

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688
(510) 464-6000

NOTICE OF MEETING AND AGENDA
BART POLICE CITIZEN REVIEW BOARD

April 9, 2018

A Meeting of the BART Police Citizen Review Board (BPCRB) will be held on Monday, April 09, 2018, at 4:00 p.m. The Meeting will be in the BART Board Room, Kaiser Center 20th Street Mall – 2040 Webster Street, Oakland, California. **(Please note: Although the address of the Board Room has changed it is still in the same location.)**

AGENDA

1. Call to Order.
2. Call for Quorum.
3. Pledge of Allegiance Recital.
4. Approval of Minutes of Prior Board Meeting. For Discussion and Action.
5. General Discussion and 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).
6. Review of Draft 2017 Quarter 4 2017 BPCRB Report to the BART Board of Directors. For Discussion and Action.
7. National Association of Civilian Oversight of Law Enforcement (NACOLE) Annual Conference Budget. For Discussion and Action.
8. BPCRB Onboarding and Training Syllabus Subcommittee Status. For Discussion and Action.
9. Chairperson's Report. For Discussion and Action.
10. BPCRB Training Program. (The curriculum to be addressed will not satisfy AB 1234 training requirements for legislative body members.)
 - a. Investigation Processes of the BART Police Department (BPD) Internal Affairs Division and BART Office of the Independent Police Auditor (OIPA)
11. Discussion of BART Police Officers' Association (BPOA) Memorandum Regarding the OIR Oversight System Evaluation Report. For Discussion and Action.
12. Chief of Police's Report. For Discussion and Action.
 - a. BPD Monthly Reports for January 2018 and February 2018
 - b. Use of Force Analysis Report Pursuant to BPD Policy 300 (Section 300.9)
 - c. BPD Fare Evasion Policy Reinstatement
 - d. BPD Response to Process to Calls for Service Regarding Disruptive Behavior

- 13. Independent Police Auditor's Report. For Discussion and Action.**
 - a. OIPA Monthly Reports for February 2018 and March 2018
 - b. Discussion re Board of Directors' Appointments for BPCRB Seats Expiring on June 30, 2018 and the Public-at-Large Seat
 - c. Discussion of OIR Report Process Including BART Board of Directors March 8, 2018 Vote to Implement 39 of 54 Recommendations
 - d. Discussion of OIPA and BPCRB Roles in Connection with BPD Officer-Involved Shootings

- 14. Closed Session.**
 - a. To Consider Public Employee Discipline/Dismissal/Release in Office of the Independent Police Auditor Case #17-35. Govt. Code §54957
 - b. To Consider Public Employee Discipline/Dismissal/Release in Office of the Independent Police Auditor Case #17-44. Govt. Code §54957

- 15. Adjournment.**

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to this meeting, as there may be people in attendance susceptible to environmental illnesses.

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.

BPCRB Meeting Agenda materials will be made available to the public at the meeting and may also be accessed and downloaded 72 hours prior to the meeting at <http://www.bart.gov/about/bod/advisory/crb> (click on "Agenda").

Pursuant to Govt. Code §54953.5, the audio recording of this open and 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
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2888

BART Police Citizen Review Board
Monday, March 12, 2018

A regular meeting of the BART Police Citizen Review Board (BPCRB) was held on Monday, March 12, 2018 convening at 4:00 p.m. in the BART Board Room, 344 20th Street, Oakland, California.

Members Present: Chairperson George Perezvelez, Vice Chairperson William White, Cathryn Freitas, Darren White, Bob Maginnis, Les Mensinger, Aman Sebahtu, David Rizk, and Richard Knowles.

BART Staff: BART Police Department (BPD) Chief Carlos Rojas, BPD Deputy Chief Jeffrey Jennings, BPD Deputy Chief Lance Haight, BPD Deputy Chief Edgardo Alvarez, BPD Lieutenant Paul Kwon, BPD Lieutenant Chris Vogan, BPD Officer Stephen Christ, BPD Officer Shane Reiss, Independent Police Auditor Russell Bloom, Independent Police Investigator Patrick Caceres, Senior Administrative Analyst Sarah Celso, Assistant General Manager Office of External Affairs Kerry Hamill.

Others Present: BART Director Robert Raburn, BART Director Lateefah Simon, KPIX Channel 5 News, Bay City News, Members of the Public.

Agenda items discussed:

- 1. Call to Order.**
The regular meeting was called to order at 4:01 p.m. by Chairperson George Perezvelez.
- 2. Call for Quorum.**
Chairperson George Perezvelez, Vice Chairperson William White, Cathryn Freitas, Darren White, Bob Maginnis, Les Mensinger, Cydia Garrett, and Richard Knowles were present, amounting to a quorum.
- 3. Pledge of Allegiance Recital.**
The pledge of allegiance was recited.
- 4. Approval of Minutes of Prior Board Meeting. For Discussion and Action.**
A motion to approve the minutes for the Prior Board Meeting was made by Mr. Mensinger and seconded by Mr. Maginnis. The motion passed with seven votes in favor, zero against and one abstention.

Mr. Sebahtu entered the meeting at 4:04 p.m.

With unanimous consent, the BPCRB moved Agenda Item #8 – January 3, 2018 BART Police Department (BPD) Officer-Involved Shooting (OIS) – to Agenda Item #6.

5. General Discussion and 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.)

Mr. Rizk entered the meeting at 4:23 p.m.

Chairperson Perezvelez called for Public Comment. The following individuals addressed the BPCRB:

Afiyah Chambers
Cat Brooks
Ki LeMon
Asale Chandler
Elizabeth Fitzer
James Douglas Burch
Iysis Levi

Chairperson Perezvelez addressed the public.

JayVon Muhammad
Ainchanel Turnage
Ciara Turner
Kavin Tindle
Courtney Walton
Crystal Hamilton
Karmeisha Edwards
Karim Mayfield
Anonymous (friend of the Sahleem Tindle family)

Chairperson Perezvelez addressed the BPCRB and members of the public.

6. January 3, 2018 BART Police Department (BPD) Officer-Involved Shooting (OIS). For Discussion and Action.

This item was originally Agenda Item #8.

Mr. Sebahtu gave his condolences to the Sahleem Tindle Family and addressed the public.

Chairperson Perezvelez addressed the public.

Ms. Garrett gave her condolences to the Sahleem Tindle Family and addressed the public.

Chairperson Perezvelez gave his condolences to Sahleem Tindle Family.

Mr. Rizk gave his condolences to the Sahleem Tindle Family and addressed the public.

Mr. Bloom addressed the public.

The BPCRB discussed this item.

Mr. Mensinger gave his condolences to the Sahleem Tindle Family and addressed the public.

Chief Rojas addressed the BPCRB.

Mr. W. White addressed the public and Chief Rojas.

Chief Rojas addressed the BPCRB.

Mr. Rizk addressed the public.

The BPCRB continued to discuss this item.

A motion to extend the meeting time to 6:30 p.m. was made by Mr. Knowles and seconded by Mr. Mensinger. The motion passed unanimously.

A motion to write a letter to the BART Board of Directors to direct the BART General Manager and BART Chief of Police to refrain from any public statements to any media outlet prior to the completion of investigations by the Oakland Police Department and the Alameda County District Attorney's Office was made by Chairperson Perezvelez and seconded by Mr. Mensinger. The BPCRB continued discussion on this item.

Chief Rojas addressed the BPCRB.

The BPCRB continued to discuss this item.

Chairperson Perezvelez withdrew his motion. Mr. Mensinger did not recall his second on the motion.

The BPCRB continued to discuss this item.

A motion to generate a letter to the BART Board of Directors in which the BPCRB would express their concern about public comments from BART Police Chief Rojas and urge BART staff and the BART Board of Directors to consult with BPCRB before making any further public comment regarding the January 3, 2018 officer-involved shooting was made by Mr. Perezvelez and seconded by Mr. Mensinger. The motion passed with seven votes in favor, two against and zero abstentions.

Chairperson Perezvelez called for Agenda Items #7 through #12 be agendaized for the next BPCRB meeting and he called for the meeting to be adjourned.

7. **Chairperson's Report. For Discussion and Action.**
This item was originally Agenda Item #6.
8. **BPCRB Onboarding and Training Syllabus Subcommittee Status. For Discussion and Action.**
This item was originally Agenda Item #7.
9. **Discussion of BART Police Officers' Association (BPOA) Memo Regarding the OIR Oversight System Evaluation Report. For Discussion and Action.**
10. **Chief of Police's Report. For Discussion and Action.**
 - a. BPD Monthly Report for January 2018
 - b. Use of Force Analysis Report Pursuant to BPD Policy 300 (Section 300.9)
11. **Independent Police Auditor's Report. For Discussion and Action.**
 - a. Office of the Independent Police Auditor (OIPA) Monthly Report for February 2018
 - b. Report-back on February 22, 2018 BART Board of Directors Meeting: Public Comment re January 3, 2018 OIS and Next Steps re OIR Report Recommendations
 - c. Discussion re Board Appointments for BPCRB Seats Expiring on June 30, 2018 and the Public-at-Large Seat
 - d. Discussion of OIPA and BPCRB Roles in Connection with BPD Officer-Involved Shootings
12. **Closed Session.**
 - a. To Consider Public Employee Discipline/Dismissal/Release in Office of the Independent Police Auditor Case #17-35. Gov. Code §54957
13. **Adjournment.**

A motion to adjourn the meeting was made by Mr. Maginnis and was seconded by Mr. D. White. The motion passed unanimously.

The meeting was adjourned at approximately 6:25 p.m.

Date: December 31, 2017
To: BART Board of Directors
From: BART Police Citizen Review Board
George Perezvelez, Chairperson
Subject: Quarterly Report to Board of Directors

This quarterly report from the BART Police Citizen Review Board (BPCRB) to the BART Board of Directors covers the BPCRB's most significant activities for October, November, and December 2017.

BART Police Citizen Review Board Members:

Kenneth Loo	District 1
Cathryn Freitas	District 2
William White (Vice Chairperson)	District 3
Darren White	District 4
Bob Maginnis	District 5
Les Mensinger	District 6
Aman Sebahtu	District 7
David Rizk	District 8
George Perezvelez (Chairperson)	District 9
Cydia A. Garrett	Public-At-Large
Richard Knowles	BART Police Officers and Managers Associations

Meetings:

The BPCRB normally meets in the district boardroom at 4:00 p.m. on the second Monday of the month. Meeting agendas and minutes are posted on the district website and can be found at www.bart.gov/about/bod/meetings.aspx. The regular agenda items include monthly oral reports by the BART Chief of Police and the Independent Police Auditor.

Reporting

This is the 24th formal written report to the Board of Directors.

Primary Duties and Responsibilities

The Citizen Oversight Model lists several primary duties and responsibilities for the BPCRB. The general topic headings below describe the BPCRB activities related to these tasks.

Receiving complaints, reviewing investigative reports and making recommendations for corrective action.

The Independent Auditor has received a number of complaints and appeals, which are being investigated. During this quarter, two cases (OIPA Case #17-09 Govt. Code 54957, and Case #17-29 Govt. Code 54957) were presented to the BPCRB and the OIPA recommendations were agreed to by at least a majority of BPCRB members.

Recommendations on Procedures, Practices and Training

N/A

Monitor Study Recommendations

During the Quarter, the Board accepted BART Police Department (BPD) review the OIR Report and compiled a comprehensive report to be presented to the BART Board of Directors of review.

Community Outreach and Other Activities

During October through December 2017, Les Mensinger attended BART's PD Annual Awards Ceremony.

Training

N/A

Participation in Oral Boards

Les Mensinger participated on oral board interviews.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BPCRB Members

DATE: March 8, 2018

FROM: General Counsel

SUBJECT: Budget for NACOLE Annual Conference

It has been brought to my attention that President Raburn misspoke at a previous BPCRB meeting in regards to the process by which the allowable amount to be contributed by the District towards attendance at this above referenced conference may be adjusted. President Raburn indicated that the amount could be adjusted to \$5000 without additional BART Board action.

Many may not recall, but in June of 2014, this matter was brought to the BART Board and that body passed a motion setting a limit of \$3500 per year for the purpose of funding BPCRB members' attendance at the conference. Because the BART Board has previously legislated a monetary limit, if the BPCRB desires to have that amount adjusted it must seek such an adjustment from the BART Board.



Matt Burrows

cc: BART Board President Raburn
Independent Police Auditor



February 22, 2018

BART Board of Directors

President Raburn and Members of the Board,

On behalf of the members of the BART POLICE OFFICERS ASSOCIATION, I am writing to express our opinion of the OIR Group review of the BART Police oversight structure. We found the proposed fifty three recommendations constitute a gross power grab. If accepted, it would place almost complete control of the police department in the hands of the Office of the Independent Police Auditor (OIPA). It is our opinion that the OIPA does not have the training, experience, and expertise in police management to adequately manage the role. A second concern is that many of the OIR recommendations would inflate the budget of the OIPA, and place an unnecessary financial burden on the District. These recommendations are not in the best interest of the public, the police department, or the District.

If adopted, the OIR recommendations would change the role of the OIPA from oversight to active intervention in internal affairs investigations. How can an auditor be independent and review the work of the police department if they are directing the course of the investigations? The OIR recommendations expand the scope and control of the OIPA to include investigating civilians, intervening in civil litigations and participation in all use of force reviews. These types of changes would serve no purpose other than to damage morale and stifle pro-active law enforcement. No justification for these changes has been offered, and we see no need for these changes to be implemented. Furthermore, every law enforcement officer has received extensive training and specialized education to become a police officer. Allowing civilians without the specialized training and education in law enforcement to make decisions about how to run a police department is irresponsible, and subjects the District to inefficiency, or worse, harmful litigation. Allowing the OIPA to control the police department would be a disastrous decision.

We are in favor of the current model, which offers oversight and transparency. The current model has proven to be effective. We recommend rejecting the OIR Group report and continuing the oversight model in its current configuration.

Sincerely,

Keith Garcia
BPOA President

Independent Review of the BART Police Oversight Structure

June 2017



Michael J. Gennaco
323 821 0586
7142 Trask Avenue
Playa del Rey, CA 90293
OIRGroup.com

Aaron B. Zisser
628 400 1203
Oakland, CA
civilrightsconsulting.com

TABLE OF CONTENTS

I. Executive Summary	3
II. Introduction.....	6
A. Background.	6
B. Scope and Methodology.....	7
C. Acknowledgements	9
III. Findings and Recommendations.....	11
A. Clarifying Oversight’s Scope	11
B. Increasing OIPA’s Monitoring Responsibilities.....	12
C. Making the Complaint Process Available to All	14
D. Enhancing OIPA Investigations	14
E. Improving the Disposition Process of OIPA Investigations	18
F. Additional Risk Management Role for OIPA.	23
G. Developing a Mediation Program.....	24
H. Ensuring Prompt OIPA Notification of All Critical Incidents	25
I. Enhancing OIPA’s Footprint Regarding Use of Force.....	25
J. Mapping Out a Significant Role for the Auditor in BART PD’s Early Identification System	
26	
K. Increasing OIPA’s Role as Auditor	27
L. Expanding OIPA’s Role in Policy Development	28
M. Ensuring Integration of Oversight in BART PD’s Policies and Practices	29
N. Clarifying the Relationship Between OIPA and the BART Police Citizen Review Board....	30
O. Clarifying and Enhancing the Roles of the BART Police Citizen Review Board	31
P. Providing Increased Transparency Authority for BART Oversight	34
Q. Ensuring Periodic Review of BART Oversight.....	34

I. Executive Summary

Overview of the review: Chapter 3-01 of the BART oversight model (hereinafter the “Model”) provides as follows:

The Board of Directors, with input from the BART Police Citizen Review Board, Auditor, BART Police Associations, complainants and the public, will evaluate the BART Police citizen oversight structure after the first year of implementation to determine if the need exists to make changes and or otherwise make adjustments to the system to improve its continued performance. This evaluation shall in no way be intended to eliminate the BART Police citizen oversight structure.¹

This review and report were commissioned and conducted in furtherance of BART’s compliance with this provision of the Model; that is, to facilitate the Board of Directors’ evaluation of the oversight structure.

Our review began in January 2017. We interviewed the stakeholders whose input is expressly set out in the Model, but we conducted many additional interviews with a broad range of other significant parties. We ensured that the evaluation takes account of the original impetus for the establishment of the oversight system – the January 1, 2009, shooting of Oscar Grant by a BART Police Department (BART PD) officer – as well as the subsequent systemic reviews of policies and practices. Because oversight’s effectiveness depends heavily on the community’s trust, engagement, and support, we placed a high premium on community attitudes and concerns regarding the oversight system. We measured these factors in a variety of ways.

During our review, all individuals we met were generous with their time, accessibility, and candor. Representatives of the Board of Directors, the BART Police Citizen Review Board, and the BART PD were particularly helpful in providing both relevant documents and important insights regarding the issues discussed herein. The Office of the Independent Police Auditor (OIPA) was especially helpful in facilitating the mechanics of our work, and was continually available to provide documents and important perspective. To the degree that our findings and recommendations may help enhance the current civilian oversight system, it reflects the cooperation, assistance, and acumen provided by these stakeholders.

The oversight system: The BART PD oversight system, established in July 2010 following a process that involved community input, consists of the OIPA and the BART Police Citizen Review Board. According to the Model, OIPA (with a current staffing level of three) is to conduct investigations of complaints alleging serious officer misconduct, make recommendations on BART PD policies and practices, audit Internal Affairs (IA) investigations, conduct close monitoring of officer-involved shootings, conduct community outreach, issue

¹ The Oversight Model is available on the website of the Office of the Independent Police Auditor: <https://www.bart.gov/about/policeauditor> and attached to this report as Attachment A.

public reports on investigation outcomes and trends, and provide staffing and other resources to the BART Police Citizen Review Board.

The BART Police Citizen Review Board consists of 11 members. Each of the nine Directors selects one member, while one is appointed by the police associations, and one is “at-large.” According to the Model, the Review Board is to hold monthly public meetings, review OIPA’s investigations, review BART PD and OIPA recommendations regarding BART PD policies, make its own recommendations regarding BART PD policies, conduct community outreach, and issue reports on its activities. Its members are also authorized under the Model to participate in officer and executive hiring.

Overview of findings: We found that the Model devised in response to the tragic shooting of Oscar Grant created two oversight entities that have served a valuable purpose in establishing effective civilian oversight over an agency that had no such previous external influences. The fact that we offer numerous recommendations designed to strengthen and clarify the original Model should in no way diminish the work of those who have worked diligently to fulfill the overarching objectives of accountability, advancing progressive police practices, and fostering greater community trust in law enforcement. Instead, this Report seeks to fulfill a key part of the Model’s original vision: one that recognized that a constructive re-assessment of BART’s nascent oversight program should be built into the design.

From that starting point, we found several areas in which the Model could benefit from revision and reform. These include significant omissions in the Model relating to investigations and auditing authority, and the ambiguities in provisions relating to outreach, reporting, investigations, and policy recommendations.

The review features a total of fifty-three recommendations. They range in scope from broad issues of jurisdiction and structure to more particular or technical adjustments to specific provisions in the Model. Among the key categories that produced specific suggestions for reform are the following:

Recommendations to expand authority and related findings: We recommend expanding the oversight system’s authority in two areas:

- **Broader audit authority:** First, we recommend expanding the auditing authority to allow OIPA to review any operational aspect of BART PD – as opposed to merely reviewing IA’s operations.
- **Investigations absent a complaint:** Second, we recommend authorizing OIPA to conduct its own independent investigation or review into any use of force or potential act of misconduct without the need to await receipt of a qualifying citizen complaint.

Other recommendations and findings:

- **Independence** from each other’s roles and responsibilities should be reinforced through structural changes to OIPA and the BART Police Citizen Review Board for the sake of their respective and mutual effectiveness. OIPA’s obligations relating to staffing the

Review Board should be removed, the requirement of a Review Board performance evaluation of the IPA should be eliminated, and orientation and training for Review Board members should be enhanced to delineate roles and responsibilities.

- **Case Auditing** should be conducted in a more consistent and thorough manner that allows for not only pre-completion input into the IA investigation, but also the ability to influence dispositions and discipline prior to BART PD's final decision.
- A **Systemic Auditing** protocol should be developed and implemented. OIPA should analyze trends and patterns, and it should be involved in BART PD procedures relating to use-of-force reviews and early identification of officers who may require remedial interventions.
- **Investigations** should address a broader range of complaints; any person should be able to file a complaint; and written protocols should be developed regarding investigative techniques, procedures, and coordination with other BART components to ensure confidence in OIPA's investigations and to ensure that it receives all complaints coming in to BART.
- **Use of Force Review** should become an arena in which OIPA more regularly participates, including assessing individual incidents, and contributing to holistic discussions of tactics and training, and other potential elements of constructive feedback.
- **Policy, procedure, and practice recommendations** should constitute a regular and formalized element of OIPA's interactions with and influence on BART PD.
- **Public reporting** by OIPA should be enhanced, in the form of greater detail with regard to its case monitoring role of internal investigations initiated by BART PD. Similarly, OIPA should report on the increased activities proposed in this report.
- **Mediation** should continue to be studied for ways to make it more attractive to complainants and officers.
- **An oversight system evaluation** should be conducted periodically.

II. Introduction

A. Background.

BART PD: Established in 1969, BART PD is “comprised of 296 personnel, of which 206 are sworn peace officers,” according to BART PD’s website.² BART PD covers the entire BART system, which extends into four counties. The Chief of Police reports to the General Manager (GM), who is appointed by the Board of Directors.

Shooting of Oscar Grant and aftermath: On January 1, 2009, Oscar Grant was fatally shot by BART police officer Johannes Mehserle on the Fruitvale Station platform. On August 11, 2009, the law firm Meyers Nave issued a report regarding policies and practices “relevant to the” Oscar Grant shooting.³

From June 2009 to September 2009, the National Organization of Black Law Enforcement Executives (NOBLE) conducted a review of BART PD’s policies and practices, and it issued a report on January 1, 2010, which identified areas for improvement in a number of areas of BART PD’s operations.⁴ A follow-up audit was conducted in 2013, and BART PD continues to report on its ongoing efforts to implement the recommended reforms.

In June 2010, Mehserle was convicted of involuntary manslaughter and acquitted of murder and voluntary manslaughter charges.

BART Public Safety Accountability Act: In September 2009 – immediately following the Meyers Nave report and before the completion of the NOBLE report – a bill was proposed in the state legislature to create an independent oversight system for BART PD. In July of 2010, the BART Public Safety Accountability Act was enacted. It directed the BART Board of Directors to “establish an office of independent police auditor, reporting directly to the board, to investigate complaints against district police personnel” and assigned the following “powers and duties” to the appointed auditor⁵:

- (1) To investigate those complaints or allegations of on-duty misconduct and off-duty unlawful activity by district police personnel, within the independent police auditor’s purview as it is set by the board.

² “History of the BART Police Department,” <http://m.bart.gov/about/police/employment>.

³ Meyers Nave, “Review of BART PD Policies, Practices and Procedures Re: New Year’s Day 2009,” 1 (Aug. 2009), available at https://www.bart.gov/sites/default/files/docs/Meyers_Nave_Public_Report.pdf.

⁴ NOBLE, “BART Management Audit,” (Jan. 2010) [NOBLE Audit (2010)], available at https://www.bart.gov/sites/default/files/docs/NOBLE_Final_Report.pdf.

⁵ CA Pub. Util. Code § 28767.8(a) (2016).

- (2) To reach independent findings as to the validity of each complaint.
- (3) To recommend appropriate disciplinary action against district police personnel for those complaints determined to be sustained.⁶

The Act also authorized the Board to create “a citizen review board to participate in recommending appropriate disciplinary action.”⁷

Oversight Model: Pursuant to the legislation, the BART Board of Directors formed a committee to study what type of oversight should be established. There were numerous public hearings with robust input from members of the community. The Model eventually promulgated called for an independent police auditor, as well as a citizen review board. Responsibilities of the oversight system – detailed in this report – included: investigations of complaints alleging serious officer misconduct, recommendations on BART PD policies and practices, auditing of Internal Affairs investigations, close monitoring of officer-involved shootings, community outreach, and issuing public reports on investigation outcomes and trends.

OIPA: The OIPA is appointed by and reports directly to the Board of Directors. OIPA consists of three staff, including the Independent Police Auditor (IPA), an investigator, and an administrative support person.

BART Police Citizen Review Board: The Review Board consists of 11 members, including nine members appointed by the respective Directors, a member appointed by the police associations, and an at-large member selected through a formal application process.

B. Scope and Methodology

Scope: Chapter 3-01 of the Oversight Model provides as follows:

The Board of Directors, with input from the BART Police Citizen Review Board, Auditor, BART Police Associations, complainants and the public, will evaluate the BART Police citizen oversight structure after the first year of implementation to determine if the need exists to make changes and or otherwise make adjustments to the system to improve its continued performance. This evaluation shall in no way be intended to eliminate the BART Police citizen oversight structure.

Even though the Model calls for an evaluation after one year of implementation, no assessment has ever been conducted since the inception of BART’s civilian oversight. While this lapse was unfortunate, it is a testament to OIPA and the Board of Directors that this independent review has now been commissioned.

We sought to answer two basic sets of questions:

⁶ CA Pub. Util. Code § 28767.8(b)(1)-(3) (2016).

⁷ CA Pub. Util. Code § 28767.8(c) (2016).

- Does the oversight structure perform as contemplated in the language of the Model? If not, what ambiguities or omissions in the Model’s language may impact optimum performance?
- Could the oversight structure be improved or enhanced to further the oversight system’s goals, as articulated in best practices and understood by the communities it serves?

Overview of methodology: To these ends, we evaluated:

- The language of the Model for ambiguity or weaknesses.
- Whether practice could benefit by providing clearer authority, expansion of duties, and reconsideration of priorities.
- The perceptions and concerns of communities BART serves and BART system stakeholders, as well as national best practices, to gauge what changes would help to instill additional trust in the oversight structure and aid in serving its goals.

Interviews: Our review began in January 2017 and entailed more than 50 interviews with nearly four dozen stakeholders. These included OIPA staff; BART Police Citizen Review Board members; seven BART directors; local oversight professionals; local advocacy groups, including the local ACLU affiliate and the Coalition on Homelessness; police associations; IA officers; and BART PD command staff.

Community interest and concerns: Just as it was essential that we speak with police officials and representatives, community feedback – particularly input from impacted communities, including communities of color – was of critical importance in our review. This is because the effectiveness of civilian oversight depends heavily on the community’s trust in its independence, authority, and capacity.

Community members – especially those who have perceived or borne the brunt of systemic unfairness and an adversarial relationship with law enforcement – are much more likely to provide information and insight to an oversight entity that they consider fair, meaningful, and empowered. Those contributions from the community can, in turn, strengthen the legitimacy and the effectiveness of the oversight entity. And this dynamic can ultimately increase community trust in the police department, as well – the public is reassured by the sense of accountability and gives credence to the positive acknowledgements of progress that the oversight entity can provide. Accordingly, our recommendations draw heavily on what we learned from and about the communities served by BART.

We assessed community interest through interviews with individual residents as well as political leaders, leaders of community and advocacy groups, and leaders of other Bay Area oversight agencies who could speak to broader community sentiment. We also gauged community interest and concerns through other Bay Area initiatives on oversight, as well as input provided during the original 2009 process.

Finally, we sought to account for any countervailing concerns, with an eye toward maximizing the understanding and acceptance of all key stakeholders, including those subject to oversight and those with contrasting viewpoints on how it should function.

BART Police Citizen Review Board sessions and documentation: We attended three Review Board sessions and requested and reviewed additional documentation, including:

- The Model and earlier drafts of the Model
- Review Board bylaws
- Complaints and OIPA investigation reports
- Notifications provided to officers and complainants
- OIPA monitoring reports regarding IA investigations
- OIPA and Review Board reports
- Review Board agendas and minutes
- OIPA and Review Board policy recommendations
- IPA and Review Board member selection materials
- The 2010 NOBLE report, the follow-up 2013 audit, and the 2009 Meyers Nave report
- Outreach materials
- Public information regarding the process for developing the oversight Model, community members' observations of the oversight system, and serious incidents involving BART PD officers

Best practices and standards: In addition to drawing from our own experience and exposure to various oversight models and practices, we consulted best practices and standards from a variety of sources, including the National Association for the Civilian Oversight of Law Enforcement (NACOLE) reports and reports by other professional organizations; scholarly literature on oversight; the NACOLE code of ethics (cited in the Model); the Core Principles for an Effective Police Auditor's Office (cited in the Model); U.S. Department of Justice, Civil Rights Division investigations and consent decrees⁸ and COPS Collaborative Reform Initiative reports⁹; and the Final Report of the President's Task Force on 21st Century Policing (May 2015).¹⁰

C. Acknowledgements

We received enormous support throughout the review process from a range of stakeholders and are grateful to each person who took the time to sit down with us for an interview. We were able to interview most members of the Board of Directors, who expressed strong interest in the review. Some helpfully directed us to other stakeholders. BART PD's executive staff, Internal

⁸ The U.S. Department of Justice publishes its findings letters and settlement agreements on its website: <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0>.

⁹ The U.S. Department of Justice catalogues its COPS assessment reports: <https://cops.usdoj.gov/collaborativereform>.

¹⁰ Final Report of the President's Task Force on 21st Century Policing (May 2015), available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

Affairs investigators, and the police associations, as well as the OIPA staff were open and candid and provided invaluable insights.

The current IPA enlisted this review, provided a comprehensive list of potential interviewees, contacted many of them to help schedule interviews, and was readily available for ongoing questions. The IPA provided critical OIPA documents and spent many hours sharing his understanding of and views on the system with us. We applaud his energy and interest and note that this review likely would not have happened but for his proactivity and creativity. The IPA's embracing of this peer review process, and full cooperation with it, is testament to an admirable growth mindset.

Finally, we are grateful to the family of Oscar Grant, who remain constructively engaged in the subjects of oversight and accountability, and who took the time in that spirit to share their experience and suggestions with us.

III. Findings and Recommendations

BART's current oversight model has many admirable features and has served its transit community well for almost six years. The Model provides OIPA with access to the most sensitive of Police Department records and gives it the ability to conduct independent investigations, audit internal investigations conducted by BART PD, and make policy recommendations. Moreover, the Model provides the BART Police Citizen Review Board with an opportunity to meaningfully weigh in on complaint investigations and recommend disciplinary outcomes, an authority that very few community-based oversight entities possess.

However, the Model has ambiguities and places unnecessary limits on oversight authority. This is due in large part to requiring the existence of a complaint before authority can be exercised. In addition, the Model saddles OIPA with administrative functions for the BART Police Citizen Review Board, blurring the lines between oversight entities with complementary yet distinct and independent roles. The recommendations set out below – which flow from an evaluation process expressly contemplated by the original model – are intended to provide clarity regarding both OIPA and the BART Police Citizen Review Board's authority. The recommendations suggest a course that could result in more impactful oversight for the benefit of the community and BART PD alike.

A. Clarifying Oversight's Scope

The Model Should Make Explicit that OIPA's Oversight Scope Includes All Employees of BART PD and Any Potential Violations of Policy.

Currently the Model states that OIPA has the authority to exercise its oversight duties with regard to “any and all law enforcement activities or personnel operating under the authority of” BART. We have been informed that this passage has been interpreted to include non-sworn members of BART. However, for purposes of clarity, the Model should indicate that all employees of BART are within OIPA's oversight authority.

Many of the non-sworn employees of a police agency have considerable interaction with the public and are indirectly imbued with the authority of the law enforcement entity for which they work. Accordingly, those employees often have significant influence on whether the public is appropriately served by the agency. For that reason, all police department employees should be subject to civilian oversight's ambit.

Moreover, at least as to sworn officers, the Model should make clear that any potential violations of policy should fall within the ambit of OIPA. Law and practice has also recognized that there is a clear nexus between off-duty conduct and on duty responsibilities for sworn officers. For that reason, it has been long held that police officers can be held accountable for off-duty misconduct inconsistent with their duties and responsibility to uphold the law. For example, officers who are found to have engaged in domestic violence or impaired driving can be independently sanctioned for that conduct by their employing agencies. In order to ensure accountability for these actions, progressive oversight entities have recognized that they must

similarly be able to exercise oversight over off-duty officer conduct. The Model for OIPA must ensure that such oversight authority exists over BART PD.

Recommendation One: The Model should be revised to make clear that the scope of OIPA’s authority extends to non-sworn employees of BART PD and to all potential misconduct involving sworn officers whether on or off duty.

B. Increasing OIPA’s Monitoring Responsibilities

OIPA Should Consider Revising Its Approach Towards Monitoring Internal Affairs Investigations Conducted by BART PD Toward Real-Time Monitoring and More Transparency.

Pursuant to the Model, OIPA has the authority to audit internal affairs investigations conducted by BART PD to determine if the investigations are “complete, thorough, objective and fair.” OIPA also has the ability to “require” follow-up investigation into any citizen complaint or allegation that is handled by BART PD.

OIPA has, in the past, exercised this authority provided by the Model when it determined that a BART PD investigation did not meet investigative standards. However, we are aware of a recent instance when there was resistance by BART PD after the Auditor identified an incomplete and substandard investigation and sought follow-up investigative work. BART PD should be reminded of the non-discretionary language in the Model requiring it to conduct follow-up investigation when requested by OIPA. To ensure an effective remedy should there be any BART PD compliance issues, the Auditor should be able to present any significant lapse to the attention of the General Manager, the Board of Directors, and the BART Police Citizen Review Board and set out the incident in its public reporting.

The Model provides the opportunity for OIPA to engage with BART PD as it proceeds with its internal investigative process. That ability has been enhanced by OIPA’s direct access to IA’s investigative database. We have been informed that OIPA regularly uses its database access to audit investigations being conducted by BART PD and has provided input and suggestions such as identifying additional witnesses to interview. OIPA also provides feedback on completed investigations to BART PD.¹¹

However, to the degree that OIPA provides such auditing of the Department’s internal affairs investigations, most of the feedback occurs after the case has been completed and a disposition has already been rendered. At that point, any post hoc input from OIPA has a potentially limited impact on disposition decisions made by the Police Department since the disposition has already been determined and subject officers and complainants notified about that decision.

Another approach to auditing of BART PD cases that appears to be workable within the current Model would be for OIPA to deploy “real-time” monitoring of cases. Under that paradigm,

¹¹ To the degree there remains any uncertainty, OIPA should be provided the authority to monitor any internal investigations conducted by BART PD, including internally generated investigations.

OIPA would audit active Internal Affairs investigations, serve as a resource during the pendency of the investigations, and, upon their completion, would review each case for completeness and objectivity. OIPA would then provide any feedback to Internal Affairs, suggesting any additional investigation prior to the case being completed. Similarly, prior to BART decision-makers' determination as to whether the evidence indicates a violation of policy, OIPA would offer independent recommendations on investigative outcomes. Finally, on founded cases, OIPA would present its recommendations with regard to the appropriate level of discipline. While BART PD would have ultimate authority regarding each of these internal decisions, OIPA's real time involvement in these decisions would likely make its input more impactful than the "after the fact" interaction currently deployed.¹²

In addition to providing quality assurance in real time for thorough investigations and evidence-based determinations on outcomes, OIPA could and should weigh in on other important investigative decisions. Sometimes, allegations of misconduct implicate potential crimes. The decision whether to forward such allegations to the District Attorney is one in which OIPA should participate. Additionally, under this approach, OIPA could play a helpful role in the proper scoping of investigations.

As importantly, OIPA should document and report on its auditing function. Currently, there is no detailed report of OIPA's auditing of BART PD cases, and the data reported regarding discipline and the outcomes by investigating agency (i.e., OIPA versus IA) is unclear. If OIPA decides to transition its current auditing function into real-time monitoring, it should significantly enhance its reporting of this function to the BART Police Citizen Review Board, the Board of Directors, and the public. OIPA should set out a narrative of each case audited, whether it found the investigation adequate, any input made by OIPA regarding improving the investigations, the disposition, and, in founded cases, the discipline imposed. OIPA should also report on the degree to which it concurred or disagreed with BART PD's case determinations. This increased level of transparency would provide stakeholders an important window into the Police Department's accountability system and an independent assessment of its vibrancy.¹³

Recommendation Two: OIPA should consider modifying its monitoring function of BART PD internal affairs investigations to "real-time" monitoring, offering recommendations on the strength of investigations and appropriateness of dispositions prior to BART PD completing the process.

¹² We have been informed that, to the credit of the former Chief, occasionally OIPA had been asked in real time to provide input regarding investigative or disposition determinations by BART PD. Our recommendation is for a more comprehensive expansion of this encouraging dynamic.

¹³ We leave to OIPA to determine based on its resources what portion of BART PD's internal investigations it could monitor in real time. One potential "bright line" suggestion would be to monitor all internal investigations conducted by the Department's Internal Affairs unit.

Recommendation Three: Should OIPA move to real-time monitoring, it should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review, and the appropriate scoping of an investigation.

Recommendation Four: OIPA should make its reported data on investigations and recommended discipline clearer and should publicly report its involvement and auditing functions in detail, setting out its assessment of the quality of each investigation and the appropriateness of each disposition and disciplinary determination. The Model should be modified to provide OIPA the express authority to report any resistance by BART PD to conduct additional investigation to the attention of the Board of Directors, the General Manager, the BART Police Citizen Review Board, and the public.

C. Making the Complaint Process Available to All

The Model Should Be Revised to Allow Any Person to File a Complaint with OIPA or the BART Police Citizen Review Board Against Any BART Employee.

Currently, the Model provides for a very limited universe of persons who may file a complaint with OIPA or the BART Police Citizen Review Board. Only “victims of on-duty police misconduct, a victim’s parent or guardian or a witness to misconduct” are permitted to file complaints against “a BART police officer.” The Model’s limitation on who qualifies as a complainant has led to circumstances in which OIPA has been handcuffed in its ability to investigate concerning incidents.

In one recent case, a widow of a person who died in custody did not qualify as a “complainant” under the Model’s definition. And in another case, a concerning use of force incident that occurred on a train platform, was captured on video, was uploaded on You Tube, and received thousands of views but did not qualify for OIPA purview because a qualified complainant did not file with the Auditor.

There is no rational justification for denying access to any individual who desires to file a complaint with BART’s oversight entities. In fact, progressive oversight entities even allow receipt of anonymous complaints. In addition, for the reasons discussed above, OIPA should have clear authority to investigate complaints against any BART PD employee, not just police officers.

Recommendation Five: The Model should be revised to provide any persons the ability to file a complaint with OIPA and/or the BART Police Citizen Review Board against any BART PD employee.

D. Enhancing OIPA Investigations

The Model Should Be Revised to Provide OIPA the Discretion to Investigate Any Complaint Received.

Currently, the Model provides OIPA the authority to investigate “all complaints of allegations of police officer misconduct regarding unnecessary or excessive use of police force, racial profiling, sexual orientation bias, sexual harassment, and the use of deadly force, suspicious and wrongful

deaths.” It is inconsistent with progressive oversight practices to limit OIPA’s investigative authority to these categories. Instead of setting out what OIPA “can do,” the Model should provide OIPA the discretion and authority to investigate any complaint received.

Recommendation Six: The Model should be revised to provide OIPA the ability to investigate any allegation of misconduct that implicates the policies of BART PD.¹⁴

OIPA and BART PD Should Consider New Investigative Models Designed to Create Efficiencies and Avoid Duplicative Investigations.

Currently, when OIPA determines to investigate a complaint and proceeds with its investigation, BART PD conducts its own investigation into the same allegations. This paradigm results in two investigations of the same allegation with the same purpose – to determine whether the facts indicate a violation of BART PD policies. In addition to the inefficiencies of having two investigations being conducted for the same purpose, such an investigative scheme has the potential of requiring the complainant, witnesses, and involved officers to be interviewed twice, with any inconsistencies being used to undermine the investigation if a disciplinary determination is challenged. Moreover, the existence of two investigations with separate review criteria could lead to disparate results based on the same set of facts.

For these reasons, we recommend that OIPA and BART PD examine the possibility of developing an investigative paradigm whereby the Auditor has initial review authority on complaint allegations made to his Office. In those cases, the Auditor should determine whether to investigate the case or refer all or some of the allegations to BART PD for investigation. Any allegations referred to BART PD should be monitored by OIPA. BART PD should defer any investigation of allegations assumed by OIPA. Such a paradigm would eliminate the inefficiencies of two investigations undertaken for the same purpose and the potential negative consequences discussed above.

Recommendation Seven: OIPA and BART PD should develop an investigative paradigm whereby OIPA would determine whether to investigate any complaint allegations received initially by the Office and BART PD would defer investigating allegations that the Auditor opted to investigate.

OIPA Should Develop an Investigative Handbook.

Too frequently, investigative authority is provided to entities with little guidance or direction on how to exercise that authority. This has proven true in our experience regarding police agencies and their internal review processes, and oversight agencies are often susceptible to the same

¹⁴ To the degree that our recommendations provide clear authority for OIPA to investigate allegations of misconduct, it may become necessary for the Auditor and BART PD to work out protocols regarding which entity investigates which allegations. One “bright line” rule that may work is for the entity that initially receives the allegation to take the investigative lead. We are confident, however, that OIPA and the Police Department will be able to work out these jurisdictional questions.

omissions. OIPA apparently falls within this paradigm. While, to its credit, OIPA did create investigative templates and standard formatting for its investigations, principles of investigation were not set out in any handbook or manual. Such a handbook is particularly important for internal investigations of police officers, given the unique substantive elements and the distinctive framework of statutory requirements set forth in California’s “Police Officer’s Bill of Rights.”

An investigative handbook that codified basic principles would help ensure that OIPA investigations were conducted consistent with best internal investigative practices.¹⁵ Moreover, the development of an investigative handbook should not create a substantial resource burden. Our experience suggests that, while the handbook should be tailored to OIPA’s oversight responsibilities for BART PD, universal investigative principles that already exist in handbooks of other agencies could be easily incorporated into an OIPA version.

Recommendation Eight: OIPA should develop a handbook to provide guidance and expectations for its internal investigations.

OIPA Should Develop Internal Guidelines Regarding Investigative Timelines for Completion of an Investigation.

Under California law, in order for discipline to be imposed, a subject police officer generally must be informed of the agency’s intent to discipline within a year of agency knowledge of the investigation. For that reason, with some exceptions, internal investigations of police officers need to be completed within a year of their initiation. While police agencies and oversight entities imbued with investigative authority recognize this statutory requirement, many recognize the interest in completing investigations well before the one-year deadline. There are several reasons for this.

First, if an investigation languishes unnecessarily, the complainant and subject officer will not receive timely notice of the result. More importantly, because most discipline is intended to be remedial, a delayed investigation will result in the remediation also being delayed. Nor does the quality of evidence tend to improve with age; on the contrary, memories fade and a delayed investigation can undermine the gathering of accurate and complete recollections. Finally, collateral issues such as consideration for promotion or special assignment can be unnecessarily delayed for the subject officer during the pendency of unresolved investigations.

Fortunately, OIPA has established a history of being timely in completing its investigations, in part because of its relatively small caseload. However, because the recommendations set out in

¹⁵ While a qualitative review of OIPA’s internal investigations was not the focus of our inquiry, we learned of one investigative technique that was concerning, namely the frequent use of telephone interviews by OIPA. Investigative principles strongly favor in-person interviews because of the natural limitations that exist if an interview is conducted over the telephone.

this report envision a larger caseload for OIPA, it is important to establish formal protocols for maintaining timeliness.¹⁶

Recommendation Nine: OIPA should set out investigative timelines in its internal protocols that not only meet the statutory requirements but also reflect a commitment to prompt and efficient resolution of cases.

The Model Should Be Amended so that OIPA’s Disciplinary Determinations Correspond to Those Utilized by BART PD.

Currently, the Model states that OIPA is to recommend that the matter be “dismissed” at the conclusion of an OIPA investigation in which the allegations are not supported by the evidence. Such a finding is not a generally accepted outcome for internal investigations in California. Rather, police agencies provide a menu of disposition options; for BART PD they are sustained, not sustained, exonerated or unfounded.

We have been informed that, in practice, OIPA makes findings after its investigation consistent with the four options available to BART PD. However, in order for the Model to conform to current practice, the language should be revised accordingly.

Recommendation Ten: The Model should be clarified to reflect that upon the conclusion of an OIPA investigation, OIPA should recommend a finding of sustained, not sustained, exonerated, or unfounded.

OIPA Should Revise its Closing Letters to Provide the Complainant as Much Information as Legally Permissible.

At the conclusion of an internal investigation, OIPA prepares a closing letter informing the complainant of the results. Consistent with many closing letters we have reviewed, OIPA’s closing letters are brief and provide little detail about the underlying investigation. Instead, the notification letter simply reports the outcome without explaining the basis for the decision or the nature of the investigative process. Complainants whose allegation is not proven (i.e., exonerated, unfounded, or not sustained) are left wondering about the thoroughness of the investigation and the legitimacy of the result.

California law provides restrictions on the type of information that can be provided to a complainant. Those restrictions, for example, have been interpreted to bar the agency from providing precise information about the disciplinary action taken. However, there is room under the law to give complainants more insight into the process. There is no prohibition, for example, on providing the number of witnesses interviewed, or whether video or audio evidence existed and was reviewed. By sharing this information, and otherwise tailoring the notification to the unique circumstances of the case, OIPA could move away from the type of “form letter” response that can exacerbate disappointment and undermine trust in the process. Accordingly,

¹⁶ We iterate that the ability to successfully keep to any internal timelines will be dependent on a sufficient allocation of resources to OIPA.

OIPA should craft closing letters that offer insights into the process and the means by which the result was reached.

Recommendation Eleven: OIPA should tailor its closing letters to each individual case and provide the complainant additional information about the investigative steps taken to reach its conclusion.

At the End of an Investigation, OIPA Should Consider Offering the Complainant the Opportunity to View Video Evidence.

Because of the adoption of body-worn cameras and the other video surveillance available at BART stations, there is a significant likelihood that the conduct complained about may be captured by video evidence. Video evidence can be significantly dispositive of allegations made against police officers. In cases in which video evidence exists and has contributed to the decision not to sustain an allegation, it is recommended that OIPA offer the complainant the opportunity to view the video, particularly when the complainant is the alleged victim of the misconduct.¹⁷

Recommendation Twelve: When a concluded investigation does not result in a sustained finding, OIPA should offer the complainant the opportunity to view any video account of the incident.

E. Improving the Disposition Process of OIPA Investigations

The Model Should Be Revised so that More Transparency is Provided Regarding the BART Police Citizen Review Board's Determination on Case Outcomes.

Currently the Model requires the Auditor to submit his findings to the BART Police Citizen Review Board for consideration. Under current practice, the Review Board considers the Auditor's recommendations and votes in closed session regarding whether to agree or disagree with those recommendations. The Model is silent about how that vote is reported. Current practice is to report out the results of any vote and the vote count when not unanimous, but the way in which individual Board members voted is not discernable.

While the case deliberation must remain private in accord with state law, there is no legal prohibition on publicizing how each Review Board member voted. Moreover, when there is a dissent, a rationale for the opposing votes should be crafted that could be made public. Accordingly, and consistent with enhanced transparency, the Model should be revised to stipulate that such information will be made public in the interest of providing further insight into the process and outcomes.

¹⁷ Competing privacy interests may prevail in cases in which the complainant is not the person being captured on video and in those situations OIPA should use its discretion on whether to offer to show the video evidence.

There may be occasions where OIPA may be interested in presenting monitored BART PD cases to the BART Police Citizen Review Board in order to receive input and feedback. Modifying the Model to provide the Auditor flexibility and discretion to do so is consistent with the document's overarching interest in gaining meaningful feedback and input from the community-based oversight entity.

Recommendation Thirteen: The Model should be revised to instruct that the BART Police Citizen Review Board's vote tally by member on the Auditor's case recommendations and findings should be made public. In cases in which a non-unanimous majority agrees with the Auditor's case recommendations and findings, the dissenters should set out their rationale for diverging from the majority's determination.

Recommendation Fourteen: The Model should be revised to provide the Auditor the discretion to present BART PD internal investigations to the BART Police Citizen Review Board in order to receive input and feedback.

The Model Should Be Revised to Provide More Clarity Regarding Process When BART's Chief Disagrees with OIPA/BART Police Citizen Review Board's Recommendation.

Currently the Model states that, should the BART Chief of Police disagree with the findings and recommendations of the Auditor and the BART Police Citizen Review Board, the Chief has the ability to appeal the determination to the General Manager in a confidential personnel meeting. The Model further states that the General Manager shall then make a decision and convey his/her decision to the Chief, Auditor, and the BART Police Citizen Review Board. The Model then instructs the Chief to implement the General Manager's decision.

We have been informed that this process has been used at least twice in the six-year existence of BART's oversight system. Based on recollection, we learned that in both cases, the Chief communicated with the General Manager's Office, pursuant to the Model, and the General Manager decided to accept the Chief's recommendations.

As implemented and as the current Model suggests, the appeal process has to date amounted to an ex parte meeting between the Chief and the General Manager. In that process, the General Manager only apparently heard the arguments put forth by the Chief; neither the Auditor nor the BART Police Citizen Review Board had an opportunity to be heard or to rebut the Chief's arguments. Moreover, because there was no public accounting of this process, there was no record of the Chief's reason for disagreement or the rationale for the General Manager accepting the Chief's view over those of the oversight entities.

In common law jurisprudence, most "appeal" processes consist of a forum where the appealing party submits arguments in writing, all other parties submit papers in response to the moving party and all parties can be heard in a meeting. Moreover, the decision-maker generally affords each party the opportunity to respond to any arguments put forward by the "appealing" party at the meeting. However, under the current plain language of the Model and apparent practice, the Chief of Police has the apparent ability to present his arguments to the General Manager without any opportunity for the Auditor or the BART Police Citizen Review Board to be heard.

The Model should be revised to explicitly provide for an opportunity for the Auditor and a representative (e.g., the chair) of the BART Police Citizen Review Board to have seats at the General Manager's meeting with the Chief in order to be able to listen to the Chief's arguments and to respond to them accordingly.¹⁸ Such a process will provide the General Manager the opportunity to hear from all impacted parties and be able to make a better-informed determination based on input from each of them. The Model should also be revised to require the Auditor to publicly report on the outcome of any such appeals consistent with state law.

Recommendation Fifteen: The Model should be changed to require the Chief to timely put forward the reasons and arguments for appeal in writing and provide the Auditor and the Chair of the BART Police Citizen Review Board the opportunity to respond in writing, to be present at any appeal meeting, and to respond to any additional arguments set forth by the Chief at the appeal meeting. The Model should be further revised to require the General Manager to set out her/his findings in writing.

Recommendation Sixteen: The Model should be changed to require the Auditor to publicly report the results of any such appeal meeting consistent with state law confidentiality requirements.

The Model Should Be Revised so that the Chief of Police Does Not Determine Disputes Between the Auditor and the BART Police Citizen Review Board on Case Outcomes.

Currently the Model states that in cases in which the BART Police Citizen Review Board disagrees with the Auditor and fail to come to a consensus, the Review Board and the Auditor are to appeal the disagreement to the Chief of Police for a determination. Under the current model, the Chief then listens to both parties and determines whether to accept either the Review Board or the Auditor's findings.

Under the current language of the Model, the potential exists for an untenable situation in which the head of the agency subject to oversight is empowered to be the initial decision-maker when the two oversight entities disagree on outcome.¹⁹ A more appropriate dispute resolution process would be for the General Manager to convene a meeting with the Auditor, the Chair of the BART Police Citizen Review Board, and the Chief of Police. During that meeting, the General Manager would hear the opposing positions of the oversight entities and render a disposition determination accordingly.

Recommendation Seventeen: The Model should be changed so that when the BART Police oversight entities disagree on a case disposition, the General Manager will convene a meeting and, after receiving input from the oversight entities and the Chief of Police, render a disposition determination.

¹⁸ Moreover, in order for the envisioned process to effectively work, the Chief must timely present any appeal to the General Manager.

¹⁹ We have been informed that, to date, this provision has not been applied in an actual case. While this is fortunate, the potential for such a circumstance obviously continues to exist.

The Model Should Be Modified to Allow Complainants to Appeal to OIPA Any BART PD Internal Affairs Findings.

Currently the Model provides complainants the right to appeal to OIPA the findings of an internal investigation conducted by BART PD regarding “on-duty incidents.” There is scant rationale for so limiting appellate rights of complainants.

Recommendation Eighteen: The Model should be revised to provide complainants the right to appeal to OIPA the findings of any internal affairs investigation conducted by BART PD.

Complainants Should Be Informed as a Matter of Course of Their Right to Appeal BART PD Internal Affairs Findings to OIPA.

We have been informed that the right to appeal BART PD IA findings to OIPA has been used by complainants only infrequently. One explanation for this may be complainants’ unawareness of this option. Pursuant to state law, when BART PD closes an internal affairs investigation, it informs the complainant of that event by letter. The closing letter could be used as an efficacious way to make complainants aware of their right to appeal the findings to OIPA.

Recommendation Nineteen: BART and OIPA should work with BART PD to ensure that the Police Department’s required notification letter to the complainant regarding case outcome also informs the complainant of his/her right to appeal the finding to OIPA.

Recommendation Twenty: OIPA should regularly report on the number of appeals received and the results of those appeals.

The Model Should Be Revised to Protect all Disposition and Disciplinary Decisions from Unprincipled Changes at the End of the Process.

Currently, the Model simply states that any discipline recommended shall be subjected to an administrative hearing prior implementation to address the “due process” rights of public employees. However, the Model does not articulate a role for either oversight entity in the post-disciplinary processes that currently exist.

Prior to the actual imposition of discipline, BART employees have the ability to argue that any decision is not supported by the evidence or is inappropriate or otherwise unfair. Currently, the Chief of Police has the ability to modify the initial determination and rescind charges or discipline as he sees fit. As a result, the potential exists for initial disciplinary findings by the oversight entities to be entirely undone by the Chief with neither notice nor opportunity for input from them. The Model’s silence on oversight’s role in post-disciplinary appellate processes creates a huge hole in the process that must be filled in order to ensure the effectiveness of oversight.

One easily implemented remedy would be to add a provision to the Model requiring the Chief to consult with the Auditor prior to modifying any disposition or discipline decision. If the employee has raised principled reasons during the post-discipline process for a modification, the Auditor should obviously be open to the Chief’s proposed amendments. Conversely, the Auditor should have the opportunity to resist changes in outcome that do not seem to have a reasonable

basis. If the proposed change is sufficiently significant in its impact on accountability, the Auditor should request a meeting with the General Manager prior to the change being effectuated. The Model should also require the Auditor to report on any post-disciplinary changes in disposition and discipline and whether he agreed with the modifications.²⁰

After a disciplinary determination has been made, BART PD employees have the ability to appeal to an arbitrator. BART is required in this forum to establish the policy violation and discipline, and any determination by the arbitrator is binding on the parties. Again, our experience with other jurisdictions is that prior or during these proceedings, the Chief and entity may be approached by representatives of the employee with an offer to settle the case. The settlement offer is usually an agreement by the employee to drop the appeal in exchange for a lessening or removal of the disciplinary determination. Without the oversight entity's input in these settlement offers, the potential exists for a settlement that undermines accountability.

Again, an easy remedy exists. The Model should require input from the Auditor before any settlement agreement is struck between BART and the appealing employee. Should the Auditor determine that the settlement offer was unreasonable and undermined accountability, the Auditor should be able to convene a meeting with the General Manager for a final determination regarding the settlement offer. Finally, the Model should require the Auditor to report on any disciplinary determinations that are settled, whether he was consulted, and whether he agreed with the decision to settle the case.

The arbitration process itself is beyond the authority of OIPA but nonetheless warrants attention as an important influence on its work. Arbitration hearings test the strength of internal investigations and disposition determinations and can uncover potential weaknesses in those processes. In addition, an arbitrator has the authority to rescind even termination cases and order the agency to return the police officer to work – a power that is worthy of public awareness and scrutiny.

During our review, we were informed of at least one instance in which a BART police officer was returned to work after being initially terminated by the Department for a serious violation. However, because the Model sets out no role for its oversight entity in these processes, the Auditor did not review or assess the reason for the decision to return this terminated employee to BART employ. As importantly, the Model did not contemplate a public accounting of this decision as part of the Auditor's transparency responsibilities. This should be addressed.

Recommendation Twenty-One: The Model should be revised to require the Chief of Police to consult with the Auditor prior to modifying any initial disposition or disciplinary determinations. The Model should provide the Auditor an appeal process to the General Manager should he believe that any modification would result in a serious erosion of

²⁰ We were informed of one case in which a BART police officer originally received notice that he was to be terminated for a serious infraction that was investigated by the Police Department. However, that decision was reversed during the grievance process and the employee was returned to work. The appropriateness of this decision notwithstanding, this is the type of case that OIPA should be reporting on publicly.

accountability. The Model should require the Auditor to publicly report on any modification of an initial disposition or disciplinary modification and whether he agreed with the modification.

Recommendation Twenty-Two: The Model should be revised to require BART to apprise OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation. The Model should provide the Auditor the opportunity to appeal any intention to settle the matter to the General Manager should the Auditor find that the settlement would amount to a serious erosion of individual accountability. The Model should require the Auditor to publicly report on any cases settled at the post-discipline stage and whether OIPA agreed with the decision to settle.

Recommendation Twenty-Three: The Model should be revised to require the Auditor to report on any arbitration determinations that modify or rescind initial disposition and disciplinary decisions and to evaluate the reasons for any modification. The Model should require the Auditor to identify any systemic issues that formed the basis for any modification and work with BART PD to remediate those issues.

OIPA Should Report Publicly the Results of Any Completed Investigation.

While currently OIPA provides some information regarding completed investigations, we recommend that its reporting be modified to include a narrative of the allegation, the results of the investigation, whether the BART Police Citizen Review Board agreed with OIPA's recommendation, whether the Chief agreed with the proposed disposition, and whether there were any post-disciplinary changes to the initial disposition. In most cases, the reporting should begin when the investigation is initiated, with additional information being included as the process moves forward. Consistent with state law requirements, identifying information about the case or officers involved should not be included.

Recommendation Twenty-Four: OIPA should publicly report on every investigation from inception to conclusion, providing information about the case result and the degree to which OIPA and the BART Police Citizen Review Board recommendations were implemented.

F. Additional Risk Management Role for OIPA.

OIPA Should Be Expressly Authorized to Review Any Claim, Civil Complaint, and Law Suit Settlements and Judgments.

When an individual believes he or she has been aggrieved by police officers, the person can file a complaint with the agency and/or oversight entity. Some persons, however, seek relief through the courts and file a claim or lawsuit instead. Depending on how the concern is received, the entity's response may be entirely different. Complaints filed with the agency or oversight entity are investigated as personnel matters, while the evidence-gathering for litigation has a different and inherently defensive orientation. We understand this dichotomy but see it differently – or at least more broadly. Among other things, a claim or lawsuit is essentially a “citizen complaint with a price tag attached.” If a jurisdiction handles these matters solely in litigation mode, it may overlook important questions of potential misconduct or resist the kind of investigation that might produce unwanted evidence.

For that reason, leading oversight entities routinely review claims and lawsuits to ensure that such an appropriate internal inquiry does occur in addition to other responses. In a similar vein, oversight entities monitor civil litigation to identify potential individual officer performance issues as well as systemic issues that may be unsurfaced. In cases resulting in significant settlements or adverse judgments, the oversight entity is often involved with the agency in developing a corrective action plan designed to remediate any of those issues.

In large part, because the Model did not specify a role for OIPA in these matters, it has not been involved in reviewing the civil litigation from an oversight and risk management perspective. OIPA should expressly be provided such authorization so that it can perform this important function.

Recommendation Twenty-Five: OIPA should be provided authority to review claims and lawsuits to ensure allegations of misconduct are thoroughly investigated.

Recommendation Twenty-Six: OIPA should review any significant settlements and adverse judgments involving BART PD performance and work with BART PD to develop corrective actions intended to remediate any systemic issues.

Recommendation Twenty-Seven: OIPA should report publicly on its work in reviewing civil litigation.

G. Developing a Mediation Program

OIPA Should Redouble its Efforts to Develop a Robust Mediation Program.

The Model expressly sets out a role for the Auditor in developing a mediation program. It states expressly that OIPA “shall develop a voluntary alternative dispute resolution process for resolving those complaints which may most appropriately be corrected or modified through less formal means.” The Model also contemplated that the BART Police Citizen Review Board and BART Police Associations would be part of the development process.

Nonetheless, in four years there has yet to be a case that has gone through a mediation process. While a few individual instances have come close, participants withdrew from the process at the eleventh hour.

Mediation – where involved parties can safely and productively articulate different viewpoints with a neutral arbiter – provides a process consistent with contemporary principles of restorative and procedural justice. The key to developing an effective mediation program is to make the process worthwhile to all participants, and departments have often faced challenges in getting officers to see the benefits. While these challenges are real, the experience of agencies in other jurisdictions shows they are surmountable. OIPA should examine these other jurisdictions to gain ideas for achieving a successful program. BART PD also should be more engaged in working with OIPA and the Police Associations to consider additional incentives for police officers to engage in mediation.

Recommendation Twenty-Eight: OIPA should redouble its efforts to create a mediation process that is attractive to complainants and officers and provides an effective alternative dispute resolution process.

H. Ensuring Prompt OIPA Notification of All Critical Incidents

OIPA Should Receive Notification as to All Critical Incidents.

Currently, the Model provides that the Auditor shall be notified immediately regarding an officer-involved shooting that results in the death or serious bodily injury to a member of the public or a police officer so that the Auditor can respond in real time to the investigative scene. The current language of the Model restrictively limits notification of OIPA to only uses of deadly force that result in death or serious bodily injury.²¹ While a shooting that does not result in serious injury or loss of life has less significant consequences for the involved parties, a non-hit shooting or one that results in minor injury still involved a decision by the officer to use deadly force, and that decision is worthy of the same scrutiny. Additionally, the notification protocol does not expressly include other uses of force that result in death or serious injury, or incidents in which an off-duty officer may take police action and use deadly force.

We have been informed that, to the credit of BART PD, it has been regularly informing OIPA of a broader set of critical incidents that do not fit squarely within the Model's language. While BART PD's voluntary approach is praiseworthy, the Model should be modified so that it is clear to all that notification of OIPA should occur for a broader category of incidents.

Recommendation Twenty-Nine: The Model should be enhanced to ensure that OIPA is timely notified of any critical incident including all officer-involved shootings (on duty or off duty) regardless of whether the use of deadly force resulted in injury or death, any use of force resulting in significant injury, and any in-custody death.

I. Enhancing OIPA's Footprint Regarding Use of Force

The Auditor Should Be Regularly Reviewing Uses of Force by BART Police Officers.

In order for peace officers to perform their public safety function they are provided unique authority. In addition to being provided the power to arrest, police are provided the authority to use force when necessary. This authority, however, must be strictly limited and its exercise carefully scrutinized in light of the Constitution, the law, and internal policy. As a result, police officers are required to report when they use force, and command staff of the agency has a responsibility to review the policy and legal appropriateness of these incidents.

Because of the inherent seriousness of force incidents, and the profound ramifications of misuse or abuse of this police power, independent oversight should be significantly involved in

²¹ The subheading of the Model is entitled "On-Duty Officer Involved Shooting Incidents," suggesting that there is no need to notify OIPA of off-duty uses of deadly force.

monitoring force. Currently, except for some officer-involved shootings, OIPA’s review of force incidents is limited to situations when a “qualified person” complains of force. As a result, both significant and minor force incidents escape the purview of BART’s oversight entity and are not subjected to outside independent review.

OIPA should be afforded the opportunity to review every force incident and determine whether the force should be the subject of an internal affairs investigation. OIPA should also review the force to determine whether other issues are implicated for the involved officers or the Department as a whole. OIPA should work with BART PD to ensure that each force incident is reviewed with an eye toward identifying systemic issues such as training, equipment, supervision, and policy.

We also understand that BART PD convenes use of force review boards that examine significant force incidents. OIPA should regularly participate in those review boards to provide an independent perspective and to help assess individual performance and conduct as well as identify systemic issues. Finally, OIPA should regularly report on its involvement in the force review process and on any critical incidents.

Recommendation Thirty: The Model should be revised to provide OIPA the authority for and responsibility of reviewing use of force incidents by BART PD, regardless of whether the incident is a subject of a complaint.

Recommendation Thirty-One: OIPA should regularly participate in BART PD’s use of force review boards.

Recommendation Thirty-Two: OIPA should report publicly on its use of force review program including the outcome of BART PD’s use of force review boards.

Recommendation Thirty-Three: OIPA should report publicly on the internal review of any officer-involved shootings, in-custody deaths, or serious uses of force.

J. Mapping Out a Significant Role for the Auditor in BART PD’s Early Identification System

OIPA Should Be Involved in the Early Identification System.

We have been informed that BART PD continues to develop an early identification system. This system is intended to use relevant data to identify police officers who may be displaying patterns of conduct that need to be addressed before they become a problem for the officer, the agency, and/or the public. For example, an early identification system may reveal an officer who uses force significantly more frequently than his or her counterparts on the shift – a potential “red flag” that could make further scrutiny worthwhile. The resultant intervention is intended to be remedial rather than punitive and might use mentoring, closer supervision, or other non-punitive strategies tailored to help mitigate or fix identified concerns.

Our experience is such programs are not only potentially beneficial, but also that independent oversight can be a helpful resource in their development, implementation, and execution. Currently, there is no role for OIPA in the Department’s early identification system; we are

confident that setting out a distinct role for an independent voice will strengthen the system that BART PD has been developing.

Recommendation Thirty-Four: The Model should be revised to provide authority and responsibility for OIPA to regularly participate in BART PD's early identification process.

Recommendation Thirty-Five: OIPA should report regularly on the status of the Department's early identification system and results.

K. Increasing OIPA's Role as Auditor

The Model Should Be Modified to Increase the Auditing Function of the Independent Police Auditor.

While the professional oversight entity for BART PD is named the Independent Police Auditor, most of its work to date has been not auditing but investigating complaints. This incongruity stems, in large part, because the Model does not clearly define the auditing role for the Auditor.²² As a result, OIPA has not conducted systemic audits of vital police functions. Other jurisdictions with robust oversight regularly conduct audits of their responsible police agencies, including the following areas:

- Recruiting and hiring practices
- Background investigations
- Supervisor performance
- Email, MDC and texting reviews
- Academy and in-service training
- Performance evaluations
- Promotional and special assignment processes
- Potential bias-based policing in stops or searches
- Stop and frisk practices
- Complaint intake procedures
- Appropriate use of the disciplinary matrix
- Transparency and public reporting of data by the police agency
- Crisis intervention practices and/or interactions with the homeless
- Police Department outreach
- Use of lock-ups
- Assessing compliance with precepts set out in pillars of 21st Century Policing

²² For example, one lost opportunity was that no role was created in the Model for OIPA to audit and report on BART PD's progress on implementing the recommendations set forth by the NOBLE report referred to above.

These oversight entities publicly report on the results of those audits.²³ Those same jurisdictions often monitor systems audits conducted by the police agencies themselves and publicly report on the results of those audits.

The Model should be revised so that OIPA is provided authority and responsibility to conduct systemic audits of BART PD functions that impact the quality of the Department and the service provided to its public. Similarly, the Model should provide OIPA the authority and responsibility of monitoring internal audits conducted by BART PD and to publicly report the results of those audits.²⁴

Recommendation Thirty-Six: The Model should be revised to provide OIPA the authority, access to data and records, staffing, and responsibility to conduct systemic audits of BART PD functions that impact the quality of the Department and the service provided to its public.

Recommendation Thirty-Seven: The Model should be revised to provide OIPA the authority and responsibility to monitor any audits conducted by BART PD regarding similar issues and report publicly the results of those audits.

L. Expanding OIPA's Role in Policy Development

The Model Should Explicitly Authorize OIPA to Be Involved in BART PD-Initiated Policy Development.

The current Model expressly authorizes the Auditor to develop specific recommendations concerning “General Orders and Directives, procedures, practices, and training” intended to improve “professionalism, safety, effectiveness, and accountability” of BART PD employees. To its credit, OIPA has made policy recommendations – for example, it most recently suggested changes to the way in which BART PD deals with panhandlers. However, OIPA has had little involvement in policy and training changes initiated by BART PD.²⁵ Our experience is that the most efficacious method of policy development is to have the police incorporate the feedback and input of oversight entities at an early stage, rather than the presentation of a “finished” product for review at the end of the process.

²³ We were informed that the recently retired Chief requested OIPA to conduct an audit of background investigation files, but that the project was halted because of disagreement regarding the Auditor's access and authority.

²⁴ The increased role we recommend for OIPA in auditing, reporting, and real-time monitoring of BART PD IA cases will likely result in a need to provide additional resources to the Auditor. The Board of Directors, the General Manager, and OIPA should work jointly to determine the degree to which additional resources will be needed to perform these additional functions.

²⁵ For example, BART PD recently developed language intended to modify its use of force policy; OIPA had no involvement in its initial development.

Recommendation Thirty-Eight: The Model should be revised to provide OIPA the authority and responsibility to be involved in any policy or training initiatives being developed by BART PD and to report publicly on any reforms.

The Model Should Explicitly Authorize OIPA to Forward Any Policy Recommendations to the General Manager and/or the Board of Directors.

While the Model currently authorizes the BART Police Citizen Review Board to forward any of its policy recommendations to the General Manager and/or the Board of Directors, no similar express language exists for OIPA. While we have been informed that in practice OIPA has been provided the ability to forward policy recommendations it has made to these entities, it would be advisable to revise the Model to expressly recognize this authority.

Recommendation Thirty-Nine: The Model should be revised to provide OIPA the express authority to forward policy recommendations to the General Manager and/or Board of Directors. In situations in which OIPA's recommendations are not accepted by BART PD, OIPA should consider whether to forward its recommendations for further consideration to BART's governing entity.

OIPA Should Ensure that the Public Is Informed on Status and Outcome of Policy Recommendations.

Over the years, OIPA has developed thoughtful policy recommendations. However, there is no “record” of the degree to which BART PD accepted and integrated those recommendations. For example, in its 2012-13 annual report, OIPA set out in detail recommended changes to BART PD’s recording policy. However, in the subsequent annual reports, there is no follow up on whether BART PD accepted or rejected each of the recommendations.

Recommendation Forty: In its annual report, OIPA should include an update on any previous outstanding recommendations and the degree to which the recommendations were endorsed by the Review Board and accepted by BART PD.

M. Ensuring Integration of Oversight in BART PD’s Policies and Practices

BART PD’s General Orders Should Include the Authorities and Responsibilities of its Oversight Entities and a Provision Recognizing the Duty to Cooperate with those Oversight Entities.

While the current General Orders and Directives of BART PD include some references to the existence and responsibility of the Independent Police Auditor and the BART Police Citizen Review Board, the specific responsibilities set out by the Model do not appear to be incorporated into those Orders. BART PD General Orders should make specific reference to oversight and its responsibilities. Moreover, BART PD’s Orders should inform its members of their responsibility to cooperate and respect the role of its oversight entities.

Recommendation Forty-One: BART and OIPA should work with BART PD to ensure that BART PD’s General Orders incorporate the authority of its oversight entities and the duty of members to cooperate in the execution of that authority.

N. Ensuring Regular Dialogue Between Oversight and BART Police Associations

OIPA and the BART Police Citizen Review Board Should Develop Mechanisms to Ensure At Least Annual Meets with the BART Police Associations.

The Model instructs both OIPA and the BART Police Citizen Review Board to meet “periodically” and “seek input” from the BART Police Managers Association and the BART Police Officers Association. We have been informed that while meetings may have occurred during the first year and have been subsequently scheduled, actual meetings over the past few years have been sporadic at best. We believe that there is value in having periodic meetings between the oversight entities and those tasked with representing the interests of BART police officers. For that reason, a meeting schedule should be devised by both oversight entities to ensure there is an attempt to meet with both Police Associations at least annually. OIPA and the Citizen Review Board should annually report on any meetings that are held with the Police Associations.

Recommendation Forty-Two: OIPA and the BART Police Citizen Review Board should attempt to schedule a meeting at least annually with the two BART Police Associations. The oversight entities should annually report on whether such meetings occurred.

O. Clarifying the Relationship Between OIPA and the BART Police Citizen Review Board

The Model Should Be Revised to Provide Further Guidance Regarding the Relationship Between OIPA and the BART Police Citizen Review Board.

Consistent with oversight trends nationwide, BART’s oversight system includes a professional oversight office and an oversight board appointed from the community. That paradigm has resulted in OIPA being able to develop an expertise in police accountability practices adapted to a police agency designed to police an extensive transit system and a Board selected from the BART community that has a meaningful voice and role in both individual cases and systemic reform.

While it is laudatory that the drafters of the Model recognized the value in having both police practices experts and community members involved in providing oversight, more clarity is needed in defining the relationship between the two entities. The Model should expressly recognize that OIPA and the BART Police Citizen Review Board are to be considered as entities with complementary oversight roles that are independent of each other.

Much of the source of confusion about the complementary oversight entities is that the Model assigns the BART Police Citizen Review Board administrative tasks to OIPA. To eliminate this overlap, BART should consider creating an Executive Assistant position to provide

administrative support for the BART Police Citizen Review Board. The Executive Assistant would assume the administrative functions now set out in Chapter 1-05 of the Model including:

- Records of Review Board meetings
- Preparation of Review Board reports
- Review Board staff support and facilitation of training
- Review Board community outreach and communicating with the public
- Application process for open Review Board seats

In addition to the administrative tasks expressly set out in the Model, the Executive Assistant could also be responsible for assisting in developing the Review Board meeting agenda, arranging Review Board training, coordinating Review Board outreach, assisting with Review Board reporting responsibilities, and providing any additional administrative support for the BART Police Citizen Review Board.

The Model currently states that the BART Police Citizen Review Board “shall assess and report to the Board of Directors’ Personnel Committee on the performance and effectiveness” of OIPA. We have been informed that this provision of the Model has not been implemented in practice. The Auditor is subject to an annual performance review by the BART Board of Directors, the appointing authority. In assessing that performance, the Board of Directors could and should solicit input from several stakeholders, including the BART Police Citizen Review Board. However, the Model should be modified to clarify that the BART Police Citizen Review Board is not the “assessor” of the Auditor’s performance but simply another important source for input to the Board of Directors.

Similarly, when a BART Police Citizen Review Board seeks reappointment to a new term, the appointing Director should seek input from OIPA along with other important stakeholders on the performance of that Review Board member.

Recommendation Forty-Three: The Model should be revised to expressly clarify the independent yet complementary roles of the BART Police Citizen Review Board and OIPA.

Recommendation Forty-Four: BART should consider creating an Executive Assistant position for the BART Police Citizen Review Board to assist with administrative tasks now assigned to OIPA.

Recommendation Forty-Five: The Model should be revised to acknowledge that the BART Police Citizen Review Board is one potential source of information when the Board of Directors is seeking input on the performance of OIPA.

Recommendation Forty-Six: The Model should be revised to provide OIPA the opportunity for input when a BART Police Citizen Review Board member seeks reappointment.

P. Clarifying and Enhancing the Roles of the BART Police Citizen Review Board

The Model should provide clarification of BART Police Citizen Review Board Member Qualifications.

Currently the Model disallows from service on the BART Police Citizen Review Board any person “currently employed in a law enforcement capacity” or any “relative of current and former BART Police Department personnel.” While prohibiting relatives of current and former BART PD personnel from serving, the Model does not expressly disallow former BART PD personnel themselves from membership on the BART Police Citizen Review Board. The Model should be revised to correct this incongruity.

Recommendation Forty-Seven: The Model should clarify that former BART PD personnel are ineligible to serve on the BART Police Citizen Review Board.

BART Police Citizen Review Board Members Should Have Requisite Training in Order to Fulfill Their Responsibilities.

By selecting BART Police Citizen Review Board members from the community, BART oversight benefits from each member’s life experience and perspective. However, modern day policing is increasingly complex, and BART PD itself has a unique role in providing public safety for a large transit system. As detailed above, the BART Police Citizen Review Board has been provided considerable authority, including the ability to consider and vote on the Auditor’s recommendations regarding specific complaint investigation dispositions.²⁶ This authority carries with it a heavy burden of responsibility and the BART Police Citizen Review Board cannot effectively exercise that authority regarding investigation dispositions without each member undertaking a careful read of each case.²⁷

Accordingly, in order to effectively carry out BART Police Citizen Review Board duties, each member must be afforded a basic understanding of progressive police practices, constitutional and state law, principles of civilian oversight, and BART PD’s distinctive challenges. The training should also focus on how, as expressly stated in the Model, the BART Police Citizen Review Board fulfills the “essential community involvement component” piece of the system and how it can most effectively fulfill this role. To these ends, a training curriculum developed for each new Review Board member, including ride-alongs, should be devised. In addition, Review Board members should get additional training at least semi-annually, perhaps as an agenda item during regularly scheduled meetings. As noted above, we recommend assignment of an Executive Assistant to the Review Board; that individual could be responsible, with input from the existing BART Police Citizen Review Board and the Auditor, for developing and maintaining the BART Police Citizen Review Board’s training program.

²⁶ The Board of Directors should continue to be mindful of the weighty responsibilities demanded of each Review Board member when making future appointments.

²⁷ Review Board members who have not had the opportunity to read the investigation and accompanying materials should recuse themselves from deliberations and voting on the Auditor’s recommendation for that particular case.

Recommendation Forty-Eight: A Training Curriculum Should Be Devised For Incoming BART Police Citizen Review Board Members, and In-Service Training Should Be Provided at Least Semi-Annually to Current Review Board Members.

Rotating the Location of the BART Police Citizen Review Board Meetings Would Allow the Review Board to Reach More Communities.

As noted above, BART PD is responsible for providing public safety for a transit system to traverses multiple jurisdictions over a wide-ranging area. Yet the BART Police Citizen Review Board responsible for oversight over this region only meets at one location. Community members served must travel to this location to attend meetings and provide public comment. While this challenge is ameliorated by the transit-friendly locale of the meetings, it would demonstrate the Review Board's responsiveness to other communities to rotate the meeting locations. While such a rotation may provide some logistical challenges, it appears worth exploring whether those hurdles can be overcome.

Recommendation Forty-Nine: The BART Police Citizen Review Board should consider rotating its meetings to a wider array of locales served by BART.

The BART Police Citizen Review Board's Outreach Should Be More Vibrant.

The current Model notes that the existence of the BART Police Citizen Review Board effectuates the essential community involvement component of the oversight system. To advance that crucial role, the Model expects that the BART Police Citizen Review Board will lead in outreach efforts to the community, particularly constituencies impacted most by policing, including communities of color, immigrant communities, and individuals with psychiatric disabilities. While the Review Board's regularly scheduled public meetings fulfills that role to some degree, the Model certainly contemplated that more could and should be done in the outreach arena. We gather from the BART Police Citizen Review Board's annual reports that outreach has been largely undertaken by a few members. However, outreach should be an expected responsibility of all members of the Review Board.

To that end, before a Review Board member is appointed, the appointing authority should emphasize the outreach expectation to the potential appointee. Moreover, at one year intervals, the BART Police Citizen Review Board should place an item on the agenda in which each member publicly reports on the outreach efforts he/she has undertaken. The degree to which a member has engaged in public outreach should be considered by the appointing authority in determining whether to reappoint the member to an additional term. The Executive Assistant (recommended elsewhere) for the BART Police Citizen Review Board should track the outreach efforts of individual members and the Review Board as a whole.

Recommendation Fifty: Procedures should be adopted by the BART Police Citizen Review Board intended to ensure that the Model's commitment to outreach is achieved. To that end, each incoming member should be alerted to outreach expectations by his/her appointing authority. On an annual basis, each Review Board member should report publicly on the outreach he/she has undertaken the previous year. Finally, the degree of each member's

public outreach will be considered prior to reappointing the Review Board member to an additional term.

The Model Should Provide More Flexibility for “Good Cause” Meeting Absences.

Currently, the Model calls for removal of any BART Police Citizen Review Board member who misses more than three regularly scheduled meetings per year. While the interest in having Review Board members attend meetings is well-placed, there may be situations where a member has “good cause” to miss a meeting. For that reason, it would be advisable to provide each Director with flexibility to excuse his/her appointed Review Board member’s absence for good cause. Such excusal would not count against the absence limit requirements.

Recommendation Fifty-One: The Model should be revised to authorize excused absences for good cause that would not count against the absence limitations.

Q. Providing Increased Transparency Authority for BART Oversight

The BART Oversight Entities Should Be Expressly Authorized to Make Public Statements.

It is not uncommon for officer-involved shootings, in-custody deaths, significant force incident or allegations of misconduct to engender immediate controversy and concern, particularly if part of the incident is captured on videotape. In those cases, the existence of oversight entities can assist in tempering that concern with the recognition that there will be an independent review and accounting of the incident at the conclusion of any investigation. In recognition of this, jurisdictions have provided their oversight entities full rein to make public statements about their role in the wake of controversial incidents.

We have been informed that the Auditor has interpreted the Model to allow him the authority to make public statements about his work and BART policing issues. That being said, the Model should be revised to expressly authorize the Auditor freedom to make such statements. Moreover, the Auditor should be free to speak with any media outlets about any aspect of oversight and in conjunction with any public report or findings. The BART Police Citizen Review Board’s ability to make timely public statements provides logistical challenges since the Review Board meets as a body only periodically. However, the BART Police Citizen Review Board should consider authorizing the Chair to make public statements on behalf of the Review Board regarding role and process when an exigency to respond is presented.

Recommendation Fifty-Two: The Model should be revised to expressly authorize OIPA and the BART Police Citizen Review Board to make public statements about their oversight work.

R. Ensuring Periodic Review of BART Oversight

BART’s Oversight Entities Should Be Reviewed on a Regular Basis.

As noted above, the current Model provided for an assessment of oversight after one year of implementation. Because the world of oversight is new and constantly evolving, there should be a commitment to a periodic review of BART’s oversight entities on a going forward basis.

Recommendation Fifty-Three: The Model should be revised to call for periodic reviews of BART's oversight entities at a minimum of four-year intervals.

Independent Review of the BART Police Oversight Structure

July 2017

ADDENDUM



Michael J. Gennaco
323 821 0586
7142 Trask Avenue
Playa del Rey, CA 90293
OIRGroup.com

Aaron B. Zisser
628 400 1203
Oakland, CA
civilrightsconsulting.com

INDEPENDENT REVIEW OF THE BART OVERSIGHT STRUCTURE: ADDENDUM

The Model Should Set Out With More Clarity Procedures for Replacement of BPCRB Members.

A question has arisen since the issuance of our initial June 2017 report, and we were asked to address an issue surrounding the replacement of BPCRB members. The specific question was whether a new BART Director may, prior to the end of the BPCRB member's term of appointment, replace the BPCRB member appointed by that BART Director's predecessor. The Model is currently silent on this specific issue. Chapter 2-04 of the Model does address removal for cause "including but not limited to breach of ethics, confidentiality, or criminal conviction" and allows for removal by a resolution adopted by the majority of the Board of Directors. As stated in our Report, Chapter 2-04 of the Model also calls for automatic termination of a BPCRB member after three Board meeting absences in a calendar year.¹

Whether the Model currently provides authority for an incoming Director to remove a BPCRB member unilaterally is not specifically addressed by the current Model. The fact that the Model does not provide clear guidance on this issue suggests a need to amend the Model in order to do so. Because our project was focused on improving the Model through revisions, we offer our thoughts below.

From a civilian oversight perspective, modifying the Model to expressly allow a Director to remove a BPCRB member appointed by his/her predecessor could be seen by some as undermining the independence of the BPCRB. If a BPCRB member can be replaced by an incoming Director for no reason, that BPCRB member may be concerned that making decisions on individual cases, policies, or systemic issues that are controversial could then be a basis for his/her removal. Such a tenuous situation may also dissuade otherwise interested individuals from seeking appointment to the BPCRB.

On the other hand, the BPCRB's strength and authority arise in part from the support and confidence of the elected Directors in the member and the current Model appointment process clearly provides Directors the ability to each select a member with virtually unfettered discretion. Consistent with that discretion, a persuasive argument could be made that an incoming Director should have the authority to replace a BPCRB member with a new appointee who better reflects the values, interests, and philosophy of the incoming Director.

In sum, the Model should be clarified to specifically speak to this issue. Potential options to modifying the Model would be to expressly prohibit removal of BPCRB members except for unexcused absences or good cause or provide incoming Directors a brief window such as 60 days during which they could replace the outgoing Director's appointee. Requiring the incoming

¹ In our initial report, we have recommended modification of this provision in order to provide relief for excused absences.

Director to act within a brief period of time reduces the perception that a BPCRB member is being removed because the Director is unhappy with actions taken in a particular matter.

Recommendation Fifty-Four: The Model should be revised to clarify whether a newly-seated BART Director may unilaterally remove his or her predecessor's BPCRB appointee and specify any time limits for doing so.

BART POLICE DEPARTMENT



January 2018

MONTHLY REPORT

BPD Monthly Reports

January 2018

Report	Responsible
01 – Industrial Leave*	SSD – J. Morgan
02 – Vacancy	SSD – F. Cheung
03 – Diversity	SSD – F. Cheung
04 – Training	PS&T – R. Gregson
05 – Use of Force	PS&T – P. Kwon
06 – Citizen Complaints	PS&T – P. Kwon
07 – Internal Affairs Log	PS&T – P. Kwon
08 – Performance Measures	SSD – K. Dam
09 – Enforcement Contacts	SSD – K. Dam
10 – Parking Enforcement	POD – J. DeVera
11 – Warrant Arrests	SSD – K. Dam
12 – Detectives Assignments	SSD – J. Power
13 – Detectives Closure Rate	SSD – J. Power
14 – Assembly Bill 716	POD – M. Williamson
15 – Absence Overview	SSD – C. Vogan
16 – Overtime	SSD – F. Cheung
17 – Communications Center	SSD – G. Hesson
18 – BART Watch	SSD – C. Vogan

*Not included in Year-End or Monthly BPCRB Reports

BART Police Department (07) Staffing Status

As of: 02/07/18
Vacancy Factor: 0.0

	Pos'n Code	Job Title	FY18 Adopted	Reclass	As of 02/07/18	Filled	On Leave or TMD	Vacant
NON-SWORN (Rep)	027	Community Service Officer	63		63	46	5	17
	045	Police Admin Specialist	12		12	10	-	2
	048	Police Dispatcher	16		16	15	1	1
	098	Revenue Protection Guard	19		19	16	1	3
	836	Police Sup./CAD/RMS Admin**	6		6	6	-	-
SWORN	778	Police Officer	67		67	55	6	12
		In Academy = 7						-
		Field Training = 2						-
	788	Senior Police Officer	100		100	79	5	21
	798	Master Police Officer	14		14	11	-	3
	838	Police Sergeant	34		34	31	4	3
	888	Police Lieutenant	10		10	11	1	(1)
	898	Police Deputy Chief	3		3	3		-
	980	Police Chief	1		1	1		-
Non-Sworn (Non-Rep)	SF100	Mgr of Security Programs**	1		1	-		1
	000065	Emergency Preparedness Mgr.	1		1	1	-	-
	000074	Crisis Outreach Coordinator	1		1	1		-
	000081	Accreditation Manager	1		1	1	-	-
	AF200	Sr. Administrative Analyst	1		1	1		-
DEPARTMENT TOTAL			350	-	350	288	23	62

Notes

>1 ea. LT show as unbudgeted

Add people on TMD to the filled position

EBART - Ofc 5, CSO 4

Fare Evasion - 6 CSOs, 1 PAS

Note: BART Police Department has 17 Attrition Float positions, of which 10 are Police Officers (778), 5 are Community Service Officers (027) and 2 are Police Dispatchers (048).

- > "On Leave" category does not include personnel on Admin Leave.
- > Mgr of Security Programs position is currently filled by a Police Lieutenant**

BART PD DIVERSITY MONTHLY REPORT

As of 2/7/18

+

<u>ETHNICITY</u>		<u>S</u>		<u>C</u>	
White	37% 107	43%	77	31%	30
Black	22% 62	21%	40	23%	22
Asian	21% 61	16%	31	30%	30
Hispanic	17% 53	18%	40	12%	13
American/ Indian	0% 0	0%	0	0%	0
Native Hawaiian/Pac Island	2% 5	2%	3	2%	2
Total:	100% 288	100%	191	100%	97
<u>DEMOGRAPHIC</u>		<u>S</u>		<u>C</u>	
Female	21% 59	9%	18	47%	46
Male	79% 225	91%	173	53%	52
Total:	100% 284	100%	191	100%	98
<u>CLASSIFICATION</u>					
Sworn	66% 191				
Civilian	34% 98				
Total:	100% 289				

CRISIS INTERVENTION TRAINING AS OF: January 31, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	(Not in Academy or Field Training) Eligible to Attend Training	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions Trained
Chief	1	1	0	1	0	0%	0%
Deputy Chiefs	3	3	0	3	3	100%	100%
Lieutenants	11	11	0	9	9	82%	100%
Sergeants	34	31	3	31	31	100%	100%
Officers	183	145	38	135	131	90%	97%
Dispatchers	16	15	1	13	13	87%	100%
Dispatch Supervisors	2	2	0	2	2	100%	100%
CSOs	63	46	17	45	43	93%	96%
Crisis Outreach Coordinator	1	1	0	1	1	100%	100%
Total	314	255	59	240	233	91%	97%

Personnel Positions that are not designated to attend CIT Training

	Total	Filled	Vacant
Revenue Protection Guards	19	16	3
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	4	4	0
Civilian Managers/Analyst	3	3	0
Sub Total	38	33	5
TOTAL PERSONNEL	352	288	64

FAIR AND IMPARTIAL / BIASED BASED TRAINING AS OF January 31, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	Eligible to Attend (Not in Academy or Field Training)	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions
Chief	1	1	0	1	0	0.0%	0.0%
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	11	11	0	11	11	100.0%	100.0%
Sergeants	34	31	3	31	31	100.0%	100.0%
Officers	181	145	38	138	138	95.2%	100.0%
CSOs	63	46	17	44	42	91.3%	95.5%
Total	293	237	58	228	225	94.9%	98.7%

Personnel Positions that are not designated to attend FAIR AND IMPARTIAL Training

	Total	Filled	Vacant
Dispatchers	16	15	1
Dispatch Supervisors	2	2	0
Crisis Outreach Coordinator	1	1	0
Revenue Protection Guards	19	16	3
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	4	4	0
Civilian Managers/Analyst	3	3	0
Sub Total	57	51	6
TOTAL PERSONNEL	350	288	64

POLICE ROADWAY PROTECTION TRAINING AS OF: January 31, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	Eligible to Attend (Not in Academy, FTO, or IND/Leave)	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions
Chief	1	1	0	1	0	0.0%	0.0%
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	11	11	0	10	10	90.9%	100.0%
Sergeants	34	31	3	30	30	97%	100.0%
Officers	181	145	38	137	136	93.8%	99.3%
CSOs-Not Required	63	46	17	43	41	89.1%	95.3%
Total	293	237	58	224	220	92.8%	98.2%

Personnel Positions that are REQUIRED to attend Police Roadway Protection Training

	Total	Filled	Vacant
CSOs	63	46	17
Dispatchers	16	15	1
Dispatch Supervisors	2	2	0
Crisis Outreach Coordinator	1	1	0
Revenue Protection Guards	19	16	3
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	4	4	0
Civilian Managers/Analyst	3	3	0
Sub Total	120	97	23
TOTAL PERSONNEL	413	334	81

Use of Force Incidents - 2018

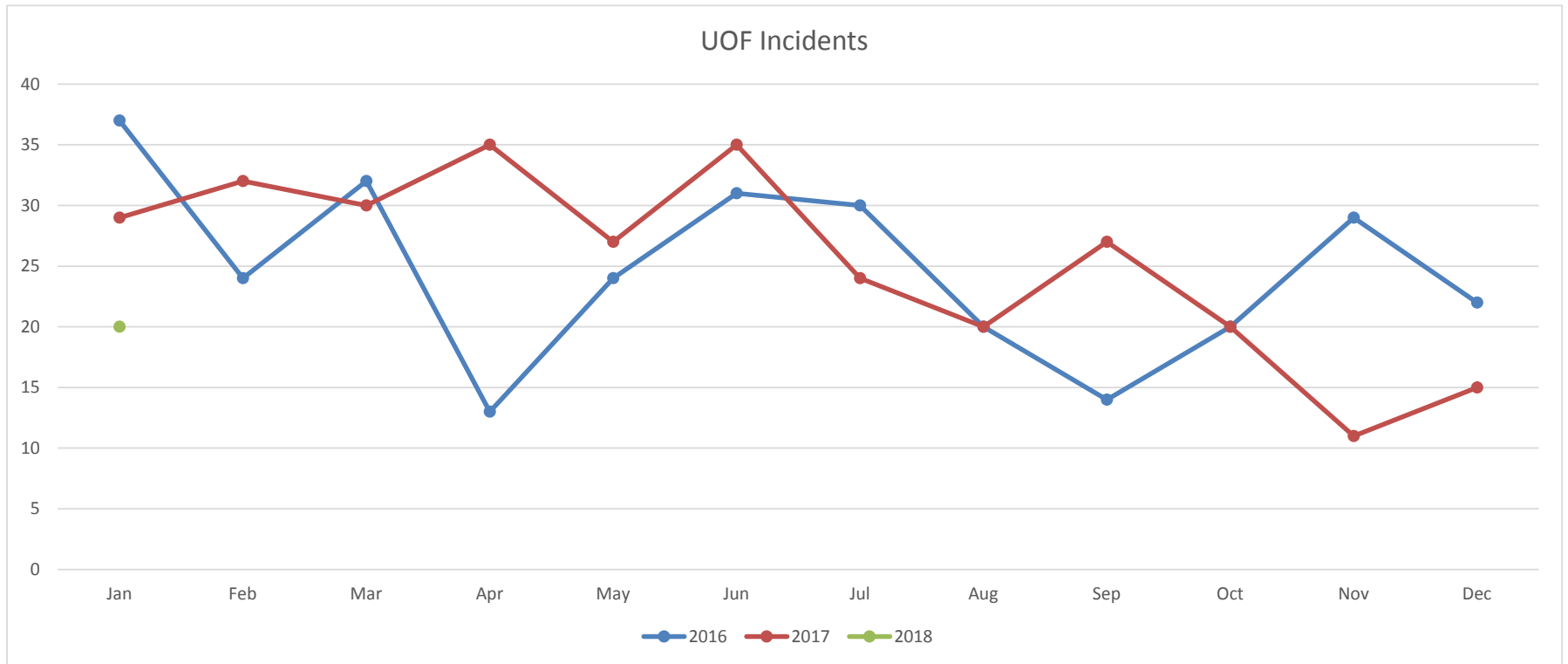
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	20												20
YTD 2018	20												

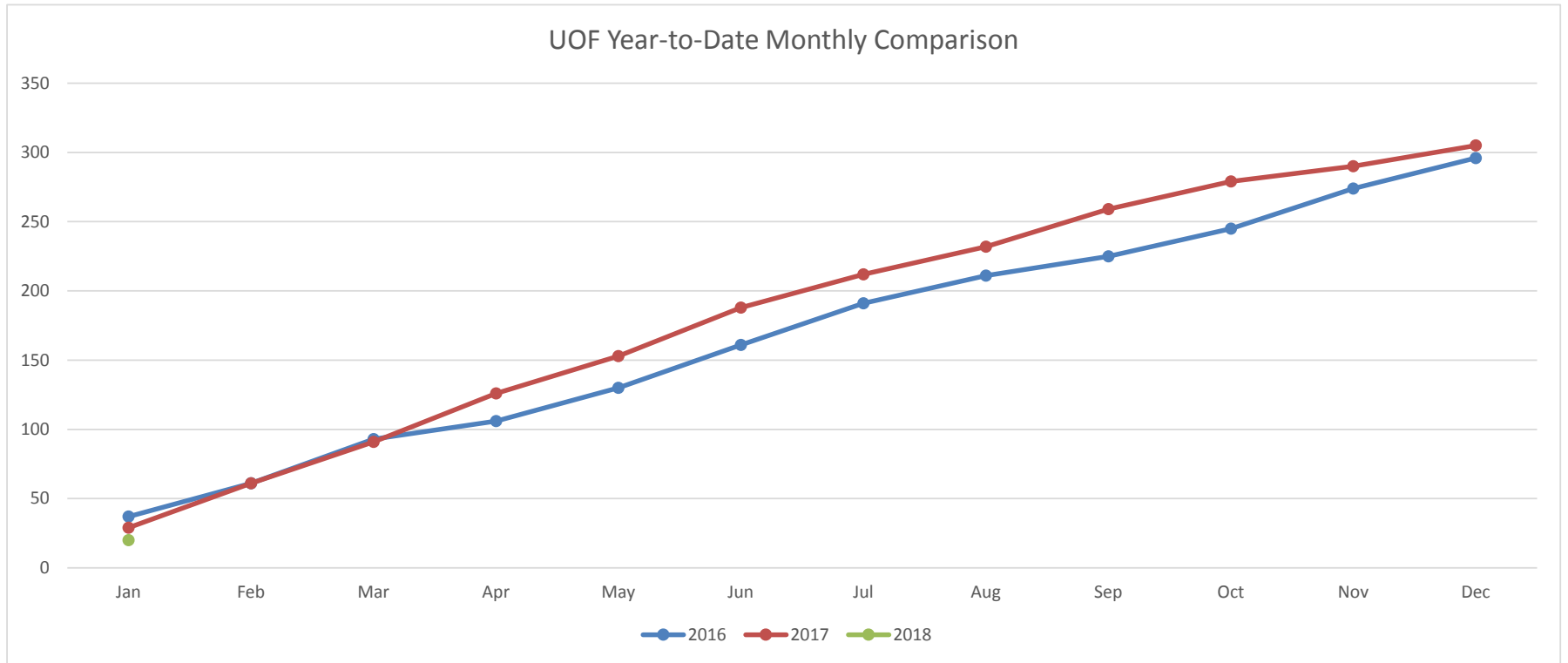
Use of Force Incidents - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	29	32	30	35	27	35	24	20	27	20	11	15	305
YTD 2017	29	61	91	126	153	188	212	232	259	279	290	305	

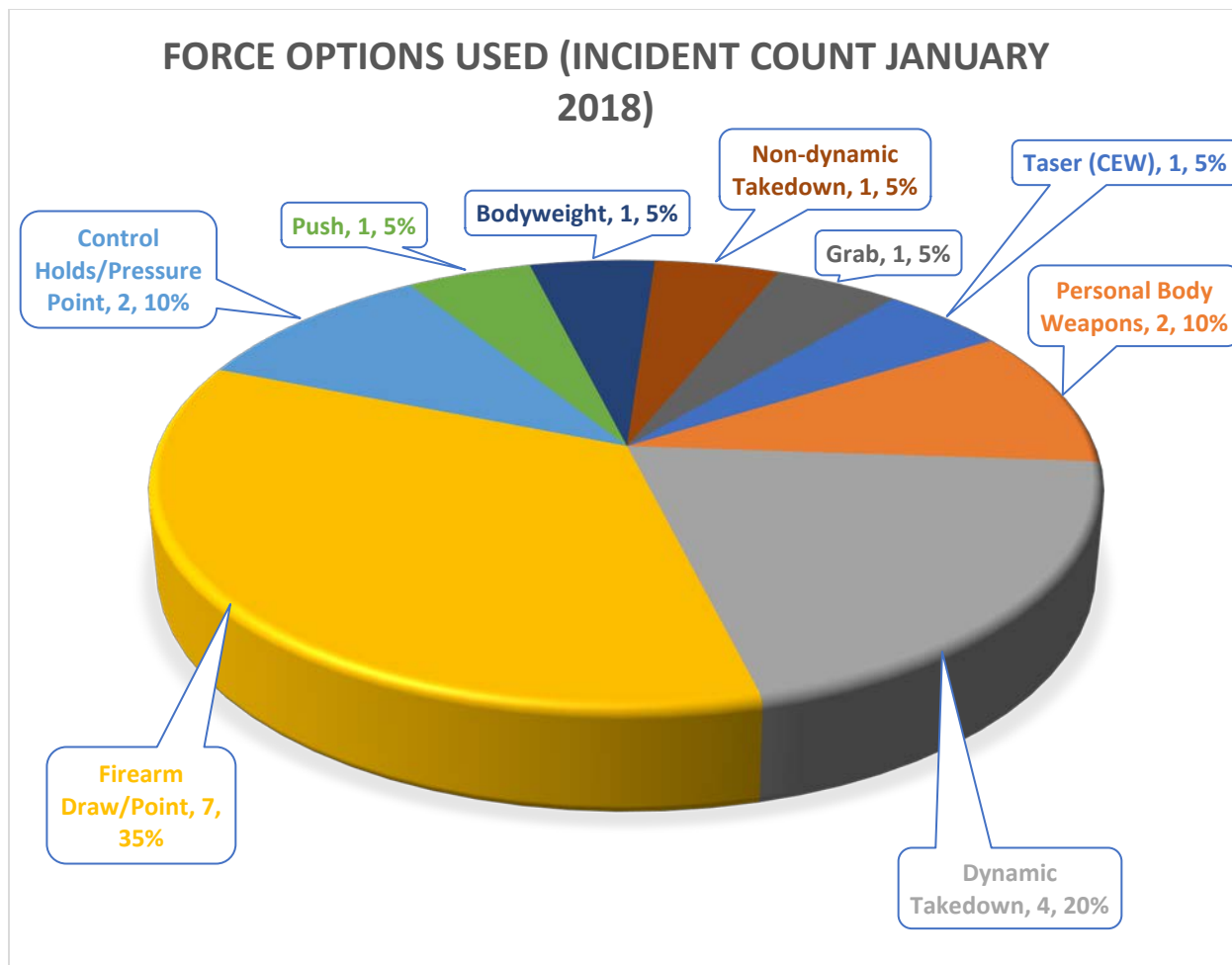
Use of Force Incidents - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2016	37	24	32	13	24	31	30	20	14	20	29	22	296
YTD 2016	37	61	93	106	130	161	191	211	225	245	274	296	



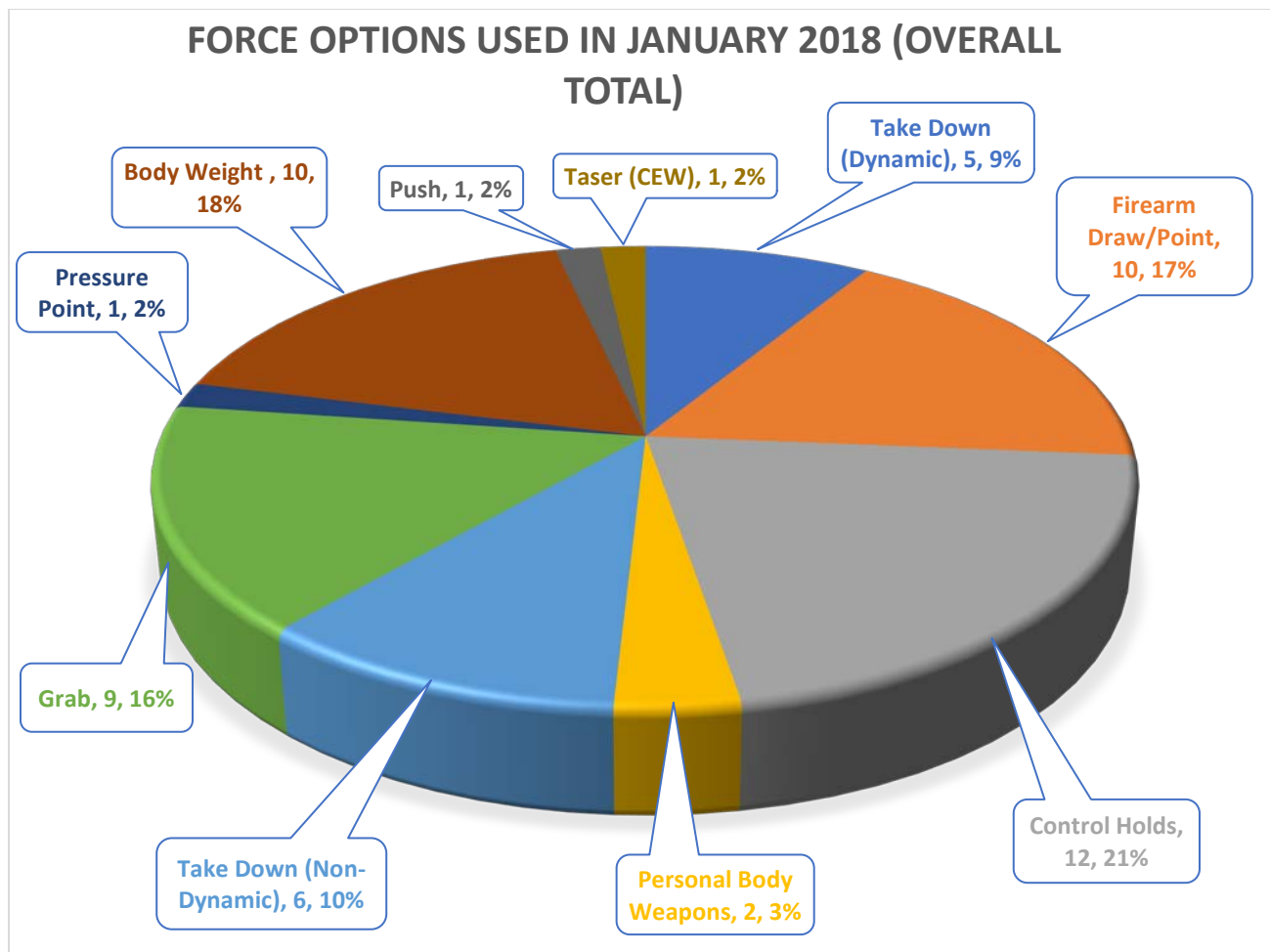


Force Options Used (Incident Count), January 2018



*Each incident could contain more than one force option used. This pie chart reflects the most significant force option used per incident.

Types of Force Used, January 2018 (Overall Total)



*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 in the same incident used control holds, this data would reflect two separate control holds.

Citizen Complaints - 2018

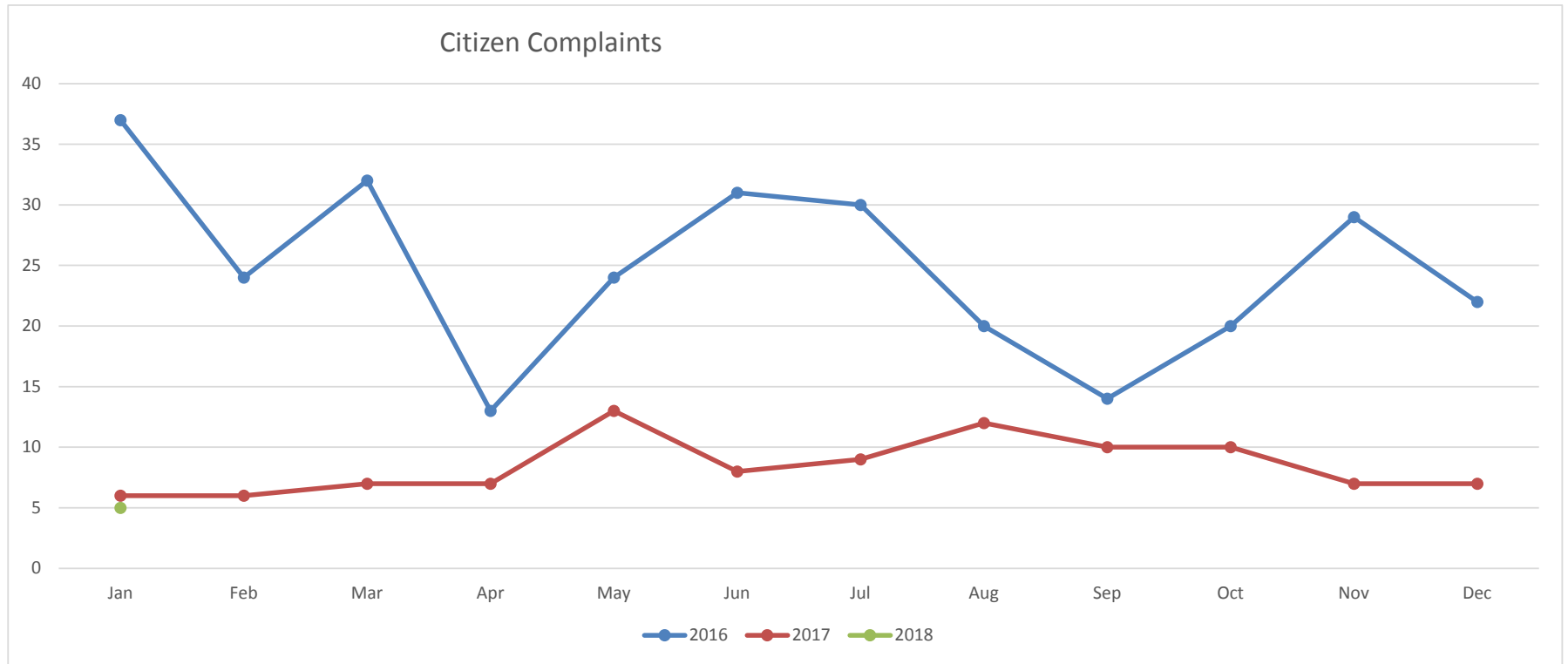
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	5												5
YTD 2018	5												

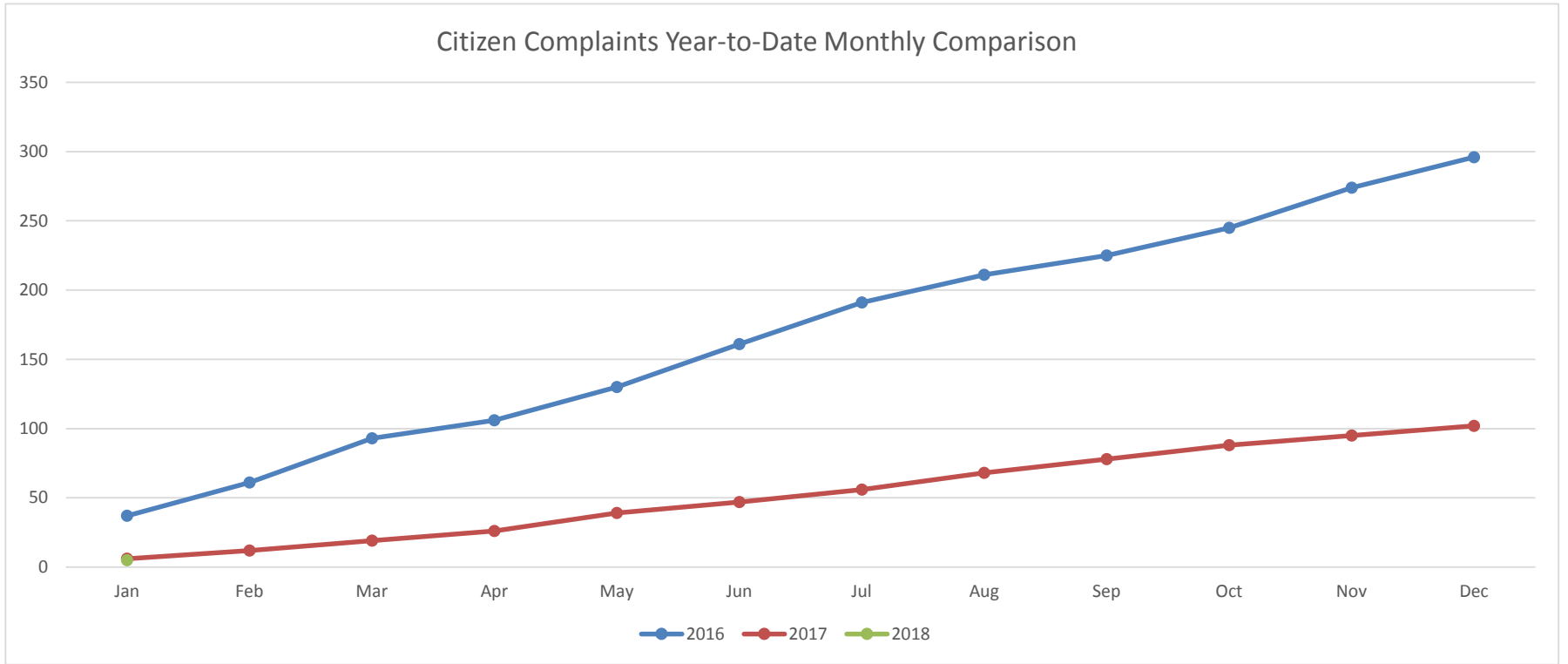
Citizen Complaints - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	6	6	7	7	13	8	9	12	10	10	7	7	102
YTD 2017	6	12	19	26	39	47	56	68	78	88	95	102	

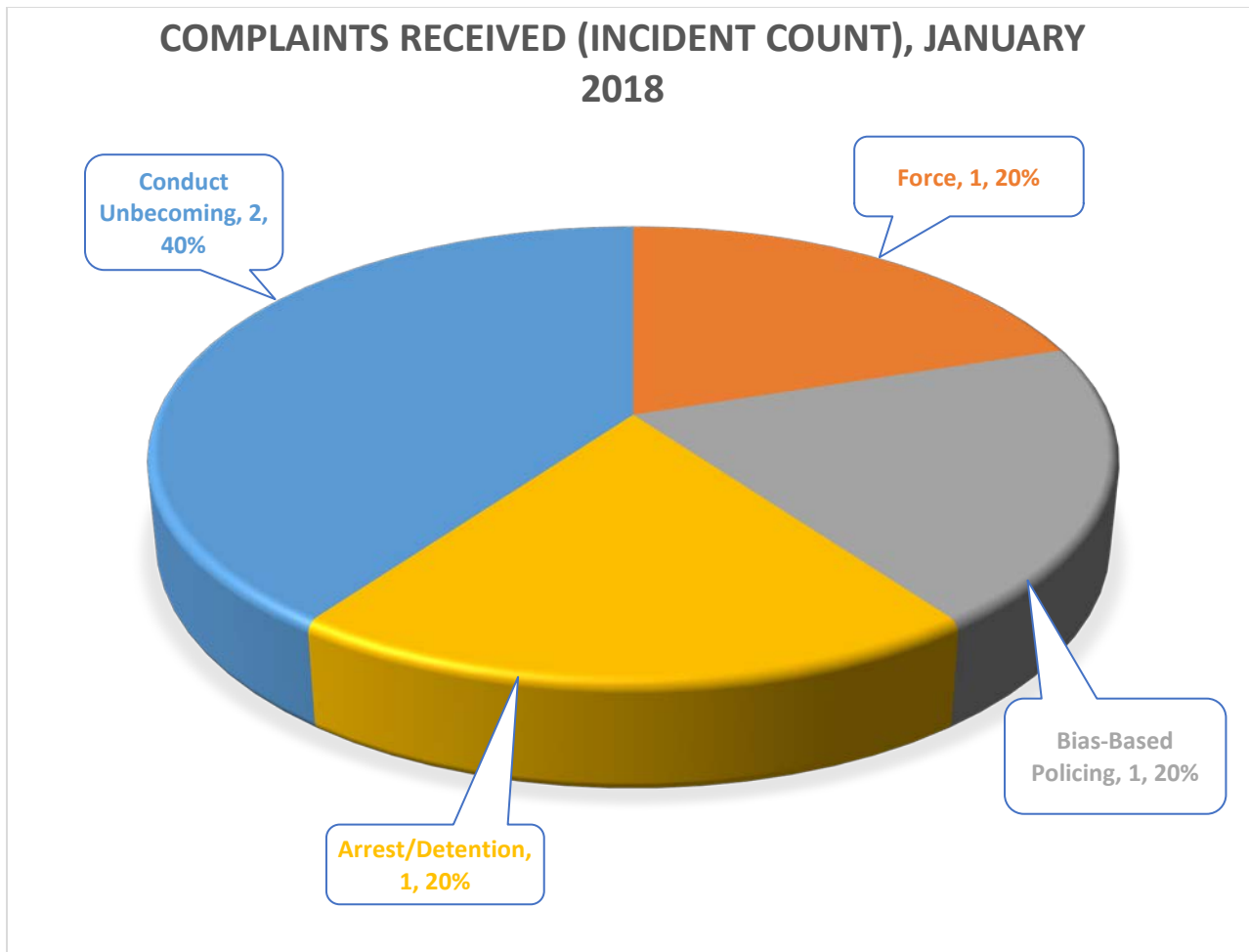
Citizen Complaints - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2016	10	3	13	7	7	10	6	9	8	7	8	6	94
YTD 2016	10	13	26	33	40	50	56	65	73	80	88	94	





Complaints Received (Incident Count), January 2018



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

BART Police Department - Office of Internal Affairs							
Investigation Log - January 2018							
IA	DATE						COMPLETED DATE
CASE #	OCC'D	REC'D	ALLEGATION	FINDING	INVESTIGATOR	DUE DATE	
IA2016-071	07/29/16	07/29/16	Force, Bias, Arrest		Lt. Kwon	12/28/16	
			Force, Bias, Arrest		(Tolled)	01/27/17	
			Force, Bias, Arrest				
			Force, Bias, Arrest				
IA2017-040	1/31/2017	5/18/2017	Force		Sgt. Togonon	10/17/2017	
			Force		Tolled		
IA2017-060	3/2/2016	7/19/2017	Conduct Unbecoming		Sgt. T.Salas	12/18/2017	Submitted C5
			Courtesy				
IA2017-079	8/30/2017	9/8/2017	CUBO		Sgt. T. Salas	2/7/2018	Submitted L21
					Hesson	10/14/2017	
IA2017-081	8/31/2017	8/31/2017	CUBO		Sgt. T. Salas	1/30/2018	Submitted L21
			CUBO				
			CUBO				
IA2017-083	9/13/2017	9/13/2017	CUBO	Admin Closure	Sgt. T. Salas	2/7/2018	Submitted L21
IA2017-084	9/17/2017	9/18/2017	Force, CUBO		Sgt. Togonon	2/17/2018	Submitted 01/24/2018
IA2017-093	10/4/2017	10/4/2017	Force		Sgt. T. Salas	3/5/2018	
IA2017-095	10/13/2017	10/18/2017	Performance of duty		Sgt. T. Salas	3/19/2018	
			Force/Search				
IA2017-096	10/20/2017	10/23/2017	Bias Based Policing		Sgt.T. Salas	3/24/2018	
					Sgt. Fueng		
IA2017-097	10/13/2017	10/18/2017	CUBO		Sgt. Togonon	3/19/2018	
			Bias-Based Policing				
IA2017-101	10/30/2017	10/31/2017	Performance of Duty		Sgt. T. Salas	3/22/2018	Submitted L21
IA2017-102	11/3/2017	11/3/2017	Performance of Duty		Sgt. Togonon	4/4/2018	
					Sgt. Henderson		
IA2017-103	11/7/2017	11/7/2017	Condcut Unbecoming		T.Salas	4/8/2018	Submitted L21
					Sgt. Williamson	1/5/2018	
IA2017-105	11/15/2017	11/16/2017	Performance of Duty		T. Salas		
			Bias-Based Policing				
			Policy (Axon)				
IA2017-106	11/16/2017	11/16/2017	Force		Sgt. Togonon		Submitted L21
					Lt. Kwon		
IA2017-108	11/22/2017	11/23/2017	CUBO		Sgt. Togonon	4/15/2018	Submitted L21
			CUBO				
IA2017-110	11/28/2017	11/28/2017	Policy/Procedure	Service Review	Lt. Kwon		
IA2017-111	11/10/2017	11/10/2017	Force		Sgt. Salas	4/11/2017	
IA2017-112	12/5/2017	12/5/2017	Performance		Sgt. T. Salas	5/6/2018	
IA2017-113	12/12/2017	12/12/2017	CUBO sent on 011518	Supervisor Referral	Sgt. Salas	5/13/2018	1/25/2018
IA2017-114	12/12/2017	12/13/2017	Force, Bias, CUBO		Sgt. T. Salas	5/14/2018	
IA2017-115	12/20/2017	Unk	Force		Sgt. Togonon	5/21/2018	
			Policy/Procedure				
IA2017-117	12/17/2017	12/28/2017	Performance			5/29/2018	
			Arrest/ Detention		Sgt. Togonon		
IA2017-118	12/25/2017	1/2/2018	Force		Sgt. T. Salas	6/3/2018	
IA2018-001	1/3/2018	1/3/2018	Force (OIS)		Sgt. T.Salas	6/4/2018	

IA	DATE		ALLEGATION	FINDING	INVESTIGATOR	DUE DATE	COMPLETED DATE
	CASE #	OCC'D					
IA2018-002	1/4/2018	1/4/2018	CUBO	Admin Closure	Sgt. Togonon	6/4/2018	
IA2018-003	1/28/2018	1/8/2018	Arrest/Detention		Sgt. Togonon	7/8/2018	
IA2018-004	1/12/2018	1/12/2018	CUBO		Sgt. Togonon	7/12/2018	
IA2018-005	1/12/2018	1/12/2018	Bias/CUBO		Sgt. Togonon	7/12/2018	
IA2018-007	1/26/2018	1/26/2018	Force		Sgt. Togonon	7/4/2018	

PART 1 CRIMES	2013	2014	2015	2016	2017	YTD January		% change from '17
						2017	2018	
Homicide	1	0	1	1	0	0	0	#DIV/0!
Rape	0	2	3	4	8	0	0	#DIV/0!
Robbery	209	153	161	232	290	32	32	0%
Aggravated Assault	29	44	35	42	49	4	4	0%
Violent Crime Subtotal	239	199	200	279	347	36	36	0%
Burglary (Not including Auto)	25	7	4	12	15	1	1	0%
Larceny	2524	2597	2325	2217	2586	188	201	7%
Auto Theft	483	522	480	480	419	32	35	9%
Arson	0	0	0	1	4	0	0	#DIV/0!
Property Crime Subtotal	3032	3126	2809	2710	3025	221	237	7%
TOTAL	3271	3325	3009	2989	3372	257	273	6%



BART Police Performance Measurements

January 2018

Disclaimer--**The data is drawn from the BART Police Department TriTech computer database, and they are unaudited. The numbers may not match the official monthly totals reported to the FBI through the Uniform Crime Reporting (UCR) program. Late reporting, the reclassification or un-founding of crimes, can affect crime statistics. The statistics contained in the on the Performance Measurements are **subject to change, updates, and corrections. ****

Top 5 Stations For Part 1 Crimes

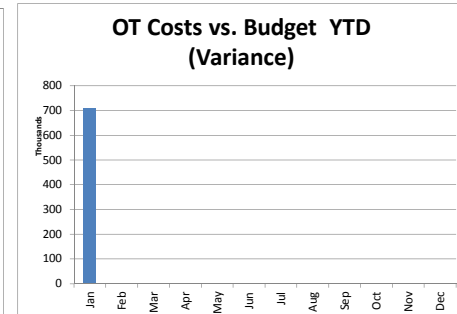
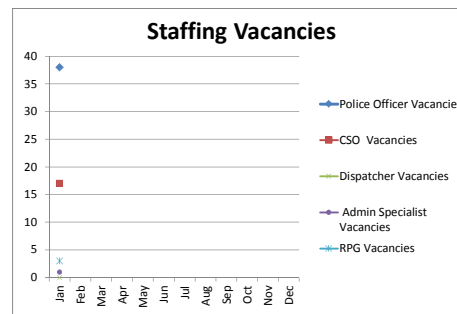
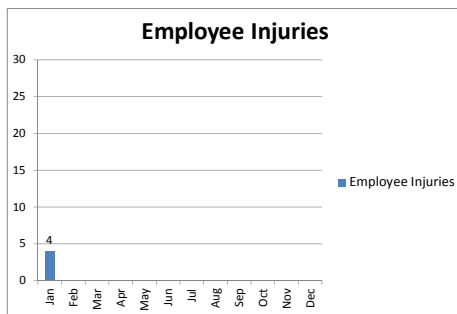
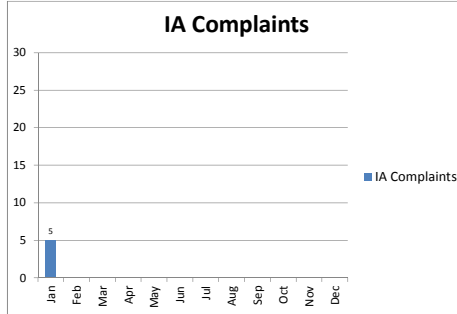
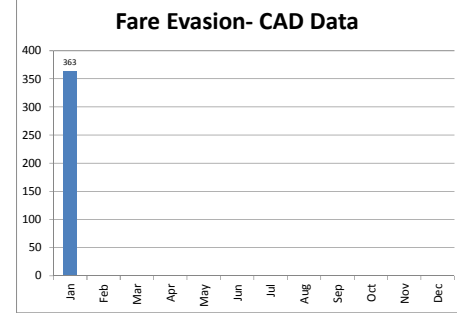
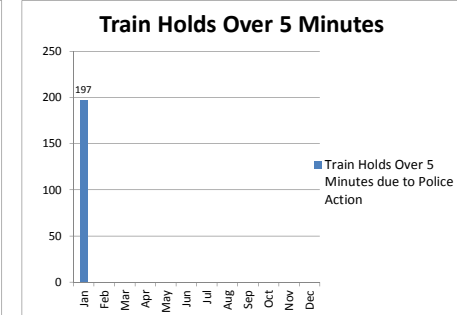
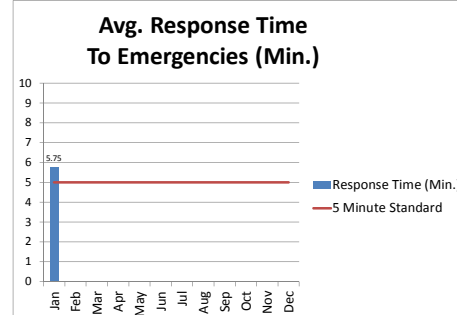
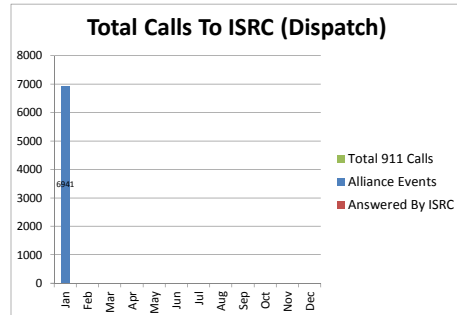
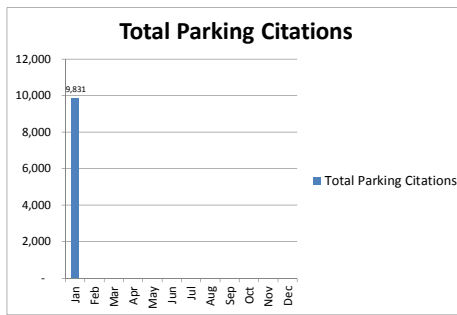
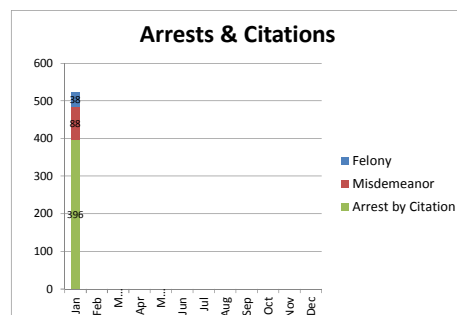
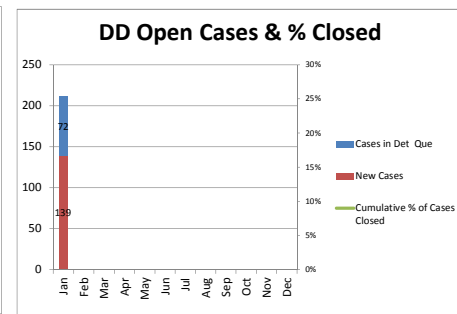
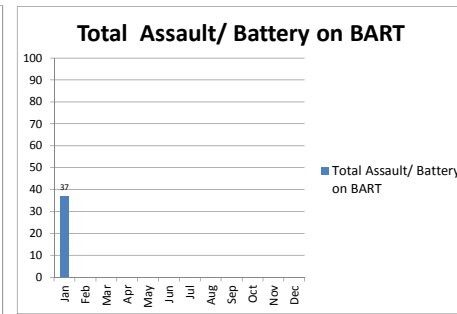
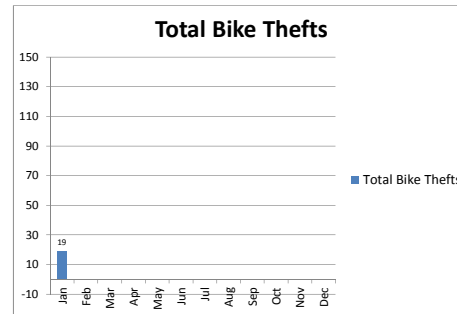
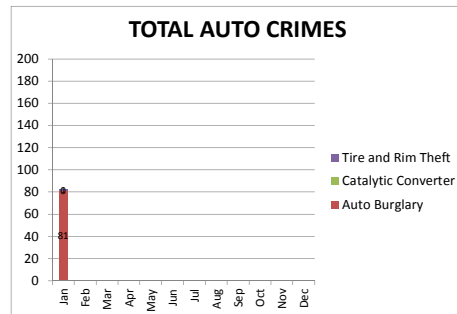
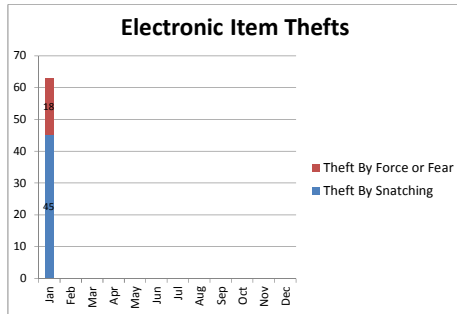
Most Frequent 2018 Current Month

- Pittsburg Bay Point
- Coliseum
- Bay Fair
- Fruitvale
- San Leandro

Most Frequent all of 2017 2017 YEAR

- Coliseum
- Bay Fair
- West Oakland
- Fruitvale
- East Dublin

This list was obtained by adding the highest totals listed in the Part 1 crimes data.



Enforcement Contacts - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Felony Arrest	38												38
YTD 2018	38												
Misd. Arrest	88												88
YTD 2018	88												
Cite & Release	396												396
YTD 2018	396												
Field Interview	512												512
YTD 2018	512												

Enforcement Contacts - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Felony Arrest	29	32	35	28	34	35	24	33	36	37	28	18	369
YTD 2017	29	61	96	124	158	193	217	250	286	323	351	369	
Misd. Arrest	96	82	112	100	109	107	106	137	129	142	131	104	1,355
YTD 2017	96	178	290	390	499	606	712	849	978	1,120	1,251	1,355	
Cite & Release	356	578	355	252	222	155	261	654	385	730	287	200	4,435
YTD 2017	356	934	1,289	1,541	1,763	1,918	2,179	2,833	3,218	3,948	4,235	4,435	
Field Interview	175	336	322	349	418	336	348	545	749	646	508	466	5,198
YTD 2017	175	511	833	1,182	1,600	1,936	2,284	2,829	3,578	4,224	4,732	5,198	

Enforcement Contacts - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Felony Arrest	23	20	37	24	31	28	22	24	21	32	31	26	319
YTD 2016	23	43	80	104	135	163	185	209	230	262	293	319	
Misd. Arrest	71	57	50	86	103	86	74	73	71	79	92	77	919
YTD 2016	71	128	178	264	367	453	527	600	671	750	842	919	
Cite & Release	424	538	443	195	591	195	314	162	239	229	229	246	3,805
YTD 2016	424	962	1,405	1,600	2,191	2,386	2,700	2,862	3,101	3,330	3,559	3,805	
Field Interview	175	501	219	469	482	422	350	490	372	425	444	355	4,704
YTD 2016	175	676	895	1,364	1,846	2,268	2,618	3,108	3,480	3,905	4,349	4,704	

Parking Enforcement - 2018

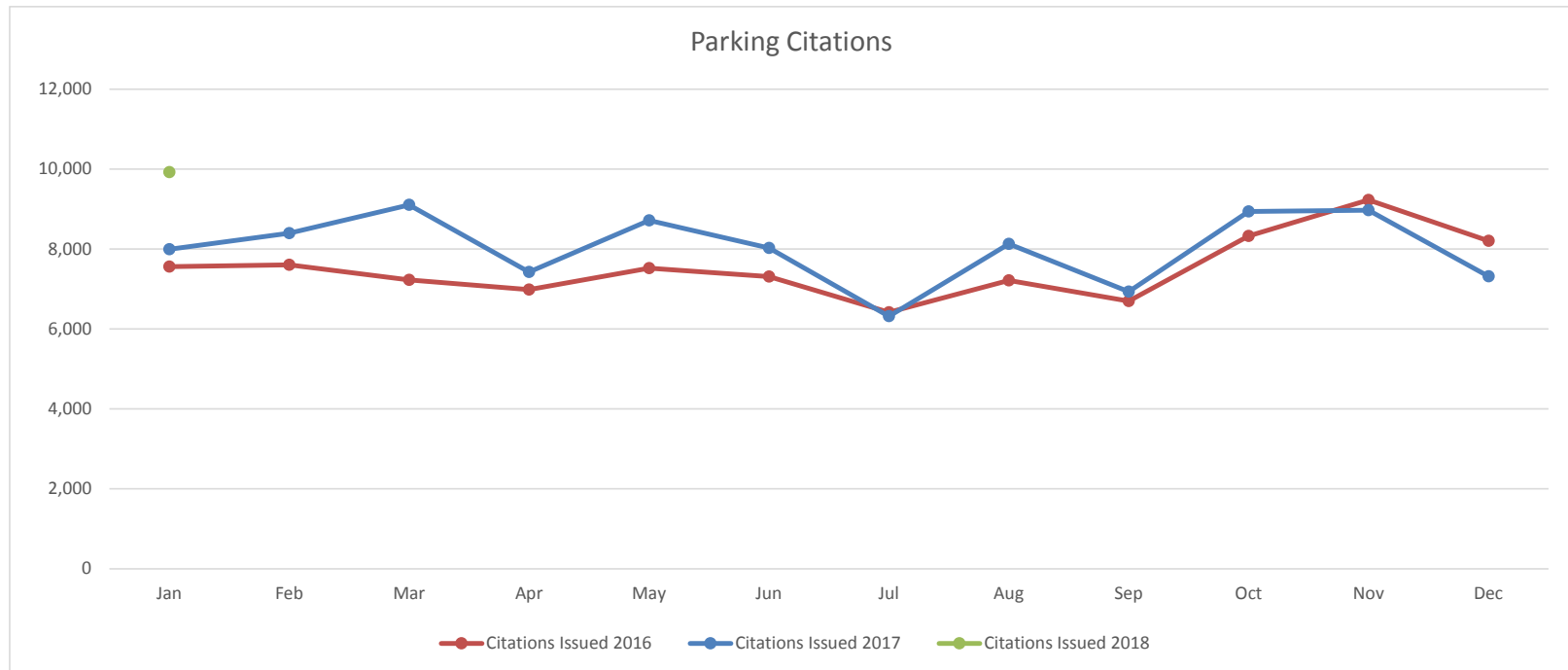
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	9,925												9,925
YTD 2018	9,925												
Contested	2,121												2,121
YTD 2018	2,121												
Dismissed	1,502												1,502
YTD 2018	1,502												

Parking Enforcement - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	7,997	8,400	9,104	7,424	8,716	8,028	6,318	8,131	6,933	8,939	8,973	7,316	96,279
YTD 2017	7,997	16,397	25,501	32,925	41,641	49,669	55,987	64,118	71,051	79,990	88,963	96,279	
Contested	1,324	1,673	1,761	1,796	1,912	1,681	1,587	1,734	1,578	1,793	1,556	2,116	20,511
YTD 2017	1,324	2,997	4,758	6,554	8,466	10,147	11,734	13,468	15,046	16,839	18,395	20,511	
Dismissed	821	1,000	1,136	1,223	1,288	1,070	998	1,115	937	1,107	940	1,375	13,010
YTD 2017	821	1,821	2,957	4,180	5,468	6,538	7,536	8,651	9,588	10,695	11,635	13,010	

Parking Enforcement - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	7,559	7,608	7,225	6,988	7,521	7,312	6,419	7,218	6,698	8,326	9,229	8,205	90,308
YTD 2016	7,559	15,167	22,392	29,380	36,901	44,213	50,632	57,850	64,548	72,874	82,103	90,308	
Contested	1,211	1,297	1,112	938	1,289	1,248	1,179	1,063	979	1,259	1,433	1,139	14,147
YTD 2016	1,211	2,508	3,620	4,558	5,847	7,095	8,274	9,337	10,316	11,575	13,008	14,147	
Dismissed	722	788	688	738	847	772	668	649	602	690	855	733	8,752
YTD 2016	722	1,510	2,198	2,936	3,783	4,555	5,223	5,872	6,474	7,164	8,019	8,752	



Warrant Arrests

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2018												
BART Felony Warrants	2											
BART Misdemeanor Warrants	3											
O/S Felony Warrants	12											
O/S Misdemeanor Warrants	40											
Monthly Total	57											
YTD Total	57											
2017												
BART Felony Warrants	1	2	1	1	2	3	1	5	1	1	1	0
BART Misdemeanor Warrants	6	4	3	5	9	2	6	17	10	3	8	3
O/S Felony Warrants	20	19	20	18	18	15	10	9	18	16	14	6
O/S Misdemeanor Warrants	39	40	53	53	54	44	52	53	48	74	60	36
Monthly Total	66	65	77	77	83	64	69	84	77	94	83	45
YTD Total	66	131	208	285	368	432	501	585	662	756	839	884
2016												
BART Felony Warrants	0	0	0	1	0	0	0	0	0	0	1	1
BART Misdemeanor Warrants	11	18	8	3	3	4	0	0	0	0	2	3
O/S Felony Warrants	16	28	23	12	6	9	15	12	8	20	17	11
O/S Misdemeanor Warrants	53	35	35	34	48	35	41	32	30	28	33	62
Monthly Total	80	81	66	50	57	48	56	44	38	48	53	77
YTD Total	80	161	227	277	334	382	438	482	520	568	621	698



San Francisco Bay Area Rapid Transit Police Department Criminal Investigations Section Monthly Summary Report January 2018

Detective Assignments

Total number of cases assigned to detectives during the month	Number of cases that are still being investigated by detectives	Number of cases that all current leads have been exhausted	Number of cases that were sent to the district attorney's offices for a review	Number of cases that the district attorney's offices has not made a final disposition	Number of cases that were charged by the district attorney / probation violation	Number of cases that were not charged by the district attorney's offices	Percentage of cases that the district attorney's offices filed charges	Total number of cases that are assigned to a detective as of Feb 7, 2018
139	72	10	57	22	20	14	35%	96

Submitted By: Sgt. J. Power S-49

Date: 02/07/2018

San Francisco Bay Area Rapid Transit Police Department

Criminal Investigations Section

January 2018

Detective Closure Rate

	Total number of cases assigned to detectives previous 12 months (Feb 2017 - Jan 2018)	Number of cases that are still being investigated by detectives	Number of cases that all current leads have been suspended	Number of cases that were sent to the district attorney's offices for a review (suspect identified)	Percentage of cases closed by identification of suspect	Percentage of cases suspended	Percentage of cases Open
	1880	102	421	1331	71%	22%	5%
D39	228	19	31	176	77%	14%	8%
D51	223	17	33	172	77%	15%	8%
D89	42	0	7	35	83%	17%	0%
D75	158	5	16	130	82%	10%	3%
D31	402	20	121	258	64%	30%	5%
D55	525	22	131	368	70%	25%	4%
D27	231	12	71	140	61%	31%	5%
D54	71	7	11	52	73%	15%	10%

CASES IN DETECTIVE QUEUE

	<i>Total</i>	<i>Past 60 days</i>
D39	11	0
D51	13	0
D75	7	0
D55	17	1
D31	23	2
D27	7	0
D54	11	0

Submitted by: Sgt. John J. Power #S49
Date: Feb 7, 2018

D51 currently out on industrial leave. Cases to be re-assigned and cleared.

Assembly Bill 716 - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	20												20
YTD 2018	20												

Assembly Bill 716 - 2017

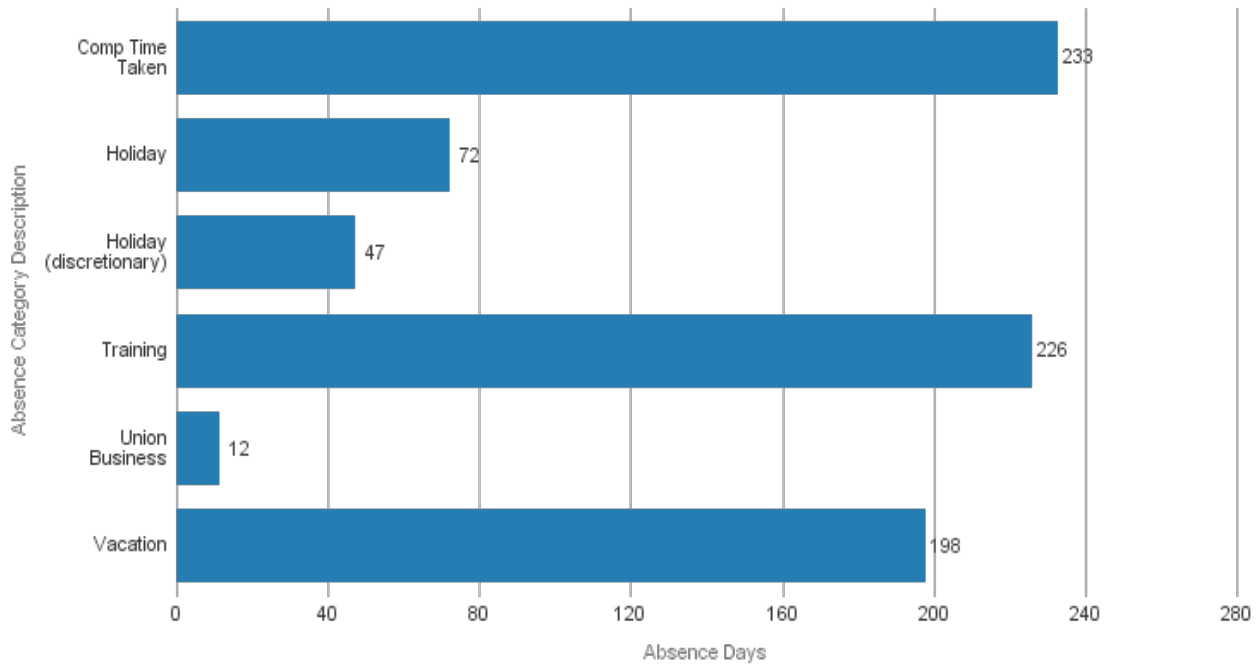
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	18	18	30	27	37	30	24	21	27	31	38	14	315
YTD 2017	18	36	66	93	130	160	184	205	232	263	300	315	

Assembly Bill 716 - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	21	16	22	17	39	23	20	25	19	31	24	19	276
YTD 2016	21	37	59	76	115	138	158	183	202	233	257	276	

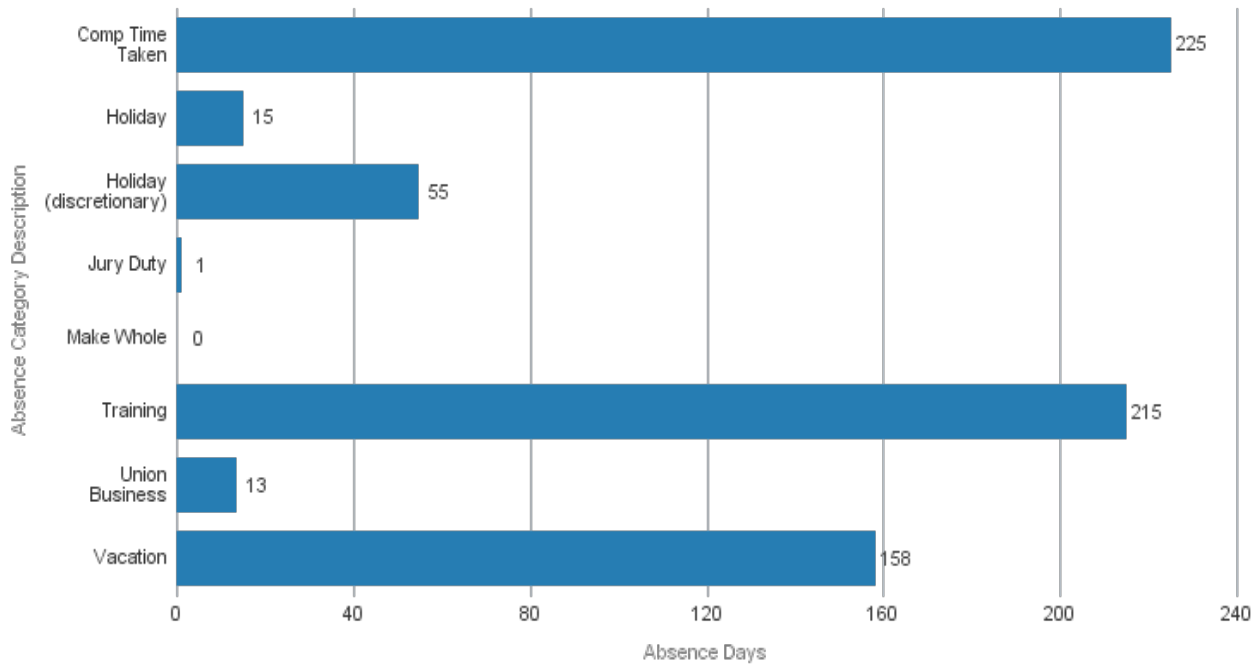


Scheduled Absence Overview - January 2018



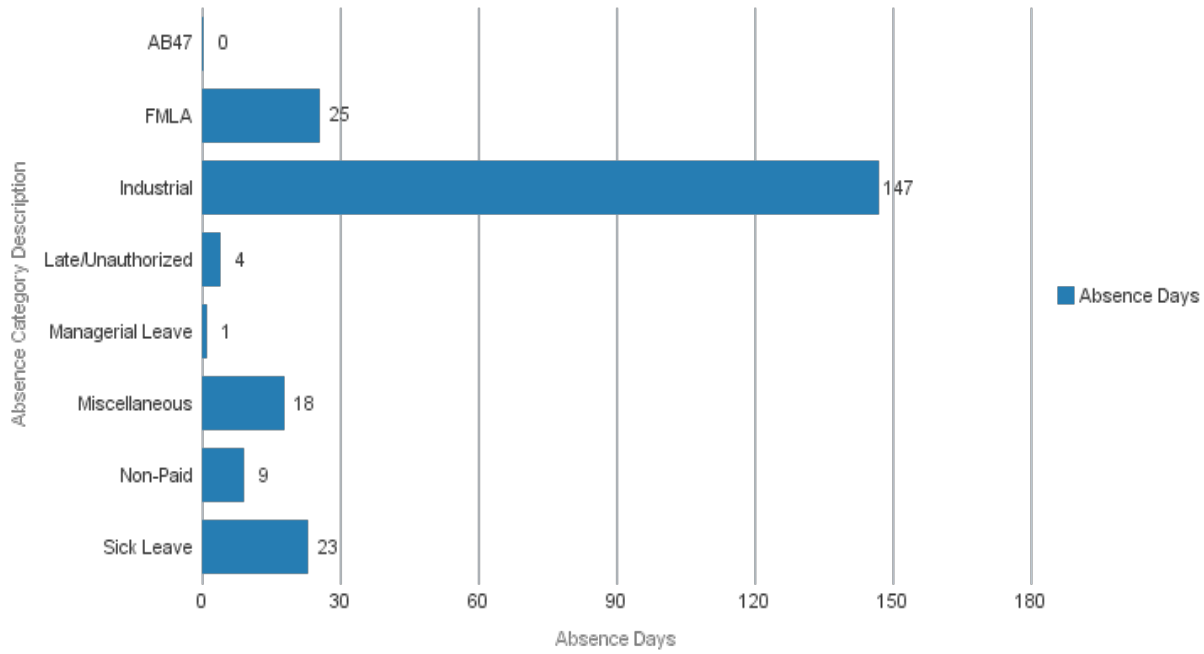
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	2,276	233	30%
Holiday	672	72	9%
Holiday (discretionary)	442	47	6%
Training	2,038	226	29%
Union Business	117	12	1%
Vacation	1,940	198	25%
Grand Total	7,485	787	100%

Scheduled Absence Overview - January 2017



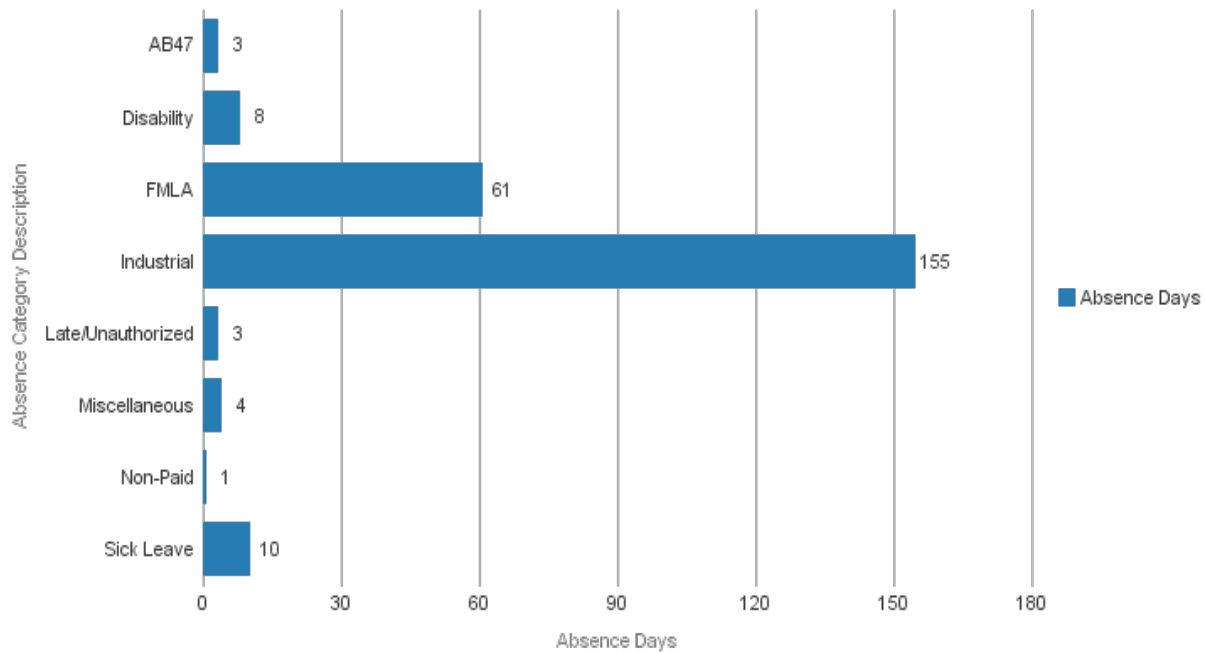
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	2,361	225	33%
Holiday	151	15	2%
Holiday (discretionary)	542	55	8%
Jury Duty	8	1	0%
Make Whole	2	0	0%
Training	2,007	215	32%
Union Business	156	13	2%
Vacation	1,584	158	23%
Grand Total	6,811	683	100%

Unscheduled Absence Overview - January 2018



Absence Category Description	Absence Hours	Absence Days	% Total
AB47	5	0	0%
FMLA	268	25	11%
Industrial	1,530	147	64%
Late/Unauthorized	41	4	2%
Managerial Leave	10	1	0%
Miscellaneous	174	18	8%
Non-Paid	75	9	4%
Sick Leave	239	23	10%
Grand Total	2,342	228	100%

Unscheduled Absence Overview - January 2017



Absence Category Description	Absence Hours	Absence Days	% Total
AB47	32	3	1%
Disability	96	8	3%
FMLA	652	61	25%
Industrial	1,718	155	63%
Late/Unauthorized	34	3	1%
Miscellaneous	40	4	2%
Non-Paid	5	1	0%
Sick Leave	108	10	4%
Grand Total	2,685	245	100%

BART PD OVERTIME MONTHLY REPORT

January 2018

Activity Name	Activity ID	2017			2018		
		Overtime10	Overtime15	Overtime20	Overtime10	Overtime15	Overtime20
Administration	ADMIN	0	0	798	0	68	623
Adv Officer Training	ADVOF	0	14,266	11,894	0	3,615	921
BART Labor	BLABR	0	552	0	0	1,264	0
BF OT Admin Leave BPD	BFALV	0	3,353	3,559	0	868	7,306
BF OT Discr Day BPD	BFDSC	0	2,382	1,301	0	868	1,163
BF OT Industrial Leave BPD	BFILV	0	7,120	3,095	140	5,844	2,645
BF OT Minimum Rest	BFRST	0	391	0	0	383	714
BF OT Patrol TRN	BFTRN	541	3,937	3,792	0	3,058	2,237
BF OT Recovery Day	BFRCV	0	14,084	27,832	482	8,289	9,058
BF OT Training BPD	BFTRN	541	3,937	3,792	0	3,058	2,237
BF OT Vacancy BPD	BFVCN	610	19,958	23,740	478	2,515	21,698
BF OT Vacation BPD	BFVAC	0	13,434	21,325	1,508	34,850	26,762
BF Sick/FMLA/Brvment	BFSLV	0	15,470	17,859	0	9,477	12,733
Backfill for Negotiations	BCKFL	0	0	0	4	450	0
Boardroom Security	BRDRM	0	0	3,769	0	0	1,538
COPPS Project/Event	COPPS	0	2,780	3,720	0	1,200	0
Calendar Year 2017	CY2017	0	0	0	0	552	1,968
Civil Unrest	PRTST	0	1,167	0	0	0	0
Coliseum Events	CEOPS	0	5,192	3,987	0	3,575	3,927
Contra Costa County Task Force	CCCTF	0	1,592	0	0	0	0
Court Appearance	COURT	0	406	688	0	1,183	1,144
Detectives Unit OT	INVST	0	1,150	0	0	8,166	4,539
EMS/OWS Pltfrm Detail	PLTFM	0	11,921	3,490	533	12,807	8,056
Evidence Collection	EVIDN	0	426	301	0	653	0
Explorer Advisors	EXPLR	0	0	0	0	4,105	0
Final Design	FDSGN	0	668	0	0	10,372	21,179
Held Over/Late Case	HLD OV	0	8,341	784	0	12,700	254
Honor Guard Detail	HONOR	0	338	0	0	0	0

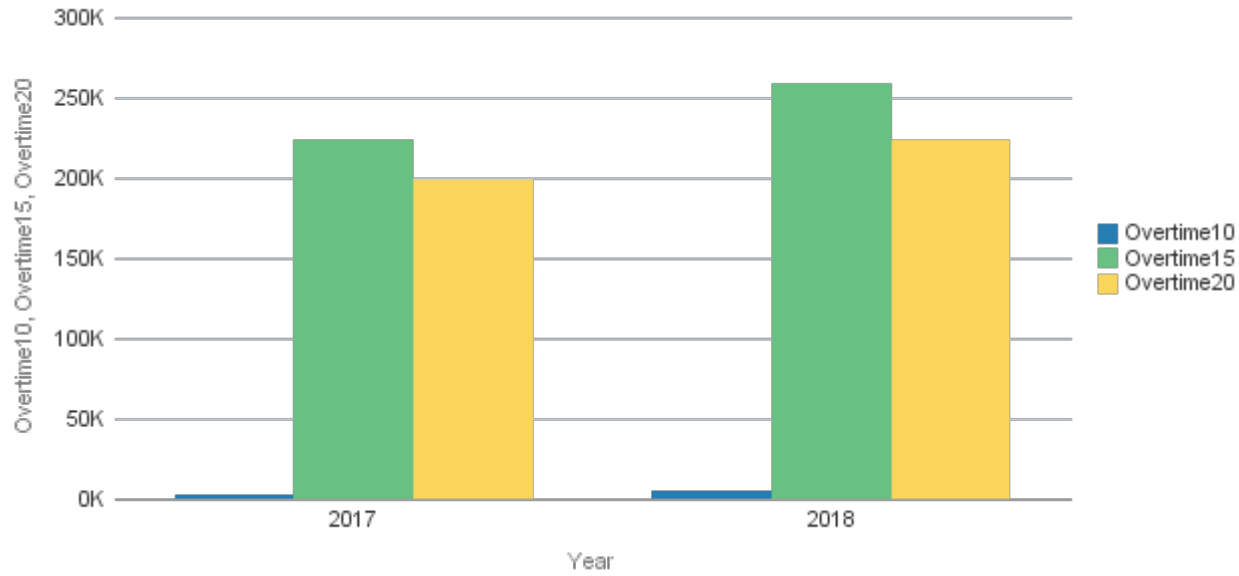
IA Unit Overtime	IAUNT	0	6,693	2,546	0	3,226	2,722
K-9 Team Training	K9TTR	0	935	0	0	2,313	1,841
Marketing Advertising & Prom	MRKAP	0	0	314	0	0	0
Meeting Attendance	MTNGS	0	4,220	709	0	5,113	0
Mgr of Sec Programs	SECPR	0	294	0	0	1,868	0
New Year's Eve SVC 2	NYEVE	0	2,423	868	485	6	0
Operating	OPRTN	0	14,080	14,463	385	22,979	17,796
P&T Unit Overtime	PTUNT	0	10,252	5,110	0	13,585	4,740
Police Admin OT	PADMN	0	10,505	1,539	87	20,989	2,819
Ptrl Special Enforcement	SPECL	216	22,834	15,057	865	40,817	43,839
Raiders - Walkway	RAIDR	0	0	0	0	970	509
Raiders Game Cleanup	RAIDR	0	0	0	0	970	509
Range Staff Training	RANGE	0	527	599	0	0	0
Rev Protection Unit OT	RVPRT	0	3,324	2,166	0	1,326	0
SF STA CLN SEC	DSFCS	0	0	0	209	1,080	4,433
SWAT Team Expenses	SWATT	0	0	0	0	0	803
SWAT Team Training	SWATT	0	0	0	0	0	803
Special Events	SPEVN	439	10,556	15,980	0	0	0
Training	TRNG	0	0	0	0	382	695
Training Other	TRNOT	0	3,487	2,940	0	3,783	2,179
Trma Resp Team TRN	TRTTR	0	0	0	0	856	956
Union Business	UNBUS	0	776	0	0	1,445	0
Women's March	MARCH	0	0	0	288	6,751	8,194
Total:		2,349	223,770	198,014	5,465	258,379	223,541

January 2018

424,134

487,386

Overtime10, Overtime15, Overtime20



Communications Center - 2018

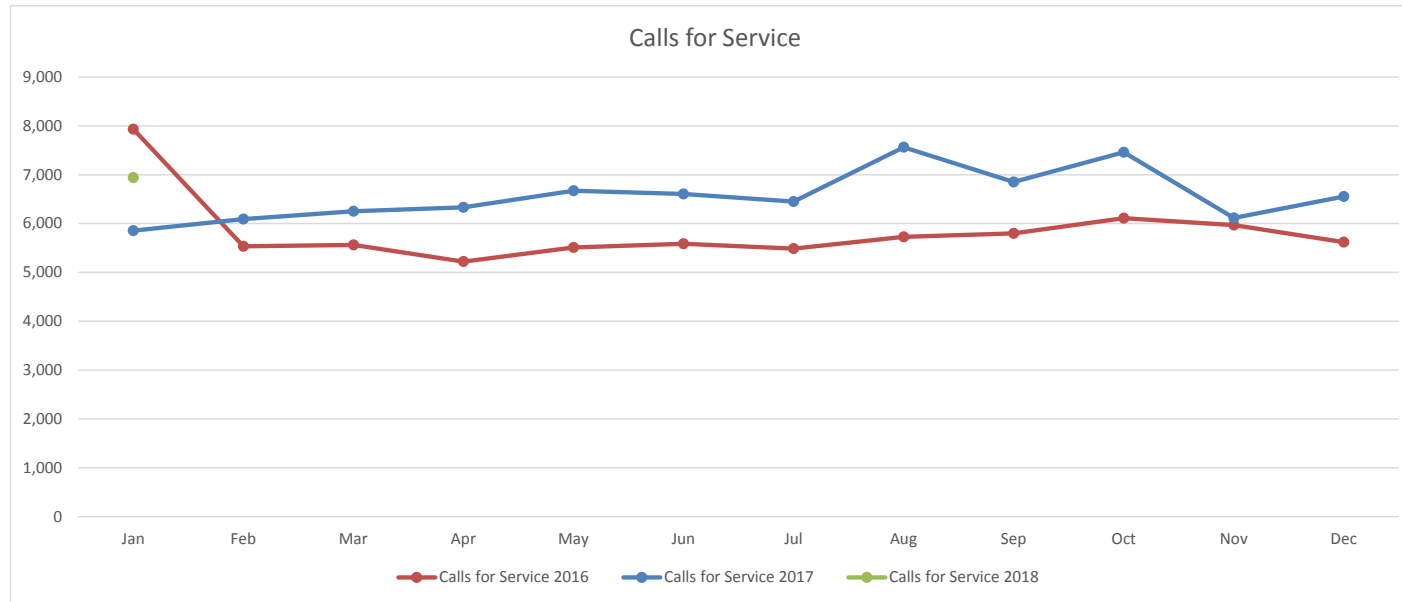
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	6,941												6,941
YTD 2018	6,941												
Priority 1 Calls	192												192
YTD 2018	192												
Medical Emergencies	414												414
YTD 2018	414												

Communications Center - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	5,855	6,093	6,250	6,331	6,670	6,605	6,448	7,562	6,850	7,460	6,117	6,553	78,794
YTD 2017	5,855	11,948	18,198	24,529	31,199	37,804	44,252	51,814	58,664	66,124	72,241	78,794	
Priority 1 Calls	214	192	194	182	209	234	210	185	174	204	154	176	2,328
YTD 2017	214	406	600	782	991	1,225	1,435	1,620	1,794	1,998	2,152	2,328	
Medical Emergencies	425	327	357	344	367	385	376	344	356	387	387	463	4,518
YTD 2017	425	752	1,109	1,453	1,820	2,205	2,581	2,925	3,281	3,668	4,055	4,518	

Communications Center - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	7,934	5,536	5,563	5,221	5,511	5,587	5,488	5,726	5,797	6,111	5,970	5,621	70,065
YTD 2016	7,934	13,470	19,033	24,254	29,765	35,352	40,840	46,566	52,363	58,474	64,444	70,065	
Priority 1 Calls	177	151	171	154	177	156	180	181	177	178	178	157	2,037
YTD 2016	177	328	499	653	830	986	1,166	1,347	1,524	1,702	1,880	2,037	
Medical Emergencies	305	277	334	315	305	304	281	278	334	313	307	389	3,742
YTD 2016	305	582	916	1,231	1,536	1,840	2,121	2,399	2,733	3,046	3,353	3,742	



BART Watch - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Suspicious Activity	134												134
Crime in Progress	112												112
Illegally Parked Vehicle	13												13
Vandalism	40												40
Unattended Bag or Package	31												31
Sexual Assault/Lewd Behavior	21												21
Report a Crime Tip	31												31
Robbery/Theft	15												15
Unsecure Door	13												13
Disruptive Behavior	667												667
Panhandling	116												116
Total	1193												1,193

Total Downloads: 44,684

Total Reports Made

Anonymous: 39.98%

Non-Anonymous: 60.02%

Statistics

Statistics	Six Week Average	02/19-02/25	02/12-02/18	02/05-02/11	01/29-02/04	01/22-01/28	01/15-01/21
Alerts Sent	0.00	0	0	0	0	0	0
Description	<i>The total number of alerts sent.</i>						
Incoming Reports	326.17	340	312	349	311	340	305
Description	<i>The number of reports sent from users.</i>						
Replies to Reports	318.33	345	299	333	274	380	279
Description	<i>The number of replies sent to users from ELERTS EPICenter console.</i>						

Report Type	# of Reports (all time)	
Disruptive Behavior (A)	14758	40.59%
Panhandling (A)	3564	9.80%
Suspicious Activity (A)	3151	8.67%
Other (D)	3080	8.47%
[none selected]	3078	8.47%
Crime in Progress (A)	2058	5.66%
Panhandling or Disruptive Behavior (D)	1967	5.41%
Vandalism (A)	1165	3.20%
Unattended Bag or Package (A)	960	2.64%
Report a Crime Tip (A)	710	1.95%
Illegally Parked Vehicle (A)	687	1.89%
Sexual Assault / Lewd Behavior (A)	593	1.63%
Robbery / Theft (A)	353	0.97%
Unsecure Door (A)	229	0.63%
Text a Tip (A)	7	0.02%
Total	36360	100 %
(A) Active Disabled (D)		

Identification	Total
Anonymous	39.90 %
Description	<i>Reports sent anonymously.</i>
Non-Anonymous	60.10 %
Description	<i>Reports sent non-anonymously.</i>

App Statistics (including tests)	
Total Messages (iOS)	43968
Description	<i>Reports and replies via iOS devices.</i>
Total Messages (Android)	22881
Description	<i>Reports and replies via Android devices.</i>
Total Messages (SMS)	2
Description	<i>Reports and replies via SMS.</i>

TEST-THIS IS ONLY A TEST	# of Reports (all time)
TEST Report Total	5408

Top SMS Users	
Phone Number	Number of Reports
5103685574	1
5108215151	1

BART POLICE DEPARTMENT



February 2018

MONTHLY REPORT

BPD Monthly Reports

February 2018

Report	Responsible
01 – Industrial Leave*	SSD – J. Morgan
02 – Vacancy	SSD – F. Cheung
03 – Diversity	SSD – F. Cheung
04 – Training	PS&T – R. Gregson
05 – Use of Force	PS&T – P. Kwon
06 – Citizen Complaints	PS&T – P. Kwon
07 – Internal Affairs Log	PS&T – P. Kwon
08 – Performance Measures	SSD – K. Dam
09 – Enforcement Contacts	SSD – K. Dam
10 – Parking Enforcement	POD – J. DeVera
11 – Warrant Arrests	SSD – K. Dam
12 – Detectives Assignments	SSD – J. Power
13 – Detectives Closure Rate	SSD – J. Power
14 – Assembly Bill 716	POD – M. Williamson
15 – Absence Overview	SSD – C. Vogan
16 – Overtime	SSD – F. Cheung
17 – Communications Center	SSD – G. Hesson
18 – BART Watch	SSD – C. Vogan

*Not included in Year-End or Monthly BPCRB Reports

BART Police Department (07) Staffing Status

As of: 03/07/18
Vacancy Factor: 0.0

	Pos'n Code	Job Title	FY18 Adopted	Reclass	As of 03/07/18	Filled	On Leave or TMD	Vacant
NON-SWORN (Rep)	027	Community Service Officer	63		63	45	5	18
	045	Police Admin Specialist	12		12	10	-	2
	048	Police Dispatcher	16		16	15	1	1
	098	Revenue Protection Guard	19		19	16	1	3
	836	Police Sup./CAD/RMS Admin**	6		6	6	-	-
SWORN	778	Police Officer	66		66	57	6	9
		In Academy = 9						-
		Field Training = 2						-
	788	Senior Police Officer	101		101	80	5	21
	798	Master Police Officer	14		14	11	-	3
	838	Police Sergeant	34		34	31	4	3
	888	Police Lieutenant	10		10	11	1	(1)
	898	Police Deputy Chief	3		3	3		-
	980	Police Chief	1		1	1		-
Non-Sworn (Non-Rep)	SF100	Mgr of Security Programs**	1		1	-		1
	000065	Emergency Preparedness Mgr.	1		1	1	-	-
	000074	Crisis Outreach Coordinator	1		1	1		-
	000081	Accreditation Manager	1		1	1	-	-
	AF200	Sr. Administrative Analyst	1		1	1		-
DEPARTMENT TOTAL			350	-	350	290	23	60

Notes

>1 ea. LT show as unbudgeted

Add people on TMD to the filled position

EBART - Ofc 5, CSO 4

Fare Evasion - 6 CSOs, 1 PAS

Note: BART Police Department has 17 Attrition Float positions, of which 10 are Police Officers (778), 5 are Community Service Officers (027) and 2 are Police Dispatchers (048).

- > "On Leave" category does not include personnel on Admin Leave.
- > Mgr of Security Programs position is currently filled by a Police Lieutenant**

BART PD DIVERSITY MONTHLY REPORT

As of 2/8/18

+

<u>ETHNICITY</u>		<u>S</u>		<u>C</u>	
White	37% 107	43%	77	31%	30
Black	22% 63	21%	42	22%	21
Asian	21% 60	16%	31	30%	29
Hispanic	19% 55	18%	41	15%	14
American/ Indian	0% 0	0%	0	0%	0
Native Hawaiian/Pac Island	1% 5	2%	3	2%	2
Total:	100% 290	100%	194	100%	96
<u>DEMOGRAPHIC</u>		<u>S</u>		<u>C</u>	
Female	22% 63	9%	18	47%	45
Male	78% 227	91%	176	53%	51
Total:	100% 290	100%	194	100%	96
<u>CLASSIFICATION</u>					
Sworn	67% 194				
Civilian	33% 96				
Total:	100% 290				

CRISIS INTERVENTION TRAINING AS OF: January 31, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	(Not in Academy or Field Training) Eligible to Attend Training	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions Trained
Chief	1	1	0	1	0	0%	0%
Deputy Chiefs	3	3	0	3	3	100%	100%
Lieutenants	11	11	0	9	9	82%	100%
Sergeants	34	31	3	31	31	100%	100%
Officers	183	145	38	135	131	90%	97%
Dispatchers	16	15	1	13	13	87%	100%
Dispatch Supervisors	2	2	0	2	2	100%	100%
CSOs	63	46	17	45	43	93%	96%
Crisis Outreach Coordinator	1	1	0	1	1	100%	100%
Total	314	255	59	240	233	91%	97%

Personnel Positions that are not designated to attend CIT Training

	Total	Filled	Vacant
Revenue Protection Guards	19	16	3
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	4	4	0
Civilian Managers/Analyst	3	3	0
Sub Total	38	33	5
TOTAL PERSONNEL	352	288	64

FAIR AND IMPARTIAL / BIASED BASED TRAINING AS OF January 31, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	Eligible to Attend (Not in Academy or Field Training)	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions
Chief	1	1	0	1	0	0.0%	0.0%
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	11	11	0	11	11	100.0%	100.0%
Sergeants	34	31	3	31	31	100.0%	100.0%
Officers	181	145	38	138	138	95.2%	100.0%
CSOs	63	46	17	44	42	91.3%	95.5%
Total	293	237	58	228	225	94.9%	98.7%

Personnel Positions that are not designated to attend FAIR AND IMPARTIAL Training

	Total	Filled	Vacant
Dispatchers	16	15	1
Dispatch Supervisors	2	2	0
Crisis Outreach Coordinator	1	1	0
Revenue Protection Guards	19	16	3
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	4	4	0
Civilian Managers/Analyst	3	3	0
Sub Total	57	51	6
TOTAL PERSONNEL	350	288	64

POLICE ROADWAY PROTECTION TRAINING AS OF: January 31, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	Eligible to Attend (Not in Academy, FTO, or IND/Leave)	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions
Chief	1	1	0	1	0	0.0%	0.0%
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	11	11	0	10	10	90.9%	100.0%
Sergeants	34	31	3	30	30	97%	100.0%
Officers	181	145	38	137	136	93.8%	99.3%
CSOs-Not Required	63	46	17	43	41	89.1%	95.3%
Total	293	237	58	224	220	92.8%	98.2%

Personnel Positions that are REQUIRED to attend Police Roadway Protection Training

	Total	Filled	Vacant
CSOs	63	46	17
Dispatchers	16	15	1
Dispatch Supervisors	2	2	0
Crisis Outreach Coordinator	1	1	0
Revenue Protection Guards	19	16	3
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	4	4	0
Civilian Managers/Analyst	3	3	0
Sub Total	120	97	23
TOTAL PERSONNEL	413	334	81

Use of Force Incidents - 2018

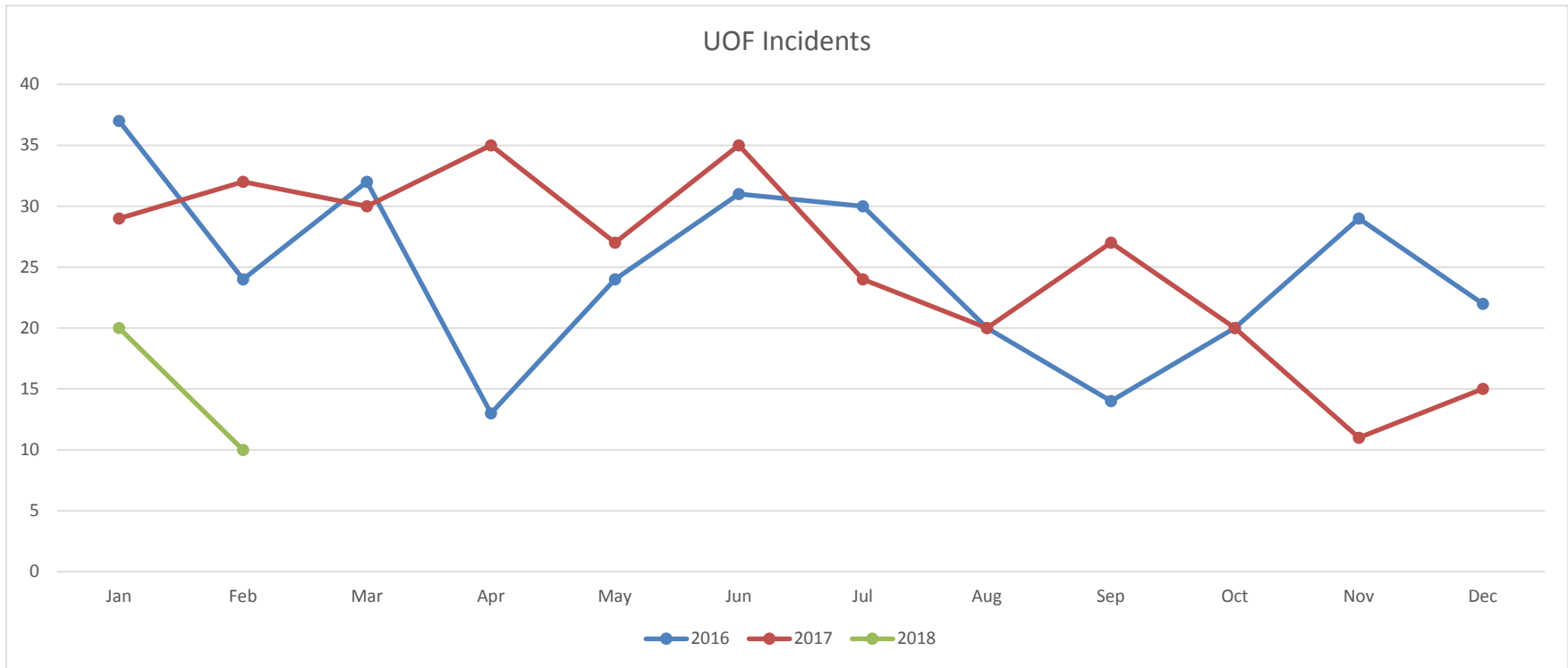
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	20	10											30
YTD 2018	20	30											

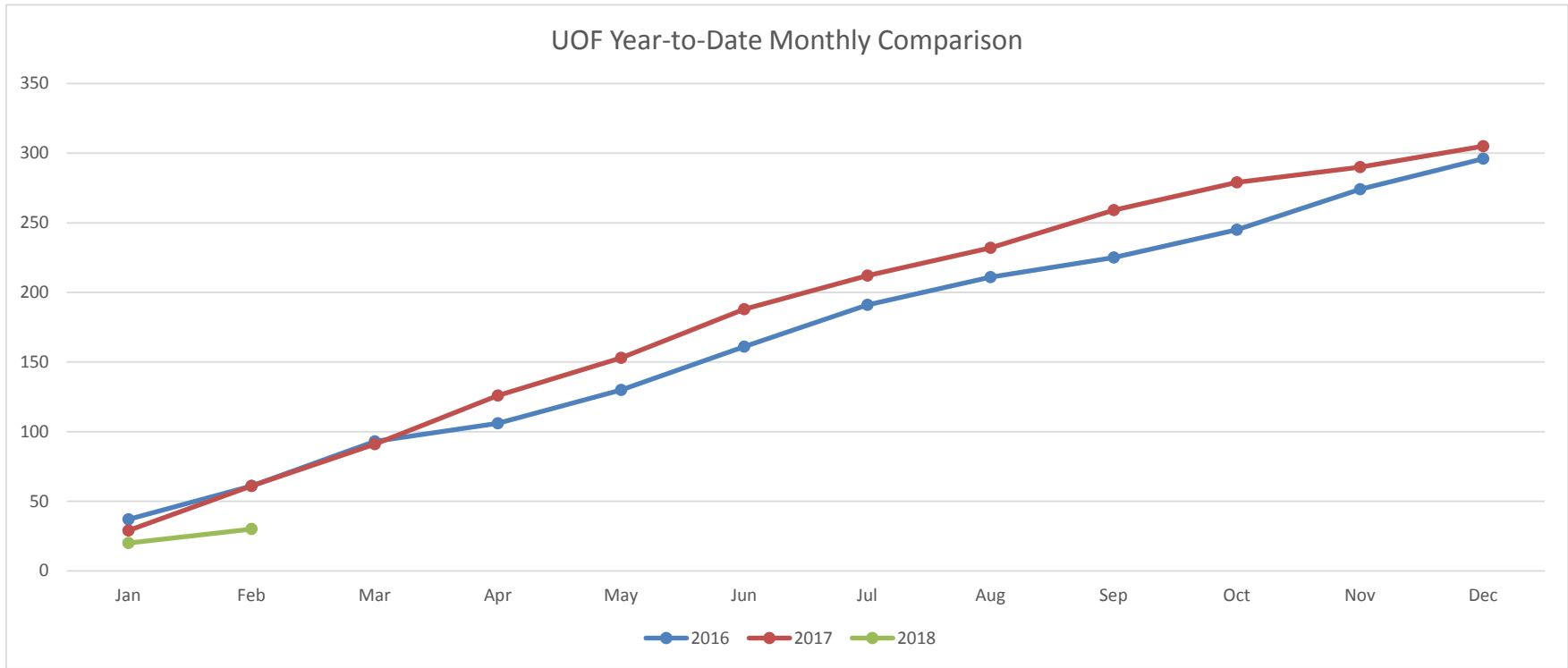
Use of Force Incidents - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	29	32	30	35	27	35	24	20	27	20	11	15	305
YTD 2017	29	61	91	126	153	188	212	232	259	279	290	305	

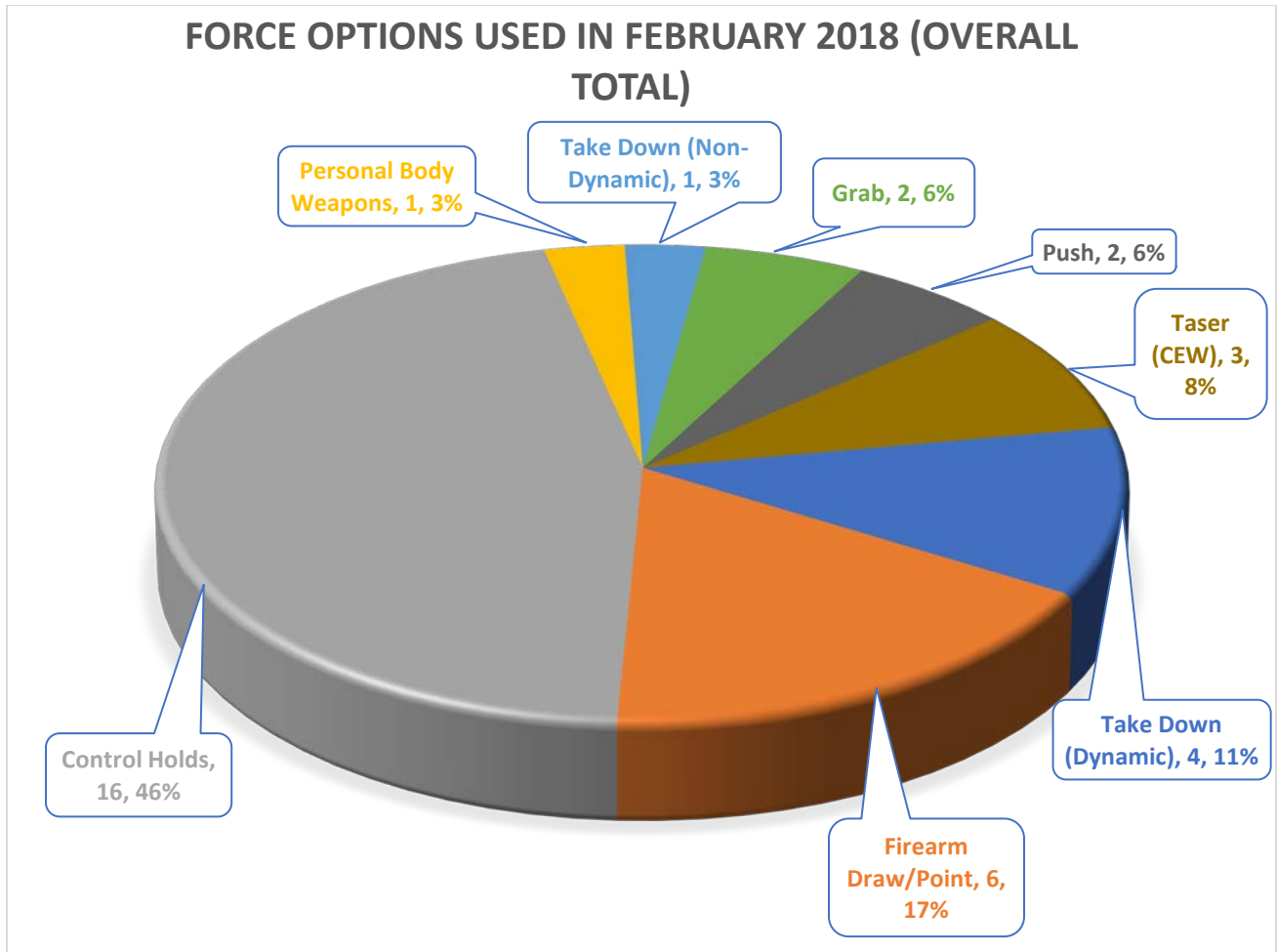
Use of Force Incidents - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2016	37	24	32	13	24	31	30	20	14	20	29	22	296
YTD 2016	37	61	93	106	130	161	191	211	225	245	274	296	



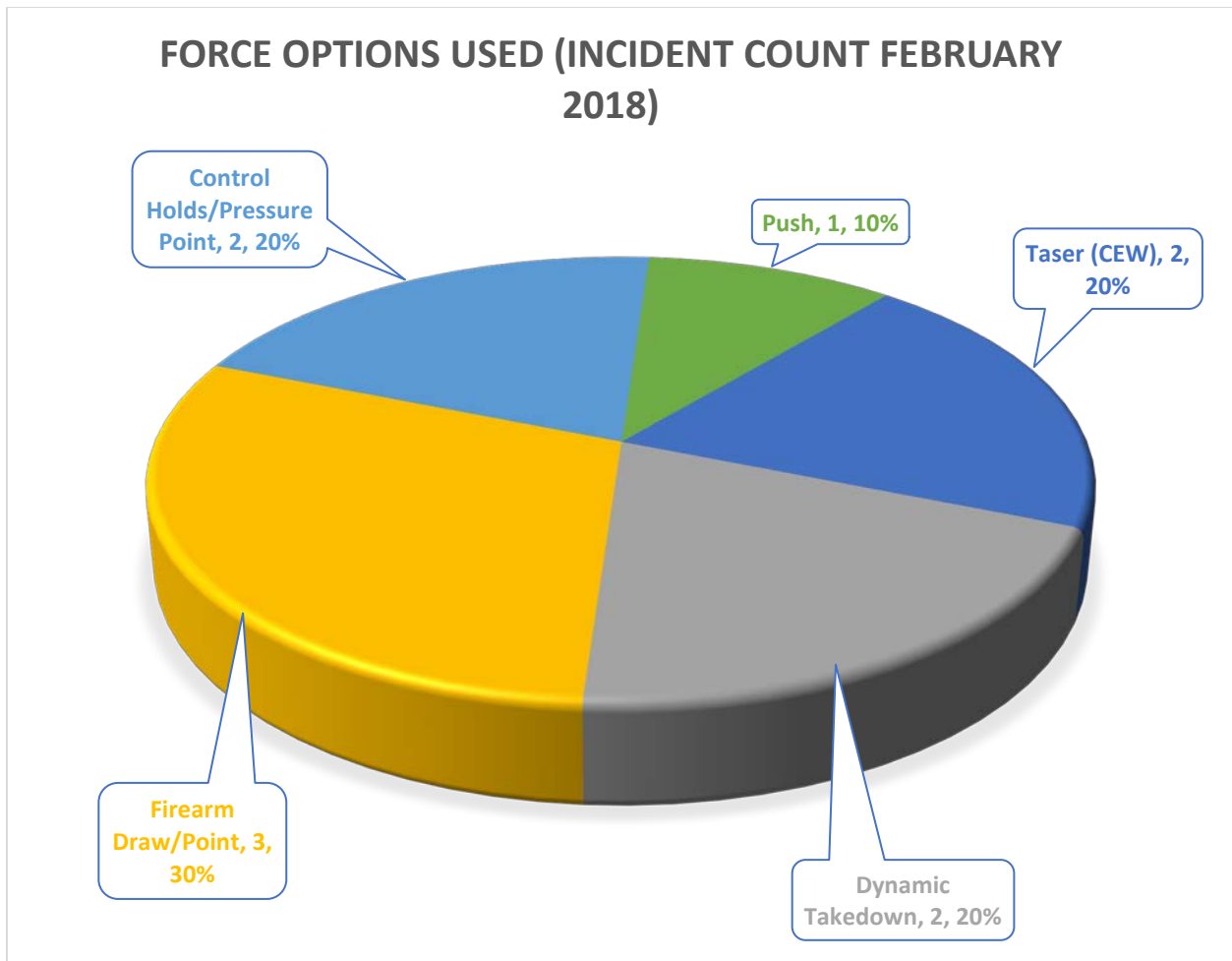


Types of Force Used, February 2018 (Overall Total)



*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 in the same incident used control holds, this data would reflect two separate control holds.

Force Options Used (Incident Count), February 2018



*Each incident could contain more than one force option used. This pie chart reflects the most significant force option used per incident.

Citizen Complaints - 2018

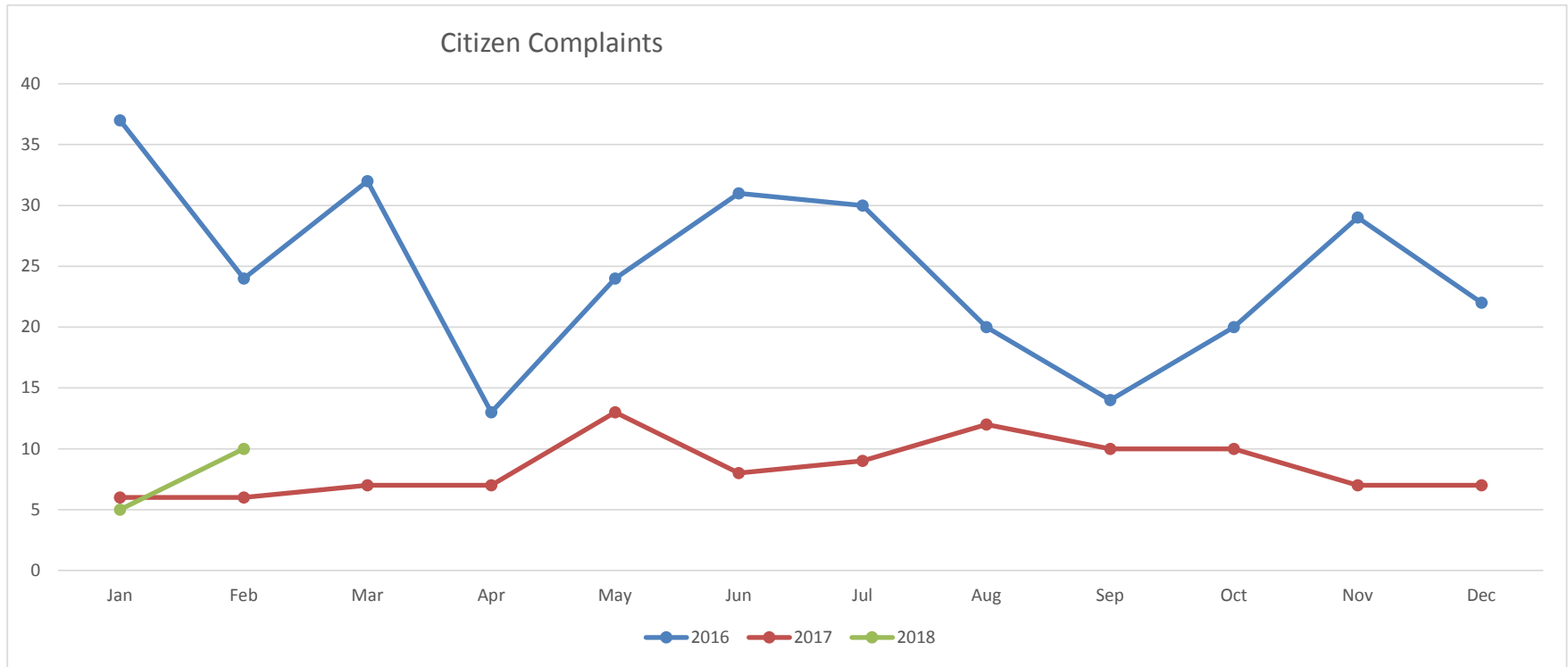
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	5	10											15
YTD 2018	5	15											

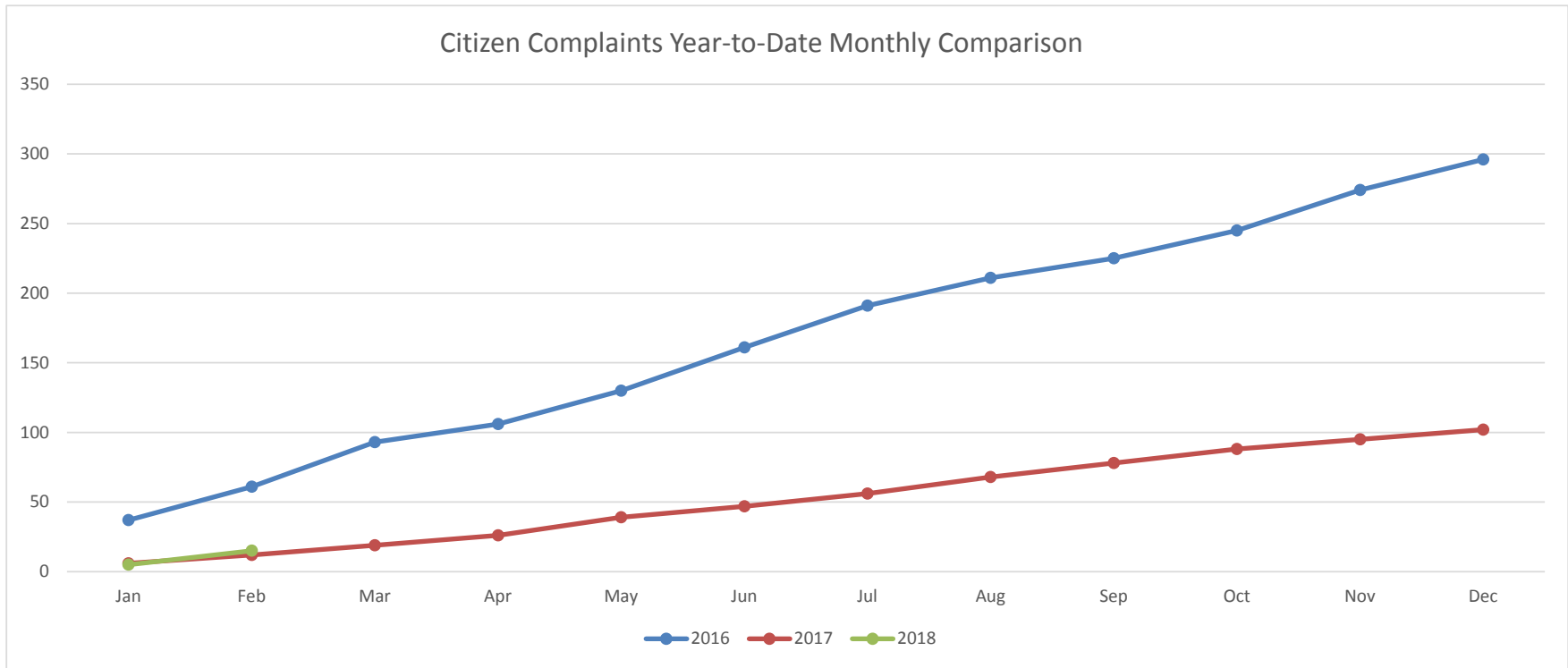
Citizen Complaints - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	6	6	7	7	13	8	9	12	10	10	7	7	102
YTD 2017	6	12	19	26	39	47	56	68	78	88	95	102	

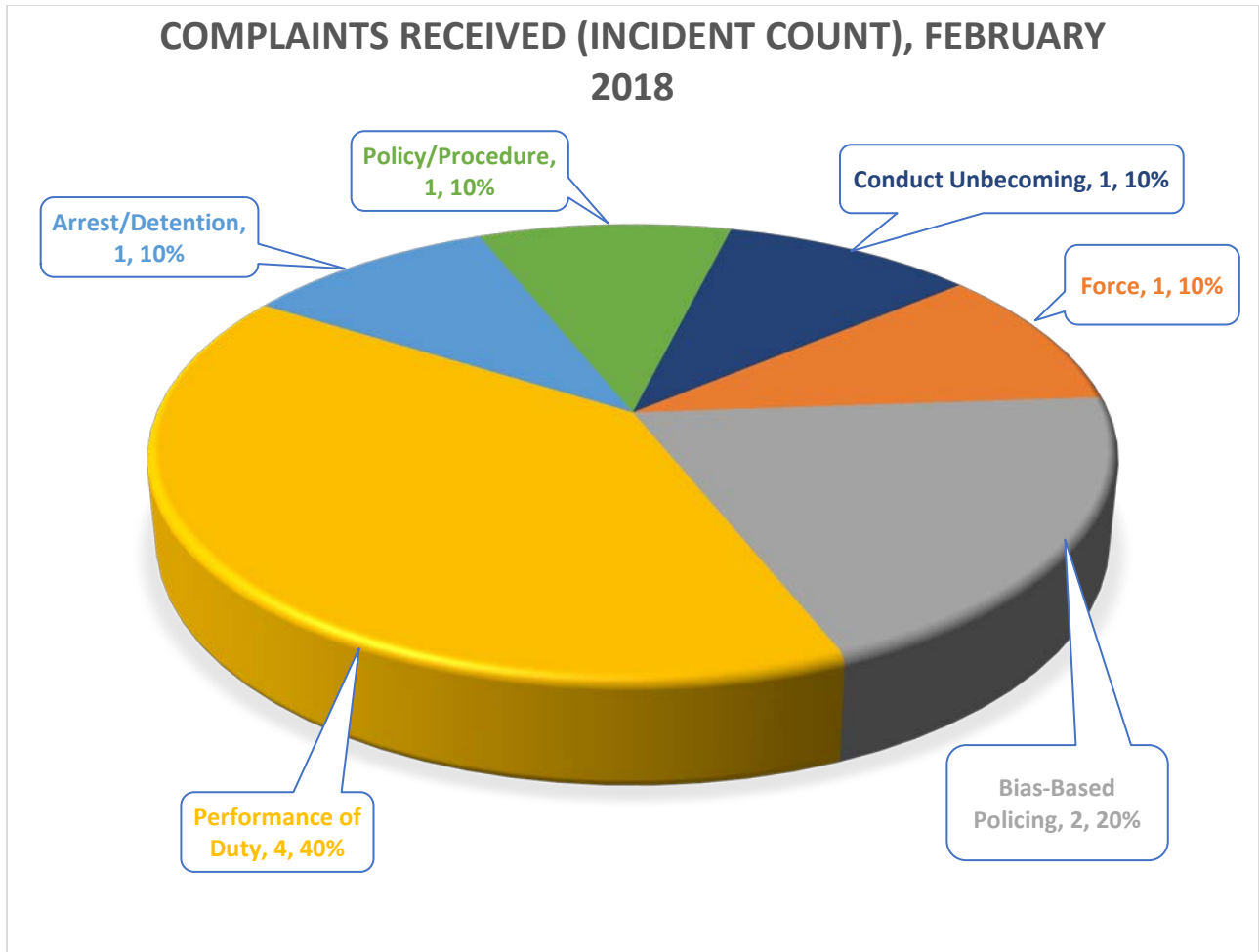
Citizen Complaints - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2016	10	3	13	7	7	10	6	9	8	7	8	6	94
YTD 2016	10	13	26	33	40	50	56	65	73	80	88	94	





Complaints Received (Incident Count), February 2018



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

BART Police Department - Office of Internal Affairs							
Investigation Log - February 2018							
IA	DATE						COMPLETED DATE
CASE #	OCC'D	REC'D	ALLEGATION	FINDING	INVESTIGATOR	DUE DATE	
IA2016-071	07/29/16	7/29/2016	Force, Bias, Arrest		Lt. Kwon	12/28/16	
			Force, Bias, Arrest		(Tolled)	01/27/17	
			Force, Bias, Arrest				
			Force, Bias, Arrest				
IA2017-040	1/31/2017	5/18/2017	Force		Sgt. Togonon	10/17/2017	
			Force		Tolled		
IA2017-081	8/31/2017	8/31/2017	CUBO		Sgt. T. Salas	1/30/2018	Submitted L21
			CUBO				
			CUBO				
IA2017-084	9/17/2017	9/18/2017	Force, CUBO		Sgt. Togonon	2/17/2018	Corrections
IA2017-093	10/4/2017	10/4/2017	Force		Sgt. T. Salas	3/5/2018	Submitted L21
IA2017-095	10/13/2017	10/18/2017	Performance of duty		Sgt. T. Salas	3/19/2018	
			Force/Search				
IA2017-096	10/20/2017	10/23/2017	Bias Based Policing		Sgt. T. Salas	3/24/2018	
					Sgt. Fueng		
IA2017-097	10/13/2017	10/18/2017	CUBO	OIPA Inv	Sgt. Togonon	3/19/2018	
			Bias-Based Policing				
IA2017-101	10/30/2017	10/31/2017	Performance of Duty		Sgt. T. Salas	3/22/2018	Submitted L21
IA2017-102	11/3/2017	11/3/2017	Performance of Duty		Sgt. Togonon	4/4/2018	
					Sgt. Henderson		
IA2017-105	11/15/2017	11/16/2017	Performance of Duty		T. Salas		
			Bias-Based Policing				
			Policy (Axon)				
IA2017-106	11/16/2017	11/16/2017	Force		Sgt. Togonon		Submitted C1
					Lt. Kwon		
IA2017-108	11/22/2017	11/23/2017	CUBO		Sgt. Togonon	4/15/2018	Submitted C5
			CUBO				
IA2017-110	11/28/2017	11/28/2017	Policy/Procedure	Service Review	Lt. Kwon		
IA2017-111	11/10/2017	11/10/2017	Force		Sgt. Salas	4/11/2017	
IA2017-114	12/12/2017	12/13/2017	Force, Bias, CUBO		Sgt. T. Salas	5/14/2018	
IA2017-115	12/20/2017	Unk	Force, CUBO		Sgt. Togonon	5/21/2018	
			Policy/Procedure				
IA2017-117	12/17/2017	12/28/2017	Performance		Sgt. Togonon	5/29/2018	
			Arrest/ Detention		Sgt. Henderson	3/15/2018	
IA2017-118	12/25/2017	1/2/2018	Force		Sgt. T. Salas	6/3/2018	
IA2018-001	1/3/2018	1/3/2018	Force (OIS)		Sgt. T. Salas	6/4/2018	
					Tolled		
IA2018-002	1/4/2018	1/4/2018	CUBO	Admin Closure	Sgt. Togonon	6/4/2018	
IA2018-003	1/28/2018	1/8/2018	Arrest/Detention		Sgt. Togonon	7/8/2018	
IA2018-005	1/12/2018	1/12/2018	Bias/CUBO		Sgt. Togonon	7/12/2018	
IA2018-007	1/26/2018	1/26/2018	Force		Sgt. Togonon	7/4/2018	
IA2018-009	2/1/2018	2/8/2018	Bias		Sgt. Togonon	7/10/2018	
IA2018-010	2/1 2/2 2018	2/12/2018	CUBO		Sgt. T. Salas		

IA	DATE						
CASE #	OCC'D	REC'D	ALLEGATION	FINDING	INVESTIGATOR	DUE DATE	COMPLETED DATE
			CUBO				
IA2018-011	2/12/2018	2/13/2018	Arrest/Detention, Force, Bias, CUBO	OIPA inv	Sgt. T. Salas	7/16/2018	
IA2018-012	2/2/2018	2/14/2018	Arrest/Detention, POD		Sgt. Togonon	7/16/2018	
			Arrest/Detention, POD				
			Arrest/Detention, POD				
IA2018-013	2/7/2018	2/10/2018	Force/Policy/Procedure		Sgt. T. Salas	7/22/2018	
			Policy/Procedure				

PART 1 CRIMES	2013	2014	2015	2016	2017	YTD February		% change from '17
						2017	2018	
Homicide	1	0	1	1	0	0	0	#DIV/0!
Rape	0	2	3	4	8	1	0	-100%
Robbery	209	153	161	232	290	48	54	13%
Aggravated Assault	29	44	35	42	49	5	10	100%
Violent Crime Subtotal	239	199	200	279	347	54	64	19%
Burglary (Not Including Auto)	25	7	4	12	15	1	2	100%
Larceny	2524	2597	2325	2217	2586	366	367	0%
Auto Theft	483	522	480	480	419	54	77	43%
Arson	0	0	0	1	4	1	1	0%
Property Crime Subtotal	3032	3126	2809	2710	3025	422	447	6%
TOTAL	3271	3325	3009	2989	3372	476	511	7%



BART Police Performance Measurements

February 2018

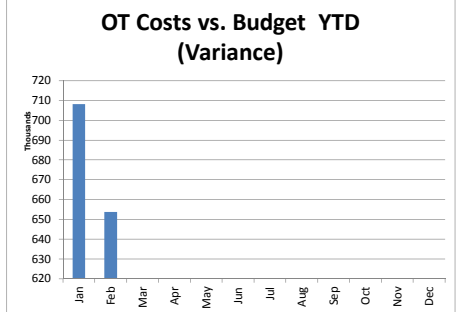
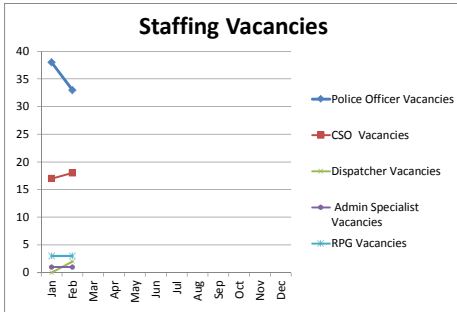
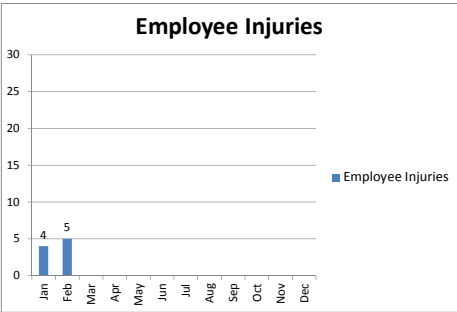
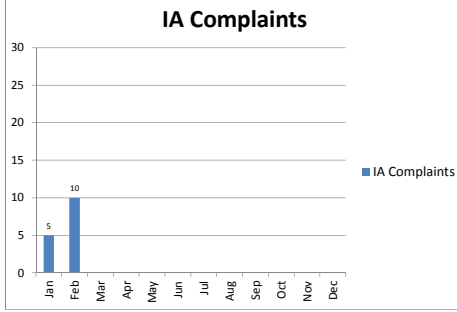
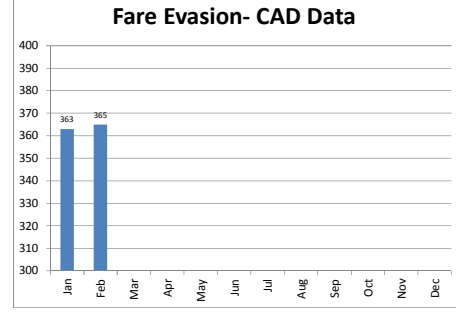
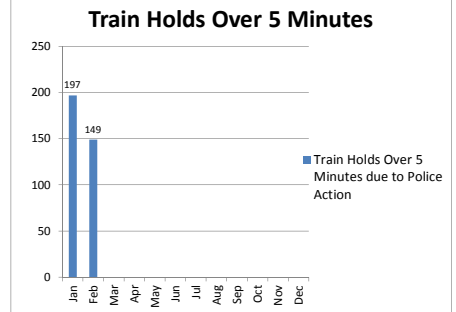
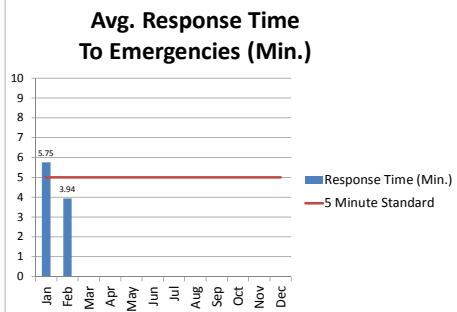
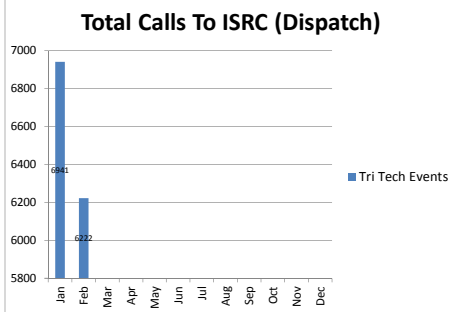
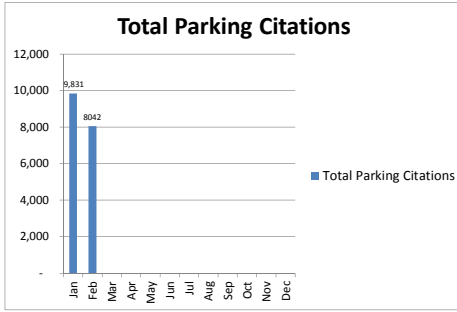
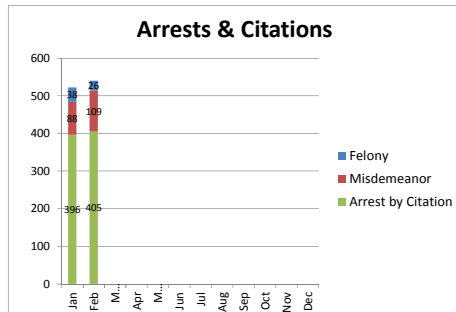
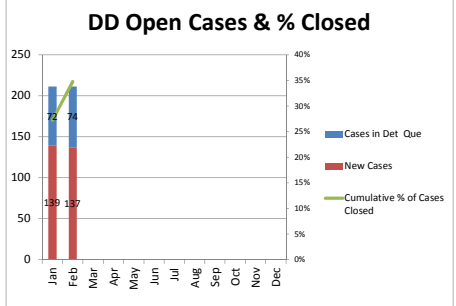
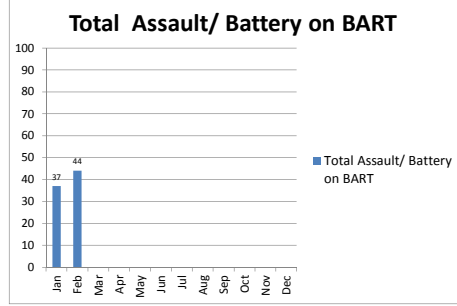
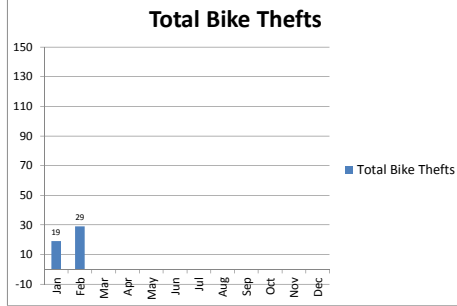
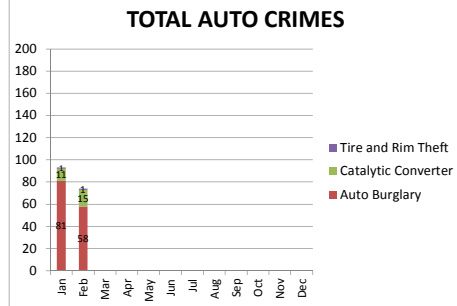
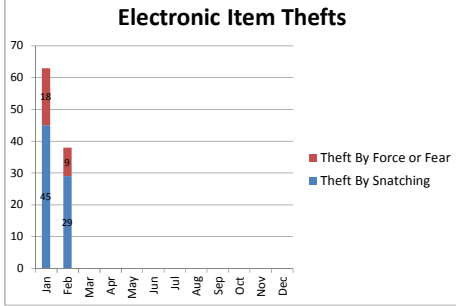
Disclaimer--**The data is drawn from the BART Police Department TriTech computer database, and they are unaudited. The numbers may not match the official monthly totals reported to the FBI through the Uniform Crime Reporting (UCR) program. Late reporting, the reclassification or unfounding of crimes, can affect crime statistics. The statistics contained in the on the Performance Measurements are **subject to change, updates, and corrections. ****

Top 5 Stations For Part 1 Crimes

Most Frequent 2017
2018 Current Month
 Hayward
 South Hayward
 Richmond
 San Leandro
 Pleasant Hill

Most Frequent all of 2017
2017 YEAR
 Coliseum
 Bay Fair
 West Oakland
 Fruitvale
 East Dublin

This list was obtained by adding the highest totals listed in the Part 1 crimes data.



Enforcement Contacts - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Felony Arrest	38	26											64
YTD 2018	38	64											
Misd. Arrest	88	109											197
YTD 2018	88	197											
Cite & Release	396	405											801
YTD 2018	396	801											
Field Interview	512	581											1,093
YTD 2018	512	1,093											

Enforcement Contacts - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Felony Arrest	29	32	35	28	34	35	24	33	36	37	28	18	369
YTD 2017	29	61	96	124	158	193	217	250	286	323	351	369	
Misd. Arrest	96	82	112	100	109	107	106	137	129	142	131	104	1,355
YTD 2017	96	178	290	390	499	606	712	849	978	1,120	1,251	1,355	
Cite & Release	356	578	355	252	222	155	261	654	385	730	287	200	4,435
YTD 2017	356	934	1,289	1,541	1,763	1,918	2,179	2,833	3,218	3,948	4,235	4,435	
Field Interview	175	336	322	349	418	336	348	545	749	646	508	466	5,198
YTD 2017	175	511	833	1,182	1,600	1,936	2,284	2,829	3,578	4,224	4,732	5,198	

Enforcement Contacts - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Felony Arrest	23	20	37	24	31	28	22	24	21	32	31	26	319
YTD 2016	23	43	80	104	135	163	185	209	230	262	293	319	
Misd. Arrest	71	57	50	86	103	86	74	73	71	79	92	77	919
YTD 2016	71	128	178	264	367	453	527	600	671	750	842	919	
Cite & Release	424	538	443	195	591	195	314	162	239	229	229	246	3,805
YTD 2016	424	962	1,405	1,600	2,191	2,386	2,700	2,862	3,101	3,330	3,559	3,805	
Field Interview	175	501	219	469	482	422	350	490	372	425	444	355	4,704
YTD 2016	175	676	895	1,364	1,846	2,268	2,618	3,108	3,480	3,905	4,349	4,704	

Parking Enforcement - 2018

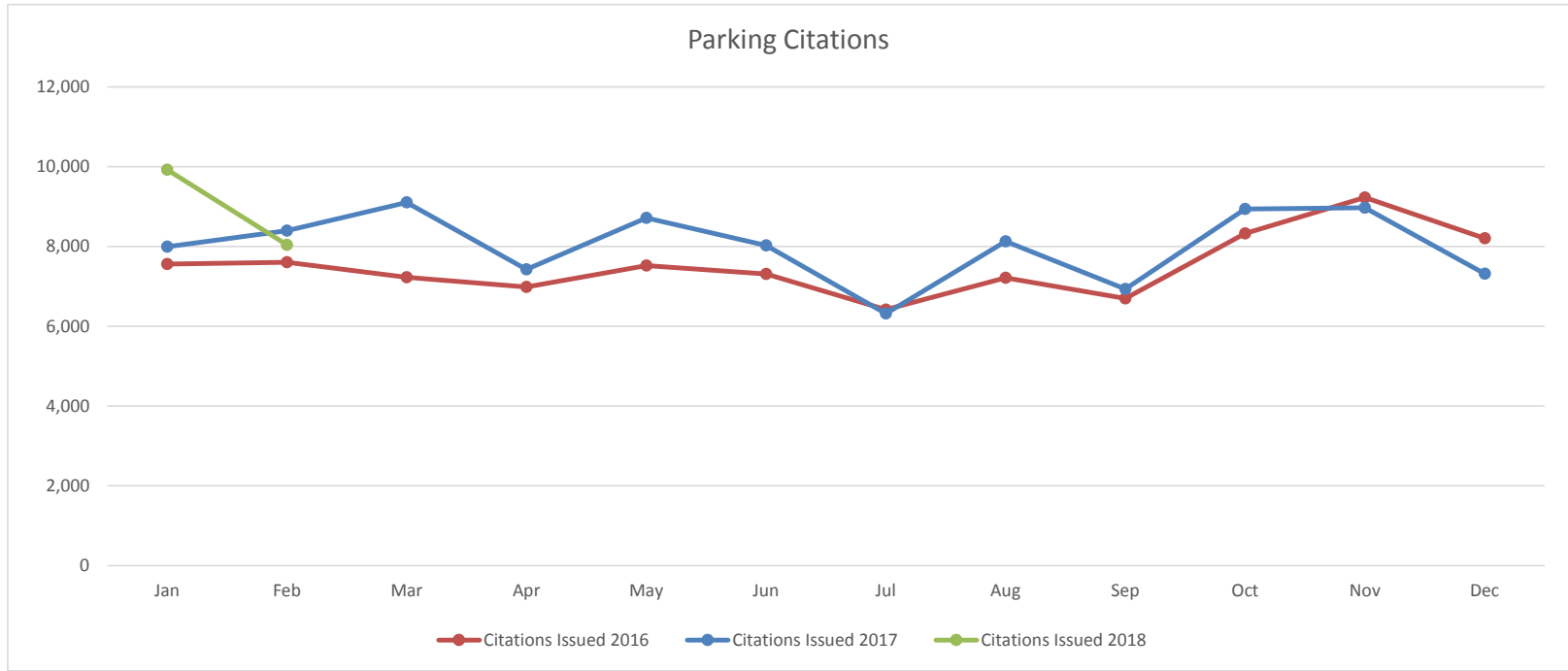
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	9,925	8,042											17,967
YTD 2018	9,925	17,967											
Contested	2,121	1,808											3,929
YTD 2018	2,121	3,929											
Dismissed	1,502	1,200											2,702
YTD 2018	1,502	2,702											

Parking Enforcement - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	7,997	8,400	9,104	7,424	8,716	8,028	6,318	8,131	6,933	8,939	8,973	7,316	96,279
YTD 2017	7,997	16,397	25,501	32,925	41,641	49,669	55,987	64,118	71,051	79,990	88,963	96,279	
Contested	1,324	1,673	1,761	1,796	1,912	1,681	1,587	1,734	1,578	1,793	1,556	2,116	20,511
YTD 2017	1,324	2,997	4,758	6,554	8,466	10,147	11,734	13,468	15,046	16,839	18,395	20,511	
Dismissed	821	1,000	1,136	1,223	1,288	1,070	998	1,115	937	1,107	940	1,375	13,010
YTD 2017	821	1,821	2,957	4,180	5,468	6,538	7,536	8,651	9,588	10,695	11,635	13,010	

Parking Enforcement - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	7,559	7,608	7,225	6,988	7,521	7,312	6,419	7,218	6,698	8,326	9,229	8,205	90,308
YTD 2016	7,559	15,167	22,392	29,380	36,901	44,213	50,632	57,850	64,548	72,874	82,103	90,308	
Contested	1,211	1,297	1,112	938	1,289	1,248	1,179	1,063	979	1,259	1,433	1,139	14,147
YTD 2016	1,211	2,508	3,620	4,558	5,847	7,095	8,274	9,337	10,316	11,575	13,008	14,147	
Dismissed	722	788	688	738	847	772	668	649	602	690	855	733	8,752
YTD 2016	722	1,510	2,198	2,936	3,783	4,555	5,223	5,872	6,474	7,164	8,019	8,752	



Warrant Arrests

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2018												
BART Felony Warrants	2	1										
BART Misdemeanor Warrants	3	3										
O/S Felony Warrants	12	10										
O/S Misdemeanor Warrants	40	37										
Monthly Total	57	51										
YTD Total	57	108										
2017												
BART Felony Warrants	1	2	1	1	2	3	1	5	1	1	1	0
BART Misdemeanor Warrants	6	4	3	5	9	2	6	17	10	3	8	3
O/S Felony Warrants	20	19	20	18	18	15	10	9	18	16	14	6
O/S Misdemeanor Warrants	39	40	53	53	54	44	52	53	48	74	60	36
Monthly Total	66	65	77	77	83	64	69	84	77	94	83	45
YTD Total	66	131	208	285	368	432	501	585	662	756	839	884
2016												
BART Felony Warrants	0	0	0	1	0	0	0	0	0	0	1	1
BART Misdemeanor Warrants	11	18	8	3	3	4	0	0	0	0	2	3
O/S Felony Warrants	16	28	23	12	6	9	15	12	8	20	17	11
O/S Misdemeanor Warrants	53	35	35	34	48	35	41	32	30	28	33	62
Monthly Total	80	81	66	50	57	48	56	44	38	48	53	77
YTD Total	80	161	227	277	334	382	438	482	520	568	621	698



San Francisco Bay Area Rapid Transit Police Department Criminal Investigations Section Monthly Summary Report February 2018

Detective Assignments

Total number of cases assigned to detectives during the month	Number of cases that are still being investigated by detectives	Number of cases that all current leads have been exhausted	Number of cases that were sent to the district attorney's offices for a review	Number of cases that the district attorney's offices has not made a final disposition	Number of cases that were charged by the district attorney / probation violation	Number of cases that were not charged by the district attorney's offices	Percentage of cases that the district attorney's offices filed charges	Total number of cases that are assigned to a detective as of March 8, 2018
137	74	2	61	27	24	10	39%	80

Submitted By: Sgt. J. Power S-49

Date: 03/08/2018

San Francisco Bay Area Rapid Transit Police Department

Criminal Investigations Section

February 2018

Detective Closure Rate

	Total number of cases assigned to detectives previous 12 months (March 2017 - Feb 2018)	Number of cases that are still being investigated by detectives	Number of cases that all current leads have been suspended	Number of cases that were sent to the district attorney's offices for a review (suspect identified)	Percentage of cases closed by identification of suspect	Percentage of cases suspended	Percentage of cases Open
	1884	150	399	1312	70%	21%	8%
D39	231	22	30	178	77%	13%	10%
D51	241	19	42	179	74%	17%	8%
D89	31	0	2	29	94%	6%	0%
D75	148	4	15	122	82%	10%	3%
D31	379	16	115	246	65%	30%	4%
D55	514	52	113	346	67%	22%	10%
D27	256	27	71	150	59%	28%	11%
D54	84	10	11	62	74%	13%	12%

CASES IN DETECTIVE QUEUE

	<i>Total</i>	<i>Past 60 days</i>
D39	3	0
D51	16	0
D75	4	1
D55	27	2
D31	19	2
D27	5	0
D54	6	2

Submitted by: Sgt. John J. Power #S49
Date: March 8, 2018

D51 currently out on industrial leave. Cases to be re-assigned and cleared.

Assembly Bill 716 - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	20	28											48
YTD 2018	20	48											

Assembly Bill 716 - 2017

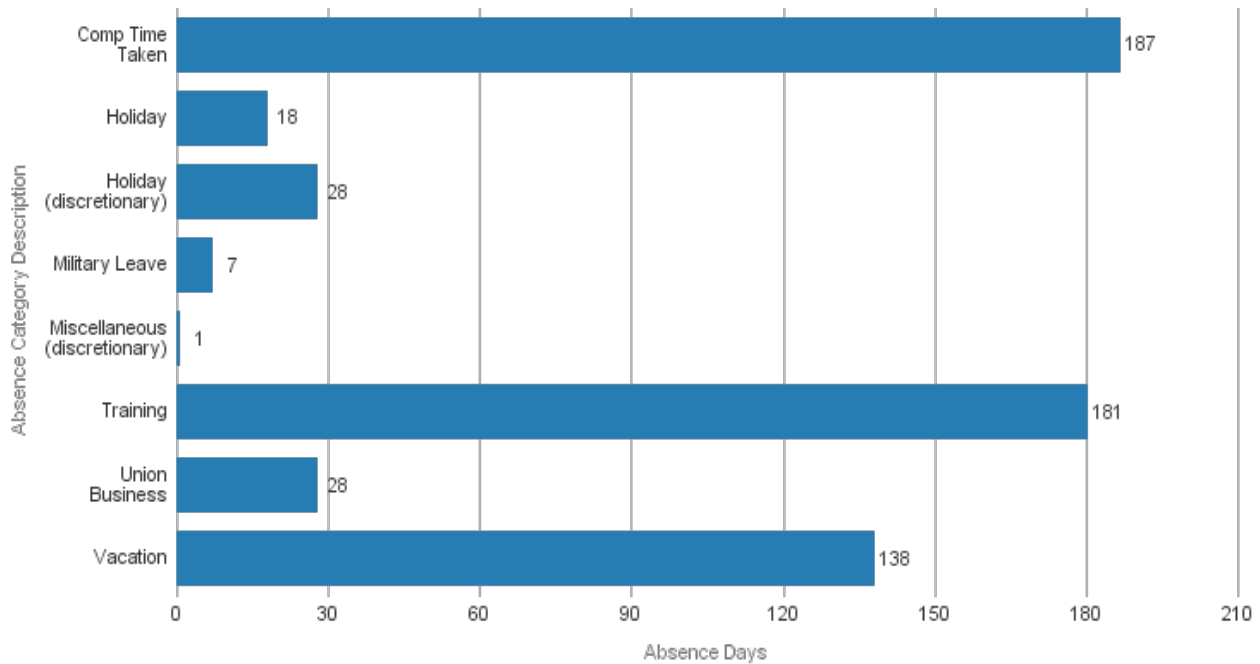
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	18	18	30	27	37	30	24	21	27	31	38	14	315
YTD 2017	18	36	66	93	130	160	184	205	232	263	300	315	

Assembly Bill 716 - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	21	16	22	17	39	23	20	25	19	31	24	19	276
YTD 2016	21	37	59	76	115	138	158	183	202	233	257	276	

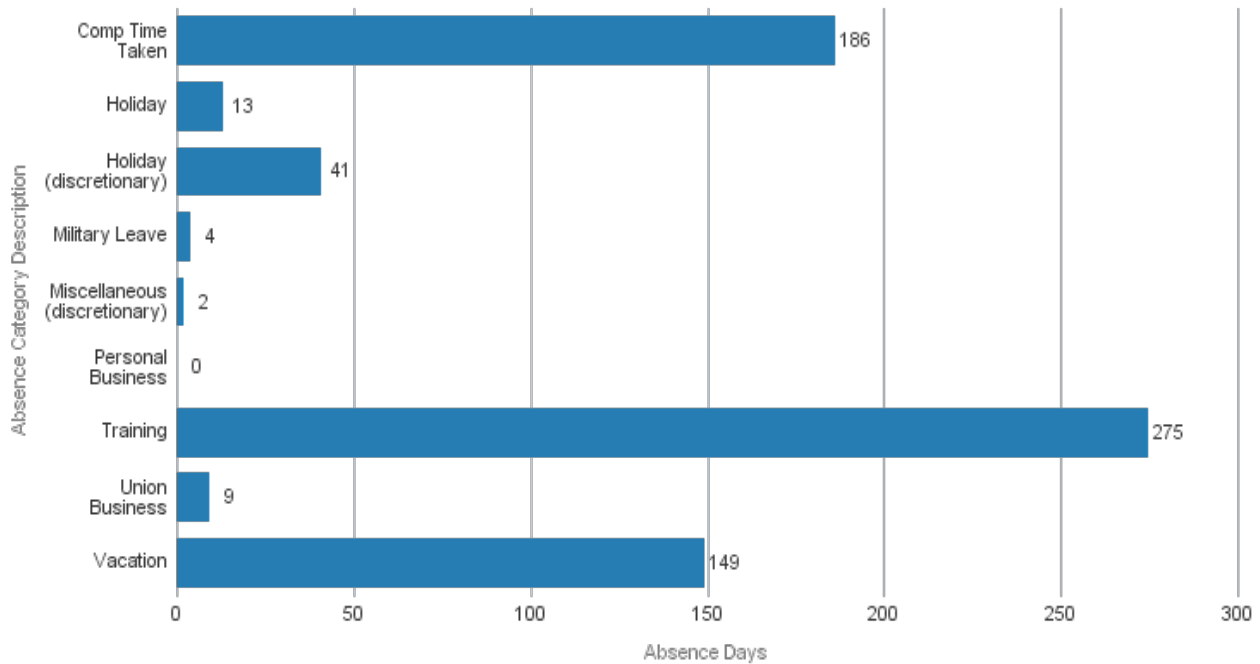


Scheduled Absence Overview - February 2018



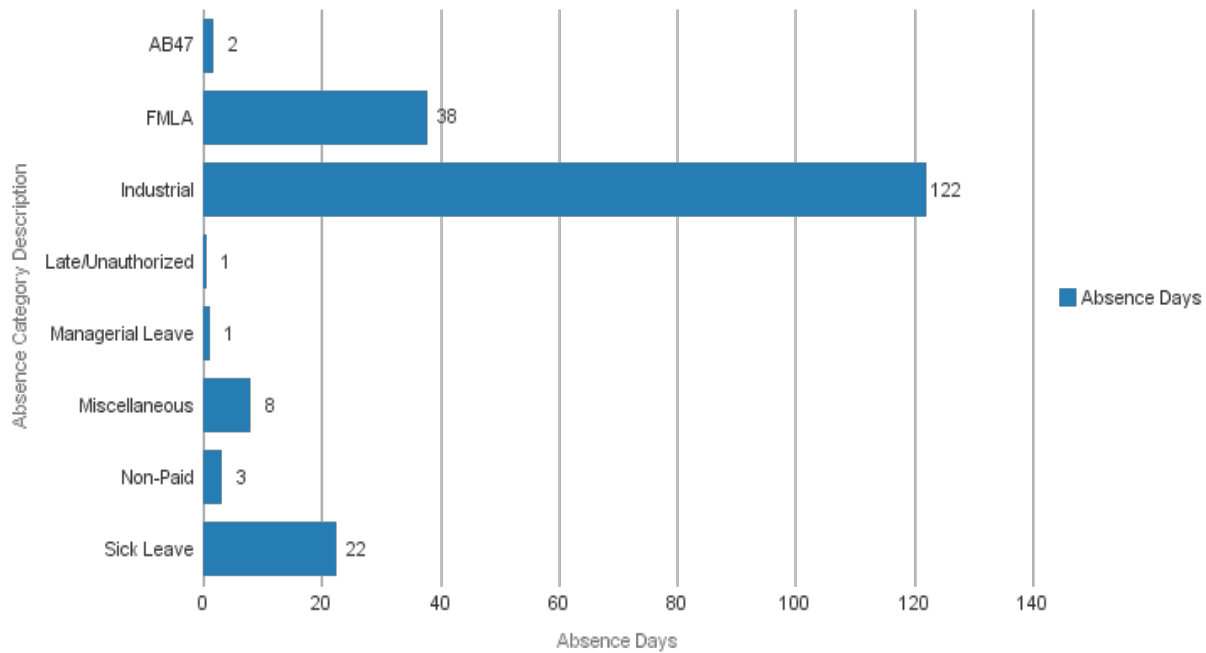
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	1,878	187	32%
Holiday	174	18	3%
Holiday (discretionary)	270	28	5%
Military Leave	84	7	1%
Miscellaneous (discretionary)	8	1	0%
Training	1,688	181	31%
Union Business	270	28	5%
Vacation	1,342	138	24%
Grand Total	5,715	588	100%

Scheduled Absence Overview - February 2017



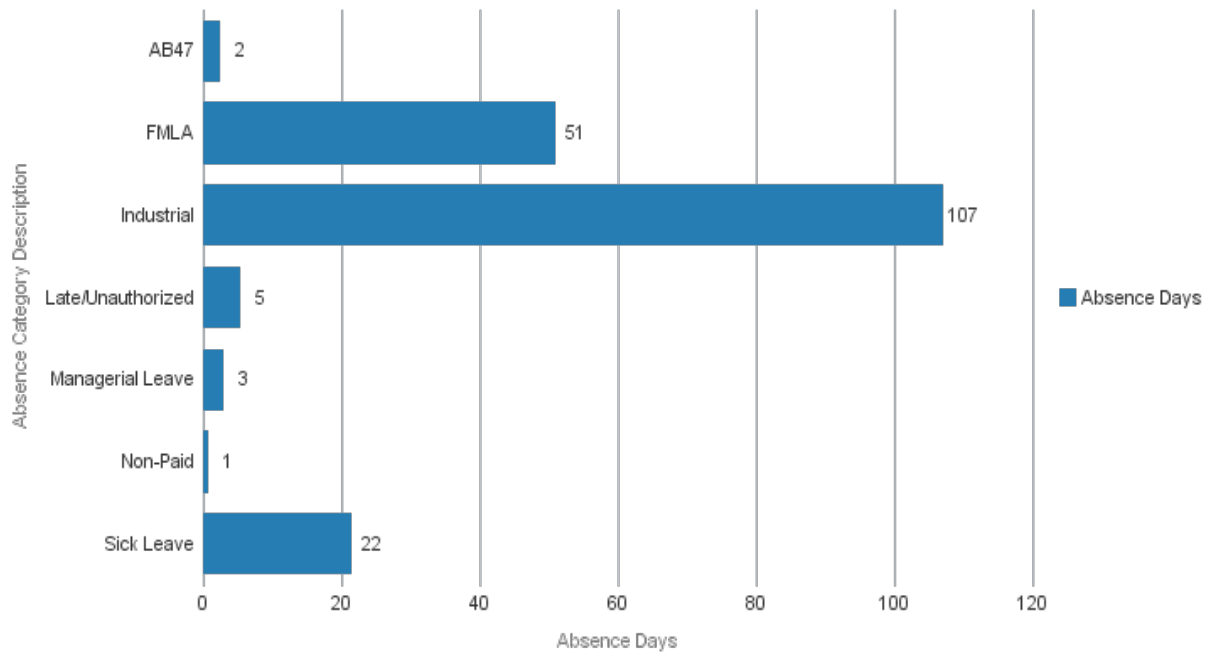
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	1,921	186	27%
Holiday	124	13	2%
Holiday (discretionary)	410	41	6%
Military Leave	48	4	1%
Miscellaneous (discretionary)	20	2	0%
Personal Business	0	0	0%
Training	2,545	275	40%
Union Business	110	9	1%
Vacation	1,600	149	22%
Grand Total	6,778	680	100%

Unscheduled Absence Overview - February 2018



Absence Category Description	Absence Hours	Absence Days	% Total
AB47	16	2	1%
FMLA	350	38	19%
Industrial	1,262	122	62%
Late/Unauthorized	6	1	0%
Managerial Leave	10	1	1%
Miscellaneous	76	8	4%
Non-Paid	32	3	2%
Sick Leave	225	22	11%
Grand Total	1,977	197	100%

Unscheduled Absence Overview - February 2017



Absence Category Description	Absence Hours	Absence Days	% Total
AB47	24	2	1%
FMLA	553	51	27%
Industrial	1,161	107	56%
Late/Unauthorized	54	5	3%
Managerial Leave	30	3	2%
Non-Paid	5	1	0%
Sick Leave	222	22	11%
Grand Total	2,049	191	100%

BART PD OVERTIME MONTHLY REPORT

February 2018

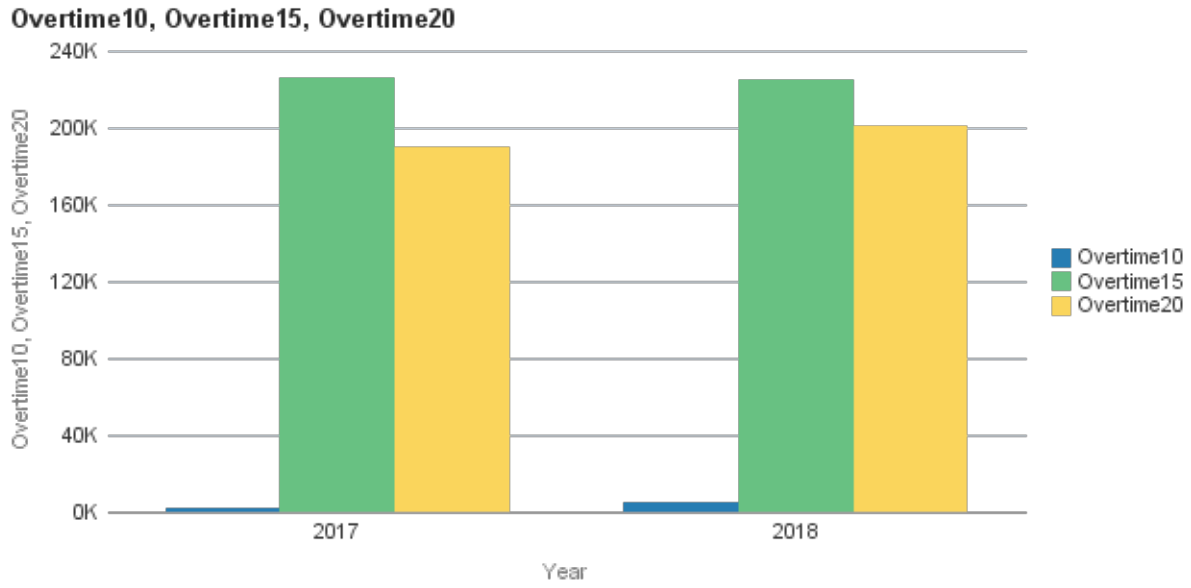
Activity Name	Activity ID	2017			2018		
		Overtime10	Overtime15	Overtime20	Overtime10	Overtime15	Overtime20
Administration	ADMIN	0	941	0	0	68	0
Adv Officer Training	ADVOF	157	18,299	21,045	478	16,217	10,228
BART Labor	BLABR	0	469	0	95	8,065	3,572
BF OT Discr Day BPD	BFDSC	0	472	2,854	0	1,544	2,933
BF OT Industrial Leave BPD	BFILV	0	4,476	12,089	0	2,651	1,195
BF OT Minimum Rest	BFRST	192	1,898	384	0	367	632
BF OT Patrol TRN	BFTRN	384	4,311	7,865	0	3,324	9,686
BF OT Recovery Day	BFRCV	0	9,162	13,810	88	2,882	20,421
BF OT Training BPD	BFTRN	384	4,311	7,865	0	3,324	9,686
BF OT Vacancy BPD	BFVCN	0	17,040	22,052	452	13,321	13,254
BF OT Vacation BPD	BFVAC	8	31,862	25,645	1,512	19,478	19,051
BF Sick/FMLA/Brvment	BFSLV	823	11,860	12,717	0	8,470	13,583
Backfill for Negotiations	BCKFL	0	0	0	0	0	1,009
Boardroom Security	BRDRM	0	449	587	0	1,646	3,322
COPPS Project/Event	COPPS	0	1,579	5,155	0	0	0
Coliseum Events	CEOPS	0	974	3,850	0	3,802	6,265
Construction Management	CNMGT	0	2,606	1,035	0	0	0
Court Appearance	COURT	0	0	0	0	1,162	1,108
Detectives Unit OT	INVST	0	2,566	397	0	1,376	226
E-BART SECURITY	EBSEC	0	0	0	0	384	0
EMS/OWS Pltfrm Detail	PLTFM	0	13,606	5,373	0	10,288	4,854
Explorer Advisors	EXPLR	0	224	0	0	1,794	0
Final Design	FDSGN	0	2,225	0	0	6,023	14,329
Fire Watch	FIRE1	0	47	0	0	0	0
Held Over/Late Case	HLDOV	0	5,602	0	0	7,649	185
IA Unit Overtime	IAUNT	0	2,494	4,261	151	533	1,797
K-9 Team Training	K9TTR	0	3,276	2,938	0	996	3,005
K9 PATROL TEAMS	K9TMS	0	0	0	0	0	2,754
MTC SECURITY	MTCSC	0	0	0	0	706	0
Meeting Attendance	MTNGS	142	8,379	1,942	0	4,039	561

Mgr of Sec Programs	SECPR	0	118	0	0	436	0
Operating	OPRTN	0	14,283	6,497	1,094	23,001	6,141
P&T Unit Overtime	PTUNT	272	12,794	7,641	427	14,284	3,791
Police Admin OT	PADMN	0	10,221	1,539	0	4,644	930
Police Admin Training	PATRN	79	624	0	0	0	0
Police Administration Training	PATRN	79	624	0	0	0	0
Protest Event Charge Code	PROTE	0	0	0	238	700	0
Ptrl Special Enforcement	SPECL	0	28,536	17,014	750	40,909	29,821
Range Staff Training	RANGE	0	748	876	0	1,772	1,043
SF STA CLN SEC	DSFCS	0	0	0	0	2,932	8,329
SWAT Team Expenses	SWATT	0	0	0	0	827	948
SWAT Team Training	SWATT	0	0	0	0	827	948
Special Events	SPEVN	0	2,417	2,336	0	2,090	2,618
Training	TRNNG	0	580	722	0	699	0
Training Other	TRNOT	0	4,464	698	0	11,646	1,314
Union Business	UNBUS	0	1,638	1,034	0	0	1,272
Walnut Creek Transit Village	C154A	0	0	0	0	168	0
Total:		2,520	226,176	190,221	5,287	225,047	200,810

February 2018

418,916

431,144



Communications Center - 2018

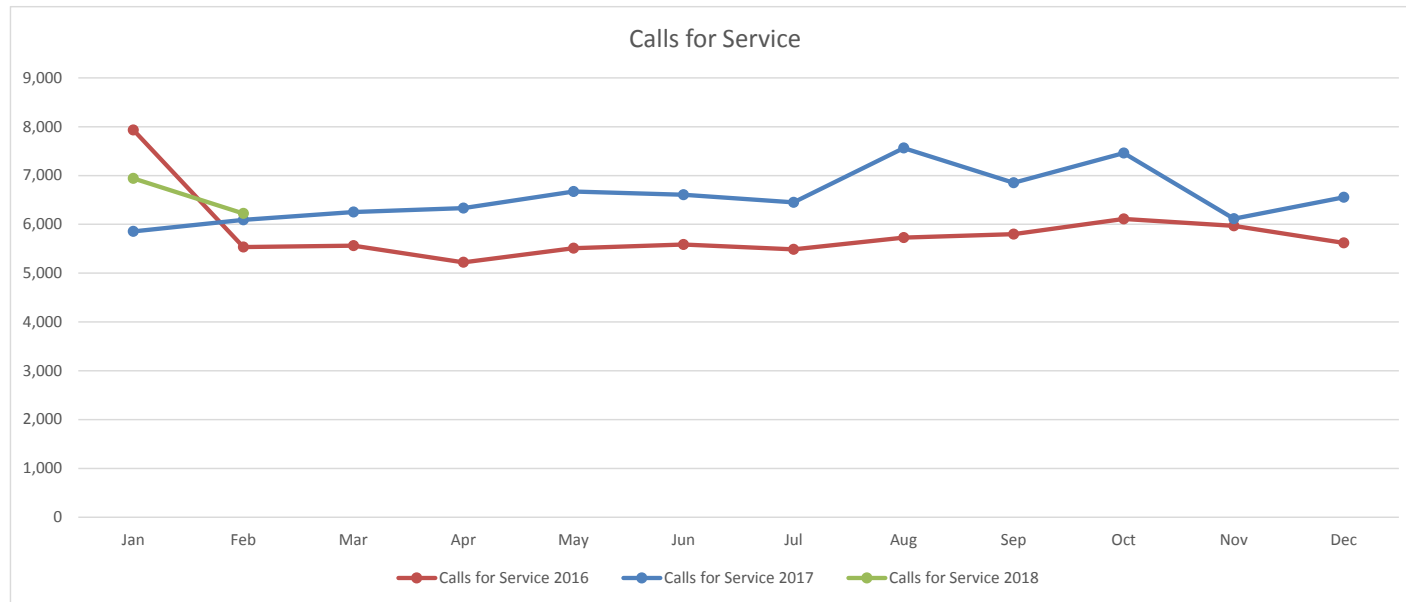
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	6,941	6,222											13,163
YTD 2018	6,941	13,163											
Priority 1 Calls	192	180											372
YTD 2018	192	372											
Medical Emergencies	414	310											724
YTD 2018	414	724											

Communications Center - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	5,855	6,093	6,250	6,331	6,670	6,605	6,448	7,562	6,850	7,460	6,117	6,553	78,794
YTD 2017	5,855	11,948	18,198	24,529	31,199	37,804	44,252	51,814	58,664	66,124	72,241	78,794	
Priority 1 Calls	214	192	194	182	209	234	210	185	174	204	154	176	2,328
YTD 2017	214	406	600	782	991	1,225	1,435	1,620	1,794	1,998	2,152	2,328	
Medical Emergencies	425	327	357	344	367	385	376	344	356	387	387	463	4,518
YTD 2017	425	752	1,109	1,453	1,820	2,205	2,581	2,925	3,281	3,668	4,055	4,518	

Communications Center - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	7,934	5,536	5,563	5,221	5,511	5,587	5,488	5,726	5,797	6,111	5,970	5,621	70,065
YTD 2016	7,934	13,470	19,033	24,254	29,765	35,352	40,840	46,566	52,363	58,474	64,444	70,065	
Priority 1 Calls	177	151	171	154	177	156	180	181	177	178	178	157	2,037
YTD 2016	177	328	499	653	830	986	1,166	1,347	1,524	1,702	1,880	2,037	
Medical Emergencies	305	277	334	315	305	304	281	278	334	313	307	389	3,742
YTD 2016	305	582	916	1,231	1,536	1,840	2,121	2,399	2,733	3,046	3,353	3,742	



BART Watch - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Suspicious Activity	235	212											447
Crime in Progress	177	151											328
Illegally Parked Vehicle	24	24											48
Vandalism	60	68											128
Unattended Bag or Package	44	50											94
Sexual Assault/Lewd Behavior	36	71											107
Report a Crime Tip	60	44											104
Robbery/Theft	28	22											50
Unsecure Door	19	7											26
Disruptive Behavior	1167	1111											2,278
Panhandling	172	177											349
Total	2022	1937											3,959

Total Downloads: 45,711

Total Reports Made

Anonymous: 39.89%

Non-Anonymous: 60.11%

Statistics

Statistics	Six Week Average	03/26-04/01	03/19-03/25	03/12-03/18	03/05-03/11	02/26-03/04	02/19-02/25
Alerts Sent	0.00	0	0	0	0	0	0
Description	<i>The total number of alerts sent.</i>						
Incoming Reports	367.17	351	332	391	391	398	340
Description	<i>The number of reports sent from users.</i>						
Replies to Reports	347.67	300	333	363	362	383	345
Description	<i>The number of replies sent to users from ELERTS EPICenter console.</i>						

Report Type	# of Reports (all time)	
Disruptive Behavior (A)	15484	40.96%
Panhandling (A)	3686	9.75%
Suspicious Activity (A)	3273	8.66%
[none selected]	3244	8.58%
Other (D)	3080	8.15%
Crime in Progress (A)	2175	5.75%
Panhandling or Disruptive Behavior (D)	1967	5.20%
Vandalism (A)	1229	3.25%
Unattended Bag or Package (A)	990	2.62%
Report a Crime Tip (A)	740	1.96%
Illegally Parked Vehicle (A)	700	1.85%
Sexual Assault / Lewd Behavior (A)	621	1.64%
Robbery / Theft (A)	367	0.97%
Unsecure Door (A)	237	0.63%
Text a Tip (A)	7	0.02%
Human Trafficking (A)	2	0.01%
Total	37802	100 %
(A) Active Disabled (D)		

Identification	Total
Anonymous	39.92 %
Description	<i>Reports sent anonymously.</i>
Non-Anonymous	60.08 %
Description	<i>Reports sent non-anonymously.</i>

App Statistics (including tests)	
Total Messages (iOS)	45759
Description	<i>Reports and replies via iOS devices.</i>
Total Messages (Android)	23599
Description	<i>Reports and replies via Android devices.</i>
Total Messages (SMS)	2
Description	<i>Reports and replies via SMS.</i>

TEST-THIS IS ONLY A TEST	# of Reports (all time)
TEST Report Total	5475

Top SMS Users	
Phone Number	Number of Reports
5103685574	1
5108215151	1

**BART Police
Use of Force
Annual Report**

2017

This report contains data and analysis of use of force incidents,
compiled by the Patrol Operations Bureau.

Report Content

Use of Force Policy 300.9 requires the following:

At least annually, the Patrol Division Commander 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.*

This report will also incorporate the following statistics as they relate to the above topics:

1. Types of force used
2. Cause for use of force
3. Service being rendered at time of use of force
4. Suspect custody status
5. Suspect injuries
6. Officer injuries

Year in Review

A significant revision was made to the Use of Force Policy in 2017, through the collaborative efforts of the Department, the BART Police Citizen Review Board, The Office of the Independent Police Auditor, and the BART Police Officers and Managers Associations.

The policy revision was initiated by the Department following a Police Executive Research Forum (PERF) publication, *Guiding Principles on Use of Force*. The Department reviewed recommendations made by PERF, compared the recommendations to current Department policy, and considered potential changes to existing policy.

A tiered documentation system for use of force incidents was introduced into the policy, for efficiency. An essential element for this tiered reporting system to be viable is that officers consistently record incidents on officer worn body cameras. The consideration to modify the policy was reviewed by OIPA, recommended for approval by the BPCRB, and approved by the Chief of Police.

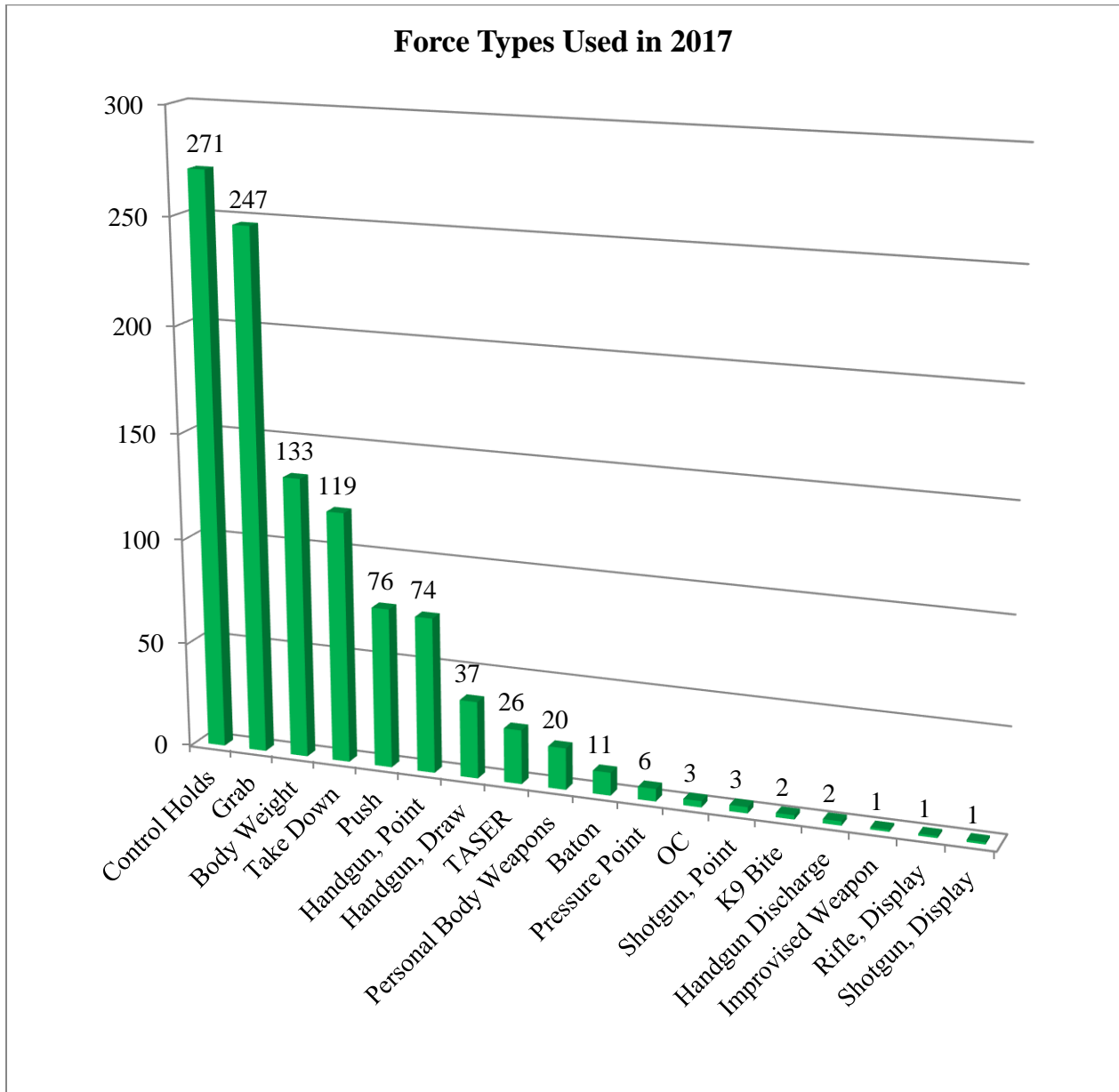
The collaborative effort resulted in a revised Use of Force policy which was reviewed by OIPA, recommended for approval by the BPCRB, and approved by the Chief of Police. The policy revision was adopted in July 2017. The policy revision includes the following:

- *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.*
- *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.*
- *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.*
- *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.*

BART Police Use of Force, 2017 Annual Report

- *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 tiered documentation system for use of force incidents.*

REPORT TOPIC: TRENDS IN THE USE OF FORCE

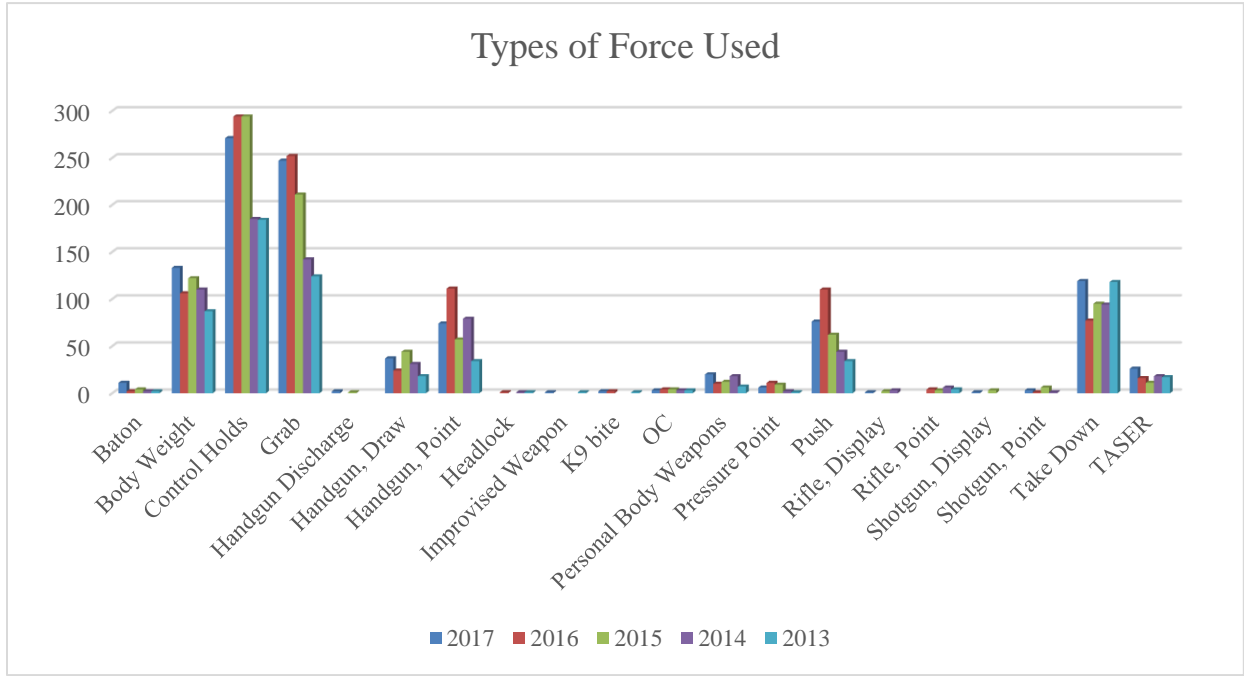


*There were 306 incidents where force was used; however, some incidents involved the use of multiple force types, and/or the same force type used by multiple officers.

This data shows that the most frequently used force options are the low-level options such as control holds and grabs. Officers appear to be using the minimal amount of force necessary in most situations.

The following data compares year to year totals of the types of force used. The data appears to show that the type of force used has not significantly varied from year to year.

BART Police Use of Force, 2017 Annual Report



The following data indicates that there was no significant increase or decrease in the number of use of force incidents, compared to the prior two years. There was a 3% increase in comparison to 2016, but a 2.6% decrease in comparison to 2015.

Use of Force Incidents - 2017

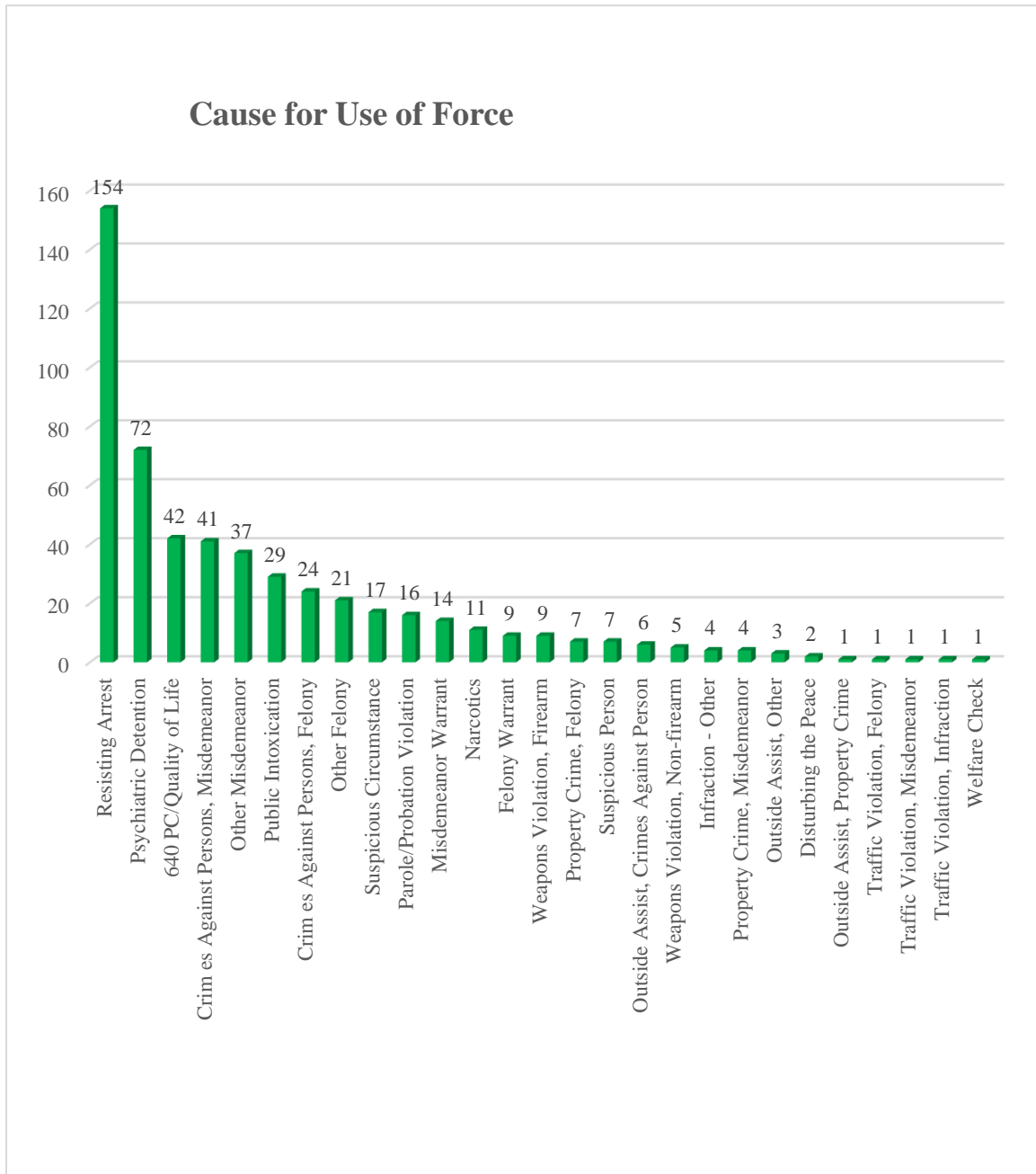
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	29	32	30	35	27	35	24	20	27	20	11	15	305
YTD 2017	29	61	91	126	153	188	212	232	259	279	290	305	

Use of Force Incidents - 2016

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2016	37	24	32	13	24	31	30	20	14	20	29	22	296
YTD 2016	37	61	93	106	130	161	191	211	225	245	274	296	

Use of Force Incidents - 2015

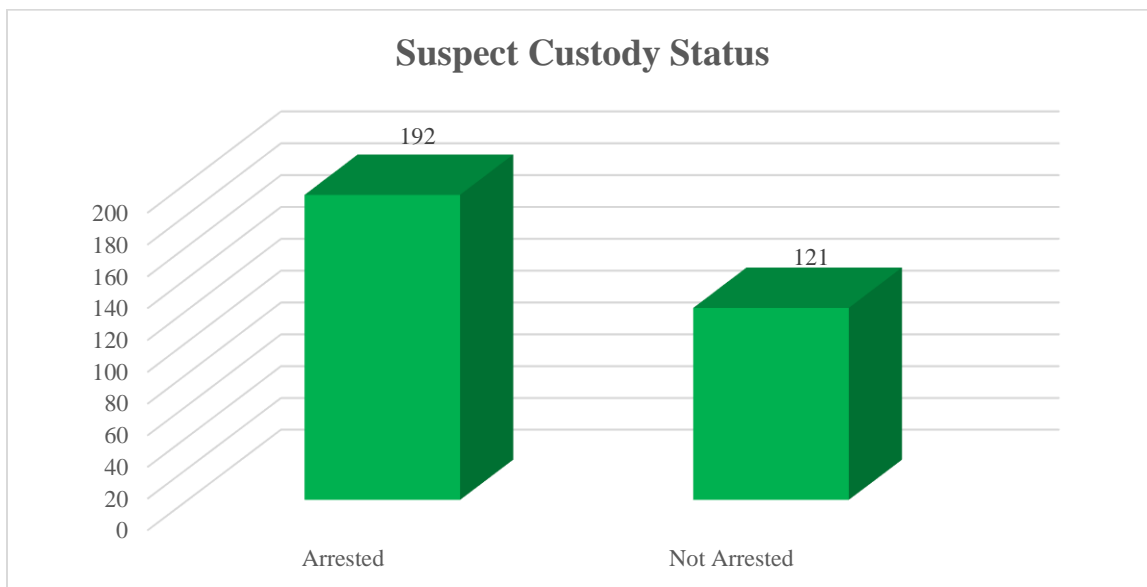
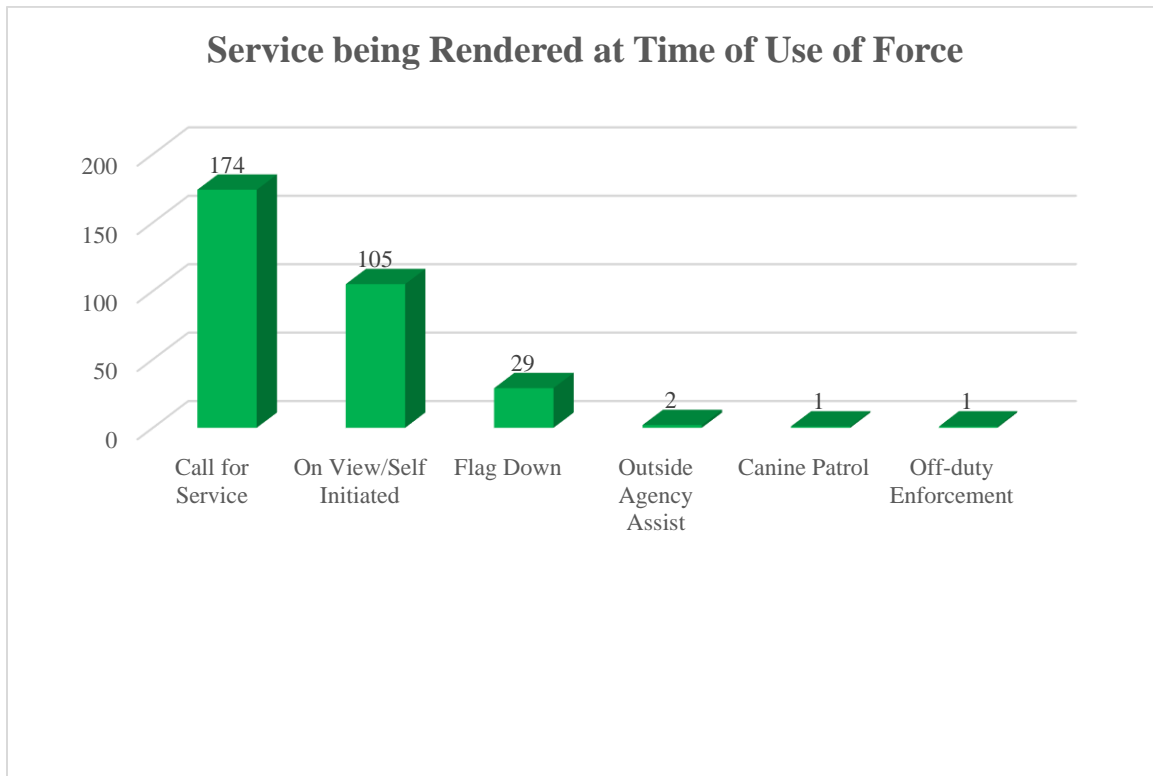
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2015	17	19	34	20	24	22	30	29	30	28	33	27	313
YTD 2015	17	36	70	90	114	136	166	195	225	253	286	313	



Annual Officer Training in 2018 will re-emphasize the importance for officers to tactically control initial contacts with persons in effort to avoid having to use force. When officers use verbal skills, correct body positioning, and sound tactics to exert control, persons are less able and less likely to attempt to flee or physically resist an officer.

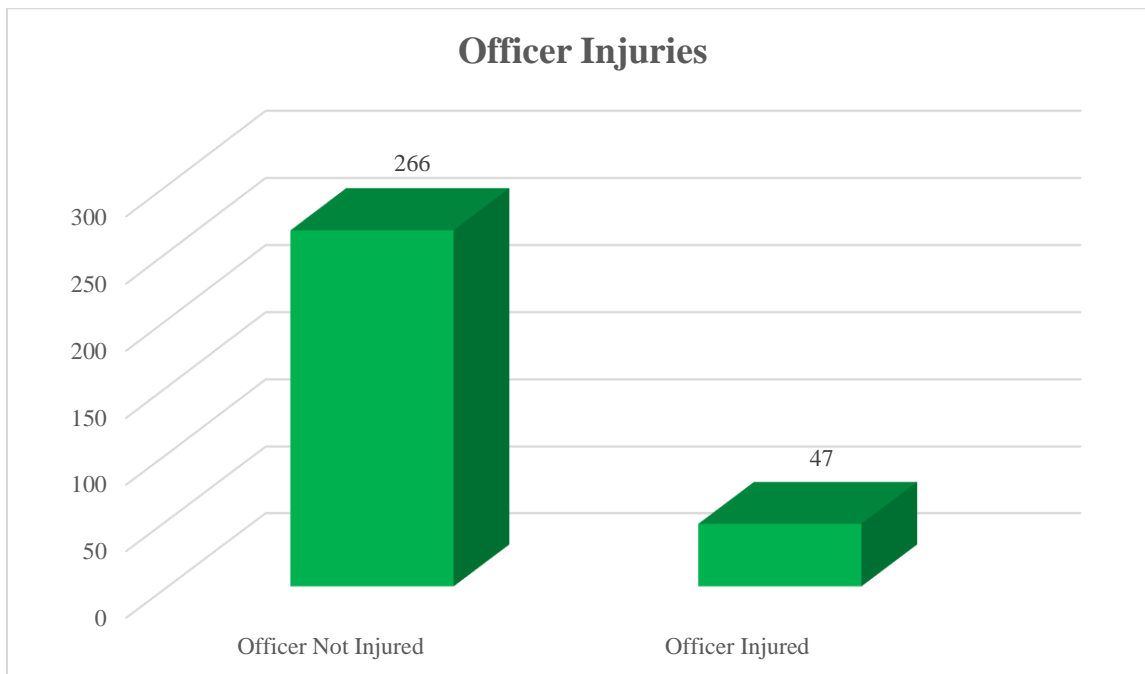
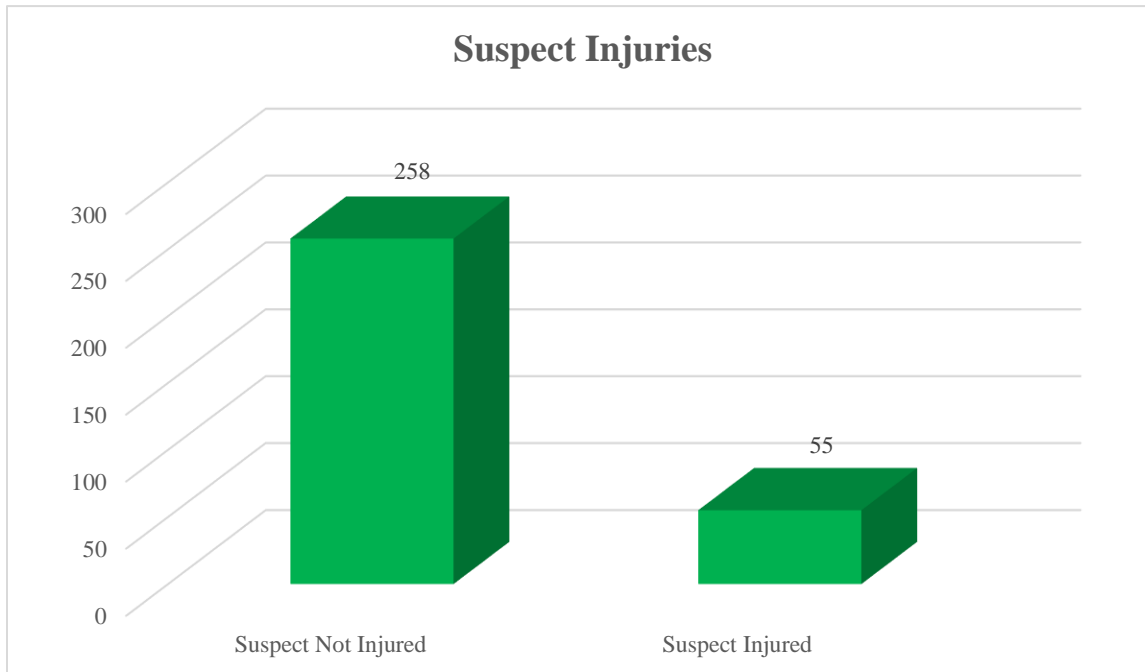
Annual Officer Training in 2018 will also include a review of Crisis Intervention Training, which includes de-escalation tactics and skills to potentially reduce use of force when interacting with persons in crisis and/or persons with mental health issues.

BART Police Use of Force, 2017 Annual Report



Note: this data shows that 38% of instances when force was used, the suspect was not arrested. The Department would like OIPA to consider reviewing these instances to possibly identify any patterns or trends related to the level of force used upon suspects who were ultimately released from custody.

BART Police Use of Force, 2017 Annual Report



Note: this data indicates that suspects were not injured in 83% of use of force incidents and officers were not injured in 85% of incidents. This is an indication that officers are using minimal force upon suspects.

REPORT TOPIC: TRAINING

Supervisors received training on the Use of Force policy update (July 2017) in Staff Meetings and the Patrol Managers Meeting.

All officers received training on the policy as well. Training was conducted by supervisors, and verification of training completion was confirmed with a signature log for each Zone. Officers were also required to acknowledge receipt of the new policy in our on-line Lexipol policy manual update.

Deputy Chief Haight participated in Zone meetings with Chief Rojas to answer questions about the policy.

With the adoption of the policy update, the Department created a mechanism to track the use of de-escalation techniques by officers in the BlueTeam software database. Supervisors were instructed to select the de-escalation force option whenever an officer used de-escalation techniques. The BlueTeam software prompts the supervisor to designate whether the force option was effective or not. Unfortunately, supervisors have not been indicating in BlueTeam when de-escalation has been used. This will be rectified for all incidents going forward in 2018. Additional training will be provided, and use of the de-escalation force option will be monitored throughout the year.

The following training will be reviewed with supervisors and officers in 2018:

- Review of policy related to de-escalation
- Review of BlueTeam software functionality (for supervisors)
- Command Staff training on Use of Force investigation and review

REPORT TOPIC: EQUIPMENT

A significant equipment issue related to Use of Force incidents was identified and resolved in 2017. The issue was with AXON Flex body worn cameras. Frequently, during a physical altercation, the wire connecting the camera to the battery would become disconnected, resulting in the camera powering off, and in some cases the video footage prior to the disconnection would also be lost. To resolve this issue, the Department replaced all AXON Flex body cameras with the AXON 2 body camera, which has the camera and battery integrated in a single unit with no connection wire. The Department purchased 220 new AXON 2 cameras and issued the cameras to all sergeants and officers prior to January 1, 2018.

REPORT TOPIC: POLICY RECOMMENDATIONS

After the July 2017 policy update, there was a request for clarification on the threshold when officers need to notify a supervisor that they have used force. Clarification language has been drafted and is in final review.

Independent Police Auditor Russell Bloom also recommended that the force level and associated documentation requirement should be determined by a supervisor instead of the involved officer. To that end, the following amendment language has been drafted, adoption pending:

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following any application of force.

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.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BART Police Citizens Review Board
FROM: Carlos Rojas, Chief of Police
SUBJECT: Reinstated BART Fare Evasion Policy

Date: March 26, 2018

After careful consideration of the previously rescinded Fare Evasion Policy, I want to inform you that Lexipol Policy 419 has been immediately reinstated. In evaluating my decision, I considered the comments of the Citizen Review Board, Police Department staff and the OIPA.

I appreciate your comments and feedback.



Carlos Rojas
Chief of Police

Fare Evasion

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 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.

419.2.1 FARE EVASION ENFORCEMENT

The California Penal Code for fare evasion used by officers of the BART Police Department is 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.

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.

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 DEFINED

Fare evasion occurs when an individual 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 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 totally free

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Fare Evasion

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

Bay Area Rapid Transit Police Department

BART PD Policy Manual

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.

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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

February 2018

Issue date: March 12, 2018

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), 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 **February 1, 2018 through February 28, 2018**.¹

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

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
February 2017	7	41	0	0	0
March 2017	9	43	0	0	0
April 2017	8	42	1	0	0
May 2017	13	47	1	0	0
June 2017	11	44	1	0	0
July 2017	13	48	0	0	0
August 2017	12	35	0	0	0
September 2017	12	31	1	0	0
October 2017	11	33	0	0	0
November 2017	11	32	0	1	0
December 2017	9	34	1	0	0
January 2018	7	32	0	0	0
February 2018	10	34	0	1	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	8
Informal Complaints ⁷	1
Administrative Investigations	1
TOTAL	10

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁸

OIPA	1
BART Police Department	7
TOTAL	8

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During February 2018, **1 Citizen Complaint (Formal)** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #18-03) (IA2018-011)	Officer #1: <ul style="list-style-type: none"> • Force • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer 	OIPA notified BPD, which initiated an investigation.	27

During February 2018, **7 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2018-009)	Unknown Officers #1-3: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	32
2 (IA2018-010)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	28
3 (IA2018-012)	Officer #2: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	26
4 (IA2018-014)	Officers #1-3: <ul style="list-style-type: none"> • Arrest or Detention • Performance of Duty 	BPD initiated an investigation.	20
5 (IA2018-015)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure • Performance of Duty 	BPD initiated an investigation.	20
6 (IA2018-016)	Unknown Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	14
7 (IA2018-017)	Unknown Officer #2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	18

During February 2018, **1 Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2018-013)	Officer #1: <ul style="list-style-type: none"> • Force • Policy/Procedure Officer #2 <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	30

During February 2017, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2017-065)	Employee #1: <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated an investigation.	33

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During February 2018, **5 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 (IA2017-079)	Employee did not appropriately respond to a request for law enforcement assistance.	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming – Sustained 	185	160
2 (IA2017-083)	Officer was rude and unprofessional during contact with subject.	Unknown Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	180	161
3 (IA2017-103)	Officer improperly contacted and harassed complainant and did not properly document the contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure – Not Sustained • Arrest or Detention – Not Sustained • Conduct Unbecoming an Officer – Not Sustained 	125	100
4 (IA2017-112)	Officer did not take appropriate law enforcement action in response to a call for service.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Supervisor Referral⁹ 	97	78

5 (IA2018-004)	Officers made rude and unprofessional comments to complainant.	Officers #1-4: • Conduct Unbecoming an Officer – Supervisor Referral	59	44
-------------------	--	---	----	----

During February 2018, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2018-008)	Employee parked BPD vehicle blocking an accessibility ramp.	Employee #1: • Policy/Procedure – Supervisor Referral	33	20

During February 2018, **2 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Address Complaint
1 (IA2017-074)	Officer kicked subject's property and did not properly record a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained	202	168
2 (IA2018-006)	Officer spoke discourteously to Employee and Employee hung up on Officer.	Employee #1: • Conduct Unbecoming – Supervisor Referral Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	200	180

DISCIPLINE ISSUED DURING REPORTING PERIOD

No discipline was issued during the month of February 2018.

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	2
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	24†

† 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 handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹⁰

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 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.

⁹ A Supervisory 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 IA.

¹⁰ 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

March 2018

Issue date: April 9, 2018

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), 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 **March 1, 2018 through March 31, 2018**.¹

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

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
March 2017	9	43	0	0	0
April 2017	8	42	1	0	0
May 2017	13	47	1	0	0
June 2017	11	44	1	0	0
July 2017	13	48	0	0	0
August 2017	12	35	0	0	0
September 2017	12	31	1	0	0
October 2017	11	33	0	0	0
November 2017	11	32	0	1	0
December 2017	9	34	1	0	0
January 2018	7	32	0	0	0
February 2018	10	34	0	1	0
March 2018	6	35	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	6
Informal Complaints ⁷	0
Administrative Investigations	0
TOTAL	6

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁸

OIPA	5
BART Police Department	1
TOTAL	6

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2018, **4 Citizen Complaints (Formal)** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #18-06) (IA2018-019)	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure • Courtesy Officer #2: <ul style="list-style-type: none"> • Bias-Based Policing 	OIPA notified BPD, which deferred investigation to OIPA.	35
2 (OIPA #18-07) (IA2018-020)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	OIPA notified BPD, which initiated an investigation.	27
3 (OIPA #18-08) (IA2018-001)	Officer #1: <ul style="list-style-type: none"> • Force 	OIPA initiated an investigation.*	27
4 (OIPA #18-09) (IA2018-021)	Officer #1: <ul style="list-style-type: none"> • Courtesy 	OIPA notified BPD, which initiated an investigation.	30
5 (OIPA #18-10) (IA2018-022)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure • Conduct Unbecoming an Officer 	OIPA notified BPD, which initiated an investigation.	38

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During February 2018, **1 Citizen Complaint (Formal)** was received by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2018-018)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	40

* As BPD has previously initiated an investigation regarding the same incident, this investigation will only be counted once in the number of open cases.

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2018, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #17-35)	Officers and employee used unnecessary force during arrest of subject and two officers inappropriately applied a restraint device.	Officers #1-3: • Force – Exonerated Employee #1: • Force – Exonerated Officers #1-2: • Policy/Procedure – Exonerated	200	166

During March 2018, **2 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 (IA2017-084)	Officers used excessive force and inappropriate language during detention of subject.	Officers #1-4: • Force (Count 1) – Unfounded • Conduct Unbecoming an Officer – Unfounded Officer #2: • Force (Count 2) – Not Sustained	204	190
2 (IA2017-108)	Officers made complainant feel unsafe and embarrassed.	Officers #1-2: • Conduct Unbecoming an Officer – Unfounded	137	98

During March 2018, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Complete Investigation
1 (IA2017-106)	Officers used excessive force.	Officers #1-2: • Force – Exonerated	144	120

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR PERIOD

During January 2018, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Complete Investigation
1 (IA2017-060)	Officer used inappropriate language.	Officer #1: • Conduct Unbecoming an Officer – Sustained	264	183

DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 2018, 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 used inappropriate language.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Written Reprimand
2	Officer kicked subject's property and did not properly document a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer • Policy/Procedure	Officer #1: • Written Reprimand
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion
4	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion
5	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure	Officer #1: • Letter of Discussion Officer #2: • Oral Counseling
6	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion
7	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure	Officers #1-2: • Oral Counseling

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	4
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	10
Investigations Reviewed During Current Month	22†

† 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 handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.⁹

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 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.

⁹ 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.