

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

NOTICE OF MEETING AND AGENDA
BART POLICE CITIZEN REVIEW BOARD

April 12, 2021
4:00 p.m.

A regular meeting of the BART Police Citizen Review Board (BPCRB) will be held on Monday, April 12, 2021, at 4:00 p.m.

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

Presentation materials will be available 72 hours prior to the BPCRB meeting at <https://www.bart.gov/about/bod/advisory/crb> (click on “Agenda”).

You may listen to the Meeting by calling 1-833-827-2778 and entering access code 619 291 010#.

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

Individuals may also be given an opportunity by the moderator to speak on any item on the agenda by calling (833) 827-2778 and entering access code 619 291 010# in advance of the item. Public comment will be limited to three (3) minutes per person. Your phone will be muted until you are called upon.

AGENDA

1. Call to Order.
 - a. Roll Call.
 - b. Pledge of Allegiance.
2. Introduction of Laura Pagey, New BPCRB Member for BART Police Associations.
3. [Approval of Minutes of the Meetings of March 8, 2021 \(Special\) and March 8, 2021 \(Regular\). For Discussion and Action.](#)
4. [Chief of Police’s Report. For Discussion and Action.](#)
 - a. [BART Police Department’s Monthly Reports for February 2021.](#)
5. [Independent Police Auditor’s Report. For Discussion and Action.](#)
 - a. [Office of the Independent Police Auditor \(OIPA\) Monthly Report for March 2021.](#)
6. [Discussion of Lexipol Policy 419 - Fare Evasion. \(Continued from the March 8, 2021 BPCRB meeting\). For Discussion and Action.](#)

7. Implementation of Standing Subcommittee on BART Citizen Oversight Model. (Member Perezvelez's Request). For Discussion and Action.
8. Implementation of Ad Hoc Working Group on Fare Evasion (Chair Rizk's Request). For Discussion and Action.
9. 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.)
10. Closed Session.
 - a. To Consider Public Employee Discipline/Dismissal/Release in OIPA Case Numbers #20-19 and #20-23. Govt. Code §54957.

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

11. Adjournment.

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

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

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

BART Police Citizen Review Board Meeting Minutes
Monday, March 8, 2021

A special meeting of the BART Police Citizen Review Board (BPCRB) was held Monday, March 8, 2021, convening at 3:08 p.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate. The meeting was called to order by Chairperson David Rizk; Mag Tatum, Recording Secretary.

Chairperson David Rizk gave instructions and opening remarks.

1. Call to Order.

The regular meeting was convened at 3:08 p.m. by Chairperson David Rizk.

Members Present:

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

Absent:

Member Erin Armstrong.

2. Public Comment on Item 3 Only. No Comments were received.

3. Closed Session.

a. To Discuss the Appeal and Final Disposition by the General Manager of the Public Employee Discipline/Dismissal/Release in Office of the Independent Police Auditor (OIPA) Cases #20-07 and #20-11. Govt. Code §54957.

Chairperson Rizk announced that the Board would enter into closed session under Item 3-A to Discuss the Appeal and Final Disposition by the General Manager (Public Employee Discipline/Dismissal/Release in OIPA Cases #20-07 and #20-11) of the Special Meeting agenda, and that no reportable action is anticipated from closed session, if any, would be announced in open session at the beginning of the next regular BPCRB meeting.

The Meeting was adjourned at 3:10 p.m.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
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BART Police Citizen Review Board Meeting Minutes
Monday, March 8, 2021

A regular meeting of the BART Police Citizen Review Board (BPCRB) was held Monday, March 8, 2021, convening at 4:04 p.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate. The meeting was called to order by Chairperson David Rizk; Mag Tatum, Recording Secretary.

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

1. Call to Order.

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

Members Present:

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

Absent:

Member Erin Armstrong.

The Pledge of Allegiance was recited.

Member Darren White entered the meeting.

2. Announcements from February 8, 2021, and March 8, 2021, Closed Session.

Chairperson Rizk announced that the Board voted unanimously to accept the findings in OIPA Case #20-14, from February 8, 2021, Closed Session.

3. Announcement from the Appeal and Final Disposition by the General Manager of the Public Employee Discipline/Dismissal/Release in the Office of the Independent Police Auditor (OIPA) Cases #20-07 and #20-11.

Chairperson Rizk provided brief descriptions of the facts of each appeal and final disposition by the General Manager of the Public Employee/Discipline/Dismissal/Release in the Office of the Independent Police Auditor (OIPA) Cases #20-07 and #20-11.

Chairperson Rizk announced that the order of agenda items would be changed, and Item 10 will begin at approximately 4:45 p.m.

4. Approval of Minutes of the Meeting of February 8, 2021.

Members Todd Davis and Darren White exited the meeting.

Member Mensinger moved that the Minutes of the Meeting of February 8, 2021, be approved as amended, to adjourn in honor of Mr. Ken Jones. Member Loo seconded the motion, which was carried by a unanimous roll call vote. Ayes – 7: Members Gomez, Longmire, Loo, Mensinger, Perezvelez, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 3: Members Armstrong, Davis and D. White. Vacant – 1.

5. Chief of Police’s Reports.

a. BART Police Department’s Monthly Reports for January 2021.

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

Members Todd Davis and Darren White re-entered the meeting.

6. Independent Police Auditor’s Report.

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

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

7. Update to Roll Call for Introductions Item No. RCI 20-832, BART Progressive Policing.

Rodd Lee, Assistant General Manager, External Affairs; and Deputy Chief Angela Averiett, presented Update to Roll Call for Introductions Item No. RCI 20-832, BART Progressive Policing. The item was discussed.

Director Janice Li addressed the Board.

8. Discussion of Lexipol Policy 419 - Fare Evasion.

Chairperson Rizk announced that Item 8, Discussion of Lexipol Policy 419 - Fare Evasion, would be continued to a future meeting.

9. Revisions to the BART Citizen Oversight Model.

- a. BART Citizen Oversight Model
- b. Independent Review of the BART Police Oversight Structure – OIR Group Report
- c. Independent Review of the BART Police Oversight Structure – OIR Group Report Addendum

Members Todd Davis and Darren White exited the meeting.

Chairperson Rizk moved the motion to extend the meeting time by 20 minutes. Member Perezvelez seconded the motion, which was carried by a unanimous roll call vote.

Ayes – 7: Members Gomez, Longmire, Loo, Mensinger, Perezvelez, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 3: Members Armstrong, Davis and D. White. Vacant – 1.

Member Perezvelez moved that the Standing Subcommittee on the BART Citizen Oversight Model be created and approved. Chairperson Rizk seconded the motion, which was carried by a unanimous roll call vote. Ayes – 7: Members Gomez, Longmire, Loo, Mensinger, Perezvelez, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 3: Members Armstrong, Davis and D. White. Vacant – 1.

10. Center for Policing Equity Final Report - BART Police Department.

a. Center for Policing Equity Final Report - BART Police Department – Presentation

Janie Schutz, Relationship Manager, CPE; and Michael Burbank, Director of Law Enforcement Initiatives, CPE, presented the item and the report was discussed.

b. Center for Policing Equity Final Report - BART Police Department – BPCRB Presentation

Chairperson Rizk presented the item and the report was discussed.

Member Todd Davis re-entered the meeting.

Member Perezvelez moved the motion to extend the meeting time by 30 minutes. Chairperson Rizk seconded the motion, which was carried by a unanimous roll call vote. Ayes – 8: Members Davis, Gomez, Longmire, Loo, Mensinger, Perezvelez, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 2: Members Armstrong and D. White. Vacant – 1.

Chairperson Rizk moved that the Ad Hoc Working Group on Fare Evasion including non-BPCRB members be created and approved. Member Longmire seconded the motion, which was carried by a unanimous roll call vote. Ayes – 7: Members Davis, Gomez, Longmire, Mensinger, Perezvelez, W. White and Rizk. Noes – 0. Abstain – 1: Member Loo. Absent – 2: Members Armstrong and D. White. Vacant – 1.

11. Public Comment. No Comments were received.

The Meeting was adjourned at 6:56 p.m.

BART POLICE DEPARTMENT



February 2021

MONTHLY REPORT



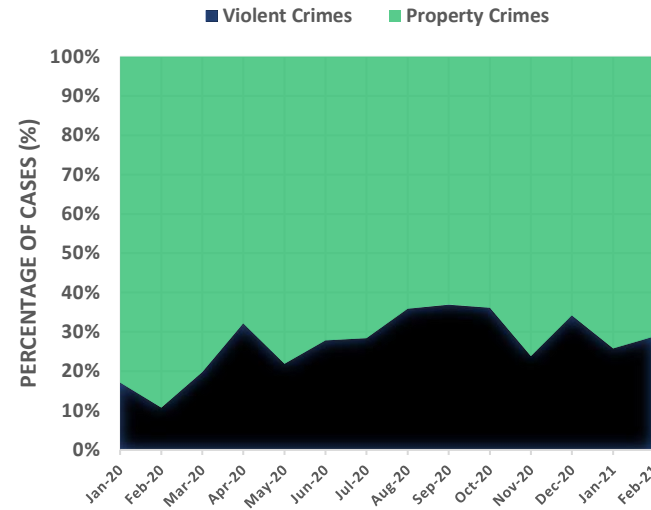
Bay Area Rapid Transit Police Department

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

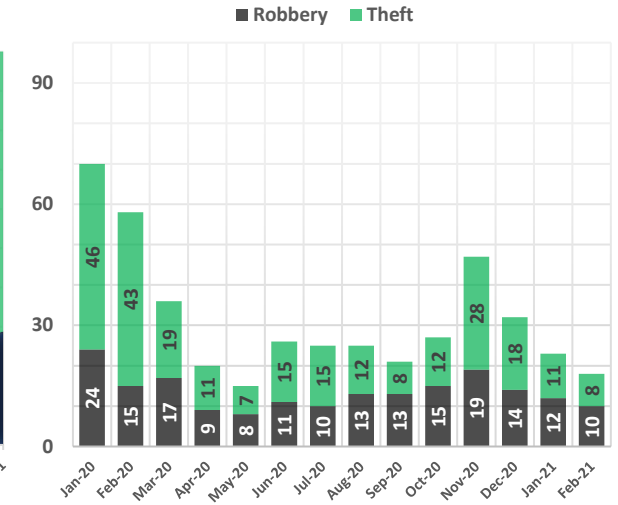
February 2021 Performance Measurement Review - **Systemwide**

PART 1 UCR Crime	2015	2016	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	1	1	0	3	2	0	0	0	-%
Rape	3	4	8	3	7	5	1	0	-100%
Robbery	161	232	290	345	378	252	56	33	-41%
Aggravated Assault	73	93	125	130	112	95	17	3	-82%
Violent Crime Subtotal	238	330	423	481	499	352	74	36	-51%
Burglary (Structural)	4	12	15	18	16	12	3	0	-100%
Larceny & Auto Burglary	2,325	2,217	2,593	2,565	3,177	1,038	429	92	-79%
Auto Theft	480	480	420	348	247	100	30	4	-87%
Arson	0	1	4	4	4	4	1	0	-100%
Property Crime Subtotal	2,809	2,710	3,032	2,935	3,444	1,154	463	96	-79%
TOTAL	3,047	3,040	3,455	3,416	3,943	1,506	537	132	-75%

PART 1 CRIME OVERALL

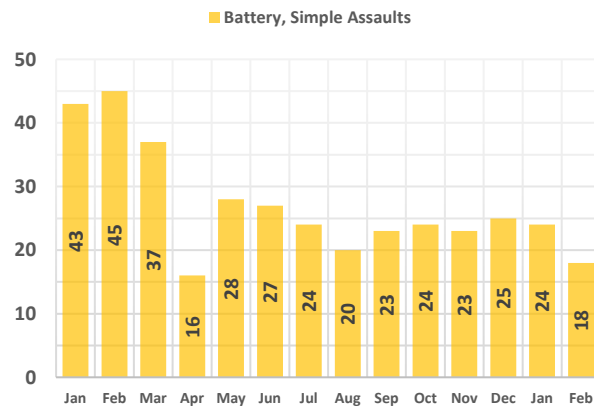


ELECTRONIC THEFT

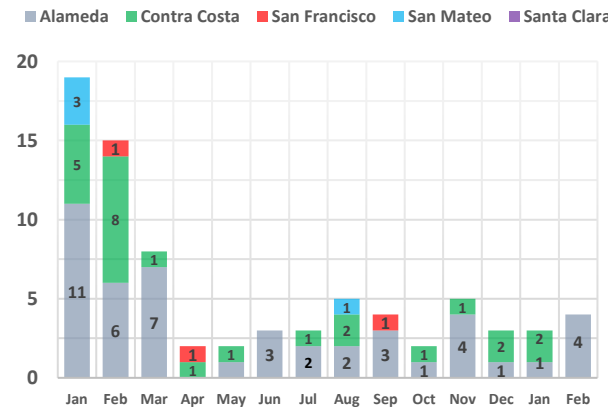


Part 1 Crimes: Top Five Stations
 February 2021 M40/CCS A30/COS M90/DCS M30/PPS A10/LMS
 Full Year 2020 A30/COS A20/FVS M60/TFS M50/SSS A60/HAS

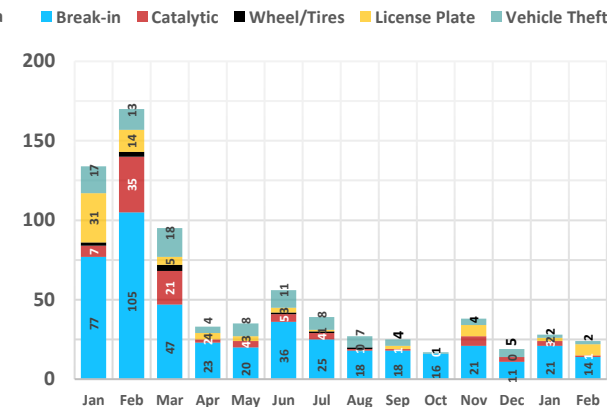
BATTERY & ASSAULT ON BART



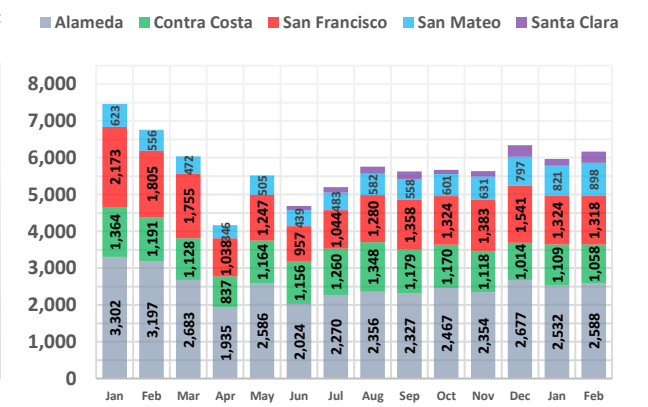
BICYCLE THEFT



VEHICLE CRIME



CALLS TO DISPATCH



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

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

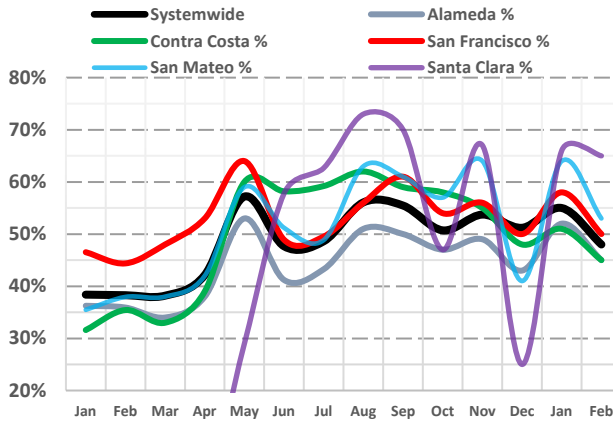


Bay Area Rapid Transit Police Department

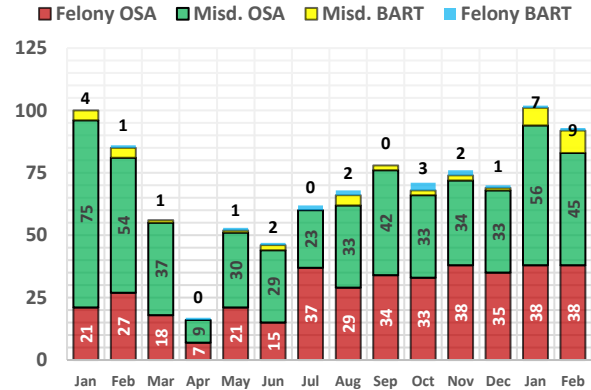
101 8th St, Oakland, CA, 94607 (510) 464-7000 www.bart.gov/police

February 2021 Performance Measurement Review - Systemwide

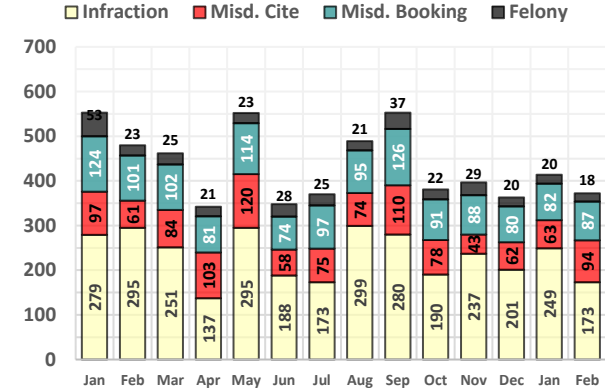
OFFICER-INITIATED INCIDENTS



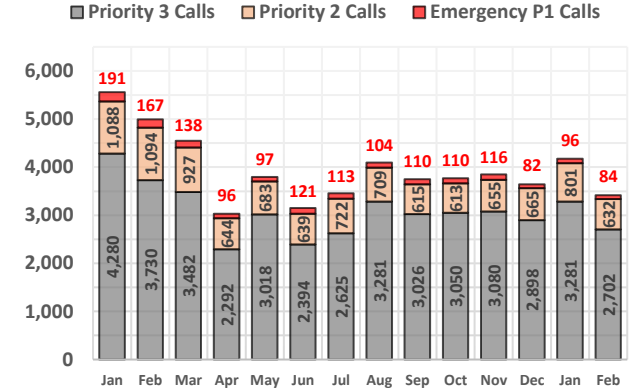
WARRANT ARRESTS



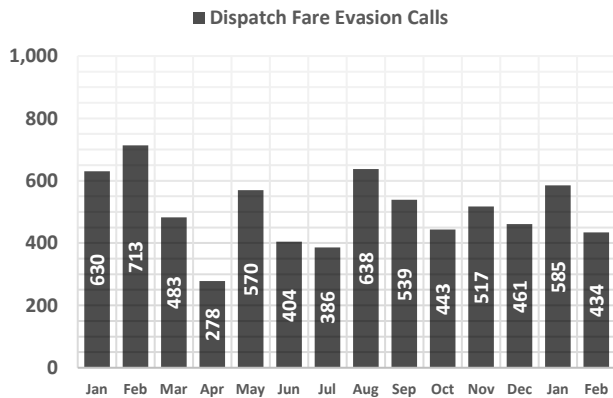
ALL BOOKINGS & ARRESTS



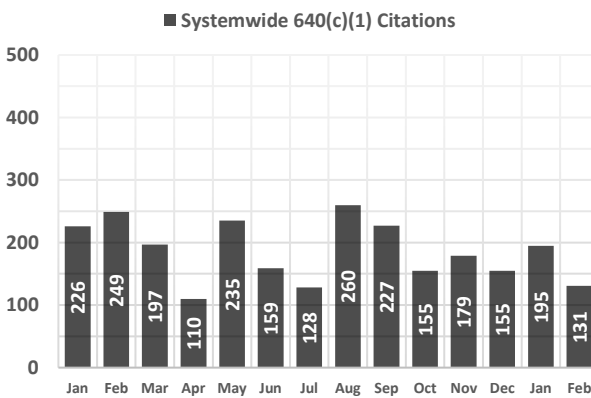
PRIORITY TYPE 1 - 3 CALLS



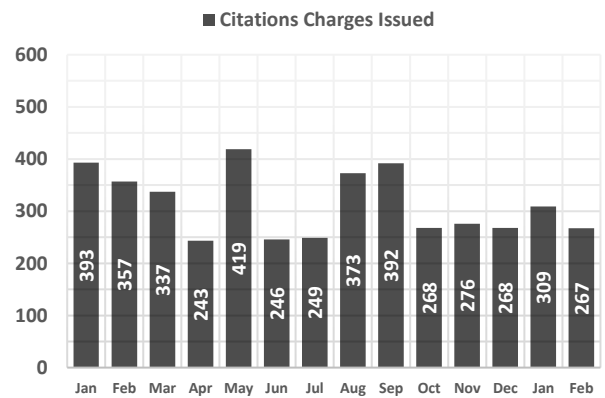
FARE EVASION CAD CALLS



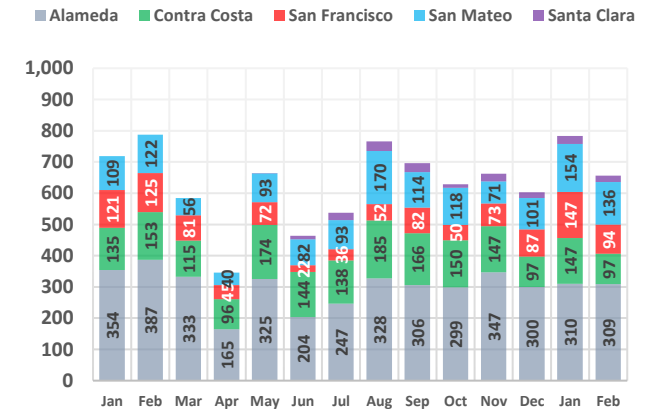
FARE EVASION CITATIONS



ALL CITATIONS



FIELD INTERVIEWS



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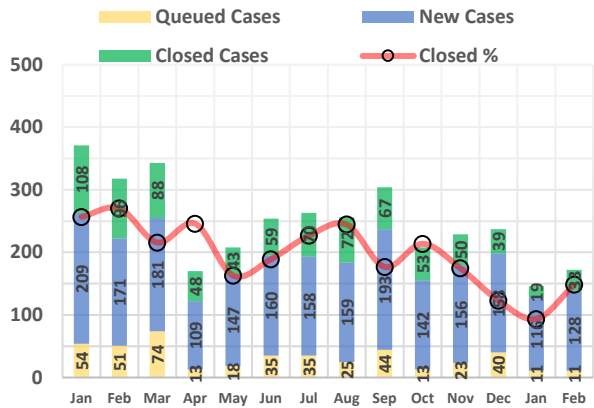


Bay Area Rapid Transit Police Department

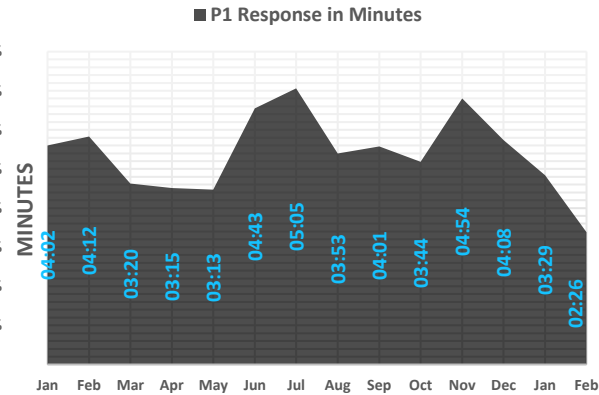
101 8th St, Oakland, CA, 94607 (510) 464-7000 www.bart.gov/police

February 2021 Performance Measurement Review - Systemwide

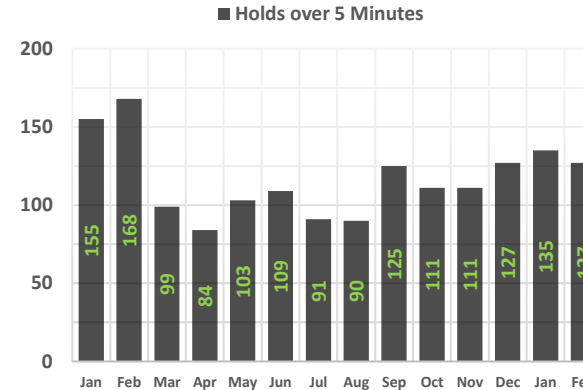
INVESTIGATIONS CASELOAD %



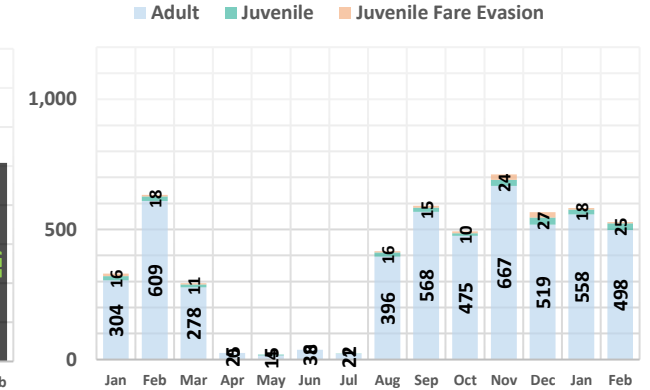
SYSTEM RESPONSE TIME (P1) AVG



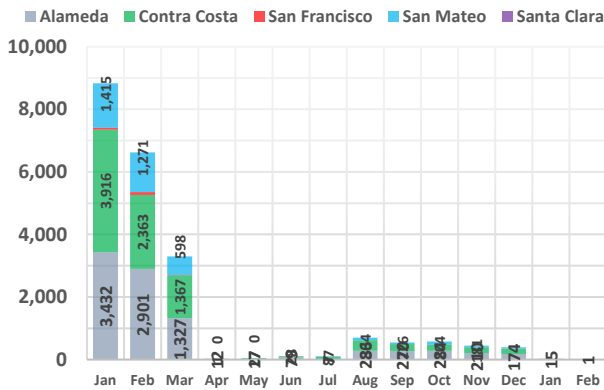
POLICE TRAIN HOLDS



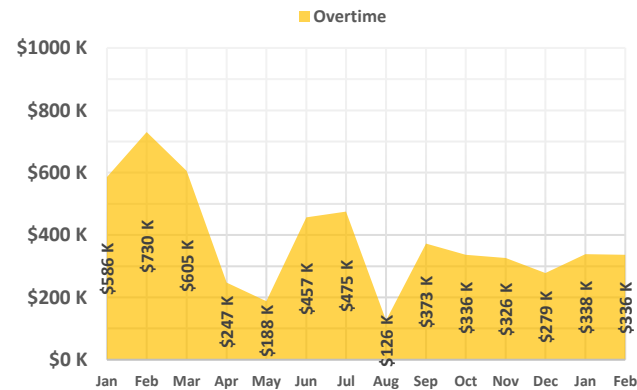
PROOF OF PAYMENT CITATIONS



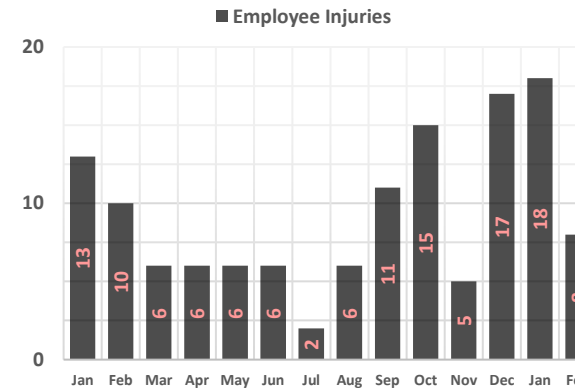
PARKING CITATIONS



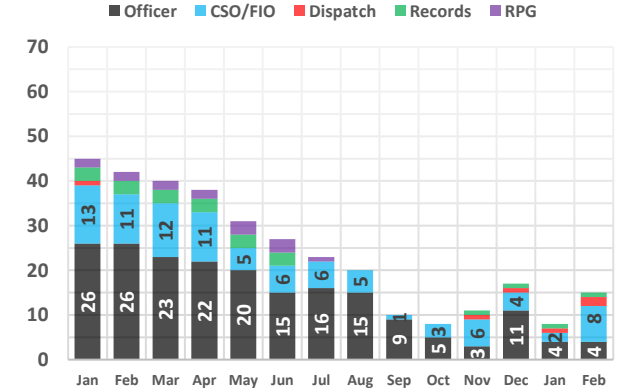
OVERTIME UTILIZATION (IN THOUSANDS)



EMPLOYEE INJURIES



VACANCIES



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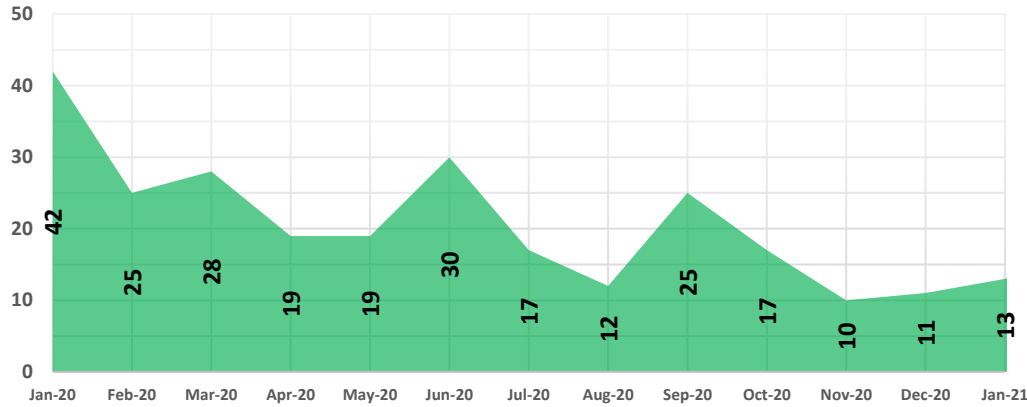


Bay Area Rapid Transit Police Department

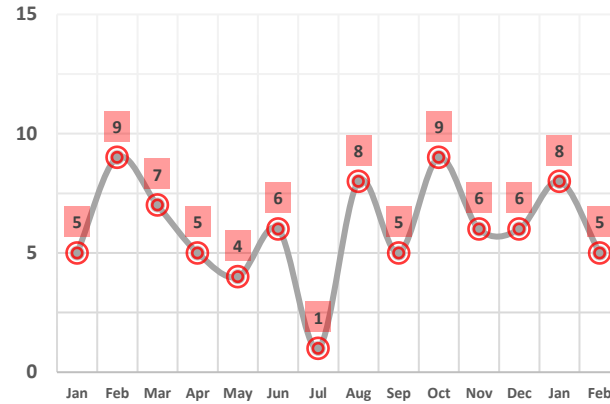
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February 2021 Performance Measurement Review - **Systemwide**

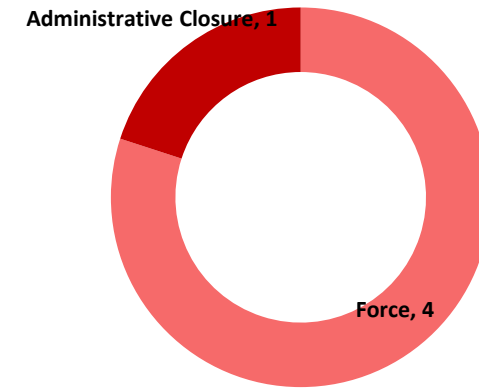
AB716 - PROHIBITION ORDERS



INTERNAL AFFAIRS COMPLAINTS

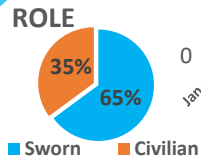
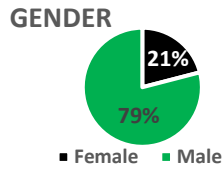
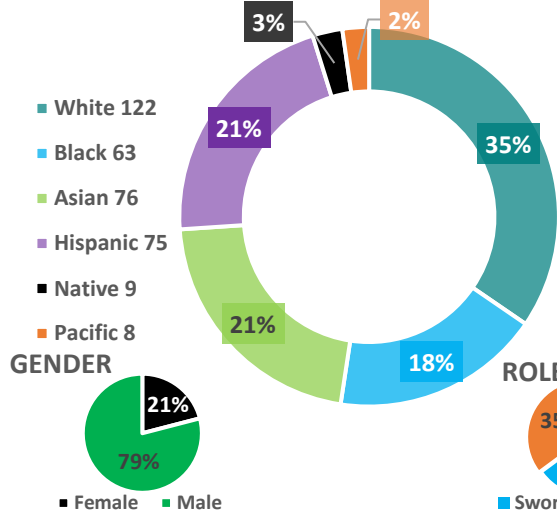


IA COMPLAINTS RECEIVED¹

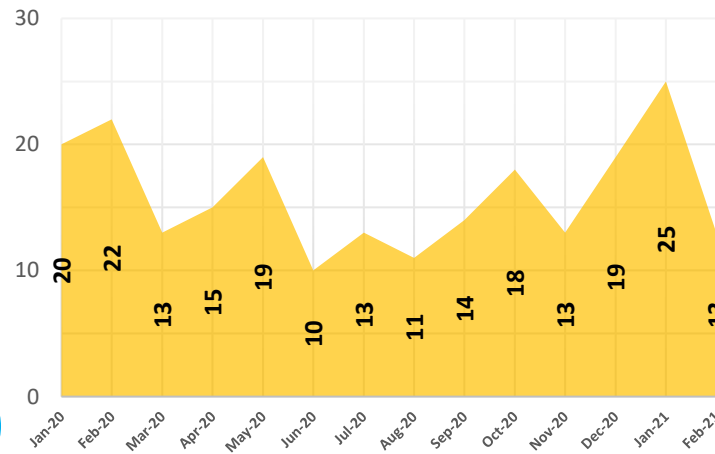


1: Each incident could contain more than one allegation. This chart reflects the most significant allegation per incident.

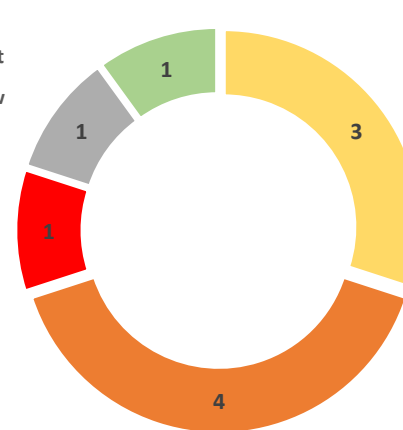
DEPARTMENT ETHNIC DIVERSITY



USE OF FORCE INCIDENTS

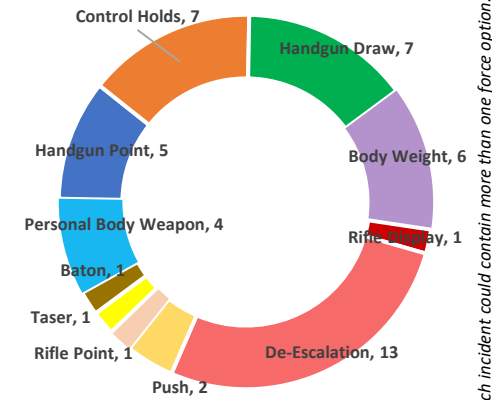


INCIDENT FORCE OPTIONS USED²



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

TYPES OF FORCE USED³



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



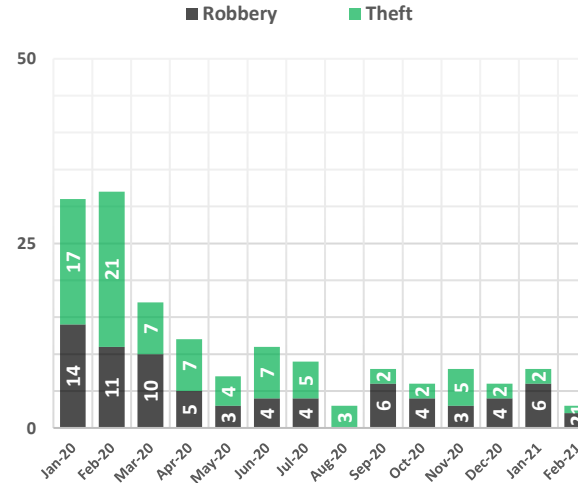
Bay Area Rapid Transit Police Department

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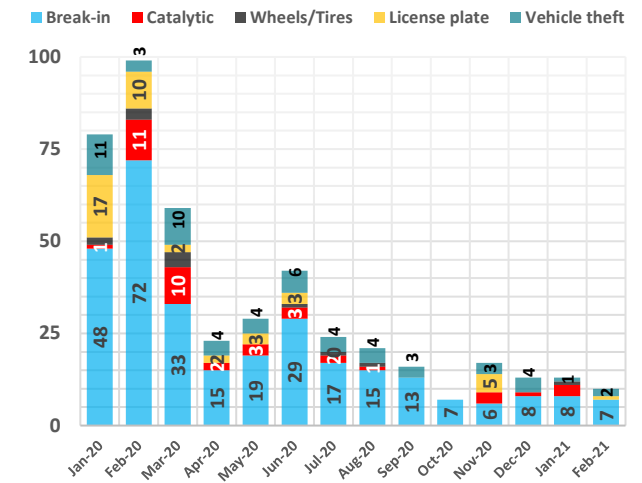
February 2021 Performance Measurement Review - Alameda County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	2	1	0	0	0	-%
Rape	6	3	2	3	1	0	-100%
Robbery	191	211	229	122	37	14	-62%
Aggravated Assault	73	87	52	54	9	1	-89%
Violent Crime Subtotal	270	303	284	179	47	15	-68%
Burglary (Structural)	8	11	13	9	2	0	-100%
Larceny & Auto Burglary	1,471	1,262	1,634	577	248	34	-86%
Auto Theft	266	201	149	56	14	3	-79%
Arson	2	3	5	2	0	0	-%
Property Crime Subtotal	1,747	1,477	1,801	644	264	37	-86%
TOTAL	2,017	1,780	2,085	823	311	52	-83%

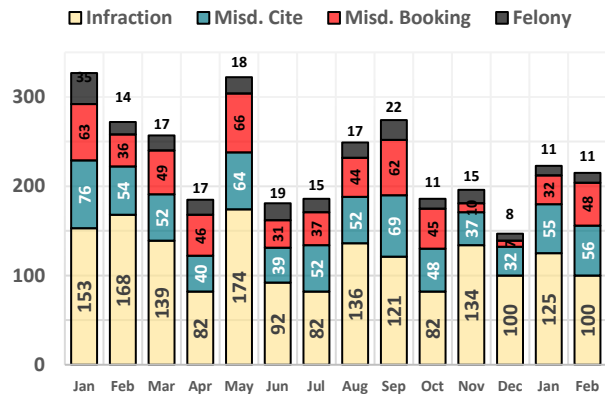
ALAMEDA ELECTRONIC THEFT



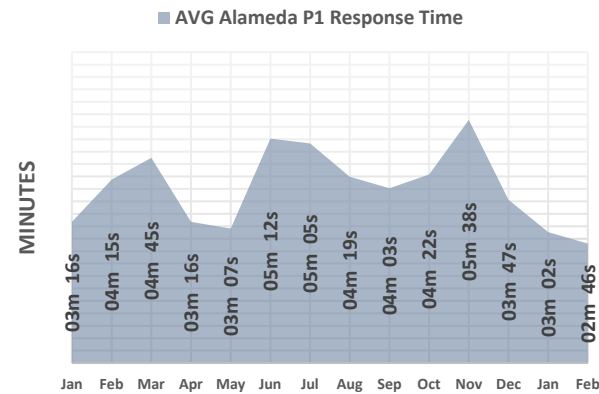
ALAMEDA VEHICLE CRIME



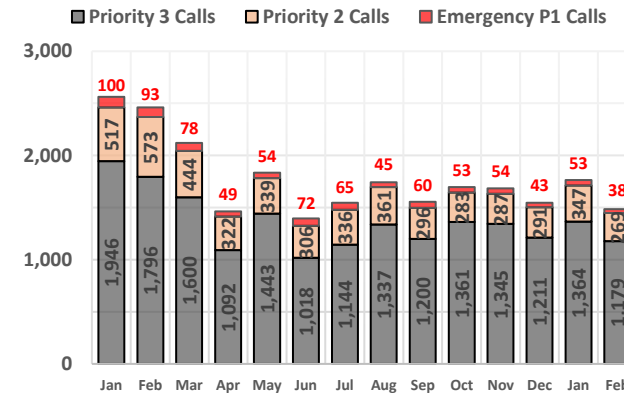
ALAMEDA ARRESTS & CITATIONS



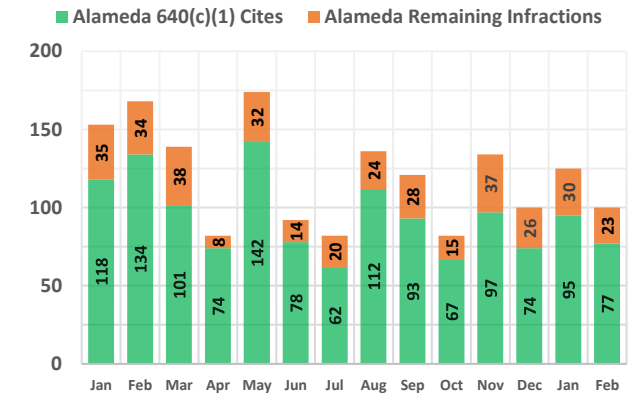
RESPONSE TIME (P1) AVG



ALAMEDA PRIORITY 1 - 3 CALLS



ALAMEDA FARE EVASION



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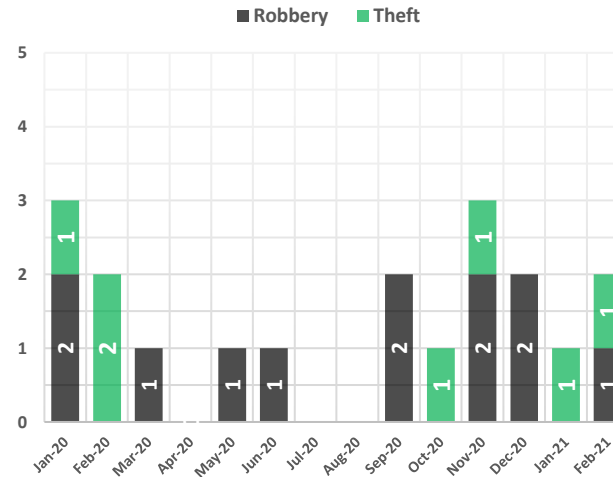
Bay Area Rapid Transit Police Department

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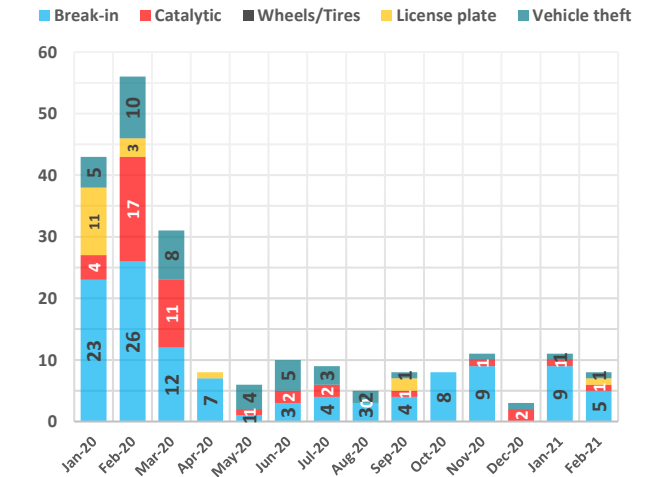
February 2021 Performance Measurement Review - Contra Costa County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	1	0	0	0	0	-%
Rape	1	0	4	0	0	0	-%
Robbery	35	29	34	23	5	3	-40%
Aggravated Assault	23	20	23	17	1	2	+100%
Violent Crime Subtotal	59	50	61	40	6	5	-17%
Burglary (Structural)	2	1	2	1	0	0	-%
Larceny & Auto Burglary	675	669	592	202	95	23	-76%
Auto Theft	134	124	81	40	15	2	-87%
Arson	3	1	0	0	0	0	-%
Property Crime Subtotal	814	795	675	243	110	25	-77%
TOTAL	873	845	736	283	116	30	-74%

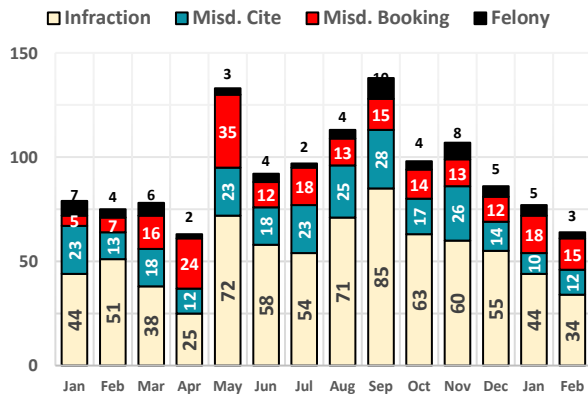
CONTRA COSTA ELECTRONIC THEFT



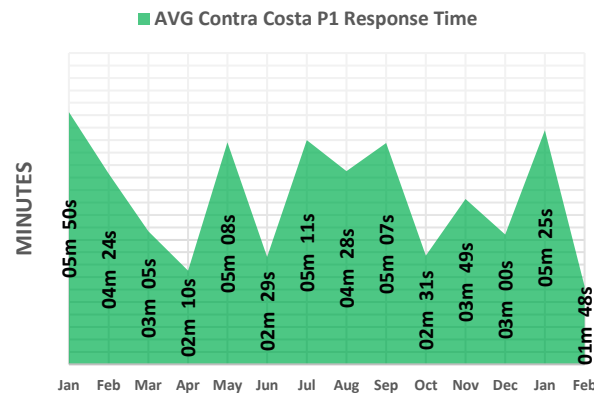
CONTRA COSTA VEHICLE CRIME



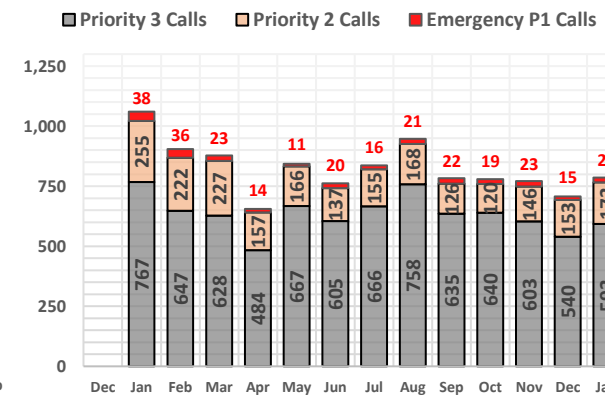
COCO ARRESTS & CITATIONS



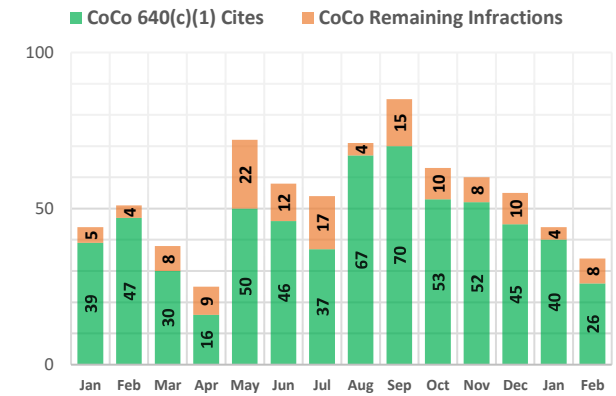
RESPONSE TIME (P1) AVG



COCO PRIORITY 1 - 3 CALLS



COCO FARE EVASION



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

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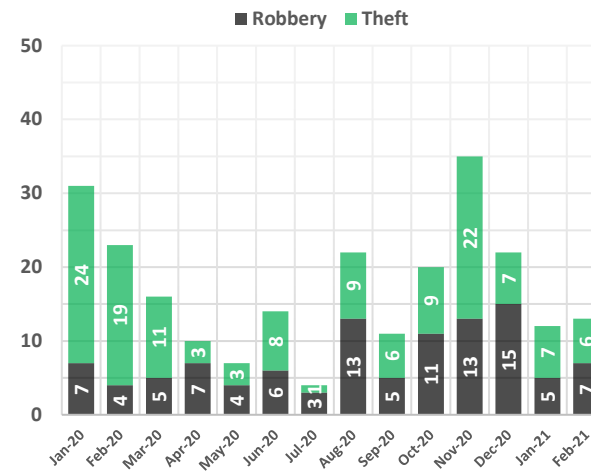
Bay Area Rapid Transit Police Department

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

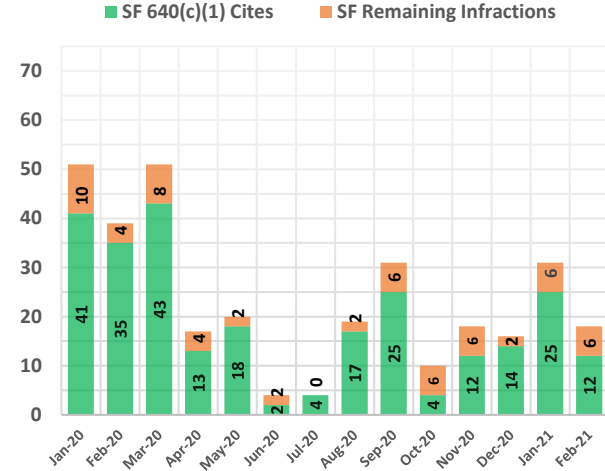
February 2021 Performance Measurement Review - San Francisco County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	0	0	0	0	0	-%
Rape	0	0	0	4	0	0	-%
Robbery	49	97	104	101	13	14	+8%
Aggravated Assault	23	18	28	19	5	0	-100%
Violent Crime Subtotal	72	115	132	124	18	14	-22%
Burglary (Structural)	5	6	4	1	1	0	-100%
Larceny & Auto Burglary	244	473	619	200	72	20	-72%
Auto Theft	2	1	1	0	0	0	-%
Arson	0	0	0	1	0	0	-%
Property Crime Subtotal	251	480	624	202	73	20	-73%
TOTAL	323	595	756	326	91	34	-63%

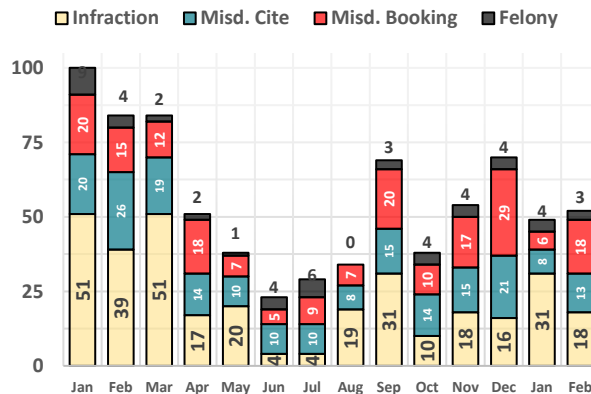
SAN FRANCISCO ELECTRONIC THEFT



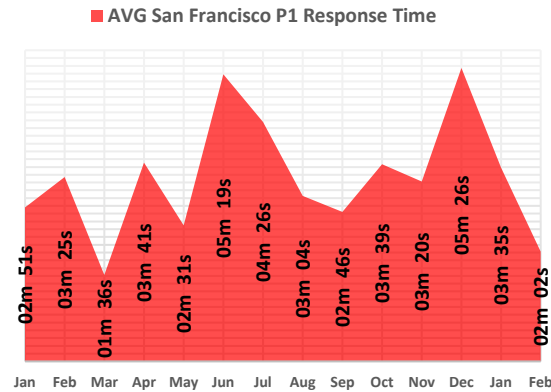
SAN FRANCISCO FARE EVASION



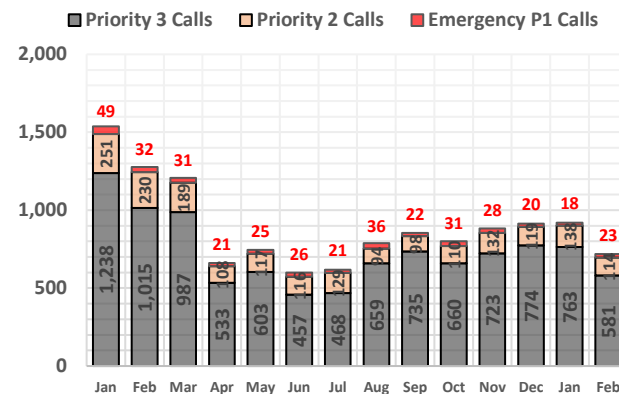
SF ARRESTS & CITATIONS



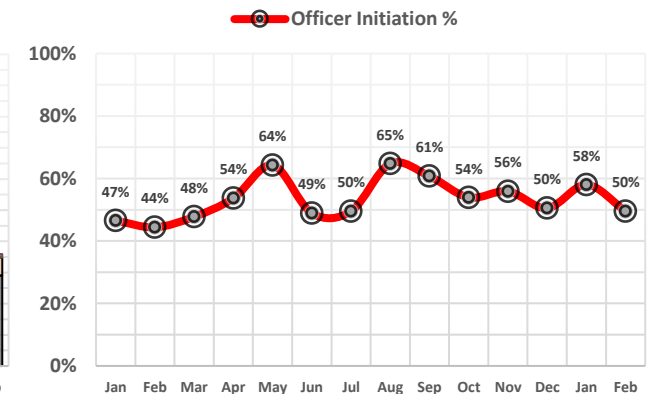
RESPONSE TIME (P1) AVG



SF PRIORITY 1 - 3 CALLS



SF OFFICER-INITIATED INCIDENTS



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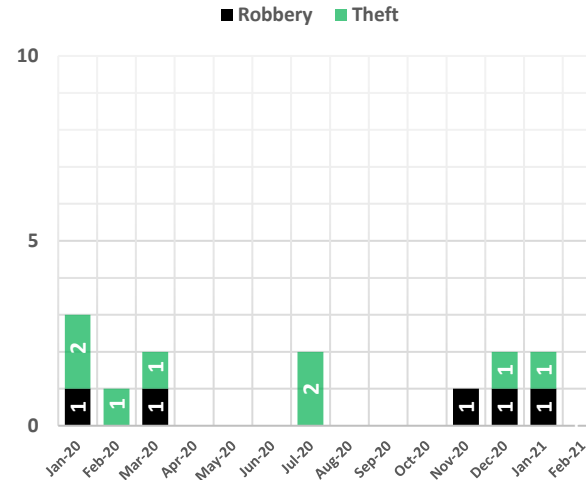
Bay Area Rapid Transit Police Department

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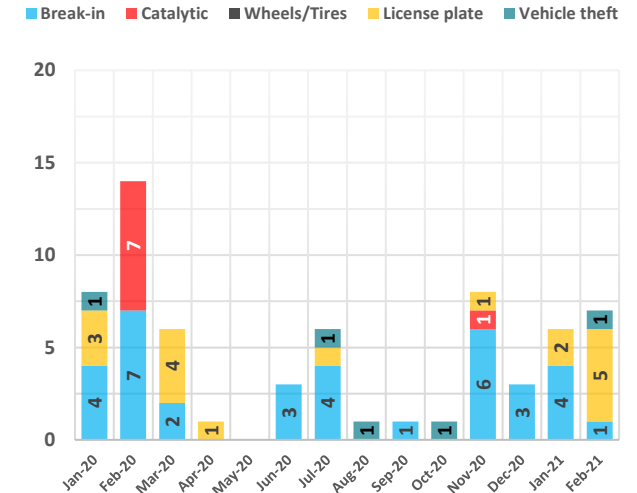
February 2021 Performance Measurement Review - San Mateo County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2019	YTD 2020	PCT %
Homicide	0	0	0	0	0	0	-%
Rape	1	0	1	1	0	0	-%
Robbery	15	8	13	6	1	2	+100%
Aggravated Assault	6	5	8	4	2	0	-100%
Violent Crime Subtotal	22	13	22	11	3	2	-33%
Burglary (Structural)	0	0	0	1	0	0	-%
Larceny & Auto Burglary	208	161	332	75	30	15	-50%
Auto Theft	18	19	13	4	1	1	0%
Arson	0	0	0	1	1	0	-100%
Property Crime Subtotal	226	180	345	81	32	16	-50%
TOTAL	248	193	367	92	35	18	-49%

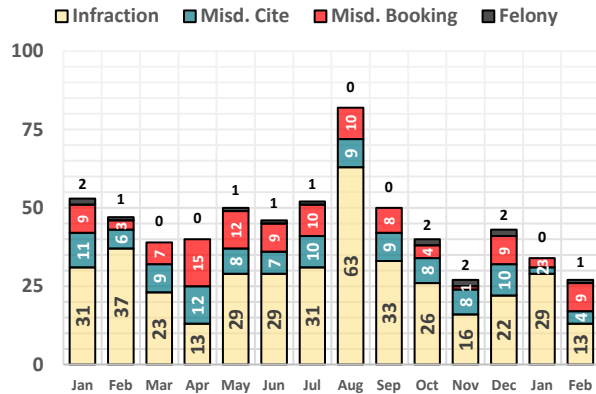
SAN MATEO ELECTRONIC THEFT



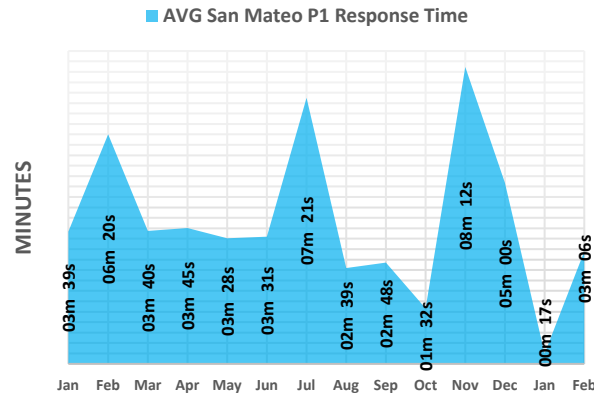
SAN MATEO VEHICLE CRIME



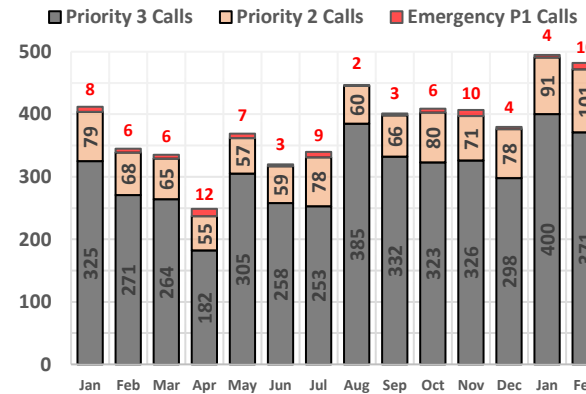
SMC ARRESTS & CITATIONS



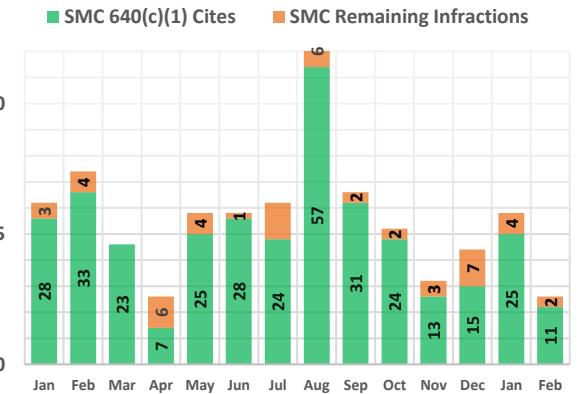
RESPONSE TIME (P1) AVG



SMC PRIORITY 1 - 3 CALLS



SMC FARE EVASION



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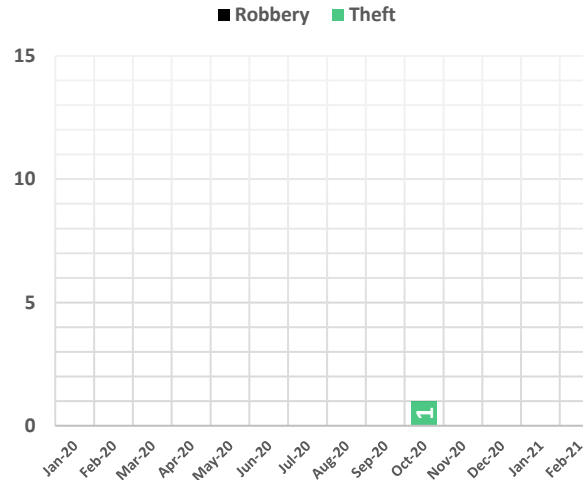
Bay Area Rapid Transit Police Department

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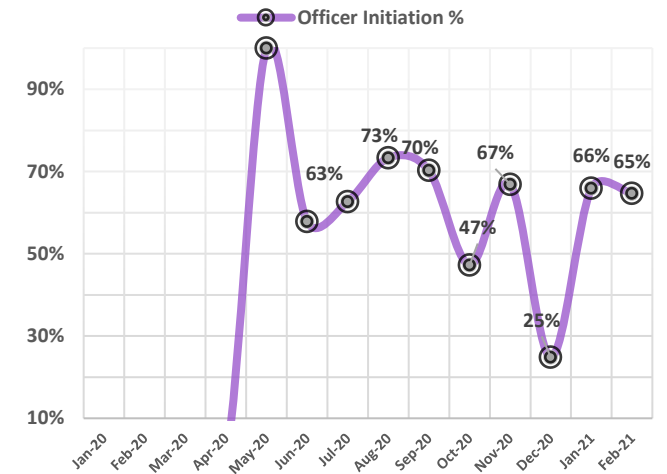
February 2021 Performance Measurement Review - Santa Clara County

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

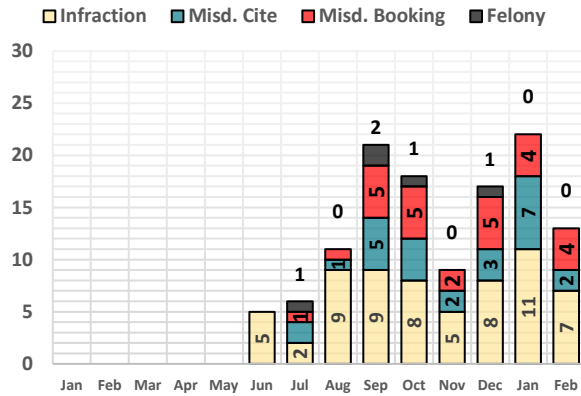
SANTA CLARA ELECTRONIC THEFT



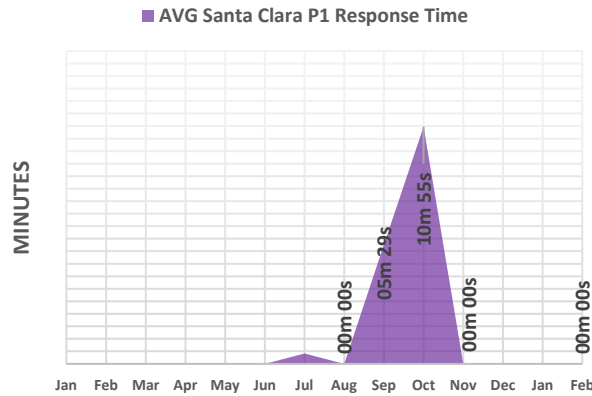
SCC OFFICER-INITIATED INCIDENTS



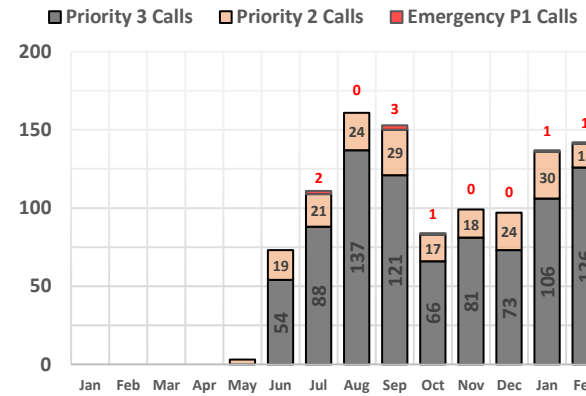
SCC ARRESTS & CITATIONS



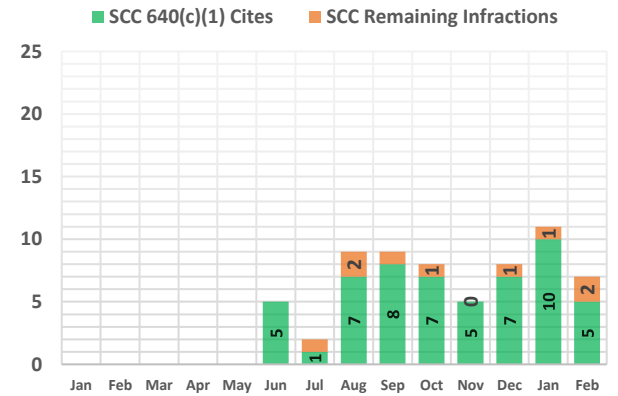
RESPONSE TIME (P1) AVG



SCC PRIORITY 1 - 3 CALLS



SCC FARE EVASION



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BART Police Department - Office of Internal Affairs
Investigation Log

IA#:	DATE OCC'D	DATE REC'D	ALLEGATION	MISC	INVESTIGATOR	STATUS	5 Month Date	Due Date
IA2018-001	1/3/2018	1/3/2018	Force (OIS)		Lt. Salas	Tolled	6/4/2018	
IA2018-043	6/6/2018	6/6/2018	Force		Sgt. Spears	Pending Approval	11/5/2018	
IA2018-060	7/22/2018	7/23/2018	Service Review		Lt. Salas	Tolled	12/23/2018	
IA2020-017	2/15/2020	2/15/2020	Force		Sgt. Spears	Tolled	7/16/2020	2/15/2021
IA2020-028	3/12/2020	3/12/2020	Force		Sgt. Mavrakis	In Progress	8/11/2020	3/12/2021
IA2020-035	4/26/2020	4/26/2020	BBP,CUBO, Axon	Formal/Admin Investigation	Lt. Salas	In Progress	9/25/2020	4/26/2021
IA2020-036	Unk	4/30/2020	Arrest/Detention, POD, Axon	OIPA Intake #20-17	Lt. Salas	In Progress	9/29/2020	4/30/2021
IA2020-037	Unk	4/30/2020	POD	OIPA Intake #20-18	Sgt. Mavrakis	In Progress	10/3/2020	4/30/2021
IA2020-039	5/14/2019	5/14/2020	POD		Sgt. Mavrakis	In Progress	10/12/2020	5/14/2021
IA2020-042	6/2/2020	6/3/2020	CUBO, Force, BBP		Sgt. Mavrakis	In Progress	11/2/2020	6/3/2021
IA2020-044	6/4/2020	6/5/2020	CUBO, Courtesy, Policy/Procedure	Deferred to OIPA #20-19	OIPA	In Progress	11/4/2020	6/5/2021
IA2020-046	6/8/2020	6/8/2020	BBP, CUBO		Sgt. Mavrakis	In Progress	11/7/2020	6/8/2021
IA2020-047	6/11/2020	6/12/2020	CUBO	Clear by Video	Sgt. Mavrakis	In Progress	11/11/2020	6/12/2021

IA2020-048	7/23/2020	7/23/2020	Force		Sgt. Mavrakis	In Progress	12/22/2020	7/23/2021
IA2020-050	7/7/2020	8/17/2020	Arrest/Detention, Force		Sgt. Spears	In Progress	1/16/2021	8/17/2021
IA2020-051	8/18/2020	8/21/2020	BBP		Sgt. Spears	Pending Approval	1/20/2021	8/21/2021
IA2020-056	8/29/2020	8/31/2020	CUBO	Possible Clear by Video	Sgt. Mavrakis	In Progress	1/30/2021	8/31/2021
IA2020-057	8/12/2020	8/27/2020	CUBO	Deferred to OIPA #20-22	OIPA	In Progress	1/26/2021	8/27/2021
IA2020-058	9/2/2020	9/3/2020	Force, CUBO	Deferred to OIPA #20-23	OIPA	In Progress	2/2/2021	9/3/2021
IA2020-059	9/4/2020	9/4/2020	POD, Policy/Procedure		Sgt. Spears	In Progress	2/3/2021	9/4/2021
IA2020-060	9/9/2020	9/11/2020	POD, CUBO, Force, Policy/Procedure		Lt. Salas	In Progress	2/10/2021	9/11/2021
IA2020-061	9/9/2020	9/17/2020	CUBO, Courtesy, Axon		Lt. Salas	In Progress	2/16/2021	9/17/2021
IA2020-062	5/21/2020	9/17/2020	Bias Based Policing, CUBO		Sgt. Spears	In Progress	2/21/2021	9/17/2021
IA2020-063	9/18/2020	9/18/2020	Arrest/Detention - Handcuffing, CUBO, Search/Seizure, Axon		Sgt. Spears	In Progress	2/22/2021	9/18/2021
IA2020-065	9/14/2020	9/14/2020	Force, CUBO, POD		Lt. Salas	In Progress	2/13/2021	9/14/2021

IA2020-066	9/17/2020	9/18/2020	Force, CUBO, Bias, POD, Axon		Sgt. Spears	In Progress	2/17/2021	9/18/2021
IA2020-069		10/14/2020	POD	Deferred to OIPA #20-26	OIPA	OIPA Investigation	3/15/2021	10/14/2021
IA2020-070	10/20/2020	10/21/2020	Force, Arrest/Detention, Search/Seizure	OIPA Intake #20-28	Lt. Salas	In Progress	3/22/2021	10/21/2021
IA2020-071	10/15/2020	10/16/2020	Courtesy, POD	Possible Clear by Video	Sgt. Spears	In Progress	3/17/2021	10/16/2021
IA2020-075	10/23/2020	10/23/2020	BBP, Courtesy	Possible Admin Closure	Sgt. Spears	In Progress	3/24/2021	10/23/2021
IA2020-076	10/27/2020	10/29/2020	Arrest/Detention, CUBO, POD, Axon		Sgt. Spears	In Progress	4/3/2021	10/29/2021
IA2020-077	10/16/2020	11/9/2020	Force, Arrest/Detention, CUBO	Deferred to OIPA #20-29	OIPA	In Progress	3/16/2021	11/9/2021
IA2020-078	11/3/2020	11/13/2020	CUBO	Possible Clear by Video	Sgt. Spears	In Progress	4/3/2021	11/13/2021
IA2020-079	11/9/2020	11/9/2020	POD	Possible Admin Closure	Sgt. Spears	In Progress	4/9/2021	11/9/2021
IA2020-080	9/14/2020	10/26/2020	Arrest/Detention, BBP		Sgt. Spears	In Progress	2/14/2021	10/26/2021
IA2020-081	11/18/2020	11/18/2020	Policy/Procedure		Lt. Salas	In Progress	4/19/2021	11/17/2021

IA2020-082	11/17/2020	11/17/2020	BBP, CUBO		Sgt. Mavrakis	In Progress	4/19/2021	11/17/2021
IA2020-083	11/19/2020	11/19/2020	Force, Axon		Sgt. Spears	In Progress	4/20/2021	11/19/2021
IA2020-085	11/27/2020	11/30/2020	CUBO, Axon	Inquiry	Lt. Salas	In Progress	5/1/2021	11/30/2021
IA2020-086		11/25/2020	POD, Axon		Lt. Salas	In Progress	4/26/2021	11/25/2021
IA2020-087			Awaiting Information	Inquiry	Lt. Salas			12/31/1900
IA2020-089	12/15/2020	12/15/2020	Force		Sgt. Spears	In Progress	5/16/2021	12/15/2021
IA2020-090	12/11/2020	12/13/2020	CUBO	S.R.	Sgt. Mavrakis	In Progress	1/12/2021	12/13/2021
IA2020-091	11/29/2020	11/29/2020	Force		Sgt. Mavrakis	In Progress	4/30/2021	11/29/2021
IA2020-092	11/24/2020	11/30/2020	Arrest/Detention	Inquiry	Sgt. Mavrakis	In Progress	12/30/2020	11/30/2021
IA2020-093	12/3/2020	12/18/2020	CUBO	OIPA Intake #20-32, S.R.	Sgt. Mavrakis	In Progress	1/17/2021	12/18/2021
IA2020-095	12/24/2020	12/29/2020	CUBO, POD		Sgt. Mavrakis	In Progress	5/30/2021	12/29/2021
IA2020-096	12/29/2020	12/29/2020	Force		Sgt. Mavrakis	In Progress	5/30/2021	12/29/2021
IA2021-001	1/2/2021	1/2/2021	Arrest/Detention		Sgt. Mavrakis	In Progress	6/30/2021	1/2/2022
IA2021-002	1/2/2021	1/4/2021	BBP, CUBO		Sgt. Mavrakis	In Progress	6/5/2021	1/4/2022
IA2021-003	9/11/2019	1/7/2019	Force		Sgt. Mavrakis	In Progress	6/8/2021	1/7/2020
IA2021-004	1/5/2021	1/5/2021	Force		Sgt. Spears	In Progress	6/6/2021	1/5/2022

IA2021-005	1/20/2021	1/22/2021	POD		Sgt. Mavrakis	In Progress	6/6/2021	1/22/2022
IA2021-006	1/20/2021	1/20/2019	Force		Sgt. Mavrakis	In Progress	6/21/2021	1/20/2020
IA2021-007	1/26/2021	1/26/2021	Unk	OIPA Intake #21-02	Sgt. Spears	In Progress	6/27/2021	1/26/2022
IA2021-008	1/8/2021	1/11/2021	Unk	Admin Closure	Lt. Salas	In Progress	6/12/2021	1/11/2022
IA2021-009	1/13/2021	2/4/2021	Force, CUBO		Sgt. Spears	In Progress	7/6/2021	2/4/2022
IA2021-010	2/14/2021	2/16/2021	Force		Sgt. Spears	To Patrol	7/16/2021	2/16/2022
IA2021-011	2/14/2021	2/14/2021	POD	Admin Closure	Sgt. Mavrakis	In Progress	7/16/2021	2/14/2022
IA2021-012	2/17/2021	2/17/2021	Force, CUBO		Sgt. Spears	In Progress	7/19/2021	2/17/2022
IA2021-013	2/16/2021	2/16/2021	Force		Sgt. Mavrakis	In Progress	7/18/2021	2/16/2022
IA2021-014	2/25/2021	3/1/2021	Force		Sgt. Spears	In Progress	7/31/2021	3/1/2022
IA2021-015	3/1/2021	3/1/2021	BBP		Sgt. Spears	In Progress	8/1/2021	3/1/2022
IA2021-016	3/3/2021	3/3/2021	POD		Sgt. Mavrakis	In Progress	4/2/2021	3/3/2022

BART Watch - 2021

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Crime in Progress	7	14											21
Disruptive Behavior	163	183											346
Drug Use	61	62											123
Human Trafficking	0	1											1
Illegally Parked Vehicle	1	1											2
Aggressive Panhandling	4	9											13
Report a Crime Tip	5	9											14
Robbery/Theft	4	4											8
Sexual Assault/Lewd Behavior	5	2											7
Suspicious Activity	26	30											56
Unattended Bag or Package	4	4											8
Unsecure Door	2	2											4
Vandalism	9	12											21
Welfare Check	28	35											63
Total	319	368	0	0	0	0	0	0	0	0	0	0	687
Text-a-Tip	1031	913											1,944

Total Downloads:

91,494



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

March 2021

Issue date: April 12, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **March 1, 2021 through March 31, 2021**.¹

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

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	2
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	7

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	5
TOTAL	5

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2021, **5 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-014)	Officer #1: • Force	BPD initiated an investigation.	42
2 (IA2021-015)	Officers #1-3: • Bias-Based Policing	BPD initiated an investigation.	42
3 (IA2021-017)	Officer #1: • Force	BPD initiated an investigation.	29
4 (IA2021-018)	Officer #1: • Force	BPD initiated an investigation.	27
5 (IA2021-020)	Officer #1: • Force	BPD initiated an investigation.	13

During March 2021, **2 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-016)	Officer #1: • Performance of Duty	BPD initiated a Supervisor Referral. ¹⁰	40
2 (IA2021-019)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	24

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2021, **4 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 (IA2018-043)	Officers improperly contacted complainant based on complainant's race and used excessive force during the detention and arrest.	Officers #1-2: <ul style="list-style-type: none"> Force – Exonerated Bias-Based Policing – Unfounded Officer #2: <ul style="list-style-type: none"> Conduct Unbecoming an Officer – Exonerated 	1041	281*
2 (IA2020-039)	Employee did not systematically enforce the BART Proof of Payment Ordinance.	Employee #1: <ul style="list-style-type: none"> Performance of Duty – Not Sustained 	333	300
3 (IA2020-050)	Officers improperly detained complainant and used excessive force during the detention and arrest.	Officers #1-2: <ul style="list-style-type: none"> Force – Exonerated Arrest/Detention – Exonerated Employee #1: <ul style="list-style-type: none"> Force – Exonerated Arrest/Detention – Exonerated 	238	220
4 (IA2020-095)	Employee did not properly route a call for service and was unfamiliar with BPD policy.	Employee #1: <ul style="list-style-type: none"> Performance of Duty – Supervisor Referral Conduct Unbecoming – Supervisor Referral 	104	84

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

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2020-093)	Officer operated a BPD vehicle in an unsafe manner.	Officer #1: <ul style="list-style-type: none"> Conduct Unbecoming an Officer – Supervisor Referral 	115	96
2 (IA2021-016)	Officer requested unnecessary personal information from complainant.	Officer #1: <ul style="list-style-type: none"> Performance of Duty – Supervisor Referral 	40	12

* This investigation was tolled for 741 days due to litigation related to the contact.

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During February 2019, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-14) (IA2020-026) [†]	Officer used excessive force during a contact and inappropriately threatened to use additional force. Two officers failed to properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Arrest/Detention – Exonerated 	250	218

DISCIPLINE ISSUED DURING REPORTING PERIOD

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

Case #	Nature of Sustained Allegation(s) ‡	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
4	Officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officers #1-2: <ul style="list-style-type: none"> • Letter of Discussion

[†]This complaint remained on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BART Police Citizen Review Board in closed session. The chart on page 2 of this report has been updated to reflect the February 2021 completion.

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

ADDITIONAL NOTES

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

Investigations Being Conducted	5
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	62
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.

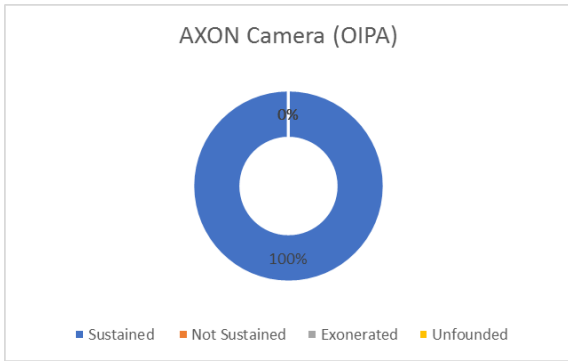
The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹²

Comparison of OIPA and BPD Internal Affairs Outcomes by Allegation

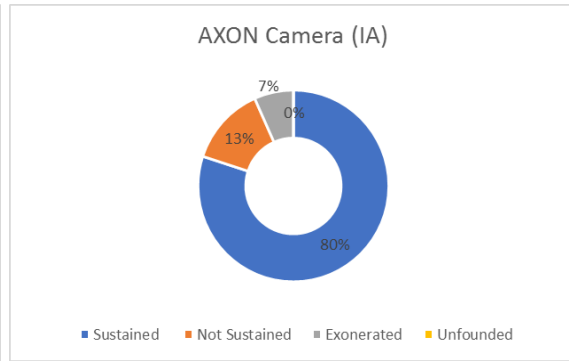
At the request of the BPCRB, OIPA will regularly include data comparisons in graphic form by reporting investigative outcomes for specific misconduct allegations and by displaying outcomes generated by both OIPA and the BPD Office of Internal Affairs.

(Complaints resolved between 1/1/20 and 12/31/20):

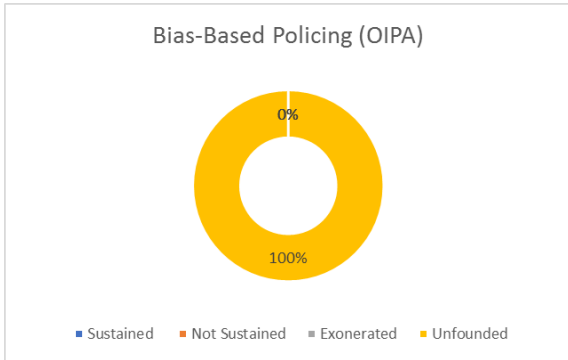




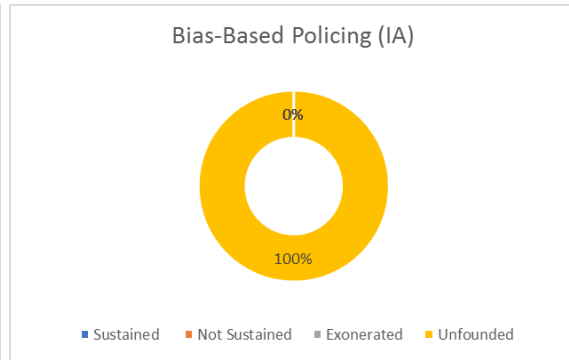
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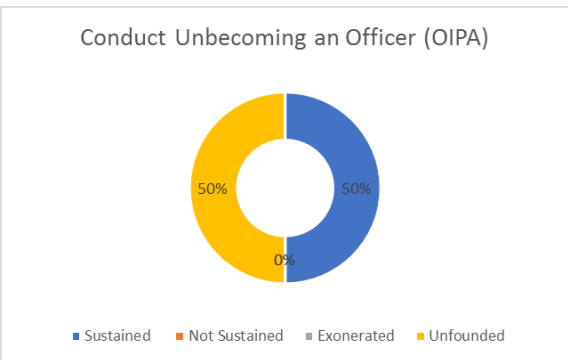
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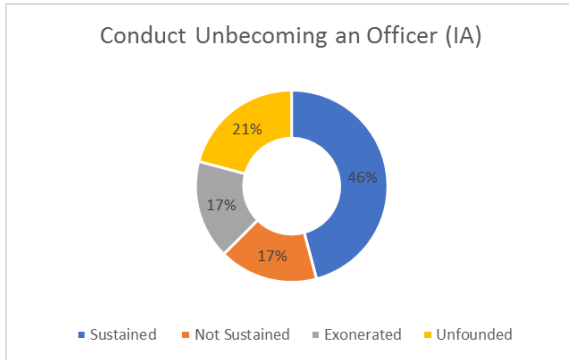
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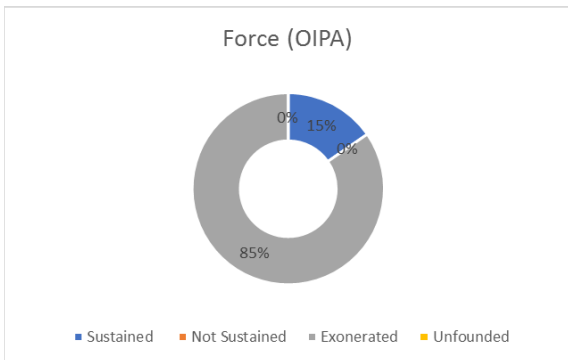
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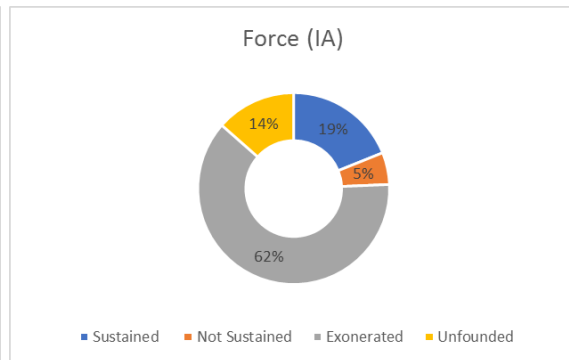
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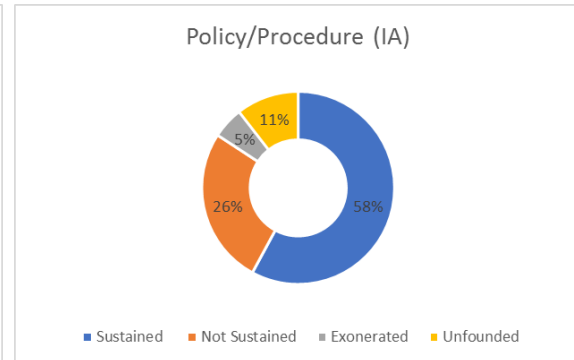
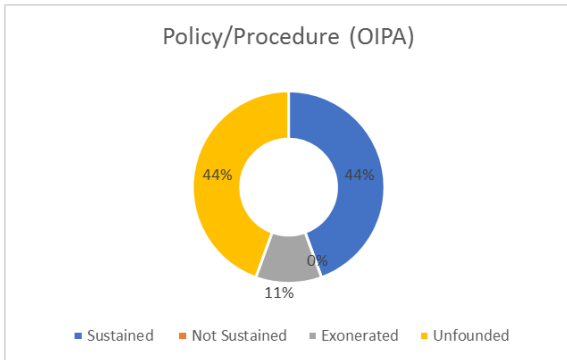
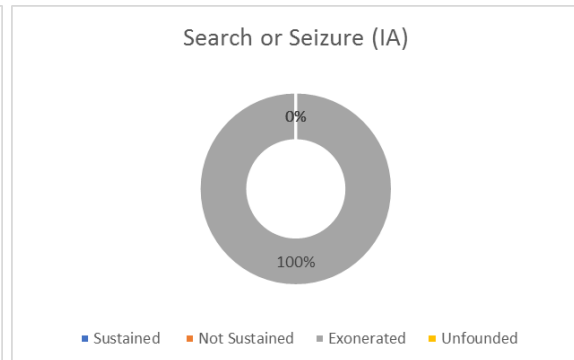
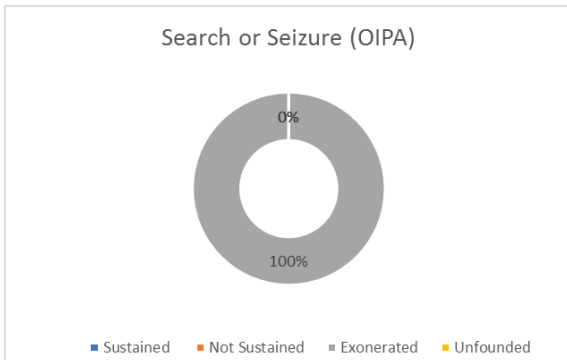
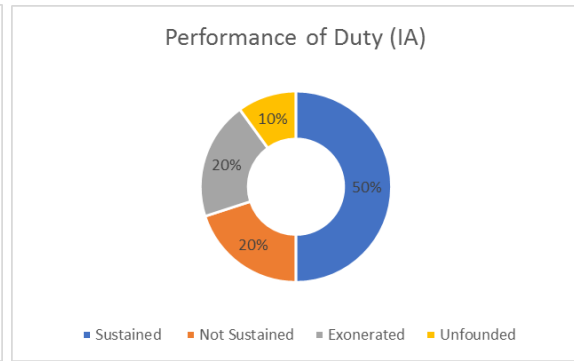
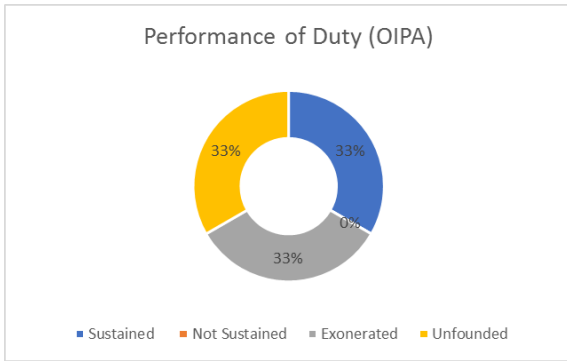
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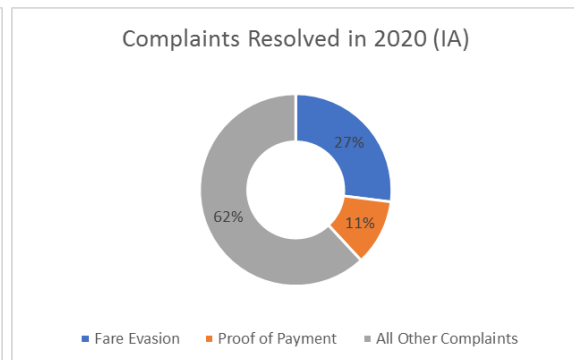
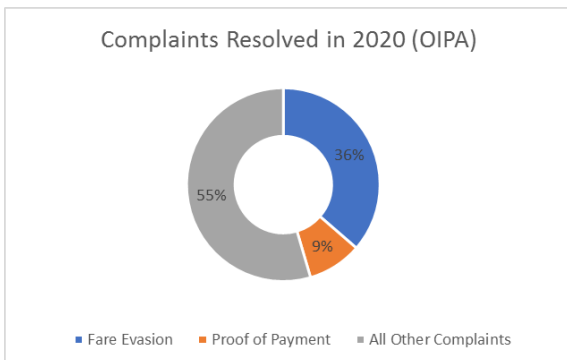
N=13



N=37



The following charts reflect the percentage of resolved allegations that were related to a contact for fare evasion or violation of the BART Proof of Payment Ordinance.



BPD Supervisor Use of Force Reports (SUFRRs) and OIPA Review of Contacts

OIPA's review of SUFRRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend review by BPD Command Staff and the Office of Internal Affairs in some instances. OIPA also generated recommendations based on review of contacts that did not include a use of force.

These referrals were related to:

- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance
 - Some sworn BPD officers have initiated detentions by asking riders for proof of payment absent reasonable suspicion in violation of Constitutional protections from such detentions
 - This application of the PoP Ordinance does not reflect the systematic approach to enforcement that was proposed by BPD when the BART Board of Directors voted to approve the Ordinance
 - This practice may exacerbate existing racially disparate outcomes by allowing officers to decide whom to detain based solely on the officer's perceptions about who may be using the system without carrying valid proof of payment
 - Assertions that the racially disparate outcomes of contacts related to PoP enforcement mirror those of fare evasion enforcement are undermined by the absence of data and documentation about the subjects of "sweeps" and ejections that do not result in the issuance of a civil citation
 - BPD command staff distributed a new bulletin via email to all BPD personnel advising them of key points and requirements for initiating a lawful detention based on suspected PoP violations
- Late or failed AXON body-worn camera activations
 - Including late activations reported as "timely" by officers and reviewing supervisors
 - In one instance, discipline has yet to be issued in connection with this policy violation despite clear written instructions to the officer's supervising Lieutenant
- Discipline not timely issued as required for an AXON body-worn camera policy violation
 - The progressive discipline system under which the Department operates requires the timely imposition of discipline so that subsequent violations may be appropriately addressed

In response to OIPA's concerns related to the actual and potential policy violations listed above, BPD has committed to examining the quality and scope of training for officers and supervisors while concurrently reviewing specific contacts flagged by OIPA.

OIPA will continue to monitor the efforts of the Department as they implement improvements.

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

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

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

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

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

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

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

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

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

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

¹¹ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹² OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.

Fare Evasion

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

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

- (b) **Reasonable Suspicion:** Reasonable suspicion to detain a suspect exists if officers were aware of specific facts that reasonably indicated the person was in the process of committing a crime, or was wanted for a completed crime. It is based on objective facts. Reasonable suspicion is the level of proof necessary for a temporary detention.
- (c) **Probable Cause to Arrest:** Although some courts continue to cite the old definition which requires an "honest and strong suspicion", the trend is toward incorporating the new "fair probability" standard; i.e. probable cause to arrest exists if there is a fair probability that the suspect committed the crime. Probable cause is the level of suspicion required to make an arrest.

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

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

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

419.3 LEGAL ISSUES REGARDING FARE EVASION CONTACTS

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

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

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

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

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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.