the complaint to Internal Affairs.
 - (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
 - (e) Review the portion(s) of the body worn camera video pertaining to the use of force and/or allegation of misconduct.
 - (f) Review and approve all related reports.

In the event that an uninvolved supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit. The investigation will be documented in a Use of Force Investigation checklist and narrative as warranted.

When practical, involved supervisors, meaning those who use force in a given incident or those who witness the use of force by another officer in a given incident, should not obtain statements from other officers as part of a report on the use of force, as such is the responsibility of an uninvolved supervisor. Furthermore, involved supervisors and officers shall not attempt to influence other officers' or civilian witnesses' accounts of what occurred during the incident or otherwise compromise the integrity of the use of force investigation.

Use of Force Investigation Reports will be forwarded and reviewed through the chain of command.

300.7.1 WATCH COMMANDER RESPONSIBILITY

A watch commander will review the Use of Force Investigation Report to ensure compliance with this policy and that any training issues are addressed.

Nothing in the policy precludes the watch commander from requiring that a supervisor complete a Use of Force Investigation Report for any incident involving force.

The on-duty watch commander shall promptly notify the Office of the Independent Police Auditor in the event that a use of force resulted in significant (i.e. life threatening) injury, notwithstanding the notification requirements regarding officer-involved shootings and in-custody deaths pursuant to Policy 310.

300.8 TRAINING

Officers will receive annual training on this policy (at a minimum) and demonstrate their knowledge and understanding.

Departmental personnel authorized to carry lethal and less-lethal weapons will be issued copies of, and be instructed in, the policies of lethal and less-lethal force before being authorized to carry a weapon. The issuance and instruction shall be documented.

Use of Force

Training standards and requirements relating to demonstrated knowledge and understanding of the use of force policy, and training about interactions with vulnerable populations (including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities) are established in the Department's Training Plan. Relevant course titles from the Training Plan include, but are not limited to; POST Basic Academy material, POST-Approved Field Training Program, POST Continued Professional Training, POST-Certified Force Options Update, POST-Certified Driving Update, POST-Certified Force Options Update, POST Certified Driving Update, POST Certified Arrest & Control, POST-Certified Tactical Communications, First Aid/CPR Update, Firearm Qualification, Patrol Rifle, Racial Profiling or Fair & Impartial Update, Impact Weapons Update, TASER Training, Code of Ethics Training, Crisis Intervention Training, Reality Based Training, Active Shooter Training, Cultural Diversity Training, POST Field Training Officer Course, Field Training Officer Update Course, Firearms Instructor Course, Firearms Instructor Update, Arrest & Control/Impact Weapons Instructor, Arrest & Control/Impact Instructor Update, Impact Weapons Instructor Update, In-House New Sergeant Orientation, Officer Involved Shooting – Supervisor Responsibilities, POST Basic Instructor Development Institute, Fair and Impartial Policing Train the Trainer, Racial Profiling Instructor Course, Tactical Medical Course, POST First Aid / CPR Instructors Course, Force Options Simulator Instructor Course, Basic TASER Instructor Course, TASER Instructor Recertification Course.

300.9 USE OF FORCE ANALYSIS

At least annually, the Operations Bureau Deputy Chief should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the Office of the Independent Police Auditor, and the BART Police Citizen Review Board. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

300.10 USE OF FORCE COMPLAINTS

Complaints by members of the public related to this policy may be filled with the BART Police Department Internal Affairs Division (IAD), the BART Police Citizen Review Board (BPCRB) or the Office of the Independent Auditor (OIPA). The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)). Complaints filed with the BPCRB and/or OIPA will be investigated with the applicable procedures of the BART Citizen Oversight Model.

300.11 POLICY REVIEW

The Chief of Police or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Use of Force

300.12 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.13 PUBLIC RECORDS REQUESTS

Requests for public records involving an officer's personnel records shall be processed in accordance with Penal Code § 832.7 and the Personnel Records and Records Maintenance and Release policies (Government Code § 7286(b)).





Differences exist between documents.

New Document:	Old Document:
Lexipol 402 - Current	Lexipol 402 - Old
3 pages (14 KB)	3 pages (275 KB)
5/6/2021 05:07:25	5/6/2021 05:07:25
Used to display results.	

[Get started: first change is on page 1.](#)

No pages were deleted

How to read this report

-  indicates a change.
-  indicates deleted content.
-  indicates pages were changed.
-  indicates pages were moved.

Bias-Based Policing

402.1 PURPOSE AND SCOPE

This policy provides guidance to department members and establishes appropriate controls to ensure that employees of the Bay Area Rapid Transit Police Department do not engage in racial- or bias-based profiling or violate any related laws while serving the community.

402.1.1 DEFINITIONS

Definitions related to this policy include:

Bias-based policing - The consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement services, except that an officer may consider or rely on characteristics listed in a specific suspect description. (Penal Code § 13519.4).

402.2 POLICY

The Bay Area Rapid Transit Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

402.3 RACIAL- OR BIAS-BASED PROFILING PROHIBITED

Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering factors such as race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).

402.3.1 CALIFORNIA RELIGIOUS FREEDOM ACT

Members shall not collect information from a person based on religious belief, practice, affiliation, national origin or ethnicity unless permitted under state or federal law (Government Code § 8310.3).

Members shall not assist federal government authorities (Government Code § 8310.3):

- (a) In compiling personal information about a person's religious belief, practice, affiliation, national origin or ethnicity.
- (b) By investigating, enforcing or assisting with the investigation or enforcement of any requirement that a person register with the federal government based on religious belief, practice, or affiliation, or national origin or ethnicity.

Bias-Based Policing

402.4 MEMBER RESPONSIBILITY

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or bias-based profiling to a supervisor.

402.4.1 REASON FOR DETENTION

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify a detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

402.4.2 REPORTING TRAFFIC STOPS

Each time an officer makes a traffic stop, the officer shall report any information required in the Traffic Function and Responsibility Policy.

402.5 SUPERVISOR RESPONSIBILITY

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
- (b) Supervisors should periodically review MAV recordings, MDC data and any other available resource used to document contact between officers and the public to ensure compliance with the policy.
 - 1. Supervisors should document these periodic reviews.
 - 2. Recordings that capture a potential instance of racial- or bias-based profiling should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial- or bias-based profiling.

402.6 ADMINISTRATION

Each year, the Operations Division Commander shall review the efforts of the Department to prevent racial- or bias-based profiling and submit an overview, including public concerns and complaints, to the Chief of Police.

Bias-Based Policing

This report should not contain any identifying information regarding any specific complaint, citizen or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.

Supervisors shall review the annual report and discuss the results with those they are assigned to supervise.

402.7 TRAINING

Training on racial- or bias-based profiling and review of this policy should be conducted as directed by the Personnel and Training **Bureau**.

- (a) All sworn members of this department will be scheduled to attend Peace Officer Standards and Training (POST)-approved training on the subject of racial- or bias-based profiling.
- (b) Pending participation in such POST-approved training and at all times, all members of this department are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- (c) Each sworn member of this department who received initial racial- or bias-based profiling training will thereafter be required to complete an approved refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial and cultural trends (Penal Code § 13519.4(i)).

402.8 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Internal Affairs Division Manager shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against officers is collected and provided to the Records Supervisor for required reporting to the DOJ (Penal Code § 13012; Penal Code § 13020). See the Records Division Policy.

Supervisors should ensure that data stop reports are provided to the Records Supervisor for required annual reporting to the DOJ (Government Code § 12525.5) (See Records Bureau Policy).