

**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**

November 18, 2019

A Meeting of the BART Police Citizen Review Board (BPCRB) will be held on Monday, November 18, 2019, at 4:00 p.m. The Meeting will be held in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor – 2040 Webster Street, Oakland, California.

**AGENDA**

1. Call to Order.
  - a. Roll Call.
  - b. Pledge of Allegiance.
2. Approval of Minutes of the Meeting of October 21, 2019. For Discussion and Action.
3. Lexipol Policy System Training. For Discussion.
4. Chief of Police's Report. For Discussion and Action.
  - a. BART Police Department Monthly Report for September 2019.
  - b. Use of Force / De-escalation Training Materials.
  - c. Lexipol Manual Updates – Memo.
5. Independent Police Auditor's Report. For Discussion and Action.
  - a. Office of the Independent Police Auditor (OIPA) Monthly Report for October 2019.
  - b. National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference Report-back.
  - c. OIPA BART Rider Survey Findings.
6. 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.)
7. Closed Session. (Room 303, Board Conference Room.)
  - a. To Consider Public Employee Discipline/Dismissal/Release in OIPA Case #19-10. Govt. Code §54957.
8. 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 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, October 21, 2019**

A regular meeting of the BART Police Citizen Review Board (BPCRB) was held Monday, October 21, 2019, at 4:05 p.m. in the BART Board Room, 2040 Webster Street, Oakland, California. The meeting was called to order by Chairperson David Rizk; Mag Tatum, Recording Secretary.

**1. Call to Order.**

The regular meeting was convened at 4:05 p.m. by Chairperson Rizk.

Members Present: Members Erin Armstrong, Zachary Bruno,  
George Perezvelez, Pete Longmire,  
Robert Pirone, William White and  
David Rizk.

Absent: Members Christina Gomez, Kenneth Loo and  
Les Mensinger.  
Darren White entered the meeting later.

The Pledge of Allegiance was recited.

**2. Approval of Minutes of the Meeting of September 9, 2019.**

Member Armstrong moved that the Minutes of the Meeting of September 9, 2019 be approved; Member Perezvelez seconded the motion, which carried by unanimous voice vote. Ayes – 7: Members Armstrong, Bruno, Longmire, Perezvelez, Pirone, W. White and Rizk. Noes – 0. Absent – 4: Members Gomez, Loo, Mensinger and D. White.

**3. Introduction to the BART General Manager, Mr. Robert Powers.**

Member Darren White entered the meeting.

Chairperson Rizk introduced BART General Manager, Mr. Powers addressed the Board. The Board and Mr. Powers discussed various topics of mutual concern.

**4. Selection of Members for the Subcommittee on Public Outreach. (Vice Chair Armstrong's request.)**

Vice Chairperson Armstrong brought the matter of Selection of Members for the Subcommittee on Public Outreach before the Board. The item was discussed. Members Armstrong, Bruno, Rizk, D. White and W. White volunteered to be appointed as part of the Subcommittee on Public Outreach.

**5. Use of Force / De-escalation Training Materials. (Chair Rizk's request.)**

Chairperson Rizk presented information regarding the Use of Force / De-escalation Training Materials. The item was discussed and will come back to a future BPCRB meeting.

**6. Chief of Police's Report.**

**a. BART Police Department's Monthly Report for August 2019.**

Interim Police Chief Ed Alvarez presented the BART Police Department's Monthly Report. The report was discussed.

**b. Proposed Modifications to the BART Police Use of Force Review Board.**

Deputy Chief Lance Haight presented the Proposed Modifications to the BART Police Use of Force Review Board. The item was discussed.

Member Longmire exited the meeting.

Chairperson Rizk moved that the proposed Modifications to the BART Police Use of Force Review Board be implemented, by removing two Use of Force Review Committee Members from the Use of Force review process, to codify the new BART Police Use of Force Review Board process in the BPD Manual Policy; and authorize the Office of the Independent Police Auditor to participate in the Use of Force review process. Member D. White seconded the motion. Member Bruno requested a bifurcation of the motion. Chairperson Rizk withdrew the motion.

Chairperson Rizk moved that the Modifications to the BART Police Use of Force Review Board be implemented, by removing two Use of Force Review Committee Members from the review process. Member Bruno seconded the motion, which carried by roll call vote. Ayes – 7: Members Armstrong, Bruno, Perezvelez, Pirone, D. White, W. White and Rizk. Noes – 0. Absent – 4: Members Gomez, Loo, Longmire and Mensinger.

Chairperson Rizk moved to codify the new BART Police Use of Force Review Board process in the BPD Manual Policy; and authorize the Office of the Independent Police Auditor to participate in the Use of Force review process. Member D. White seconded the motion, which carried by unanimous voice vote. Ayes – 6: Members Armstrong, Perezvelez, Pirone, D. White, W. White and Rizk. Noes – 1: Member Bruno. Absent – 4: Members Gomez, Loo, Longmire, and Mensinger.

Member Perezvelez moved to extend the meeting until 6:15 p.m. Member Armstrong seconded the motion. The motion was approved by unanimous acclamation.

**c. Annual Use of Force Report 2018.**

Deputy Chief Lance Haight presented the Annual Use of Force Report 2018. The report was discussed.

## 7. Independent Police Auditor's Reports.

### a. **Office of the Independent Police Auditor (OIPA) Monthly Report for September 2019.**

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

### b. **National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference Report-back.**

Independent Police Auditor Russell Bloom will bring back the National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference Report-back to a future BPCRB Meeting.

### c. **Description and Discussion of OIPA's Use of Force Review Process.** Independent Police Auditor Russell Bloom presented OIPA's Use of Force Review Process. The report was discussed.

### d. **OIPA BART Rider Survey Findings.** Independent Police Auditor Russell Bloom will bring back the BART Rider Survey Findings to a future BPCRB Meeting.

## 8. Public Comment.

Chairperson Rizk called for Public Comment. No comments received.

Chairperson Rizk announced that the Board would enter closed session under Item 9-A (Public Employee Discipline/Dismissal/Release in OIPA Case #19-10) of the regular meeting agenda, and that the Board would reconvene in open session at the conclusion of the closed session.

The Meeting recessed at 6:15 p.m.

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The Meeting reconvened in Closed Session at 6:16 p.m.

## 9. Closed Session.

- a. To consider Public Employee Discipline/Dismissal/Release in OIPA Case #19-10. Govt. Code §54957.

## 10. Adjournment.

The Meeting reconvened in Open Session at 6:17 p.m.

Chairperson Rizk announced that OIPA Case #19-10 will come back to a future BPCRB meeting.

The Meeting was adjourned at 6:18 p.m.

# Bay Area Rapid Transit Police Department

# LEXIPOL

## Knowledge Management System

November 18, 2019



# OVERVIEW

- Online and mobile platform
  - Policies issued and acceptance tracked electronically
- Fully developed, state-specific policies researched and written by public safety professionals and vetted by public safety attorneys
  - Based on nationwide standards and best practices
  - Incorporates state and federal laws and regulations
- Regular updates provided
  - Updates delivered when laws, practices, or standards change
- Daily Training Bulletins
  - Helps personnel learn and apply policies
- CALEA Accreditation integration



# LEXIPOL STANDARD POLICY MANUAL

- State of California Master Policy Manual
  - 164 Standard Policies
  - 704 Total pages
- Policies
  - Sections
    - State
    - Federal
    - Best Practice
    - Discretionary
    - Agency Content





# BART POLICE POLICIES

- **BART PD Policy Manual**  
(last updated September 5, 2019)
  - 180 Policies
  - 896 Total pages



# UPDATES

- Types of Updates
  - Minor
  - Major
  - Critical
- Side-by-side comparison of changes within the policy
- Release notes that contain the legal reasons for each change, as well as rational for changes that don't involve a legal update.
- Allows individual acceptance of each update
- Changes all affected policies if not overridden by agency content



# Bay Area Rapid Transit Police Department

# Questions?



## **BART POLICE CITIZENS REVIEW BOARD**

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### MEMORANDUM

**TO:** BART Police Citizen Review Board Members      **DATE:** November 15, 2019  
**FROM:** BPCRB Chair David Rizk  
**SUBJECT:** Texas Law Review Lexipol: The Privatization of Police Policymaking - Link

Texas Law Review Lexipol: The Privatization of Police Policymaking - Link:

<https://texaslawreview.org/wp-content/uploads/2018/04/Eagly.pdf>

Thank you,  
David Rizk  
District 8 - BPCRB Representative

cc: BPCRB Members  
Police Department  
District Secretary's Office  
Office of the Independent Police Auditor



# Lexipol: The Privatization of Police Policymaking

Ingrid V. Eagly & Joanna C. Schwartz\*

*This Article is the first to identify and analyze the growing practice of privatized police policymaking. In it, we present our findings from public records requests that reveal the central role played by a limited liability corporation—Lexipol LLC—in the creation of internal regulations for law enforcement agencies across the United States. Lexipol was founded in 2003 to provide standardized policies and training for law enforcement. Today, more than 3,000 public safety agencies in thirty-five states contract with Lexipol to author the policies that guide their officers on crucial topics such as when to use deadly force, how to avoid engaging in racial profiling, and whether to enforce federal immigration laws. In California, where Lexipol was founded, as many as 95% of law enforcement agencies now rely on Lexipol’s policy manual.*

*Lexipol offers a valuable service, particularly for smaller law enforcement agencies that are without the resources to draft and update policies on their own. However, reliance on this private entity to establish standards for public policing also raises several concerns arising from its for-profit business model, focus on liability risk management, and lack of transparency or democratic participation. We therefore offer several recommendations that address these concerns while also recognizing and building upon Lexipol’s successes.*

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\* Professors of Law, UCLA School of Law. This Article benefitted greatly from valuable feedback from our colleagues at UCLA School of Law, and from Barry Friedman, Emi MacLean, Jon Michaels, Eric Miller, John Rappaport, David Sklansky, Samuel Walker, and Adrienna Wong. Thanks also to Tim Kensok and the others at Lexipol who shared their insights about the company. We thank Jessica Blatchley, David Koller, Jodi Kruger, Jenny Lentz, Jamie Libonate, Phillip Shaverdian, and Jessica Sonley for their superb research support, and the editors of the *Texas Law Review* for their editorial assistance. Finally, we thank Jennifer Mnookin for suggesting that we write this Article.

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## Introduction

The conduct of American police is never far from the front page of the news. A wide range of policing issues—such as use of force, racial profiling, stop and frisk, roadblocks, Tasers, body cameras, and immigration policing—have garnered significant attention from community members, courts, advocacy organizations, and law enforcement agencies. Much of the discussion about improving police practices has focused on how best to regulate police conduct.<sup>1</sup> Gaining increasing traction in this discussion is the view that comprehensive internal police policies can guide the opaque and largely discretionary conduct of the police.<sup>2</sup> Those engaged in these discussions appear to assume that police departments, local governments, and nonprofits will play leading roles in the creation of police policies. However, the most significant national player in policing policy today is a private limited liability corporation—Lexipol LLC—that has, to date, received almost no scholarly attention.<sup>3</sup>

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1. See generally Joanna C. Schwartz, *Who Can Police the Police?*, 2016 U. CHI. LEGAL F. 437 (describing various police reformers and their strengths and limitations).

2. See *infra* notes 175–177 and accompanying text (summarizing scholarship in this area).

3. To date, the only limited descriptions of Lexipol in academic scholarship occur in our own work and that of John Rappaport. See Ingrid V. Eagly, *Immigrant Protective Policies in Criminal Justice*, 95 TEXAS L. REV. 245, 256 (2016) (discussing the role of Lexipol, “a private service that writes and updates policies and procedures for public safety organizations, including police departments”); John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV.

This Article is the first to examine Lexipol's role in police policymaking. Lexipol explains on its website that it "offers a customizable, reliable and regularly updated online policy manual service, daily training bulletins on your approved policies, and implementation and management services to allow us to manage the administrative side of your policy manual."<sup>4</sup> And Lexipol contends that it is "America's leading provider of state-specific policy management resources for law enforcement organizations."<sup>5</sup> But beyond the statements Lexipol posts about itself online, there is little publicly available information about Lexipol LLC's products, its relationships with local jurisdictions, or the values that its products promote. Accordingly, we submitted public records requests to the 200 largest law enforcement agencies in California, seeking copies of their policy manuals as well as any communications or agreements with Lexipol. In response, we received thousands of pages of Lexipol-authored policy manuals, contracts, promotional materials, and e-mails.<sup>6</sup> We supplemented these public records responses with court records, newspaper stories, and other documentation of Lexipol's work in California and around the country.

We found that Lexipol has expanded like wildfire since its founding in 2003. In only fifteen years, Lexipol has grown from a small company servicing forty agencies in California to a leading national police policymaker, replacing the homegrown manuals of local police departments with off-the-shelf policies emblazoned with the Lexipol LLC copyright stamp. Company employees and executives promote the fact that 95% of California law enforcement agencies subscribe to Lexipol<sup>7</sup>—an assertion

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1539, 1575 (2017) (noting that "some insurers fund or subsidize subscriptions to a turnkey policy-writing service from a company called Lexipol"); Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1188 (2016) (explaining that some risk pools offer discounts on premiums to jurisdictions that subscribe to Lexipol).

4. *Lexipol Products & Services*, LEXIPOL, <http://www.lexipol.com/law-enforcement/law-enforcement-products/> [https://perma.cc/TMH9-ZTZX].

5. *Id.*

6. We discuss our methodology in Part I, *infra*. Our focus in this Article is on the manuals created by Lexipol for police and sheriff's departments. We note, however, that Lexipol also provides policy manuals for fire departments.

7. See, e.g., SBN Staff, *Dan Merkle, Chairman and CEO, Lexipol LLC*, SMART BUS. (July 1, 2012), <http://www.sbnonline.com/category/industry-topics/legal-industry-topics/page/2/> [https://perma.cc/27R9-G5GQ] ("Ninety-five percent of the police agencies in California now use Lexipol's online Knowledge Management System, which includes law enforcement standardization and training programs, and the company has exceeded 30 percent growth for each of the last five years, all without infusions of outside capital."); Report of Bruce D. Praet at 1, *Mitz v. City of Grand Rapids*, No. 1:09-cv-365, 2009 WL 6849914 (W.D. Mich. Oct. 21, 2009) ("Lexipol currently has 94% of all California law enforcement agencies subscribing to our policy and training systems."). California jurisdictions regularly use the 95% figure in their public communications, suggesting that that figure is used in Lexipol's marketing materials as well. See, e.g., CITY OF LAGUNA BEACH: AGENDA BILL NO. 5, at 2 (Sept. 3, 2013), [http://lagunabeachcity.granicus.com/MetaViewer.php?view\\_id=3&clip\\_id=314&meta\\_id=24551](http://lagunabeachcity.granicus.com/MetaViewer.php?view_id=3&clip_id=314&meta_id=24551) [https://perma.cc/6FJS-5F6B] ("Lexipol dominates with over 95% of the cities [in California] using its services."); VALLEJO POLICE DEPARTMENT,

consistent with agencies' responses to our public records requests.<sup>8</sup> Lexipol's rapid growth has allowed it not only to saturate the market in California but also to expand its reach to 3,000 public safety agencies in thirty-five states across the country.<sup>9</sup> Although Lexipol is not the only private entity to sell policies to local police departments in the United States, it appears to sell policy manuals and trainings to far more local law enforcement agencies than its competitors.<sup>10</sup> Indeed, law enforcement agencies in several states describe

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2013: THE YEAR IN REVIEW 29 (2014), <http://www.ci.vallejo.ca.us/common/pages/DisplayFile.aspx?itemId=74914> [<https://perma.cc/Q3RY-F8UW>] ("More than 95 percent of California law enforcement agencies . . . now utilize Lexipol for their policies and procedures . . ."); Alex Emslie, *Vallejo City Manager Responds to Questions About Police Shootings*, KQED NEWS (May 20, 2014), <https://www.kqed.org/news/2014/05/20/vallejo-city-manager-responds-to-questions-about-police-shootings/> [<https://perma.cc/L6B3-MGGG>] ("More than 95 percent of California law enforcement agencies . . . subscribe to the Lexipol Policy system."). Lexipol executives reported to us that 94% of all California public safety agencies use Lexipol—a figure which reflects not only police departments and sheriff's departments, but also law enforcement for parks, college campuses, transit systems, and airports. E-mail from Tim Kensok, Vice President, Prod. Mgmt., Lexipol, to authors (Sept. 13, 2017, 4:07 PM) (on file with authors).

8. See *infra* Table 2; Appendix. Our public records requests revealed that 83% of California's 200 largest law enforcement agencies were Lexipol customers. Smaller agencies were especially likely to use Lexipol: 95% of responding agencies with fewer than 100 officers relied on Lexipol policies.

9. See *infra* Table 1. Lexipol executives assert that approximately 2,500 of those 3,000 public safety agencies are local police and sheriff's departments. See LEXIPOL: REVIEW OF LEXIPOL: THE PRIVATIZATION OF POLICE POLICYMAKING 4 (2017) (on file with authors) [hereinafter SECOND LEXIPOL POWERPOINT] (presenting company information in a PowerPoint given to authors by Lexipol LLC). The remainder are fire departments, probation departments, and other types of public safety agencies. Telephone Interview with Tim Kensok, Vice President, Lexipol, Gordon Graham, Vice President, Lexipol, Leslie Stevens, Vice President, Lexipol, Kevin Piper, Vice President, Lexipol, and Shannon Piper, Dir. of Mktg. & Comm'n's, Lexipol (Sept. 8, 2017) [hereinafter Lexipol September Conference Call].

10. Other private entities that provide similar services include: OSS Law Enforcement Advisors, <http://www.ossrisk.com/consultant/Law-Enforcement/page174.html> [<https://perma.cc/W54Z-P636>]; Daigle Law Grp., LLC, <http://daiglelawgroup.com> [<https://perma.cc/J36N-KFBA>]; Pub. Safety Specialist's Grp., <http://www.pssg.net/liability/liability.shtml> [<https://perma.cc/68LK-FPDA>]; Legal & Liability Risk Management Institute, <http://www.llrmi.com/index.shtml> [<https://perma.cc/8LTE-TWTX>]; The Thomas & Means Law Firm, <https://www.thomasandmeans.com/policy-manual-work> [<https://perma.cc/YDW3-UFLV>]; and Hillard Heintze, <http://www.hillardheintze.com/law-enforcement-consulting/police-department-assessment/> [<https://perma.cc/V8WS-QBA5>]. Most of these companies were reluctant to provide us with information about their law enforcement clients, but the information we have been able to collect suggests that these companies work with fewer law enforcement agencies than does Lexipol. See Telephone Interview by David Koller with Eric Daigle, Principal, Daigle Law Group, LLC (Aug. 28, 2017) (reporting that his company consults with approximately eighty law enforcement agencies, and confirming that Lexipol has only a couple of competitors—including The Daigle Group—because "Lexipol had the market cornered for so long"); Telephone Interview by David Koller with Dennis W. Bowman, President & Founder, Public Safety Specialist's Group (Aug. 31, 2017) (reporting that his company has worked with forty to fifty law enforcement agencies on their policy manuals since the company's formation in 2001); Telephone Interview by David Koller with David Lee Salmon II, Law Enforcement Advisor, OSS Law Enf't Advisors (Sept. 13, 2017) (reporting that OSS has "well over" 2,000 clients but explaining that that figure includes local law enforcement agencies,



it as the “sole source provider” of standardized, state-specific law enforcement policy manuals.<sup>11</sup>

The key to Lexipol’s commercial success appears to be its claims to reduce legal liability in a cost-effective manner. Lexipol promotes itself as providing departments with a “policy that is always up to date” containing “legally defensible content” that will “protect your agency today.”<sup>12</sup> In fact, Lexipol’s promotional materials assert that departments using Lexipol have fewer lawsuits filed against them and pay less to resolve the suits that are filed.<sup>13</sup> Lexipol also argues that its policy manuals are higher-quality, more user-friendly, and less expensive than manuals that local jurisdictions could create on their own. Lexipol claims its standardized policies reflect court opinions, legislation, and what it calls “best practices” in each state.<sup>14</sup> Lexipol updates its policies, and local jurisdictions can incorporate those updates into their policy manuals with a click of a button. And Lexipol’s sliding-fee scale, which is based on the number of officers employed by the agency, makes this prepackaged deal particularly appealing for smaller departments that would not have the resources to develop and update policies on their own.<sup>15</sup>

Lexipol’s meteoric rise has significant implications for longstanding debates about the role policymaking might play in police reform. Beginning in the 1960s,<sup>16</sup> Anthony Amsterdam, Kenneth Culp Davis, Herman Goldstein, and others argued that comprehensive police policies could guide police discretion, improve police decisionmaking, and increase transparency.<sup>17</sup> These scholars advocated for a rulemaking procedure akin to

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municipal groups, insurance companies, state agencies, state associations, and private employers). We repeatedly reached out to LLRMI, Thomas & Means, and Hillard Heintze, and did not get responses to our inquiries.

11. See *infra* notes 311–312 and accompanying text.

12. *About Lexipol*, LEXIPOL, <http://www.lexipol.com/about-us/> [https://perma.cc/3W98-VXF5] (click on video).

13. See *infra* notes 144–148 and accompanying text.

14. See *infra* Figure 1.

15. For example, the Calaveras County Sheriff’s Department, with fifty-nine officers, was charged less than \$9,000 for a one-year contract, while larger agencies were charged more. See *infra* notes 110–120 and accompanying text for a discussion of Lexipol’s cost structure.

16. For a history of administrative rulemaking in policing, see Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department “Pattern or Practice” Suits in Context*, 22 ST. LOUIS U. PUB. L. REV. 3, 14–17 (2003).

17. See, e.g., Herman Goldstein, *Police Discretion: The Ideal Versus the Real*, 23 PUB. ADMIN. REV. 140, 146 (1963) (arguing that police should acknowledge the role of discretion in law enforcement); Joseph Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543, 588–89 (1960) (suggesting that legislatures should create Policy Appraisal and Review Boards to review the nonenforcement decisions of police officers and make policy recommendations); Jerome Hall, *Police and Law in a Democratic Society*, 28 IND. L.J. 133, 146 (1953) (advancing the idea that police methods and policies should “reflect democratic values”); Sanford H. Kadish, *Legal Norm and Discretion in the Police and Sentencing Processes*, 75 HARV. L. REV. 904, 904 (1962) (asserting that “criminal law

that which exists for administrative agencies, whereby proposed policies would be subject to notice and comment by the public before promulgation, so as to invite “community reaction.”<sup>18</sup> In recent years, Barry Friedman, Christopher Slobogin, Eric Miller, and others have renewed these earlier calls for policing policies created by an administrative rulemaking process.<sup>19</sup> Yet Lexipol does not appear in these ongoing discussions about the types of police policies that will best guide police behavior, or the need for transparency and community engagement in the development of those policies.

As we reveal in this Article, Lexipol’s approach to police policymaking diverges in several significant ways from that long advocated by scholars and experts. Commentators have viewed police policies as a tool to constrain officer discretion and to improve officer decisionmaking. Lexipol, in contrast, promotes its policies as a risk management tool that can reduce legal liability. Commentators have long contended that the Supreme Court’s policing decisions are wholly inadequate to guide law enforcement discretion

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enforcement can often be improved substantially by the imposition of legal procedures and standards upon the exercise of discretion”); Wayne R. LaFare, *The Police and Nonenforcement of the Law* (pt. 1), 1962 WIS. L. REV. 104, 104 (1962) (discussing the reasons why police discretion has rarely been recognized in the law); Carl McGowan, *Rule-Making and the Police*, 70 MICH. L. REV. 659, 674 (1972) (highlighting the lack of actual police participation in the making of rules governing police). Note, however, that the earliest calls for administrative rulemaking for police occurred in the early 1900s. See Christopher Slobogin, *Policing as Administration*, 165 U. PA. L. REV. 91, 123 (2016) (citing BRUCE WYMAN, *THE PRINCIPLES OF THE ADMINISTRATIVE LAW GOVERNING THE RELATIONS OF PUBLIC OFFICERS* (1903)).

18. Gerald M. Caplan, *The Case for Rulemaking by Law Enforcement Agencies*, 36 L. & CONTEMP. PROBS. 500, 509 (1971); see also Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 423 (1974) (“[I]nformed authorities today agree with rare unanimity upon the need to direct and confine police discretion by the same process of rulemaking that has worked excellently to hold various other forms of public agencies to accountability under standards of lawfulness, fairness and efficiency.”); Kenneth Culp Davis, *An Approach to Legal Control of the Police*, 52 TEXAS L. REV. 703, 725 (1974) (“My central idea is that police practices should no longer be exempt from the kind of judicial review that is usual for other administrative agencies.”); see also REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 164–65 (1968) (arguing in favor of formal policymaking pursuant to an administrative-type procedure for police departments).

19. See, e.g., Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1833 n.28 (2015) (observing that, in calling for administrative rulemaking in policing, they “stand on the shoulders of giants”); Eric J. Miller, *Challenging Police Discretion*, 58 HOW. L.J. 521, 525 (2015) (proposing that police reformers “focus on the departmental level of police policy-making to give local communities and disadvantaged individuals a more meaningful voice in evaluating and checking local police policy”); Slobogin, *supra* note 17, at 91 (arguing that when police create “statute-like policies that are aimed at largely innocent categories of actors . . . they should have to engage in notice-and-comment rulemaking or a similar democratically oriented process and avoid arbitrary and capricious rules”); see also Andrew Manuel Crespo, *Systemic Facts: Toward Institutional Awareness in Criminal Courts*, 129 HARV. L. REV. 2049, 2050 (2016) (identifying a trend calling “for a pivot to law enforcement self-regulation as a primary means of constraining state power in the criminal justice arena”).

regarding racial profiling, stop and frisk, and other practices.<sup>20</sup> Yet Lexipol has resisted efforts to craft policies that go beyond the minimum requirements of court decisions because such policies might increase legal liability exposure.<sup>21</sup>

Moreover, the process by which Lexipol develops its policies is not consistent with the approach recommended by many policing experts who have emphasized the importance of transparent policymaking, with opportunities for public input.<sup>22</sup> Lexipol does not disclose information about who is making Lexipol's policies and what interests are prioritized in their process. And although Lexipol informally receives feedback from subscribing jurisdictions about its policies, its policymaking process departs considerably from the transparent, quasi-administrative approach recommended by scholars and policing experts and adopted by some law enforcement agencies.<sup>23</sup> Also, Lexipol's profit-seeking motive influences its product design in concerning ways. For example, Lexipol's policies are copyrighted, and the company vigorously defends that copyright as a means of maintaining its profitability. Yet police policymaking has long been viewed as a collaborative enterprise. Departments across the country have traditionally shared their policies as a means of learning from each other and have borrowed liberally from each others' policies. Lexipol's business model impedes this generative process.<sup>24</sup>

In this Article, we do not reach any conclusions about how Lexipol's policies compare to those adopted by law enforcement agencies that do not purchase Lexipol's products. Indeed, some of these same critiques have been made of local law enforcement agencies that draft their own policies.<sup>25</sup> Yet

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20. See, e.g., Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 125 (2017) (criticizing Fourth Amendment law as in fact "legaliz[ing] racial profiling," resulting in ongoing police surveillance, social control, and the injury and death of African Americans); see also *infra* notes 189–192 and accompanying text.

21. See *infra* notes 180–194 and accompanying text for further discussion of these concerns.

22. See, e.g., Friedman & Ponomarenko, *supra* note 19, at 1827 (arguing that police practices should be legislatively authorized and "subject to public rulemaking").

23. See *infra* notes 213–226 and accompanying text for further discussion of these concerns.

24. See *infra* notes 241–253 and accompanying text for further discussion of these concerns.

25. For example, although we critique Lexipol's resistance to model use of force policies recommended by the International Association of Chiefs of Police and the Police Executive Research Forum, see *infra* notes 180–195 and accompanying text, we recognize that there have also been powerful critiques of use of force policies promulgated by departments that do not contract with Lexipol. See, e.g., Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 VA. L. REV. 211, 212 (2017) (arguing that use of force policies of the fifty largest policing agencies in the United States are insufficiently specific and lack guidance in key areas); see also POLICE USE OF FORCE PROJECT, <http://useofforceproject.org/#project> [https://perma.cc/57AN-GAW] (reviewing police use of force policies in ninety-one of the one hundred largest law enforcement agencies and finding that policies frequently failed to include eight "common-sense limits on police use of force"). Critics have also argued that police departments should—but do not—view

because Lexipol appears to be the single most influential actor in police policymaking, its successes—and failures—have an outsized impact on American police policy. As Lexipol goes, so go thousands of law enforcement agencies across the country. And Lexipol's for-profit status raises additional concerns that do not apply to government and nonprofit police policymakers.

By identifying Lexipol as a force to be reckoned with in American policing, this Article also begins an important conversation about the privatization of police policymaking. Privatization scholars tend, in varying degrees, to applaud privatization of government functions as cost-effective<sup>26</sup> or to despair that privatization impedes democratic values.<sup>27</sup> Our research regarding the privatization of police policymaking offers evidence to support both views. Lexipol appears to have solved a problem that has proven elusive to those advocating for police policymaking—how to promulgate police policies in the almost 18,000 highly localized law enforcement agencies across the country.<sup>28</sup> And agencies that contract with Lexipol may well have

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policymaking as a quasi-administrative exercise. *See generally* Friedman & Ponomarenko, *supra* note 19, at 1833 (summarizing scholarly arguments for using administrative processes to govern policing policy). And critics have complained that police policies are often kept secret. *See, e.g.,* Garrett & Stoughton, *supra*, at 277 (finding that only seventeen of the fifty largest police departments published their policies and patrol manuals online).

26. *See, e.g.,* Steven J. Kelman, *Achieving Contracting Goals and Recognizing Public Law Concerns: A Contracting Management Perspective* (arguing that privatization will often be the most efficient solution for government and that limitations on privatization can be counterproductive), in *GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY* 153, 158–59 (Jody Freeman & Martha Minow eds., 2009); Stan Soloway & Alan Chvotkin, *Federal Contracting in Context: What Drives It, How to Improve It* (arguing that private companies often have better resources and research capacity than government entities), in *GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY*, *supra* at 192, 221–22; Jody Freeman, *Extending Public Law Norms Through Privatization*, 116 *HARV. L. REV.* 1285, 1296 (2003) (“From this pragmatic perspective, privatization is a means of improving productive efficiency: obtaining high-quality services at the lowest possible cost . . .”).

27. *See, e.g.,* JON D. MICHAELS, *CONSTITUTIONAL COUP: PRIVATIZATION'S THREAT TO THE AMERICAN REPUBLIC* (2017) (describing how privatization threatens constitutional principles and threatens government health and stability); Sharon Dolovich, *How Privatization Thinks: The Case of Prisons* (arguing that operators of private prisons will promote efficiency over other important interests), in *GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY*, *supra* note 26, at 128, 134; Martha Minow, *Outsourcing Power: Privatizing Military Efforts and the Risks to Accountability, Professionalism, and Democracy* (describing concerns about the process by which contracts are awarded for government work and the difficulty of monitoring private employees), in *GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY*, *supra* note 26, at 110, 111; David A. Sklansky, *The Private Police*, 46 *UCLA L. REV.* 1165, 1277–78 (1999) (highlighting how the growing private security industry undermines the function of the criminal law).

28. As Monica Bell has noted, “the sheer volume of locally controlled police departments, all of which have slightly different policies and issues,” has impeded systemic police reform across these different localities. Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *YALE L.J.* 2054, 2138 (2017); *see also* Friedman & Ponomarenko, *supra* note 19, at 1886 (arguing that “the real challenge” to applying rulemaking to policing “is identifying

a more complete and up-to-date policy manual than they would have developed on their own—Lexipol subscribers quoted on its website certainly make that claim.<sup>29</sup> But our research also raises serious questions about the values, process, and expertise called upon to create the Lexipol policies that regulate the public police.

Many believe—and we agree—that police departments need comprehensive and detailed policies to guide officer discretion and should engage with local communities in some manner when shaping those policies. We additionally believe that plans to improve law enforcement policymaking must recognize the prevalence of Lexipol and take account of the strengths and weaknesses of its approach. Accordingly, we recommend that Lexipol be more transparent about its policymaking process so that local governments can make more informed decisions about the policies that guide their law enforcement agencies; that local governments and courts take a more active role in police policymaking; and that nonprofits and scholars develop more easily accessible alternative model policies that are compatible with Lexipol's user-friendly platform. We believe that these recommendations will encourage local jurisdictions to craft their own policies when possible and, when contracting with Lexipol, view the company as a first—but not final—step in the policymaking process.

### I. The Rise of Lexipol

In this Part, we share our findings about Lexipol's founders, its products, and its relationships with the local governments it serves. In conducting this research, we first gathered information from Lexipol's website, financial filings, press releases, news sources, and court documents. We supplemented this research with public records requests to the 200 largest police and sheriffs' departments in California, seeking each department's policy manual and any dealings with Lexipol LLC—including contracts, payments, correspondence, and other memoranda.<sup>30</sup> We chose to conduct this research in California, where Lexipol was founded. Soon thereafter, we were contacted by a vice president at Lexipol who had learned about our public records requests from Lexipol subscribers. We had several conversations with this vice president and other Lexipol executives about the company's business model and process for creating its policy manuals.

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methods of public participation that can be scaled to communities and police forces of various sizes").

29. See *infra* notes 152–158 and accompanying text.

30. To identify the 200 largest police and sheriff's departments in California, we relied on a census of local law enforcement agencies conducted by the Bureau of Justice Statistics (BJS). See Appendix (describing our methodology).

In this Part, we provide a descriptive account of Lexipol's services, drawn from the information we gathered. We begin by introducing what we know about Lexipol's founders and employees. We then describe the company's products, cost structure, sales methods, and growth. Later, in Part II, we build on our findings to analyze Lexipol's model of police policymaking.

#### A. *People*

Lexipol LLC was founded in 2003 by Bruce Praet, Gordon Graham, and Dan Merkle.<sup>31</sup> Praet, an attorney and former law enforcement officer, appears to have had the initial vision for the company. While working as a partner at the Southern California law firm of Ferguson, Praet and Sherman, Praet developed a specialty in “aggressively defending police civil matters such as shootings, dog bites and pursuits.”<sup>32</sup> In the late 1990s, Praet's firm assisted the California agencies he represented to reduce liability exposure by recommending they adopt a policy he authored on vehicular pursuits.<sup>33</sup> A 1959 California law provided that agencies with a written policy for vehicular pursuits were immunized from certain forms of civil damages.<sup>34</sup> By drafting such a policy for his clients, Praet shielded them from civil liability for these types of claims.

Praet's experience developing a model policy for vehicle pursuits inspired him to create a more comprehensive set of policies that local law enforcement agencies could purchase. Working with Geoff Spalding, a Police Captain with the Fullerton Police Department, Praet created a model California law enforcement manual based on Fullerton's policies.<sup>35</sup> Praet used this model when the Escalon Police Department retained his firm to write its entire policy manual in 1999. By 2002, the firm maintained the policy manuals for about forty California-based law enforcement agencies.<sup>36</sup>

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31. Deposition of Bruce D. Praet at 7, *Schrock v. Taser Int'l, Inc.*, No. CIVDS-14-8556, 2016 WL 5656893 (Cal. Super. Ct. Mar. 25, 2016) (on file with authors) [hereinafter Praet Deposition].

32. Thadeus Greenon, *Arraignment Only the First Step in Moore Case*, EUREKA TIMES STANDARD (Dec. 12, 2007), <http://www.times-standard.com/general-news/20071212/arraignment-only-the-first-step-in-moore-case> [https://perma.cc/46Q2-9SCR] (quoting a description of Praet's firm from the Lexipol website); see also Mark I. Pinsky, *Former Officer Defends Police in Courtroom: Law: Bruce D. Praet Faces What May Be the Challenge of His Legal Career in the Newport Police Sexual Harassment Case*, L.A. TIMES (Dec. 28, 1992), [http://articles.latimes.com/1992-12-28/local/me-2115\\_1\\_police-officers](http://articles.latimes.com/1992-12-28/local/me-2115_1_police-officers) [https://perma.cc/3GPQ-TAKR] (chronicling Praet's career from police officer to lawyer).

33. LEXIPOL, LEXIPOL POLICY DEVELOPMENT—HOW WE DO WHAT WE DO 12 (Feb. 10, 2017) (on file with authors) [hereinafter FIRST LEXIPOL POWERPOINT] (presenting company information in a PowerPoint given to authors by Lexipol).

34. *Id.* (citing CAL. VEH. CODE § 17004.7 (West 2007)).

35. *Id.* at 13.

36. *Id.*

In 2003, Praet founded Lexipol with Gordon Graham and Dan Merkle, and transferred his policy development work from his law firm to the new company.<sup>37</sup> Graham, also a former law enforcement officer and law school graduate, additionally has a master's degree in Safety and Systems Management.<sup>38</sup> In the 1980s, while a sergeant in the California Highway Patrol, Gordon developed daily trainings for officers that he called the "SROVT program: Solid, Realistic, Ongoing, Verifiable, Training."<sup>39</sup> In the early 1990s, Graham began adapting his training programs for private sector and public safety organizations.<sup>40</sup> When Graham joined Lexipol as co-President, he drew on his expertise in public entity risk management to develop training materials to accompany the manuals.<sup>41</sup>

Dan Merkle served as Lexipol's first Chairman and CEO.<sup>42</sup> Merkle has a background as a corporate executive<sup>43</sup> and was recruited to focus on building the company's infrastructure.<sup>44</sup> When Merkle left Lexipol in 2013 to join a media technology company,<sup>45</sup> Ron Wilkerson became the new CEO of Lexipol.<sup>46</sup> As the company has grown beyond its original founders, it has hired scores of attorneys, marketing specialists, and account managers.<sup>47</sup>

Although Lexipol applauds the "all-star team of public safety veterans"<sup>48</sup> that drafts its polices and trainings, there is no publicly available

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37. Letter from Lexipol to Pat Smith, Chief of Police, Beaumont Police Dep't (Sept. 4, 2003) (on file with authors) ("Lexipol has assumed all functions of the policy manual development work formerly performed by the law firm of Ferguson Praet and Sherman.").

38. *About GRC, Bio: Gordon Graham*, GRAHAM RES. CONSULTANTS, <http://www.gordongraham.com/about.html> [<https://perma.cc/9Z33-EAAE>].

39. *Id.*

40. *Id.*

41. See Letter from Lexipol to Pat Smith, *supra* note 37 ("Gordon is leading a group developing a training system based on the content of each agency's policy manual and his extraordinary knowledge base."); see also GRAHAM RES. CONSULTANTS, *supra* note 38 (recounting Graham's expertise in police training programs before establishing Lexipol).

42. SBN Staff, *supra* note 7.

43. Dan Merkle, LINKEDIN, <https://www.linkedin.com/in/dan-merkle/>.

44. See Letter from Lexipol to Pat Smith, *supra* note 37 ("Dan Merkle has been recruited to lead our investment in systems and resources to better serve our subscribing agencies.").

45. Merkle, *supra* note 43.

46. Ron Wilkerson, LINKEDIN, <https://www.linkedin.com/in/ron-wilkerson-8a075b8a>. In 2013, Praet and Graham sued Merkle for allegedly attempting to strip Praet of his ownership interest in Lexipol. See Praet v. Merkle, No. 30-2013-00622437 (Cal. Super. Ct. Jan. 4, 2013); see also *Veritone Appoints New President of Public Safety, Expanding Cognitive Media Platform to Law Enforcement*, CISION: PRWEB (Sept. 15, 2016), <http://www.prweb.com/releases/2016/09/prweb13690214.htm> [<https://perma.cc/9NZU-5EK6>] (announcing Dan Merkle as the new CEO of Veritone, Inc.).

47. See *Current Career Opportunities*, LEXIPOL, <http://www.lexipol.com/careers/> [<https://perma.cc/S9YF-KXP8>] (stating that Lexipol is currently hiring product managers, attorneys, and development representatives).

48. Letter from Lexipol to Roy Davenport, Assistant Chief Deputy, Denton Cty. (Dec. 3, 2012) (on file with authors).

information about who these public safety veterans are. We found information about Praet and Graham, but could find no information about the identities or credentials of their 120 employees.<sup>49</sup> Indeed, none of the marketing materials that we obtained from the California jurisdictions we surveyed included information on names or credentials of Lexipol's employees. When we spoke to company executives about this issue, they provided us with the photos, names, and titles of ten Lexipol executives, and one vice president told us that he would love to include photos and bios of staff on Lexipol's website, but that he had not yet had a chance to do so.<sup>50</sup> Another vice president observed that law enforcement agencies can always call Lexipol to learn more about the people who develop policies.<sup>51</sup>

Bruce Praet was equally unforthcoming about Lexipol's employees in a recent deposition taken after Lexipol was sued over its Taser policy.<sup>52</sup> Praet testified that Lexipol identifies best practices by relying on their internal subject matter experts and feedback from their subscriber agencies.<sup>53</sup> Yet when Praet was directly asked whether Lexipol "employ[s] subject matter experts on different areas of law enforcement practices who determine what best practices are," he acknowledged that they did not.<sup>54</sup> He explained: "We don't have a specific subject matter expert on a specific topic, but a good number of our people are law enforcement background, so there's a wealth of information that we draw upon, depending on the subject."<sup>55</sup> Similarly, Praet could not (or would not) identify Lexipol employees who had particular expertise in Tasers.<sup>56</sup> Instead, he said, Lexipol "had a wealth of people who

49. FIRST LEXIPOL POWERPOINT, *supra* note 33, at 13 (reporting a rapid growth from 61 employees in 2014 to 120 employees in 2016).

50. See Lexipol September Conference Call, *supra* note 9 (statement of Tim Kensok, Vice President, Prod. Mgmt., Lexipol); SECOND LEXIPOL POWERPOINT, *supra* note 9, at 8, 12 (responding to the authors' criticisms about a lack of transparency with pictures and brief descriptions of ten executives).

51. Lexipol September Conference Call, *supra* note 9 (statement of Leslie Stevens, Vice President, Legal Dep't, Lexipol).

52. In the deposition, Praet was repeatedly asked to identify employees involved in crafting Lexipol's 2008 Taser policy. After several nonresponsive answers, Praet was asked whether he could name a single person with whom he consulted about a Taser-related memo. Praet's response:

A: [T]he staffing at Lexipol has changed so many times over 15 years, I couldn't tell you. All I can tell you is that whoever was on staff in 2009 at the time of this I probably would have consulted with several people.

Q: Can you name any of those several people?

A: That's my problem. I don't have a roster of who was on staff in 2009 to give you names, and I don't want to give you somebody who came on in January of 2010 or somebody who may have left in 2008. So . . .

Praet Deposition, *supra* note 31, at 41. For additional details about the case, see *infra* note 237.

53. Praet Deposition, *supra* note 31, at 12.

54. *Id.*

55. *Id.* at 12–13.

56. *Id.* at 21.



have a significant amount of information about Tasers, but not one person who was the go-to person.”<sup>57</sup>

### B. Products

On its website and in its promotional materials sent to potential law enforcement customers, Lexipol markets three main products: (1) a policy manual, (2) Daily Training Bulletins, and (3) implementation services.<sup>58</sup> In this section, we share what we have learned about each product.

*1. Policy Manual.*—Lexipol’s signature product is its copyrighted policy manual.<sup>59</sup> Lexipol has a “global master” manual that is based on federal standards and best practices.<sup>60</sup> It has used this global master to create “state master” manuals that incorporate state-specific standards.<sup>61</sup>

There is limited public information available regarding how Lexipol goes about drafting the policies contained in its manuals. We know from speaking with executives at Lexipol that they work with a team of company attorneys and former law enforcement officials to review court decisions, legislation, and other materials applicable to a state.<sup>62</sup> Lexipol also considers media reports, client feedback, trends in law enforcement, and reports by outside groups including the Department of Justice, the American Civil Liberties Union (ACLU), and the National Institute of Justice.<sup>63</sup> Anecdotal evidence also plays a significant role in Lexipol’s policy development

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57. *Id.*

58. See *Lexipol Products & Services*, LEXIPOL, <http://www.lexipol.com/law-enforcement/law-enforcement-products/> [<https://perma.cc/LDS6-JGRA>] (describing a “customizable, reliable and regularly updated online policy manual service, daily training bulletins on your approved policies, and implementation and management services to allow [Lexipol] to manage the administrative side of [an agency’s] policy manual”).

59. Lexipol vice presidents made clear that Lexipol offers a “policy manual,” not a “procedure manual.” Telephone Interview with Tim Kensok, Vice President, Lexipol, Leslie Stevens, Vice President, Lexipol, and Kevin Piper, Vice President, Lexipol (Feb. 10, 2017) [hereinafter Lexipol February Conference Call]. In Lexipol’s view, a policy manual “[a]nswers major organizational issues,” is “[u]sually expressed in broad terms,” has “[w]idespread application,” and “[c]hanges less frequently.” FIRST LEXIPOL POWERPOINT, *supra* note 33, at 16. In contrast, a procedure manual “[d]escribes a process,” is “[o]ften stated in detail,” is “[p]rone to change,” and has “[n]arrow application.” *Id.*

60. Lexipol February Conference Call, *supra* note 59.

61. FIRST LEXIPOL POWERPOINT, *supra* note 33, at 15; see also Letter from John Fitisemanu, Client Servs. Representative, Lexipol, to Tammie Stilinovich, Officer, Long Beach Police Dep’t (Feb. 28, 2014) (on file with authors) (stating that “Lexipol provides . . . [c]ustomized content for the state of California”). For a copy of Lexipol’s California state master policy document, see LEXIPOL, CALIFORNIA STATE MASTER POLICE DEPARTMENT: POLICY MANUAL (n.d.), which the authors obtained through their public records request to the Irvine Police Department.

62. Lexipol February Conference Call, *supra* note 59.

63. FIRST LEXIPOL POWERPOINT, *supra* note 33, at 19, 21; Lexipol September Conference Call, *supra* note 9.

process. As Bruce Praet explained in a deposition, “we’re constantly getting anecdotal information, and I can’t speak for everybody, but everybody on the Lexipol staff, when they become aware of something that may impact policy . . . they share that and then that is round-tabled, and if it has a policy impact, then that’s incorporated into our content.”<sup>64</sup>

The Lexipol vice presidents we interviewed offered little guidance about how Lexipol ultimately weighs and balances these various sources of information. They simply reported that policies are designed by looking at all available evidence and having all relevant employees weigh in on how the policies should be crafted.<sup>65</sup> As Bruce Praet similarly reported in his deposition, “if an issue comes up, typically, among the attorneys and subject matter experts that we have, we would, for lack of a better term, turkey shoot or brainstorm the issue and see what we could come up with [as] an appropriate response.”<sup>66</sup> Once Lexipol decides to develop a policy, employees determine how the policy should be written. The vice presidents with whom we spoke described this process as “a challenge” that often results in disagreements between the legal team (which is focused on risk to its agency clients in the courtroom) and the content-development team (which is focused on risk to law enforcement officers on the street).<sup>67</sup> How these disagreements resolve “varies based on what the issue is and the timing.”<sup>68</sup> Lexipol does not make public the substance of its deliberative process or the justifications for its policy decisions. Indeed, Lexipol appears to keep no discoverable records of its decisionmaking process regarding policy content.<sup>69</sup>

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64. Praet Deposition, *supra* note 31, at 107.

65. Lexipol February Conference Call, *supra* note 59.

66. Praet Deposition, *supra* note 31, at 21.

67. Lexipol February Conference Call, *supra* note 59.

68. *Id.*

69. In a deposition about Lexipol’s Taser policy, Bruce Praet was asked about the process by which the company wrote the policy and an advisory memorandum to its subscribers. Praet answered:

I’m sure that I had communications with all of our people involved in the development of the policy, and we have a collaborative forum in which the attorneys and everybody on staff at Lexipol can brainstorm issues, so I’m sure there was a good deal of communication between myself as an attorney, other attorneys in the—on Lexipol’s staff and those who might have any subject matter interest or expertise.

Praet Deposition, *supra* note 31, at 27. The attorney then asked for documentation regarding these conversations:

Q: Do you know whether there are any e-mails regarding these communications?

A: I doubt it.

Q: Why is that? I mean, why would there not be?

A: Because we don’t communicate much by way of e-mail.

Q: How would those communications take place?

A: Um, I’d be guessing, and I don’t want to guess, but I would imagine there would have been phone calls.

Agencies that contract with Lexipol are provided a draft state-specific policy manual for review.<sup>70</sup> The draft manual is typically accompanied by a diagram (reproduced in Figure 1) that captures the framework that Lexipol uses for categorizing the policies included in its manuals. According to this typology, some policies are required by federal or state law, whereas others are considered “best practices” or “discretionary.” Lexipol’s draft policy manuals are coded to inform readers of the categorization of each proposed policy.<sup>71</sup>

Figure 1: The Components of a Lexipol Policy Manual<sup>72</sup>



Jurisdictions can choose whether to adopt, reject, or modify each policy.<sup>73</sup> Lexipol advises its users to “fully understand the ramifications and

*Id.* at 27–28.

70. *See, e.g.*, LEXIPOL, LAW ENFORCEMENT POLICY MANUAL & DAILY TRAINING BULLETINS: PRESENTED TO COSTA MESA POLICE DEPARTMENT (2014) (on file with authors) (proposing a Law Enforcement Policy Manual to the Costa Mesa Police Department).

71. *See, e.g.*, Invoice from Lexipol to Alameda Police Dep’t (Sept. 26, 2007) (on file with authors) (referring to a “color coded draft”).

72. Figure 1 was obtained from the Long Beach Police Department in response to our public records request. LEXIPOL PROPOSAL PRESENTED TO LONG BEACH POLICE DEP’T, LAW ENFORCEMENT POLICY MANUAL & DAILY TRAINING BULLETINS (Feb. 28, 2014) (on file with authors) [hereinafter LONG BEACH PROPOSAL].

73. *See, e.g.*, E-mail from Chris Hofford, Lieutenant, Baldwin Park Police Dep’t, to authors (Nov. 7, 2016, 3:51 PM) (on file with authors) (“Policy changes proposed by Lexipol are addressed electronically in Lexipol’s online environment. Proposed changes that we accept in part or whole are incorporated into the next released edition of the Policy Manual. Proposed changes that we reject are not retained.”).

use caution before changing or removing” policies derived from federal and state law.<sup>74</sup> Policies characterized as “best practices” are reportedly “considered the currently accepted best practice in the public safety field,” and Lexipol advises adopters that “[t]his content may be changed if necessary, with caution.”<sup>75</sup> Discretionary policies are described as those “that may or may not be important for your agency” and “may be changed or removed as needed.”<sup>76</sup> Jurisdictions understand this message: as one agency representative told us in responding to our public records request, those Lexipol policies designated as “best practices” or “discretionary” are “optional,” but those that are the “law” are required.<sup>77</sup>

In promotional materials, Lexipol describes its manual as “a complete regulatory and operational policy manual” that “may be accepted for use immediately.”<sup>78</sup> Nonetheless, Lexipol does take some steps that enable local jurisdictions to customize their manuals. When Lexipol first begins working with a department, it asks the department to fill out a questionnaire that is used by the company to ensure that the terminology used in the manual (such as “officers” or “deputies”) is consistent with that used by the particular agency.<sup>79</sup> Once Lexipol receives the questionnaire, its staff members spend

74. LEXIPOL, LEXIPOL CITATION FAQs: GUIDANCE FOR AGENCY ADMINISTRATORS ON THE USE OF CITATIONS AND EDIT LEVELS IN LEXIPOL POLICY MANUALS 4 (2015) (on file with authors) [hereinafter LEXIPOL CITATION FAQs].

75. DAN FISH, BILL MCAULIFFE & JEFF WITTENBERGER, SANTA CLARA POLICE DEPARTMENT PROJECT MANAGEMENT GUIDE AND POLICY IMPLEMENTATION PLAN 5 (2017) (on file with authors) [hereinafter SANTA CLARA POLICE DEPARTMENT POWERPOINT].

76. *Id.* Another Lexipol document describes discretionary content as:  
not necessarily a best practice, doesn't have a direct impact on risk or may not apply to your agency. . . . For example, the Administrative Communications Policy outlines specifications for letterhead, memorandum style, fax cover sheets, etc. It is appropriately classified [as] Discretionary since it is agency-specific and does not have a direct risk management impact.

LEXIPOL CITATION FAQs, *supra* note 74, at 5.

77. *See, e.g.*, Telephone Interview by Ingrid Eagly with Joseph May, Deputy Chief, Simi Valley Police Dep't (Nov. 23, 2016) (explaining which policies are mandatory and which ones are merely optional).

78. Letter from Martha Bereczky, Mktg. Coordinator, Lexipol, to Cliff Baumer, San Joaquin Sheriff Office (Aug. 27, 2008) (on file with authors).

79. *See* LEXIPOL, LEXIPOL LLC DELAWARE POLICY GUIDE 1 (2016), <http://www.lexipol.com/wp-content/uploads/2016/10/DE-LE-Policy-Guide-Sheets-2016-10-10.pdf> [<https://perma.cc/ZMD2-9784>] (explaining that the “implementation process begins when you complete the agency Questionnaire” and that the responses will be used to replace certain bracketed terms “with terminology familiar to your agency”); *see also* E-mail from Nicole Falconer, Account Manager, Lexipol, to Tyson Pogue, Lieutenant, Madera Cty. Sheriff's Dep't (Jan. 28, 2016, 2:35 PM) (on file with authors) (instructing Lt. Pogue to complete and return a questionnaire that would assist Lexipol “to define key titles and terms specific to your agency's structure and operation so the manual is consistent with how you operate”); Letter from John Fitsemanu, Client Servs. Representative, Lexipol, to Tammie Stilinovich, Officer, Long Beach Police Dep't (Feb. 20, 2014) (on file with authors) (explaining that Lexipol's “proprietary software allows efficient and accurate generation of a draft version of the manual from an online questionnaire”); Letter from Bruce D. Praet, Attorney

an average of ten to fifteen hours “to further refine the manual to the specific needs of the agency.”<sup>80</sup> Agencies may also work with Lexipol to customize certain policies or supplement the manual with original policy content.<sup>81</sup> For those agencies that wish to author some of their own policies, Lexipol issues a style guide in which it describes “house rules for spelling, punctuation, citations and other style issues.”<sup>82</sup>

Lexipol executives informed us that they also make policy “guide sheets” available to their subscribers that offer additional information agencies can use when deciding whether to customize their manuals.<sup>83</sup> But when we requested a copy of this policy guide, Lexipol refused to provide us with a copy<sup>84</sup> and none of the California agencies we queried provided us with guide sheets or a policy guide in response to our public records requests.<sup>85</sup> Indeed, when we asked a detective at the Fontana Police Department—a Lexipol subscriber—about Lexipol’s policy guide, he said that they had never “heard of” or “seen” such a guide.<sup>86</sup> Lexipol executives conceded that the guide is a “well-kept secret” because it is difficult for subscribers to access online.<sup>87</sup> Lexipol marketing material that we obtained from the Santa Clara Police Department included a single sample “guide sheet” for a policy on Records Release and Security. The sample “guide sheet” stressed the necessity of adopting Lexipol’s policy with little or no modification: “This is a highly recommended policy that all agencies should have as part of their manual. . . . [W]e have provided you with a

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at Law, to Pat Smith, Chief, Beaumont Police Dep’t (Jan. 30, 2002) (“If you subscribe, the first phase of the manual development requires that you (or your assigned staff member) [] simply complete the questionnaire and return it at your earliest convenience.”).

80. Letter from Dan Merkle, CEO, Lexipol, to Bob Gustafson, Captain, City of Orange Police Dep’t (Oct. 20, 2003) (on file with authors).

81. For example, an official from the Los Angeles Port Police Department explained in responding to our public records request that his agency modified the Lexipol policies before accepting them so that they would match the agency’s practices. Telephone Interview by Ingrid Eagly with Lt. Kevin McCousky, L.A. Port Police Dep’t (Dec. 1, 2016).

82. LEXIPOL, LEXIPOL STYLE GUIDE 3 (2015), [http://www.lexipol.com/wp-content/uploads/2016/10/StyleGuide\\_2015.pdf](http://www.lexipol.com/wp-content/uploads/2016/10/StyleGuide_2015.pdf) [<https://perma.cc/H59U-W6D7>].

83. Lexipol September Conference Call, *supra* note 9.

84. E-mail from Tim Kensok, Vice President, Prod. Mgmt., Lexipol, to authors (Sept. 13, 2017, 7:27 AM) (on file with authors) (“We would not be able to give you a copy of the entire policy guide.”). Kensok did suggest that we could try to get a policy guide from one of Lexipol’s subscribers through our public records requests, but the company reported that it would not provide us with a copy of its copyrighted materials. *See id.*

85. After Lexipol informed us of the existence of a “policy guide,” we followed up with several California agencies to request a copy, but none were provided.

86. Telephone Interview by Joanna Schwartz with Matthew Roth, Detective, Custodian of Records, Fontana Police Dep’t (Oct. 2, 2017).

87. Lexipol September Conference Call, *supra* note 9. Lexipol executives told us that they are working to make it easier for customers to access the policy guide. *Id.*

comprehensive policy . . . . [I]t is unlikely that you will want to modify it to any great extent.”<sup>88</sup>

The Lexipol-issued policy manuals we reviewed from California law enforcement agencies follow a nearly identical format.<sup>89</sup> After an initial page concerning the law enforcement code of ethics and a page for a mission statement, there is a table of contents that covers the role of law enforcement officers, the organizational structure of the department, general operations, patrol operations, traffic operations, investigation operations, equipment, support services, custody, and personnel.<sup>90</sup> Each section has several policies, and each policy has an identical numbering system and title. For example, Policy 310 concerns “Officer-Involved Shootings and Deaths”; Policy 402 concerns “Racial- or Bias-Based Profiling”; and Policy 1014 concerns “Sick Leave.”

2. *Daily Training Bulletins.*—Daily Training Bulletins (DTBs) are the second principal component of the Lexipol platform. The company describes DTBs as a system of short “training scenarios” that give departments and officers the ability to understand their policies and apply them in practice.<sup>91</sup>

The concept of short daily trainings is based on founder Gordon Graham’s philosophy that “every day is a training day.”<sup>92</sup> The approach focuses on “high risk, low frequency events” that, according to Lexipol, “pose the greatest risk to agencies and their personnel.”<sup>93</sup> DTBs are made available to agency personnel via any web-enabled device, including a mobile phone, in-car computer, or desktop computer.<sup>94</sup> Company executives informed us that each DTB training is designed to be completed in only two

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88. SANTA CLARA POLICE DEPARTMENT POWERPOINT, *supra* note 75, at 10.

89. In this project, we do not analyze the California departments’ policy manuals to assess the frequency or extent to which departments customize Lexipol’s California state master policies. Lexipol has informed us that its subscribers change, on average, 20% of the manual text, but the company has not assessed whether or to what extent those changes are substantive. *See infra* note 212 and accompanying text.

90. *See, e.g.*, BREA POLICE DEPARTMENT: POLICY MANUAL 3–6 (2016) (on file with authors).

91. FIRST LEXIPOL POWERPOINT, *supra* note 33, at 29.

92. Rachel Cisto, *City Cleaning Up Tax Rules*, DAILY NEWS-RECORD (Mar. 7, 2016), [http://nl.newsbank.com/nl-search/we/Archives?p\\_action=doc&p\\_docid=15B7618C0ED53208&p\\_docnum=129](http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=15B7618C0ED53208&p_docnum=129) [<https://perma.cc/C88G-CE6B>].

93. ROSEMARIE CURRAN, LEXIPOL OVERVIEW FOR BEVERLY HILLS POLICE DEPARTMENT: CALIFORNIA LAW ENFORCEMENT POLICY MANUAL AND DAILY TRAINING BULLETINS 9 (2016) (on file with authors); *see also* Agreement Between Lexipol and Reedley Police Dep’t for Use of Daily Training Bulletins (Aug. 18, 2014), [http://www.reedley.com/departments/city\\_clerk/agreements\\_contracts\\_and\\_leases/PDFs/Lexipol%20Addendum%20to%20Online%20Subscription%20Agreement%20-%20August%202014.pdf](http://www.reedley.com/departments/city_clerk/agreements_contracts_and_leases/PDFs/Lexipol%20Addendum%20to%20Online%20Subscription%20Agreement%20-%20August%202014.pdf) [<https://perma.cc/3VZA-U3B8>] (offering a subscription to Lexipol’s DTB online training program and describing its design and features).

94. SECOND LEXIPOL POWERPOINT, *supra* note 9, at 4.

minutes.<sup>95</sup> They explained that this is because two minutes of daily training—which amounts to one hour per month and twelve hours per year—is sufficient to satisfy minimum police training requirements set by some states' Peace Officer Standards and Training (POST) organizations.<sup>96</sup>

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95. *Id.* (clarifying that two-minute trainings add up to an hour per month and twelve hours per year, the minimum that state-required police officer standards and trainings (POST) require).

96. *Id.*; see also Lexipol, *Four Ways to Integrate Policy into Police Training*, <http://www.lexipol.com/news/4-ways-to-integrate-policy-into-police-training/> [https://perma.cc/3X6J-LTJ2] (asserting that law enforcement agencies in Kansas and Utah have used Lexipol's DTBs to satisfy their states' POST requirements). California's POST requires that its law enforcement officers complete at least twenty-four hours of training every two years. See CAL. CODE REGS. tit. 11, § 1005 (2017) (requiring that "[e]very peace officer . . . satisfactorily complete the CPT requirement of 24 or more hours of POST-qualifying training during every two-year CPT cycle"). Yet, we learned through our public records requests that California's POST has twice declined to certify Lexipol as a provider of state-approved trainings for California law enforcement agencies. See *infra* notes 219–224 and accompanying text for further discussion of the reasons California's POST declined to certify Lexipol DTBs as sufficient to satisfy their training requirements.

Figure 2: A Lexipol Daily Training Bulletin<sup>97</sup>

Daily Training Bulletin - Review Question  
8 / 1 / 2007

Please answer the following question, and submit your response using the button at the bottom of the page.  
You may change your answer at any time prior to submission.

**DEADLY FORCE (Furtive Movements)**

While patrolling late one night, you monitor a BOLO broadcast on a vehicle containing multiple armed robbery suspects. The suspects committed a robbery of a convenience store, killing the clerk with a shotgun. Several minutes later, you observe the suspect vehicle turn in front of you, in a remote part of the city. You begin following the vehicle and advise dispatch of its location. Before backup officers arrive, the vehicle abruptly stops at the right curb of the highway. You stop behind the vehicle, at which time the suspects begin looking in your direction and making numerous furtive movements within the vehicle.

**ISSUE:** An officer may use deadly force to protect him or herself or others from what they reasonably believe would be an immediate threat of death or serious bodily injury.

- True  
 False

**REFERENCE:** 300 DEADLY FORCE APPLICATIONS

**ANALYSIS:**

Policy and law allow an officer to use deadly force to protect him or herself or others from what they reasonably believe would be an immediate threat of death or serious bodily injury. When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. In this worst-case scenario, you are suddenly confronted with a potential threat of death or serious bodily injury. Any evaluation of the use of deadly force must include whether or not the threat was immediate. Because you are outnumbered by armed suspects without backup officers present, you should take immediate steps, consistent with your training, to place yourself in a position of cover. Although the use of deadly force would not be immediately appropriate in this situation, the circumstances could rapidly change if the suspects were to exit their vehicle and/or display a weapon. Another tactical option to consider in this scenario would have been to continue driving past the suspect vehicle once it stopped at the right curb. Apprehension can then be accomplished after sufficient resources arrive on scene to better protect the safety of officers and citizens.

**CONCLUSION:**

This scenario represents a high-risk, low frequency event. It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision. Constant training in tactics and policy is the key to ensuring a successful resolution.

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Figure 2 contains a sample DTB taken from Lexipol's promotional materials. According to Lexipol's founding CEO Dan Merkle, DTBs follow "the well-respected 'IRAC' (Issue, Rule, Analysis, Conclusion) method of

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97. Figure 2 was obtained from the San Joaquin Sheriff's Office in response to our public records request.



training commonly used in law schools.”<sup>98</sup> Using this standardized IRAC format,<sup>99</sup> all DTBs begin with a three to four sentence scenario that could occur in the field.<sup>100</sup> Next, the DTB provides the number of the Lexipol policy that guides police decisionmaking in the scenario.<sup>101</sup> The officer is asked to respond to a multiple choice or true/false question that highlights application of the policy to the scenario.<sup>102</sup> Finally, the DTB provides a short analysis of why the policy applies and summarizes the learning objective for the training.<sup>103</sup>

For those departments that choose to supplement their Lexipol policy manuals with DTBs, officers can receive one of these short trainings each day during roll call. As Deputy Chief of the Simi Valley Police Department explains in an advertisement on Lexipol’s web page: “It can be challenging for the supervisor to come up with relevant topics for roll call training, but having the DTBs gives us a pool of topics to choose from.”<sup>104</sup> Lexipol keeps a record of each officer’s participation in the training exercises.<sup>105</sup>

3. *Implementation Services.*—In addition to the policy manual and DTBs, Lexipol offers departments a range of consulting services to assist in implementing and managing their Lexipol products.<sup>106</sup> For example, agencies

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98. Letter from Dan Merkle, CEO, Lexipol, to Paul Cappitelli, Director, California Commission on Peace Officer Standards and Training (June 4, 2009) (on file with authors).

99. See LEXIPOL STYLE GUIDE, *supra* note 82, at 5–7 (describing the standard style format for Lexipol’s DTBs).

100. Letter from Martha Berezky, *supra* note 78.

101. *Id.*

102. *Id.*; see also MIKE DIMICELI & ALAN DEAL, CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING, REPORT ON APPEAL OF LEXIPOL TO POST COMMISSION 9, JULY 7, 2009 (on file with authors) [hereinafter POST LEXIPOL REPORT] (noting that the Commission reviewed paper versions of the DTBs and all contained a “single true/false question at the end”).

103. Letter from Martha Berezky, *supra* note 78.

104. Shannon Pieper, *Simi Valley Police Department: Q&A with Deputy Chief John McGinty*, LEXIPOL (May 17, 2016), <http://www.lexipol.com/casestudycategory/law-enforcement/page/2/> [<https://perma.cc/WV2Z-QRVW>].

105. Lexipol February Conference Call, *supra* note 59; see also Letter from Dan Merkle, *supra* note 98, at 2 (explaining that “[a]ll DTBs and all training records are retrievable from Lexipol’s searchable database”).

106. *Implementation and Management Services*, LEXIPOL, <http://www.lexipol.com/law-enforcement/law-enforcement-products/implementation-management-services/> [<https://perma.cc/RE9K-HWTY>]. In a call with company executives, they explained that implementation services have been offered since 2014 and that currently about half of their new customers purchase at least some implementation services. For example, for a few thousand dollars, Lexipol will provide the agency with a “cross-reference” guide that compares its current manual to the Lexipol guide. Full implementation services, which give the agency access to a “team of people over an 18-month period,” might cost as much as \$200,000. Lexipol executives did not provide us with information about the total number of law enforcement clients that have purchased these services. Lexipol September Conference Call, *supra* note 9.

can hire Lexipol to draft custom policies based on specific needs, as well as to ensure that departments' DTBs are consistent with any custom policies that the departments have modified.<sup>107</sup> Agencies can choose between a basic "silver plan" that provides a "quick start," or go with a "platinum" plan that will "help with implementation."<sup>108</sup> As a Lexipol executive told the Beverly Hills Police Department in 2016, departments can retain a "Project Manager" to "facilitate" the "entire project" and "do all the heavy lifting when it comes to edits, linking policy to procedure and anything else you would need."<sup>109</sup>

4. *Cost.*—The cost of a Lexipol subscription varies significantly depending on the size of the agency and the services purchased. The initial start-up cost for the first year generally includes access to the policy manual, policy updates, and DTBs. The cost of a basic subscription to the Lexipol service depends upon the size of the agency. For example, Lexipol charged the Calaveras County Sheriff's Office, which has fifty deputies, \$8,600 for the first year of services;<sup>110</sup> Lexipol's proposal to the Simi Valley Police Department for up to 150 full-time sworn officers priced the first year at \$15,150.<sup>111</sup> The larger Long Beach Police Department, which is no longer a Lexipol client,<sup>112</sup> was quoted \$24,950 for up to 820 full-time sworn officers.<sup>113</sup>

Once an agency adopts the Lexipol manual, it can choose to subscribe to Lexipol's updating service, as well as its Daily Training Bulletins, for an additional fee.<sup>114</sup> Subscribers to the updating service will periodically receive revised policies from Lexipol.<sup>115</sup> When departments accept these policy

107. See generally LEXIPOL, LEXIPOL DTB AND POLICY MANUAL UPDATE ADMINISTRATION SERVICES (2015) (on file with authors) (provided by the San Leandro Police Department).

108. E-mail from Bill McAuliffe, Operations Manager, Lexipol, to Tony Lee, Beverly Hills Police Dep't (Nov. 18, 2016, 1:41 PM) (on file with authors).

109. *Id.*

110. Agreement Between Lexipol and Calaveras Cty. Sheriff's Office for Use of Subscription Material (Aug. 1, 2015) (on file with authors).

111. LEXIPOL, LAW ENFORCEMENT POLICY MANUAL & DAILY TRAINING BULLETINS: PRESENTED TO SIMI VALLEY POLICE DEPARTMENT 7 (2014) (on file with authors).

112. E-mail from Tim Kensok, *supra* note 84 (advising authors that Long Beach Police Department is no longer a Lexipol client); Letter from Robert G. Luna, Chief, Long Beach Police Dep't, to Peter Roth, Chief Customer Officer, Lexipol (Jan. 12, 2016) (on file with authors) (cancelling Lexipol subscription).

113. LONG BEACH PROPOSAL, *supra* note 72, at 7.

114. Praet Deposition, *supra* note 31, at 10–11 (explaining that the "updating component" Lexipol offers "is something that most agencies don't have the resources for").

115. See, e.g., LEXIPOL, POLICY MANUAL UPDATE: RELEASE NOTES 1 (June 2013) (on file with authors) (provided by the Folsom Police Department) [hereinafter FOLSOM UPDATE] (describing "a list of recommended changes and updates to your manual"); see also Telephone Interview by Joanna Schwartz with Lon Milka, Captain, Rocklin Police Dep't (Nov. 8, 2016) (explaining that when Rocklin began working with Lexipol in 2004, Lexipol would send out an

revisions, they are incorporated automatically into the existing policy manual.<sup>116</sup> Again, prices for these services vary based on the size of the department. For example, the Simi Valley Police Department (which has 127 sworn officers) was quoted \$13,250 for ongoing updates and DTBs,<sup>117</sup> while the Long Beach Police Department (which has 968 sworn officers) was quoted \$64,500.<sup>118</sup>

Beyond these standardized services, jurisdictions can pay additional fees for consulting services. For example, the Baltimore (Maryland) Police Department paid Lexipol \$340,000 in 2013 for “overhauling the manual providing the basis for Standard Operating Procedures and providing professionally created training bulletins.”<sup>119</sup> Similarly, the New Orleans Police Department (NOPD) paid Lexipol \$295,000 to help develop policies required by the Department of Justice following a civil rights investigation of the NOPD.<sup>120</sup>

Sometimes the costs for Lexipol are partly or wholly covered by municipal insurers.<sup>121</sup> More often, local jurisdictions pay for Lexipol’s

updated manual every six months, but now Lexipol uses software that sends out individual amended policies every few weeks to be accepted or rejected by the jurisdiction).

116. See FOLSOM UPDATE, *supra* note 115, at 1 (“Each time you accept an update the new content will automatically replace your current content for that section of your manual.”); Telephone Interview with Lon Milka, *supra* note 115.

117. LEXIPOL, TERMS AND CONDITIONS FOR USE OF SUBSCRIPTION MATERIALS (2014) (on file with authors) (provided by the Simi Valley Police Department).

118. E-mail from Tammie Stilinovich, Officer, Long Beach Police Dep’t to Randy Allan (Feb. 26, 2014, 10:06 AM) (on file with authors).

119. Justin Fenton & Doug Donovan, *Use of Local Foundation Allowed Baltimore Police Surveillance Project to Remain Secret*, BALT. SUN (Aug. 25, 2016), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-community-foundation-20160824-story.html> [<https://perma.cc/EY7J-YJZA>].

120. Charles Maldonado, *Paying for the Consent Decree*, GAMBIT (Aug. 14, 2012), <https://www.bestofneworleans.com/gambit/reform-at-a-cost/Content?oid=2057022> [<https://perma.cc/5VYT-V62X>].

121. See, e.g., E-mail from Cathie Bigger-Smith, Risk Control Consultant, to Steve Pangelinan, Commander, Milpitas Police Dep’t (Apr. 22, 2008, 7:12 AM) (on file with authors) (reporting that the municipal insurer—the Association of Bay Area Governments—would cover the cost of Lexipol for the Milpitas Police Department); Invoice from Lexipol to Porterville Police Dep’t (June 1, 2016) (on file with authors) (noting that the DTB subscription service and management service invoice was “Paid by CSJVRMA [the Central San Joaquin Valley Risk Management Authority]”); E-mail from Brenda Haggard, Assistant City Clerk, City of Elk Grove, to Ingrid Eagly (Feb. 13, 2017, 9:37 AM) (on file with authors) (“The City does not directly contract with Lexipol; rather, the City is a member of the Northern California Cities Self Insurance Fund (NCCSIF), who provides various services to the City, including on-line policy services via Lexipol.”); see also John Rappaport, *Cops Can Ignore Black Lives Matter Protestors. They Can’t Ignore Their Insurers*, WASH. POST (May 4, 2016), [https://www.washingtonpost.com/opinions/cops-can-ignore-black-lives-matter-protesters-they-cant-ignore-their-insurers/2016/05/04/c823334a-01cb-11e6-9d36-33d198ea26c5\\_story.html?utm\\_term=.0d4b1e53381c](https://www.washingtonpost.com/opinions/cops-can-ignore-black-lives-matter-protesters-they-cant-ignore-their-insurers/2016/05/04/c823334a-01cb-11e6-9d36-33d198ea26c5_story.html?utm_term=.0d4b1e53381c) [<https://perma.cc/BJ4K-VKQ9>] (“Insurers work closely with police departments on policies and training. . . . The companies sometimes bring in outside consultants—usually police veterans—to do this work or send departments off-the-shelf rules from policy-writing services such as Lexipol.”). For further discussion of the role insurance plays in police reform—and

products directly through their general city or county budgets,<sup>122</sup> or through the law enforcement agency's budget.<sup>123</sup> One jurisdiction reported using forfeiture funds to pay Lexipol.<sup>124</sup>

### C. Sales Techniques

Lexipol LLC engages in an aggressive marketing campaign with its potential customers. The company hosts booths at government and law

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in the proliferation of Lexipol policies—see *infra* notes 133–134, 149, 179, 266–269 and accompanying text.

122. See, e.g., Lexipol Bill to the City of San Leandro (June 30, 2011) (on file with authors) (reflecting that the cost of Lexipol's online policy manual should be billed to the finance department of the City of San Leandro and delivered to the San Leandro Police Department); Purchase Order from the City of Oxnard, to Lexipol (Jan. 19, 2016) (on file with authors) (billing the city for the police department's contract with Lexipol); Centralized Purchase Order from the Cty. of Ventura Gen. Servs. Agency, to Lexipol (Nov. 20, 2009) (on file with authors) (billing the county for Lexipol subscription materials to be shipped to the sheriff's department); Purchase Order from the City of Riverside, Fin. Dep't—Purchasing Div., to Lexipol (Mar. 16, 2011) (on file with authors) (billing the city for a Lexipol subscription service to update the police department manual); Purchase Order from the Cty. of San Joaquin, Purchasing & Support Servs., to Lexipol (Sept. 12, 2008) (on file with authors) (paying Lexipol invoice for the sheriff's department from the county budget); Purchase Order from the City of Corona, Purchasing Div., to Lexipol (July 1, 2006) (on file with authors) (billing the city for a Lexipol subscription for the police department); Purchase Order from the City of Richmond, Accounts Payable, Fin. Dep't, to Lexipol (Jan. 20, 2016) (on file with authors) (listing the City of Richmond as the "bill to" addressee for Lexipol's contract with the Richmond Police Department); Purchase Order from the City of El Monte to Lexipol (Mar. 14, 2007) (on file with authors) (billing the police department's Lexipol contract price to the City of El Monte); Check from the City of Newport Beach to Lexipol (June 22, 2007) (on file with authors) (paying \$4,950 out of city funds to Lexipol); Purchase Order from the City of Roseville, Purchasing Dep't, to Lexipol (Mar. 14, 2016) (on file with authors) (paying the Lexipol invoice on behalf of the city's police department); Check from the City of Rialto, to Lexipol (Aug. 25, 2006) (on file with authors) (making a payment of \$8,950 to Lexipol out of city funds).

123. See, e.g., Cty. of Madera Board Letter Approving Lexipol Contract (Feb. 23, 2016) (on file with authors) (seeking authorization to purchase Lexipol's service, with funds coming from the sheriff's department's budget); E-mail from Kristie Velasco, Fin. Office Prof'l, Santa Barbara Sheriff's Dep't, to Craig Bonner, Commander, N. Cty. Operations Div. (July 8, 2016, 11:38 AM) (on file with authors) (obtaining approval to have the sheriff's department pay the invoice for Lexipol); Purchase Order from the City of Glendale, to Lexipol (Sept. 5, 2007) (on file with authors) (billing the police department for Lexipol's policy service); E-mail from Suzanne Perez, City of Irvine, to Mike Hallinan, Commander, City of Irvine Police Dep't (Apr. 18, 2016, 12:19 PM) (on file with authors) (indicating that Irvine's "OPD will handle payment" and that police department funds have been used "in the past"); E-mail from Deirdre Rockefeller-Ramsey, Police Bus. Manager, Fremont Police Dep't, to John Harnett, Lieutenant, Fremont Police Dep't (Feb. 8, 2016, 2:17 PM) (on file with authors) (indicating that the police department will budget \$5,750 for Lexipol services).

124. See Memorandum from Lili Hadsell, Chief of Police, City of Baldwin Park, to the Mayor and Members of City Council, City of Baldwin Park (June 3, 2010) (on file with authors). "Forfeiture funds" are funds collected through civil forfeiture, which are sometimes used by law enforcement agencies for various needs. For further discussion of civil forfeiture, see generally Beth A. Colgan, *Fines, Fees, and Forfeitures*, 18 CRIMINOLOGY, CRIM. JUST., L. & SOC'Y 22 (2017).

enforcement conventions to promote its wares.<sup>125</sup> For example, in 2017, Lexipol representatives attended the Kansas Sheriff's Association Fall Conference, the New Jersey Association of Chiefs of Police Annual Mid-Year Meeting, and the Oregon State Sheriff's Association Annual Conference, among other conferences and events.<sup>126</sup> Lexipol clients who visited the Lexipol booth at the 2016 conference for the International Association of Chiefs of Police could "enter [its] drawing to win a free iPad air 2."<sup>127</sup>

Lexipol also attracts clients by sponsoring free webinars on hot policing issues such as "Immigration Violations & Law Enforcement" or "How Not to Speak to the Media" that may encourage departments to purchase their services.<sup>128</sup> One e-mail sent to the Madera Police Department explained that state law "offers unprecedented protection from liability risks associated with police pursuits" but that "[m]any law enforcement agencies fall short in meeting these requirements and are exposing their cities and counties to much greater financial risk than necessary."<sup>129</sup> The e-mail then invited representatives of the department to attend a free thirty-minute educational webinar.<sup>130</sup>

Some of the solicitation correspondence we collected reveals that Lexipol researches the target departments to learn about their particular law enforcement challenges. For example, in 2015 Lexipol approached the Chief of the San Francisco Police Department, writing: "I recognize the current challenges your department is facing. I reviewed your policies and they are severely outdated and insufficient. Case in point, you don't have a Department's Use of Social Media policy and your Use of Force policy hasn't been updated/revised since 1995."<sup>131</sup> Lexipol provided the Chief with sample policies and a few ideas for improving his department's policies, and asked for a fifteen-minute call to discuss Lexipol's services. Similarly, a Lexipol

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125. Public records from the San Francisco Sheriff proclaim that Lexipol will be at "booth 1024" at the 2016 National Sheriffs' Association Annual Conference and Exhibition. E-mail from marketing@lexipol.com, to Carl Koehler, S.F. Sheriff's Dep't (June 6, 2016, 12:01 PM) (on file with authors); *see also* E-mail from Nicole Falconer, Account Manager, Lexipol, to Christian Lemoss, Lieutenant, City of Santa Cruz Police Dep't (Oct. 13, 2016, 10:59 PM) (on file with authors) (inviting Lemoss to come by Lexipol's booth at the International Association of Chiefs of Police Convention in 2016).

126. *Event Calendar*, LEXIPOL, <http://www.lexipol.com/event-calendar/> [<https://perma.cc/4VZD-GBJZ>].

127. E-mail from Nicole Falconer, *supra* note 125.

128. *Lexipol Webinars: Timely, Free Education on Important Issues*, LEXIPOL, <http://www.lexipol.com/webinars/> [<https://perma.cc/HDU2-WRV5>].

129. E-mail from John Fitisemanu, Senior Account Exec., Lexipol, to undisclosed recipients (Oct. 5, 2015, 2:40 PM) (on file with authors) (provided by the Madera Police Department).

130. *Id.*

131. E-mail from John Fitisemanu, Senior Account Exec., Lexipol, to Greg Suhr, Chief of Police, S.F. Police Dep't (May 28, 2015, 5:03 PM) (on file with authors).

Client Services Representative reached out to the Chief of the Beverly Hills Police Department to complement him for “the amazing manner in which” his officers “presided over the Trayvon Martin protests recently,” before going on to warn that “with recent racial tensions rising, now would be the perfect opportunity to re-examine ways Lexipol can help ensure the safety of your officers to avoid any potential risks.”<sup>132</sup>

Lexipol also appears to have directed its advertising to municipal liability insurers that provide liability insurance to small governments. Our research has revealed that insurance companies will sometimes reduce their annual premium for cities that contract with Lexipol, or even pay outright for their insureds’ Lexipol contracts.<sup>133</sup> In California, for example, more than 100 law enforcement agencies are given access to Lexipol as a benefit of their insurance agreement with one large insurer, the California Joint Powers Insurance Authority.<sup>134</sup>

Lexipol has a standard sales pitch that was repeated in communications with multiple California jurisdictions. The message describes the high costs of “[o]utdated [p]olicy and [l]ack of [t]raining,” measured in “Increased Risk and Liability to Deputies, Department and Community,” “Damaged [sic] to Reputation, Negative news Headlines and/or Viral Footage,” “Lawsuits,” “Legal Fees,” “Settlements,” “Injury and/or Death,” and “Distrust with the Community.”<sup>135</sup> Lexipol’s solicitation e-mails to department officials include catchy taglines such as “Are Outdated Policies Putting Your Agency at Risk?,”<sup>136</sup> “Is Your Use of Force Policy Properly Protecting You?,”<sup>137</sup> and

132. E-mail from John Fitiseanu, Client Servs. Representative, Lexipol, to David L. Snowden, Chief of Police, Beverly Hills Police Dep’t (July 29, 2013, 2:09 PM) (on file with authors).

133. See, e.g., Pub. Agency Risk Sharing Auth. of Cal., *Training Resources*, PARSAC, <http://www.parsac.org/services/trainingresources/> [<https://perma.cc/F8VW-G64D>] (“[Public Agency Risk Sharing Authority of California] subsidizes each member’s subscription to Lexipol . . .”).

134. See Alex Mellor, *Legislative Update: Law Enforcement Must Report Details on Shootings and Uses of Force Under New California Law*, CAL. JPIA (Jan. 2016), <https://cjpia.org/news/newsletter/newsletter-article/2016/01/28/january-2016—issue-47#four> [<https://perma.cc/MP67-4QTL>] (reporting that in January 2009, Lexipol and CJPIA entered a “strategic business partnership . . . whereby the California JPIA funds the cost of a member’s participation in the Law Enforcement Policy Manual Update and Daily Training Bulletin subscriptions”); Cal. Joint Powers Ins. Auth., *Members*, CAL. JPIA, <https://www.cjpia.org/join/members> [<https://perma.cc/X5TD-JQ67>] (listing over 100 member agencies in California).

135. E-mail from James Quanico, S.F. Sheriff’s Dep’t, to Mark Nicco, S.F. Sheriff’s Dep’t (Nov. 21, 2016, 1:02 PM) (forwarding e-mail from Lexipol Senior Account Executive John Fitiseanu, with the subject line “The Cost of Policies?”); see also *About Lexipol*, LEXIPOL, <http://www.lexipol.com/about-us/> [<https://perma.cc/ALA5-L7WM>] (click on video) (promoting Lexipol’s service as allowing police, fire, and custody departments to have “up-to-date policies” that will “protect your agency today” by offering “legally defensible content”).

136. E-mail from marketing@lexipol.com, *supra* note 125.

137. *Id.*

“What is the Cost of Outdated Policy and Lack of Training?”<sup>138</sup> After attracting the attention of top officials, Lexipol makes a web-based or in-person presentation to the department that highlights the Lexipol approach and the benefits of entering into a contract with Lexipol.<sup>139</sup> Lexipol may also make presentations to city council or other government officials who make the ultimate decision about whether to purchase Lexipol’s services.

Although Lexipol describes many different types of risk in its marketing materials, liability risk plays the central role. As Lexipol’s CEO Dan Merkle stressed in a letter to Captain Bob Gustafson of the Orange Police Department, the value in Lexipol’s service is that it provides “[p]olicies that are court tested and successful in withstanding the numerous legal challenges prevalent today.”<sup>140</sup> Lexipol constantly warns its potential customers that without Lexipol they are at risk of having their outdated policies turn up “downstream in litigation” and make the day for “plaintiff’s lawyers.”<sup>141</sup> In a document prepared for the Chula Vista Police Department, Lexipol summed up why its clients choose Lexipol this way: “Law Enforcement agencies by their nature are a high frequency target for litigation. It is the most compelling reason why our customers choose our services.”<sup>142</sup>

Lexipol does not outline the precise ways in which updated policy manuals will reduce liability risk, but it does report that its products have in fact “helped public safety agencies across the country reduce risk and avoid litigation.”<sup>143</sup> In a PowerPoint presentation offered to several departments in our study, Lexipol included a slide (reproduced as Figure 3) claiming that adoption of Lexipol policies was associated with reduced litigation costs. According to the slide, Lexipol’s Oregon clients that “fully adopted” Lexipol reportedly had a 45% reduction in the “frequency of litigated claims” and a 48% reduction in the “severity of claims paid out,” as compared to nonparticipating agencies.<sup>144</sup>

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138. E-mail from John Fitisemanu, Senior Account Exec., Lexipol, to James Quanico, S.F. Sheriff’s Dep’t (Feb. 24, 2016, 4:28 PM) (on file with authors).

139. *See, e.g.*, E-mail from Rosemarie Curran, Senior Account Exec., Lexipol, to Rob Ransweiler, Admin. Lieutenant, El Cajon Police Dep’t (Oct. 26, 2016, 10:05 AM) (on file with authors) (setting up a web-based “go to meeting” regarding Lexipol’s services as part of their marketing to the department).

140. Letter from Dan Merkle, CEO, Lexipol, to Bob Gustafson, Captain, City of Orange Police Dep’t (Oct. 20, 2003) (on file with authors).

141. GORDON GRAHAM, REAL RISK MANAGEMENT: AN EXCLUSIVE ARTICLE SERIES BROUGHT TO YOU BY LEXIPOL (pt. 2) 5 (2016), [http://www.lexipol.com/wp-content/uploads/2016/06/Lexipol\\_Real\\_Risk\\_Management\\_Part\\_2.pdf](http://www.lexipol.com/wp-content/uploads/2016/06/Lexipol_Real_Risk_Management_Part_2.pdf) [<https://perma.cc/FY3T-BJ88>].

142. LEXIPOL, INDEMNIFICATION RATIONALE (n.d.) (on file with authors) (provided by the Chula Vista Police Department).

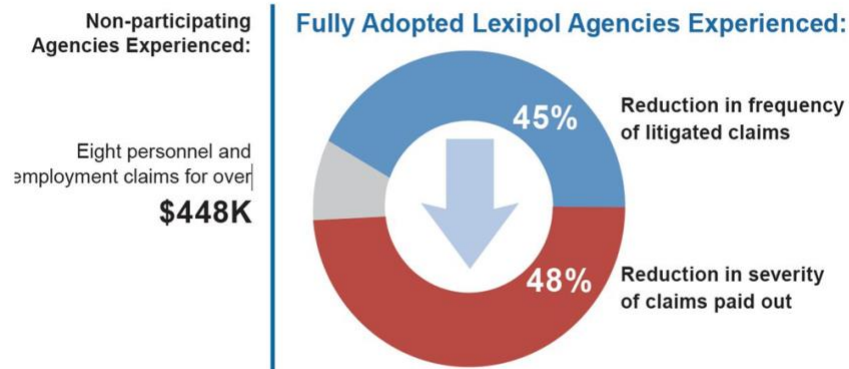
143. Donna Thompson, *Ilion Board OKs Policy Service for Police*, TIMES TELEGRAM (Dec. 22, 2015), <http://www.timestelegram.com/news/20151222/ilion-board-oks-policy-service-for-police> [<https://perma.cc/7AU3-WTLH>].

144. *See* CURRAN, *supra* note 93, at 13.

Figure 3: Lexipol Risk Management Analysis<sup>145</sup>

## LEXIPOL RISK MANAGEMENT ANALYSIS

5-years post-implementation (Oregon)



13

COMPREHENSIVE, DEFENSIBLE POLICY AND DAILY TRAINING

**Lexipol**  
PREDICTABLE IS PREVENTABLE™

Other Lexipol promotional materials tout similar litigation-cost savings. Materials provided to the San Francisco Police Department in 2016 quoted one risk management association as saying this about Lexipol: “Two years post-Lexipol implementation, perhaps the most positive trend is that Lexipol users have 69% fewer litigated claims compared to pre-Lexipol implementation. And, the claims that are litigated have, on average, \$7k paid out instead of \$20k pre-Lexipol.”<sup>146</sup> A company press release from 2014 claimed that “a 10-year third-party study demonstrated a 54% decrease in litigated claims and a 46% reduction in liability for agencies that adopted Lexipol.”<sup>147</sup> Lexipol additionally provided us with marketing materials that tout “37% fewer claims,” “45% reduced frequency of litigated claims,” “48% reduction in severity of claims,” and “67% lower incurred costs.”<sup>148</sup> Lexipol’s

145. Figure 3 was obtained from the Beverly Hills Police Department in response to our public records request. *Id.*

146. LEXIPOL, THE LEXIPOL ADVANTAGE: LAW ENFORCEMENT 2 (n.d.) (emphasis omitted) (on file with authors) (provided by the San Francisco Police Department).

147. Chris Witkowsky, *Riverside Company Acquires Lexipol*, PE HUB NETWORK (Aug. 22, 2014), <https://www.pehub.com/2014/08/riverside-company-acquires-lexipol/> [<https://perma.cc/4JXW-42AP>].

148. E-mail from Tim Kensok, *supra* note 84 (attaching a slide reportedly used by Lexipol’s marketing staff titled “Proven Customer Results”).



promotional materials identify insurance company claims data as the source for these findings, but Lexipol provided us with no dataset, study, or other evidence to support these assertions by the company.<sup>149</sup>

Lexipol's marketing materials also contain detailed testimonials of jurisdictions explaining why they chose to adopt Lexipol. The justifications offered repeatedly echo Lexipol's claims that its products insulate jurisdictions from liability. For example, Sheriff Blaine Breshears of the Morgan County Sheriff's Office in Utah explains in an advertisement on Lexipol's website that after attending "a class taught by Lexipol co-founder and risk management expert Gordon Graham," he became concerned that his outdated policy manual "could actually be a serious liability."<sup>150</sup> After adopting Lexipol, however, Sheriff Breshears successfully defended his agency against a use of force lawsuit: "[A]s soon as the attorneys discovered that we have Lexipol, they said, 'We won't have an issue there.' Our policies were never in question."<sup>151</sup>

In the records we obtained from 200 California jurisdictions, we found that several departments justified the cost of Lexipol's products with claims that Lexipol's policies would protect them from possible lawsuits. The Chief of Police of the City of Baldwin Park explained in a memo to the Mayor and City Council that "[n]ot having an updated policy manual [from Lexipol] could result in litigation against the city."<sup>152</sup> The Riverside Police Department similarly told the City's Purchasing Division that without Lexipol it risked "continuing to fall behind as court decisions, laws, and law enforcement practices change. This deficiency can potentially expose the City, Department, and Officers to unnecessary liability and harm."<sup>153</sup> And the City of South San Francisco's Chief of Police told the Mayor and City Council that Lexipol would "assist in mitigating any litigation that is related to the policies of the Police Department."<sup>154</sup>

In addition to litigation-risk reduction, Lexipol promotes its products as cost effective by saving jurisdictions the time and money of developing their own policies. Lexipol repeatedly noted in its promotional materials that

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149. Indeed, it is unclear whether any of these data are available. A Lexipol executive reported that he "plan[s] to do some additional work with our [Risk Management Association] partners to drive toward a more statistically defensible correlation of claims to excellence in policy management and training on policy." *Id.*

150. *Morgan County (UT) Sheriff's Office*, LEXIPOL, <http://www.lexipol.com/casestudytype/morgan-county-ut-sheriffs-office/> [<https://perma.cc/MP3V-CLXK>].

151. *Id.*

152. Memorandum from Lill Hadsell, Chief of Police, City of Baldwin Park, to the Mayor and Members of City Council, City of Baldwin Park (June 3, 2010) (on file with authors).

153. CITY OF RIVERSIDE, JUSTIFICATION OF SOLE SOURCE/SOLE BRAND REQUEST 2 (n.d.) (on file with authors) [hereinafter RIVERSIDE PD SOLE SOURCE JUSTIFICATION].

154. Staff Report from Mark Raffaelli, Chief of Police, City of S. S.F., to the Mayor and City Council, City of S. S.F. 2 (Feb. 28, 2007) (on file with authors).

agencies would spend far more than Lexipol's modest subscription cost to write and update policing policies on their own.<sup>155</sup> As Lexipol warned the Long Beach Police Department during contract negotiations: "A fully burdened officer can cost an agency upward of \$100K in salary and benefits. Most small to mid-sized agencies assign one officer to update and maintain their policy manual, which can consume 50% to 80% of the officer's time."<sup>156</sup> In case studies on Lexipol's website, chiefs of small agencies explain that they did not have the capacity to create and maintain policies on their own and applaud Lexipol for providing up-to-date policies in a cost-effective manner.<sup>157</sup> Several California departments in our study justified their adoption of the Lexipol service in similar terms. For instance, the Riverside Police Department told city officials charged with approving the Lexipol contract that "the salary savings realized over having Department personnel research the constantly changing legal requirements and make the needed policy changes, would likely far exceed the cost of this service."<sup>158</sup>

#### D. Growth

Lexipol does not publish a list of its clients and refused to provide us with a list of its clients.<sup>159</sup> However, the company regularly makes public statements about the number of law enforcement and other public safety agencies that use Lexipol policies and boasts of the growing number of states that the company now services. In order to chart the company's growth, we

155. Lexipol describes the high cost to a department to develop a "Legal[], Defensible Policy Manual and an Online Training Program," and asserts that "Lexipol's services are offered at a fraction of the cost, by way of an annual subscription fee, thus allowing us to pass along savings to departments." E-mail from John Fitisemanu, *supra* note 138.

156. LONG BEACH PROPOSAL, *supra* note 72, at 4.

157. For example, the Police Chief from Midland, Michigan, says:

It just makes good sense to me to have experts overseeing our policy manual as opposed to relying on myself to track the case law and the legislation. This will make the maintenance part very easy. What I see happening in most departments is that the manual gets done but then it doesn't get updated for 10 years. Here, if something changes, we get notified, and then we review the updates and add them. And that frees up my time.

*Midland (MI) Police Department*, LEXIPOL, <http://www.lexipol.com/casestudytype/midland-mi-police-department/> [<https://perma.cc/2B67-TRNE>]. Similarly, a Lieutenant from Bonners Ferry, Idaho observes:

Small departments like mine don't have . . . a legal team or a policy/procedure division. We have only ourselves—seven people who are responsible for the department. With Lexipol, we have a resource we can go to if we have questions, and we know our policies stay current. It's an easy decision to make as far as cost.

*Bonners Ferry (ID) Police Department*, LEXIPOL, <http://www.lexipol.com/casestudytype/bonners-ferry-id-police-department/> [<https://perma.cc/DM5Z-GWP9>].

158. RIVERSIDE PD SOLE SOURCE JUSTIFICATION, *supra* note 153, at 3.

159. See E-mail from Tim Kensok, *supra* note 84 (refusing to provide a list of clients in California).

collected the company's own statements from press releases, the company's web page, news articles, and marketing materials provided by Lexipol clients in response to our public records requests.

Our research reveals that the company has grown from forty California-based agencies in 2003 to 3,000 public safety agencies across thirty-five states in 2017.<sup>160</sup> This astronomical growth has been mainly focused on police and sheriff's departments, but also includes fire departments and other public safety agencies.<sup>161</sup> Table 1 reports these data in two-year increments.

Table 1: Lexipol's Growth, by Agencies and States (2003–2017)<sup>162</sup>

<i>Year</i>	<i>Agencies</i>	<i>States</i>
2003	40	1
2005	200	2
2007	500	4
2009	1,000	10
2011	1,100	12
2013	1,500	15
2015	2,000	25
2017	3,000	35

160. According to information we obtained from Lexipol, the only states in which its product is not yet active are Alaska, Arkansas, Connecticut, Hawaii, Kentucky, Maine, Mississippi, Nebraska, New Hampshire, New Mexico, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming. LEXIPOL, LEXIPOL LIVE DATES (Sept. 13, 2017) (on file with authors); *see also* FIRST LEXIPOL POWERPOINT, *supra* note 33, at 13 (stating that in 2003, Lexipol had about forty agency clients).

161. Lexipol executives informed us that 2,500 of its current 3,000 clients are police departments and sheriff's departments. Lexipol September Conference Call, *supra* note 9.

162. The following sources were relied on to compile Table 1: FIRST LEXIPOL POWERPOINT, *supra* note 33, at 13 (stating that in 2003, when Lexipol was founded, it was only in California and had about forty agency clients); *Lexipol (from Latin: Law Enforcement Policy)*, LEXIPOL, <http://plan.abag.ca.gov/rmm/rmm/pobp/Police%20-%20Lexipol%20Service.pdf> [<https://perma.cc/5BER-BMMY>] ("Over two hundred law enforcement agencies operate from our policy manual system . . ."); Press Release, Lexipol, Lexipol Launches Custody Policy Manual and Daily Training Bulletin Service in Idaho (July 15, 2011), <https://globenewswire.com/news-release/2011/07/15/451250/226510/en/Lexipol-Launches-Custody-Policy-Manual-and-Daily-Training-Bulletin-Service-in-Idaho.html> [<https://perma.cc/FRX8-QKXZ>] (explaining that in 2005, Lexipol expanded into Idaho); *id.* (noting that in 2011, Lexipol served more than 1,100 law enforcement agencies in twelve states); Memorandum, Lexipol, Lexipol's Position on Contractual Indemnification (Jan. 2008) (on file with authors) (provided by Rohnert Park Police Department) [hereinafter Lexipol's Position on Contractual Indemnification] (reporting that Lexipol then had over 500 clients in four states); Report of Bruce D. Praet at 1, *Mitz v. City of Grand Rapids*, No. 1:09-cv-365, 2009 WL 6849914 (W.D. Mich. Oct. 21, 2009) (reporting that by 2009, Lexipol was used by almost 1,000 agencies in ten states); Letter from Paul Workman, Chief of Police, City of Laguna Beach, to the Honorable Thomas J. Borris, Presiding Judge, Orange Cty. Super. Ct. (Sept. 3,

Not surprisingly, Lexipol enjoys a strong market presence in California, where the company began. Lexipol executives claim that as many as 95% of California law enforcement agencies now have their policies written by Lexipol.<sup>163</sup> Our public records requests to the 200 largest police and sheriff's agencies in California reveal that only twenty-six agencies (13%) are independent, meaning that they create their own policy manuals and have no relationship with Lexipol. The 174 remaining departments—or 87% of our sample—purchase Lexipol's services or receive them through their insurer. Of these 174 agencies, all but eight have adopted a copyrighted Lexipol policy manual for their police or sheriff's department.<sup>164</sup>

We also find that the smaller agencies are especially likely to use Lexipol's products. Among agencies with 1,000 or more officers, only 20% subscribe to Lexipol. In contrast, among agencies with fewer than 100 officers, 95% subscribe to Lexipol. The complete results of this size-based analysis are displayed in Table 2.

Table 2: Lexipol Subscriptions Among the 200 Largest Police and Sheriff's Departments in California, by Agency Size (2017)<sup>165</sup>

<i>Agency Size</i>	<i>Number of Agencies</i>	<i>Lexipol Subscribers</i>
1,000+	10	2 (20%)
500–999	10	5 (50%)
200–499	27	23 (85%)
100–199	57	53 (93%)
71–99	49	46 (94%)
48–70	47	45 (96%)

2013), [http://www.ocgrandjury.org/pdfs/2012\\_2013\\_reports/Laguna%20Beach%20Police%20Department090313.pdf](http://www.ocgrandjury.org/pdfs/2012_2013_reports/Laguna%20Beach%20Police%20Department090313.pdf) [https://perma.cc/ZEL3-WZGS] (“Lexipol provides a comprehensive policy program for . . . more than 1,500 law enforcement agencies throughout 15 states.”); Praet Deposition, *supra* note 31, at 7–10 (testifying that in 2015, Lexipol was used by approximately 2,000 agencies across twenty-five states); *Proud Partner of the Louisiana Fire Chiefs Association*, LEXIPOL, <http://info.lexipol.com/louisiana-fire-chiefs> [https://perma.cc/VWJ2-DPTK] (claiming that Lexipol is “[t]rusted by more than 3,000 public safety agencies in 35 states”).

163. See *supra* note 7 (collecting sources).

164. As we develop further, these eight departments have a hybrid arrangement with Lexipol, whereby they produce their own manual with no Lexipol copyright stamp but have an agreement to consult with Lexipol on policy development. See *infra* note 253 and accompanying text.

165. In Table 2, “Agency Size” measures the number of sworn officers in the department. We include in Table 2 the eight “hybrid” jurisdictions that subscribe to Lexipol but produce a manual without a Lexipol copyright stamp. Additional information about the California law enforcement agencies that have adopted Lexipol is provided in the Appendix.

In 2010, Lexipol was ranked the twenty-fourth fastest-growing private company in Orange County, California.<sup>166</sup> In 2012, Lexipol was ranked 387 on Deloitte's Technology Fast 500, "a ranking of the 500 fastest growing technology, media, telecommunications, life sciences and clean technology companies in North America."<sup>167</sup> Lexipol was purchased by The Riverside Company in 2014.<sup>168</sup> The Riverside Company describes Lexipol as a company with "tremendous opportunity for growth due to a largely untapped market."<sup>169</sup> Riverside plans to help Lexipol expand into new states and offer clients additional risk management services.<sup>170</sup>

## II. The Significance of Lexipol

Although there are other private, nonprofit, and government entities that draft police policies, Lexipol is now a dominant force in police policymaking across the country. Lexipol has saturated the market in California and provides its services to more than 3,000 public safety agencies in thirty-five states across the country. There is every reason to expect that Lexipol will play a controlling role in police policymaking in more states in the future.

Lexipol has achieved a goal that has proven elusive—disseminating and updating police policies for thousands of law enforcement agencies. Lexipol's business model appears to be the key to its growth. Lexipol has successfully marketed its policy and training products as risk management tools that can insulate police and sheriff's departments from liability. The company has also promoted its policies and trainings as being of higher quality than local jurisdictions could create on their own—the products are available online, are state-specific, are updated to reflect changes in governing law and best practices, and allow jurisdictions to track when their employees have viewed policies and completed trainings. Lexipol's products are therefore viewed as money-savers twice over—they reduce the cost of creating comparable policies and trainings, and those policies and trainings reduce the cost of litigation. Lexipol's service has been particularly popular

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166. Michael Lyster, *Fast-Growing Privates: \$12B in Sales, Growth of 23%*, ORANGE COUNTY BUS. J., Oct. 25, 2010, at 12.

167. Press Release, Lexipol, Lexipol Is Proud to Be Selected as a Deloitte Technology Fast 500(TM) Award Winner for 2012 (Nov. 14, 2012), <https://globenewswire.com/news-release/2012/11/14/505171/10012576/en/Lexipol-is-Proud-to-Be-Selected-as-a-Deloitte-Technology-Fast-500-TM-Award-Winner-for-2012.html> [<https://perma.cc/ZPE6-23C6>].

168. Witkowsky, *supra* note 147. See generally *About*, RIVERSIDE, <https://www.riversidecompany.com/About.aspx> [<https://perma.cc/T3HV-AS78>] ("The Riverside Company is a global private equity firm focused on making control and non-control investments in growing businesses valued at up to \$400 million.")

169. Press Release, Riverside Co., Riverside Trains Its Eyes on Lexipol (Aug. 22, 2014), <http://www.riversideeurope.com/es/News%20and%20Media/Press%20Releases/Lexipol%20-%20Acquisition%20News%20Release> [<https://perma.cc/CF6Y-ZFUK>].

170. *Id.*

with smaller jurisdictions that lack the personnel or resources to create and update their own policies and trainings. Mayors, city councils, and insurers have been willing to pay Lexipol's fees, apparently convinced that they more than pay for themselves given the litigation and risk management savings associated with Lexipol's products.

Yet Lexipol's approach appears to run contrary to the purposes, values, and processes recommended by two generations of advocates for police policymaking. In this Part, we consider three main areas of divergence: Lexipol's unwavering focus on liability risk management, its lack of transparency, and its privatization of the policymaking role.

#### A. *Liability Risk Management*

Police policies have long been viewed as a means of regulating officers' vast discretion. When President Lyndon B. Johnson's National Crime Commission studied policing practices in 1967, it found that police did have some internal rules.<sup>171</sup> However, the few rules that existed were "mostly of a housekeeping character—how to wear the uniform, how to carry the gun, whether to scribble a report in triplicate or in quadruplicate, and what to do with the copies."<sup>172</sup> Police manuals did not address "the hard choices policemen must make every day."<sup>173</sup> That is, they did not resolve how officers should exercise discretion in high-frequency scenarios, such as "whether or not to break up a sidewalk gathering, whether or not to intervene in a domestic dispute, whether or not to silence a street-corner speaker, whether or not to stop and frisk, whether or not to arrest."<sup>174</sup> The end result was that police engaged in policymaking in an ad hoc way as they went about their work, rather than answering to a centralized set of rules when making the important discretionary decisions inherent to policing.

Scholars and policing experts in the 1950s and 1960s hoped that comprehensive police policies would give an officer "more detailed guidance to help him decide upon the action he ought to take in dealing with the wide range of situations which he confronts and in exercising the broad authority

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171. THE PRESIDENT'S COMM'N ON LAW ENF'T & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 103 (1967), <https://www.ncjrs.gov/pdffiles1/nij/42.pdf> [<https://perma.cc/J2QE-626K>] [hereinafter CRIME IN A FREE SOCIETY] ("Many police departments have published 'general order' or 'duty' or 'rules, regulations, and procedures' manuals running to several hundred pages.").

172. Davis, *supra* note 18, at 712.

173. CRIME IN A FREE SOCIETY, *supra* note 171, at 103.

174. *Id.* As Kenneth Culp Davis famously explained in his classic text on the topic: "The police . . . make far more discretionary determinations in individual cases than any other class of administrators; I know of no close second." KENNETH CULP DAVIS, POLICE DISCRETION 222 (1975).

with which he is invested.”<sup>175</sup> Internal policies could also help to achieve “uniformity” in police conduct within an agency, including by ensuring that when “individual police officers confront similar situations, they will handle them in a similar manner.”<sup>176</sup> Today, scholars and experts echo concerns from half a century ago about the need to guide police discretion and the potential for comprehensive police policies to serve that role.<sup>177</sup>

Lexipol has a different set of goals and values that guide its approach to police policymaking. While scholars and experts have long viewed police policies as a means of limiting officer discretion, Lexipol appears to view its products primarily as a means of reducing legal liability. Lexipol relentlessly markets its products to jurisdictions by arguing that it will decrease the number of claims brought against police departments and the amount that jurisdictions pay in settlements and judgments in cases that are filed. We do not condemn Lexipol for focusing on limiting liability risk—its claim that Lexipol policies reduce financial liability appears to be a powerful selling point for local jurisdictions and insurers that purchase its services.<sup>178</sup> We also recognize that efforts to reduce liability risk will sometimes lead to the same policy prescriptions as efforts to constrain officer discretion.<sup>179</sup> But Lexipol’s focus on reducing liability risk is sometimes in tension with longstanding efforts to guide and restrict officer discretion through police policies.

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175. Herman Goldstein, *Police Policy Formulation: A Proposal for Improving Police Performance*, 65 MICH. L. REV. 1123, 1128 (1967).

176. Gerald F. Uelman, *Varieties of Police Policy: A Study of Police Policy Regarding the Use of Deadly Force in Los Angeles County*, 6 LOY. L.A. L. REV. 1, 4 (1973); see also Caplan, *supra* note 18, at 504 (“At the very least, the promulgation of policy will serve to reduce the uneven enforcement that now characterizes so much of street policing.”).

177. See *supra* note 19 (collecting citations).

178. For example, the City of Fresno includes the claim that Lexipol’s policies reduce legal liability in its signed agreement with Lexipol. See Agreement Between City of Fresno and Lexipol for Consultant Services 1–2 (Dec. 1, 2005) (on file with authors) (agreeing that the policies that Lexipol will create for the city “are court tested and successful in withstanding legal challenges”); see also *supra* notes 140–148, and accompanying text (describing claims of liability risk reduction made in promotional materials to several agencies).

179. Research by John Rappaport and Joanna Schwartz underscores that municipal liability insurers’ financial incentives to reduce legal liability can sometimes lead them to demand policing improvements aimed at reducing misconduct. See Rappaport, *supra* note 3, at 1543–44 (“[A]n insurer writing police liability insurance may profit by reducing police misconduct. Its contractual relationship with the municipality gives it the means and influence necessary to do so—to ‘regulate’ the municipality it insures.”); Schwartz, *supra* note 3, at 1207 (“[O]utside insurers have a uniquely powerful position from which they can demand improvements in policing.”). Indeed, municipal liability insurers’ financial incentives may make them better situated than self-insured municipalities to push for these types of policing reforms. See *id.* at 1203–04 (finding that the costs of lawsuits have no financial consequences for the majority of law enforcement agencies in self-insured jurisdictions); *id.* at 1205–06 (“Contrary to the assumption that insurance creates moral hazard, public entity risk pools may take greater efforts than self-insured jurisdictions to reduce liability risk. . . . [P]ublic entity risk pools can place financial pressures on law enforcement agencies that self-insured governments may be unwilling or unable to replicate.”).

This tension can be seen in recent debates about use of force policies. Over the past few years, several groups—including the Fraternal Order of Police, the International Association of Chiefs of Police, the Police Executive Research Forum (PERF), academics, and nonprofit advocacy organizations—have recommended new policing policies to reduce unnecessary and excessive use of force.<sup>180</sup> Included in this approach are policies requiring that police use de-escalation techniques with suspects, refrain from shooting into moving vehicles, and intervene if another officer might use excessive force.<sup>181</sup> Although Lexipol’s California state master policy manual contains some of these concepts,<sup>182</sup> Lexipol has issued a series of public statements critical of these recently issued model use of force policies because language in these policies restricts officers’ discretion in ways that could expose them to legal liability.

Soon after several prominent law enforcement groups issued a National Consensus Policy on Use of Force, Lexipol’s founding partner, Bruce Praet, posted an article to Lexipol’s website titled *National Consensus Policy on Use of Force Should Not Trigger Changes to Agency Policies*.<sup>183</sup> Praet cautioned law enforcement agencies against adopting several of the model policies because they used the word “shall.” Although the model policies’ use of “shall” was presumably geared to constrain officer discretion, Praet discouraged agencies from adopting that language because plaintiffs’ attorneys would “highlight” that type of language as a way of showing that officers had violated policy.<sup>184</sup> According to Praet, the need to shield officers from liability is “why Lexipol policy clearly defines the difference between

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180. See *infra* note 181. For other efforts by academics and nonprofits to draft model rules, see *infra* notes 305–309 and accompanying text.

181. See, e.g., NATIONAL CONSENSUS POLICY ON USE OF FORCE 3–4 (2017), [http://www.theiacp.org/Portals/0/documents/pdfs/National\\_Consensus\\_Policy\\_On\\_Use\\_Of\\_Force.pdf](http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf) [<https://perma.cc/SS9A-QFE3>] [hereinafter NATIONAL CONSENSUS] (requiring that officers use de-escalation when possible, prevent other officers’ use of excessive force, and refrain from shooting at moving vehicles); POLICE EXEC. RESEARCH FORUM, GUIDING PRINCIPLES ON USE OF FORCE 40–41, 44, 74–75 (2016), <http://www.policeforum.org/assets/30%20guiding%20principles.pdf> [<https://perma.cc/RH4L-D8Y3>] [hereinafter PERF GUIDING PRINCIPLES] (same); *Limit Use of Force*, CAMPAIGN ZERO, <https://www.joincampaignzero.org/force/> [<https://perma.cc/6G82-29JA>] (advocating for police policies that would ban shooting at moving vehicles and require de-escalation before use of force).

182. See, e.g., CALIFORNIA STATE MASTER POLICE DEPARTMENT: POLICY MANUAL, *supra* note 61, at 44, 48 (Policy 300.2.1 “Duty to Intercede,” Policy 300.4.1 “Shooting at or From Moving Vehicles”). Lexipol does not appear to include a policy of de-escalation, though it alludes to the concept in its policy manual as a benefit of kinetic energy projectiles, see *id.* at 61, and one of the skills of a Crisis Negotiation Team, see *id.* at 279.

183. Bruce D. Praet, *National Consensus Policy on Use of Force Should Not Trigger Changes to Agency Policies*, LEXIPOL (Jan. 25, 2017), <http://www.lexipol.com/news/use-caution-when-changing-use-of-force-policy-language/> [<https://perma.cc/UR2T-DUH2>].

184. *Id.*



‘shall’ and ‘should’ and cautions against the unnecessary use of ‘shall.’”<sup>185</sup> Lexipol posted an article by a police chief offering a similar admonition against adopting a model use of force policy recommended by PERF that prohibited shooting at moving vehicles. His argument against the model policy was also based on limiting legal liability: “Policy language that definitively prohibits an action will inevitably result in a situation where an officer violates the policy under reasonable circumstances, which in turn can create issues that must be dealt with if litigation results.”<sup>186</sup>

Bruce Praet has additionally criticized PERF for recommending that use of force policies “go beyond the legal standard of ‘objective reasonableness’ outlined in the 1989 United States Supreme Court decision *Graham v. Connor*.”<sup>187</sup> PERF’s recommendation was motivated by an interest in limiting officers’ discretion to use lethal force. As PERF explained:

[The *Graham*] decision should be seen as “necessary but not sufficient,” because it does not provide police with sufficient guidance on use of force. . . . Agencies should adopt policies and training to hold themselves to a higher standard, based on sound tactics, consideration of whether the use of force was proportional to the threat, and the sanctity of human life.<sup>188</sup>

PERF’s position is consistent with decades of scholarship about the limitations of court opinions as a guide for police policymaking. Those who advocate for improved police policies are generally skeptical of the ability of courts to provide needed guidance to agencies creating police policies.<sup>189</sup> Judicial decisions do play a critically important role in police policies, as they create a floor that cannot be violated.<sup>190</sup> Because courts are focused on the

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185. *Id.*

186. Michael D. Ranalli, *Counsel’s Corner: Adding Perspective to the PERF Guiding Principles on Use of Force: What Police Administrators Should Consider*, N.Y. ST. CHIEF’S CHRON., June 2016, at 7, 11, as reprinted in Michael Ranalli, *Why PERF’s Prohibition on Shooting at Vehicles Sells Agencies Short*, LEXIPOL (Dec. 7, 2016), <http://www.lexipol.com/news/why-perfs-prohibition-on-shooting-at-vehicles-sells-agencies-short> [https://perma.cc/AZQ8-V6U2] [hereinafter Ranalli, *Shooting at Vehicles*].

187. Praet, *supra* note 183; see POLICE EXEC. RESEARCH FORUM, 30 GUIDING PRINCIPLES 1 (2016), <http://www.policeforum.org/assets/30guidingprinciples.pdf> [https://perma.cc/3ZD2-UNCQ] (discussing *Graham v. Connor*, 490 U.S. 386 (1989), a seminal Supreme Court opinion that defines what force is unreasonable and in violation of the Fourth Amendment).

188. POLICE EXEC. RESEARCH FORUM, *supra* note 187, at 1.

189. See, e.g., Friedman & Ponomarenko, *supra* note 19, at 1832, 1865 (describing courts as “completely inadequate” for the task of regulating police behavior). An insightful recent article by Anna Lvovsky provides additional historical context for the inadequacies of courts in this arena: the longstanding deference to “police expertise” that has made courts presume that police decisions are necessarily based on reliable “expert” knowledge. See generally Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995 (2017).

190. For example, the Warren Court’s criminal procedure decisions, such as *Mapp* and *Miranda*, arguably “initiated” police rulemaking by addressing “previously unregulated aspects of routine police procedures” related to searches and interrogations. Walker, *supra* note 16, at 12, 15.

constitutionality of officer behavior, their decisions will, by definition, articulate the bare minimum that officers must do to avoid violating the Constitution.<sup>191</sup> However, due to their “case-by-case and relatively intuition-laden” approach, courts are not necessarily well-situated to articulate best practices.<sup>192</sup> As a result, most experts agree that police policymaking should draw from multiple sources, including input from local community members regarding their experiences with police, best practices recommended by policing experts, research about the impact of various policies, and analyses of the costs and benefits of different approaches.<sup>193</sup>

In contrast to decades of scholarship on the subject, Praet has criticized the notion that police use of force policies should “go beyond” the requirements announced by the Supreme Court in *Graham*. He writes:

Several years ago, our forefathers decided that there would be nine of the finest legal minds in the country who would interpret the law of the land. For almost 30 years, law enforcement has learned to function under the guidance of the Supreme Court’s “objective reasonableness” standard. What would happen if each of the 18,000+ law enforcement agencies in the United States formulated their own standard “beyond” *Graham*?<sup>194</sup>

To be sure, Lexipol’s policies are not solely guided by court decisions. Lexipol makes clear in its promotional materials that some of its policies are inspired by what it calls “best practices” that are not mandated by statutes or court decisions.<sup>195</sup> But use of force policies raise a different question for policymakers: When there is a court decision or statute that prohibits certain officer behavior, and expert opinion that recommends additional restrictions on officer behavior, should the policy conform to the court decision or to the higher standard recommended by experts? Statements by Praet and other

191. As administrative law scholar Kenneth Culp Davis asked decades ago: “If the Supreme Court has stated the minimum requirements of the Constitution, how can the police change anything unless they are willing to go above the minimum?” Davis, *supra* note 18, at 712.

192. Slobogin, *supra* note 17, at 117.

193. Barry Friedman and Maria Ponomarenko describe the need for additional information to supplement judicial decisions in this way:

[F]ew believe it makes sense for courts to be the primary supervisors of police agencies, particularly because judicial review is almost exclusively about constitutionality. Governing policing involves a host of prior questions: Are policing policies and procedures properly vetted? Are they efficacious? What harms do they impose? Do they make sense from a cost-benefit perspective? In short, largely neglected by courts and constitutional law are the very questions that concern us most with regard to the work of other agencies.

Friedman & Ponomarenko, *supra* note 19, at 1832.

194. Praet, *supra* note 183.

195. See, e.g., *Law Enforcement: Custom Policy Content*, LEXIPOL, <http://www.lexipol.com/law-enforcement> [<https://perma.cc/GQ83-EEAH>] (describing Lexipol’s policy content as “based on federal and state statutes, case law and law enforcement best practices”).

Lexipol spokespeople about use of force suggest that Lexipol's focus on liability risk management may cause it to draft policies that maximize officer discretion and hew closely to court decisions when such decisions exist—and that those inclinations may conflict with experts' views on best practices.

Lexipol's focus on liability risk management may influence its product design in other ways. For example, Lexipol promotes its officer DTB training program as focused on “high-risk, low-frequency behaviors” including use of force, use of electronic control devices, vehicle and foot pursuits, and crisis intervention incidents.<sup>196</sup> According to Lexipol, its DTB trainings are designed to be “a cost effective training delivery method that serves as a substantial safety net” against lawsuits.<sup>197</sup> Yet, although low-risk, high-frequency events—such as traffic stops and searches—are less likely to result in litigation,<sup>198</sup> such events threaten other risks, including risks to community safety and trust in the police. As John Rappaport has observed, a focus on reducing liability risk may shortchange other important areas of police activity.<sup>199</sup>

Lexipol's focus on liability risk management may also cause it to design products that reduce the frequency with which plaintiffs sue or the amount they recover without reducing the occurrence of the underlying harms. For example, Lexipol has designed its policy and training software so that officers can “acknowledge” that they received updated policies and participated in Lexipol's trainings.<sup>200</sup> According to the company, this acknowledgement protocol can help in litigation, as it provides evidence that

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196. See, e.g., Ranalli, *Shooting at Vehicles*, *supra* note 186; see also Letter from Dan Merkle, *supra* note 98, at 2 (“The primary focus of the DTBs are those high/risk, low/frequency events that can get an agency and/or an officer into trouble.”).

197. Dan Merkle, CEO, Lexipol Daily Training Bulletins (DTBs): Request for California POST Certification 2 (undated) (on file with authors).

198. In one important exception, the Center for Constitutional Rights brought a federal class action lawsuit against the City of New York challenging the New York Police Department's stop-and-frisk practices as unconstitutionally relying on racial profiling. See *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013). For additional background on the *Floyd* litigation, see Sunita Patel, *Policing the Police: The Potential of Public Law Injunctions* (manuscript on file with authors).

199. See John Rappaport, *An Insurance-Based Typology of Police Misconduct*, 2016 U. CHI. LEGAL F. 369, 375–83, 399–404 (2016) (describing how financial risk prompts municipal liability insurers to focus on reducing “high-dollar, short-tail” claims, like excessive force, while overlooking “low-dollar” claims—like investigatory stops and racial profiling claims—and “long-tail” claims—like wrongful convictions).

200. See, e.g., *How It Works*, LEXIPOL, <http://www.lexipol.com/how-it-works/> [<https://perma.cc/X6KY-6K5L>] (“Lexipol's Knowledge Management System (KMS) is easy to use and allows your agency to customize policy content to fit your needs. Features include easy editing of policies, electronic policy acknowledgement, and reports that quickly enable you to document whether officers have completed training and reviewed new or updated policies.”).

officers were informed and trained on the policies.<sup>201</sup> Yet we found no corresponding marketing materials suggesting that Lexipol designs its trainings to improve officer understanding of harmful practices by drilling down on these challenging topics, or that the two-minute training format is well-suited to achieve these goals.

Finally, Lexipol's focus on risk management appears to influence the ways in which the company evaluates the efficacy of its policies. Lexipol consistently promotes its policies as reducing the frequency of lawsuits and the cost of settlements and judgments. The marketing materials we obtained make specific claims about the reduction in such costs enjoyed by subscribers.<sup>202</sup> But Lexipol does not make any claims about whether its products advance other important policing goals, such as enhanced trust within communities or fewer deaths of persons stopped by the police.<sup>203</sup> Also notably absent is any claim about whether Lexipol's products reduce the frequency with which police officers engage in unconstitutional conduct that does not frequently result in litigation.<sup>204</sup> Lexipol's decision to focus on liability risk management makes sense; it certainly has been an effective marketing strategy with local governments. Nevertheless, this focus threatens to crowd out other values that can be advanced through police policies.

Because Lexipol does not publicly disclose information about its drafting process, it is impossible to know the extent to which liability risk management interests have influenced drafting choices for individual policies, decisions about which trainings to develop, or assessments of policy efficacy. Nonetheless, the evidence we have collected suggests that Lexipol's policies and trainings may differ in meaningful ways from those proposed by policing experts and researchers and that Lexipol's focus on liability risk management may explain at least some of those differences.

### B. *Secret Policymaking*

Proponents of police reform have long recommended that police policies be created through a transparent, quasi-administrative process.

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201. See, e.g., *FAQs*, LEXIPOL, <http://www.lexipol.com/law-enforcement/law-enforcement-faqs/> [<https://perma.cc/APU7-KE7D>] (“Lexipol recommends that all personnel take every DTB, as it links to the policy manual, encourages continuous training and serves as a record of training for potential litigation.”); see also Letter from John Fitisemanu, Client Servs. Representative, Lexipol, to Tammie Stilinovich, Officer, Long Beach Police Dep't (Feb. 28, 2014) (noting that DTB reports are archived and that these records can be used for litigation).

202. See, e.g., *supra* Figure 3; see also *supra* notes 144-148 and accompanying text.

203. For New York City's efforts to measure community trust in its police department, see Al Baker, *Updated N.Y.P.D. Anti-Crime System to Ask: 'How We Doing?'*, N.Y. TIMES (May 8, 2017), <https://www.nytimes.com/2017/05/08/nyregion/nypd-compstat-crime-mapping.html> [<https://perma.cc/36XR-2MBS>].

204. See Rappaport, *supra* note 199, at 385-91 (observing that insurers can help improve policing but will be focused only on those types of behaviors deemed liability risks).

Beginning in the 1950s and 1960s, commentators advocated for an administrative rulemaking process whereby proposed policies would be subject to notice and comment by the public.<sup>205</sup> As President Johnson's 1967 Commission explained, "the people who will be affected by these decisions—the public—have a right to be apprised in advance, rather than ex post facto, what police policy is."<sup>206</sup> Ideally, policies would also be evaluated after enactment by law enforcement officials, researchers, and the public.<sup>207</sup>

Today, scholars are again calling for an administrative rulemaking process that encourages police to develop detailed policies that are subject to notice and comment and some manner of judicial review.<sup>208</sup> Contemporary commentators have also emphasized—perhaps even more forcefully than their predecessors—that any administrative police rulemaking process should directly engage community members and that policies should be tailored to the particular circumstances and interests of the community.<sup>209</sup>

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205. See, e.g., Caplan, *supra* note 18, at 509 (supporting "openness" and "public examination" of proposed police department policies which "invites publicity and community reaction and insures that policy can be easily challenged in the courts," which will "promote the production of sophisticated, balanced policy positions"); see also *supra* note 18 and sources cited therein.

206. CRIME IN A FREE SOCIETY, *supra* note 171, at 104–05.

207. *Id.*; Amsterdam, *supra* note 18, at 423, 427; Caplan, *supra* note 18, at 509; Davis, *supra* note 18, at 717.

208. See *supra* note 19 and sources cited therein.

209. See, e.g., PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT 20 (2015), [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) [<https://perma.cc/BC9G-P4VA>] (recommending that law enforcement agencies "should collaborate with community members to develop policies and strategies in communities and neighborhoods disproportionately affected by crime" and emphasizing that community members need to be included in these discussions because "what works in one neighborhood might not be equally successful in every other one"); Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 2 (2009) (contending that when departments provide "inadequate training and policy guidance to officers" and fail to incorporate "public feedback," they facilitate or encourage misconduct); Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1120 (2000) ("Empowering citizens through access to government information and by giving them a voice in the decisionmaking process is not only more democratic, but has the potential to establish a basis for trust in otherwise distrusting communities."); Miller, *supra* note 19, at 525 (promoting giving "local communities and disadvantaged individuals a more meaningful voice in evaluating and checking local police policy"); Sunita Patel, *Toward Democratic Police Reform: A Vision for "Community Engagement" Provisions in DOJ Consent Decrees*, 51 WAKE FOREST L. REV. 793, 794, 796, 802 (2016) (highlighting the benefits of community engagement in police policymaking as a reform strategy); Kami Chavis Simmons, *New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 409 (2010) (explaining that community engagement in police policymaking on the front end "may create not only better substantive reforms, but may also increase the legitimacy of the ultimate police reforms implemented in a particular jurisdiction"); Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 407 (2016) (revealing how copwatching is a form of civic engagement in which "groups of lay people come together to contest police practices through observation, recording, and dialogue"); cf. Bell, *supra* note 28, at 2144 (arguing that administrative rulemaking procedures will not on their own "unsettle legal estrangement in the communities that are most affected" by police abuse and

Advocates for these more democratic processes contend that they can lead to more effective policies and enhance the perceived legitimacy of policing.<sup>210</sup> Increasingly, police departments are incorporating these democratic ideals into their policymaking processes: In 2015, several law enforcement leaders signed on to a Statement of Democratic Principles, organized by New York University (NYU) School of Law's Policing Project, which included a commitment to a rulemaking process that incorporates robust community engagement.<sup>211</sup>

Lexipol's policymaking process departs considerably from the transparent, quasi-administrative policymaking processes recommended by scholars and policing experts and adopted by some law enforcement agencies. Instead of policies crafted locally and with community input, policies created by Lexipol are based on a uniform state template. Lexipol's standardization of policymaking is one of the reasons that the private service has been so commercially successful. But its approach runs contrary to that recommended by experts and embraced by some law enforcement agencies.

Lexipol does not preclude local jurisdictions from seeking out the types of community engagement and deliberation that scholars and experts recommend, or tailoring Lexipol policies to reflect local values and interests. In this Article, we have not examined the extent to which local jurisdictions modify Lexipol's standard policies to reflect local values and interests, or whether jurisdictions are engaging community members in the customization process.<sup>212</sup> But several aspects of Lexipol's structure make us wary of simply assuming that jurisdictions will seek public input or modify policies based on their own needs once they have made the decision to give the policymaking job to Lexipol. First, Lexipol provides local jurisdictions with little information about the reasons for its policy choices, which makes it difficult for subscribers to make informed decisions about whether to adopt Lexipol's policies. Lexipol's statewide master manual does identify whether a policy is required by law, a best practice, or discretionary.<sup>213</sup> But the manual contains no explanation of what evidence Lexipol considers when designing its

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that such processes should therefore be combined “with other democracy-enhancing reforms” such as providing more transparency on police practices).

210. See sources cited *supra* note 209.

211. POLICING PROJECT: NYU SCH. OF LAW, STATEMENT OF PRINCIPLES ON DEMOCRATIC POLICING 3 (2015), <https://policingproject.org/wp-content/uploads/2016/05/Policing-Principles.pdf> [<https://perma.cc/YLC8-PJ58>].

212. Lexipol executives provided us with data suggesting that approximately 60% of customers change less than 20% of their Lexipol policy manuals. SECOND LEXIPOL POWERPOINT, *supra* note 9, at 16. The remaining 40% of customers change 20% or more of Lexipol's manuals. *Id.* But Lexipol has not examined the extent to which its customers' modifications are cosmetic—changing the name of the law enforcement agency, for example—or more substantive.

213. See *supra* Figure 1 and accompanying text.

policies, why Lexipol makes particular drafting decisions, or whether there are other plausible alternative policies.

The other materials Lexipol provides to its customers are similarly unilluminating. We used the Public Records Act to request all information that the California agencies had regarding their relationship with Lexipol. What we typically obtained was Lexipol's standard police manual, a contract, and evidence of payment. Many jurisdictions also had marketing information that they received from Lexipol, e-mail exchanges, and PowerPoint presentations from Lexipol executives. Some had internal memoranda justifying local jurisdictions' decisions to purchase Lexipol's service rather than continue to write their own policy manuals. Some had materials from Lexipol that described amended policies and the rationale for the amendments (generally a change in the law). But none of the departments produced materials from Lexipol that described the evidentiary basis for policies, drafting decisions by the company, or the existence of alternative approaches.

The Lexipol executives with whom we spoke reported that, since 2008, jurisdictions have also had access to policy guides that offer general background information about policies. Yet the fact that no jurisdictions provided us with such guides—and a detective from one jurisdiction, when asked about the policy guide, said he had never seen or heard of it—confirms one Lexipol vice president's view that these guides are “well-kept secrets” and difficult for departments to access online.<sup>214</sup> Moreover, we are skeptical that these guides—even if widely available—would provide much information to agencies about Lexipol's policy decisions. Lexipol declined to provide us with a copy of its policy guide, but it did provide us with a single page of the guide regarding body camera video, and that page provided little basis by which a Lexipol customer could assess the sensibility of Lexipol's policy choices in this area.<sup>215</sup>

Even when local jurisdictions seek out information from Lexipol about the bases for its policy-drafting decisions, Lexipol reveals scant information about its choices. For example, a sergeant at the Irvine Police Department e-mailed Lexipol, seeking information about several aspects of Lexipol's use of force policy, including:

1. Where did the definition of Force come from? Has it changed over time? I know there is not one agreed upon definition as it applies to UoF policy, but was wondering where your definition came from.

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214. *See supra* notes 86–87.

215. *See infra* notes 259–261 and accompanying text (describing the substance of the page we received).

2. Is the lethal force policy verbiage based on federal standards? It varies slightly from ours, primarily because it includes the word imminent. The definition of imminent is broadly defined to include preventing a crime. Was the Lexipol wording derived from case law that includes “imminent” as it is defined in your policy?<sup>216</sup>

The sergeant explained in his message that the Irvine Police Department has its own policy manual but uses Lexipol to “augment” its policies, and that he was reviewing Lexipol’s policies to see whether and how they should adjust their own manual.<sup>217</sup> The Lexipol representative responded quickly to the sergeant’s questions but offered no specifics about its use of force policy choices, writing only: “The force definitions are based on federal guidelines as well as the deadly force section. This policy has changed over time with the changes in laws and case decisions. The ‘imminent’ wording again is based on the federal guidelines.”<sup>218</sup> Although the sergeant took this laudable step to discover additional information about Lexipol’s standardized policy, the company offered him minimal guidance.

Our research uncovered similar concerns regarding the claims that Lexipol makes about its DTB trainings. Although Lexipol promises that its two-minute trainings and “every day is training day” philosophy will save subscribers money and reduce exposure to lawsuits, we found no empirical support for these claims. Indeed, citing a litany of concerns, California’s Commission on Peace Officer Standards and Training (POST) twice declined to certify Lexipol’s DTBs as sufficient to satisfy their minimum standards for state law enforcement training.<sup>219</sup> Among other concerns, the Commission cited a “[l]ack of evidence or feedback to indicate the information [in Lexipol’s DTBs] is understood or can be applied.”<sup>220</sup> According to the Commission staff, the true/false format of the extremely brief DTBs provides no “proof of learning” or “degree of assurance that the information would be applied in a unique situation, i.e., beyond the single scenario included in the

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216. E-mail from Barry Miller, Sergeant, Irvine Police Dep’t, to Greg Maciha, Lexipol (Aug. 4, 2015, 11:22 AM) (on file with authors).

217. *Id.*

218. E-mail from Greg Maciha, Lexipol, to Barry Miller, Sergeant, Irvine Police Dep’t (Aug. 4, 2015, 1:41 PM) (on file with authors).

219. POST LEXIPOL REPORT, *supra* note 102, at 2–3 (reviewing the history of Lexipol’s unsuccessful attempts to gain state certification from the Commission for its DTBs, beginning informally in 2004, and later resulting in two formal denials in 2006 and 2009). Lexipol appealed this decision pursuant to Commission Regulation 1058 but lost the appeal. *See* Letter from Paul A. Cappitelli, Executive Director, Commission on Peace Officer Standards and Training, to Dan Merkle, CEO, Lexipol (July 27, 2009) (on file with authors) (“It is the decision of the Commission to deny your appeal and affirm the actions of POST staff and the Executive Director to deny certification of the Daily Training Bulletin.”).

220. POST LEXIPOL REPORT, *supra* note 102, at 3.



DTB.”<sup>221</sup> Moreover, the DTBs do not include clear “learning objectives,” do not ensure that students will actually read the information contained in the DTBs, are entirely “stand-alone trainings” not supported by “the assistance or guidance of an instructor,” and fail to provide opportunities for “practice or feedback.”<sup>222</sup> The fact that the DTBs are “part of a wholly proprietary subscription service” and distributed by a “private, for-profit company” also weighed heavily in the Commission’s decision to decline certification of the trainings.<sup>223</sup> In particular, the Commission found it troubling that it would have no “oversight” over Lexipol’s privatized “content, instructional methodology, instructor competence, or effectiveness” and that non-subscribing agencies would not have access to the proprietary, fee-based trainings.<sup>224</sup>

In sum, based on the information we have been able to collect, we do not believe that Lexipol provides subscribing agencies with sufficient information for them to be able to understand what evidence Lexipol has consulted when crafting its policies and trainings, the rationale for its drafting decisions, or whether there are diverging opinions about best practices in a given area. Even if a jurisdiction tries to deviate from the standard-issue Lexipol policies or trainings, it must address structural aspects of Lexipol’s products that make it burdensome to customize. For example, Lexipol’s update service automatically overrides client customization. The Lexipol policy manual updates repeatedly caution subscribers that “[e]ach time you accept an update the new content will automatically replace your current content for that section/subsection of your manual,” meaning that “if you have customized the section/subsection being updated you will lose your

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221. Letter from Paul A. Cappitelli, Executive Director, Commission on Peace Officer Standards and Training, to Steve Peeler, Training Director (Apr. 20, 2009) (on file with authors); *see also* POST LEXIPOL REPORT, *supra* note 102, at 9 (“The single true/false question at the end of each DTB assesses only whether the student is able to read the questions but does not, by itself, assess whether the concept is understood or can be applied. Whether or not the student has read the DTB, the chance of selecting the correct answer is 50/50. If the incorrect answer is selected online, no corrective feedback or remediation is necessary because the correct answer is obvious. True/false questions are widely determined to be inherently unsound as a stand-alone assessment.”).

222. POST LEXIPOL REPORT, *supra* note 102, at 2–3, 7–9.

223. Letter from Paul A. Cappitelli, *supra* note 221.

224. Letter from Michael C. DiMiceli, Assistant Exec. Dir., Cal. Comm’n on Peace Officer Standards and Training, to Steve Foster, Lexipol LLC (May 2006) (on file with authors); POST LEXIPOL REPORT, *supra* note 102, at 10 (“[T]he DTB program is a wholly proprietary, fee-based subscription service of Lexipol. It is directly connected to their foundational policy manual service. Certification of the DTB limits training credit solely to Lexipol customers and, if certified, the training would not be available to non-subscribing officers and agencies. Limiting training and credit to subscribers of a proprietary service is a significant departure from long-standing Commission policy.”).

specific changes.”<sup>225</sup> The fact that Lexipol’s DTB trainings are all based on the standard policies is another impediment to customization. Jurisdictions wishing to deviate from Lexipol’s standard trainings would need to invest in creating their own training programs.

Finally, Lexipol’s subscribers purchase Lexipol’s products in part because they do not have the money or time to engage in their own rulemaking processes. Lexipol markets its service as a cost-saving tool, emphasizing that it costs less to adopt the Lexipol manual than to pay internal staff to research and develop policies on their own. And Lexipol subscribers applaud the service because it eliminates the need for police chiefs and other government officials to develop policies themselves.<sup>226</sup> If a subscriber wanted to modify Lexipol’s standard policies, it would need to identify alternative policy language, consider the strengths and limitations of that alternative, and seek community input. Most jurisdictions that contract with Lexipol are unlikely to dedicate the time and money necessary to this project, particularly given Lexipol’s assurances that its policies reduce litigation and litigation costs so dramatically.

In this Article, we do not examine the substance of Lexipol’s policies or compare its policies to those created through the transparent, quasi-administrative processes recommended by scholars and experts and adopted by some progressive agencies. But we defer to their view that there are

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225. LEXIPOL, CALIFORNIA LE POLICY MANUAL UPDATES 2 (Nov. 2016) (provided by the Modesto Police Department) (on file with authors). These update instructions also inform clients that:

If you wish to preserve your custom content, you should select “Edit ←” to manually merge the new content with your modified content. If you select “Reject Update” your customized content will not be changed. If the update is to delete an entire section/subsection and you choose “Reject Delete” the content will no longer be supported by Lexipol and the section/subsection will be shown as agency-authored content.

*Id.*; see also LEXIPOL, LEXIPOL POLICY MANUAL UPDATE, RELEASE NOTES 1 (June 2013) (provided by the Folsom Police Department) (on file with authors) (“**Important:** Each time you accept an update the new content will automatically replace your current content for that section of your manual.”) (emphasis in original).

226. See, e.g., Press Release, Lexipol, Lexipol Launches LE Policy Manual & Daily Training Bulletin Service in Missouri (Nov. 28, 2011), reprinted in *Lexipol Launches LE Policy Manual & Daily Training Bulletin Service in Missouri*, LAW OFFICER (Dec. 1, 2011), <http://lawofficer.com/archive/lexipol-launches-le-policy-manual-daily-training-bulletin-service-in-missouri/> [https://perma.cc/5PRE-QM8A]. Gregory Mills, Police Chief in Riverside, Missouri, explains Lexipol’s benefits:

Like most chiefs, I do not have the luxury of having a staff that can research policy issues from the legal and best practices perspectives and then translate the information into an understandable written policy . . . . But with Lexipol I don’t need to, because they do it all. Lexipol’s policy manual is complete and its updates are timely. There are many things in police management to worry about. Fortunately for me, not having up-to-date policies is no longer one of those.

*Id.*

democratic and perhaps substantive benefits to customization and community engagement in police policymaking. We are concerned that Lexipol's lack of transparency about its policy decisions, the difficulty of modifying Lexipol's manual, and the financial pressures faced by agencies that decide to purchase Lexipol's services discourage local agencies from evaluating the sensibility of Lexipol's policy choices, seeking community input, or modifying policies to reflect local priorities.

### C. *Policymaking for Profit*

Those who have promoted police policymaking over the past several decades never considered the possibility that a private, for-profit enterprise might play such a dominant role in the creation and dissemination of police policies. Yet perhaps the rise of Lexipol should come as no surprise. Private entities have long engaged in police functions.<sup>227</sup> Private companies have also drafted government policies, standards, and regulations.<sup>228</sup> And more generally, private–public partnerships and hybrids have become the rule, rather than the exception.<sup>229</sup> The growth of Lexipol and other private agencies involved in police policymaking is consistent with the privatization of law enforcement functions and the increasing privatization of government policies, standards, and regulation more generally.

Privatization scholars tend, in varying degrees, to applaud privatization as more effective and efficient than government action and to despair that privatization compromises democratic principles.<sup>230</sup> Our study of Lexipol offers evidence to support both views. In this Article, we have not compared Lexipol's policies with those drafted by agencies and so cannot reach any firm conclusions about whether Lexipol's policies are more “effective”—by

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227. See generally Sklansky, *supra* note 27. For a discussion of the ways in which private business is playing a role in policing technologies, see Elizabeth E. Joh, *The Undue Influence of Surveillance Technology Companies on Policing*, 92 N.Y.U. L. REV. ONLINE 101 (2017). Joh's examination of private surveillance technologies raises similar concerns to those we have raised here, including the dominance of one company's policy choices and secrecy about technology decisions.

228. See, e.g., Lawrence A. Cunningham, *Private Standards in Public Law: Copyright, Lawmaking and the Case of Accounting*, 104 MICH. L. REV. 291, 292–93 (2005) (describing copyrighted standards that are incorporated into substantive law); Nina A. Mendelson, *Taking Public Access to the Law Seriously: The Problem of Private Control over the Availability of Federal Standards*, 45 ENVTL. L. REP. 10776, 10776 (2015) (reporting that federal agencies have incorporated privately drafted standards into federal regulations); Alan Schwartz & Robert E. Scott, *The Political Economy of Private Legislatures*, 143 U. PA. L. REV. 595, 596 (1995) (describing the work of ALI and other private entities that create restatements); Peter L. Strauss, *Private Standards Organizations and Public Law*, 22 WM. & MARY BILL RTS. J. 497, 502 (2013) (describing standards created by private standard-setting organizations that are incorporated into public laws).

229. See generally Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. L. REV. 543 (2000).

230. See *supra* notes 26–27 and accompanying text.

whatever metric one might use—than policies drafted by local agencies. But Lexipol subscribers quoted on Lexipol’s website appear to believe that the company’s policies are of higher quality than they could create on their own.<sup>231</sup> Lexipol’s dramatic expansion over the past fifteen years suggests a widespread belief that the company is better situated than local law enforcement agencies to perform the police policymaking function and can do so at reduced cost.

Yet our study of Lexipol also offers anecdotal support for common criticisms of privatization. As we have argued, Lexipol appears to prioritize liability risk management over other interests, and the secrecy with which it drafts its policies makes it difficult for law enforcement to understand the bases for Lexipol’s policy decisions. These observations echo concerns by privatization scholars that private companies overvalue efficiency interests and lack transparency.<sup>232</sup> In addition, Lexipol’s interest in making a profit creates unorthodox relationships between the policymaking company and the public police agencies that subscribe to its services.

For example, Lexipol’s standard contract with subscribers contains an indemnification clause providing that the company “shall have no responsibility or liability” to any subscriber for its products.<sup>233</sup> According to Lexipol, an indemnification term is necessitated by its business model: As Lexipol explained in a memorandum to customers, removing the indemnification clause would mean that subscription prices would increase “dramatically” to account for the possibility of litigation.<sup>234</sup> Nevertheless, Lexipol has also assured its subscribers that “Lexipol’s content has been published for agency use for over 10 years,” and “[w]e are unaware of any

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231. *See supra* note 157 and accompanying text.

232. *See supra* note 27.

233. *See, e.g.*, Lexipol, Contract with the Long Beach Police Dep’t (2013) (on file with authors); Lexipol, Contract with the City of Orange Police Dep’t (Feb. 21, 2004) (on file with authors); Lexipol, Contract with the Walnut Creek Police Dep’t (Apr. 12, 2011) (on file with authors); Lexipol, Contract with the San Ramon Police Dep’t (Aug. 13, 2006) (on file with authors); Lexipol, Contract with the Cty. of Napa (approved by Board of Supervisors Apr. 12, 2005) (on file with authors). Similarly, Lexipol has required jurisdictions to waive standard provisions in their contracts requiring vendors to pay any settlements and judgments arising out of their contract performance. *See, e.g.*, Agreement between Lexipol and the City of Chula Vista for Use of Subscription Material (July 1, 2015) (on file with authors) (waiving the standard provision in a vendor contract for Lexipol, which requires city vendors to indemnify and hold harmless the city). Other localities similarly had to request waivers of their normal indemnification terms in order to accommodate Lexipol’s refusal to agree to this term. Agenda Item, Office of the Sheriff–Coroner, Cty. of Tulare, Approve Agreement Between the County of Tulare and Lexipol (Aug. 23, 2006) (on file with authors) (requesting that the Board approve an agreement between the County of Tulare and Lexipol, “which includes payment in advance and waiver of [the county’s] indemnification provisions”).

234. Lexipol’s Position on Contractual Indemnification, *supra* note 162.

case in which Lexipol provided content was found faulty by a court. . . . Consider that track record against any alternative.”<sup>235</sup>

Although Lexipol’s indemnification clause may make business sense for the company and for its subscribers, it creates the potential for a liability shell game when policies are faulty. A plaintiff can sue a city or county if she suffered a constitutional harm that resulted from official police policy.<sup>236</sup> Presumably as a means of avoiding liability under this legal theory, Lexipol has repeatedly made clear that “Lexipol will never assume the position as any agency’s ‘policy-maker.’”<sup>237</sup> In negotiations with one jurisdiction over the indemnification issue, Lexipol offered the curious rationale that it only “suggests” content and does not actually “control” the policies adopted by the agency:

We only suggest content. The agency has total control of their actual policies. The Chief will adopt the Policy Manual before it is deployed and certify that he is the Policy Maker as defined by federal requirements. Certainly the agency would not ask us to indemnify what we do not control.<sup>238</sup>

In addition, when Lexipol issues a policy update, it cautions its subscribers “to carefully review all content and updates for applicability to your agency, and check with your agency’s legal advisor for appropriate legal review before changing or adopting any policy.”<sup>239</sup> These disclaimers about Lexipol’s policymaking role sit in stark contrast with the broader messaging by Lexipol to jurisdictions—that its policies are “legally defensible” and designed to help jurisdictions avoid litigation that will result from out-of-date

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235. *Id.*

236. *See generally* Monell v. Dep’t of Soc. Serv., 436 U.S. 658 (1978) (allowing municipal liability for an unconstitutional policy that causes harm).

237. Lexipol’s Position on Contractual Indemnification, *supra* note 162; *see also* Second Addendum to Agreement Between City of Fresno and Lexipol, LLC (July 23, 2015) (on file with authors) (containing an acknowledgment by the city that “neither Lexipol nor any of its agents, employees or representatives shall be considered ‘policy makers’ in any legal or other sense and that the chief executive of City will, for all purposes, be considered the ‘policy maker’ with regard to each and every such policy and Daily Training Bulletin”).

We could find only one case in which Lexipol was named as a defendant in a civil rights suit against a law enforcement agency or officer. That case alleged that Thomas Schrock died after Ontario Police, following a Lexipol policy, shot him twice with a Taser. Schrock v. Taser Int’l, Inc., No. ED CV 14–02142–AB (DTBx), 2014 WL 7332112 (C.D. Cal. Dec. 19, 2014). Lexipol was voluntarily dismissed from the case after moving for summary judgment. *See* Defendant, Lexipol, LLC’s Ex Parte Application to Dismiss Lexipol, LLC and for Entry of Judgment at 3, Schrock v. Taser Int’l, Inc., No. CIVDS 1408556 (Cal. Super. Ct. Apr. 28, 2016) (Bloomberg, Litigation & Dockets) (requesting Lexipol be dismissed from the case because it was not named in plaintiffs’ amended complaint). In this Article we have repeatedly relied on Bruce Praet’s deposition in that case. *See supra* note 31.

238. INDEMNIFICATION RATIONALE, *supra* note 142.

239. LEXIPOL, POLICY MANUAL UPDATE: RELEASE NOTES 1 (Dec. 2013) (provided by Cathedral City) (on file with authors).

policies. Indeed Lexipol markets its policies as a cost-savings because agencies can adopt them without modification.<sup>240</sup>

Lexipol, LLC's vigorous use of copyright law to protect its business interests is another troubling outgrowth of its for-profit status. Under a standard term found in all Lexipol contracts, Lexipol, rather than the contracting agency, holds the copyright to all policies.<sup>241</sup> Even when a law enforcement agency that contracts with Lexipol amends Lexipol's model policies, Lexipol regards the resulting amended policy as covered by Lexipol's copyright.<sup>242</sup> The manuals used by Lexipol subscribers have the Lexipol copyright on each page, even when the subscriber has added original content to the page.<sup>243</sup>

Lexipol has a sensible business argument for copyrighting its policies and preventing its policies from being adopted by other agencies without paying Lexipol. As Lexipol's CEO explained in correspondence to a customer in our study, "if we do not correct/defend any and all known violations we risk losing the copyright and by extension we risk our ability to do business."<sup>244</sup> Yet this copyright position may inhibit improvements to Lexipol's policies and stunt development of policies and best practices more generally.

Police policymaking is often viewed as a collective enterprise among advocacy groups, community leaders, and other experts. For example, the Immigrant Legal Resource Center (ILRC), a nonprofit organization that advocates for the rights of immigrants, has published a guide featuring policies from several jurisdictions that protect immigrants from federal immigration enforcement.<sup>245</sup> As part of this project, ILRC also publishes an

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240. See *supra* note 78 and accompanying text.

241. See, e.g., Lexipol, Contract with the Long Beach Police Dep't (2013) (on file with authors). The contract provides that:

Agency further agrees that any content within an Agency Policy Manual prepared by Agency, based in whole or in part on content created by Lexipol, or based on any Supplemental Policy Publications and/or Procedure Manuals, and Daily Training Bulletins copyrighted by Lexipol shall be derivative works subject to the copyright of Lexipol.

*Id.*

242. See, e.g., E-mail from Ron Wilkerson, CEO, Lexipol, to Scott Jordan, Chief, Tustin Police Dep't (Apr. 1, 2013, 9:32 AM) ("Lexipol copyright needs to be added to any content authored by Lexipol whether in total or a derivative of content authored by Lexipol.").

243. We did find eight jurisdictions that consulted with Lexipol but did not officially adopt Lexipol's policies. Their manuals did not have Lexipol's copyright stamp on their policies. See *infra* note 253 and accompanying text.

244. E-mail from Ron Wilkerson, *supra* note 242.

245. LENA GRABER, ANGIE JUNCK & NIKKI MARQUEZ, LOCAL OPTIONS FOR PROTECTING IMMIGRANTS: A COLLECTION OF CITY & COUNTY POLICIES TO PROTECT IMMIGRANTS FROM DISCRIMINATION AND DEPORTATION (2016), [https://www.ilrc.org/sites/default/files/resources/local\\_options\\_final.pdf](https://www.ilrc.org/sites/default/files/resources/local_options_final.pdf) [<https://perma.cc/W9KP-GFG3>].

interactive national map that includes links to local policing policies that disentangle local law enforcement from federal deportation efforts.<sup>246</sup> Campaign Zero, a nonprofit organization dedicated to ending police-caused deaths, has crafted a model use of force policy from components of policies adopted by departments in a number of jurisdictions including Philadelphia, Denver, Seattle, Cleveland, New York City, Los Angeles, Las Vegas, and Milwaukee, all of which are made available to the public on Campaign Zero's web page.<sup>247</sup>

The basic idea behind these efforts is that sharing, evaluating, and modifying policies from different jurisdictions will improve police policies overall. Groups like ILRC and Campaign Zero can identify the strengths and weaknesses of policies from different jurisdictions and analyze the ways in which these policies impact discretionary decisionmaking. This information can then be used by other jurisdictions to make informed decisions about which policies to adopt.

Lexipol's copyrighted policies can only play a limited role in this evaluative process. Lexipol subscribers can make their policies public and sometimes post their policies online.<sup>248</sup> But Lexipol's copyright stamp must be included on each page of those policies. And it is Lexipol's position that other jurisdictions cannot adopt language from Lexipol policies—even policies that have been modified by their subscribers—without first paying Lexipol. When Lexipol learned that the Tustin Police Department—a Lexipol subscriber—did not have a Lexipol copyright stamp on its policy manual's pages and had distributed its manual online and shared portions of its manual with other agencies, then-CEO Ron Wilkerson contacted the Tustin Police Chief with the company's copyright concerns. Wilkerson explained to the chief that “if your manual is posted on any web site or forum such as the [International Association of Chiefs of Police] site and others use that content not knowing it is copyrighted material a much more serious problem takes shape.”<sup>249</sup> Wilkerson also asked that the chief identify any agencies that might be using the policies so that he could “work to correct the problem.”<sup>250</sup>

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246. *National Map of Local Entanglement with ICE*, IMMIGRANT LEGAL RESOURCE CTR. (Dec. 19, 2016), <https://www.ilrc.org/local-enforcement-map> [<https://perma.cc/F9PW-KBFN>].

247. *Limit Use of Force*, CAMPAIGN ZERO, <https://www.joincampaignzero.org/force/> [<https://perma.cc/U4RZ-DQQ7>].

248. For examples of agencies posting their Lexipol-authored policy manuals online see AUSTIN POLICE DEP'T, POLICY MANUAL (2015), <https://www.documentcloud.org/documents/2661319-Austin-Police-Department-Policy-Manual-2015.html> [<https://perma.cc/RAQ3-QR5N>]; PALO ALTO POLICE DEP'T, POLICY MANUAL (2013), <https://www.cityofpaloalto.org/civicax/filebank/documents/38381> [<https://perma.cc/Z2VR-VY2L>]; RIVERSIDE POLICE DEP'T, RIVERSIDE P.D. POLICY MANUAL (2017), <https://riversideca.gov/rpd/ChiefOfc/manual.pdf> [<https://perma.cc/B36R-FW25>].

249. E-mail from Ron Wilkerson, *supra* note 242.

250. *Id.*

Lexipol's approach allows the company to preserve its copyright and the associated financial benefits but is contrary to a collaborative policymaking approach.

One jurisdiction in our study—the City and County of San Francisco Sheriff's Department—concluded that Lexipol's insistence on a copyright provision was a deal breaker. The sheriff had retained Lexipol to consult with them on developing a new use of force policy. But Lexipol insisted that the resulting policy would belong to Lexipol, not the sheriff. As the San Francisco City Attorney's Office advised Lexipol in a memorandum terminating the relationship, “Lexipol's ownership of copyrighted material and related derivative works language was unacceptable.”<sup>251</sup> Other jurisdictions have also struggled with the copyright issue. For example, the City of Orange raised the copyright issue with us in response to our public records request, lamenting that although they “have revised many of [their] policies without Lexipol input” since the time of their initial Lexipol contract in 2004, “[t]he policies maintain the Lexipol trademark stamp as we did not wish to fight with them about whether they were still their intellectual property.”<sup>252</sup>

Eight of the departments in our study have what we call hybrid contractual arrangements, whereby they subscribe to Lexipol's manual service to stay updated on policy development but do not adopt the Lexipol manual for their department.<sup>253</sup> Instead, they have continued using their own manual, which carries no Lexipol copyright stamp.

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251. Memorandum from Michael Renoux, Dir. Contracts, Lexipol, to Carl Fabbri, Lieutenant, S.F. Police Dep't (Jan. 25, 2016) (on file with authors).

252. E-mail from Denah Hoard, City of Orange, to Ingrid Eagly (Dec. 14, 2016, 7:43 AM) (on file with authors).

253. The eight hybrid departments are the Oceanside Police Department, the Solano County Sheriff's Office, the Kern County Sheriff's Office, the Davis Police Department, the Riverside County Sheriff's Department, the Irvine Police Department, the Burbank Police Department, and the Butte County Sheriff's Office. *See* E-mail from Patti Czaiko, Admin. Sec'y, City of Oceanside, to Ingrid Eagly (Sept. 20, 2017, 7:37 AM) (“I confirmed with Oceanside Police Department that the Lexipol website is utilized for research when developing language for the OPD internal manual. They are not using Lexipol as the Policy and Procedure Manual, it is simply a resource.”); E-mail from Kimberley G. Glover, Solano Cty. Counsel, to Ingrid Eagly (Sept. 16, 2017, 4:02 PM) (on file with authors) (“[A]lthough the Sheriff's Office does have a Lexipol contract, I have been advised that they do not use it very often and have not adopted the Lexipol 'policy manual.'”); E-mail from Jennifer Moran, Police Records Manager, Burbank Police Dep't, to Ingrid Eagly (May 11, 2017, 3:24 PM) (on file with authors) (“We use the Lexipol policies as a reference. We read the policies and edit them to fit our needs. Some polic[i]es require very little changes and others are heavily edited. We customize the policies so they are in line with the BPD[']s business practices and with our existing procedures. Lexipol assists with the legal mandate verbiage. Once we make the edits, the policy becomes ours and it is not a Lexipol policy.”); Letter from Virginia L. Gingery, Deputy Cty. Counsel, Butte Cty., Cal., to authors (Dec. 6, 2016) (on file with authors) (“I am informed that the Department does not use Lexipol's policies and procedures verbatim, but rather, uses Lexipol as a resource when developing its own policies and departmental orders. The contractual relationship with Lexipol is in the form of a yearly subscription.”); Letter from Donny



In this Article, we have not examined the practices of all private companies engaged in police policymaking. It is certainly possible that the practices of other private policymaking groups would not prompt the same concerns that we have observed about Lexipol. Yet Lexipol is—and is well-positioned to remain—the dominant private actor in the police policymaking market, and we find that Lexipol’s privatized approach raises significant substance and process concerns. More fundamentally, our study raises questions as to what role Lexipol can and should play in efforts to improve police policymaking more generally. This is the topic to which we turn in Part III.

### III. Moving Forward

In this Part, we offer several recommendations about how to move forward. Our goal with these recommendations is to enable local governments to be more fully engaged in the creation of their policies and trainings, while recognizing the financial and time constraints that have made it difficult for local governments to craft comprehensive policy manuals and trainings on their own. First, we recommend that Lexipol be more transparent about its policymaking process so that adopting jurisdictions can more easily make informed decisions about whether to modify or adopt wholesale Lexipol’s proposed policies. Second, we encourage states and local jurisdictions to promulgate model policies and foster independent policymaking processes. Third, we urge nonprofits and scholars interested in improving police policies to take steps to more effectively compete in the increasingly privatized police policymaking space and view Lexipol as a critically important audience.

#### A. *Understanding Lexipol*

Lexipol should be more transparent about its policymaking process. Currently, Lexipol provides no information to its subscribers about the identity of experts who draft their model policies, the evidence upon which it relies when crafting policies and trainings, the policy interests that animate

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Youngblood, Sheriff–Coroner, Kern Cty., Cal., to Ingrid Eagly (Dec. 2, 2016) (on file with authors) (“The Commander in charge of the Human Resources unit believes that the Sheriff’s office has been using Lexipol for years but has never used or adopted Lexipol information to formulate any policy or procedures. The Commander periodically receives e-mails from Lexipol LLC with the latest updates in case law [a]ffecting law enforcement which coincides with notifications received from other services about the same issues.”); Letter from David Delaini, Deputy Police Chief, Davis Police Dep’t, to authors (Nov. 14, 2016) (reporting that the Davis Police Department is a member of the Yolo County Public Agency Risk Management Insurance Company (YCPARMIA), that the Department has access to Lexipol’s policies as part of its contract with YCPARMIA, and that, “[w]hile the Department has used the Lexipol policies as a guide, the Department has not adopted the Lexipol policy manual as its own and does not communicate with Lexipol regarding the Department’s policy manual.”); *see also* Appendix.

its drafting choices, the availability of alternative policy formulations, or the impact of its policies on local jurisdictions' practices.

Lexipol's lack of transparency about its employees and policymaking process threatens local governments' policymaking efforts in two ways. First, local jurisdictions deciding whether to purchase Lexipol's services have little information with which to assess the quality of Lexipol's products or the ways in which those products might influence police practices. Second, Lexipol's lack of transparency makes it difficult for subscribers to decide which of Lexipol's proposed policies to adopt. Lexipol customers are faced with an uncomfortable choice—adopt each of Lexipol's model policies on the untested assumption that the policies are sound or spend scarce time and money to independently evaluate those policies.

Lexipol could make this choice less stark by providing its customers with additional information about the rationale for its policy choices and available policy alternatives. Armed with more knowledge about the considerations relevant to Lexipol's policy rationales, subscribers could make better informed decisions about whether and how to modify Lexipol's standard policy language.

Body camera policies are just one arena in which more transparency by Lexipol would benefit its customers. There is a great deal of disagreement about whether police officers should be able to review body camera video before writing up reports about use of force incidents.<sup>254</sup> The United States Department of Justice's Community Oriented Policing Services and the Police Executive Research Forum recommend allowing officers to review video footage before making a statement about an incident because “[r]eviewing footage will help officers remember the incident more clearly, which leads to more accurate documentation of events” and “[r]eal-time recording of the event is considered best evidence.”<sup>255</sup> In contrast, the ACLU opposes policies that allow officers to review video before writing up reports, arguing that the practice enables lying, undermines the legitimacy of investigations, and allows for cross-contamination of evidence.<sup>256</sup> Several police departments, including Atlanta, Oakland, San Francisco, San Jose, and

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254. N.Y.C. POLICE DEP'T, NYPD RESPONSE TO PUBLIC AND OFFICER INPUT ON THE DEPARTMENT'S PROPOSED BODY-WORN CAMERA POLICY 16–17 (2017), [https://policingproject.org/wp-content/uploads/2017/04/NYPD\\_BWC-Response-to-Officer-and-Public-Input.pdf](https://policingproject.org/wp-content/uploads/2017/04/NYPD_BWC-Response-to-Officer-and-Public-Input.pdf) [<https://perma.cc/TDM9-XG7D>] [hereinafter NYPD BODY CAMERA REPORT].

255. U.S. DEP'T OF JUSTICE CMTY. ORIENTED POLICING SERVS. & POLICE EXEC. RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 45 (2014), <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> [<https://perma.cc/799X-RM29>].

256. See Jay Stanley & Peter Bibring, *Should Officers Be Permitted to View Body Camera Footage Before Writing Their Reports?*, ACLU (Jan. 13, 2015), <https://www.aclu.org/blog/free-future/should-officers-be-permitted-view-body-camera-footage-writing-their-reports> [<https://perma.cc/8FWS-DKBG>].

Washington, D.C., prohibit their officers from viewing video footage prior to making a statement.<sup>257</sup>

Lexipol adopted a model policy that allows officers to review body camera footage before making a statement to investigators.<sup>258</sup> But Lexipol's policy manual includes no guidance about the rationale supporting its policy decision, alternative policies adopted by other jurisdictions, or the reasons it rejected those alternative approaches. Lexipol was willing to share with us their policy "guide sheet" for this policy,<sup>259</sup> but it contained nothing by way of guidance for agencies other than to note that the issue is "hotly debated . . . when it comes to officer-involved shootings."<sup>260</sup> Moreover, the guide "recommends" that agencies adopt the Lexipol policy language without providing additional information with which agencies can make their own assessment.<sup>261</sup> Finally, Lexipol executives who read a draft of this Article pointed us to a webinar available on its website about the decision to allow officers to view video footage before offering a statement.<sup>262</sup> We do not know how many agencies review this and other webinars produced by Lexipol, but note that the webinar did not include information about alternative policy approaches adopted by other agencies or supported by those groups advocating for restrictions on video review by officers.<sup>263</sup>

Lexipol's presentation of its body camera policy stands in contrast to that of the New York City Police Department, which similarly allows officers to review body camera footage before making a statement. When New York

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257. NYPD BODY CAMERA REPORT, *supra* note 254, at 16. A recent report by the Stanford Criminal Justice Center (SCJC) recommends that law enforcement agencies should not investigate their own cases involving officer shootings. Such an approach, according to SCJC, would help to minimize conflicts of interest and enhance the accountability of police. AMARI L. HAMMONDS ET AL., STANFORD CRIMINAL JUSTICE CTR., AT ARM'S LENGTH: IMPROVING CRIMINAL INVESTIGATIONS OF POLICE SHOOTINGS 16 (2016), <https://law.stanford.edu/wp-content/uploads/2016/09/At-Arms-Length-Oct-2016.pdf> [<https://perma.cc/JSC6-L22J>].

258. See, e.g., ELK GROVE POLICE DEP'T, POLICY MANUAL (2017) (adopting Lexipol Policy 310.8, Audio and Video Recordings, which explains that "[a]ny officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports").

259. For a description of policy guide sheets, see *supra* notes 83–88 and accompanying text. As we have discussed, these policy guide sheets do not appear to be used by many Lexipol customers. See *supra* notes 214–215 and accompanying text.

260. SECOND LEXIPOL POWERPOINT, *supra* note 9, at 17 (presenting a sample Lexipol policy guide sheet for officer-involved shootings in California).

261. *Id.*

262. See Grant Fredericks, Laura Scarry & Ken Wallentine, *Point/Counterpoint: The Debate over Officer Viewing of BWC Video Footage*, LEXIPOL (Dec. 12, 2016), <https://register.gotowebinar.com/register/277667746234235396> [<https://perma.cc/M9M6-SHCA>] (Lexipol webinar).

263. The three participants in the video are two Lexipol employees and an instructor at the FBI National Academy who is a forensic video analyst. *Id.* The webinar identified arguments for and against allowing officers to review video before making a statement but ultimately recommended that officers be allowed to view video before making a statement.

City adopted this policy, it issued a lengthy report describing public and police views about various policy options and the rationale supporting its decision.<sup>264</sup> Were Lexipol to provide agencies with more information about the rationale underlying its policy decisions regarding body camera footage and other areas of debate and disagreement, subscribing jurisdictions would be able to make independent, informed decisions about whether to adopt or modify Lexipol's standard policies.

Assuming that Lexipol stands by its process and content, it should welcome additional transparency. Lexipol makes clear that it should not be viewed as police departments' policymaker and that local jurisdictions should assess proposed policies and decide on their own whether to adopt them. According to the fine print in Lexipol contracts, the local jurisdictions (not Lexipol LLC) are the policymakers, and local law enforcement (not Lexipol LLC) will be held liable if those policies are found to be constitutionally unsound. It is, therefore, consistent with Lexipol's proclaimed advisory role to provide agencies with background information about Lexipol's policy decisions so that they can be more engaged in the creation of their policies.

### *B. Regulating Lexipol*

Our second recommendation is that governments become more actively engaged with police policymaking as a mechanism to narrow the gap between policymaking ideals and current practices. Lexipol's influence could be subject to greater public oversight if states and cities were to take a greater interest in both the process by which important policing policies are created and the content of the resulting policies. In addition, courts could play a role by requiring local governments to engage in transparent policymaking.

First, state and local policing agencies that subscribe to Lexipol should customize Lexipol's model policies to reflect their particular needs and community values.<sup>265</sup> When making the decision to purchase a Lexipol contract, localities should account for the agency time that is necessary to review and customize the policies. Indeed, the agency does remain the

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264. See generally NYPD BODY CAMERA REPORT, *supra* note 254. In another example that deviates from the Lexipol model, the City Council in Berkeley, California, recently worked with the SCJC to provide detailed advice in a published report regarding the benefits and drawbacks of arming the Berkeley Police Department with Electronic Control Weapons. See generally JENA NEUSCHELER & AKIVA FREIDLIN, STANFORD CRIMINAL JUSTICE CTR., REPORT ON ELECTRONIC CONTROL WEAPONS (ECWs) SUBMITTED TO THE CITY OF BERKELEY (2015), <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/ECW-Final-Draft-2.pdf> [<https://perma.cc/2VCD-6CVD>].

265. While determining the extent to which jurisdictions customize their manuals is beyond the scope of this project, the manuals that we did receive in public records requests appear highly standardized. See *supra* notes 89–90 and accompanying text.

“policymaker” under the standard Lexipol contract and must take this obligation seriously.

This is precisely how a major California municipal insurer hopes its subscribers will use Lexipol. California Joint Powers Insurance Authority (CJPIA), a municipal self-insurance pool with more than 100 members, provides Lexipol subscriptions to its insureds.<sup>266</sup> However, in a recent newsletter, CJPIA encouraged its members to view sample policies from Lexipol and other sources as “a [s]tarting [p]oint; [n]ot an [e]nding [p]oint.”<sup>267</sup> Acknowledging that “[s]uch policies are often well-researched, well-written, and legally compliant” and “can provide an excellent starting point for drafting,” CJPIA warned readers that “all too often, the drafter simply takes the policy, changes the names and titles and voilà—a policy has been born! Yet, using another’s policy can be a trap for the unwary.”<sup>268</sup> Among the concerns identified by the CJPIA are that the model policy “does not alleviate the agency of the responsibility for the content of the policy” and that different public agencies may have different needs and practices.<sup>269</sup> Although this type of localization will take some time and money, it will be far less expensive than creating entirely new policies and trainings. And if Lexipol is more transparent about its policymaking process, it will be less burdensome for local jurisdictions to benefit from—without overly relying upon—Lexipol.

Second, local governments should be encouraged to write their own policies, and develop procedures for implementing them, without subscribing to Lexipol. At the local level, some jurisdictions have taken steps to create their own formalized system for police rulemaking, akin to what has been advocated by scholars. The Los Angeles Board of Police Commissioners is one such example. This five-member civilian body functions “like a corporate board of directors” for the Los Angeles Police Department,<sup>270</sup> taking on roles that include developing and analyzing police policies and

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266. Mellor, *supra* note 134 (reporting that in January 2009, Lexipol and CJPIA entered a “strategic business partnership . . . whereby the California JPIA funds the cost of a member’s participation in the Law Enforcement Policy Manual Update and Daily Training Bulletin subscriptions”).

267. Kelly A. Trainer, *Risk Solutions: One Size Rarely Fits All: Proper Use of Sample Policies*, CAL. JPIA, Dec. 2016, <https://cjpia.org/news/newsletter/newsletter-article/2016/12/15/december-2016—issue-58#seven> [<https://perma.cc/TAK4-TC9E>].

268. *Id.*

269. *Id.*

270. *Police Commission*, L.A. POLICE DEP’T, [http://www.lapdonline.org/police\\_commission](http://www.lapdonline.org/police_commission) [<https://perma.cc/C7EZ-WPTE>]. The Board’s five civilian members are appointed by the Mayor and confirmed by the Los Angeles City Council. *The Function and Role of the Board of Police Commissioners*, L.A. POLICE DEP’T, [http://www.lapdonline.org/police\\_commission/content\\_basic\\_view/900](http://www.lapdonline.org/police_commission/content_basic_view/900) [<https://perma.cc/BP23-3PPJ>].

monitoring policy implementation.<sup>271</sup> Importantly, all of its meetings are open to the public and the group provides opportunities for public comment.<sup>272</sup>

The Chief of the Washington, D.C. Metropolitan Police Department is responsible for policymaking,<sup>273</sup> with internal institutional support and input from outside constituencies. The Chief has a dedicated Policy and Standards Branch, which develops and publishes department policy and directives.<sup>274</sup> The Chief also consults with the Citizens Advisory Council, a group of community members that provide community feedback on policy issues.<sup>275</sup> To further increase transparency, the D.C. Official Code requires all written policy directives to be available to the public online.<sup>276</sup>

Other jurisdictions have involved community members in piloting new policy initiatives. The Camden County Police Department partnered with NYU School of Law's Policing Project to seek community input on their department's body-worn-camera policy.<sup>277</sup> The department posted a draft policy on its website and sought feedback through an online questionnaire, in two community forums, and from focus groups made up of Camden police officers who had been using body cameras as part of a pilot project.<sup>278</sup> In

271. *The Function and Role of the Board of Police Commissioners*, L.A. POLICE DEP'T, [http://www.lapdonline.org/police\\_commission/content\\_basic\\_view/900](http://www.lapdonline.org/police_commission/content_basic_view/900) [https://perma.cc/BP23-3PPJ] (including a detailed description of the various arms of the Commission, including the policy group that "assists the Board in developing and analyzing policy, monitoring the progress of policy implementation, and reviewing proposed Department actions" and "also provides overall research and analytical support to the Commission, and facilitates the transfer and coordination of information").

272. *Id.* Other major cities have also adopted a Police Commission model similar to that of Los Angeles. See, e.g., *Police Commission*, S.F. POLICE, <http://sanfranciscopolice.org/police-commission> [https://perma.cc/9AVN-EKPR]; *About the Fire and Police Commission*, CITY.MILWAUKEE.GOV, <http://city.milwaukee.gov/fpc/About#.WXaL39Pytn5> [https://perma.cc/36XN-XUPH]; *Police Commissioners History*, DETROITMI.GOV, <http://www.detroitmi.gov/How-Do-I-Find-Detroit-Archives/Police-Commissioners-History> [https://perma.cc/Q8A6-VNUL]; *Community Police Commission: About Us*, SEATTLE.GOV, <https://www.seattle.gov/community-police-commission/about-us> [https://perma.cc/8BM6-QRTJ]; *Board of Police Commissioners: St. Louis County Police Department*, STLOUISCO.COM, <http://www.stlouisco.com/LawandPublicSafety/PoliceDepartment/AboutUs/BoardofPoliceCommissioners> [https://perma.cc/CUA9-EK7P].

273. METROPOLITAN POLICE DEP'T, D.C., GO-OMA-101.00, DIRECTIVES SYSTEM 1 (June 3, 2016), [https://go.mpdconline.com/GO/GO\\_101\\_00.pdf](https://go.mpdconline.com/GO/GO_101_00.pdf) [https://perma.cc/V2Z3-K9YL] ("The Chief of Police makes 'orders, rules, and regulations governing conduct and controlling police activity.'").

274. *Policy and Standards Branch*, METROPOLITAN POLICE DEP'T, D.C., <https://mpdc.dc.gov/page/policy-and-standards-branch> [https://perma.cc/LQL6-MZTP].

275. *Citizens Advisory Councils*, METROPOLITAN POLICE DEP'T, D.C., <https://mpdc.dc.gov/page/citizens-advisory-councils-cac> [https://perma.cc/8UGE-4KBT].

276. D.C. CODE § 2-536 (2012).

277. *Camden, POLICING PROJECT*: N.Y.U. SCH. L., <https://policingproject.org/our-work/developing-accountability/camden/> [https://perma.cc/T8BP-7S32].

278. *Id.*

response to this feedback, the department made several adjustments to its draft policy and published a report describing the community feedback the department received and the changes to the draft policy inspired by that feedback.<sup>279</sup>

While not all jurisdictions will have the resources to support a full commission process like that in operation in Los Angeles, most larger departments could follow Camden's example and involve community members in the ongoing development and revision of police policies. Moreover, jurisdictions that create their own policies could do more to disseminate their resulting policies to the public free of cost so that other agencies, particularly smaller ones, can adopt them. Local engagement in the development and revision of police policies is particularly important in jurisdictions that have been investigated or sued for civil rights abuses. Public rulemaking processes and advisory councils like that adopted in Washington, D.C., can be used to address the unique problems faced by departments and can strengthen community trust damaged as a result of those problems. Instead, several departments in our study appear to have adopted Lexipol policies after facing these types of suits and investigations without public engagement or input about the content of those policies.<sup>280</sup>

Third, state legislatures could more actively shape the content of the Lexipol policies that their law enforcement departments adopt. It was, after all, a 1959 California law designed to encourage police departments to adopt policies governing police pursuits that provided the foundation for starting Lexipol.<sup>281</sup> Since then, additional state reforms have further shaped the

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279. *Id.*

280. For example, when the Oakland City Council approved a settlement of a multitude of constitutional violations by police officers, the court monitor approved a Lexipol contract rather than requiring the city to revise its own policies in collaboration with community members. See Oakland City Council, Resolution No. 85356 (Dec. 4, 2014) (on file with authors) (indicating that Lexipol was the sole respondent to a request for proposals from outside vendors); E-mail from Kristin Burgess to Danielle Cortijo (Mar. 26, 2015, 2:37 PM) (on file with authors) (indicating that approval for Lexipol was obtained from the monitor). Similarly, the Bakersfield Police Department became a Lexipol subscriber immediately after the Department of Justice recommended a series of reforms to their department's written police policies. Joe Mullins, Sergeant, Bakersfield Police Dep't, Approval of Lexipol's Subscription Agreement (July 6, 2006) (on file with authors) (laying out the terms and conditions of the subscription agreement); Letter from Shanetta Y. Cutlar, Chief, Special Litig. Section, U.S. Dep't of Justice, to Virginia Gennaro, City Attorney, City of Bakersfield (Apr. 12, 2004), [https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/bakersfield\\_ta\\_letter.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/bakersfield_ta_letter.pdf) [<https://perma.cc/GG2S-R39E>] (recommending a series of reforms to the department's written policies at a preliminary stage of investigation). The Inglewood Police Department also adopted Lexipol policies after public outcry over repeated shootings of unarmed suspects by the department's officers. See Jack Leonard & Victoria Kim, *Inglewood Police Have Repeatedly Resorted to Deadly Force*, L.A. TIMES (Dec. 28, 2008), <http://www.latimes.com/local/la-me-inglewood28-2008dec28-story.html> [<https://perma.cc/H2KU-DLDD>] (detailing the Inglewood Police Department's pattern of using unnecessary force against suspects).

281. CAL. VEH. CODE § 17004.7 (West 2007) (benefitting jurisdictions that adopt a "written policy" on police pursuits that meets a number of "minimum standards" and requires that "all peace

content of police pursuit policy in California. For example, in 1993, the state required the Commission on Peace Officer Standards and Training to establish further guidelines and training on vehicle pursuits, involving more than 120 law enforcement agencies, legal advisors, and public representatives in the development of the guidelines.<sup>282</sup> Other states around the country have similarly passed laws that require departments to adopt policy content. For example, a number of states require that police administer lineups with safeguards that research has shown reduce the possibility of misidentification.<sup>283</sup> Wisconsin's state law on eyewitness identification procedures specifically requires that law enforcement agencies "adopt written policies" that are "designed to reduce the potential for erroneous identifications by eyewitnesses in criminal cases."<sup>284</sup> Moreover, the law requires that agencies "consider model policies and policies adopted by other jurisdictions" when developing and revising their own eyewitness identification policies.<sup>285</sup>

States could do more to regulate the content of police policies of public import—they could require Lexipol and its law enforcement agency clients to be more transparent about their policy choices. States could also require that Lexipol and its subscribers seek community input about proposed policies. The California legislature recently passed the TRUTH Act, which requires law enforcement agencies to hold community forums before allowing officials from Immigration and Customs Enforcement (ICE) to interview detainees.<sup>286</sup> This legislation requires all jurisdictions that cooperate with ICE in the state to solicit community input. Perhaps a similar requirement could be legislated for agencies that subscribe to Lexipol or other private policymaking entities, requiring them to seek public comment on their police policies.

States and localities could also facilitate public rulemaking by establishing a rulemaking body for the police. Since 1953, California's Ralph

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officers of the public agency certify in writing that they have received, read, and understand the policy"); *see also supra* notes 31–34 and accompanying text (discussing the founding of Lexipol).

282. S.B. 601, 1993–1994 Leg. Sess. (Cal. 1993). This law and other subsequent legal amendments are codified in § 13519.8 of California's Penal Code. CAL. PENAL CODE § 13519.8 (West 2012); *see generally* CAL. COMM'N ON PEACE OFFICER STANDARDS & TRAINING, CALIFORNIA LAW ENFORCEMENT VEHICLE PURSUIT GUIDELINES 2006 (rev. ed. 2007), [http://lib.post.ca.gov/Publications/vp\\_guidelines.pdf](http://lib.post.ca.gov/Publications/vp_guidelines.pdf) [<https://perma.cc/MP62-XXMQ>].

283. Mark Hansen, *Show Me Your ID: Cops, Courts Re-evaluate Their Use of Eyewitnesses*, ABA J. (May 2012), [http://www.abajournal.com/magazine/article/show\\_me\\_your\\_id\\_cops\\_courts\\_re-evaluate\\_their\\_use\\_of\\_eyewitnesses/](http://www.abajournal.com/magazine/article/show_me_your_id_cops_courts_re-evaluate_their_use_of_eyewitnesses/) [<https://perma.cc/B46G-M33S>].

284. WIS. STAT. § 175.50(2) (2017).

285. *Id.* § 175.50(4).

286. *See* Assemb. B 2792, 2015–2016 Leg., Reg. Sess. (Cal. 2016). *See generally* Ingrid V. Eagly, *Criminal Justice in an Era of Mass Deportation: Reforms from California*, 20 NEW CRIM. L. REV. 12 (2017) (discussing California's adoption of new laws designed to disentangle state law enforcement from federal deportation efforts).



M. Brown Act (Brown Act) has required that all meetings by the governing body of a local agency be open to the public and allow for public participation.<sup>287</sup> The Brown Act provides a ready-made framework to facilitate public participation in police policymaking.<sup>288</sup> As far as we are aware, California jurisdictions using Lexipol have not followed the Brown Act provisions.<sup>289</sup> However, they could start doing so by requiring that a governmental committee or commission approve local police policies, including those written by Lexipol, thereby bringing the process of reviewing and customizing Lexipol policies squarely into the purview of the state's open-meeting requirements.<sup>290</sup> A simple additional improvement would be to require that police departments make copies of their policy manuals and training materials available to the public on the Internet. This would be a first, modest step toward improving transparency and facilitating public engagement on policymaking.

Finally, courts could assume a more active role in the substance and process of police policymaking. Courts will always serve an important function in identifying the baseline—a constitutional floor under which police conduct may not pass. That alone will continue to inform police policy, particularly the type of “legally defensible” policies that Lexipol promotes. But courts have often proven themselves ill-suited or unwilling to articulate the detailed and comprehensive rules necessary to guide police discretion.<sup>291</sup> Andrew Manuel Crespo has argued that if courts took better advantage of the voluminous facts at their disposal about the criminal justice system, they would gain a greater “institutional awareness of the criminal justice systems

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287. Ralph M. Brown Act, CAL. GOV'T CODE §§ 54950–63 (West 2017) (providing that meetings of public bodies in California must be “open and public” and that action taken in violation of open-meetings laws may be voided). The Act provides details regarding which entities are covered and how to properly run public meetings (including requirements for when and how agendas are posted, how to broadcast meetings, and how to track the minutes of the meetings). *Id.*; see also Int'l Longshoremen's & Warehousemen's Union v. L.A. Exp. Terminal, Inc., 69 Cal. App. 4th 287, 293 (1999) (noting that the Brown Act “serves to facilitate public participation in all phases of local government decisionmaking and to curb misuse of the democratic process by secret legislation of public bodies”).

288. Several local jurisdictions in California—including San Francisco, Contra Costa County, and Oakland—require even greater public transparency through local “Sunshine” ordinances. *E.g.*, S.F., CAL., S.F. ADMIN. CODE § 67.1 (1999), <http://sfgov.org/sunshine/provisions-sunshine-ordinance-section-67> [<https://perma.cc/9MYN-E2MB>]; CONTRA COSTA CTY., CAL., ORDINANCE CODE tit. 2 div. 25 (1995); OAKLAND, CAL., CODE OF ORDINANCE tit. 2 ch. 2.20 (1997).

289. Our research did reveal one unsuccessful suit challenging a Lexipol police policy that alleged that meetings between the police chief, his lieutenant, and officials from Lexipol concerning proposed police policies were subject to the Brown Act. *Jiaqing v. City of Albany*, No. RG06254229, 2008 WL 7864330 (Cal. Super. Ct. Sept. 29, 2008).

290. Under the Brown Act, “legislative body” includes any “commission, committee, board, or other body of a local agency,” including one “that governs a private corporation.” CAL. GOV'T CODE § 54952 (West 2003).

291. See *supra* notes 189–192 and accompanying text (describing these critiques).

over which they preside.”<sup>292</sup> Doing so, according to Crespo, could bring the institutional advantages of courts—including their ability to “safeguard minority interests that may be ignored or abused in the political process”—to bear on the substance of police policy.<sup>293</sup> Courts could also, as Barry Friedman and Maria Ponomarenko advocate, require localities to adopt democratic processes for police policymaking. Courts could require that local governments create police policies through an administrative rulemaking process and “refuse to defer to policing actions that lack a sufficient democratic pedigree.”<sup>294</sup>

Indeed, courts have already played an important role in helping to get major United States cities to democratize their policymaking process. For example, in 2001, the United States Department of Justice entered into a civil rights consent decree with the Los Angeles Police Department following a corruption scandal in the 1990s.<sup>295</sup> The court-enforced consent decree, which was ended by the federal court in 2013,<sup>296</sup> provided guidelines for creating new policies and procedures designed to remedy past abuses<sup>297</sup> and, among other reforms, resulted in the creation of an Office of Constitutional Policing to address issues of police policy.<sup>298</sup> These kinds of court-ordered remedies through consent decrees are, however, labor intensive and therefore have tended to focus on the largest police departments.<sup>299</sup>

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292. Crespo, *supra* note 19, at 2065.

293. *Id.* at 2063.

294. Friedman & Ponomarenko, *supra* note 19, at 1836; see also BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION 113 (2017) (suggesting that courts could refuse “to allow the police to act without [democratic] authorization” or “reward the police for obtaining public approval” for their policing rules before they are adopted).

295. For background on the Rampart corruption scandal, see Lou Cannon, *One Bad Cop*, N.Y. TIMES MAG. (Oct. 1, 2000), <http://www.nytimes.com/2000/10/01/magazine/one-bad-cop.html>, and Anne-Marie O’Connor, *Rampart Set Up Latinos to Be Deported, INS Says*, L.A. TIMES (Feb. 24, 2000), <http://articles.latimes.com/2000/feb/24/news/mn-2075> [<https://perma.cc/98TP-MFFR>].

296. Joel Rubin, *Federal Judge Lifts LAPD Consent Decree*, L.A. TIMES (May 16, 2013), <http://articles.latimes.com/2013/may/16/local/la-me-lapd-consent-decree-20130517> [<https://perma.cc/3PSG-JYG2>].

297. See generally *Quarterly Reports of the Independent Monitor*, L.A. POLICE DEP’T, [http://www.lapdonline.org/office\\_of\\_constitutional\\_policing\\_and\\_policy/content\\_basic\\_view/9010](http://www.lapdonline.org/office_of_constitutional_policing_and_policy/content_basic_view/9010) [<https://perma.cc/97TX-9848>] (containing reports from the Independent Monitor hired to ensure effective and timely implementation of the LAPD consent decree).

298. *Office of Constitutional Policing and Policy*, L.A. POLICE DEP’T, [www.lapdonline.org/office\\_of\\_constitutional\\_policing\\_and\\_policy](http://www.lapdonline.org/office_of_constitutional_policing_and_policy) [<https://perma.cc/3SPQ-FPJR>]. See generally ALEXANDER A. BUSTAMANTE, OFFICE OF THE INSPECTOR GEN., L.A. POLICE COMM’N, REVIEW OF NATIONAL BEST PRACTICES (2017), [http://www.lapdpolicy.com.lacity.org/050217/BPC\\_17-0169.pdf](http://www.lapdpolicy.com.lacity.org/050217/BPC_17-0169.pdf) [<https://perma.cc/PX8E-DAEM>] (analyzing the Los Angeles Police Department’s implementation of national best practice recommendations).

299. See generally Bell, *supra* note 28, at 2130 (arguing that litigation reform strategies risk allowing abuses to continue undetected, especially since litigation “is rarely initiated before tragedy occurs”); Rachel Harmon, *Limited Leverage: Federal Remedies and Policing Reform*, 32 ST. LOUIS U. PUB. L. REV. 33, 44 (2012) (explaining that “the Department of Justice cannot achieve national

Finally, we believe that judges could take a more active role in understanding and overseeing Lexipol's products and people when they appear in court. Lexipol employees regularly serve as defense experts in constitutional litigation against law enforcement agencies and rely on their association with Lexipol as a credential when establishing their expertise.<sup>300</sup> At least one expert has relied on the fact that a policy was written by Lexipol as proof that it was constitutionally sound.<sup>301</sup> Courts assessing police policies have also taken notice when policies are created by Lexipol.<sup>302</sup> And when the Department of Justice entered into a court-monitored consent decree with the New Orleans Police Department, New Orleans and Lexipol entered into a

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reform by suing every department with a pattern of widespread constitutional violations"); Patel, *supra* note 209, at 812–14 (describing the “increasing strength” of the DOJ’s use of consent decrees under recent administrations and citing the perceived positive outcomes in three major police departments but noting the “vulnerab[ility] to bias and political maneuvering” of consent decrees). The viability of the Department of Justice in this role is also dependent on the priorities of the president. See David A. Graham, *Can Trump’s Justice Department Undo Police Reform?*, ATLANTIC (Apr. 4, 2017) (describing efforts by Attorney General Jeff Sessions to reverse police reform advances made by the Department of Justice under President Obama).

300. See, e.g., Rebuttal by James Sida to Jeffrey A. Schwartz at 6, *Parenti v. County of Monterey*, No. 14-CV-05481, 2017 WL 2958801 (N.D. Cal. Jan. 17, 2017) (“I have written jail policies as a practitioner and division commander of a large jail system. In addition, I was the lead consultant in the development of a jail policy manual for Lexipol, Inc., a risk management firm, that provides a jail manual throughout the United States.”); Expert Opinion of Use of Force of Robert Glen Carpenter, *Durden-Bosley v. Shepherd*, No. 2:15-CV-00798MJP, 2016 WL 9281044 (W.D. Wash. Feb. 23, 2016) (“I was the Use of Force subject matter expert (SME) used to develop and implement the present Lexipol policy manual currently used by my department.”); Report of Kenneth R. Wallentine at 8, 12, *Christiansen v. West Valley City*, No. 2:14cv00025, 2015 WL 11439375 (D. Utah July 15, 2015) (“My qualifications as an expert in this subject matter include the following: . . . I am Vice-President and Senior Legal Advisor for Lexipol, Inc., the nation[s] [sic] largest provider of policy formulation and revision for public safety agencies and policy-based training, responsible for reviewing and editing the work of legal staff in creation of policy manuals for law enforcement agencies.”); Interim Report of Expert Witness Jeffrey A. Martin at 1, *Jaramillo v. City of San Mateo*, 76 F. Supp. 3d 905 (N.D. Cal. 2015) (No. C 13-00441 NC), 2015 WL 11253330 (“I also worked as an author of ‘Daily Training Bulletins’ for Lexipol, LLC, regarding various practices including the use of force, search and seizure, and other police practices.”); Defendant’s Expert Witness Report - R. Scot Haug, *Towry v. Bonner Cty.*, No. 10-CV-292, 2011 WL 11733377 (D. Idaho June 14, 2011) (“I was selected to serve as a representative of the Statewide Lexipol Model Policy Board where I assisted ICRMP and Lexipol in developing a statewide model policy for the State of Idaho.”); Report of Bruce D. Praet at 1, *Mitz v. City of Grand Rapids*, No. 1:09-cv-365, 2009 WL 6849914 (W.D. Mich. Oct. 21, 2009) (describing his role in the formation of Lexipol as among his expert qualifications).

301. See, e.g., Interim Report of Expert Witness Jeffrey A. Martin at 1, *Jaramillo v. City of San Mateo*, 76 F. Supp. 3d 905 (N.D. Cal. 2015) (No. C 13-00441 NC), 2015 WL 11253330, at \*1 (“The San Mateo Police Department’s policy manual is provided by Lexipol, LLC, a private company. Lexipol provides standardized policy manuals for well over 500 law enforcement agencies in California and reflects current statutory authorizations and constitutional limitations on the use of force by peace officers. This makes the policy very sound.”).

302. See, e.g., *Kong Meng Xiong v. City of Merced*, Nos. 1:13-cv-00083-SKO, 1:13-cv-00111-SKO2015, WL 4598861, at \*5 (E.D. Cal. July 29, 2015) (noting that “[a]t the time of the incident, MPD used policies developed by Lexipol”).

\$295,000 contract to develop those policies.<sup>303</sup> Although we do not know how courts evaluate experts associated with Lexipol, or policies produced by Lexipol, the repeated invocation of the Lexipol brand suggests it may be treated as a signal of excellence. Yet, as we have shown, very little is actually known about the expertise of Lexipol's employees or the constitutionality or effectiveness of its products. We encourage courts to more rigorously evaluate the credentials of Lexipol experts and the constitutionality of Lexipol policies and trainings without being influenced by its untested marketing claims or its market dominance. The fact that virtually every California law enforcement agency has the same use of force policy should not be viewed as evidence that that policy language is reasonable—it is merely evidence that 95% of California law enforcement agencies subscribe to Lexipol.

### C. *Competing with Lexipol*

Our third recommendation is that nongovernmental groups interested in making their own police policy recommendations adjust their approaches in light of Lexipol's commercial success. Specifically, groups developing model policies should make it easier for jurisdictions to adopt those policies. And groups advocating for policy changes should view Lexipol as a critically important audience.

Several nonprofits and government groups have developed model police policies in recent years.<sup>304</sup> For example, NYU School of Law's Policing Project solicits public involvement when crafting policing policies and also invites social scientists and other experts to weigh in on best practices.<sup>305</sup> The American Law Institute's project on police investigations has drafted template policies with detailed commentary that can be considered and adopted by law enforcement agencies.<sup>306</sup> The Municipal Research and Services Center, a nonprofit organization that focuses on helping local

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303. Charles Maldonado, *Paying for the Consent Decree*, GAMBIT (Aug. 14, 2012), <https://www.bestofneworleans.com/gambit/reform-at-a-cost/Content?oid=2057022> [https://perma.cc/KUU2-2KRP].

304. These initiatives are similar to policy drafting initiatives undertaken in the 1960s. See Kenneth Culp Davis, *Police Rulemaking on Selective Enforcement: A Reply*, 125 U. PA. L. REV. 1167, 1170 (1977) (describing rulemaking initiatives in the 1960s by the International Association of Chiefs of Police and the National Advisory Commission on Criminal Justice Standards and Goals).

305. See generally *Our Mission*, POLICING PROJECT: N.Y.U. SCH. L., <https://policingproject.org/about-us/our-mission/> [https://perma.cc/WC4V-X8MC].

306. See Am. Law Inst., *Principles of the Law: Policing*, ALI ADVISOR, <http://www.thealiadviser.org/policing/> [https://perma.cc/V2U5-AG72] (proposing policies related to—among other things—search and seizure, the use of force, and evidence gathering); *Model Rules and Policies*, POLICING PROJECT: N.Y.U. SCH. L., <https://policingproject.org/our-work/writing-rules/> [https://perma.cc/UN4D-ZXWD] (stating that the American Law Institute's draft policies “can serve as a template for legislative bodies, communities, and courts”).

governments in Washington State with policy issues, publishes information about how local jurisdictions should develop their policy manuals and provides access to the full policy manuals of four major police departments in the state.<sup>307</sup> In a similar vein, the ACLU has launched a “Freedom Cities” campaign to promote nine model state and local law enforcement policies that protect immigrants from the Trump Administration’s deportation agenda.<sup>308</sup> And the International Association of Chiefs of Police’s Policy Center publishes model policies with accompanying explanations for its drafting choices, including related studies and other information.<sup>309</sup>

Each of these groups makes policies available to the public without copyright restrictions—and many are free. Yet our research suggests that Lexipol’s model policies are adopted by more jurisdictions than the model policies developed by these groups. Lexipol provides policies for almost every police department and sheriff’s department in California. Beyond the small handful of jurisdictions that choose to create their policies themselves, Lexipol is practically the only game in town.

Why has Lexipol dominated the markets in California and other states despite the fact that its policies cost more than those made available by nonprofits? We think that part of the answer is that Lexipol has created products that allow departments—particularly smaller departments—to develop and update police policies and trainings quickly and affordably. Lexipol delivers policies and trainings online and makes it easy for jurisdictions to update their policies to reflect changes in the law. Lexipol also allows its subscribers to track which employees have reviewed manual updates and completed trainings. And as Lexipol emphasizes in its marketing materials, it charges far less than it would cost local police departments to replicate these services on their own.

Moving forward, advocacy groups and think tanks need to recognize Lexipol’s role as their most successful competitor in the marketplace of policymaking ideas. Nonprofit groups hoping to convince law enforcement

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307. *Police and Law Enforcement Services Policy and Procedure Manuals*, MUN. RES. & SERVS. CTR., <http://mrsc.org/Home/Explore-Topics/Public-Safety/Law-Enforcement/Police-and-Law-Enforcement-Services-Policy-and-Pro.aspx> [<https://perma.cc/V97Y-KBVS>].

308. See ACLU, *Freedom Cities*, PEOPLE POWER, <https://peoplepower.org/freedom-cities.html> [<https://perma.cc/U4XX-QZKH>] (describing the ACLU’s “Freedom Cities” campaign); see also Faiz Shakir & Ronald Newman, *How People Power Activists Are Driving Change*, ACLU (July 19, 2017), <https://www.aclu.org/blog/how-people-power-activists-are-driving-change> [<https://perma.cc/8YCE-2NUP>] (summarizing the efforts of People Power Activists to encourage municipalities to adopt the ACLU’s nine model policies).

309. For example, the International Association of Chiefs of Police includes on its web page a model body-worn cameras policy as well as a “concepts and issues” paper, videos of presentations and workshops related to best practices, and a list of general principles to guide departments in developing effective policies regarding use of technology. *Body-Worn Cameras*, INT’L ASS’N CHIEFS POLICE (Apr. 2014), <http://www.theiacp.org/MPBodyWornCameras>.

to favor their policies over Lexipol's could take steps to make their proposed policies easier to integrate into existing policy manuals of both Lexipol and independent jurisdictions. In working with Lexipol clients, advocacy organizations could stress why Lexipol's existing master policy on a given topic is inadequate and propose alternative policy language that follows Lexipol's basic style guide. Nonprofit competitors could also do more to compete with Lexipol by offering policy updates to reflect changes in the law and best practices, thereby reassuring jurisdictions that these alternative policies would, to borrow Lexipol's language, remain "up-to-date" and "defensible."<sup>310</sup>

Another possible reason that Lexipol has dominated the market, despite the availability of free or less expensive alternatives, is that Lexipol makes such powerful claims about the excellence of its policies and the ability of its services to reduce liability risk. Competitors in the private marketplace often question the merits of their rivals' claims about their products. Groups drafting alternative model police policies could similarly examine the bases for Lexipol's claims about its products.

Our recommendations that other organizations more effectively compete with Lexipol's policymaking approach are not offered solely for these organizations' benefit. Instead, it is our view that Lexipol's growing dominance in the policymaking market has serious drawbacks. With more and more departments adopting Lexipol's policies, there is mass standardization of police policies across jurisdictions and less opportunity to assess the efficacy of different approaches. Lexipol's domination of the market may also inhibit transparency. Lexipol promotes itself as "the sole source provider" of its risk management tools.<sup>311</sup> Jurisdictions that agree and designate Lexipol as the sole source provider may forego the formal bidding process generally associated with city contracts. As a result, Lexipol does not have to compete for contracts or explain why its products are better than those offered by its competitors.<sup>312</sup> One way to counteract this standardization and secrecy is by nurturing policymaking competition.

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310. *Why Partner With Lexipol?*, LEXIPOL, <http://www.lexipol.com/law-enforcement/law-enforcement-why-lexipol/> [<https://perma.cc/2A2B-A7HK>].

311. *See* Lexipol, Contract with the City of Austin (Aug. 23, 2012), <http://www.austintexas.gov/edims/document.cfm?id=179747> [<https://perma.cc/72NB-BQLL>] (Lexipol explains the following in Exhibit A of the contract: "The comprehensive Lexipol service is not available through any other public or private resources or organizations. There is no other system that offers the following integration into one package; therefore we are the sole source provider of the following package . . .").

312. *See, e.g.*, City of Fremont, Sole Source Justification (undated) (on file with authors) ("This is the only known entity providing this service on the west coast. . . . Since there are no other services of this type available they are the sole source for this type of resource."); Memorandum from Lili Hadsell, Chief of Police, City of Baldwin Park, to the Mayor and Members of the City Council, City of Baldwin Park (June 3, 2010) (on file with authors) ("Lexipol LLC is a sole source

We additionally recommend that groups engaged in advocacy on police policymaking focus their efforts more directly on Lexipol. The company's policy decisions have an oversized influence on American policing. As a result, changing Lexipol's policies can influence the practices of thousands of law enforcement agencies at once. Lexipol reports that it reviews publications from government and nonprofit organizations—including the

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vender, as they are the only company that authors a policy manual specific to the agency, but also updates and maintains the policy manual as case law or interpretations change.”); Memorandum from Greg Hebert, Commander, Oxnard Police Dep’t, to Irma Coughlin, Purchasing, Oxnard Police Dep’t (Oct. 3, 2016) (on file with authors) (“LEXIPOL LLC is the only known provider of these online policy services and is led by industry leaders in risk management and policy development for law enforcement.”); Irvine Police Dep’t, Sole Source Request: Lexipol (undated) (on file with authors) (seeking approval of a “sole source request with Lexipol” to maintain the department’s policy manual and noting that “Public Safety staff conducted a web-based search and could not identify another firm that provides the breadth and expertise of services offered by Lexipol”); Interoffice Memorandum from Raymond W. King, Police Captain, San Bernardino Police Dep’t, to Deborah Morrow, Purchasing Manager, San Bernardino Police Dep’t (Feb. 28, 2012) (on file with authors) (“The service that Lexipol LLC provides is unique and is not available through any other public or private resources or organizations.”); City of Long Beach, Purchasing Div., Informal Bid Quote Form (Mar. 19, 2014) (on file with authors) (noting that Lexipol’s service is “not available through any other public or private resources or organizations”); Memorandum from Margaret Mims, Sheriff–Coroner, Cty. of Fresno to Bd. of Supervisors, Cty. of Fresno (Feb. 24, 2015) (on file with authors) (“The Department requests your Board waive the competitive bidding process . . . [because] Lexipol is the only vendor uniquely qualified to provide these services.”); City of Modesto, Justification for Sole Source/Sole Brand (Sept. 26, 2013) (on file with authors) (“Sole Source: Item is available from only one vendor.”); Oakland City Council, Resolution No. 85356 (Jan. 6, 2015) (on file with authors) (referring to Lexipol as “the sole respondent to a competitive solicitation process (Request for Proposals/Qualifications)”); Sole Source Request from the City Manager, City of Richmond (Mar. 6, 2015) (on file with authors) (“There are competing vendors that provide policy manual management services but Lexipol LLC is the sole vendor that will update the existing manual.”). We also found sole source purchase requests online from other states. *See, e.g.*, Memorandum from Jason Batalden, Internal Servs. Adm’r, to Richard A. Nahrstadt, Vill. Manager, Vill. of Northbrook, Ill. (Aug. 8, 2017), [northbrookil.iqm2.com/Citizens/FileOpen.aspx?Type=30&ID=8325](http://northbrookil.iqm2.com/Citizens/FileOpen.aspx?Type=30&ID=8325) [<https://perma.cc/23ZX-CDXE>] (recommending renewal of the sole source contract with Lexipol LLC); Executive/Council Approval Form from Snohomish Cty., Wash., Sheriff, to Council Chairperson, Snohomish Cty. Council (Apr. 29, 2008), [http://snohomish.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=270&meta\\_id=22726](http://snohomish.granicus.com/MetaViewer.php?view_id=2&clip_id=270&meta_id=22726) [<https://perma.cc/JMB9-M3CV>] (requesting permission to award “a sole source purchase order to Lexipol, LLC for the purchase of Policy Manual Services”); Nathan L., *County to Appoint Members to Mental Health Committee*, BAKER CITY HERALD (Nov. 25, 2008), <http://www.bakercityherald.com/localnews/4132524-151/county-to-appoint-members-to-mental-health-committee> [<https://perma.cc/Q395-BUB8>] (describing a request for a sole source contract between Lexipol and Baker County, Oregon); Letter from Jimmy Liles, Nixa, Mo., Police Dep’t, to Cindy Robbins, City Council, Nixa, Mo., Brian Bingle, City Council, Nixa, Mo., and Mayor Steel, Nixa, Mo. (July 16, 2015), <http://nixa.com/home/showdocument?id=4429> [<https://perma.cc/4HKE-MWKD>] (requesting funds for a subscription agreement with Lexipol and describing Lexipol as a sole source provider); Minutes of the Regular Meeting of the Moore, Okla., City Council (July 18, 2016) (requesting sole source approval of Lexipol’s products based on the City Attorney’s determination that “it qualified as a sole source purchase due to the unique services offered by Lexipol”).

Department of Justice and the ACLU—when crafting its model policies.<sup>313</sup> But these groups should also take their message directly to Lexipol.

There are some recent examples of advocacy groups doing just this: engaging Lexipol about its policies. For example, a coalition of community advocacy groups in California discovered that police departments in a number of cities had adopted “ready-made policies” from Lexipol on immigration enforcement that, in their view, are “unconstitutional and otherwise illegal, and can lead to improper detentions and erroneous arrests.”<sup>314</sup> The group shared the policies at issue with the press and sent a letter to Lexipol “demanding that it eliminate illegal and unclear directives that can lead to racial profiling and harassment of immigrants.”<sup>315</sup> Ken Wallentine, a senior legal advisor for Lexipol, told the *Los Angeles Times* that departments adopting its policies “should consider their local demographics and circumstances before turning those [model Lexipol] policies into practice.”<sup>316</sup> Nonetheless, he maintained that the Lexipol immigration-enforcement policy that came under fire—which allows officers to consider a “lack of English proficiency” as a criteria in making a police stop—was legally defensible.<sup>317</sup> In a private letter sent to attorneys at the ACLU, Bruce Praet was even more defensive: “Falsely publicizing that our policies are ‘illegal’ and ‘unconstitutional’ appears intended to interfere with our ability to conduct business and to generate media attention. . . . Lexipol policies are legally sound and do not advocate any illegal or unconstitutional conduct by law enforcement officers.”<sup>318</sup> However, we have since learned that after the public advocacy around the policy, at least one California department repealed the problematic Lexipol policy.<sup>319</sup> Following this example, groups focused on changing policies on use of force, racial

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313. Lexipol February Conference Call, *supra* note 59.

314. *ACLU Demands Change to Unlawful Pre-Packaged Police Policies*, ACLU N. CAL. (Apr. 12, 2017), <https://www.aclunc.org/news/aclu-demands-change-unlawful-pre-packaged-police-policies>.

315. *Id.*; see also Letter from Representatives of the ACLU, Nat’l Day Laborer Org. Network, All. San Diego, Advancing Justice—Asian Law Caucus, Cal. Immigrant Policy Ctr., and Immigrant Legal Res. Ctr. to Bruce Praet, Chairman, Lexipol (Apr. 12, 2017) (on file with authors) (“We strongly urge you to revise the Policy so that it comports with current law, and to promptly rescind and replace the products you have already provided to law enforcement agencies in this state.”).

316. James Queally, *Police Departments Say They Don’t Enforce Immigration Laws. But Their Manuals Say Something Different*, L.A. TIMES (Apr. 12, 2017), <http://www.latimes.com/local/lanow/la-me-ln-california-police-immigration-enforcement-20170412-story.html> (quoting Lexipol senior legal advisor Ken Wallentine).

317. *Id.*

318. Letter from Bruce D. Praet, Attorney at Law, to Adrienna Wong, Attorney at Law, ACLU, and Jennie Pasquarella, Attorney at Law, ACLU (Apr. 13, 2017) (on file with authors).

319. Letter from Pamela Healy, Records Manager, Dep’t of Pub. Safety, City of Sunnyvale, to authors (July 11, 2017) (on file with authors) (noting that Policy Section 415 on “Immigration Violations” was redacted from their policy manual “as the policy is currently under revision and the available material no longer reflective of current practice”).



profiling, body cameras, and other aspects of law enforcement practice should view Lexipol, as well as Lexipol's clients, as a crucial audience.

Each of these suggestions is aimed at encouraging local jurisdictions to play a greater role in deciding what policies should guide their law enforcement agencies. Standardized policies, like those offered by Lexipol, are one possible source of information for jurisdictions creating or updating their police policies. Yet Lexipol needs to provide its subscribers with more information about its policymaking process so that governments can make more informed decisions about whether to subscribe to the service and, if they do, whether to customize Lexipol's policy language. Moreover, Lexipol should not be the only resource consulted during local governments' police policy development. Local governments should also seek out sources that are not as focused on liability risk reduction, tailor policies to fit the particular needs of their jurisdictions, and engage community members about their policies. State governments, advocacy groups, courts, and policing organizations also have important roles to play in drafting and regulating policing policy.

### Conclusion

This Article is the first to identify and analyze the significance of Lexipol to American policing. We have documented the quiet emergence of Lexipol as a corporate answer to the challenge of creating internal police policies that guide officer discretion. Surprisingly, this growing practice of privatizing the police policymaking function has gone unnoticed in the academic literature.

As we have shown, Lexipol's policies are reshaping both the process by which police policies are created and the content of the resulting policies. This, in turn, has enormous impact on the institution of policing, particularly in a state like California where nearly every law enforcement agency has adopted Lexipol's policies.

Our goal in this project is to begin an important conversation about some of the concerns raised by this new era of reliance on a corporate legal entity to establish national standards for local policing. These concerns include a focus on liability risk management as the baseline standard for law enforcement behavior, a rulemaking process that proceeds in private with no public participation, and a profit-making model that reduces accountability and disrupts norms of sharing across agencies. We have also begun to sketch a way forward—a path that recognizes possible causes for the increasing privatization of police policymaking while encouraging greater transparency, oversight, and competition.

### Appendix

This Appendix describes our methodology for collecting public records of police and sheriff policymaking practices in California. In October and November of 2016, we submitted public records requests to the 200 largest police and sheriff's departments in California, requesting their policy manuals as well as any records reflecting their negotiations and contractual relationships with Lexipol LLC. We completed our collection of records from all 200 departments in October of 2017.

We identified the 200 largest police and sheriff's departments in California by consulting a census of law enforcement agencies published by the Bureau of Justice Statistics (BJS).<sup>320</sup> The BJS census reports on the number of sworn officers in state and local law enforcement agencies as of 2008. Because our focus is on police and sheriff policies, we first removed state law enforcement agencies, university- and school-based law enforcement agencies, and airport, public transportation, and park police from the list of California agencies. In total, the BJS data included 406 police and sheriff's departments in California. Of these, we selected the 200 agencies with the most full-time sworn officers for our public records requests. Our study therefore captures the policymaking practices of almost half of police and sheriff's departments in the state.

The table that follows summarizes the agencies we surveyed and their policy type. It contains the name of the department (column two), the number of sworn officers employed in the department, as reported by the BJS (column three), the city and county in which the department is located (columns four and five), and the policy type, as revealed by their responses to our public records requests (column six). If a jurisdiction authored its own policy manual and had no current relationship with Lexipol, we designated the policy type as "independent." If a jurisdiction adopted the Lexipol policy manual, we designated the policy type as "Lexipol." Finally, if a jurisdiction subscribed to the Lexipol service but continued to publish its own policy manual (without a Lexipol copyright stamp), we designated the department's policy type as "hybrid." Overall, we found that 26 agencies were independent, 166 adopted Lexipol, and 8 had hybrid policy manuals.

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320. Bureau of Justice Statistics, *Census of State and Local Law Enforcement Agencies (CSLLEA)*, NAT'L ARCHIVE CRIM. JUST. DATA (2008), <http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/27681> [<http://perma.cc/2XJZ-M92U>].

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
1	Los Angeles Police Department	9,727	Los Angeles	Los Angeles	Independent
2	Los Angeles County Sheriff's Office	9,461	Los Angeles	Los Angeles	Independent
3	Riverside County Sheriff's Office	2,147	Riverside	Riverside	Hybrid
4	San Diego Police Department	1,951	San Diego	San Diego	Independent
5	San Francisco Police Department	1,940	San Francisco	San Francisco	Independent
6	San Bernardino County Sheriff's Office	1,797	San Bernardino	San Bernardino	Independent
7	Orange County Sheriff-Coroner Department	1,794	Santa Ana	Orange	Lexipol
8	Sacramento County Sheriff's Office	1,409	Sacramento	Sacramento	Independent
9	San Jose Police Department	1,382	San Jose	Santa Clara	Independent
10	San Diego County Sheriff's Office	1,322	San Diego	San Diego	Independent
11	Long Beach Police Department	968	Long Beach	Los Angeles	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
12	Alameda County Sheriff's Office	928	Oakland	Alameda	Independent
13	San Francisco Sheriff's Department	838	San Francisco	San Francisco	Independent
14	Fresno Police Department	828	Fresno	Fresno	Lexipol
15	Oakland Police Department	773	Oakland	Alameda	Lexipol
16	Ventura County Sheriff's Office	755	Ventura	Ventura	Lexipol
17	Sacramento Police Department	701	Sacramento	Sacramento	Independent
18	Contra Costa County Sheriff's Office	679	Martinez	Contra Costa	Independent
19	Tulare County Sheriff's Office	513	Visalia	Tulare	Lexipol
20	Kern County Sheriff's Office	512	Bakersfield	Kern	Hybrid
21	Fresno County Sheriff's Office	461	Fresno	Fresno	Hybrid
22	Santa Clara County Sheriff's Office	450	San Jose	Santa Clara	Independent
23	Stockton Police Department	415	Stockton	San Joaquin	Independent

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
24	Anaheim Police Department	398	Anaheim	Orange	Lexipol
25	Riverside Police Department	385	Riverside	Riverside	Lexipol
26	Santa Ana Police Department	369	Santa Ana	Orange	Lexipol
27	Bakersfield Police Department	348	Bakersfield	Kern	Lexipol
28	San Bernardino Police Department	345	San Bernardino	San Bernardino	Lexipol
29	San Mateo County Sheriff's Office	334	Redwood City	San Mateo	Lexipol
30	Monterey County Sheriff's Office	315	Salinas	Monterey	Lexipol
31	Santa Barbara County Sheriff's Office	294	Santa Barbara	Santa Barbara	Lexipol
32	San Joaquin County Sheriff's Office	280	French Camp	San Joaquin	Lexipol
33	Glendale Police Department	264	Glendale	Los Angeles	Lexipol
34	Modesto Police Department	262	Modesto	Stanislaus	Lexipol
35	Sonoma County Sheriff's Office	251	Santa Rosa	Sonoma	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
36	Pasadena Police Department	246	Pasadena	Los Angeles	Lexipol
37	Chula Vista Police Department	244	Chula Vista	San Diego	Lexipol
38	Torrance Police Department	235	Torrance	Los Angeles	Independent
39	Stanislaus County Sheriff's Office	230	Modesto	Stanislaus	Lexipol
40	Ontario Police Department	230	Ontario	San Bernardino	Lexipol
41	Oxnard Police Department	228	Oxnard	Ventura	Lexipol
42	Placer County Sheriff's Office	228	Auburn	Placer	Independent
43	Huntington Beach Police Department	223	Huntington Beach	Orange	Lexipol
44	Sunnyvale Department of Public Safety	210	Sunnyvale	Santa Clara	Lexipol
45	Oceanside Police Department	210	Oceanside	San Diego	Hybrid
46	Santa Monica Police Department	205	Santa Monica	Los Angeles	Lexipol
47	Marin County Sheriff's Office	202	San Rafael	Marin	Independent
48	Irvine Police Department	197	Irvine	Orange	Hybrid

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
49	Inglewood Police Department	187	Inglewood	Los Angeles	Lexipol <sup>321</sup>
50	Berkeley Police Department	186	Berkeley	Alameda	Lexipol
51	Hayward Police Department	185	Hayward	Alameda	Lexipol
52	Fontana Police Department	184	Fontana	San Bernardino	Lexipol
53	Pomona Police Department	182	Pomona	Los Angeles	Lexipol
54	Fremont Police Department	182	Fremont	Alameda	Lexipol
55	El Dorado County Sheriff's Office	179	Placerville	El Dorado	Lexipol
56	Corona Police Department	179	Corona	Riverside	Lexipol
57	Santa Rosa Police Department	179	Santa Rosa	Sonoma	Lexipol
58	Salinas Police Department	177	Salinas	Monterey	Lexipol
59	Orange Police Department	167	Orange	Orange	Lexipol
60	Garden Grove Police Department	166	Garden Grove	Orange	Independent
61	Richmond Police Department	165	Richmond	Contra Costa	Lexipol

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321. The Inglewood Police Department never responded to our public records request. However, officials at Lexipol informed us that Inglewood is one of their clients. Email from Tim Kensok to Ingrid Eagly & Joanna Schwartz (Sept. 13, 2013) (on file with authors).

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
62	Burbank Police Department	164	Burbank	Los Angeles	Hybrid
63	Escondido Police Department	163	Escondido	San Diego	Independent
64	Concord Police Department	161	Concord	Contra Costa	Independent
65	Fullerton Police Department	159	Fullerton	Orange	Lexipol
66	Costa Mesa Police Department	158	Costa Mesa	Orange	Lexipol
67	San Luis Obispo County Sheriff's Office	156	San Luis Obispo	San Luis Obispo	Lexipol
68	Shasta County Sheriff's Office	154	Redding	Shasta	Lexipol
69	Santa Cruz County Sheriff's Office	149	Santa Cruz	Santa Cruz	Lexipol
70	El Monte Police Department	145	El Monte	Los Angeles	Lexipol
71	Santa Clara Police Department	141	Santa Clara	Santa Clara	Independent
72	Newport Beach Police Department	140	Newport Beach	Orange	Lexipol
73	San Diego Harbor Police	139	San Diego	San Diego	Lexipol
74	Beverly Hills Police Department	137	Beverly Hills	Los Angeles	Independent



	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
75	Visalia Department of Public Safety	136	Visalia	Tulare	Lexipol
76	Santa Barbara Police Department	136	Santa Barbara	Santa Barbara	Lexipol
77	Ventura Police Department	134	Ventura	Ventura	Lexipol
78	Port of Los Angeles Police	133	San Pedro	Los Angeles	Lexipol
79	Whittier Police Department	127	Whittier	Los Angeles	Lexipol
80	Simi Valley Police Department	127	Simi Valley	Ventura	Lexipol
81	Roseville Police Department	126	Roseville	Placer	Lexipol
82	Elk Grove Police Department	126	Elk Grove	Sacramento	Lexipol
83	Fairfield Police Department	124	Fairfield	Solano	Lexipol
84	El Cajon Police Department	120	El Cajon	San Diego	Independent
85	Antioch Police Department	120	Antioch	Contra Costa	Lexipol
86	West Covina Police Department	119	West Covina	Los Angeles	Lexipol
87	Vallejo Police Department	116	Vallejo	Solano	Lexipol
88	Carlsbad Police Department	114	Carlsbad	San Diego	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
89	Solano County Sheriff's Office	113	Fairfield	Solano	Hybrid
90	Daly City Police Department	113	Daly City	San Mateo	Lexipol
91	Merced County Sheriff's Office	112	Merced	Merced	Lexipol
92	Vacaville Police Department	111	Vacaville	Solano	Lexipol
93	Butte County Sheriff's Office	110	Oroville	Butte	Hybrid
94	Rialto Police Department	109	Rialto	San Bernardino	Lexipol
95	Downey Police Department	109	Downey	Los Angeles	Lexipol
96	Imperial County Sheriff's Office	109	El Centro	Imperial	Lexipol
97	Santa Maria Police Department	108	Santa Maria	Santa Barbara	Lexipol
98	San Mateo Police Department	108	San Mateo	San Mateo	Lexipol
99	Culver City Police Department	106	Culver City	Los Angeles	Lexipol
100	Sutter County Sheriff's Office	105	Yuba City	Sutter	Independent
101	Merced Police Department	105	Merced	Merced	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
102	Clovis Police Department	105	Clovis	Fresno	Lexipol
103	Brea Police Department	103	Brea	Orange	Lexipol
104	Westminster Police Department	100	Westminster	Orange	Lexipol
105	South Gate Police Department	99	South Gate	Los Angeles	Lexipol
106	Redondo Beach Police Department	99	Redondo Beach	Los Angeles	Lexipol
107	Napa County Sheriff's Office	98	Napa	Napa	Lexipol
108	Mountain View Police Department	97	Mountain View	Santa Clara	Lexipol
109	Redwood City Police Department	96	Redwood City	San Mateo	Lexipol
110	Hawthorne Police Department	96	Hawthorne	Los Angeles	Lexipol
111	Chino Police Department	96	Chino	San Bernardino	Lexipol
112	San Leandro Police Department	95	San Leandro	Alameda	Lexipol
113	Santa Cruz Police Department	95	Santa Cruz	Santa Cruz	Lexipol
114	Tustin Police Department	95	Tustin	Orange	Lexipol
115	Alameda Police Department	94	Alameda	Alameda	Lexipol
116	Buena Park Police Department	94	Buena Park	Orange	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
117	Livermore Police Department	94	Livermore	Alameda	Lexipol
118	Palm Springs Police Department	93	Palm Springs	Riverside	Lexipol
119	Palo Alto Police Department	93	Palo Alto	Santa Clara	Lexipol
120	Gardena Police Department	91	Gardena	Los Angeles	Lexipol
121	Humboldt County Sheriff's Office	91	Eureka	Humboldt	Lexipol
122	Tracy Police Department	90	Tracy	San Joaquin	Lexipol
123	National City Police Department	90	National City	San Diego	Lexipol
124	Murrieta Police Department	90	Murrieta	Riverside	Lexipol
125	Chico Police Department	88	Chico	Butte	Lexipol
126	Folsom Police Department	88	Folsom	Sacramento	Lexipol
127	Milpitas Police Department	86	Milpitas	Santa Clara	Lexipol
128	Pleasanton Police Department	85	Pleasanton	Alameda	Lexipol
129	Redlands Police Department	84	Redlands	San Bernardino	Lexipol
130	Citrus Heights Police Department	83	Citrus Heights	Sacramento	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
131	Alhambra Police Department	83	Alhambra	Los Angeles	Lexipol
132	Yolo County Sheriff's Office	82	Woodland	Yolo	Lexipol
133	Hemet Police Department	82	Hemet	Riverside	Lexipol
134	Upland Police Department	81	Upland	San Bernardino	Independent
135	Union City Police Department	81	Union City	Alameda	Lexipol
136	Montebello Police Department	81	Montebello	Los Angeles	Lexipol
137	Turlock Police Department	80	Turlock	Stanislaus	Lexipol
138	Kings County Sheriff's Office	79	Hanford	Kings	Independent
139	South San Francisco Police Department	79	San Francisco	San Francisco	Lexipol
140	Rohnert Park Department of Public Safety	78	Rohnert Park	Sonoma	Lexipol
141	Madera County Sheriff's Office	78	Madera	Madera	Lexipol
142	Mendocino County Sheriff's Office	77	Ukiah	Mendocino	Lexipol
143	Lodi Police Department	76	Lodi	San Joaquin	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
144	Manteca Police Department	76	Manteca	San Joaquin	Lexipol
145	Pittsburg Police Department	76	Pittsburg	Contra Costa	Lexipol
146	Monterey Park Police Department	75	Monterey Park	Los Angeles	Lexipol
147	Nevada County Sheriff's Office	74	Nevada City	Nevada	Lexipol
148	San Rafael Police Department	74	San Rafael	Marin	Lexipol
149	Walnut Creek Police Department	73	Walnut Creek	Contra Costa	Lexipol
150	Indio Police Department	73	Indio	Riverside	Independent
151	Napa Police Department	72	Napa	Napa	Lexipol
152	Tulare Police Department	71	Tulare	Tulare	Lexipol
153	Colton Police Department	71	Colton	San Bernardino	Lexipol
154	West Sacramento Police Department	70	West Sacramento	Yolo	Lexipol
155	Baldwin Park Police Department	69	Baldwin Park	Los Angeles	Lexipol
156	Petaluma Police Department	68	Petaluma	Sonoma	Lexipol
157	El Segundo Police Department	68	El Segundo	Los Angeles	Independent

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
158	Huntington Park Police Department	68	Huntington Park	Los Angeles	Lexipol
159	La Habra Police Department	68	La Habra	Orange	Lexipol
160	Yuba County Sheriff's Office	66	Marysville	Yuba	Lexipol
161	Yuba City Police Department	65	Yuba City	Sutter	Lexipol
162	Woodland Police Department	65	Woodland	Yolo	Lexipol
163	Arcadia Police Department	65	Arcadia	Los Angeles	Lexipol
164	San Luis Obispo Police Department	64	San Luis Obispo	San Luis Obispo	Lexipol
165	Watsonville Police Department	64	Watsonville	Santa Cruz	Lexipol
166	Manhattan Beach Police Department	64	Manhattan Beach	Los Angeles	Lexipol
167	Azusa Police Department	63	Azusa	Los Angeles	Lexipol
168	La Mesa Police Department	63	La Mesa	San Diego	Independent
169	Siskiyou County Sheriff's Office	62	Yreka	Siskiyou	Lexipol
170	Tuolumne County Sheriff's Office	61	Sonora	Tuolumne	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
171	Fountain Valley Police Department	61	Fountain Valley	Orange	Lexipol
172	Lake County Sheriff's Office	61	Lakeport	Lake	Lexipol
173	Porterville Police Department	60	Porterville	Tulare	Lexipol
174	Covina Police Department	60	Covina	Los Angeles	Lexipol
175	Madera Police Department	60	Madera	Madera	Lexipol
176	Brentwood Police Department	60	Brentwood	Contra Costa	Lexipol
177	Gilroy Police Department	60	Gilroy	Santa Clara	Lexipol
178	Calaveras County Sheriff's Office	59	San Andreas	Calaveras	Lexipol
179	Novato Police Department	59	Novato	Marin	Lexipol
180	Davis Police Department	59	Davis	Yolo	Hybrid
181	Montclair Police Department	58	Montclair	San Bernardino	Lexipol
182	San Pablo Police Department	57	San Pablo	Contra Costa	Lexipol
183	Cypress Police Department	56	Cypress	Orange	Lexipol
184	Cathedral City Police Department	56	Cathedral City	Riverside	Lexipol
185	San Ramon Police Department	56	San Ramon	Contra Costa	Lexipol



	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
186	Monrovia Police Department	55	Monrovia	Los Angeles	Lexipol
187	Monterey Police Department	54	Monterey	Monterey	Lexipol
188	Rocklin Police Department	54	Rocklin	Placer	Lexipol
189	El Centro Police Department	54	El Centro	Imperial	Lexipol
190	Beaumont Police Department	54	Beaumont	Riverside	Lexipol
191	San Gabriel Police Department	54	San Gabriel	Los Angeles	Lexipol
192	Newark Police Department	54	Newark	Alameda	Lexipol
193	Glendora Police Department	53	Glendora	Los Angeles	Lexipol
194	Vernon Police Department	53	Vernon	Los Angeles	Lexipol
195	Bell Gardens Police Department	51	Bell Gardens	Los Angeles	Lexipol
196	Menlo Park Police Department	50	Menlo Park	San Mateo	Lexipol
197	Hanford Police Department	50	Hanford	Kings	Lexipol
198	Lompoc Police Department	49	Lompoc	Santa Barbara	Lexipol
199	Seaside Police Department	48	Seaside	Monterey	Lexipol

	<b>Agency</b>	<b>Sworn Officers</b>	<b>City</b>	<b>County</b>	<b>Policy Type</b>
200	Los Banos Police Department	48	Los Banos	Merced	Lexipol

# BART POLICE DEPARTMENT



## September 2019

### MONTHLY REPORT

## BPD Monthly Reports

September 2019

Report	Responsible
01 – Industrial Leave*	SSD – J. Morgan
02 – Vacancy	SSD – F. Cheung
03 – Diversity	SSD – F. Cheung
04 – Training	PS&T – P. Kwon
05 – Use of Force	PS&T – K. Franklin
06 – Citizen Complaints	PS&T – K. Franklin
07 – Internal Affairs Log	PS&T – K. Franklin
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. Guerra
13 – Detectives Closure Rate	SSD – J. Guerra
14 – Assembly Bill 716	POD – A. Sandoval
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: 09/30/19**  
**Vacancy Factor: 0.0**

	Pos'n Code	Job Title	FY20 Adopted	Reclass	As of 07/01/19	Filled	On Leave or TMD	Vacant	
NON-SWORN (Rep)	027	Community Service Officer	59		59	43	4	16	
	035	Fare Inspection Officer	20		20	11		9	
	068	Crime Analyst	1		1	-		1	
	045	Police Admin Specialist	12		12	10		2	
	048	Police Dispatcher	18		18	17		1	
	200	Administrative Analyst	1		1	-		1	
	098	Revenue Protection Guard	18		18	16	-	2	
	836	Police Sup.//CAD/RMS Admin***	6		6	5	-	1	
#	778	Police Officer	90		90	77	10	13	
		In Academy = 18						-	
		Field Training = 2						-	
	SWORN	788	Senior Police Officer	98		98	83	1	15
		798	Master Police Officer	10		10	10	-	-
		838	Police Sergeant	34		34	27	2	7
		888	Police Lieutenant	13		13	13		-
		898	Police Deputy Chief	3		3	3		-
		980	Police Chief	1		1	-		1
		SF100	Dir of Security Programs	1		1	1		-
Non-Sworn (Non-Rep)	000065	Emergency Preparedness Mgr.	1		1	1	-	-	
	000074	Crisis Outreach Coordinator	1		1	1		-	
	000081	Police Services Administrator	1		1	1	-	-	
	AF200	Executive Assistance	1		1	1		-	
<b>DEPARTMENT TOTAL</b>			<b>389</b>	<b>-</b>	<b>389</b>	<b>320</b>	<b>17</b>	<b>69</b>	

Notes:

FY20  
Ofc - 19

FIO - 4

AA - 1

FY20 Capital 4/1/2020

Ofc - 3

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.

## BART PD DIVERSITY MONTHLY REPORT

As of 9/30/19

+

<u>ETHNICITY</u>		<u>S</u>		<u>C</u>	
White	37% 118	39%	84	32%	34
Black	19% 61	19%	40	20%	21
Asian	22% 69	17%	37	30%	32
Hispanic	20% 65	22%	47	17%	18
American/ Indian	0% 0	0%	0	0%	0
Native Hawaiian/Pac Island	2% 7	2%	5	2%	2
<b>Total:</b>	<b>100% 320</b>	<b>100%</b>	<b>213</b>	<b>100%</b>	<b>107</b>
<u>DEMOGRAPHIC</u>		<u>S</u>		<u>C</u>	
Female	22% 68	9%	19	46%	49
Male	79% 252	91%	194	54%	58
<b>Total:</b>	<b>100% 320</b>	<b>100%</b>	<b>213</b>	<b>100%</b>	<b>107</b>
<u>CLASSIFICATION</u>					
Sworn	67% 213				
Civilian	33% 107				
<b>Total:</b>	<b>100% 320</b>				

**CRISIS INTERVENTION TRAINING AS OF: September 30, 2019**

<b>Personnel Positions</b>	<b>Total Positions</b>	<b>Filled Positions</b>	<b>Vacant Positions</b>	<b>(Not in Academy or Field Training) Eligible to Attend Training</b>	<b>Total of Filled Positions Trained</b>	<b>Percentage of Total Filled Positions Trained</b>	<b>Percentage of Eligible Filled Positions Trained</b>
Chief	1	0	1	0	0	#DIV/0!	#DIV/0!
Deputy Chiefs	3	3	0	3	3	100%	100%
Lieutenants	13	13	0	13	12	92%	92%
Sergeants	34	27	7	27	26	96%	96%
Officers	198	170	28	139	119	70%	86%
Dispatchers	18	17	1	14	12	71%	86%
CSOs/FEI	79	54	25	50	34	63%	68%
Crisis Outreach	1	1	0	1	1	100%	100%
<b>Total</b>	<b>347</b>	<b>285</b>	<b>62</b>	<b>247</b>	<b>207</b>	<b>73%</b>	<b>84%</b>

Personnel Positions that are not designated to attend CIT Training

	<b>Total</b>	<b>Filled</b>	<b>Vacant</b>
Revenue Protection Guards	18	16	2
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	6	5	1
Civilian Managers/Analyst	4	3	1
Manager Sec Prog	1	1	0
<b>Sub Total</b>	<b>41</b>	<b>35</b>	<b>6</b>
<b>TOTAL PERSONNEL</b>	<b>388</b>	<b>320</b>	<b>68</b>

**FAIR AND IMPARTIAL / BIASED BASED TRAINING AS OF September 30, 2019**

<b>Personnel Positions</b>	<b>Total Positions</b>	<b>Filled Positions</b>	<b>Vacant Positions</b>	<b>Eligible to Attend (Not in Academy or Field Training)</b>	<b>Total of Filled Positions Trained</b>	<b>Percentage of Total Filled Positions Trained</b>	<b>Percentage of Eligible Filled Positions</b>
Chief	1	0	1	0	0	#DIV/0!	#DIV/0!
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	13	13	0	13	13	100.0%	100.0%
Sergeants	34	27	7	27	27	100.0%	100.0%
Officers	198	170	28	139	139	81.8%	100.0%
CSOs/FEI	79	54	25	50	45	83.3%	90.0%
<b>Total</b>	<b>328</b>	<b>267</b>	<b>61</b>	<b>232</b>	<b>227</b>	<b>85.0%</b>	<b>97.8%</b>

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

	<b>Total</b>	<b>Filled</b>	<b>Vacant</b>
Dispatchers	18	17	1
Crisis Outreach Coordinator	1	1	0
Revenue Protection Guards	18	16	2
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	6	5	1
Civilian Managers/Analyst	4	3	1
Manager Sec Prog	1	1	0
<b>Sub Total</b>	<b>60</b>	<b>53</b>	<b>7</b>
<b>TOTAL PERSONNEL</b>	<b>388</b>	<b>320</b>	<b>68</b>



**POLICE ROADWAY PROTECTION TRAINING AS OF: September 30, 2019**

<b>Personnel Positions</b>	<b>Total Positions</b>	<b>Filled Positions</b>	<b>Vacant Positions</b>	<b>Eligible to Attend (Not in Academy, FTO, or IND/Leave)</b>	<b>Total of Filled Positions Trained</b>	<b>Percentage of Total Filled Positions Trained</b>	<b>Percentage of Eligible Filled Positions</b>
Chief	1	0	1	0	0	#DIV/0!	#DIV/0!
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	13	13	0	13	10	76.9%	76.9%
Sergeants	34	27	7	27	27	100%	100.0%
Officers	198	170	28	139	139	81.8%	100.0%
CSOs/FEI -Not Required	79	54	25	50	45	83.3%	90.0%
<b>Total</b>	<b>328</b>	<b>267</b>	<b>61</b>	<b>232</b>	<b>224</b>	<b>83.9%</b>	<b>96.6%</b>

Personnel Positions that are not REQUIRED to attend Police Roadway Protection Training

	<b>Total</b>	<b>Filled</b>	<b>Vacant</b>
Dispatchers	18	17	1
Crisis Outreach Coordinator	1	1	0
Revenue Protection Guards	18	16	2
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	6	5	1
Civilian Managers/Analyst	4	3	1
Manager Sec Prog	1	1	0
<b>Sub Total</b>	<b>60</b>	<b>53</b>	<b>7</b>
<b>TOTAL PERSONNEL</b>	<b>388</b>	<b>320</b>	<b>68</b>

## Use of Force Incidents - 2019

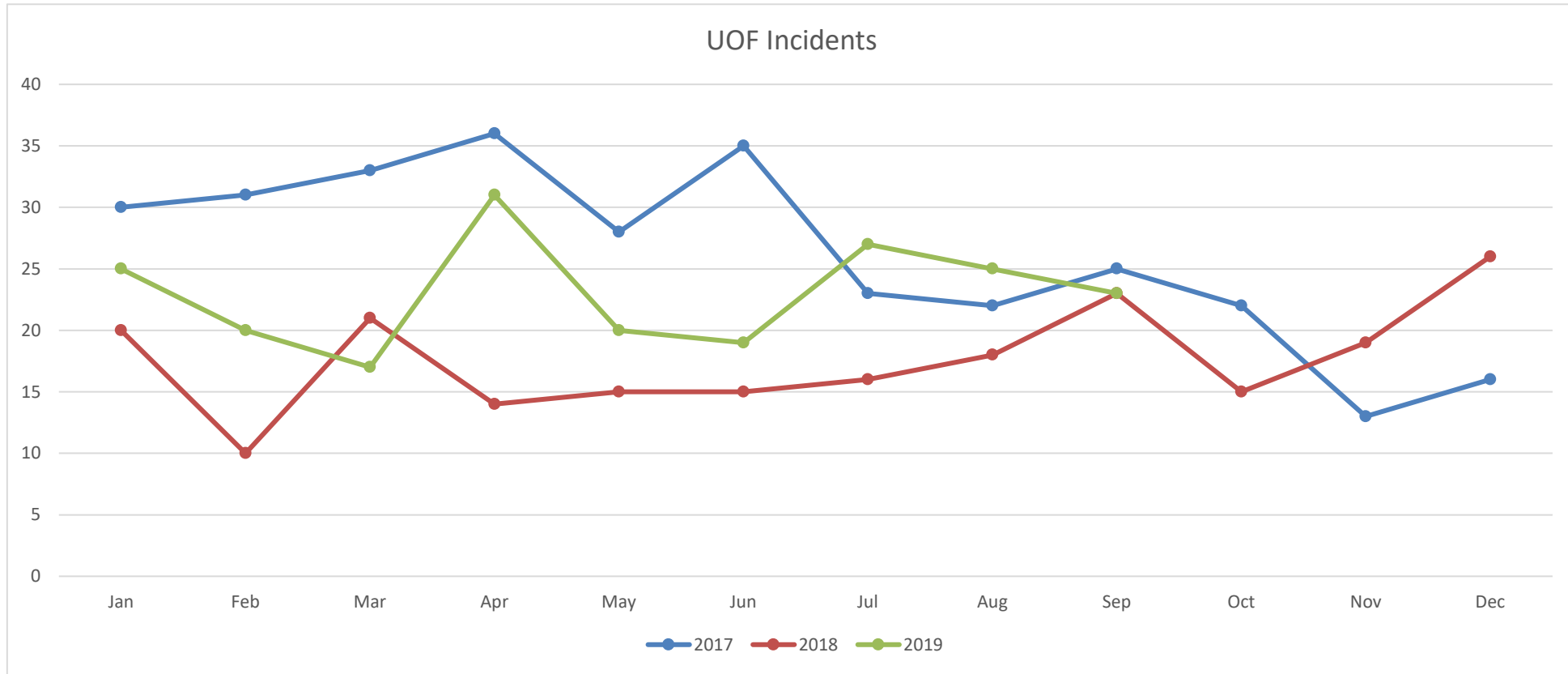
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2019	25	20	17	31	20	19	27	25	23				
YTD 2019	25	45	62	93	113	132	159	184	207				

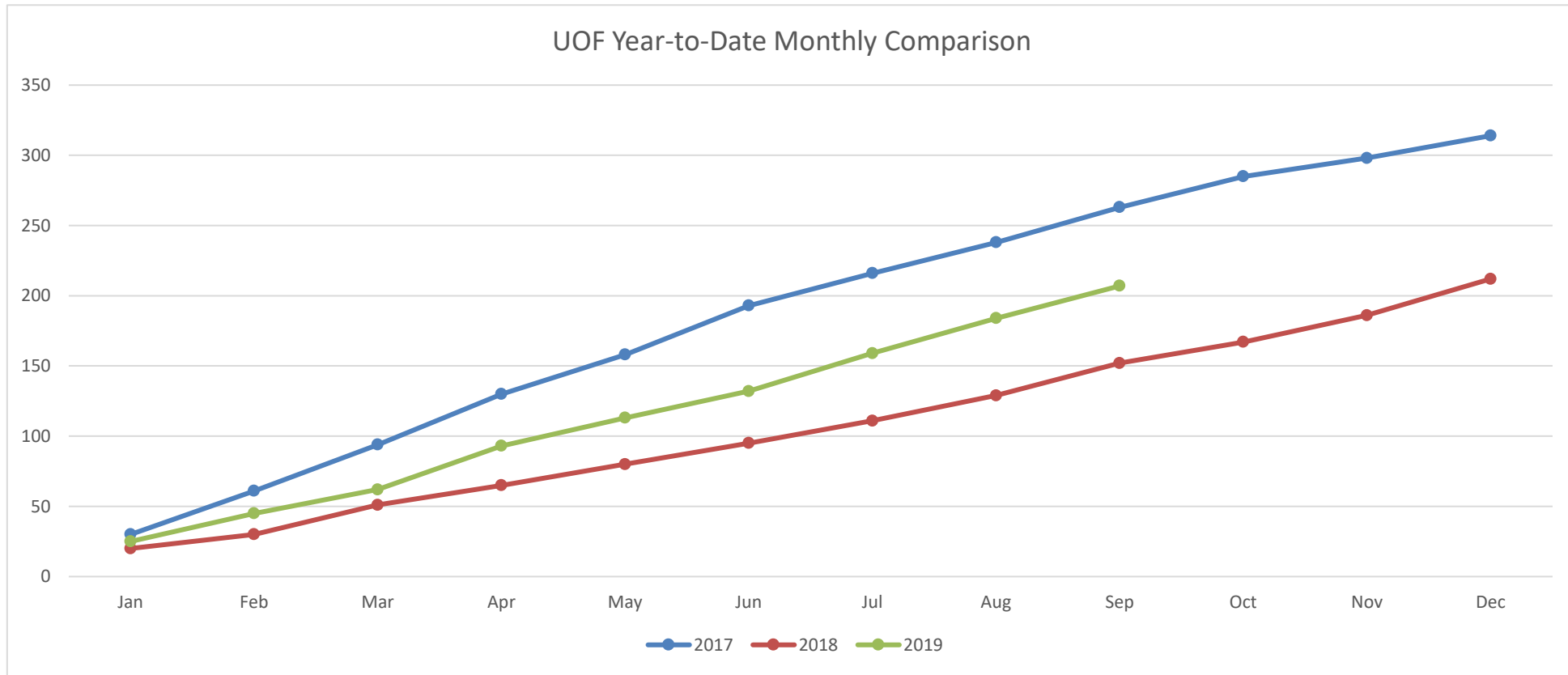
## Use of Force Incidents - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	20	10	21	14	15	15	16	18	23	15	19	26	212
YTD 2018	20	30	51	65	80	95	111	129	152	167	186	212	

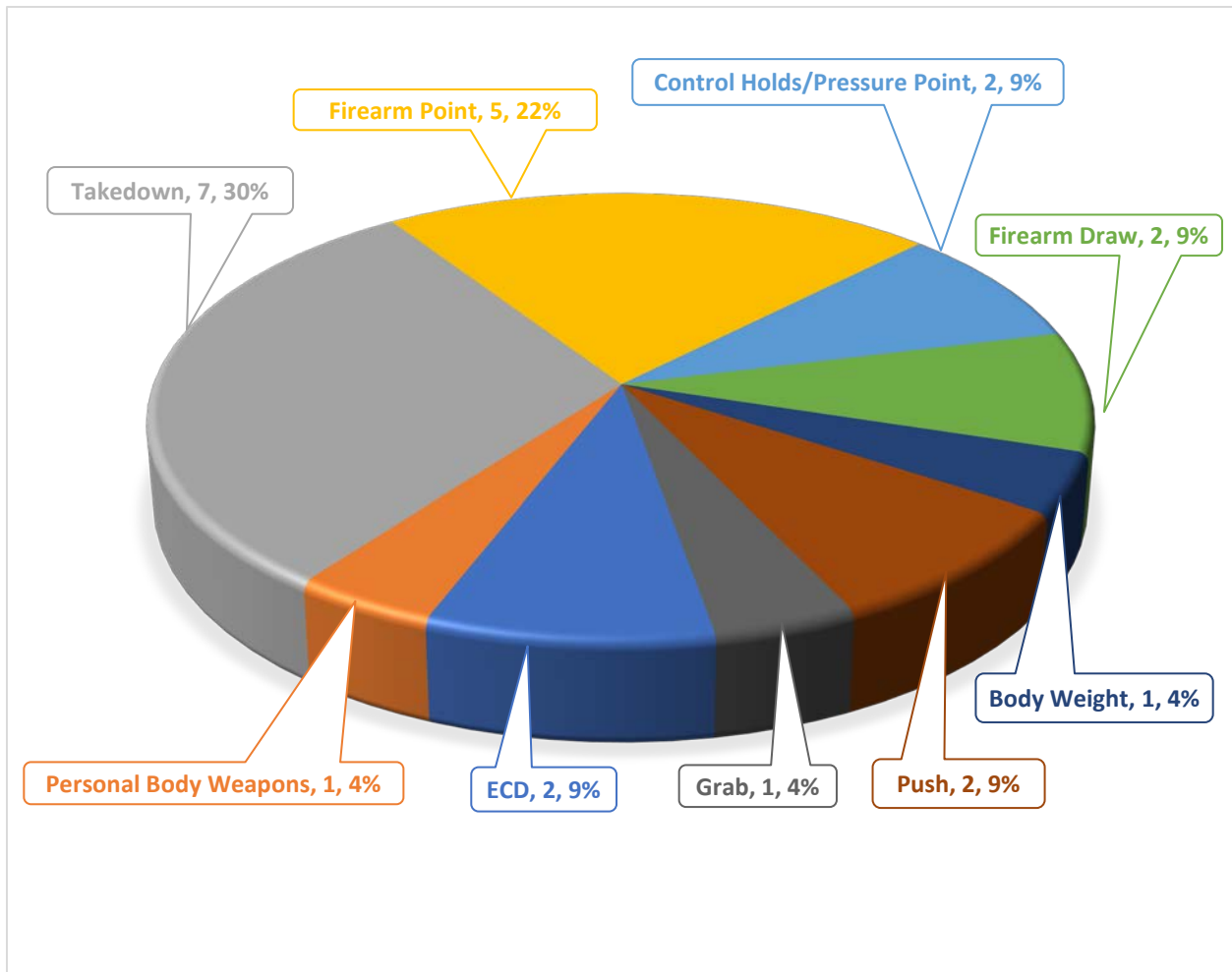
## Use of Force Incidents - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	30	31	33	36	28	35	23	22	25	22	13	16	314
YTD 2017	30	61	94	130	158	193	216	238	263	285	298	314	



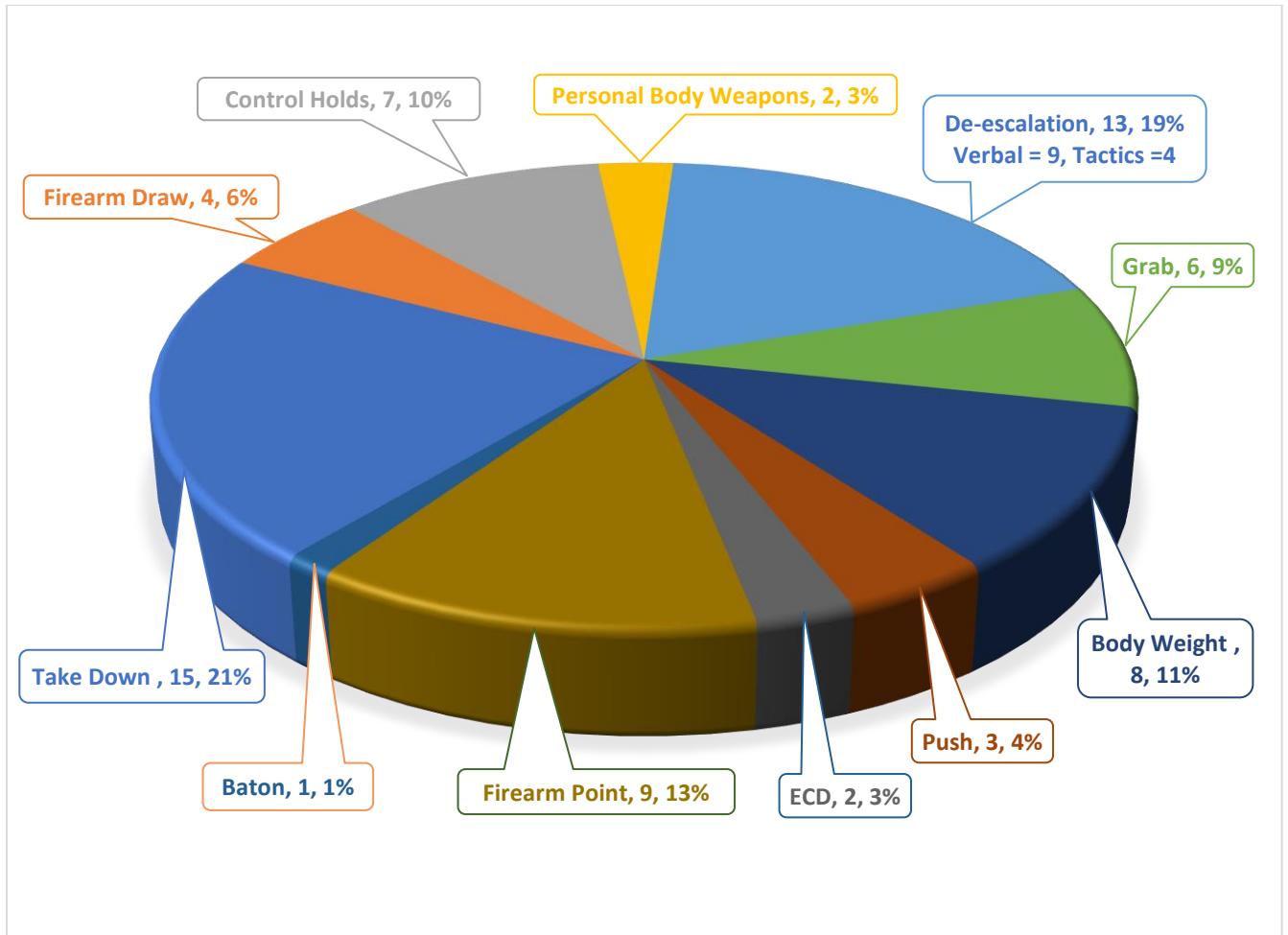


## Force Options Used (Incident Count), September 2019



\*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, September 2019 (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 - 2019

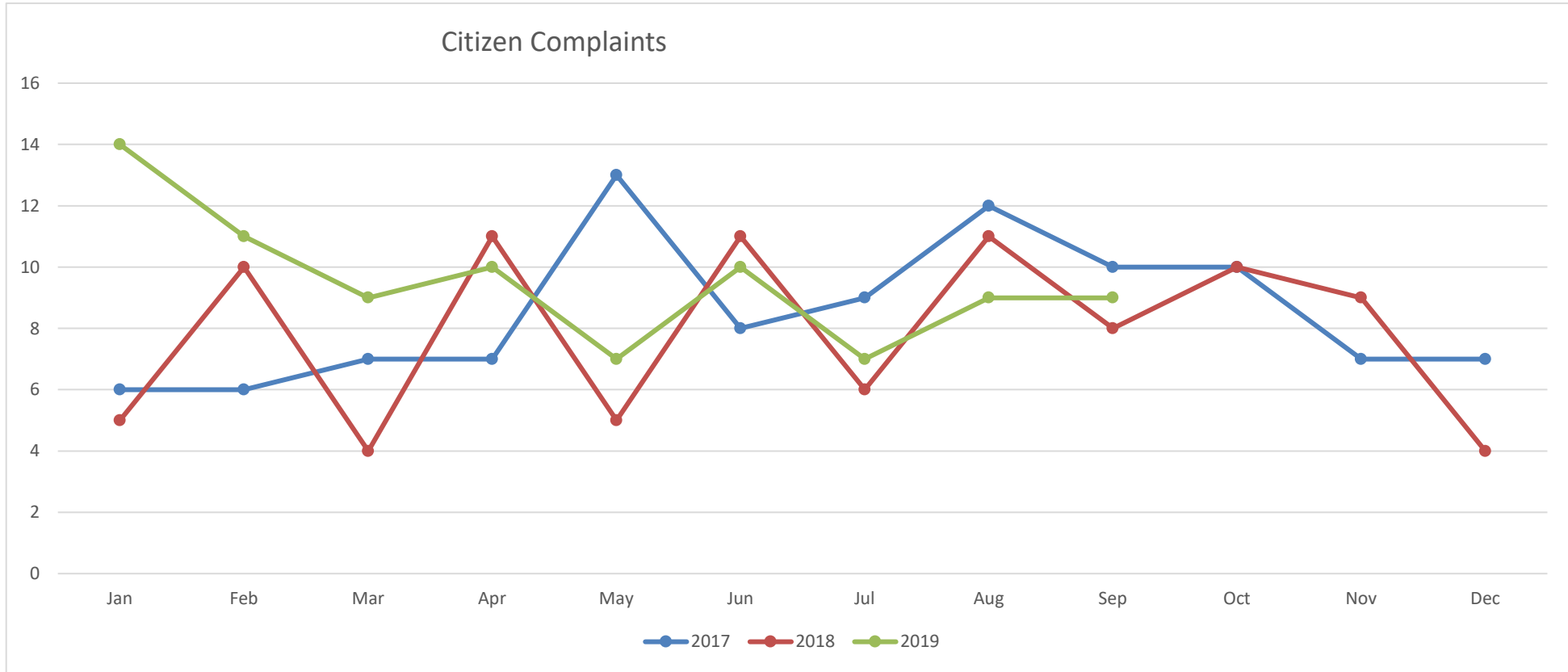
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2019	14	11	9	10	7	10	7	9	9				
YTD 2019	14	25	34	44	51	61	68	77	86				

## Citizen Complaints - 2018

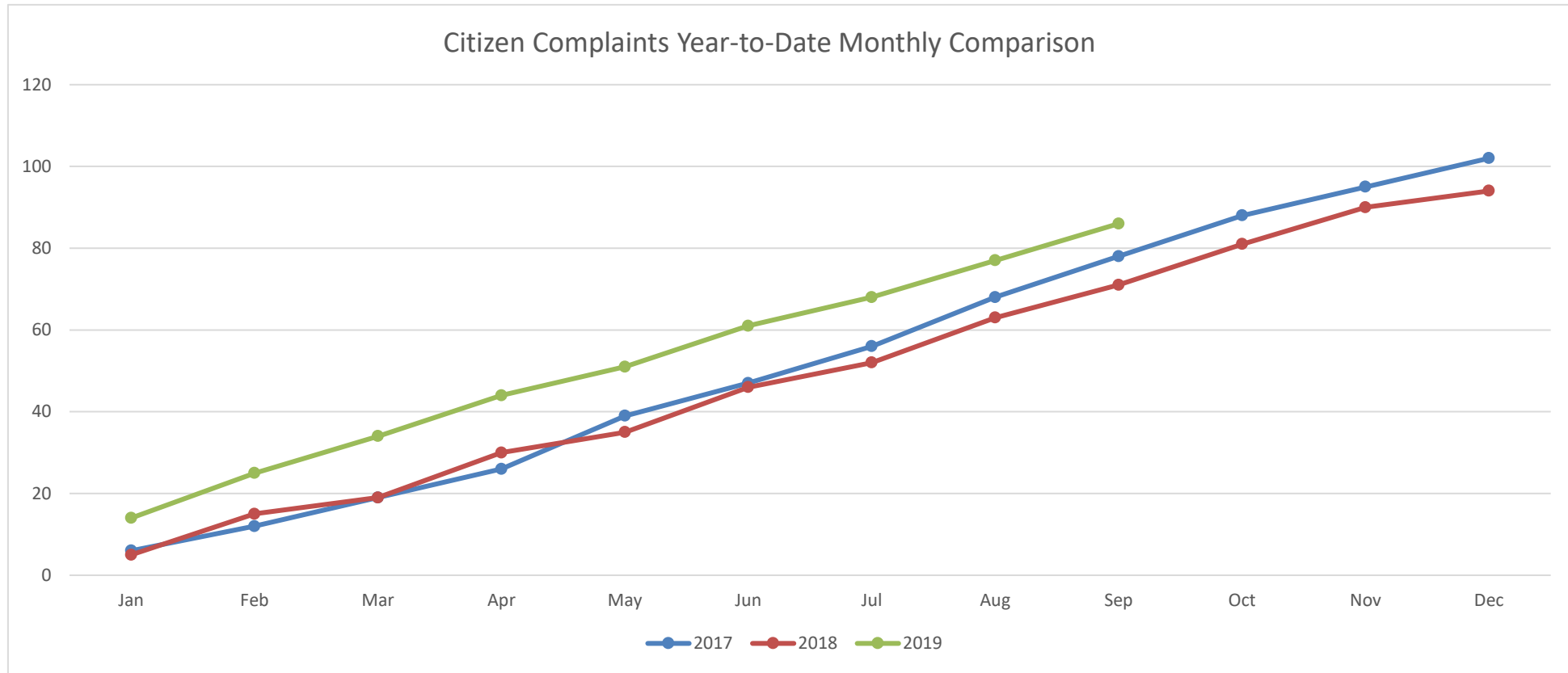
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	5	10	4	11	5	11	6	11	8	10	9	4	94
YTD 2018	5	15	19	30	35	46	52	63	71	81	90	94	

## Citizen Complaints - 2017

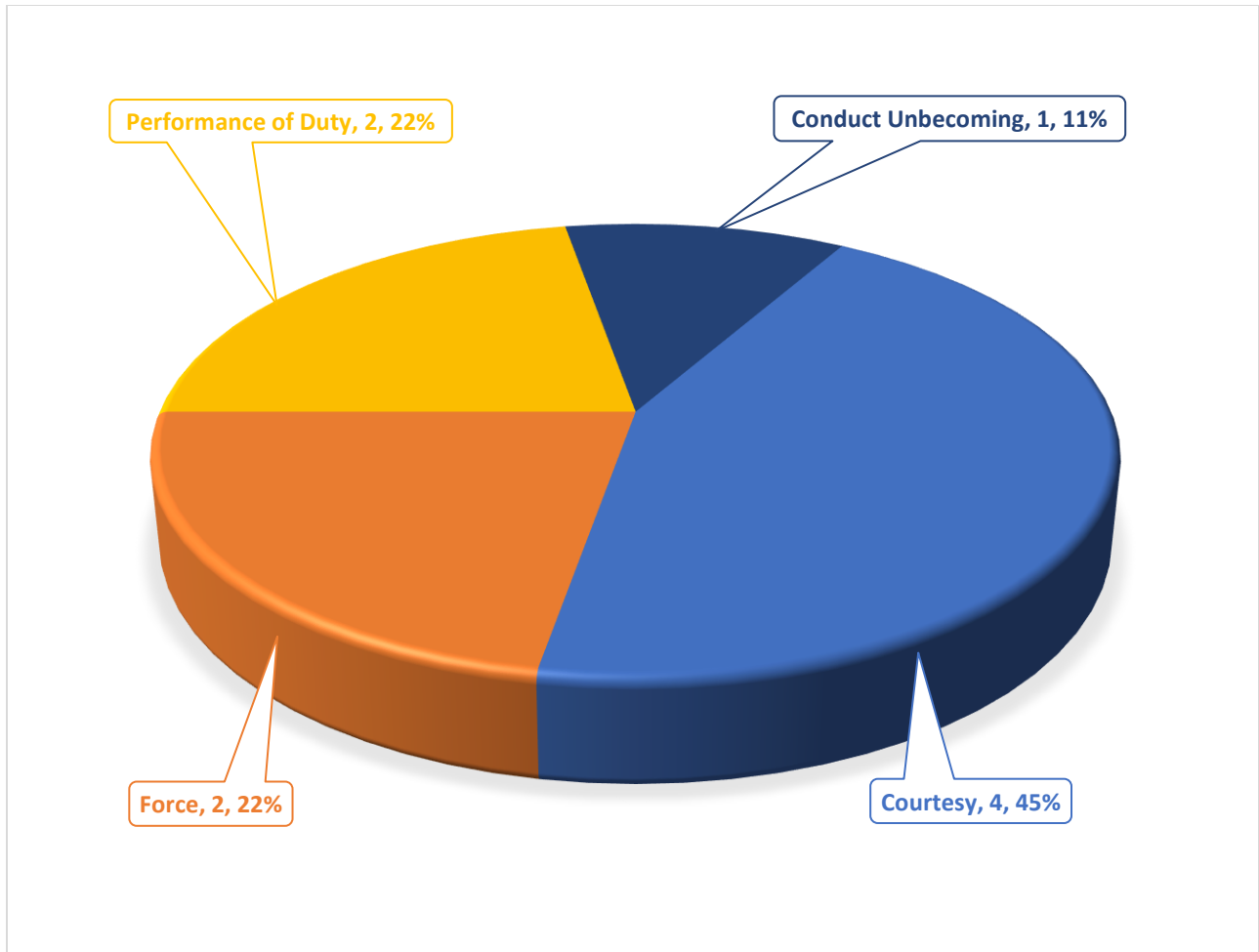
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	6	6	7	7	13	8	9	12	10	10	7	7	102
YTD 2017	6	12	19	26	39	47	56	68	78	88	95	102	







## Complaints Received (Incident Count), September 2019



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 - September 2019								
IA	DATE		ALLEGATION	MISC	INVESTIGATOR	STATUS	5 MONTH DATE	DUE DATE
CASE #	OCC'D	REC'D						
IA2017-040	01/31/17	5/18/2017	Force		Sgt. McNack	Tolled	10/17/17	
			Force					
IA2018-001	01/03/18	1/3/2018	Force (OIS)		Sgt. T. Salas	Tolled	06/04/18	
IA2018-032	UNK	4/20/2018	BBP, POD, CUBO	Deferred to OIPA #18-16		Tolled	9/23/2018	
IA2018-043	43257	6/6/2018	Force		Sgt. McNack	Tolled	43409	
IA2018-060	43303	7/23/2018	Service Review		Lt. Franklin	Tolled	43457	
IA2019-016	1/18/2019	2/5/2019	POD		Sgt. T. Salas	In Progress	3/9/2019	2/5/2020
IA2019-021	2/11/2019	2/11/2019	Force		Sgt. T. Salas	In Progress	7/23/2019	2/11/2020
IA2019-024		2/17/2019	CUBO		Sgt. McNack	In Progress	7/19/2019	2/17/2020
IA2019-025	2/21/2019	2/25/2019	Force, CUBO		Sgt. McNack	In Progress	7/23/2019	2/25/2020
IA2019-034	3/7/2019	3/13/2019		Deferred to OIPA #19-10		OIPA Investigation	3/13/2019	3/13/2020
IA2019-036	1/27/2019	3/18/2019	Force, Arrest/Detention	Deferred to OIPA #19-11		OIPA Investigation	8/17/2019	3/18/2020
IA2019-037	3/18/2019	3/18/2019		OIPA Intake #19-12 Admin Closure	Sgt. McNack	In Progress	8/17/2019	3/18/2020
IA2019-041	3/26/2019	3/25/2019	Force, Policy/Procedure	Deferred to OIPA #19-13		OIPA Investigation	8/17/2019	3/25/2020
IA2019-042	1/27/2019	3/29/2019	POD, CUBO, Policy/Procedure		Sgt. McNack	In Progress	8/28/2019	3/29/2020
IA2019-050	4/11/2019		Per Chief, regarding how department handled a call for service	Service Review	Sgt. T. Salas	In Progress	5/12/2019	12/31/1900
IA2019-052	4/16/2019	4/16/2019	Force, CUBO		Sgt. McNack	In Progress	9/15/2019	4/16/2020
IA2019-053	4/17/2019	4/17/2019	CUBO, BBP	Admin Closure	Sgt. McNack	In Progress	9/16/2019	4/17/2020
IA2019-054	4/17/2019	4/17/2019	Force, CUBO	Deferred to OIPA #19-15		OIPA Investigation	5/12/2019	4/17/2020
IA2019-056	4/29/2019	4/30/2019	POD, CUBO	SR sent to Sgt. Lee on 05/17/19	Sgt. T. Salas	In Progress	5/30/2019	4/30/2020
IA2019-057	4/29/2019	4/29/2019	Arrest/Detention BBP, CUBO	Deferred to OIPA #19-17		OIPA Investigation	9/28/2019	4/29/2020
IA2019-060	4/8/2019	5/6/2019	Arrest/Detention Force, Axon, CUBO	Deferred to OIPA #19-19		OIPA Investigation	9/10/2019	5/6/2020
IA2019-061	5/11/2019	5/11/2019	Force		Sgt. T. Salas	In Progress	10/10/2019	5/11/2020
IA2019-062	5/16/2019	5/16/2019	Force		Sgt. T. Salas	In Progress	10/15/2019	5/16/2020
IA2019-063	5/7/2019	5/16/2019	Force		Lt. Franklin	In Progress	10/15/2019	5/16/2020
IA2019-065	5/22/2019	5/23/2019	Bias- Based Policing	Clear by video	Sgt. T. Salas	In Progress	10/22/2019	5/23/2020
IA2019-067	5/16/2019	5/16/2019	Force		Sgt. McNack	In Progress	10/15/2019	5/16/2020
IA2019-068	6/3/2019	6/3/2019	Force		Sgt. McNack	In Progress	11/2/2019	6/3/2020
IA2019-069	6/4/2019	6/4/2019	CUBO		Sgt. McNack	In Progress	11/3/2019	6/4/2020
IA2019-070	6/6/2019	6/6/2019	POD	OIPA Intake #19-21	Sgt. McNack	In Progress	10/15/2019	6/6/2020
IA2019-071	6/6/2019	6/11/2019	Bias-Based Policing CUBO		Sgt. McNack	In Progress	11/10/2019	6/11/2020
IA2019-072	6/5/2019	6/6/2019	Force		Sgt. McNack	In Progress	11/12/2019	6/6/2020

IA	DATE		ALLEGATION	MISC	INVESTIGATOR	STATUS	5 MONTH DATE	DUE DATE
	CASE #	OCC'D						
IA2019-073	6/13/2019	6/14/2019	Bias-Based Policing	OIPA Intake #19-22	Sgt. McNack	In Progress	11/13/2019	6/14/2020
IA2019-074	6/25/2019	6/25/2019	Force		Sgt. T. Salas	In Progress	11/25/2019	6/25/2020
IA2019-077	5/16/2019	5/16/2019	Axon Camera		Sgt. T. Salas	In Progress	10/15/2019	5/16/2020
IA2019-078	6/29/2019	7/2/2019	BBP, POD	Clear by video	Sgt. T. Salas	In Progress	12/1/2019	7/2/2020
IA2019-079	4/20/2019	7/2/2019	CUBO		Sgt. T. Salas	In Progress	12/1/2019	7/2/2020
IA2019-080	6/28/2019	7/1/2019	Bias-Based Policing	Admin Closure	Sgt. T. Salas	In Progress	11/30/2019	7/1/2020
IA2019-081	Unk	6/25/2019	POD	OIPA Intake #19-23 Admin Closure	Sgt. T. Salas	In Progress	11/24/2019	6/25/2020
IA2019-082	7/5/2019	7/5/2019	Force		Sgt. McNack	In Progress	12/4/2019	7/5/2020
IA2019-083	4/27/2019	6/17/2019	BBP		Sgt. McNack	In Progress	7/17/2019	6/17/2020
IA2019-087	7/30/2019	7/30/2019	POD	Clear by video	Sgt. T. Salas	In Progress	8/29/2019	7/30/2020
IA2019-088	7/30/2019	7/30/2019	Courtesy		Sgt. McNack	In Progress	12/29/2019	7/30/2020
IA2019-089	8/7/2019	8/13/2019	Force, Courtesy, Arrest or Detention	OIPA Intake #19-23 Admin Closure	Sgt. T. Salas	In Progress	1/12/2020	8/13/2020
IA2019-090	8/11/2019	8/11/2019	Policy/Procedure		Sgt. T. Salas	In Progress	1/10/2020	8/11/2020
IA2019-098	9/2/2019	9/3/2019	Policy/Procedure Force, CUBO Arrest/Detention		Sgt. McNack	In Progress	2/2/2020	9/3/2020
IA2019-099	8/29/2019	8/30/2019	Arrest/Detention Force Policy/Procedure	OIPA Intake #19-35 Clear by Video	Sgt. T. Salas	In Progress	1/29/2020	8/30/2020
IA2019-101	9/1/2019	9/1/2019	CUBO		Sgt. T. Salas	In Progress	1/28/2020	9/1/2020
IA2019-102	8/30/2019	8/30/2019	Courtesy	SR sent to R. Martinez	Lt. Franklin	In Progress	10/3/2019	8/30/2020
IA2019-105	9/6/2019	9/6/2019	Courtesy	S.R.	Sgt. T. Salas	In Progress	10/6/2019	9/6/2020
IA2019-107	9/12/2019	9/12/2019	POD	Clear by Video	Sgt. T. Salas	In Progress	10/3/2019	9/12/2020
IA2019-108	8/26/2019	9/20/2019	Force Arrest/Detention Policy/Procedure	Deferred to OIPA #19-40		OIPA Investigation	10/3/2019	9/20/2020
IA2019-109	9/18/2019	9/19/2019	POD		Sgt. McNack		10/19/2019	9/19/2020
IA2019-110	9/25/2019	9/25/2019	Courtesy		Sgt. McNack		10/25/2019	9/25/2020
IA2019-111	10/1/2019	10/2/2019	Force, CUBO, Search or Seizure		Sgt. McNack		3/2/2020	10/2/2020

PART 1 CRIMES	2014	2015	2016	2017	2018	YTD September		% change from '19
	2018	2019						
Homicide	0	1	1	0	3	3	1	-67%
Rape	2	3	4	8	3	3	4	33%
Robbery	153	161	232	290	349	235	271	15%
Aggravated Assault	71	73	93	125	130	100	85	-15%
Violent Crime Subtotal	226	238	330	423	485	341	361	6%
Burglary (Not Including Auto)	7	4	12	15	18	15	12	-20%
Larceny	2597	2325	2217	2593	2590	1942	2352	21%
Auto Theft	522	480	480	420	354	281	180	-36%
Arson	0	0	1	4	4	4	1	-75%
Property Crime Subtotal	3126	2809	2710	3032	2966	2242	2545	14%
<b>TOTAL</b>	<b>3352</b>	<b>3047</b>	<b>3040</b>	<b>3455</b>	<b>3451</b>	<b>2583</b>	<b>2906</b>	<b>13%</b>



# BART Police Performance Measurements

## September 2019

**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 unbounding of crimes, can affect crime statistics. **OT Budget costs** are projected numbers and actual numbers are about 4 months behind. The statistics contained in the on the Performance Measurements are **subject to change , updates, and corrections. \*\***

### Top 5 Stations For Part 1 Crimes

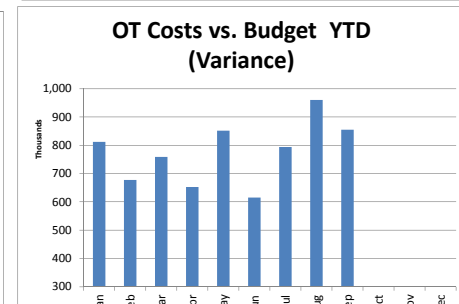
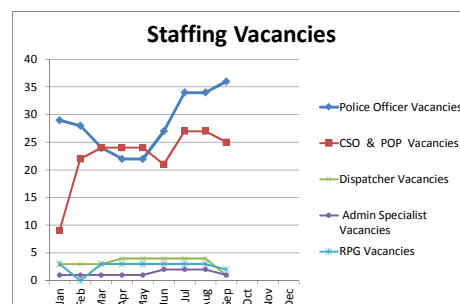
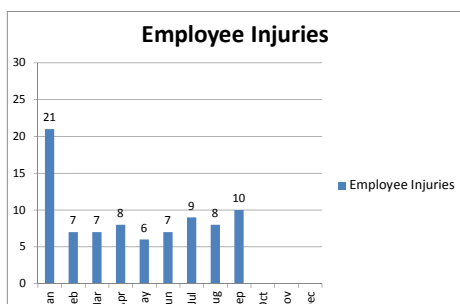
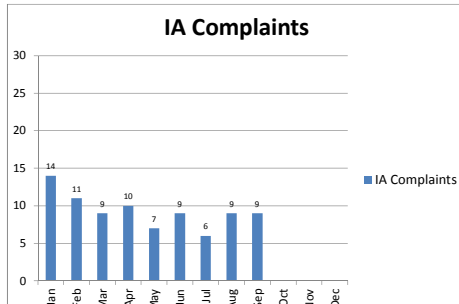
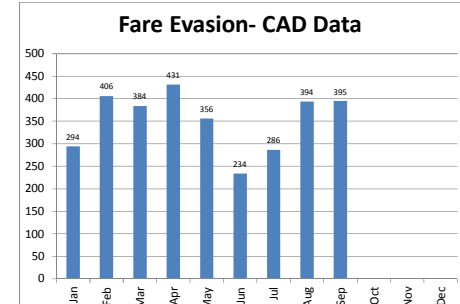
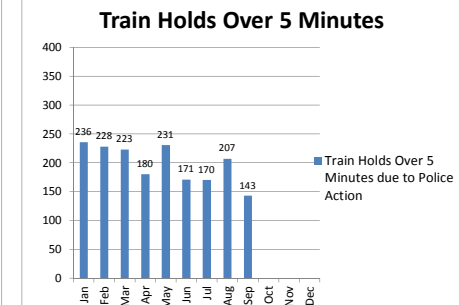
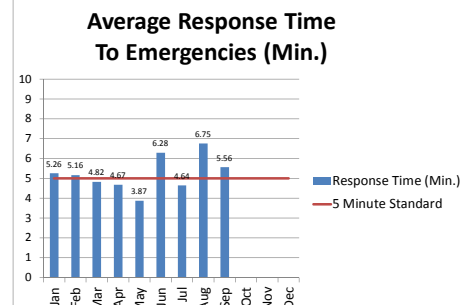
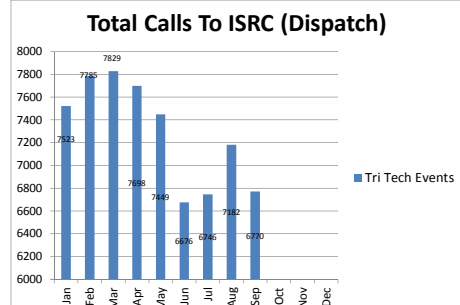
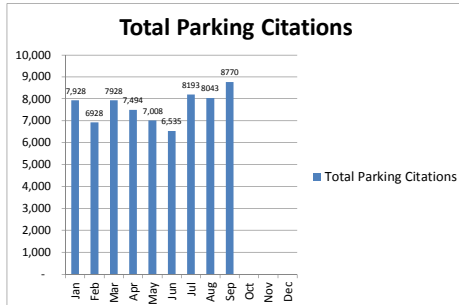
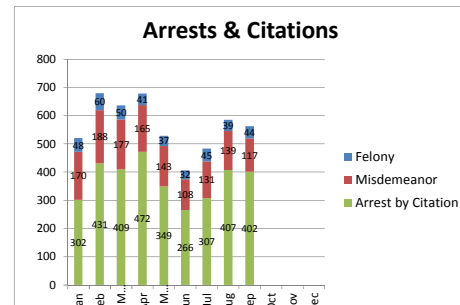
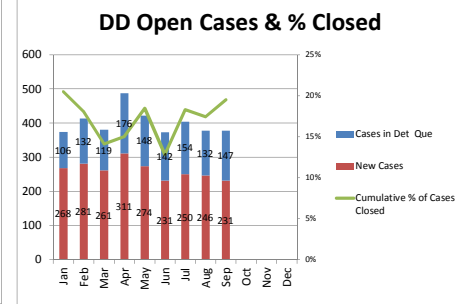
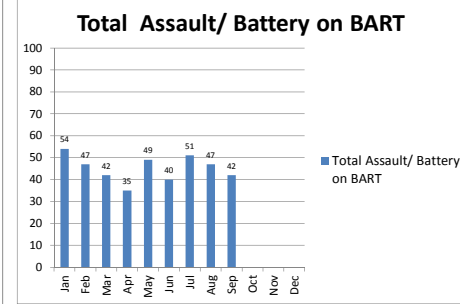
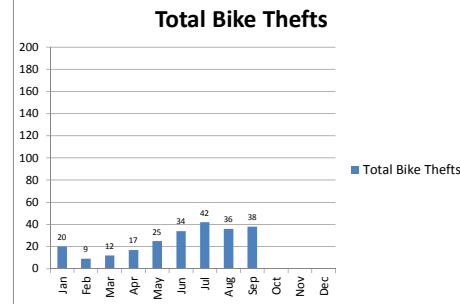
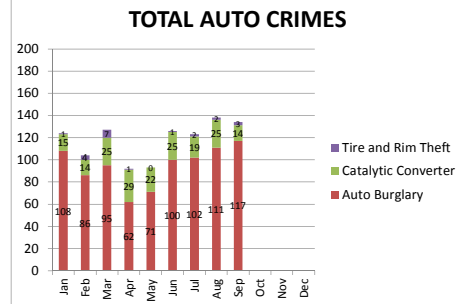
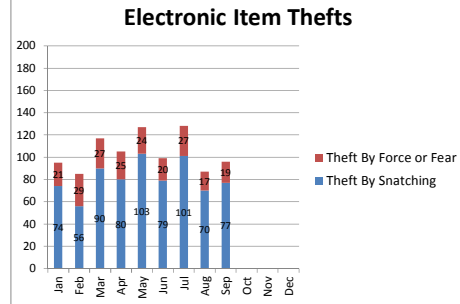
#### 2019 Current Month

Coliseum  
Hayward  
West Oakland  
Daly City  
Powell Street

#### Most Frequent all of 2018 2018 YEAR

Coliseum  
West Oakland  
Hayward/ San Leandro  
Richmond  
Fruitvale

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



PART 1 CRIMES	2017	2018	YTD September		% change from '18
			2018	2019	
Homicide	0	2	2	1	-50%
Rape	6	3	3	2	-33%
Robbery	191	215	141	172	22%
Aggravated Assault	73	87	91	40	-56%
<b>Violent Crime Subtotal</b>	<b>270</b>	<b>307</b>	<b>237</b>	<b>215</b>	<b>-9%</b>
Burglary (Not Including Auto)	8	11	8	7	-13%
Larceny	1471	1283	1024	1248	22%
Auto Theft	266	199	158	107	-32%
Arson	2	3	2	1	-50%
<b>Property Crime Subtotal</b>	<b>1747</b>	<b>1496</b>	<b>1192</b>	<b>1363</b>	<b>14%</b>
<b>TOTAL</b>	<b>2017</b>	<b>1803</b>	<b>1429</b>	<b>1578</b>	<b>10%</b>

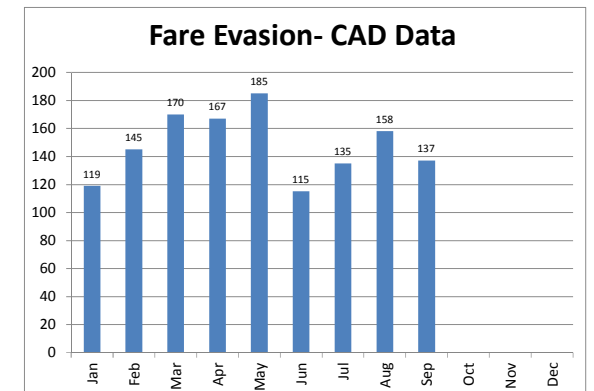
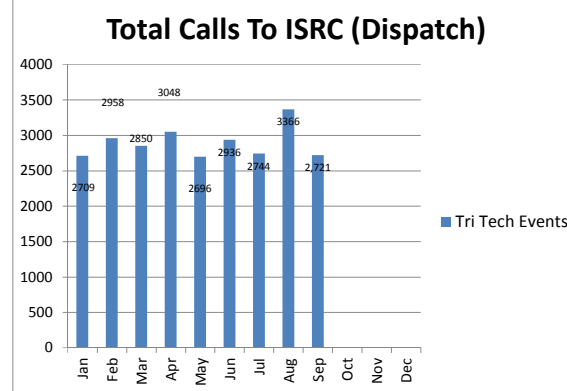
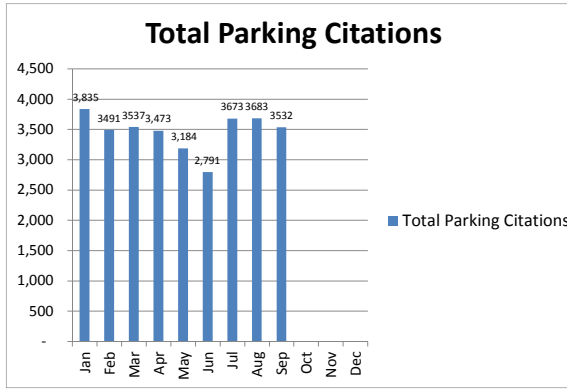
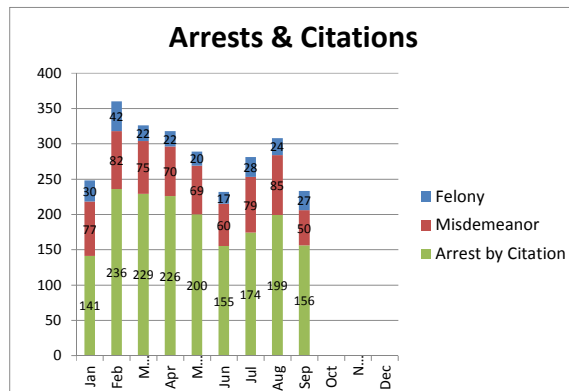
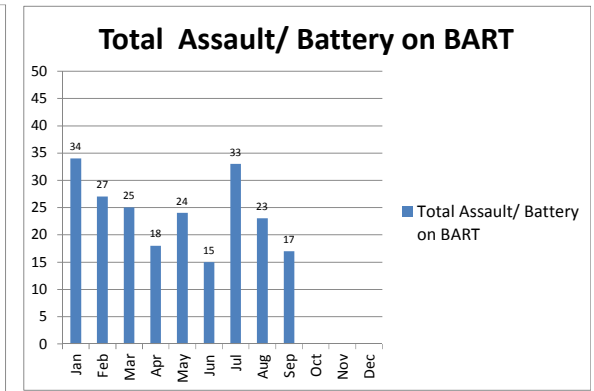
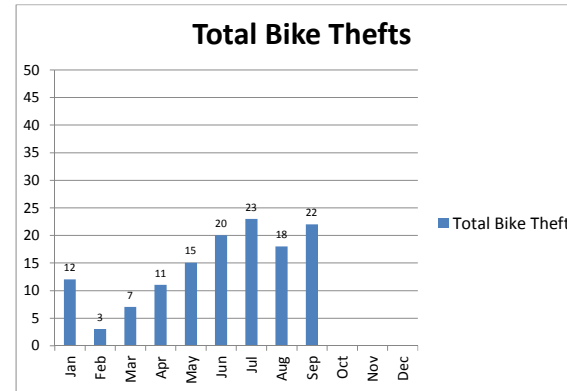
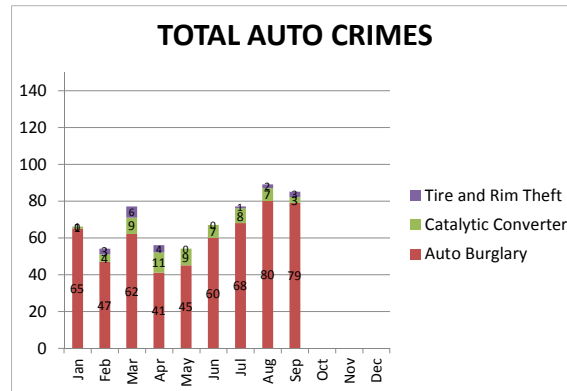
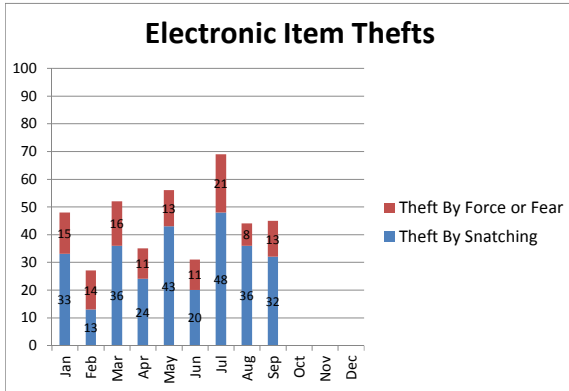


# BART Police Performance Measurements

## Alameda County Crime Statistics

### September 2019

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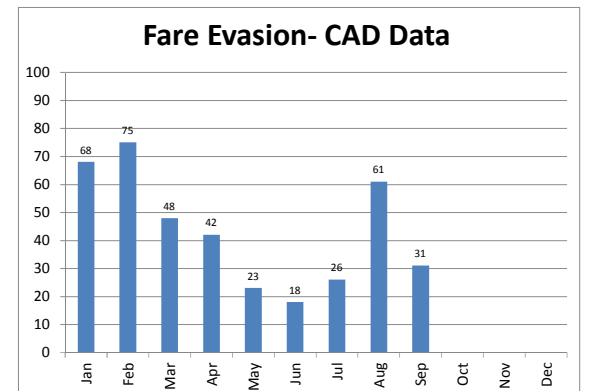
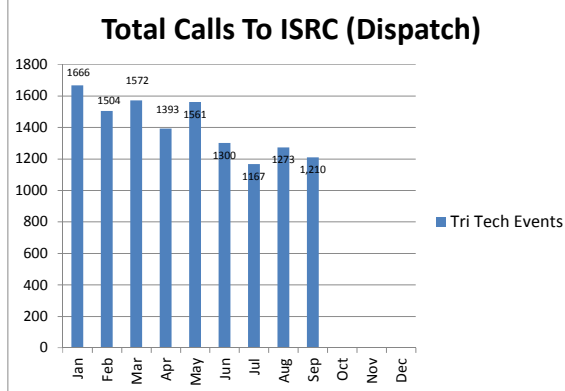
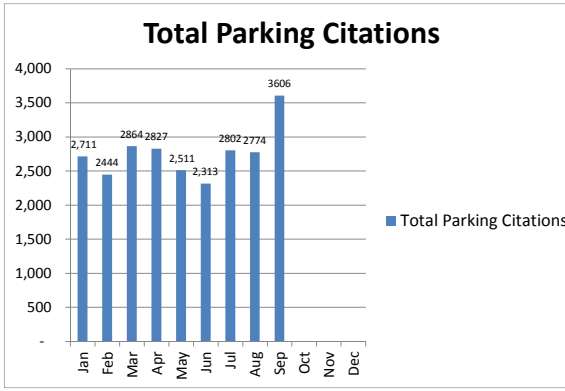
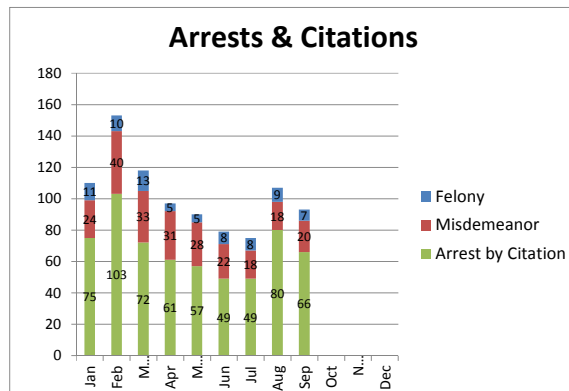
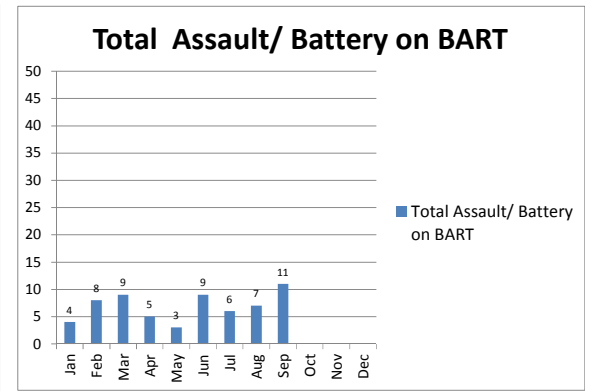
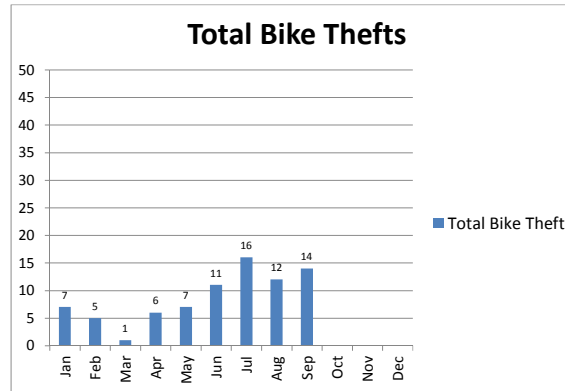
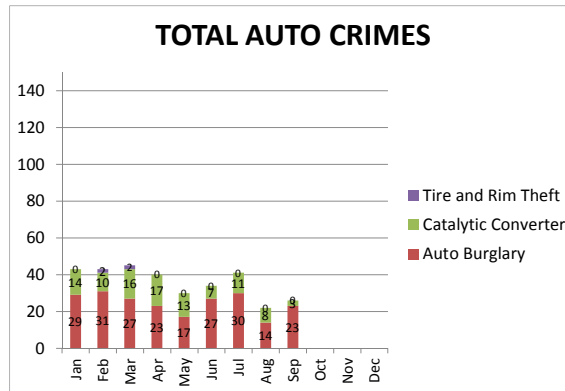
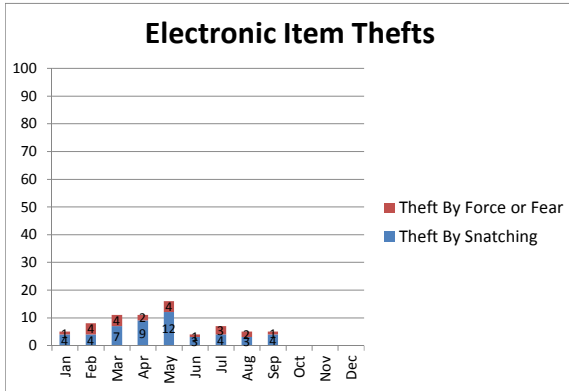


PART 1 CRIMES	2017	2018	YTD September		% change from '18
			2018	2019	
Homicide	0	1	1	0	-100%
Rape	1	0	0	2	200%
Robbery	35	29	25	25	0%
Aggravated Assault	23	20	23	14	-39%
<b>Violent Crime Subtotal</b>	<b>59</b>	<b>50</b>	<b>49</b>	<b>41</b>	<b>-16%</b>
Burglary (Not Including Auto)	2	1	1	1	0%
Larceny	675	670	499	468	-6%
Auto Theft	134	135	104	64	-38%
Arson	3	1	1	0	-100%
<b>Property Crime Subtotal</b>	<b>814</b>	<b>807</b>	<b>605</b>	<b>533</b>	<b>-12%</b>
<b>TOTAL</b>	<b>873</b>	<b>857</b>	<b>654</b>	<b>574</b>	<b>-12%</b>



## BART Police Performance Measurements Contra Costa County Crime Statistics September 2019

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PART 1 CRIMES	2017	2018	YTD September		% change from '18
			2018	2019	
Homicide	0	0	0	0	0%
Rape	0	0	0	0	0%
Robbery	49	97	63	66	5%
Aggravated Assault	23	18	12	26	117%
<b>Violent Crime Subtotal</b>	<b>72</b>	<b>115</b>	<b>75</b>	<b>92</b>	<b>23%</b>
Burglary (Not Including Auto)	5	6	5	3	-40%
Larceny	244	476	303	432	43%
Auto Theft	2	1	0	0	0%
Arson	0	0	0	0	0%
<b>Property Crime Subtotal</b>	<b>251</b>	<b>483</b>	<b>308</b>	<b>435</b>	<b>41%</b>
<b>TOTAL</b>	<b>323</b>	<b>598</b>	<b>383</b>	<b>527</b>	<b>38%</b>

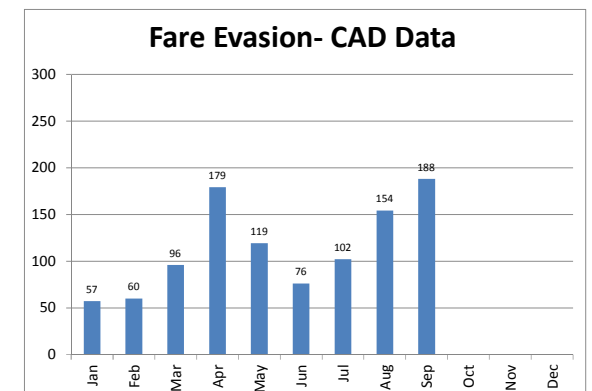
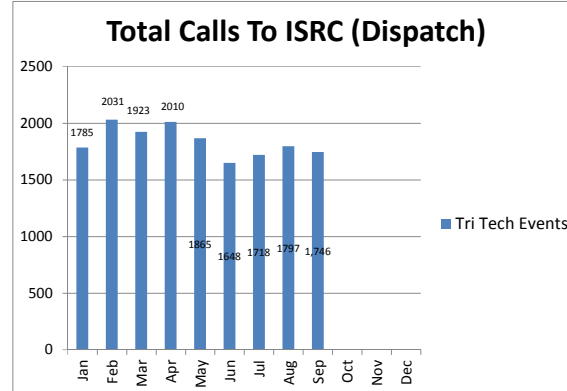
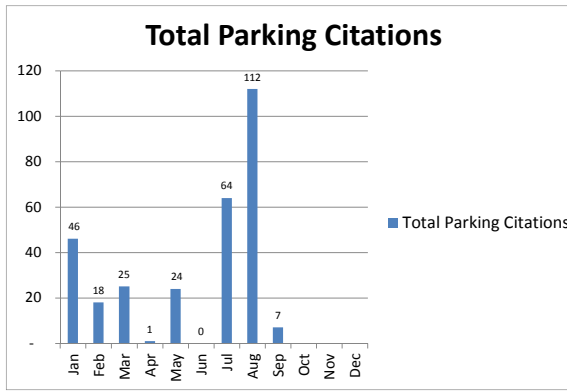
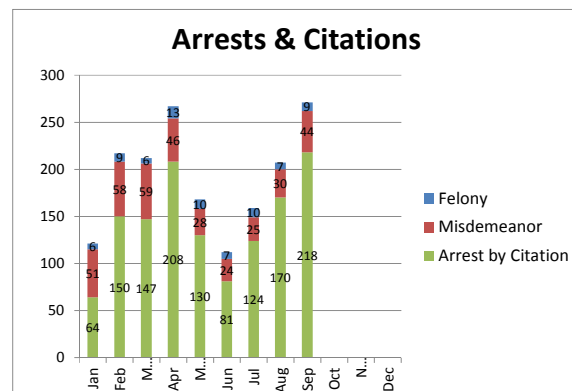
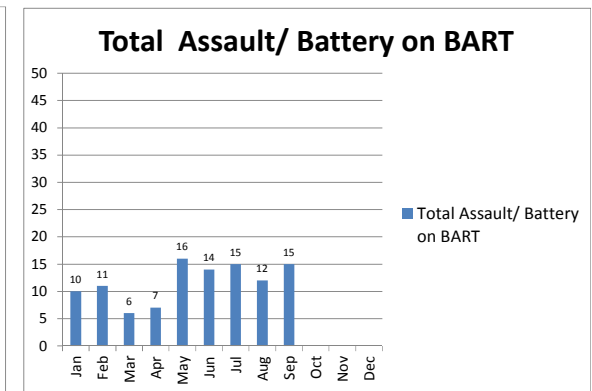
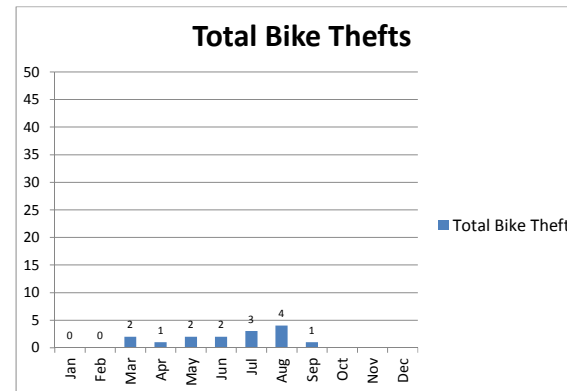
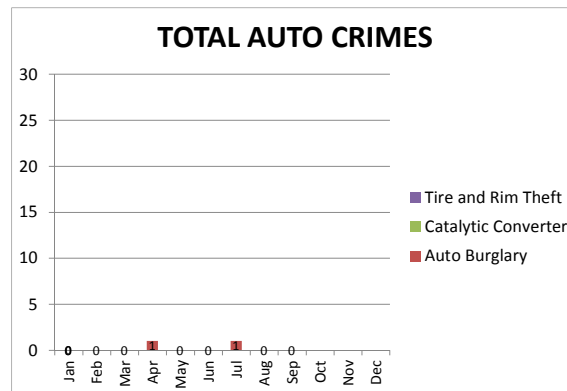
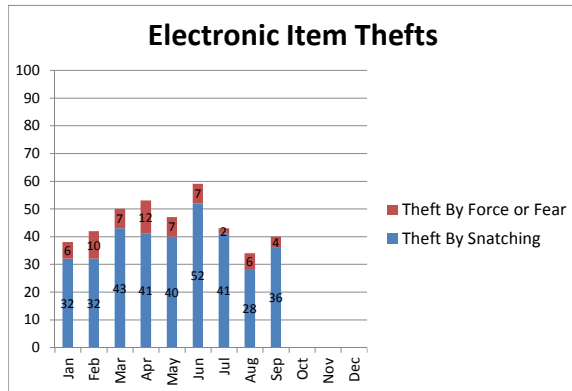


# BART Police Performance Measurements

## San Francisco County Crime Statistics

### September 2019

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PART 1 CRIMES	2017	2018	YTD September		% change from '18
			2018	2019	
Homicide	0	0	0	0	0%
Rape	1	0	0	0	0%
Robbery	15	8	5	8	60%
Aggravated Assault	6	5	3	5	67%
<b>Violent Crime Subtotal</b>	<b>22</b>	<b>13</b>	<b>8</b>	<b>13</b>	<b>63%</b>
Burglary (Not Including Auto)	0	0	0	1	100%
Larceny	208	161	125	240	92%
Auto Theft	18	19	19	9	-53%
Arson	0	0	0	0	0%
<b>Property Crime Subtotal</b>	<b>226</b>	<b>180</b>	<b>144</b>	<b>250</b>	<b>74%</b>
<b>TOTAL</b>	<b>248</b>	<b>193</b>	<b>152</b>	<b>263</b>	<b>73%</b>

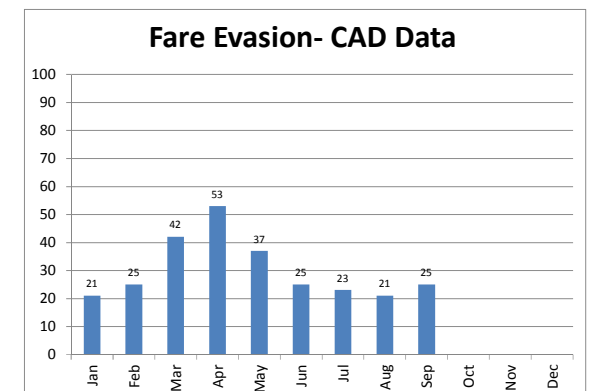
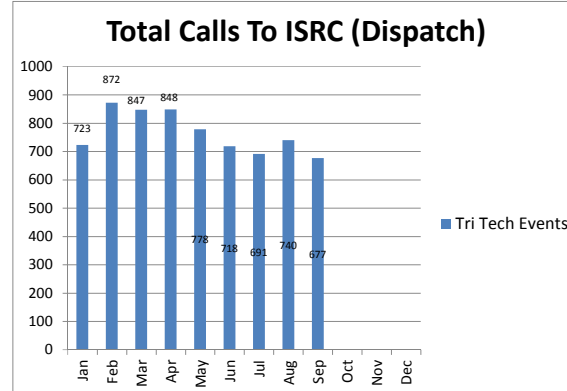
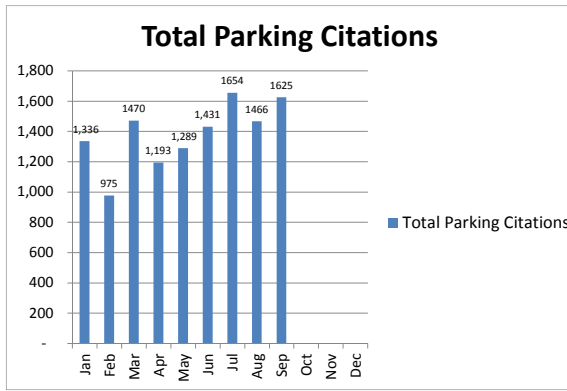
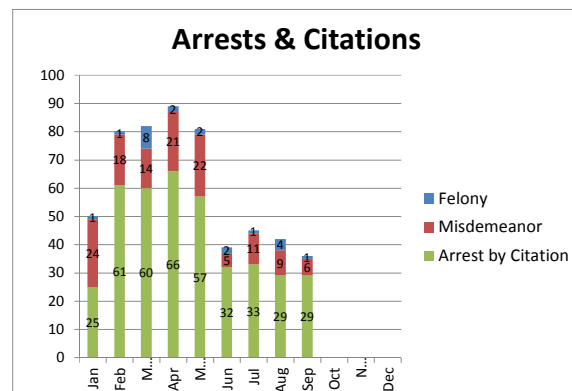
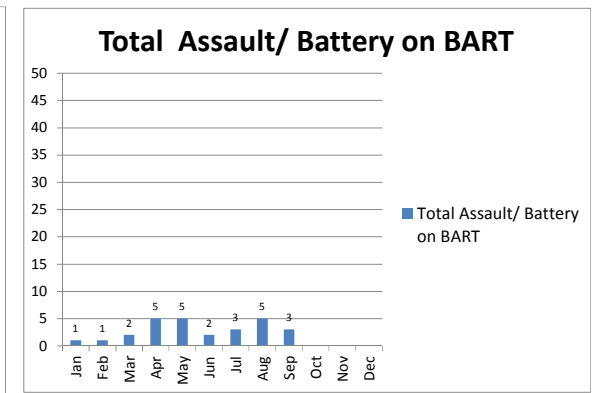
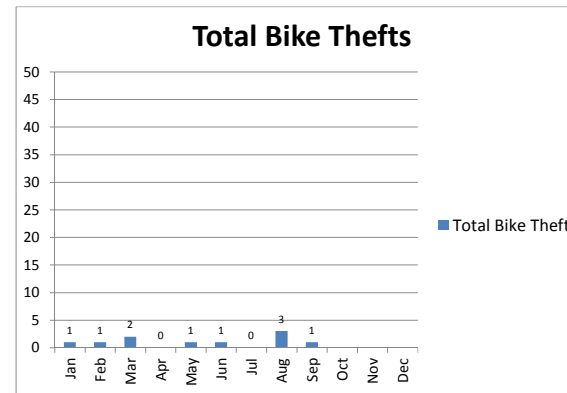
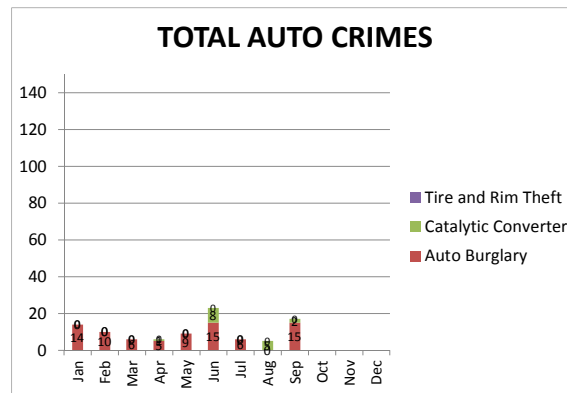
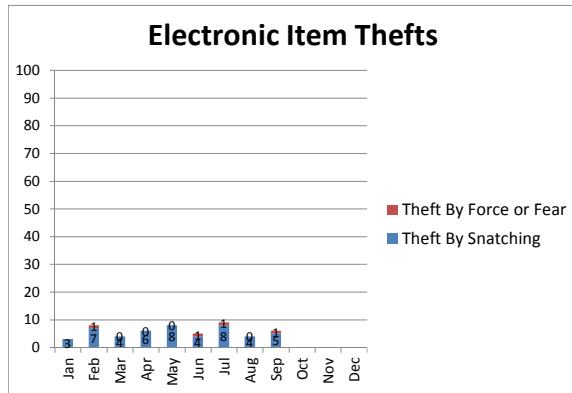


# BART Police Performance Measurements

## San Mateo County Crime Statistics

### September 2019

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## Enforcement Contacts - 2019

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Felony Arrest	48	60	50	41	37	32	45	39	44				
YTD 2019	48	108	158	199	236	268	313	352	396				
Misd. Arrest	170	188	177	165	143	108	131	139	117				
YTD 2019	170	358	535	700	843	951	1,082	1,221	1,338				
Cite & Release	302	431	409	472	349	266	307	407	402				
YTD 2019	302	733	1,142	1,614	1,963	2,229	2,536	2,943	3,345				
Field Interview	814	945	804	891	701	510	541	661	676				
YTD 2019	814	1,759	2,563	3,454	4,155	4,665	5,206	5,867	6,543				

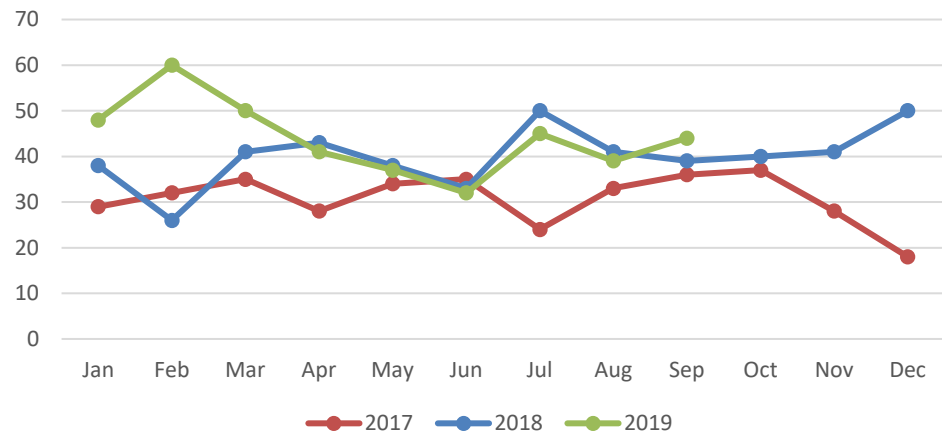
## Enforcement Contacts - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Felony Arrest	38	26	41	43	38	33	50	41	39	40	41	50	480
YTD 2018	38	64	105	148	186	219	269	310	349	389	430	480	
Misd. Arrest	88	109	123	90	117	142	108	127	119	160	144	129	1,456
YTD 2018	88	197	320	410	527	669	777	904	1,023	1,183	1,327	1,456	
Cite & Release	396	405	457	175	280	235	199	236	151	206	144	176	3,060
YTD 2018	396	801	1,258	1,433	1,713	1,948	2,147	2,383	2,534	2,740	2,884	3,060	
Field Interview	512	581	581	476	527	513	491	605	433	570	489	463	6,241
YTD 2018	512	1,093	1,674	2,150	2,677	3,190	3,681	4,286	4,719	5,289	5,778	6,241	

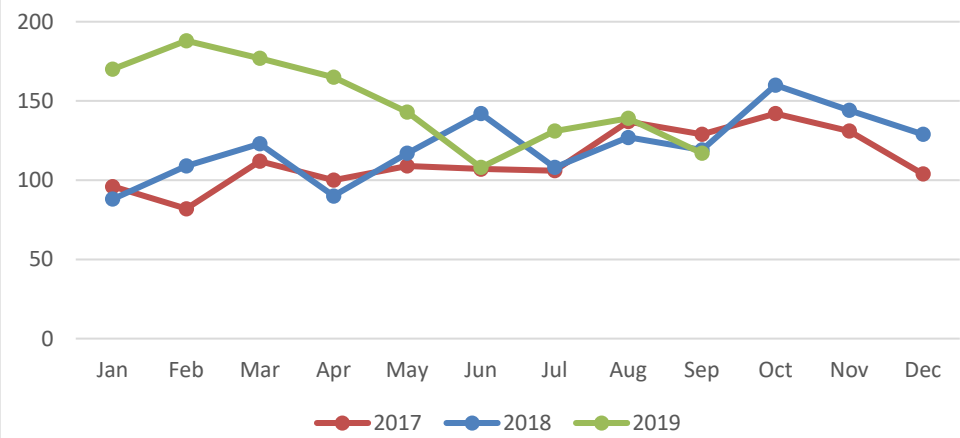
# Enforcement Contacts - 2017

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

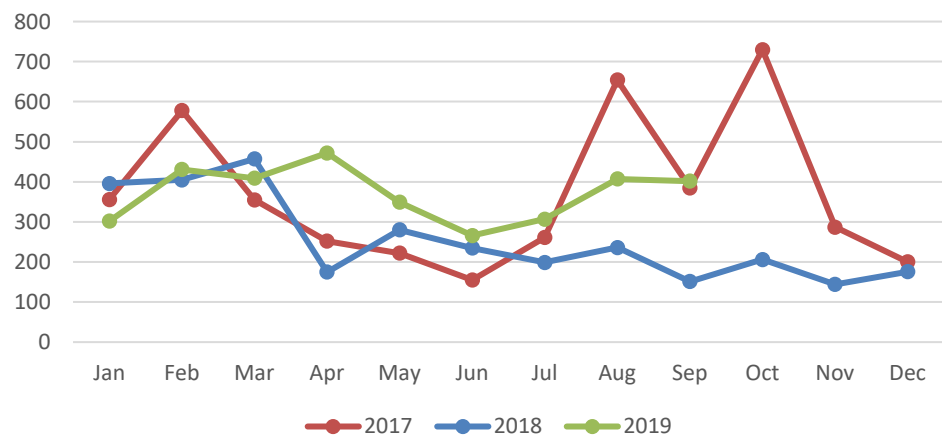
Felony Arrests



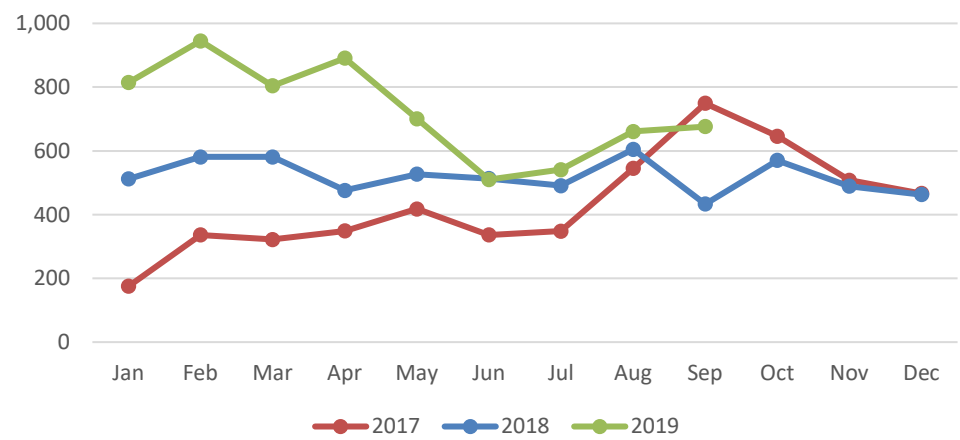
Misdemeanor Arrests



Cite & Release



Field Interviews



# Parking Enforcement - 2019

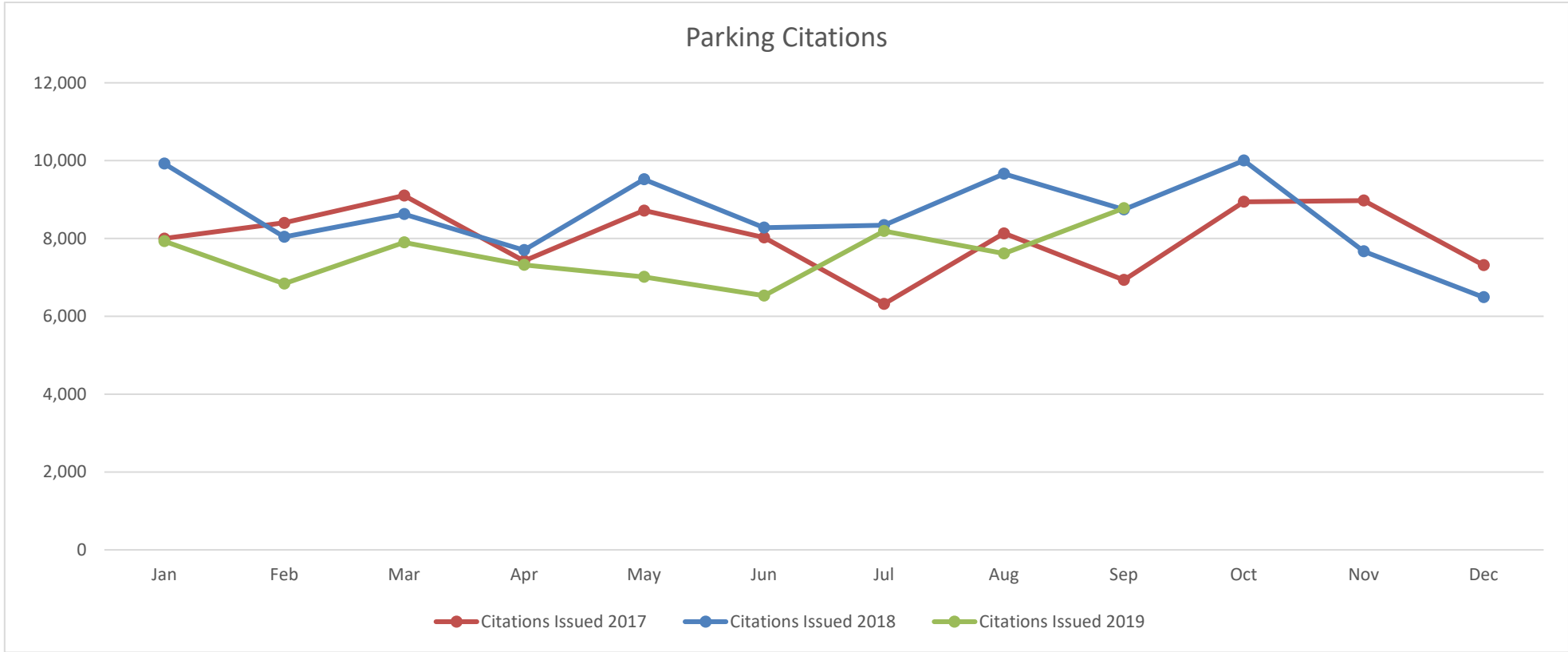
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Citations Issued	7,927	6,837	7,897	7,322	7,010	6,530	8,191	7,614	8,777				
YTD 2019	7,927	14,764	22,661	29,983	36,993	43,523	51,714	59,328	68,105				
Contested	1,654	1,605	1,838	1,386	1,803	1,447	1,808	1,682	1,789				
YTD 2019	1,654	3,259	5,097	6,483	8,286	9,733	11,541	13,223	15,012				
Dismissed	1,039	983	1,155	890	1,127	890	1,160	1,008	1,018				
YTD 2019	1,039	2,022	3,177	4,067	5,194	6,084	7,244	8,252	9,270				

# Parking Enforcement - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Citations Issued	9,925	8,042	8,629	7,697	9,520	8,281	8,344	9,661	8,744	10,001	7,671	6,488	103,003
YTD 2018	9,925	17,967	26,596	34,293	43,813	52,094	60,438	70,099	78,843	88,844	96,515	103,003	
Contested	2,121	1,808	2,152	1,782	1,827	2,053	1,958	2,211	2,060	2,314	1,925	1,667	23,878
YTD 2018	2,121	3,929	6,081	7,863	9,690	11,743	13,701	15,912	17,972	20,286	22,211	23,878	
Dismissed	1,502	1,200	1,448	1,160	1,152	1,294	1,223	1,438	1,309	1,489	1,197	1,037	15,449
YTD 2018	1,502	2,702	4,150	5,310	6,462	7,756	8,979	10,417	11,726	13,215	14,412	15,449	

# Parking Enforcement - 2017

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



# Warrant Arrests

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>2019</b>												
BART Felony Warrants	3	2	1	2	0	1	0	0	0			
BART Misdemeanor Warrants	2	13	3	5	0	3	7	10	2			
O/S Felony Warrants	24	39	32	17	16	14	29	17	19			
O/S Misdemeanor Warrants	81	73	82	101	61	42	64	57	65			
<b>Monthly Total</b>	<b>110</b>	<b>127</b>	<b>118</b>	<b>125</b>	<b>77</b>	<b>60</b>	<b>100</b>	<b>84</b>	<b>86</b>			
<b>YTD Total</b>	<b>110</b>	<b>237</b>	<b>355</b>	<b>480</b>	<b>557</b>	<b>617</b>	<b>717</b>	<b>801</b>	<b>887</b>			
<b>2018</b>												
BART Felony Warrants	2	1	3	0	2	1	2	2	2	0	1	0
BART Misdemeanor Warrants	3	3	2	2	6	4	1	4	5	7	2	4
O/S Felony Warrants	12	10	16	29	29	8	16	14	10	21	17	23
O/S Misdemeanor Warrants	40	37	68	55	60	36	67	51	41	69	62	67
<b>Monthly Total</b>	<b>57</b>	<b>51</b>	<b>89</b>	<b>86</b>	<b>97</b>	<b>49</b>	<b>86</b>	<b>71</b>	<b>58</b>	<b>97</b>	<b>82</b>	<b>94</b>
<b>YTD Total</b>	<b>57</b>	<b>108</b>	<b>197</b>	<b>283</b>	<b>380</b>	<b>429</b>	<b>515</b>	<b>586</b>	<b>644</b>	<b>741</b>	<b>823</b>	<b>917</b>
<b>2017</b>												
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
<b>Monthly Total</b>	<b>66</b>	<b>65</b>	<b>77</b>	<b>77</b>	<b>83</b>	<b>64</b>	<b>69</b>	<b>84</b>	<b>77</b>	<b>94</b>	<b>83</b>	<b>45</b>
<b>YTD Total</b>	<b>66</b>	<b>131</b>	<b>208</b>	<b>285</b>	<b>368</b>	<b>432</b>	<b>501</b>	<b>585</b>	<b>662</b>	<b>756</b>	<b>839</b>	<b>884</b>



# San Francisco Bay Area Rapid Transit Police Department

## Criminal Investigations Division Monthly Summary Report

### Sep, 2019

#### 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/probation violation by the district attorney	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 October 3, 2019
<b>231</b>	<b>147</b>	<b>14</b>	<b>68</b>	<b>26</b>	<b>28</b>	<b>14</b>	<b>41%</b>	<b>619</b>

**Submitted By: Sgt. J. Guerra #S52**

**Date: 10/03/2019**



## San Francisco Bay Area Rapid Transit Police Department Criminal Investigations Division Sep, 2019

### Detective Closure Rate

Total number of cases assigned to detectives previous 12 months (October 2018 - Sept 2019)	Number of cases that are still being investigated by detectives	Number of cases that all current leads have been exhausted	Percentage of cases that all current leads have been exhausted	Number of cases closed by arrest or identification of suspect	Percentage of cases closed by arrest or identification of suspect	Percentage of Open Cases
<b>3145</b>	<b>918</b>	<b>542</b>	<b>17%</b>	<b>1671</b>	<b>53%</b>	<b>29%</b>

Johnson	<b>D51</b>	173	0	18	<b>10%</b>	154	<b>89%</b>	<b>0%</b>
Plumley	<b>D31</b>	320	78	70	<b>22%</b>	171	<b>53%</b>	<b>24%</b>
Medeiros	<b>D55</b>	336	223	47	<b>14%</b>	66	<b>20%</b>	<b>66%</b>
Krehbiel	<b>D27</b>	411	32	109	<b>27%</b>	266	<b>65%</b>	<b>8%</b>
Davis	<b>D54</b>	438	97	80	<b>18%</b>	257	<b>59%</b>	<b>22%</b>
Rosenbaum	<b>D10</b>	386	57	44	<b>11%</b>	283	<b>73%</b>	<b>15%</b>
Ulep	<b>D52</b>	487	73	24	<b>5%</b>	389	<b>80%</b>	<b>15%</b>
Robbery	<b>Robbery</b>	413	296	97	<b>23%</b>	20	<b>5%</b>	<b>72%</b>
Jones	<b>D70</b>	181	62	53	<b>29%</b>	65	<b>36%</b>	<b>34%</b>

#### CASES IN DETECTIVE QUEUE

		<i>Total</i>	<i>Past 60 days</i>
Medeiros	<b>D55</b>	223	112
Plumley	<b>D31</b>	78	16
Krehbiel	<b>D27</b>	32	6
Davis	<b>D54</b>	41	72
Rosenbaum	<b>D10</b>	57	35
Ulep	<b>D52</b>	73	62
Robbery	<b>Robbery</b>	296	296
Jones	<b>D70</b>	62	16

Submitted by: Sgt. J. Guerra #S52  
Date: October 9, 2019

## Assembly Bill 716 - 2019

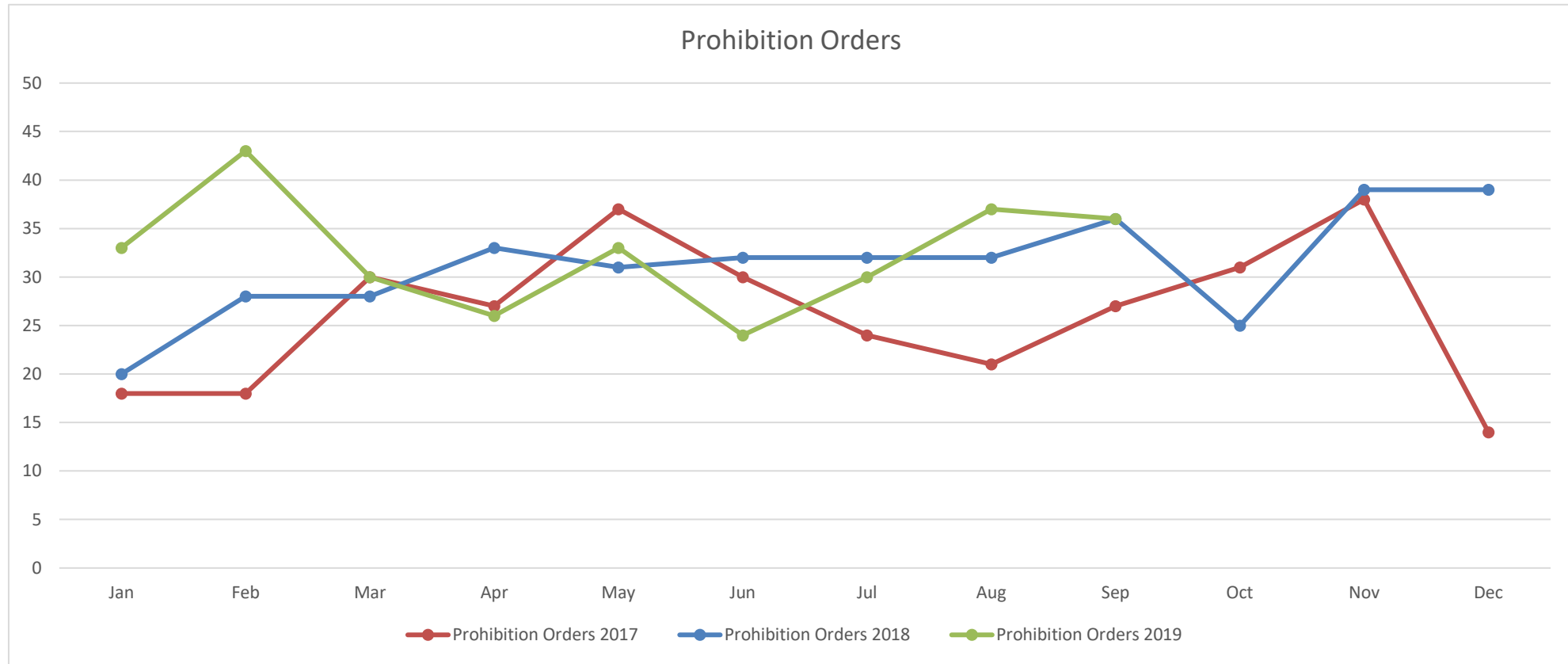
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Prohibition Orders Issued	33	43	30	26	33	24	30	37	36				
YTD 2019	33	76	106	132	165	189	219	256	292				

## Assembly Bill 716 - 2018

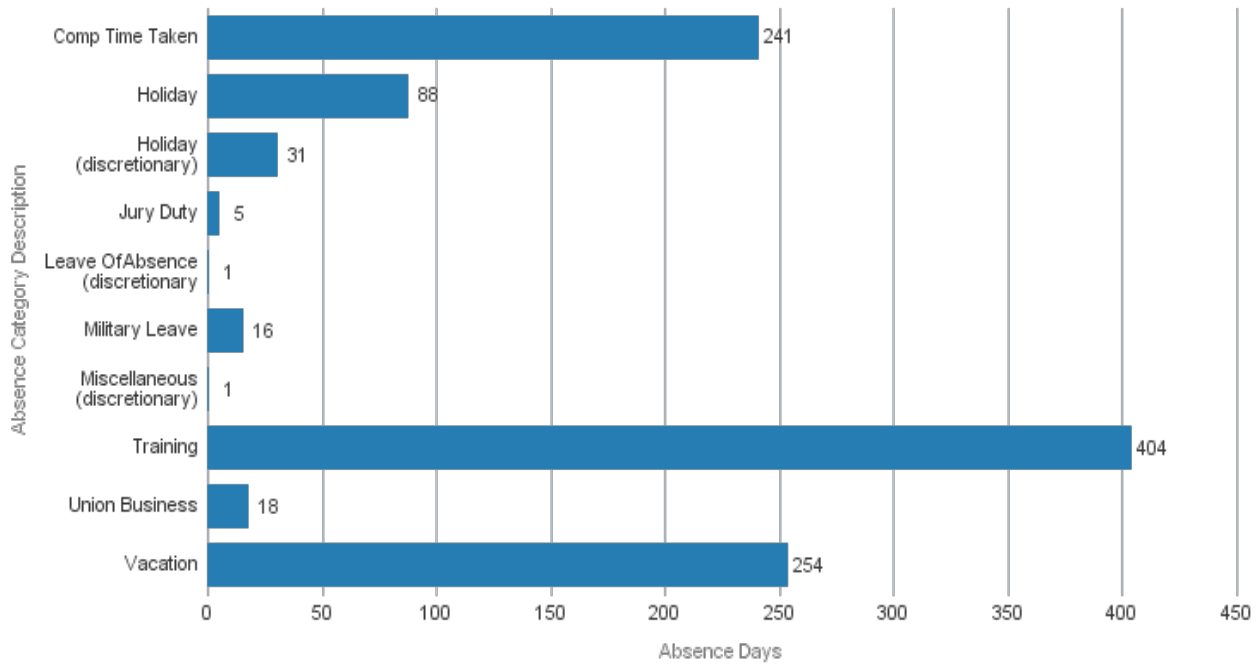
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Prohibition Orders Issued	20	28	28	33	31	32	32	32	36	25	39	39	375
YTD 2018	20	48	76	109	140	172	204	236	272	297	336	375	

## Assembly Bill 716 - 2017

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

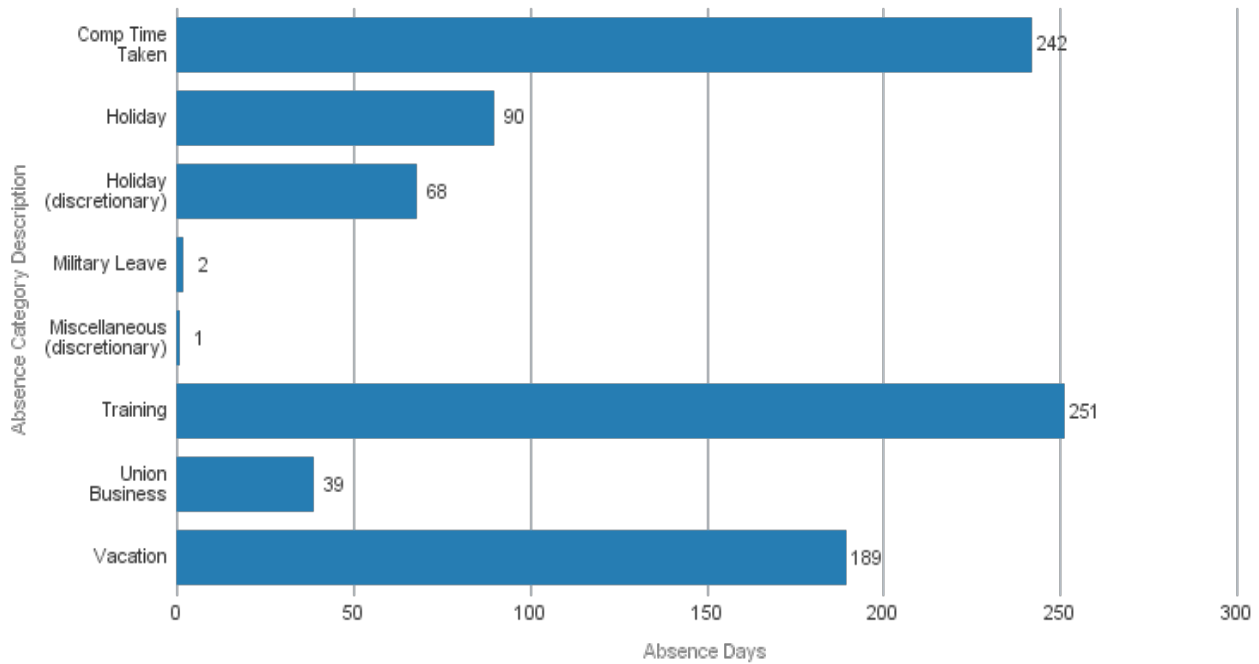


### Scheduled Absence Overview - September 2019



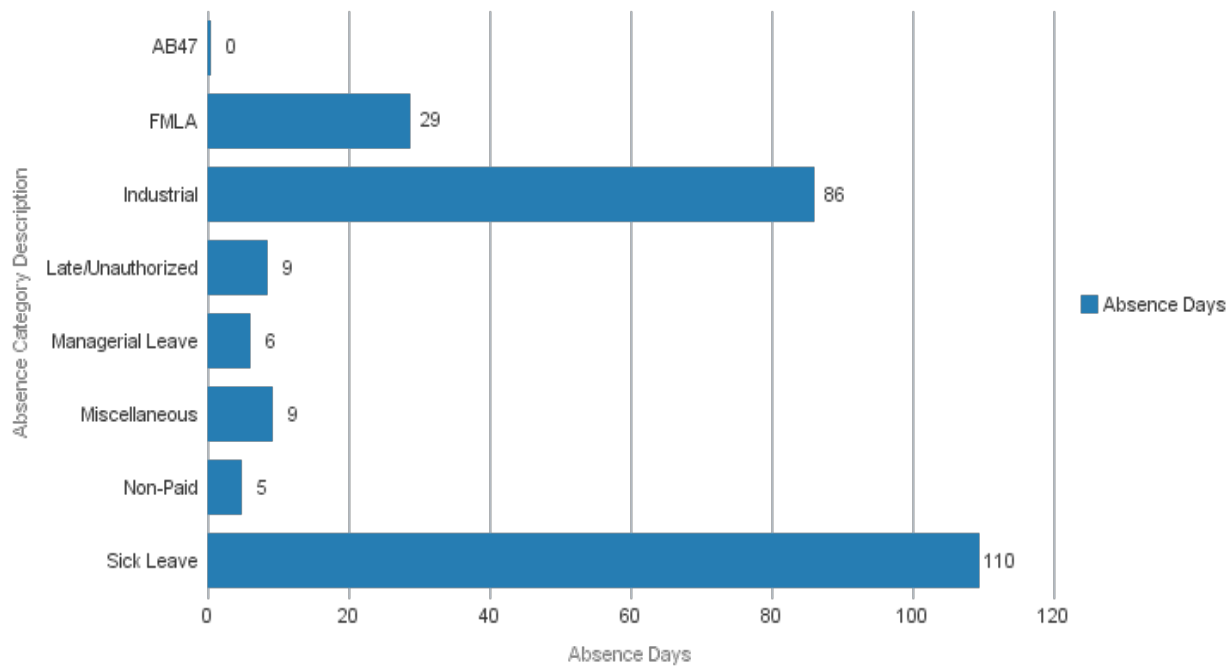
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	2,436	241	23%
Holiday	782	88	8%
Holiday (discretionary)	294	31	3%
Jury Duty	44	5	0%
Leave OfAbsence (discretionary)	10	1	0%
Military Leave	160	16	2%
Miscellaneous (discretionary)	8	1	0%
Training	3,355	404	38%
Union Business	206	18	2%
Vacation	2,505	254	24%
<b>Grand Total</b>	<b>9,801</b>	<b>1,059</b>	<b>100%</b>

### Scheduled Absence Overview - September 2018



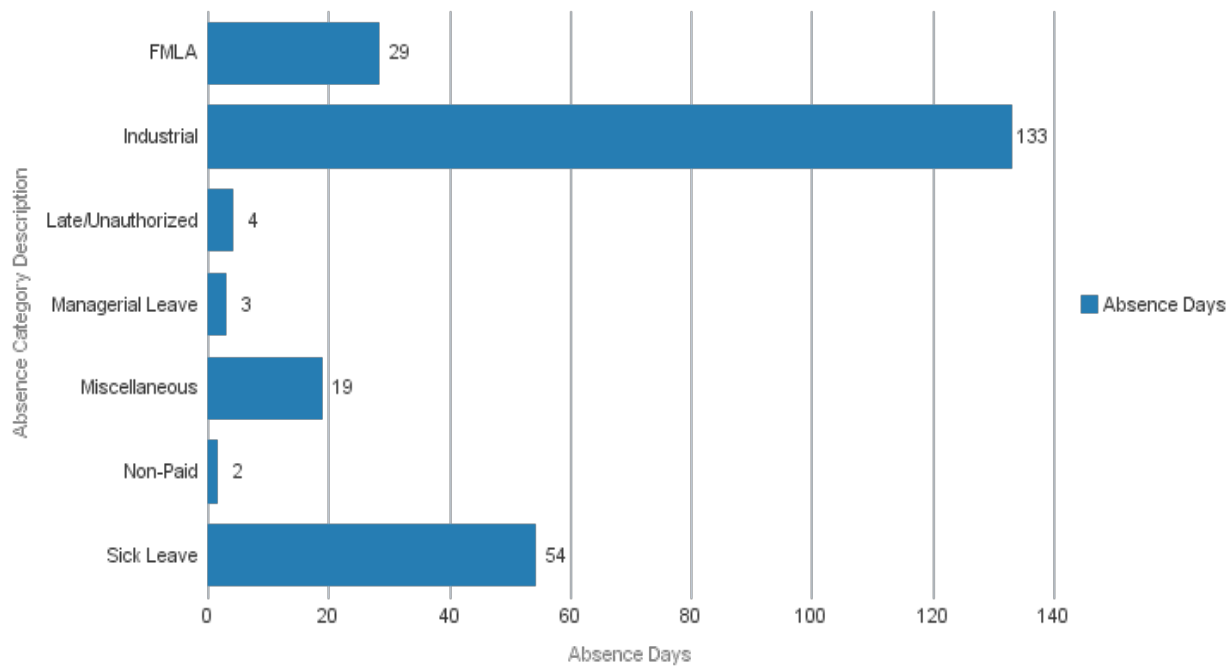
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	2,436	242	27%
Holiday	831	90	10%
Holiday (discretionary)	692	68	8%
Military Leave	24	2	0%
Miscellaneous (discretionary)	8	1	0%
Training	2,292	251	28%
Union Business	421	39	4%
Vacation	1,920	189	21%
<b>Grand Total</b>	<b>8,624</b>	<b>883</b>	<b>100%</b>

### Unscheduled Absence Overview - September 2019



Absence Category Description	Absence Hours	Absence Days	% Total
AB47	4	0	0%
FMLA	292	29	11%
Industrial	912	86	34%
Late/Unauthorized	85	9	3%
Managerial Leave	60	6	2%
Miscellaneous	96	9	4%
Non-Paid	50	5	2%
Sick Leave	1,087	110	43%
<b>Grand Total</b>	<b>2,587</b>	<b>254</b>	<b>100%</b>

### Unscheduled Absence Overview - September 2018



Absence Category Description	Absence Hours	Absence Days	% Total
FMLA	285	29	12%
Industrial	1,348	133	55%
Late/Unauthorized	44	4	2%
Managerial Leave	30	3	1%
Miscellaneous	190	19	8%
Non-Paid	16	2	1%
Sick Leave	542	54	22%
<b>Grand Total</b>	<b>2,455</b>	<b>244</b>	<b>100%</b>

# BART PD OVERTIME MONTHLY REPORT

## September 2019

Activity Name	Activity ID	2018			2019		
		Overtime10	Overtime15	Overtime20	Overtime10	Overtime15	Overtime20
Admin	ADMIN	0	0	0	0	1,796	0
Admin Pool CapRR	ADMIN	0	0	0	0	1,796	0
AdminSuppor to be allocated	ADMIN	0	0	0	0	1,796	0
Administration	ADMIN	0	0	0	0	1,796	0
Adv Officer Training	ADVOF	199	8,941	3,088	22	15,970	26,153
BART Labor	BLABR	0	620	0	0	7	0
BF OT Discr Day BPD	BFDSC	0	1,619	2,192	0	841	1,032
BF OT Industrial Leave BPD	BFILV	474	4,941	20,518	0	8,834	12,201
BF OT Minimum Rest	BFRST	0	2,355	1,007	295	1,265	1,926
BF OT Patrol TRN	BFTRN	460	3,064	1,038	0	2,778	2,095
BF OT Recovery Day	BFRCV	0	2,930	13,675	652	9,296	24,846
BF OT Training BPD	BFTRN	460	3,064	1,038	0	2,778	2,095
BF OT Vacancy BPD	BFVCN	0	26,414	57,358	51	55,567	101,086
BF OT Vacation BPD	BFVAC	1,114	38,913	73,126	109	29,276	47,205
BF Sick/FMLA/Brvment	BFSLV	20	12,274	12,681	462	13,091	12,174
Boardroom Security	BRDRM	0	0	0	0	876	646
Bus Bridge C35	BUC35	0	0	0	0	0	3,085
Bus Bridge-M03	BUM03	0	736	981	0	0	0
COPPS Project/Event	COPPS	0	729	460	0	160	2,110
Calendar Year 2018	CY2018	0	739	460	0	0	0
Calendar Year 2019	CY2019	0	0	0	0	30	0
Capital Pool CapRR	ADMIN	0	0	0	0	1,796	0
Coliseum Events	CEOPS	2	17,747	13,149	131	22,558	27,529
Court Appearance	COURT	0	778	945	0	996	0
Def Tac Instructor TRN	DEFTR	0	0	0	0	1,306	1,423
Detectives Unit OT	INVST	0	2,487	1,795	1	11,429	7,982
E-BART SECURITY	EBSEC	184	6,496	17,155	0	0	0
EMS/OWS Pltfrm Detail	PLTFM	7	7,522	3,351	505	6,534	4,877
Evidence Collection	EVIDN	0	0	0	0	0	614
Explorer Advisors	EXPLR	120	2,376	0	0	176	1,362



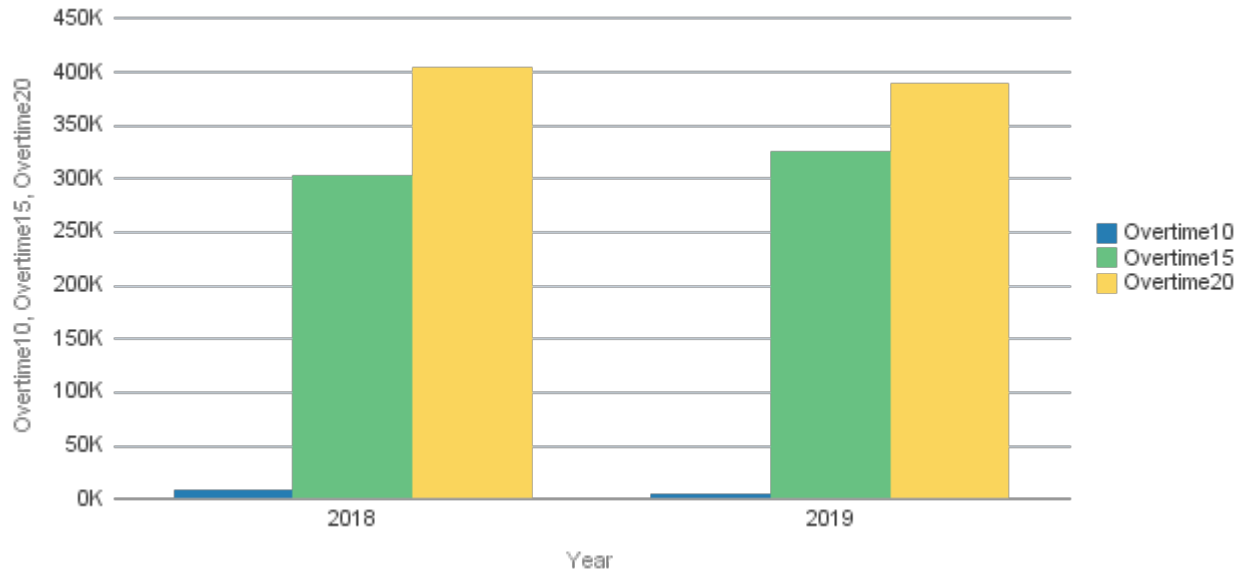
Final Design	FDSGN	0	3,137	3,264	0	2,837	3,318
Held Over/Late Case	HLDOV	0	14,230	1,176	0	12,061	464
Honor Guard Detail	HONOR	0	997	0	0	0	0
IA Unit Overtime	IAUNT	0	125	0	0	4,400	299
Jnt Terrorism Tskfrce	JTTFO	0	0	0	0	665	0
K-9 Team Training	K9TTR	0	2,645	0	0	407	0
MET BLD EVENT	METCS	0	0	0	0	218	0
Meeting Attendance	MTNGS	299	1,747	0	317	4,014	711
Mgr of Sec Programs	SECPR	0	2,865	664	0	0	0
Operating	OPER	0	4,114	12,039	0	6,140	0
	OPRTN	1,545	17,337	19,391	26	21,152	9,031
P&T Unit Overtime	PTUNT	916	15,289	12,166	0	14,099	9,678
Police Admin OT	PADMN	0	13,486	2,707	340	5,827	1,855
Ptrl Special Enforcement	SPECL	1,467	37,814	55,158	780	37,661	52,471
Raiders - Walkway	RAIDR	0	0	898	0	0	0
Raiders Game Cleanup	RAIDR	0	0	898	0	0	0
Range Staff Training	RANGE	0	0	0	0	1,792	2,972
Rev Protection Unit OT	RVPRT	0	0	0	0	1,233	410
SF STA CLN SEC	DSFCS	0	8,818	7,623	0	6,365	7,499
SWAT Team Expenses	SWATT	0	0	0	0	0	3,342
SWAT Team Training	SWATT	0	0	0	0	0	3,342
Special Events	SPEVN	54	2,304	0	0	2,241	652
Training	TRNNG	0	2,351	2,319	0	489	0
Training Other	TRNOT	0	3,868	4,171	0	5,787	7,450
Trma Resp Team TRN	TRTTR	0	0	0	0	253	0
Union Business	UNBUS	0	5,801	4,818	0	3,039	3,953
Urban Shield	URBAN	0	19,858	50,788	0	0	0
<b>Grand Total</b>		<b>7,321</b>	<b>301,536</b>	<b>402,101</b>	<b>3,693</b>	<b>323,429</b>	<b>387,889</b>

**Sept 2019**

**710,957**

**715,010**

Overtime10, Overtime15, Overtime20



# Communications Center - 2019

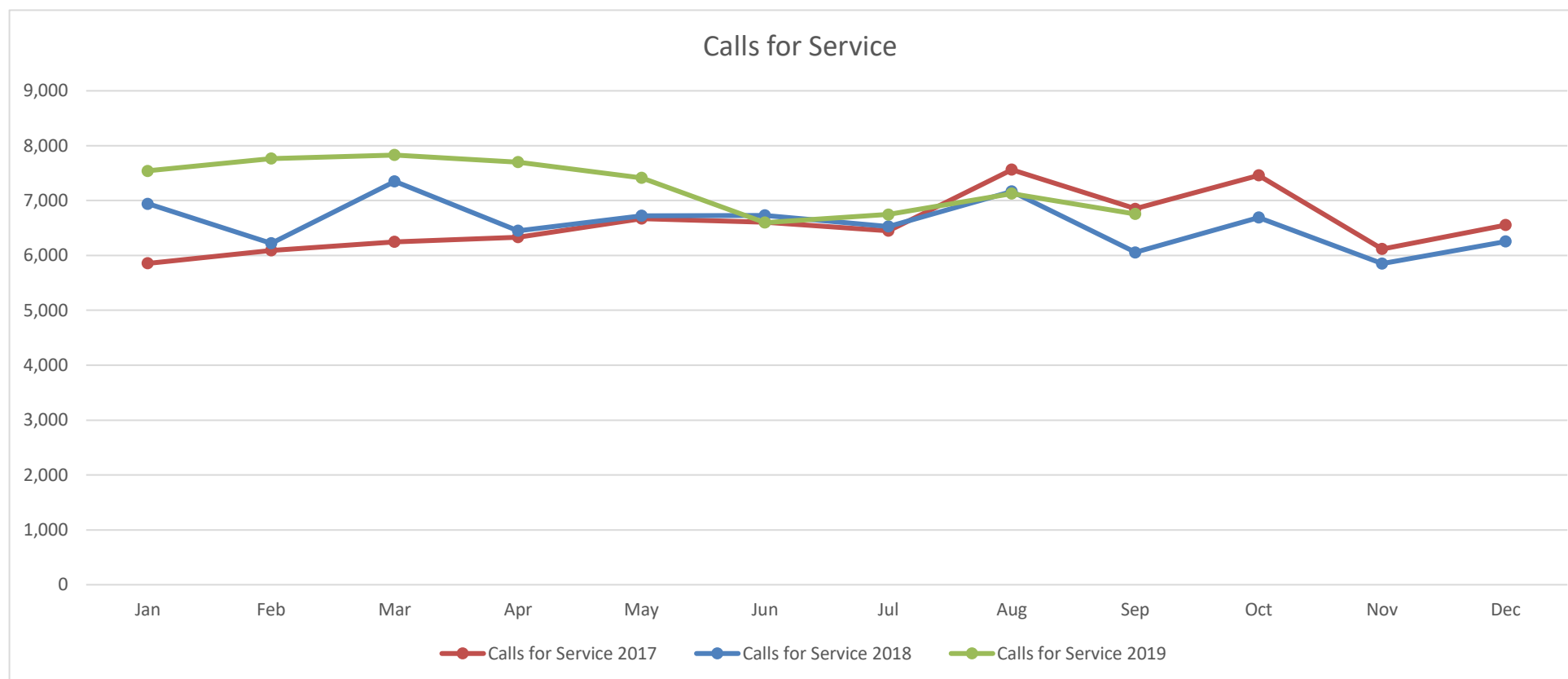
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Calls for Service	7,540	7,765	7,829	7,698	7,415	6,598	6,746	7,126	6,758				
YTD 2019	7,540	15,305	23,134	30,832	38,247	44,845	51,591	58,717	65,475				
Priority 1 Calls	203	181	202	204	202	213	205	199	222				
YTD 2019	203	384	586	790	992	1,205	1,410	1,609	1,831				
Medical Emergencies	361	310	370	321	396	360	318	323	339				
YTD 2019	361	671	1,041	1,362	1,758	2,118	2,436	2,759	3,098				

# Communications Center - 2018

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Calls for Service	6,941	6,222	7,349	6,452	6,724	6,729	6,529	7,168	6,055	6,690	5,852	6,252	78,963
YTD 2018	6,941	13,163	20,512	26,964	33,688	40,417	46,946	54,114	60,169	66,859	72,711	78,963	
Priority 1 Calls	192	180	183	214	214	216	223	202	190	209	200	199	2,422
YTD 2018	192	372	555	769	983	1,199	1,422	1,624	1,814	2,023	2,223	2,422	
Medical Emergencies	414	310	344	373	386	375	341	405	342	361	321	362	4,334
YTD 2018	414	724	1,068	1,441	1,827	2,202	2,543	2,948	3,290	3,651	3,972	4,334	

# Communications Center - 2017

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



# BART Watch - 2019

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Crime in Progress	160	124	129	119	121	139	133	89	53				1,067
Disruptive Behavior	1760	1539	1703	1419	1527	1377	1405	1594	597				12,921
Drug Use	676	636	616	505	576	623	576	599	239				5,046
Human Trafficking	15	5	12	5	8	1	5	1	2				54
Illegally Parked Vehicle	27	25	19	32	20	15	18	22	8				186
Panhandling	203	178	119	124	134	116	151	114	66				1,205
Report a Crime Tip	31	47	47	35	22	40	26	33	27				308
Robbery/Theft	91	38	50	53	40	49	39	33	20				413
Sexual Assault/Lewd Behavior	79	44	48	62	88	51	83	33	20				508
Suspicious Activity	248	204	186	212	209	211	211	172	100				1,753
Unattended Bag or Package	48	72	73	55	66	38	66	60	32				510
Unsecure Door	5	11	12	17	16	22	20	20	8				131
Vandalism	116	109	107	78	104	103	61	114	56				848
Welfare Check	299	385	403	425	385	283	316	292	155				2,943
<b>Total</b>	<b>3758</b>	<b>3417</b>	<b>3524</b>	<b>3141</b>	<b>3316</b>	<b>3068</b>	<b>3110</b>	<b>3176</b>	<b>1383</b>				<b>27,893</b>

Total Downloads: 79,884

Total Reports Made

Anonymous: 40.34%

Non-Anonymous: 59.66%

## Statistics

Statistics	Six Week Average	10/28-11/03	10/21-10/27	10/14-10/20	10/07-10/13	09/30-10/06	09/23-09/29
Alerts Sent	0.83	0	3	1	1	0	0
Description	<i>The total number of alerts sent.</i>						
Incoming Reports	409.33	385	406	420	416	388	441
Description	<i>The number of reports sent from users.</i>						
Replies to Reports	576.17	567	532	523	528	575	732
Description	<i>The number of replies sent to users from ELERTS EPICenter console.</i>						

Report Type	# of Reports (all time)	
Disruptive Behavior (A)	29648	41.57%
[none selected]	8358	11.72%
Suspicious Activity (A)	5609	7.86%
Panhandling (D)	5451	7.64%
Crime in Progress (A)	3772	5.29%
Other (D)	3082	4.32%
Drug Use (A)	2842	3.99%
Vandalism (A)	2374	3.33%
Panhandling or Disruptive Behavior (D)	1967	2.76%
Welfare Check (A)	1804	2.53%
Unattended Bag or Package (A)	1654	2.32%
Report a Crime Tip (A)	1269	1.78%
Sexual Assault / Lewd Behavior (A)	1095	1.54%
Illegally Parked Vehicle (A)	1023	1.43%
Robbery / Theft (A)	839	1.18%
Unsecure Door (A)	426	0.60%

Identification	Total
Anonymous	40.38 %
Description	<i>Reports sent anonymously.</i>
Non-Anonymous	59.62 %
Description	<i>Reports sent non-anonymously.</i>

App Statistics (including tests)	
Total Messages (iOS)	103240
Description	<i>Reports and replies via iOS devices.</i>
Total Messages (Android)	44359
Description	<i>Reports and replies via Android devices.</i>
Total Messages (SMS)	13
Description	<i>Reports and replies via SMS.</i>

TEST-THIS IS ONLY A TEST	# of Reports (all time)
TEST Report Total	8569

Human Trafficking (A)	81	0.11%
Text-a-Tip (A)	13	0.02%
Aggressive Panhandling (A)	9	0.01%
Total	71316	100 %
(A) Active   Disabled (D)		

Top SMS Users	
Phone Number	Number of Reports
7817383461	6
7029071486	1
4849860547	1
5103685574	1
6312137467	1
5109789702	1
5108215151	1
9178090953	1



*S.F. Bay Area Rapid Transit District Police Department*  
***Arrest and Control***

**Arrest and Control Training  
2018 AOT Curriculum**

**MISSION:** Arrest and Control instructors will provide officers of this department with training regarding Arrest and Control techniques.

**GOAL:** By utilizing hands-on guidance, Arrest and Control instructors will teach the Officers of this department the proper control holds, searching and handcuffing techniques. The instructors will give Officers techniques when responding to resistance during these techniques.

**1. Lecture**

**III (g,j,k)**

- A) Lead discussion of revised Use of Force Policy 300.
  - a. Officers are required to document and report all UOFs.
  - b. Sergeants have the task of which level of investigation they are to perform.
- B) Clarify administrative vs technical terms
  - a. Non-dynamic takedown vs takedown technique taught by staff
- C) Explain development of curriculum to make relevant to students
  - a. Curriculum vetted by one year of statistical analysis wherein nearly 75% of the UOFs involved Arrest & Control or attempt thereof
  - b. Curriculum vetted by observations of UOF Review Board showing deficiencies
- D) Strive for Minimum Force is a valid goal and concept. Critically analyze the policy and emphasize the many contingencies and factors to consider when using force
- E) De-escalation Techniques (Tactical Communications)
  - a. Critical Decision Making
    - i. Collect information
    - ii. Assess situation, threats, risks
    - iii. Identify options, determine best course of action (Do I have to act now, or can I wait?)
    - iv. Act, review, and re-assess
  - b. On-going evaluation of situation
    - i. Before, during, and after UOF
    - ii. When to slow down
    - iii. Situational awareness of scene – 360 environment



- c. WIN – What’s Important Now?
    - i. Use team concept
    - ii. Provide clear, single questions/commands
  
  - F) Graham v. Connor
    - a. Officer with similar training and experience
    - b. In similar situation
    - c. Act in similar manner
      - i. Not best decision, but reasonable one
  - G) Scott v. Heinrich
    - a. Force Options
    - b. No need for escalation of force options
  - H) Safety Points:
    - a. Injuries (Past, Present, & Future)
    - b. Spatial Awareness
    - c. Dangerous Conditions
  - I) Mindset
    - a. Full contact chess analogy
    - b. What are you prepared to do?
    - c. Why are you doing it?
  - J) Report Articulation
  - K) MVR Activation: especially in context of current UOF reporting
- 

## 2. Warm-up

III (a)

- Jumping jacks
- Neck rotations
- Shoulder rotations
- Arm rotations
- Side bends (left and right)
- Trunk twists (left and right)
- Hamstring stretch
- Quad stretch
- Lower back stretch
- Wrist stretches

## 3. Break falls

III (b,f,g,i)

- Front fall
- Side fall
- Back fall

**4. Footwork (from POI)**

**III (b,h,i)**

- Forward shuffle
  - Rear shuffle
  - Left shuffle
  - Right shuffle
  - Shuffle pivot
- 

**5. Control Holds/ Searching/ Handcuffing/ Self Defense**

**III (b,d,e,f,h,i)**

A) Review Twist Lock and Twist Lock Search

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**SECOND FORMAT COURSE**

**6. Ground Defense**

A) Discuss Critical Attack Positions and responses



**7. Ground Control**

## **8. Impact Weapons**

## **9. Scenario**

A) FIST suit

### **REMINDER**

**A memo must be completed and submitted to supervisor if an Officer is unable to perform any of the above listed Defensive Tactics/Arrest Control techniques.**

**END LESSON**

**NOTES:**

# SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

## POLICE DEPARTMENT

### INTEROFFICE MEMORANDUM

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**Date:** Tuesday, October 22, 2019

**To:** BART Police Citizens Review Board

**From:** Edgardo Alvarez, Interim Chief of Police

**Subject:** Lexipol Manual Updates

The BART Police Department utilizes the Lexipol system for the foundation of its policy manual. Lexipol provides fully developed policies written by public safety professionals and vetted by public safety attorneys. All policies are based on state and federal laws and regulations while also incorporating nationwide standards and best practices. Several times a year, Lexipol releases updates for their policies based on changes to state and federal laws and regulations. Many of these updates are required to be accepted by agencies who utilize Lexipol to bring their policies into legal compliance.

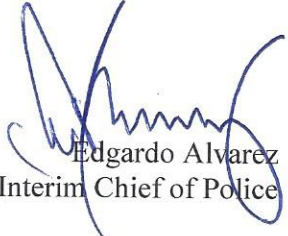
Over the past few years, the BART Police Department has reviewed most of our policies to ensure that we are in compliance with all legal update as well as the standards established by the Commission on Accreditation for Law Enforcement Agencies (CALEA). We have also reviewed many of the recommended best practice updates to see if they are applicable to our Department's work processes, so we can incorporate them into our policies. When we started this endeavor, we had over 150 policy updates to process and I am happy to report we have no more updates to review as of September of this year.

Below are the policies which have been updated since my last memorandum in May 2019:

- Lexipol Policy 208 – Training Policy
- Lexipol Policy 220 – Retiree Concealed Firearms
- Lexipol Policy 300 – Use of Force
- Lexipol Policy 302 – Use of Force Review
- Lexipol Policy 312 – Firearms
- Lexipol Policy 314 – Vehicle Pursuits
- Lexipol Policy 318 – Canines
- Lexipol Policy 324 – Temporary Custody of Juveniles
- Lexipol Policy 328 – Discriminatory Harassment
- Lexipol Policy 340 – Standards of Conduct
- Lexipol Policy 342 – Information Technology Use
- Lexipol Policy 344 – Report Preparation
- Lexipol Policy 376 – Chaplains
- Lexipol Policy 389 – Gun Violence Restraining Orders

Lexipol Policy 432 – Patrol Rifle Operator Program  
Lexipol Policy 440 – Contacts and Temporary Detentions  
Lexipol Policy 442 – Criminal Organizations  
Lexipol Policy 451 – Body Worn Camera  
Lexipol Policy 454 – Use of Audio Recorders  
Lexipol Policy 505 – Traffic Enforcement  
Lexipol Policy 514 – Impaired Driving  
Lexipol Policy 520 – Disabled Vehicles  
Lexipol Policy 524 – 72-Hour Parking Violations  
Lexipol Policy 602 – Sexual Assault Investigations  
Lexipol Policy 702 – Personal Communication Devices  
Lexipol Policy 704 – Vehicle Maintenance  
Lexipol Policy 706 – Vehicle Use  
Lexipol Policy 710 – Cash Handling, Security and Management  
Lexipol Policy 807 – Records Retention  
Lexipol Policy 810 – Records Maintenance and Release  
Lexipol Policy 903 – Processing and Handling of Arrestees  
Lexipol Policy 1005 – Processing of Voluntary/Involuntary Resignations  
Lexipol Policy 1008 – Anti-Retaliation  
Lexipol Policy 1012 – Drug and Alcohol Free Workplace  
Lexipol Policy 1014 – Sick Leave  
Lexipol Policy 1020 – Personnel Complaints  
Lexipol Policy 1026 – Personnel Records  
Lexipol Policy 1027 – Senior Officer Progression and Master Officer Program  
Lexipol Policy 1029 – Bilingual Certification Procedure  
Lexipol Policy 1030 – Commendations and Awards  
Lexipol Policy 1040 – Outside Employment  
Lexipol Policy 1042 – Occupational Disease and Work-Related Injury Reporting  
Lexipol Policy 1043 – Personnel Inspections  
Lexipol Policy 1044 – Personal Appearance Standards  
Lexipol Policy 1046 – Uniform Regulations  
Lexipol Policy 1058 – Employee Speech, Expression and Social Networking  
Lexipol Policy 1060 – Nepotism and Conflicting Relationships

I welcome any comments or feedback on any of the updated policies and look forward to working with you.

  
Edgardo Alvarez  
Interim Chief of Police

cc: General Manager  
Deputy General Manager

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## Training Policy

### 208.1 PURPOSE AND SCOPE

It is the policy of this department to administer a training program that will provide for the professional growth and continued development of its personnel. By doing so, the Department will ensure its personnel possess the knowledge and skills necessary to provide a professional level of service that meets the needs of the community.

### 208.2 PHILOSOPHY

The Department seeks to provide continued professional training and encourages all personnel to seek out other training opportunities and formal education on their own. Training is provided within the confines of funding, requirements of a given assignment, staffing levels and legal mandates. Whenever possible, the Department will use courses certified by the California Commission on Peace Officer Standards and Training. Training should be consistent with the agency's mission and values as well as its goals and objectives. Agency training functions should be the responsibility of the training committee, which shall be accountable for developing and administering training programs. Training program development should provide for input from several sources, including agency personnel in general, a training committee, the inspections function, the Deputy Chief of Police, and the Chief of Police.

### 208.3 OBJECTIVES

The objectives of the Training Program are to:

- (a) Enhance the level of law enforcement service to the public
- (b) Increase the technical expertise and overall effectiveness of our personnel
- (c) Provide for continued professional development of Department personnel

### 208.4 TRAINING COMMITTEE

The Personnel and Training Lieutenant shall establish a Training Committee, which will serve to assist with identifying training needs for the Department. The training committee should be minimally composed of the following personnel: Professional Standards and Training Deputy Chief (or designee), Personnel and Training Lieutenant, Training Sergeant, the Training officer, and a Department instructor,

The Training Committee shall report to the Personnel and Training Lieutenant. Any member of the training committee may be removed from the committee by the Personnel and Training Lieutenant, Deputy Chief of Police, or the Chief of Police for failure to remain in good standing with the Department.

The training committee shall be responsible for establishing a prioritized listing of training programs and courses for the department, and should meet at least quarterly. The training committee will also conduct an annual training needs assessment of the Department. The needs assessment

# Bay Area Rapid Transit Police Department

## BART PD Policy Manual

### *Training Policy*

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will be reviewed by the Department's command staff. Upon approval by the command staff, the needs assessment will form the basis for the training plan for the upcoming fiscal year.

The Training Committee should review certain incidents to determine whether training would likely improve future outcomes or reduce or prevent the recurrence of the undesirable issues related to the incident. Specific incidents the Training Committee should review include, but are not limited to:

- (a) Any incident involving the death or serious injury of an employee.
- (b) Incidents involving a high risk of death, serious injury or civil liability.
- (c) Incidents identified by a supervisor as appropriate to review to identify possible training needs.

The Training Committee should convene as determined by the Personnel and Training Lieutenant to review the identified incidents. The committee shall determine by consensus whether a training need exists and then submit recommendations of its findings to the Personnel and Training Lieutenant. The recommendation should not identify specific facts of any incidents, such as identities of employees involved or the date, time and location of the incident, but should focus on the type of training being recommended.

The Personnel and Training Lieutenant will consider the recommendations of the committee and determine what training should be addressed, taking into consideration the mission of the Department and available resources.

#### **208.5 TRAINING LESSON PLANS**

A continual two year department training plan is maintained by the Personnel and Training Division. It is the responsibility of the Personnel and Training Division to maintain, review, and update the training plan on an annual basis. The plan will address the following areas:

- Legislative Changes
- State Mandated Training
- Critical Issues Training
- California POST Training Network (CPTN)
- Code of Ethics/Ethics Training (This training can be reviewed in the form of classroom, shift briefing, computer based training and bulletins, or any combination of methods as determined by this Agency.)

Courses that are developed within the BART Police Department should routinely be sent to POST for certification. The department requires lesson plans for all training courses that are conducted to include:

1. A statement of performance and job-related objectives;

# Bay Area Rapid Transit Police Department

## BART PD Policy Manual

### *Training Policy*

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2. The content of the training and specification of the appropriate instructional techniques;
3. A process for approval of lesson plans; and
4. The identification of any tests used in the training process. ▲

#### **208.6 ▲ DAILY TRAINING BULLETINS**

The Lexipol Daily Training Bulletins (DTBs) is a web-accessed system that provides training on the Bay Area Rapid Transit Police Department Policy Manual and other important topics. Generally, one training bulletin is available for each day of the month. Personnel assigned to participate in DTBs should only use the password and login name assigned to them by the Support Services Lieutenant. Personnel should not share their password with others and should frequently change their password to protect the security of the system. After each session, employees should log off the system to prevent unauthorized access. The content of the DTBs is copyrighted material and shall not be shared with others outside of the Department.

Employees who are assigned to participate in the DTB program should complete each DTB at the beginning of their shift or as otherwise directed by their supervisor. Employees should not allow uncompleted DTBs to build up over time. Personnel may be required to complete DTBs missed during extended absences (e.g., vacation, medical leave) upon returning to duty. Although the DTB system can be accessed from any Internet active computer, employees shall only take DTBs as part of their on-duty assignment unless directed otherwise by a supervisor.

Supervisors will be responsible for monitoring the progress of personnel under their command to ensure compliance with this policy.



Summary  
11/6/2019 05:17:05


Differences exist between documents.


<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Use_of_Force</a>	<a href="#">Use_of_Force (old)</a>
15 pages (46 KB)	15 pages (307 KB)
11/6/2019 05:17:03	11/6/2019 05:17:03
Used to display results.	


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


No pages were deleted

### How to read this report

 indicates a change.

 indicates deleted content.

 indicates pages were changed.

 indicates pages were moved.

## Use of Force

### 300.1 PURPOSE AND SCOPE

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

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

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

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

**Feasible** - Capable of being done or carried out to successfully achieve a legitimate law enforcement objective without increasing the risk to the officer or bystander(s).

**Force** - The application of physical techniques or tactics, chemical agents or weapons to another person.

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

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

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

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

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

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

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

**Serious Bodily Injury** - A bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the functioning of any bodily member or organ.

### **300.2 POLICY**

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

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

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

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

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably

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appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

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

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

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

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

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

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

#### 300.2.1 DUTY TO INTERCEDE

A use of excessive force by law enforcement personnel is a matter of serious concern to the community, and even a single instance of excessive force may critically undermine public trust in the Department. Accordingly, any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when feasible, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.

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## BART PD Policy Manual

### *Use of Force*

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#### 300.2.2 DE-ESCALATION TECHNIQUES

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

- (a) Officers shall, when feasible, continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.
- (b) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
  - 1. Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
  - 2. Officers should consider a variety of options, including lesser force or no force options.
  - 3. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others.
  - 4. Officers shall not intentionally and unnecessarily escalate and/or create a need to use force.
  - 5. Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject’s situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
  - 6. Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use force.
- (c) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or Crisis Intervention techniques.

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

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

#### **300.3 FACTORS TO DETERMINE THE REASONABLENESS OF FORCE**

The United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.

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

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

Factors from *Graham v. Connor*:

- (a) The severity of the crime at issue.
- (b) Whether the suspect poses an immediate threat to the safety of the officer and others.
- (c) Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Factors from the California Penal Code:

- (a) Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835a).
- (b) An officer may not, under color of authority, without lawful necessity, assault or beat any person (Penal Code § 149).

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

- (a) Immediacy and severity of the threat to officers or others.
- (b) The feasibility, efficacy, and safety of alternative lesser or non-force options, including the availability of de-escalation techniques that might reduce or eliminate the need to use force, or prevent injuries to the subject, the public and the officer(s).
- (c) Whether the force option is proportionate and appropriate to the totality of the circumstances, and whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy.

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- (d) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (e) The conduct of the officer prior to the use of force. Specifically, did the officer violate policy and unnecessarily escalate the situation to a use of force.
- (f) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (g) The effects of drugs or alcohol.
- (h) Subject's mental state or capacity, including any apparent/known mental health issues.
- (i) Proximity of weapons or dangerous improvised devices.
- (j) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (k) The availability of other options and their possible effectiveness.
- (l) Seriousness of the suspected offense or reason for contact with the individual.
- (m) Training and experience of the officer.
- (n) Potential for injury to officers, suspects and others.
- (o) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (p) The risk and reasonably foreseeable consequences of escape.
- (q) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (r) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (s) Prior contacts with the subject or awareness of any propensity for violence.
- (t) Any other exigent circumstances.
- (u) Officers must strive to use the minimal amount of force necessary.

#### 300.3.1 PAIN COMPLIANCE TECHNIQUES

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

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

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

#### 300.3.2 PERSONAL BODY WEAPONS

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

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

#### 300.3.3 CAROTID CONTROL HOLD

The use of the carotid restraint is prohibited. The only exception to this prohibition would be under exigent circumstances when deadly force is justified and reasonable.

#### 300.3.4 USE OF FORCE TO SEIZE EVIDENCE

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

#### 300.3.5 DRAWING/DEPLOYING A FIREARM

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

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

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



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#### **300.4 DEADLY FORCE APPLICATIONS**

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

- (a) The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
- (b) The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

Strikes, punches, or kicks to the rear of the head, neck or spine are prohibited, unless exigent circumstances exist and use of deadly force is justified.

Choke holds are also prohibited, unless exigent circumstances exist and use of deadly force is justified.

The use of deadly force against a person who presents only a danger to himself/herself is prohibited.

When feasible, officers should immediately attempt to administer or obtain medical aid for a person who has been subject to injury resulting from the use of deadly force.

##### **300.4.1 SHOOTING AT OR FROM MOVING VEHICLES**

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

- Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
- Officers shall not intentionally and unnecessarily move into the path of an approaching vehicle to create their own exigent circumstance.
- Officers should not shoot at any part of a moving vehicle in an attempt to disable the vehicle.
- Officers shall not discharge a firearm at a moving vehicle or its occupants when there are other reasonable means available to avert the threat.

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- Officers shall not discharge a firearm from a moving vehicle when there are other reasonable means available to avert the present threat.
- Officers may only shoot at a moving vehicle under exigent circumstances, when the driver and/or occupants are targeting others with the intent to cause great bodily injury or death and there are no other reasonable means available to avert the threat.

#### 300.4.2 WARNING SHOTS

Discharging a firearm for the purpose of a “warning shot” is prohibited.

#### 300.5 REPORTING THE USE OF FORCE

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

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

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

#### 300.5.1 NOTIFICATION TO SUPERVISORS

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

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

#### 300.5.2 USE OF FORCE INVESTIGATION, DOCUMENTATION, AND REVIEW

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

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

#### **Level 1: Documentation in a Police Report Only**

Level 1 Incident Parameters:

- (a) Subject allowed him/herself to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.
- (b) Officer used any of the following, and the circumstances of the application would lead a reasonable officer to conclude that the subject did not experience more than momentary discomfort:
  1. Control holds/pressure point application

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2. Leverage
  3. Grab
  4. Bodyweight
  5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
- (c) Officer used any of following:
1. Professional presence and/or verbalization
  2. TASER/LLIMs Deployed (no activation)
  3. Drawn/deployed firearm, but no suspect contacted or arrested
- (d) Subject has no visible injury due to interaction with officer.
- (e) Subject has no complaint of injury or continuing pain.
- (f) Subject does not indicate intent to pursue litigation.
- (g) Subject was not rendered unconscious due to interaction with officer.
- (h) No allegation of misconduct against officer, regarding force.
- (i) Officer body camera was activated in a timely manner, prior to the enforcement contact, per policy.

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

### Level 2: Use of Force

Level 2 Incident Parameters:

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.
- (c) Officer body camera was activated in a timely manner, prior to the enforcement contact, per policy.
- (d) Officer's use of force was limited to the following:
  1. Any takedown, that did not appear to cause more than momentary discomfort.
  2. Firearm drawn/deployed but not fired, suspect contacted
  3. Control hold, pressure point, leverage, grab, and/or bodyweight, and the application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of the involved parties. If the incident fits the parameters for a Level 2 incident, the

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supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist with a brief summary.

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

- (a) The officer only used force options limited to the following: grab, hold, leverage, and/or bodyweight.
- (b) No subject injury or complaint of continuing pain due to interaction with officer.
- (c) No allegation of misconduct against officer, regarding force. ⚠
- (d) Officer body camera was activated in a timely manner, per policy.
- (e) The unit number for the fire and medical personnel is obtained.

### Level 3: Use of Force

Level 3 Incident Parameters:

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

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

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#### **Level 4: Use of Deadly Force**

Level 4 Incident Parameters:

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

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

#### **300.5.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

The Records Manager or the authorized designee shall ensure that data required by the Department of Justice (DOJ) regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is collected and forwarded to the DOJ as required by Government Code § 12525.2.

#### **300.5.4 EMPLOYEES WHO USE FORCE WHILE ON A SPECIAL ASSIGNMENT**

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

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

#### **300.5.5 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

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

#### **300.6 MEDICAL CONSIDERATION FOLLOWING A USE OF FORCE**

Prior to booking or release, and as soon as possible under the circumstances, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

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

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a

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description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

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

### 300.7 SUPERVISOR RESPONSIBILITY

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

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

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injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

- (e) Review the portion(s) of the Axon Flex video pertaining to the use of force and/or allegation of misconduct.
- (f) Review and approve all related reports.

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

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

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

#### 300.7.11 WATCH COMMANDER RESPONSIBILITY

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

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

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

#### 300.8 TRAINING

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

#### 300.9 USE OF FORCE ANALYSIS

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

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

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- (d) Policy revision recommendations.



Summary  
11/6/2019 05:27:37

Differences exist between documents.

<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Use_of_Force_Review_</a>	<a href="#">Use_of_Force_Review_old</a>
1 pages (8 KB)	2 pages (536 KB)
11/6/2019 05:27:37	11/6/2019 05:27:37
Used to display results.	


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


No pages were deleted

### How to read this report

**Highlight** indicates a change.

**Deleted** indicates deleted content.

 indicates pages were changed.

 indicates pages were moved.

## Use of Force Review 🗡️

### 302.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a process to review the use of force by employees of this department.

### 302.2 POLICY

The Department is charged with the important responsibility of objectively evaluating the use of force. Any use of force by a member of this department which is subject to a Supervisor's Use of Force Report (as required by Policy Manual §300.7) will be reviewed by the Operations Bureau chain of command and by the Department Defensive Tactics Coordinator. A review will also be conducted for every intentional or unintentional discharge of a firearm, whether the employee is on duty or off duty, excluding range training or recreational use.

Reviews will be routed through BlueTeam, and the routing notes should include:

- Training needs identified by the reviewer, if any
- Training assignments/referrals made by the reviewer
- Confirmation that assigned training has been scheduled/completed
- Confirmation that any late camera activations were addressed, if any
- Upon completion, the reviewer will approve the incident routing and indicate "Received and Reviewed"

If a reviewer determines that there is a potential policy violation that needs to be investigated, the reviewer should forward the incident to Internal Affairs. The chain of command review of the incident will defer to the Internal Affairs investigation for disposition.

Summary  
11/6/2019 05:29:53

Differences exist between documents.

<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Firearms</a>	<a href="#">Firearms old</a>
12 pages (40 KB)	12 pages (299 KB)
11/6/2019 05:29:52	11/6/2019 05:29:52

Used to display results.


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


No pages were deleted

### How to read this report

**Highlight** indicates a change.

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## Firearms

### 312.1 PURPOSE AND SCOPE

This policy provides guidelines for issuing firearms, the safe and legal carrying of firearms, firearms maintenance and firearms training.

This policy does not apply to issues related to the use of firearms that are addressed in the Use of Force or Officer-Involved Shootings and Deaths policies.

This policy only applies to those members who are authorized to carry firearms.

#### 312.1.1 PERSONNEL AUTHORIZED TO POSSESS FIREARMS WHILE ON-DUTY

- (a) All sworn personnel who have successfully completed a department authorized course of firearms instruction and qualified with the firearm at a department firearms qualification.
- (b) Other police department employees performing the duties of Revenue Protection Guard and after successful completion of the PC 832 course of firearms instruction and qualified with the firearm at a department firearms qualification.

### 312.2 POLICY

The Bay Area Rapid Transit Police Department will equip its members with firearms to address the risks posed to the public and department members by violent and sometimes well-armed persons. The Department will ensure firearms are appropriate and in good working order and that relevant training is provided as resources allow.

### 312.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Members shall only use firearms that are issued or approved by the Department and have been thoroughly inspected by the Rangemaster. Except in an emergency or as directed by a supervisor, no firearm shall be carried by a member who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including but not limited to edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express written authorization of the member's Division Commander. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

#### 312.3.1 DUTY HANDGUNS

The authorized departmental issued handgun is the Sig Sauer P320 chambered in 9mm parabellum. The department will issue weapons only to personnel who will carry the Sig Sauer P320 as their primary duty weapon while in uniform and/or plainclothes assignments. Members of the Range Staff may be issued Sig Sauer P320 pistols for training purposes.

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Personnel may select and have issued an appropriate sized Sig Sauer grip module to obtain a satisfactory firing grip on the P320 pistol (subject to availability).

(a) Duty Handgun Modifications:

Department issued P320 firearms shall not be altered in any way to change its general appearance or function without written Rangemaster approval. A copy of the written approval will be kept in the employees' personnel file. This includes modifications of the grip module, change or modification of the Fire control unit (i.e. Sig Sauer flat/straight triggers), change or addition of sights (including laser sights), slide or any mechanism. All modifications will be at the expense of the desiring officer. Any department firearm returned to the department must be returned in its original configuration.

Modifications that will not be approved include:

1. A polymer frame with any finish other than black.
2. A barrel length that has been altered from the original manufacturer's specifications.
3. The surface engraved, etched, or inlaid with other than a personal alpha/numeric identifier unless approved by the Rangemaster.

Only department armorers may remove the firing control unit from the grip module and change sights. Any substitution of the grip module must be performed by a Department Armorer.

Any substitution of the grip module or other change to the P320 will require personnel to conduct a test fire of the firearm at a department approved range.

b. Authorized Optional Duty Handguns:

1. Personnel who requested and were authorized (2018 and prior) to carry an optional duty handgun may continue to carry their previously authorized duty weapon, however any personnel hired after 2017 will only be authorized to carry a department issued Sig Sauer P320 as a duty weapon. Personnel choosing not to carry the department issued pistol may carry any 9mm, .40 S&W, or .45 ACP caliber pistol approved by the Support Services Deputy Chief. Authorized manufacturers include: Beretta, Glock, Heckler & Koch, Sig Sauer, Smith & Wesson, Colt, Kimber, Springfield Armory, Para Ordinance, STI, Walther, and others as approved by the Rangemaster. A copy of the authorization will be kept in the employees personnel file.

2. The pistol may be a single-action or double-action/safe-action type, semi-automatic, capable of carrying at least seven (7) rounds in its magazine. Personnel may carry a single-action type pistol after successfully completing a departmental single-action pistol training course or equivalent training and successfully completing a duty qualification course.

- i. Authorized finishes include blue, black, parkerized, nickel or stainless steel.
- ii. Personnel primarily assigned to administrative assignments may (subject to availability) be issued an additional Sig p320 pistol but in a compact size. Compact pistol

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configurations shall be returned to the department when member concludes service in the administrative assignment.

All expenses incurred with regards to the optional firearm will be borne by the member choosing to carry the weapon, except for duty ammunition and a reasonable amount of practice ammunition annually.

Any firearm used during an officer-involved shooting, may be retained as evidence for at least one year without compensation to the employee.

#### 312.3.2 SECONDARY (BACK-UP) HANDGUNS ARE NOT AUTHORIZED BY THIS DEPARTMENT

#### 312.3.3 SHOTGUNS

The department-issued shotgun is a Remington Model 870 pump action 12-gauge shotgun. Shotguns, when carried in police vehicles or District armored vehicles, must be secured in locking gun racks. The shotgun shall be carried in the "cruiser-ready" configuration (magazine tube loaded to capacity with 12-gauge, double-ought (00) buckshot, hammer forward on an empty chamber, and safety on). Additional rounds of double-ought buckshot shall be carried in the side saddle ammunition carrier attached to the weapon. Personnel shall carry only department authorized ammunition. Authorized ammunition is Federal Premium 00 Buck. Use of the police shotgun in enforcement situations shall be guided by officer/revenue guard discretion when warranted by the seriousness and hazards of the situation confronting the officer/revenue protection guard.

Shotguns will be removed from vehicles whenever the vehicle will not be driven on the on-coming shift.

#### 312.3.4 PATROL RIFLES

The authorized department-issued patrol rifles are the Colt 6920 .223 and Sig Sauer M400 chambered in .223 and/or 5.56 mm.

Members may deploy the patrol rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- (a) Situations where the member reasonably anticipates an armed encounter.
- (b) When a member is faced with a situation that may require accurate and effective fire at long range.
- (c) Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- (e) When a member reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.



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#### (g) When needed to euthanize an animal.

When not deployed, the patrol rifle shall be properly secured consistent with department training in a locking weapons rack in the patrol vehicle.

#### 312.3.5 AUTHORIZED OFF-DUTY FIREARMS

The carrying of firearms by members while off-duty is permitted by the Chief of Police but may be rescinded should circumstances dictate (e.g., administrative leave). Members who choose to carry a firearm while off-duty, based on their authority as peace officers, will be required to meet the following guidelines:

- (a) The member may use his/her duty firearm or may use a personally owned firearm that is carried and inspected in accordance with the Personally Owned Duty Firearms requirements in this policy. A member carrying his/her duty firearm will be deemed to have complied with (c), (d) and (e) of this section.
  - 1. The purchase of the personally owned firearm and ammunition shall be the responsibility of the member.
- (b) The firearm shall be carried concealed at all times and in such a manner as to prevent accidental unintentional cocking, discharge or loss of physical control.
- (c) It will be the responsibility of the member to submit the firearm to the Rangemaster for inspection prior to being personally carried. Thereafter the firearm shall be subject to periodic inspection by the Rangemaster.
- (d) Prior to carrying any off-duty firearm, the member shall demonstrate to the Rangemaster that he/she is proficient in handling and firing the firearm and that it will be carried in a safe manner.
- (e) The member will successfully qualify with the firearm prior to it being carried.
- (f) Members shall provide written notice of the make, model, color, serial number and caliber of the firearm to the Rangemaster, who will maintain a list of the information.
- (g) If a member desires to use more than one firearm while off-duty, he/she may do so, as long as all requirements set forth in this policy for each firearm are met.
- (h) Members shall only carry department-authorized ammunition.
- (i) When armed, officers shall carry their badges and Bay Area Rapid Transit Police Department identification cards under circumstances requiring possession of such identification.

#### 312.3.6 AMMUNITION

Members shall carry only department-authorized ammunition. Members shall be issued fresh duty ammunition in the specified quantity for all department-issued firearms during the member's firearms qualification. Replacements for unserviceable or depleted ammunition issued by the Department shall be dispensed by the Rangemaster when needed, in accordance with established policy. ▲

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The department authorized handgun ammunition is 9mm Federal Premium HST 147 grain, .40 caliber Federal Premium HST 180 grain and .45 caliber Federal Premium HST 230 grain.

The only authorized ammunition for the 12 gauge shotgun is Federal Premium 00 Buck.

The only authorized ammunition for the AR15 platform is Federal Premium Hi-Shok SP 64 grain and Federal Premium Bonded SP 62 grain.

Members carrying personally owned authorized firearms of a caliber differing from department-issued firearms shall be responsible for obtaining fresh duty ammunition in accordance with the above, at their own expense.

#### **312.3.7 SPECIAL WEAPONS AND TACTICS (SWAT) WEAPONS AND EQUIPMENT**

Members assigned to SWAT may modify and utilize firearms, ammunitions, and accessories other than those listed in the previous sections of this policy manual with Team Commander and Department Rangemaster approval. Said weapons, modifications, and accessories may be utilized on patrol as well as in a SWAT capacity.

- SWAT members are allowed to utilize firearms chambered in .308.
  - Said members must successfully complete a semi-annual Department approved SWAT Sniper Qualification Course.
  - The department approved and issued .308 caliber ammunitions are the Ruag Swiss P Styx 167 grain, Tactical 164 grain, and Amour Piercing (AP) 196 grain.
- SWAT members are allowed to utilize weapons of various colors as long as it serves a tactical purpose as approved by the Department Rangemaster.
- Members who have been assigned to SWAT are authorized to utilize variable power optics, night vision devices (including visible and infrared lasers), thermal imaging devices, and suppressors other than the Sig Sauer SRD556.

#### **312.4 EQUIPMENT**

Firearms carried on- or off-duty shall be maintained in a clean, serviceable condition. Maintenance and repair of authorized personally owned firearms are the responsibility of the individual member.

##### **312.4.1 REPAIRS OR MODIFICATIONS**

Each member shall be responsible for promptly reporting any damage or malfunction of an assigned firearm to a supervisor or the Rangemaster.

Firearms that are the property of the Department or personally owned firearms that are approved for department use may be repaired or modified only by a person who is department-approved and certified as an armorer or gunsmith in the repair of the specific firearm. Such modification or repair must be authorized in advance by the Rangemaster.

Any repairs or modifications to the member's personally owned firearm shall be done at his/her expense and must be approved by the Rangemaster.



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#### 312.4.2 HOLSTERS

Only department-approved holsters shall be used and worn by members. Members shall periodically inspect their holsters to make sure they are serviceable and provide the proper security and retention of the handgun.

#### 312.4.3 TACTICAL WEAPON MOUNTED LIGHTS

Tactical lights may only be installed on a firearm carried on- or off-duty after they have been examined and approved by the Rangemaster. Once the approved tactical lights have been properly installed on any firearm, the member shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it.

Personnel may utilize weapon-mounted lights on their duty and off-duty firearms. Weapon-mounted lights are intended to be used for searching, threat assessment, and target acquisition of potentially dangerous persons. Weapon-mounted lights shall not be used as ordinary flashlights for routine lighting purposes.

Authorized brands include Blackhawk, Surefire, Streamlight, and any others approved by the Rangemaster.

Weapon-mounted lights are subject to the following requirements:

- (a) Personnel must demonstrate proficiency with the weapon-mounted light prior to carrying it in an on-duty capacity.
- (b) The weapon shall be carried with the light affixed to it. This will require a holster designed to accommodate the weapon and light combination.
- (c) Personnel equipped with a weapon-mounted light shall also have a handheld light readily available to them at all times while on-duty.

#### 312.5 SAFE HANDLING, INSPECTION AND STORAGE

Members shall maintain the highest level of safety when handling firearms and shall consider the following:

- (a) Members shall not unnecessarily display or handle any firearm.
- (b) Members shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by the Rangemaster. Members shall not dry fire or practice quick draws except as instructed by the Rangemaster or other firearms training staff.
- (c) Members shall not clean, repair, load or unload a firearm anywhere in the Department, except where clearing barrels are present.
- (d) Shotguns or rifles removed from vehicles or the equipment storage room shall be loaded and unloaded in the parking lot and outside of the vehicle, using clearing barrels.
- (e) Members shall not place or store any firearm or other weapon on department premises except where the place of storage is locked. No one shall carry firearms into the jail section or any part thereof when securing or processing an arrestee, but shall place all

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firearms in a secured location. Members providing access to the jail section to persons from outside agencies are responsible for ensuring firearms are not brought into the jail section.

- (f) Members shall not use any automatic firearm, heavy caliber rifle, gas or other type of chemical weapon or firearm from the armory, except with approval of a supervisor.
- (g) Any firearm authorized by the Department to be carried on- or off-duty that is determined by a member to be malfunctioning or in need of service or repair shall not be carried. It shall be promptly presented to the Department or a Rangemaster approved by the Department for inspection and repair. Any firearm deemed in need of repair or service by the Rangemaster will be immediately removed from service. If the firearm is the member's primary duty firearm, a replacement firearm will be issued to the member until the duty firearm is serviceable.

#### 312.5.1 RANGE STAFF DUTIES

Members of the Range Staff will be assigned to assist the Rangemaster and/or Range Sergeants in conducting the established training program and will report directly to the Rangemaster or Range Sergeant. The range officers, under the direction of the Rangemaster or Range Sergeant, shall have authority to enforce rules and policies established by the Chief of Police.

#### 312.5.2 INSPECTION AND STORAGE

Handguns shall be inspected regularly and upon access or possession by another person. Shotguns and rifles shall be inspected at the beginning of the shift by the member to whom the **weapon is issued**. The member shall ensure that the firearm is carried in the proper condition and **loaded with approved ammunition**. **Inspection of the shotgun and rifle shall be done while standing outside of the patrol vehicle**. **All firearms shall be pointed in a safe direction or into clearing barrels**.

**Firearms may be safely stored in lockers at the end of the shift**. **Handguns may remain loaded if they are secured in an appropriate holster**. **Shotguns and rifles shall be unloaded in a safe manner outside the building and then stored**.

#### 312.5.3 STORAGE AT HOME

Members shall ensure that all firearms and ammunition are locked and secured while in their homes, vehicles or any other area under their control, and in a manner that will keep them inaccessible to children and others who should not have access. Members shall not permit department-issued firearms to be handled by anyone not authorized by the Department to do so. Members should be aware that negligent storage of a firearm could result in civil and criminal liability (Penal Code § 25100).

#### 312.5.4 STORAGE IN VEHICLES

When leaving a handgun in an unattended vehicle, members shall ensure that it is locked in the trunk, or in a locked container that is placed out of view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view, or in a locked toolbox or utility box permanently affixed to the vehicle (Penal Code § 16850; Penal Code § 25140; Penal Code § 25452).

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If the vehicle does not have a trunk or a locked container, then the firearm should be locked within the center utility console that can be locked with a padlock, keylock, combination lock, or other similar locking device (Penal Code § 25140).

Officers are exempt from these requirements during circumstances requiring immediate aid or action in the course of official duties (Penal Code § 25140).

#### 312.5.5 ALCOHOL AND DRUGS

Firearms shall not be carried by any member, either on- or off-duty, who has consumed an amount of an alcoholic beverage, taken any drugs or medication, or has taken any combination thereof that would tend to adversely affect the member's senses or judgment.

#### 312.6 FIREARMS TRAINING AND QUALIFICATIONS

All members who carry a firearm while on-duty are required to successfully complete training semi-annually with their duty firearms. In addition to semi-annually training, all members will qualify at least annually with their duty firearms. Members will qualify with off-duty firearms at least once a year. Training and qualifications must be on an approved range course.

At least annually, all members carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

##### 312.6.1 NON-CERTIFICATION OR NON-QUALIFICATION

If any member fails to meet minimum standards for firearms training or qualification for any reason, including injury, illness, duty status or scheduling conflict, that member shall submit a memorandum to his/her immediate supervisor prior to the end of the required training or qualification period.

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

- (a) Additional range assignments may be scheduled to assist the member in demonstrating consistent firearm proficiency.
- (b) Members shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.
- (c) No range credit will be given for the following:
  1. Unauthorized range make-up
  2. Failure to meet minimum standards or qualify after remedial training

Members who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action.

##### 312.6.2 FAILURE TO QUALIFY WITH DUTY HANDGUN

Personnel who are unable to qualify by the end of their scheduled shift or the conclusion of the training day (whichever comes first) shall be reassigned to a non-armed administrative position and prohibited from carrying a firearm off-duty. The Rangemaster or on-site Range Sergeant shall,

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as soon as practicable, notify the on-duty Watch Commander of the failure to qualify. Progressive discipline may be implemented at the level of a Letter of Discussion. The Rangemaster or designee shall arrange for a 4-hour remedial firearms training session as soon as practicable for the non-qualifying personnel.

Personnel who are unable to qualify by the conclusion of the first remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty and shall be scheduled to attend a second 4-hour remedial firearms training session. Personnel will progress to the next level in progressive discipline, not less than an oral counseling.

Personnel who are unable to qualify by the conclusion of the second remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty, and a third 4-hour remedial firearms training session will be scheduled. Personnel will progress to the next level in the discipline system, not less than a written reprimand.

Personnel that are unable to qualify by the conclusion of the third remedial firearms training session, shall remain assigned to a non-armed administrative position and restricted from carrying a firearm off-duty. Another opportunity to qualify will be scheduled. Personnel will progress to the next level in progressive discipline, not less than a pay-step reduction. The member/employee should be examined by a District medical doctor to ensure no medical condition exists that prevents the employee from qualifying.

Personnel who are unable to qualify by the conclusion of their fourth remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty, and subject to the next step in progressive discipline, suspension without pay.

Personnel who are unable to qualify by the conclusion of their fifth remedial firearms training session, shall remain assigned to a non-armed administrative position, restricted from carrying a firearm off-duty, and are subject to the fourth level of progressive discipline, demotion, or the final level of discipline, termination.

#### 312.6.3 FAILURE TO QUALIFY WITH OFF-DUTY HANDGUN

Sworn personnel that fail to annually qualify with their secondary and/or off-duty handguns shall be prohibited from carrying those firearms until they successfully complete the required departmental qualification course.

#### 312.6.4 PATROL RIFLE QUALIFICATION

(applies to Patrol Rifle Operators only, refer to policy 432)

- Day Light and Low Light: annually

#### 312.6.5 FAILURE TO QUALIFY WITH SHOTGUN OR RIFLE

Personnel who fail to attain the minimum passing qualification score with the shotgun or rifle shall be allowed a minimum of one additional opportunity to qualify during that training day. Those personnel that are still unable to qualify may receive additional firearms training that day if training

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time and a sufficient number of Range Staff are available. In situations involving personnel that are unable to qualify by the end of their scheduled shift or the conclusion of the training day (whichever comes first), the Rangemaster or on-site Range Sergeant shall, as soon as practicable, notify the employee's immediate supervisor or the on-duty Watch Commander of the failure to qualify.

Non-qualifying personnel shall not be authorized to deploy the shotgun or rifle in the performance of their duties until they are able to demonstrate acceptable proficiency and achieve a passing qualification score. Progressive discipline will be implemented at the level of a Letter of Discussion.

The Rangemaster or designee shall arrange for a 4-hour remedial shotgun or rifle training session as soon as practical for the non-qualifying personnel. Personnel that are unable to qualify by the conclusion of the first remedial firearms training session, shall not be authorized to deploy the shotgun or rifle in the performance of their duties, and a second 4-hour remedial shotgun or rifle training session will be scheduled. Progressive discipline will be administered in the same manner as described under the Failure to Qualify with Duty Handgun section.

Personnel who are unable to qualify by the conclusion of the second remedial firearms training session, shall not be authorized to deploy the shotgun or rifle in the performance of their duties, and a third 4-hour remedial shotgun or rifle training session will be scheduled. The member/employee should be examined by a District medical doctor to ensure no medical condition exists that prevents the employee from qualifying. Progressive discipline will move to the next step.

Personnel who are unable to qualify by the conclusion of the third remedial firearms training session, shall not be authorized to deploy the shotgun or rifle in the performance of their duties. The employee may, at the discretion of the Chief of Police, progress to the next level in progressive discipline.

#### **312.7 REMEDIAL TRAINING**

Any employee who handles a firearm in a grossly unsafe manner, demonstrates dangerous and/or extremely poor decision-making skills in the deployment of and/or application of any use of force-related task, in the field or in training, may be required to attend mandatory remedial training prior to returning to full-duty status.

If in the opinion of the supervisor/primary trainer at the site of the training, the employee's actions/decision-making is so unsafe that if they were returned to full duty, the employee may be a safety hazard to themselves, fellow employees, and/or the public; the supervisor/primary trainer shall recommend mandatory remedial training for the employee. The primary trainer shall contact the on-duty Watch Commander as soon as practicable and make the recommendation for mandatory remedial training.

If the request for mandatory remedial training is approved, the employee shall be removed from a firearm-carrying capacity and placed into a temporary administrative position until such time as that employee satisfactorily completes the mandatory remedial training.

Repeated failures to correct such deficiencies may result in implementation of progressive discipline.

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Nothing in this policy precludes the department from requiring an employee to successfully complete remedial training to correct lesser safety violations and/or marginal tactical decision-making skills, without the employee first being removed from full-duty status.

#### **312.8 FIREARM DISCHARGE**

Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Shootings and Deaths Policy. If a firearm was discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Use of Force Policy.

In all other cases, written reports shall be made as follows:

- (a) If on-duty at the time of the incident, the member shall file a written report with his/her Division Commander or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- (b) If off-duty at the time of the incident, the member shall file a written report or provide a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor.

##### **312.8.1 DANGEROUS ANIMALS**

Members are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

In circumstances where there is sufficient advance notice that a potentially dangerous animal may be encountered, department members should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, TASER® device, oleoresin capsicum (OC) spray, animal control officer). Nothing in this policy shall prohibit any member from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.

##### **312.8.2 INJURED ANIMALS**

With the approval of a supervisor, a member may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical (Penal Code § 597.1(e)).

Injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made (Penal Code § 597.1(b)). Injured dogs and cats found without their owners shall be taken to an appropriate veterinarian for determination of whether they should be treated or humanely destroyed.

##### **312.8.3 WARNING AND OTHER SHOTS**

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged.

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#### **312.9 RANGEMASTER DUTIES**

The rangemaster falls under the Personnel and Training Division and reports to the Personnel and Training Division Lieutenant.

The range will be under the exclusive control of the Rangemaster. All members attending will follow the directions of the Rangemaster. The Rangemaster will maintain a roster of all members attending the range and will submit the roster to the Personnel and Training Lieutenant after each range date. Failure of any member to sign in and out with the Rangemaster may result in non-qualification.

The range shall remain operational and accessible to Department members during hours established by the Department.

The Rangemaster has the responsibility of making periodic inspection, at least once a year, of all duty firearms carried by members of this department to verify proper operation. The Rangemaster has the authority to deem any department-issued or personally owned firearm unfit for service. The member will be responsible for all repairs to his/her personally owned firearm and it will not be returned to service until inspected by the Rangemaster.

The Rangemaster has the responsibility for ensuring each member meets the minimum requirements during training shoots and, on at least a yearly basis, can demonstrate proficiency in the care, cleaning and safety of all firearms the member is authorized to carry. At a minimum, the Rangemaster shall conduct a semiannual inventory of all firearms under the Department's control.

The Rangemaster shall complete and submit to the Personnel and Training Lieutenant documentation of the training courses provided. Documentation shall include the qualifications of each instructor who provides the training, a description of the training provided and, on a form that has been approved by the Department, a list of each member who completes the training. The Rangemaster should keep accurate records of all training shoots, qualifications, repairs, maintenance or other records as directed by the Personnel and Training Lieutenant.

#### **312.10 ALCOHOL & DRUGS**

Firearms shall not be carried by any personnel who have consumed an amount of an alcoholic beverage or taken any drugs that would tend to adversely affect the employee's senses or judgment.

#### **312.11 RETIREES**

The Office of the Chief shall issue honorably retired sworn personnel an identification card with a CCW endorsement, see Policy Manual § 220.

Summary  
11/6/2019 05:33:27

Differences exist between documents.


<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Vehicle_Pursuits</a>	<a href="#">Vehicle_Pursuits old</a>
11 pages (34 KB)	12 pages (299 KB)
11/6/2019 05:33:25	11/6/2019 05:33:24


Used to display results.


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


No pages were deleted

### How to read this report

 indicates a change.

 indicates deleted content.

 indicates pages were changed.

 indicates pages were moved.



## Vehicle Pursuits

### 314.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this policy is to reduce the potential for pursuit-related collisions. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the potential risk to public safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicular pursuit because of the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicular pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are proper self-discipline and sound professional judgment. Officer's conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable officer would do under the circumstances. An unreasonable individual's desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement.

#### 314.1.1 VEHICLE PURSUIT DEFINED

A vehicle pursuit is an event involving one or more law enforcement officers attempting to apprehend a suspect, who is attempting to avoid arrest while operating a motor vehicle by using high-speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to an officer's signal to stop. 🚨🚨

### 🚨🚨 314.2 OFFICER RESPONSIBILITIES

It shall be the policy of this department that a vehicle pursuit shall be conducted only with red light and siren as required by Vehicle Code § 21055 for exemption from compliance with the rules of the road. The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway as required by Vehicle Code § 21056.

#### 314.2.1 WHEN TO INITIATE A PURSUIT

Officers are authorized to initiate a pursuit when it is reasonable to believe that a suspect is attempting to evade arrest or detention by fleeing in a vehicle.

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The following factors individually and collectively shall be considered in deciding whether to initiate a pursuit:

- (a) Seriousness of the known or reasonably suspected crime and its relationship to community safety.
- (b) The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.
- (c) Apparent nature of the fleeing suspects (e.g., whether the suspects represent a serious threat to public safety).
- (d) The identity of the suspects has been verified and there is comparatively minimal risk in allowing the suspects to be apprehended at a later time.
- (e) Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.
- (f) Pursuing officers familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.
- (g) Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of apprehending the suspect.
- (h) Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
- (i) Vehicle speeds.
- (j) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- (k) Availability of other resources such as helicopter assistance.
- (l) The police unit is carrying passengers other than police officers. Pursuits should not be undertaken with a prisoner in the police vehicle.

#### 314.2.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect's escape.

The factors listed in When to Initiate a Pursuit of this policy are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In

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the context of this policy, the term “terminate” shall be construed to mean discontinue or to stop chasing the fleeing vehicle.

In addition to the factors listed in When to Initiate a Pursuit of this policy, the following factors should also be considered in deciding whether to terminate a pursuit:

- (a) Distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance.
- (b) Pursued vehicle’s location is no longer definitely known.
- (c) Officer’s pursuit vehicle sustains any type of damage that renders it unsafe to drive.
- (d) Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.
- (e) There are hazards to uninvolved bystanders or motorists.
- (f) If the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time.
- (g) Pursuit is terminated by a supervisor.

#### 314.2.3 SPEED LIMITS

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Evaluation of vehicle speeds shall take into consideration public safety, officer safety and the safety of the occupants of the fleeing vehicle.

Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit:

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

#### 314.2.4 TERMINATING A PURSUIT

The primary officer, monitoring supervisor, or watch commander may terminate a vehicle pursuit at anytime. The primary officer shall terminate a pursuit when any of the criteria for terminating a pursuit, listed in this policy, have been met, or when directed by a supervisor.

Pursuits should be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks (i.e., the immediate danger to bystanders, other motorists, or involved officers) of

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continuing the pursuit reasonably appear to be greater than the potential danger resulting from the suspect(s) remaining at large.

The factors listed in this policy are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean discontinue or to stop chasing the fleeing vehicle(s).

In addition to the factors listed in this policy the following factors should also be considered in deciding whether to terminate a pursuit:

- Distance between the pursuing officers and the fleeing vehicle(s) is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance
- Pursued vehicle's location is no longer definitely known
- Officer's pursuit vehicle sustains any type of damage that renders it unsafe to drive
- The suspect can be identified to the point where later apprehension will likely be accomplished, and the pursuing officers reasonably believe that the public and/or victim are not placed in greater danger by the suspect remaining at large

#### 314.2.5 PROTOCOL FOR TERMINATING A PURSUIT

Whenever a pursuit is terminated, the termination shall be broadcast over the police radio. All officers involved in the pursuit shall acknowledge the broadcast and immediately deactivate all emergency equipment, while returning to normal driving, unless otherwise advised by the monitoring supervisor or Watch Commander.

#### 314.2.6 PROTOCOL AT PURSUIT TERMINATION POINT

When a pursuit ends, the primary officer is responsible for notification to the Communications Center so that other responding units can shut down their emergency equipment if necessary.

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating suspects. The primary unit will be responsible for coordinating any further search for the pursued vehicle.

If the pursuit ends because the suspect vehicle stops, the primary officer is responsible for coordinating the response of other units until relieved by a supervisor. Coordinating the response of other units entails giving updates as to the status of the suspect(s), direction of flight if fleeing on foot, whether or not other units need to continue Code-3, and to broadcast any assignments and/or resources that are needed.

The monitoring supervisor shall proceed directly to the termination point of any pursuit to confer with the primary officer and provide supervision/coordination at the scene.

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### 314.3 PURSUIT UNITS

Pursuit units should be limited to three vehicles (two units and a supervisor); however, the number of units involved will vary with the circumstances. An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely arrest the suspects. All other officers should stay out of the pursuit, but should remain alert to its progress and location. Any officer who drops out of a pursuit may then, if necessary, proceed to the termination point at legal speeds, following the appropriate rules of the road.

#### 314.3.1 SECONDARY UNIT RESPONSIBILITIES

The secondary officer(s) in the pursuit is responsible for the following:

- (a) Immediately notify the dispatcher of entry into the pursuit
- (b) Remain a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit
- (c) Broadcasting the progress of the pursuit unless the situation indicates otherwise

#### 314.3.2 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspects without unreasonable danger to him/herself or other persons.

Notify Integrated Security Response Center that a vehicle pursuit has been initiated and as soon as practicable provide information including, but not limited to:

- (a) Reason for the pursuit.
- (b) Location and direction of travel.
- (c) Speed of the fleeing vehicle.
- (d) Description of the fleeing vehicle and license number, if known.
- (e) Number of known occupants.
- (f) The identity or description of the known occupants.
- (g) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

Unless relieved by a supervisor or secondary unit, the officer in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless practical circumstances indicate otherwise, and in order to concentrate on pursuit driving, the primary officer should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit.

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#### 314.3.3 SECONDARY UNITS RESPONSIBILITIES

The second officer in the pursuit is responsible for the following:

- (a) The officer in the secondary unit should immediately notify the dispatcher of entry into the pursuit.
- (b) Remain a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) The secondary officer should be responsible for broadcasting the progress of the pursuit unless the situation indicates otherwise.

#### 314.3.4 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Because intersections can present increased risks, the following tactics should be considered:
  - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
  - 2. Pursuing units should exercise due caution when proceeding through controlled intersections.
- (c) As a general rule, officers should not pursue a vehicle driving left of center (wrong way) on a freeway. In the event that the pursued vehicle does so, the following tactics should be considered:
  - 1. Requesting assistance from an air unit.
  - 2. Maintaining visual contact with the pursued vehicle by paralleling it on the correct side of the roadway.
  - 3. Requesting other units to observe exits available to the suspects.
- (d) Notifying the California Highway Patrol (CHP) and/or other jurisdictional agency if it appears that the pursuit may enter their jurisdiction.
- (e) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit.

#### 314.4 SUPERVISORY CONTROL AND RESPONSIBILITY

It is the policy of this department that available supervisory and management control will be exercised over all vehicle pursuits involving officers from this department.

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The field supervisor of the officer initiating the pursuit, or if unavailable, the nearest field supervisor will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.
- (d) Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.
- (e) Directing that the pursuit be terminated if, in his/her judgment, it is unjustified to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that aircraft are requested if available.
- (g) Ensuring that the proper radio channel is being used.
- (h) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- (i) Controlling and managing BART PD units when a pursuit enters another jurisdiction.
- (j) Preparing post-pursuit critique and analysis of the pursuit for training purposes.

#### 314.4.1 WATCH COMMANDER RESPONSIBILITY

Upon becoming aware that a pursuit has been initiated, the Watch Commander should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy. The Watch Commander has the final responsibility for the coordination, control and termination of a vehicle pursuit and shall be in overall command.

The Watch Commander shall review all pertinent reports for content and forward to the Division Commander.

### 314.5 COMMUNICATIONS

If the pursuit is confined within the District limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher. If the pursuit leaves the jurisdiction of this department or such is imminent, involved units should, whenever available, switch radio communications to an emergency channel most accessible by participating agencies and units.

#### 314.5.1 COMMUNICATION CENTER RESPONSIBILITIES

Upon notification that a pursuit has been initiated, Integrated Security Response Center will:

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- (a) Coordinate pursuit communications of the involved units and personnel.
- (b) Notify and coordinate with other involved or affected agencies as practicable.
- (c) Ensure that a field supervisor is notified of the pursuit.
- (d) Assign an incident number and log all pursuit activities.
- (e) Broadcast pursuit updates as well as other pertinent information as necessary.
- (f) Notify the Watch Commander as soon as practicable.

#### 314.6 INTER-JURISDICTIONAL CONSIDERATIONS

When a pursuit enters another agency's jurisdiction, the primary officer or supervisor, taking into consideration distance traveled, unfamiliarity with the area and other pertinent facts, should determine whether to request the other agency to assume the pursuit. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary officer or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether such jurisdiction is expected to assist.

##### 314.6.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY

Units originally involved will discontinue the pursuit when advised that another agency has assumed the pursuit and assistance of the Bay Area Rapid Transit Police Department is no longer needed. Upon discontinuing the pursuit, the primary unit may proceed upon request, with or at the direction of a supervisor, to the termination point to assist in the investigation.

The role and responsibilities of officers at the termination of a pursuit initiated by this department shall be coordinated with appropriate consideration of the units from the agency assuming the pursuit.

Notification of a pursuit in progress should not be construed as a request to join the pursuit. Requests to or from another agency to assume a pursuit should be specific. Because of communication limitations between local agencies and CHP units, a request for CHP assistance will mean that they will assume responsibilities for the pursuit. For the same reasons, when a pursuit leaves the freeway and a request for assistance is made to this department, the CHP should relinquish control.

##### 314.6.2 PURSUITS EXTENDING INTO THIS JURISDICTION

The agency that initiates a pursuit shall be responsible for conducting the pursuit. Units from this department should not join a pursuit unless specifically requested to do so by the agency whose officers are in pursuit. The exception to this is when a single unit from the initiating agency is in pursuit. Under this circumstance, a unit from this department may join the pursuit until sufficient units from the initiating agency join the pursuit.

When a request is made for this department to assist or take over a pursuit from another agency that has entered this jurisdiction, the supervisor should consider these additional following factors:



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- (a) Ability to maintain the pursuit
- (b) Circumstances serious enough to continue the pursuit
- (c) Adequate staffing to continue the pursuit
- (d) The public's safety within this jurisdiction
- (e) Safety of the pursuing officers

As soon as practicable, a supervisor or the Watch Commander should review a request for assistance from another agency. The Watch Commander or supervisor, after consideration of the above factors, may decline to assist in, or assume the other agency's pursuit.

Assistance to a pursuing allied agency by officers of this department will terminate at the District limits provided that the pursuing officers have sufficient assistance from other sources. Ongoing participation from this department may continue only until sufficient assistance is present.

In the event that a pursuit from another agency terminates within this jurisdiction, officers shall provide appropriate assistance to officers from the allied agency including, but not limited to, scene control, coordination and completion of supplemental reports and any other assistance requested or needed.

### 314.7 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, PIT (Pursuit Intervention Technique), ramming or roadblock procedures. In this context, ramming shall be construed to mean maneuvering the police unit into contact with the pursued vehicle to mechanically disable or forcibly position it such that further flight is not possible or practicable. Pursuit interventions are not authorized by this department.

#### 314.7.1 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances dictate that such use reasonably appears necessary to protect life. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

#### 314.7.2 APPREHENSION OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force, which reasonably appears necessary under the circumstances, to properly perform their lawful duties.

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Unless relieved by a supervisor the primary officer should coordinate efforts to apprehend the suspect(s) following the pursuit. Officers should consider safety of the public and the involved officers when formulating plans to contain and capture the suspect.

#### 314.8 REPORTING REQUIREMENTS

The following reports should be completed upon conclusion of all pursuits:

- (a) The primary officer should complete appropriate crime/arrest reports.
- (b) The Watch Commander shall ensure that an Allied Agency Vehicle Pursuit Report (form CHP 187A) is filed with the CHP not later than 30 days following the pursuit (Vehicle Code § 14602.1). The primary officer should complete as much of the required information on the form as is known and forward the report to the Watch Commander for review and distribution.
- (c) After first obtaining the available information, a field supervisor shall promptly complete a Supervisor's Log, briefly summarizing the pursuit, and submit it to his/her manager. This log should minimally contain the following information:
  1. Date and time of pursuit
  2. Length of pursuit
  3. Involved units and officers
  4. Initial reason for pursuit
  5. Starting and termination points
  6. Disposition (arrest, citation), including arrestee information if applicable
  7. Injuries and/or property damage
  8. Medical treatment
  9. Name of supervisor at scene
  10. A preliminary determination whether the pursuit appears to be in compliance with this policy and whether additional review or follow-up is warranted

##### 314.8.1 REGULAR AND PERIODIC PURSUIT TRAINING

In addition to initial and supplementary Police Officer Standard Training (POST) training on pursuits required by Penal Code § 13519.8, all sworn members of this department will participate no less than annually in regular and periodic department training addressing this policy and the importance of vehicle safety and protecting the public at all times, including a recognition of the need to balance the known offense and the need for immediate capture against the risks to officers and others (Vehicle Code § 17004.7(d)).

##### 314.8.2 POLICY REVIEW

Each sworn member of this department shall certify in writing that they have received, read and understand this policy initially and upon any amendments. The POST attestation form, or an

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equivalent form, may be used to document the compliance and should be retained in the member's training file.

### **314.9 APPLICATION OF VEHICLE PURSUIT POLICY**

This policy is expressly written and adopted pursuant to the provisions of Vehicle Code § 17004.7, with additional input from the POST Vehicle Pursuit Guidelines.

Summary  
11/6/2019 05:35:46

Differences exist between documents.

**New Document:**

[Temporary\\_Custody\\_of\\_Juveniles](#)

11 pages (36 KB)

11/6/2019 05:35:44

Used to display results.

**Old Document:**

[Temporary\\_Custody\\_of\\_Juveniles old](#)

11 pages (297 KB)

11/6/2019 05:35:44


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


No pages were deleted

**How to read this report**

**Highlight** indicates a change.

**Deleted** indicates deleted content.

 indicates pages were changed.

 indicates pages were moved.

## Temporary Custody of Juveniles

### 324.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Bay Area Rapid Transit Police Department (34 USC § 11133).

Guidance regarding contacting juveniles at schools or who may be victims is provided in the Child Abuse Policy.

#### 324.1.1 DEFINITIONS

Definitions related to this policy include:

**Juvenile non-offender** - An abused, neglected, dependent, or alien juvenile who may be legally held for his/her own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for his/her protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person. Juveniles 11 years of age or younger are considered juvenile non-offenders even if they have committed an offense that would subject an adult to arrest.

**Juvenile offender** - A juvenile 12 to 17 years of age who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense) (Welfare and Institutions Code § 602). It also includes an offense under Penal Code § 29610 for underage possession of a handgun or concealable firearm (28 CFR 31.303).

**Non-secure custody** - When a juvenile is held in the presence of an officer or other custody employee at all times and is not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation (Welfare and Institutions Code § 207.1(d); 15 CCR 1150).

**Safety checks** - Direct, visual observation personally by a member of this department performed at random intervals within time frames prescribed in this policy to provide for the health and welfare of juveniles in temporary custody.

**Secure custody** - When a juvenile offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object (15 CCR 1146).

Examples of secure custody include:

- (a) A juvenile left alone in an unlocked room within the secure perimeter of the adult temporary holding area.
- (b) A juvenile handcuffed to a rail.
- (c) A juvenile placed in a room that contains doors with delayed egress devices that have a delay of more than 30 seconds.

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- (d) A juvenile being processed in a secure booking area when a non-secure booking area is available.
- (e) A juvenile left alone in a secure booking area after being photographed and fingerprinted.
- (f) A juvenile placed in a cell within the adult temporary holding area, whether or not the cell door is locked.
- (g) A juvenile placed in a room that is capable of being locked or contains a fixed object designed for cuffing or restricting movement.

**Sight and sound separation** - Located or arranged to prevent physical, visual, or auditory contact.

**Status offender** - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender. This includes the habitually disobedient or truant juvenile under Welfare and Institutions Code § 601 and any juvenile suspected of an offense that would not subject an adult to arrest (e.g., fine-only offense).

#### **324.2 POLICY**

The Bay Area Rapid Transit Police Department is committed to releasing juveniles from temporary custody as soon as reasonably practicable and keeping juveniles safe while they are in temporary custody at the Bay Area Rapid Transit Police Department. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer, or release.

#### **324.3 JUVENILES WHO SHOULD NOT BE HELD**

Juveniles who exhibit any of the following conditions should not be held at the Bay Area Rapid Transit Police Department:

- (a) Unconscious
- (b) Seriously injured
- (c) A known suicide risk or obviously severely emotionally disturbed
- (d) Significantly intoxicated except when approved by the Watch Commander. A medical clearance shall be obtained for minors who are under the influence of drugs, alcohol, or any other intoxicating substance to the extent that they are unable to care for themselves (15 CCR 1151).
- (e) Extremely violent or continuously violent

Officers taking custody of a juvenile who exhibits any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and notify a supervisor of the situation (15 CCR 1142; 15 CCR 1151).

These juveniles should not be held at the Bay Area Rapid Transit Police Department unless they have been evaluated by a qualified medical and/or mental health professional (15 CCR 1142).

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If the officer taking custody of the juvenile believes the juvenile may be a suicide risk, the juvenile shall be under continuous direct supervision until evaluation, release, or a transfer is completed (15 CCR 1142).

#### **324.3.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY**

When emergency medical attention is required for a juvenile, medical assistance will be called immediately. The Watch Commander shall be notified of the need for medical attention for the juvenile. Department members should administer first aid as applicable (15 CCR 1142).

#### **324.3.2 SUICIDE PREVENTION OF JUVENILES IN CUSTODY**

Department members should be alert to potential symptoms based upon exhibited behavior that may indicate the juvenile is a suicide risk. These symptoms may include depression, refusal to communicate, verbally threatening to kill him/herself, or any unusual behavior which may indicate the juvenile may harm him/herself while in either secure or non-secure custody (15 CCR 1142).

#### **324.4 CUSTODY OF JUVENILES**

Officers should take custody of a juvenile and temporarily hold the juvenile at the Bay Area Rapid Transit Police Department when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile that is suspected of being a victim.

No juvenile should be held in temporary custody at the Bay Area Rapid Transit Police Department without authorization of the arresting officer's supervisor or the Watch Commander. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent or other responsible adult or transferred to a juvenile custody facility or to other authority as soon as practicable and in no event shall a juvenile be held beyond six hours from the time of his/her entry into the Bay Area Rapid Transit Police Department (34 USC § 11133; Welfare and Institutions Code § 207.1(d)).

#### **324.4.1 CUSTODY OF JUVENILE NON-OFFENDERS**

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Bay Area Rapid Transit Police Department. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders shall not be held in secure custody (34 USC § 11133; Welfare and Institutions Code § 206).

Juveniles 11 years of age or younger who have committed an offense that would subject an adult to arrest may be held in non-secure custody for the offenses listed in Welfare and Institutions Code § 602(b) (murder and the sexual assault offenses) and should be referred to a probation officer for a placement determination.

#### **324.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS**

Status offenders should generally be released by citation or with a warning rather than taken into temporary custody. However, officers may take custody of a status offender if requested to do

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so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders shall not be held in secure custody (34 USC § 11133).

#### **324.4.3 CUSTODY OF JUVENILE OFFENDERS**

Juvenile offenders should be held in non-secure custody while at the Bay Area Rapid Transit Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

Generally, a juvenile offender may be taken into custody when authorized by a court order or when there is probable cause to believe the juvenile has committed an offense that would subject an adult to arrest (Welfare and Institutions Code § 625).

A juvenile offender who is 14 years of age or older and suspected of using a firearm in violation of Welfare and Institutions Code § 625.3 shall be transported to a juvenile facility.

A juvenile offender suspected of committing murder or a sex offense that may subject a juvenile to criminal jurisdiction under Welfare and Institutions Code § 602(b), or a serious or violent felony should be referred to a probation officer for a decision on further detention.

In all other cases the juvenile offender may be:

- (a) Released upon warning or citation.
- (b) Released to a parent or other responsible adult after processing at the Department.
- (c) Referred to a probation officer for a decision regarding whether to transport the juvenile offender to a juvenile facility.
- (d) Transported to his/her home or to the place where the juvenile offender was taken into custody (Welfare and Institutions Code § 207.2).

In determining which disposition is appropriate, the investigating officer or supervisor shall prefer the alternative that least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the juvenile and the community (Welfare and Institutions Code § 626).

Whenever a juvenile offender under the age of 14 is taken into custody, the officer should take reasonable steps to verify and document the child's ability to differentiate between right and wrong, particularly in relation to the alleged offense (Penal Code § 26).

#### **324.5 ADVISEMENTS**

Officers shall take immediate steps to notify the juvenile's parent, guardian, or a responsible relative that the juvenile is in custody, the location where the juvenile is being held, and the intended disposition (Welfare and Institutions Code § 627).

Whenever a juvenile is taken into temporary custody, he/she shall be given the *Miranda* rights advisement regardless of whether questioning is intended (Welfare and Institutions Code § 625).



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Anytime a juvenile offender is placed in secure custody, he/she shall be informed of the purpose of the secure custody, the length of time the secure custody is expected to last, and of the maximum six-hour limitation (Welfare and Institutions Code § 207.1(d)).

Juveniles taken into custody for an offense shall immediately be advised (or at least within one hour from being taken into custody, if possible) that they may make three telephone calls: one call completed to his/her parent or guardian; one to a responsible relative or his/her employer; and another call completed to an attorney. The calls shall be at no expense to the juvenile when completed to telephone numbers within the local calling area. Juveniles should be asked whether they are a caregiver and provided two more phone calls in the same manner as provided to adults in the Temporary Custody of Adults Policy (Welfare and Institutions Code § 627; Penal Code § 851.5).

#### **324.6 JUVENILE CUSTODY LOGS**

Any time a juvenile is held in custody at the Department, the custody shall be promptly and properly documented in the juvenile custody log, including:

- (a) Identifying information about the juvenile.
- (b) Date and time of arrival and release from the Bay Area Rapid Transit Police Department (15 CCR 1150).
- (c) Supervisor notification and approval to temporarily hold the juvenile.
- (d) Any charges for which the juvenile is being held and classification of the juvenile as a juvenile offender, status offender or non-offender.
- (e) Any changes in status (e.g., emergency situations, unusual incidents).
- (f) Time of all safety checks.
- (g) Any medical and other screening requested and completed (15 CCR 1142).
- (h) Circumstances that justify any secure custody (Welfare and Institutions Code § 207.1(d); 15 CCR 1145).
- (i) Any other information that may be required by other authorities, such as compliance inspectors or a local juvenile court authority.

The zone sergeant shall initial the log to approve the custody, including any secure custody, and shall also initial the log when the juvenile is released.

#### **324.7 NO-CONTACT REQUIREMENTS**

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Department (34 USC § 11133; Welfare and Institutions Code § 207.1(d); Welfare and Institutions Code § 208; 15 CCR 1144). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Bay Area Rapid Transit

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Police Department (trained in the supervision of persons in custody) shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact (15 CCR 1144).

#### **324.8 TEMPORARY CUSTODY REQUIREMENTS**

Members and supervisors assigned to monitor or process any juvenile at the Bay Area Rapid Transit Police Department shall ensure the following:

- (a) The Watch Commander should be notified if it is anticipated that a juvenile may need to remain at the Bay Area Rapid Transit Police Department more than four hours. This will enable the Watch Commander to ensure no juvenile is held at the Bay Area Rapid Transit Police Department more than six hours.
- (b) A staff member of the same sex shall supervise personal hygiene activities and care, such as changing clothing or using the restroom, without direct observation to allow for privacy.
- (c) Personal safety checks and significant incidents/activities shall be noted on the log.
- (d) Juveniles in custody are informed that they will be monitored at all times, except when using the toilet.
  - 1. There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.
  - 2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (e) Juveniles shall have reasonable access to toilets and wash basins (15 CCR 1143).
- (f) Food shall be provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile (15 CCR 1143).
- (g) Juveniles shall have reasonable access to a drinking fountain or water (15 CCR 1143).
- (h) Juveniles shall have reasonable opportunities to stand and stretch, particularly if handcuffed or restrained in any way.
- (i) Juveniles shall have privacy during family, guardian, and/or lawyer visits (15 CCR 1143).
- (j) Juveniles shall be permitted to remain in their personal clothing unless the clothing is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody (15 CCR 1143).
- (k) Blankets shall be provided as reasonably necessary (15 CCR 1143).
  - 1. The supervisor should ensure that there is an adequate supply of clean blankets.
- (l) Adequate shelter, heat, light, and ventilation should be provided without compromising security or enabling escape.
- (m) Juveniles shall have adequate furnishings, including suitable chairs or benches.

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- (n) Juveniles shall have the right to the same number of telephone calls as an adult in temporary custody.
- (o) No discipline may be administered to any juvenile, nor may juveniles be subjected to corporal or unusual punishment, humiliation, or mental abuse (15 CCR 1142).

#### **324.9 USE OF RESTRAINT DEVICES**

Juvenile offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile offender may be handcuffed at the Bay Area Rapid Transit Police Department when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening (15 CCR 1142).

Other restraints shall only be used after less restrictive measures have failed and with the approval of the Watch Commander. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others (15 CCR 1142).

Juveniles in restraints shall be kept away from other unrestrained juveniles or monitored in such a way as to protect the juvenile from abuse (15 CCR 1142).

#### **324.10 PERSONAL PROPERTY**

The officer taking custody of a juvenile offender or status offender at the Bay Area Rapid Transit Police Department shall ensure a thorough search of the juvenile's property is made and all property is removed from the juvenile, especially those items that could compromise safety, such as pens, pencils, and belts.

The personal property of a juvenile should be placed in a property bag. The property should be inventoried in the juvenile's presence and sealed into the bag. The property should be kept in a monitored or secure location until the juvenile is released from the custody of the Bay Area Rapid Transit Police Department.

#### **324.11 SECURE CUSTODY**

Only juvenile offenders 14 years of age or older may be placed in secure custody (Welfare and Institutions Code § 207; 15 CCR 1145). Watch Commander approval is required before placing a juvenile offender in secure custody.

Secure custody should only be used for juvenile offenders when there is a reasonable belief that the juvenile is a serious risk of harm to him/herself or others. Factors to be considered when determining if the juvenile offender presents a serious security risk to him/herself or others include the following (15 CCR 1145):

- (a) Age, maturity, and delinquent history
- (b) Severity of offense for which the juvenile was taken into custody
- (c) The juvenile offender's behavior
- (d) Availability of staff to provide adequate supervision or protection of the juvenile offender

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- (e) Age, type, and number of other individuals in custody at the facility

Members of this department shall not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option (15 CCR 1145).

When practicable and when no locked enclosure is available, handcuffing one hand of a juvenile offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. An employee must be present at all times to ensure the juvenile's safety while secured to a stationary object (15 CCR 1148).

Juveniles shall not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter (15 CCR 1148). Supervisor approval should be documented.

The decision for securing a minor to a stationary object for longer than 60 minutes and every 30 minutes thereafter shall be based upon the best interests of the juvenile offender (15 CCR 1148).

#### 324.11.1 LOCKED ENCLOSURES

A thorough inspection of the area shall be conducted before placing a juvenile into the enclosure. A second inspection shall be conducted after removing the juvenile. Any damage noted to the room should be photographed and documented in the crime report.

The following requirements shall apply to a juvenile offender who is held inside a locked enclosure:

- (a) The juvenile shall constantly be monitored by an audio/video system during the entire custody.
- (b) Juveniles shall have constant auditory access to department members (15 CCR 1147).
- (c) Initial placement into and removal from a locked enclosure shall be logged (Welfare and Institutions Code § 207.1(d)).
- (d) Unscheduled safety checks to provide for the health and welfare of the juvenile by a staff member, no less than once every 15 minutes, shall occur (15 CCR 1147; 15 CCR 1151).
  1. All safety checks shall be logged.
  2. The safety check should involve questioning the juvenile as to his/her well-being (sleeping juveniles or apparently sleeping juveniles should be awakened).
  3. Requests or concerns of the juvenile should be logged.
- (e) Males and females shall not be placed in the same locked room (15 CCR 1147).
- (f) Juvenile offenders should be separated according to severity of the crime (e.g., felony or misdemeanor).
- (g) Restrained juveniles shall not be mixed in a cell or room with unrestrained juveniles.

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### *Temporary Custody of Juveniles*

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#### **324.12 SUICIDE ATTEMPT, DEATH, OR SERIOUS INJURY OF A JUVENILE**

The Watch Commander will ensure procedures are in place to address the suicide attempt, death, or serious injury of any juvenile held at the Bay Area Rapid Transit Police Department (15 CCR 1142; 15 CCR 1047). The procedures will address:

- (a) Immediate notification of the on-duty supervisor, Chief of Police, and Criminal Investigations Bureau Supervisor.
- (b) Notification of the parent, guardian, or person standing in loco parentis of the juvenile.
- (c) Notification of the appropriate prosecutor.
- (d) Notification of the District attorney.
- (e) Notification to the coroner.
- (f) Notification of the juvenile court.
- (g) In the case of a death, providing a report to the Attorney General under Government Code § 12525 within 10 calendar days of the death, and forwarding the same report to the Board of State and Community Corrections within the same time frame (15 CCR 1046).
- (h) A medical and operational review of deaths and suicide attempts pursuant to 15 CCR 1046.
- (i) Evidence preservation.

#### **324.13 INTERVIEWING OR INTERROGATING JUVENILE SUSPECTS**

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent to an interview or interrogation.

Prior to conducting a custodial interrogation, including the waiver of *Miranda* rights, an officer shall permit a juvenile 15 years of age or younger to consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived by the juvenile. The requirement to consult with legal counsel does not apply when (Welfare and Institutions Code § 625.6):

- (a) Information is necessary to protect life or property from an imminent threat.
- (b) The questions are limited to what is reasonably necessary to obtain the information relating to the threat.

##### **324.13.1 MANDATORY RECORDINGS OF JUVENILES**

Any interrogation of an individual under 18 years of age who is in custody and suspected of committing murder shall be audio and video recorded when the interview takes place at a department facility, jail, detention facility, or other fixed place of detention. The recording shall include the entire interview and a *Miranda* advisement preceding the interrogation (Penal Code § 859.5).

This recording is not mandatory when (Penal Code § 859.5):

- (a) Recording is not feasible because of exigent circumstances that are later documented in a report.

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- (b) The individual refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.
- (c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.
- (d) The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.
- (e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated, or another individual. Such circumstances shall be documented in a report.
- (f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- (g) The questions are part of a routine processing or booking, and are not an interrogation.
- (h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

These recordings shall be retained until a conviction is final and all direct and habeas corpus appeals are exhausted, a court no longer has any jurisdiction over the individual, or the prosecution for that offense is barred (Penal Code § 859.5; Welfare and Institutions Code § 626.8).

#### **324.14 FORMAL BOOKING**

No juvenile offender shall be formally booked without the authorization of the arresting officer's supervisor, or in his/her absence, the Watch Commander.

Any juvenile 14 years of age or older who is taken into custody for a felony, or any juvenile whose acts amount to a sex crime, shall be booked, fingerprinted, and photographed.

For all other acts defined as crimes, juveniles may be booked, fingerprinted or photographed upon the approval from the Watch Commander or Criminal Investigations Division supervisor, giving due consideration to the following:

- (a) The gravity of the offense
- (b) The past record of the offender
- (c) The age of the offender

#### **324.15 RELEASE OF INFORMATION CONCERNING JUVENILES**

Court decisions and legislation have combined to carefully specify situations in which information may be given out or exchanged when a case involves a juvenile. Members of this department shall not divulge any information regarding juveniles unless they are certain of the legal authority to do so.

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A copy of the current policy of the juvenile court concerning authorized release of information and appropriate acknowledgment forms shall be kept with copies of this procedure in the Bay Area Rapid Transit Police Department Policy Manual. Such releases are authorized by Welfare and Institutions Code § 827.

Welfare and Institutions Code § 828 authorizes the release of certain information to other agencies. It shall be the responsibility of the Records Supervisor and the appropriate Criminal Investigations Division supervisors to ensure that personnel of those bureaus act within legal guidelines.

### **324.16 BOARD OF STATE AND COMMUNITY CORRECTIONS CERTIFICATION**

The Support Services Bureau Deputy Chief shall coordinate the procedures related to the custody of juveniles held at the Bay Area Rapid Transit Police Department and ensure any required certification is maintained (Welfare and Institution Code § 210.2).

Summary  
11/6/2019 05:38:30

Differences exist between documents.

<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Standards_of_Conduct</a>	<a href="#">Standards_of_Conduct old</a>
12 pages (38 KB)	11 pages (298 KB)
11/6/2019 05:38:29	11/6/2019 05:38:29
Used to display results.	


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


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**Highlight** indicates a change.

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 indicates pages were changed.

 indicates pages were moved.



## Standards of Conduct

### 340.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Bay Area Rapid Transit Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

### 340.2 POLICY

The continued employment or appointment of every member of the Bay Area Rapid Transit Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### 340.3 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Employees shall maintain cooperation between the ranks and units of the Department and other District employees to accomplish the District objective of providing a safe, efficient and fast transit system for the public.

Members shall familiarize themselves with policies and procedures, as well as all applicable laws and regulations, and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees are required to obey any lawful order of a superior, including any order relayed from a superior by an employee of the same or lesser rank. Deliberate refusal of any employee to obey a lawful order given by proper authority shall be insubordination.

Obedience to an unlawful order is never a defense for an unlawful action. Therefore, no employee is required to obey any order which is contrary to Federal or State law. Responsibility for refusal to obey rests with the employee and said employee shall be strictly required to justify his action.

Upon receipt of an order conflicting with any previous order or instruction, the member affected will advise the person issuing the second order of this fact. Responsibility for countermanding the original instruction then rests with the individual issuing the second order. If so directed, the latter command shall be obeyed first. Orders will be countermanded or conflicting orders will be issued only when reasonably necessary for the good of the Department.

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### Standards of Conduct

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Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

#### 340.3.1 INFORMAL PRE-DISCIPLINE

The informal steps of the progressive discipline system are as follows:

- (a) **Informal Counseling** (first level of pre-discipline): When warranted, an informal counseling may be the first step of the process. It is an informal discussion between a supervisor and an employee about conduct, attendance or work performance. It is not documented and is pre-disciplinary.
- (b) **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.
  1. After the supervisor has discussed the performance or infraction with the employee, the Letter of Discussion memorandum should be presented to the employee for his or her signature. The supervisor shall give a copy of the Letter of Discussion to the employee, and the supervisor then forwards a copy to the Support Services Deputy Chief for placement into the employee's personnel file. The Letter of Discussion will remain in the employee's personnel file for a period as determined by the collective bargaining agreement.
- (c) **Oral Counseling** (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline. After the supervisor has discussed the performance or infraction with the employee, the Oral Counseling memorandum should be presented to the employee for his or her initials. The supervisor shall give a copy of the Oral Counseling to the employee, while the supervisor then forwards a copy to the Support Services Deputy Chief for placement into the employee's personnel file. The Oral Counseling will remain in the employee's personnel file for a period as determined by the collective bargaining agreement.

References to Letter (s) of Discussion/Oral Counseling (s) may be included in an employee's semi-annual performance evaluation if the informal pre-discipline was issued during the evaluation period. Later annual performance evaluations received by the employee shall not reference the letter of discussion or the oral counseling.

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#### 340.3.2 FORMAL DISCIPLINE

If informal pre-discipline does not correct the conduct, attendance, work performance or the violation is of such a nature to warrant formal discipline, formal discipline may be warranted.

(a) The steps of formal discipline are:

1. First level: Written Reprimand
2. Second level: Pay Step Reduction (up to six months)
3. Third level: Suspension without pay (thirty (30) day maximum)
4. Fourth level: Demotion

(b) Application:

1. A single occurrence may be serious enough to warrant formal disciplinary action.

(c) Removal of Discipline:

1. If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement, the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee's personnel files.
2. If an employee is unable to perform his/her assigned duties due to a non-industrial injury, leave of absence, or military leave occurring during the active period of the discipline, the deactivation date shall be extended for the total number of days the employee was unable to perform his/her assigned duties.
3. The Support Services Bureau removes the progressive discipline from the employee's departmental personnel file and also sends a memorandum to Human Resources instructing them to remove the discipline from the employee's District personnel file. A copy of this memorandum will also be sent directly to the employee.
4. References to formal discipline should be made in the employee's semi-annual performance evaluation, if the discipline was issued during the evaluation period. Material in the personnel file may be utilized in progressive discipline and/or grievance proceedings as determined by collective bargaining agreement.

#### 340.3.3 TERMINATION

Termination is the final level of Progressive Discipline.

#### 340.3.4 CRISIS SUSPENSION

A crisis suspension should be used when an employee's inappropriate behavior is so serious that immediate removal from the workplace is necessary. The employee may be placed on administrative leave, with pay, pending further investigation by supervisory personnel. The preliminary investigation should normally be conducted within twenty-four (24) hours of the incident. The employee will be informed by his/her immediate supervisor to report to the Support Services Deputy Chief at 10:00 hours on the next business day. The Chief of Police and the

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employee's zone Lieutenant or Bureau Deputy Chief must be notified as soon as appropriate on all crisis suspensions.

- (a) Cause for Crisis Suspensions
  - 1. Allegations or infractions serious enough to result in termination may result in a crisis suspension.

#### 340.4 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

##### 340.4.1 LAWS, RULES AND ORDERS

- (a) Violation of, or ordering or instructing a subordinate to violate any law (federal, state, local, or administrative), policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or District manuals.
- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.

##### 340.4.2 ETHICS

- (a) Using or disclosing one's status as a member of the Bay Area Rapid Transit Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- (g) Any other failure to abide by the standards of ethical conduct.

##### 340.4.3 DISCRIMINATION, OPPRESSION OR FAVORITISM

Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

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#### 340.4.4 RELATIONSHIPS

Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.

- (a) Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (b) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (c) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (d) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

#### 340.4.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.

#### 340.4.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
  - 1. Members of this department shall not disclose the name, address or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Bay Area Rapid Transit Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.

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- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.
- (f) Duplicating any District key or loaning any District key to any person not authorized to possess same, unless instructed to do so by a command officer.

#### 340.4.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 24 hours of any change in residence address, contact telephone numbers or marital status.

#### 340.4.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department -related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
  1. While on department premises.
  2. At any work site, while on-duty or while in uniform, or while using any department equipment or system.

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3. Gambling activity undertaken as part of an officer's official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Improper political activity including:
  - (a) Unauthorized attendance while on-duty at official legislative or political sessions.
  - (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by District policy, the memorandum of understanding, or the Chief of Police.
  - (h) Engaging in political activities during assigned working hours except as expressly authorized by District policy, the memorandum of understanding, or the Chief of Police.
  - (i) Concealing oneself except for the furtherance of some police purpose. Members shall be readily available to the public during duty hours.
  - (j) Any act on- or off-duty that brings discredit to this department.

#### 340.4.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy. If the employee believes the information is of such gravity that it must be brought to the immediate attention of the Chief of Police, official channels may be bypassed.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the District.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person. 🙏🙏

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- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.
- (m) Seeking restraining orders against individuals encountered in the line of duty without the express permission of the Chief of Police.
- (n) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.
- (o) Failure to provide names and/or badge numbers in a courteous manner upon request.
- (p) Employees shall not permit their names or photographs to be used to endorse any product or service which is in any way connected with law enforcement without the permission of the Chief of Police. They shall not, without the permission of the Chief of Police, allow their names or photographs to be used in any commercial testimonial which alludes to their position or employment with the District.
- (q) Employees shall not seek personal publicity in the course of their employment.

#### 340.4.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

#### 340.4.11 INTOXICANTS

- (a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.



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- (b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
- (c) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

#### 340.4.12 TOBACCO USE

Members shall not smoke, vape, or chew any tobacco substance when within direct contact with the public. All special instructions regarding "no smoking" shall be obeyed.

### 340.5 COOPERATION WITH INVESTIGATIONS

Employees will cooperate in any investigation conducted by:

- (a) Any competent investigative body
- (b) A judicial tribunal
- (c) A hearing board of officer
- (d) A person authorized to take testimony
- (e) The BART Office of the Independent Police Auditor (OIPA)

Employees are required to answer questions by, or render material and relevant statements to, a competent authority in a District personnel investigation when so directed.

### 340.6 POST INVESTIGATION PROCEDURES

#### 340.6.1 BUREAU DEPUTY CHIEF RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Bureau Deputy Chief of the involved employee shall review the entire investigative file, the employee's personnel file and any other relevant materials.

The Bureau Deputy Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

- (a) Prior to forwarding recommendations to the Chief of Police, the Bureau Deputy Chief may return the entire investigation to the assigned detective or supervisor for further investigation or action
- (b) When forwarding any written recommendation to the Chief of Police, the Bureau Deputy Chief shall include all relevant materials supporting the recommendation. Actual copies of an employee's existing personnel file need not be provided and may be incorporated by reference

#### 340.6.2 RESPONSIBILITIES OF THE CHIEF OF POLICE

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. 🙏🙏

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The Chief of Police may modify any recommendation and/or may return the file to the Bureau Deputy Chief for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, to be imposed.

In the event disciplinary action is recommended, the Chief of Police shall provide the employee with written (Skelly) notice of the following information within one year of the date of the discovery of the alleged misconduct (absent an exception set forth in Government Code § 3304(d) or 3508.1):

- (a) Specific charges set forth in separate counts, describing the conduct underlying each count.
- (b) A separate recommendation of proposed discipline for each charge.
- (c) A statement that the employee has been provided with or given access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (d) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the Skelly notice.
  1. Upon a showing of good cause by the employee, the Chief of Police may grant a reasonable extension of time for the employee to respond.
  2. If the employee elects to respond orally, the presentation shall be recorded by the Department. Upon request, the employee shall be provided with a copy of the recording.

#### **340.7 EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) This Skelly response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the Skelly response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results of such subsequent investigation prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issue(s) of information raised in any subsequent materials.

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- (f) Once the employee has completed his/her Skelly response or, if the employee has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall thereafter render a timely written decision to the employee imposing, modifying or rejecting the recommended discipline. In the event of a termination, the final notice of discipline shall also inform the employee of the reason(s) for termination and the process to receive all remaining fringe and retirement benefits.
- (g) Once the Chief of Police has issued a written decision, the discipline shall become effective.

### **340.8 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that an employee tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the file.

The tender of a retirement or resignation by itself shall not serve as grounds for the termination of pending discipline.

### **340.9 POST SKELLY PROCEDURE**

In situations resulting in the imposition of a suspension, punitive transfer, demotion, termination of a non-probationary employee, the employee shall have the right to an evidentiary appeal of the Chief of Police's imposition of discipline pursuant to the operative Memorandum of Understanding (MOU) and personnel rules.

### **340.10 DISCIPLINARY ACTION AGAINST PROBATIONARY EMPLOYEES**

In the event that a probationary employee is terminated solely for unsatisfactory performance or the failure to meet department standards, the employee shall have no right to appeal and the following shall be considered:

- (a) Termination of a probationary employee for such failure to pass probation shall be so reflected in the employee's personnel file
- (b) In the event that a probationary employee is disciplined or terminated for misconduct, the employee shall only be entitled to appeal the decision in the same manner as set forth in the Skelly procedure as set forth above. This appeal process may be held prior to or within a reasonable time after the imposition of discipline
- (c) At all times during any investigation of allegations of misconduct involving a probationary officer, such officer shall be afforded all procedural rights set forth in Government Code § 3303 and applicable Department policies
- (d) A probationary employee's appeal of disciplinary action shall be limited to an opportunity for the employee to attempt to establish that the underlying allegations should not be sustained. Nothing in this policy or procedure, however, should be construed to establish any sort of property interest in or right to the employee's continuation of employment

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- (e) The burden of proof for any probationary employee's appeal of disciplinary action shall rest with the employee and will require proof by a preponderance of the evidence
- (f) In the event that a probationary employee meets his or her burden of proof in such a disciplinary appeal, the Department shall remove all reference to the underlying allegations of misconduct from the employee's personnel file
- (g) In the event that a probationary employee fails to meet his or her burden of proof in such a disciplinary appeal, the employee shall have no further right to appeal beyond the Chief of Police

Summary  
11/6/2019 05:40:28

Differences exist between documents.

<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Report_Preparation</a>	<a href="#">Report_Preparation old</a>
19 pages (59 KB)	19 pages (320 KB)
11/6/2019 05:40:26	11/6/2019 05:40:26
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No pages were deleted

### How to read this report

**Highlight** indicates a change.

**Deleted** indicates deleted content.

 indicates pages were changed.

 indicates pages were moved.

## Report Preparation

### 344.1 PURPOSE AND SCOPE

Report preparation is a major part of each officer's job. The purpose of reports is to document sufficient information to refresh the officer's memory and to provide sufficient information for follow-up investigation and successful prosecution. Report writing is the subject of substantial formalized training and on-the-job training.

#### 344.1.1 REPORT PREPARATION

Employees should ensure that reports are sufficiently detailed for their purpose and free from errors prior to submission. It is the responsibility of the assigned employee to complete and submit all reports taken during the shift before going off-duty unless permission to hold the report has been approved by a supervisor. Generally, reports requiring prompt follow-up action on active leads, or arrest reports where the suspect remains in custody should not be held. **Employees shall not approve their own reports.**

Handwritten reports must be prepared legibly. If the report is not legible, the submitting employee will be required by the reviewing supervisor to promptly make corrections and resubmit the report. Employees who dictate reports shall use appropriate grammar, as content is not the responsibility of the typist. Employees who generate reports on computers are subject to all requirements of this policy.

All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense, and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

### 344.2 REQUIRED REPORTING

Written reports are required in all of the following situations on the appropriate department approved form unless otherwise approved by a supervisor.

#### 344.2.1 CRIMINAL ACTIVITY

When a member responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the member shall document the incident regardless of whether a victim desires prosecution. Activity to be documented in a written report includes:

- (a) All arrests
- (b) All felony crimes
- (c) Non-Felony incidents involving threats or stalking behavior
- (d) Situations covered by separate policy. These include:
  1. Use of Force Policy

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2. Domestic Violence Policy
3. Child Abuse Policy
4. Adult Abuse Policy
5. Hate Crimes Policy
6. Suspicious Activity Reporting Policy

- (e) All misdemeanor crimes where the victim desires a report

Misdemeanor crimes where the victim does not desire a report shall be documented using the department-approved alternative reporting method (e.g., dispatch log).

#### 344.2.2 NON-CRIMINAL ACTIVITY

The following incidents require the preparation of a written report:

- (a) When an officer points a firearm at any person, or deploys a firearm, CEW or LLIMS launcher in the presence of bystanders to defend, detain, or take any person into custody
- (b) Reported missing persons (regardless of jurisdiction)
- (c) Found contraband and found evidence
- (d) All incidents involving the death of a human being (see Policy Manual § 360 Death Investigations)
- (e) Traffic collisions above minimum reporting level
- (f) Suspicious Persons or Circumstances where a CAD entry would not be sufficient to explain the incident
- (g) Hazardous Material incidents where a CAD entry would not be sufficient to explain the incident
- (h) Illnesses or injuries meeting criteria of section 344.2.4 or section 344.2.5

#### 344.2.3 DEATH CASES

Cases of obvious suicide must be investigated and completed by the officer. If the officer is unable to determine the manner of death, he/she shall proceed as though it is a homicide.

The on-call detective will be notified in all unattended death cases. Detectives may respond to the scene to assist the reporting officer with the investigation.

#### 344.2.4 INJURY OR DAMAGE BY DISTRICT PERSONNEL

Reports shall be taken if an injury occurs that is a result of an act of a District employee. Additionally, reports shall be taken involving significant damage to District property or District equipment.

#### 344.2.5 MISCELLANEOUS INJURIES

Any injury that is reported to this department shall require a report when:

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- (a) The injury/illness is a result of drug overdose
- (b) Attempted suicide
- (c) The injury or illness is major/serious, whereas death could result
- (d) The circumstances surrounding the incident are suspicious in nature and it is desirable to record the event
- (e) The injury occurred on District property or the illness is attributed to the District.

The above reporting requirements are not intended to be all-inclusive. A supervisor may direct an employee to document any incident he/she deems necessary. Illnesses not attributed to the District and/or injuries not occurring on District property may be documented in the Call for Service on the TriTech CAD/Mobile software. When documenting in the Call for Service, employees will ensure the name of the individual has been added to the supplemental information and the location the injured or sick person was transported to is entered into the call notes.

#### 344.2.6 MANDATORY REPORTING OF JUVENILE GUNSHOT INJURIES

A report shall be taken when any incident in which a child 18 years or younger suffered an unintentional or self-inflicted gunshot wound. The Records Division shall notify the California Department of Public Health (CDPH) of the **incident as required** by CDPH (Penal Code § 23685).

#### 344.2.7 MANDATORY REPORTING OF JUVENILE DETENTIONS

Welfare and Institutions Code section 210.2(b) requires the tracking of all juvenile detentions which occur in any police facilities that contain any secure or non-secure detention rooms. Officers will document juvenile detention information on the BART Police Juvenile Detention log. This information will then be compiled by the Records Section and forwarded to the Board of Corrections.

#### 344.2.8 EVENTS WHICH DO NOT REQUIRE A WRITTEN REPORT

The following events may be cleared by a dispatch CADS entry without a written report:

- (a) Infraction citation of an adult
- (b) Traffic infraction citation where the violation occurred on or off BART property
- (c) 647(g) PC cases where the subject is taken to detox
- (d) 911 calls, hang-ups and call box alarms with no evidence of criminal activity, no one detained and there is no property damage or personal injury
- (e) Reports of police radio problems (PRIP)
- (f) Misplaced vehicles with no evidence of tampering
- (g) Parking complaints with no property damage or personal injury
- (h) Misdemeanor/Infraction violations where an unidentified suspect is gone on the officer's arrival and there is no victim wishing to file a report
- (i) Unsecured doors and gates to District facilities with no evidence of criminal activity
- (j) Prisoner transports for warrants that are handled without incident



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- (k) Monthly emergency exit checks
- (l) Miscellaneous service calls of a non-criminal nature that do not require follow-up, such as motorist/citizen assists and patron/fare disputes that do not result in the detention or identification of anyone by officers.

In order to document detentions of adults for infraction violations or on-property traffic stops where the suspect received a verbal warning, the officer shall complete a Field Interview Card. The information from the card will be entered into a Field Interview Report in the TriTech system by the reporting officer.

#### **344.3 GENERAL POLICY OF EXPEDITIOUS REPORTING**

In general, all officers and supervisors shall act with promptness and efficiency in the preparation and processing of all reports. An incomplete report, unorganized reports or reports delayed without supervisory approval are not acceptable. Reports shall be processed according to established priorities or according to special priority necessary under exceptional circumstances.

##### **344.3.1 GENERAL POLICY OF HANDWRITTEN REPORTS**

Some incidents and report forms lend themselves to block print rather than typing. In general, the narrative portion of those reports where an arrest is made or when there is a long narrative should be typed or dictated.

Supervisors may require, with the foregoing general policy in mind, block printing or typing of reports of any nature for department consistency.

#### **344.4 REPORT CORRECTIONS**

Supervisors shall review reports for content and accuracy. If a correction is necessary, the reviewing supervisor should promptly return the report to the author for correction, stating the reasons for rejection. The report should be resubmitted for approval as soon as practical. It shall be the responsibility of the originating officer to ensure that any report returned for correction is processed in a timely manner.

#### **344.5 REPORT CHANGES OR ALTERATIONS**

Reports that have been approved by a supervisor and submitted to the Records Division for filing and distribution shall not be modified or altered except by way of a supplemental report. Reviewed reports that have not yet been submitted to the Records Division may be corrected or modified by the authoring officer only with the knowledge and authorization of the reviewing supervisor.

#### **344.6 CASE ASSIGNMENTS**

The following types of reports will be forwarded to the Criminal Investigations Division by the approving supervisor selecting "Investigations" in the Division box under the Case Management Section of the employee's report:

- Felonies (except property crimes with no witnesses, leads, or evidence)
- Misdemeanors Arrests and Citations

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- Sex Crimes
- All employee related assaults or batteries
- Coroner's Cases
- Missing Person Cases
- Domestic Violence Cases

All cases that contain a video request will be forwarded to the Video Recovery Unit by the approving supervisor selecting "Video Recovery" in the Division box under the Case Management Section of the employee's report.

### 344.7 COMPUTERIZED REPORT USAGE AND COMPLETION GUIDELINES

#### 344.7.1 COMPUTERIZED REPORT TYPES

The TriTech system provides the following types of reports separated by county jurisdiction:

**Incident Report** - This is the standard format for criminal and non-criminal reports. The Incident Report should include the suspects/victims, associated vehicles involved in the incident and any guns, drugs, property or evidence seized by the primary reporting officer.

**Supplemental** - This report is used to document actions by assisting officers who were not assigned the primary role in an incident. It should also be used to record the results of follow-up investigation and to document facts discovered after the primary report has been submitted. Supplemental reports should not include offenses, suspects, victims, persons, vehicles, property, guns or drugs documented in the initial Incident Report unless the supplemental is providing updated information for those entries. Supplemental reports should include any property/evidence seized by the assisting officer.

**Arrest Report** - This report is a supplemental report to an Incident Report when the suspect is arrested, issued a misdemeanor citation or a notice to appear citation for an outstanding warrant.

**Field Interview Report** - This report is used to document detentions of adults for infraction violations or on-property traffic stops where the suspect received a verbal warning or was contacted for suspicious activity. Officers should attempt to fully identify the suspect, the violation and any identifiers such as scars, marks, tattoos, piercings, clothing, and license plate(s) etc... Entering this information in the Field Interview Report allows the suspect and vehicle to be searched for prior contacts.

**Police Report Dispositions** - In order to maintain accurate records of final dispositions of events and cases, it is imperative that the correct disposition is communicated between officers and dispatchers. When communicating via police radio, mobile data computer (MDC) or telephone with police dispatch, all police personnel will give the final disposition of their events and cases for data input. The final dispositions are:

- Arrest

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- Able to care
- Assistance to citizen (non-criminal contacts)
- Citation
- Field interview
- Information
- No merit
- Outside agency assist
- Reassign
- Report (any written case report, excluding an arrest)
- Secure (emergency exit checks)
- Transport
- UTL/GOA (Unable to locate/Gone on arrival)
- Cancel (used by Dispatch when appropriate)

### 344.7.2 COMPLETING NARRATIVES IN TRITECH WEB RMS

Before beginning the narrative portion of the report, the following information should be listed if applicable:

- Video Request
- Any cross-referenced cases
- Description of injuries
- Outside agency case number (San Francisco)
- Laboratory number (San Francisco)
- List of on-scene personnel
- Mobile video recorder activation information

The narrative should provide a chronological account of what transpired during the incident, in as much detail as possible. The following items must be addressed in the narrative, if applicable:

- Use of force
- Application of handcuffs and leg restraints (officers should note that the restraints were checked for proper fit and double locked)
- Drawing of firearm (when firearm is drawn in the presence of the public and/ or is used to accomplish a detention or take a suspect into custody) or other weapon. This includes pistol, shotgun, patrol rifle and LLIMS launcher, as well as the TASER.

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#### **344.8 HAND-WRITTEN REPORTS**

This department uses a number of hand-written forms to document officers' activities. These documents should be completed and listed in the "Related Documents" field of the Management page, where appropriate. The forms should be turned into the Records section after being approved by a supervisor, where needed.

##### **344.8.1 DOMESTIC VIOLENCE REPORT/SUPPLEMENTAL**

This form is used to document pertinent details of domestic violence incidents. This includes details of the relationships between the suspect and victim, prior domestic violence history, restraining order status, suspect and victim demeanor, medical treatment received, victim assistance provided and diagrams of injuries. This form should be attached as a related document in domestic violence cases.

##### **344.8.2 REPORT OF NON-RELEASE MISDEMEANOR ARREST**

This form may be completed in order to document the circumstances whereby a suspect arrested for a misdemeanor violation was not cited and released. This form is only required if the receiving jail facility requests it be completed. Most facilities incorporate this non-release information on their unique booking forms, or have their own non-release forms that must be completed at the time of booking. If completed, this form should be attached as a related document. In any event, the circumstances surrounding the non-release should be explained in the report narrative by the arresting officer.

##### **344.8.3 SUSPECT STATEMENT**

This form is used to document suspect statements. All boxes at the top of the form should be completed. The statement form includes the Miranda Admonition and Waiver. The Miranda rights should be read to the suspect prior to beginning any questioning, and the suspect's responses (yes/no) should be circled. When completing the waiver portion, the suspect's verbatim responses should be included on the lines following each waiver question, and the suspect should sign the form and note the date and time. If the suspect invokes his rights to counsel or to remain silent, this should be indicated on the form, which should be booked into evidence.

Generally speaking, the officer taking the statement should interview the suspect in order to obtain sufficient details regarding the incident to write the suspect's version of events on the statement form, using the first-person from the suspect's point of view. The statement should use the suspect's words and phraseology as much as possible. The completed statement should be shown and read to the suspect for any corrections necessary. The suspect should then sign at the end of the statement, and initial next to any corrections. The BART Police Report page 2 form may be used as additional pages if the suspect statement will not fit on the Suspect Statement form. If the suspect refuses to sign the form after giving a statement, the officer should write "refused" where the signature would normally be and book the form into evidence.

When completed and signed, the reporting officer should photocopy the statement and attach the copy as a related document to the report. The original suspect statement should be placed into evidence.

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A summary of the suspect's statement should be included in the narrative portion of the crime report.

#### 344.8.4 POLICE REPORT PAGE 2

This form may be used to document victim and witness statements and as continuation pages for suspect statements. Victim and witness statements should be taken in the same manner as suspect statements, with the exception of Miranda warnings and waivers. The completed forms should be listed as related documents on the crime report. The statements should be summarized in the narrative portion of the crime report. Victim and witness statements are not booked into evidence. They should be turned in to records for inclusion in the case file.

#### 344.8.5 PRIVATE PERSON (CITIZEN'S) ARREST REPORT

This form is used to document private person arrests. All information pertaining to the arrestee, the complainant and the crime should be completed. The pink copy of the form should be given to the person making the arrest. The form should be listed as a related document on the crime report. See Policy 364 for further details regarding private person arrests.

#### 344.8.6 CERTIFICATE OF RELEASE

This form is used to document incidents where a subject has been detained for investigation of a crime, then released per the requirements of 849(b) PC. All such releases should be approved by a supervisor. The pink copy of the certificate should be given to the person released. The white and yellow copies should be forwarded to Records and should be listed as a related document on the police report.

#### 344.8.7 STATEMENT PURSUANT TO 821 & 822 PC

This form is used to document situations where a suspect arrested on a warrant waives his right to be booked in the county of arrest, and is transported to the county which issued the warrant for booking. The arrestee should sign the form, which is listed as a related document on the police report.

#### 344.8.8 CONFIDENTIALITY NOTIFICATION

This form is used to document the victim's desires regarding confidentiality in cases qualifying for confidentiality under 293 PC. Qualifying crimes are: 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6. The law requires victims of the above offenses be informed of their right to have their name kept confidential. The victim's information should be completed and their desire to request or decline confidentiality should be checked. The form should be listed in the report as a related document.

#### 344.8.9 APPLICATION FOR EMERGENCY PROTECTIVE ORDER

This form is used to obtain an emergency protective order. All portions of the form should be completed once a judicial officer has granted the protective order. The proof of service should be completed when the restrained party is notified of the order. The order should be entered into

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CLETS by the communications center and the form should be listed on the crime report as a related document. The CLETS entry information should be included in the narrative portion of the crime report.

#### 344.8.10 VERBAL NOTICE OF PEACE OFFICER (DL-310)

This form is used to document verbal notice by an officer of the suspension of a person's driver license. The suspension information should be inserted and the license should be confiscated by the officer, if the subject is in possession of the license. The pink copy of the DL-310 form should be given to the driver at the scene. The license should be attached to the white and yellow copies of the DL-310 and forwarded to the Traffic Officer so the license can be returned to the DMV. The DL-310 form should be listed as a related document in the police report.

#### 344.8.11 NOTICE TO APPEAR

The notice to appear (citation) form is used to document an infraction or misdemeanor violation where the suspect is to appear in court to answer the charges. All pertinent boxes should be completed as accurately as possible. In the case of on-viewed infraction violations, the citation requires no accompanying police report. The citation stands alone and is forwarded to records. The citing officer should complete the reverse of the citation, making sufficient notes so that the incident can be recalled accurately in court at a later date.

In the case of private person (citizen's) arrests for infractions and misdemeanor violations, a police report is required in addition to the citation itself. Juveniles may be issued notices to appear for infraction violations only. A police report is required whenever a juvenile is issued a citation, or detained for a crime. The suspect should be given the yellow copy of the citation form. Citations should be listed as related documents when a police report is completed.

#### 344.8.12 NOTICE TO APPEAR - CONTINUATION FORM

This form is used to document additional charges that will not fit in the violations box of the standard citation. More than one continuation form may be used if necessary. The suspect should be given the yellow copy of the citation form. Continuation forms should be listed as related documents when a police report is completed.

#### 344.8.13 UNIFORM JUVENILE CITATION

This form is used to provide juvenile suspects notice to appear on felony and misdemeanor violations, where the juvenile is not booked into a juvenile detention facility. The form should be completed as thoroughly as possible. The parent/guardian accepting custody of the juvenile should sign the citation form, as well as the juvenile arrestee. The parent/guardian should be given the pink copy of the juvenile citation form. The citation should be listed as a related document on the police report.

#### 344.8.14 NOTICE OF CORRECTION & PROOF OF SERVICE (CITATION CORRECTION FORM)

This form is used to correct a Notice to Appear that was issued to a suspect. The form should be completed to indicate the required change and the affected court. The pink proof of service portion

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of the form should be completed and mailed to the suspect at their mailing address. The original form should be forwarded to Records for transmission to the affected court. The form should be listed as a related document on the crime report.

#### 344.8.15 BOOKING SHEETS/CARDS

County booking sheets or cards and juvenile intake forms are used to document a suspect being booked into an adult or juvenile detention facility. Each county has unique requirements for their booking paperwork, and this department will abide by each county's policies regarding the completion of booking paperwork. A copy of the booking forms should be listed as a related document on the police report.

#### 344.8.16 JUVENILE INTAKE FORMS

Each county has unique requirements for documenting juvenile arrests and contacts. This department will abide by each county's policies regarding the completion of booking/contact paperwork.

Alameda County requires that a Juvenile Intake Disposition Form be completed when booking a juvenile into Juvenile Hall. The completed form must be turned in to the facility, along with a copy of the completed police report, at the time the juvenile is booked into Juvenile Hall.

Contra Costa County requires the completion of their Juvenile Admission Form, if the officer is citing the juvenile for a misdemeanor or felony. If the juvenile is being booked into Juvenile Hall, a probable cause declaration must be completed in the ARIES system at time of booking. These forms are in addition to the reports normally completed by the officer. The forms provide information related specifically to juvenile offenders and provides space for a statement of probable cause. The department's probable cause declaration form should also be completed.

San Francisco County requires completion of an Admission Form, in addition to the reports normally completed by the officer. This form provides information related specifically to juvenile offenders booked into the Juvenile Justice Center. For juveniles dropped off at the CARC Center, a Juvenile Detention Disposition Report should be completed. The department's probable cause declaration should also be completed.

San Mateo County requires completion of a Juvenile Contact Report when booking a juvenile into Juvenile Hall. For juvenile offenders 14 years of age or older, who are taken into custody for a felony violation, the county requires completion of their special Promise to Appear (Form #JV-365), rather than the department's Uniform Juvenile Citation. The department's probable cause declaration should also be completed.

#### 344.8.17 PROBABLE CAUSE DECLARATIONS

This form is used to establish probable cause for warrantless arrests. The form should be completed for all misdemeanor and felony arrests (with the exception of warrant only arrests). They should also be completed for any misdemeanor private person (citizen's) arrest citation case. Officers should use the computerized template when completing this form, but the form may be completed by hand if necessary. **Names of victims, witnesses and reporting parties should**

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**not be included in the Probable Cause Declaration. If necessary, refer to the person by role, rather than by name.**

In Alameda County the Consolidated Records Information Management System (CRIMS) should be utilized to send an electronic PC Declaration. CRIMS can be found following the URL <https://crims.acgovapp/> or log into CRIMS through the BPD Links folder short cut. For CRIMS log in problems contact the CRIMS help desk anytime at (510)272-3744.

In Contra Costa County the Automated Regional Information Exchange System (ARIES) should be utilized to send an electronic PC Declaration for in-custody arrests. ARIES can be found following the URL <https://ariessystem.us/Main/Login.aspx> or log into ARIES through the BPD Links short cut folder. For ARIES log in problems contact the BART Police ARIES Administrator (currently the BART Police Crime Analyst).

In San Francisco and San Mateo Counties, as well as all out of custody cases in Contra Costa County, the BART Police Probable Cause Declaration form is to be used.

#### 344.8.18 VEHICLE RELEASE

This form is used to provide a vehicle owner a release so their stolen/embezzled vehicle may be retrieved from a towing company. It may be used to release a vehicle that was reported stolen to our department and recovered by another agency, a vehicle reported stolen to another agency and recovered by this department, or a stolen vehicle that was both reported to and recovered by this department. The form should be completed as appropriate with our case number, the outside agency case number, the vehicle information and the releasing officer's information. The vehicle owner should sign the form and the yellow copy of the form should be given to the owner/agent. The original form should be forwarded to records.

#### 344.8.19 MISSING PERSON REPORTING FORM

This form is used to document reports of missing persons. This department is required by law to accept all reports of missing persons, regardless of the ultimate investigative jurisdiction of the case. All available information should be included on the form to document the report as accurately as possible. The communications center is required by law to enter the information into the MUPS system within 4 hours. This form should be listed as a related document on the report. The Department of Justice Missing Persons report form can be located in the G drive under the Police Forms folder.

#### 344.8.20 DENTAL/SKELETAL X-RAY/PHOTOGRAPH RELEASE FORM

In the case of missing juveniles not located within 30 days, this form should be completed, authorizing doctors and dentists with records pertaining to the juvenile to release them to this department in order to assist the investigation. The form may be completed prior to 30 days, and officers should make an effort to have the parent/ guardian sign the form at the time the initial report is made, so the signed form is available if necessary. This form should be listed as a related document on the report.



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#### 344.8.21 11550 H&S NARCOTICS INFLUENCE REPORT

This form is used to document the objective symptoms of a suspect arrested for 11550 H & S. The completed form should be attached to the report as a related document.

#### 344.8.22 VEHICLE REPORT (CHP-180)

This form is intended to accomplish multiple tasks related to vehicles and license plates. As a result, not all boxes will be applicable to each report. However, all boxes that apply to the incident in question should be completed by the reporting officer, using as much detail as possible. It is important to obtain signatures from garage principals, in the case of towed vehicles, and reporting parties, in the case of stolen/ embezzled vehicles and plates.

When towing a vehicle, it is important to document existing damage on the vehicle diagrams on the face of the form. Officers should shade any areas of existing damage, and describe significant damage in the remarks section at the bottom of the face page.

Stolen/Embezzled and Recovery narratives should be documented in a criminal or non-criminal Incident Report (as applicable) in the TriTech Field Based Report system. The narrative should include the SVS entry information, indicating the date and time of the entry and the badge number of the employee who made the entry.

Completed and approved Vehicle Report forms documenting a towed vehicle should be faxed to Administration, at extension 7089, prior to the end of the officer's shift. The form should be listed as a related document on the report.

#### 344.8.23 APPLICATION FOR EMERGENCY PSYCHIATRIC DETENTION (5150 W&I)

This form along with a non-criminal incident report is used to document all incidents where a subject is detained for emergency psychiatric evaluation. All boxes should be completed with as much detail as possible. The reporting officer should document the detainment advisement required by 5157 W & I, which is printed on the form. If the advisement was not completed, a brief explanation must be included in the space provided.

All 5150 W & I reports which include a criminal hold, including all warrants, will be treated as an "in custody" and classified in the TriTech report writing system as an "arrest" in the Arrest report. The report, including all supplements, shall be written, submitted and approved by a supervisor prior to the reporting officer(s) going off duty. This shall also apply to arrestees who are transported for medical treatment prior to being booked into a jail facility. These reports cannot be approved by Field Training Officers and must be approved by a supervisor.

When an arrestee is transported from a medical or mental health facility and booked into a jail, the transporting officer shall complete a supplemental report and send an email to all Detectives and the Detective Sergeant advising them of the booking. The email should include the arrestee's name and case number and should be sent as soon as practicable after the transport has been completed.

Psychiatric self-committals will be treated as a sick person (not attributed to BART) and may be documented in the Call for Service on the TriTech CAD/Mobile software. When documenting

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in the Call for Service, employees will ensure the name of the individual has been added to the supplemental information and the location the injured or sick person was transported to is entered into the call notes.

The narrative section should be completed in enough detail to document the subject's condition and actions, and explain why the reporting officer believed the subject was a danger to him/herself, a danger to others, or was gravely disabled due to a mental condition or inebriation.

In the event that criminal charges will be filed against the subject, the officer should complete the Certification of Criminal Charges portion of the form, indicating who should be notified prior to the subject being released from mental health custody. In this case, an incident report and arrest report must also be completed, in order to document the criminal offense.

Normally all of the green copies of the form should be given to the transporting ambulance and/or the mental health facility. If the transporting ambulance or admitting mental health facility requests the white copy instead, the reporting officer should ensure that the BART case number is legibly written on the remaining green copies for proper filing, as it will not be recorded from the face page. This form should be listed as a related document on the report.

#### 344.8.24 PROPERTY DAMAGE ONLY REPORT (CHP 555-03)

This scanned document is a two-part form used to record traffic collisions which qualify for the PDO report (two or fewer vehicles involved, no injuries, and no intended prosecution). The form should be completed using the standard format found in the CHP Collision Investigation Manual (CIM). All applicable boxes should be completed. The sketch should be done using standard figures as found in the CIM. The narrative should be completed in a non-criminal incident report using the format located in the CIM.

The original report should be forwarded to Records. The reporting officer may give each party to the collision a copy of the form. The copy contains the upper portion of the completed report, listing the parties, any witnesses and the sketch of the collision. This form should be listed as a related document.

#### 344.8.25 DRIVING UNDER THE INFLUENCE ARREST INVESTIGATION REPORT (CHP 202)

This handwritten form serves to document the investigation of suspected DUI cases. Each applicable box should be completed in as much detail as possible. This form should be a related document, listed on the TriTech incident report.

The face page of the CHP 202 documents the suspect's information, vehicle details, and witness/passenger/victim information. There is a Miranda admonition printed on the form. The suspect's acknowledgment and waiver or invocation of Miranda rights should be recorded on the form. The suspect should sign the form to document his/ her choices.

The Misdemeanor Incarceration portion of the form should be completed if the suspect is booked. All situations that apply should be checked, to document the reasons for the suspect being booked for a misdemeanor violation, pursuant to 853.6 PC.

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The reverse of the form documents the investigation interview, objective symptoms of intoxication and field sobriety test location. There is also a section to document the results of a Preliminary Alcohol Screening test, if applicable. The results of any chemical tests (Breath/Blood) should also be recorded on the form. The final item on the reverse of the form documents the Trombetta Advisement, and the suspect's election regarding additional test samples.

#### 344.8.26 INTOXICATION EVALUATION/ARREST

This form is used to document the results of Field Sobriety Tests (FST's) given to suspects in DUI cases. The form provides boxes to identify the suspect and related vehicle, as well as sections for standard FST's, with diagrams which can be completed to record the suspect's performance on each test. All portions of the form should be completed in enough detail to accurately document the suspect's performance during the FST's. This form supplements the CHP 202 and is a related document in the TriTech incident report.

#### 344.8.27 AGE 21 & OLDER OFFICER'S STATEMENT (DMV 367), UNDER 21 OFFICER'S STATEMENT (DMV 367M), UNDER 21 OFFICER'S STATEMENT - SPANISH (DMV 367M SPANISH)

These forms are used to document the DUI arrest and suspension/revocation of a suspect's license by the arresting officer. This form does not replace the Intoxication Evaluation/Arrest form, but is instead sent to the Department of Motor Vehicles to document the arrest and confiscation of the suspect's driver license. The Over 21 version (gray) of the form is to be used for all suspects 21 years and older. The suspect is provided the pink copy of the form, which provides information regarding the suspension of their license and administrative review procedures conducted by DMV. The Spanish version (red) of the form is printed in English on the face of the document, in order for the officer to document the arrest and confiscation of the license. The pink copy of the form, provided to Spanish speaking suspects, explains the hearing issues and DMV formalities in Spanish on the reverse.

The Under 21 (green) version of the form is to be used with suspects under the age of 21, and is similar to the other forms, with the exception of the lower blood alcohol level allowed. Again, the pink copy of the form is provided to the suspect. This form should be listed as a related document on the report.

#### 344.8.28 PURSUIT REPORT (CHP187A)

The pursuit report should be prepared by the responsible supervisor as soon as possible following a pursuit (see also Policy #314). This form should be completed with as much information as is known about the suspects, vehicles involved, and the results of the pursuit. Detailed directions for completion of the form are located on the reverse side of the form. This form should be listed as a related document on the report.

#### 344.8.29 CITIZEN PROPERTY RECEIPT (FORM #1448)

This form is used to provide a receipt for property taken or located by members of this department. The item taken into custody should be described as fully as possible and the storage location

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should be noted. The original of the form should be forwarded to the Property/Evidence bureau. The citizen should be given the yellow copy of the form for their records.

The Property Label (Form #0470) with wire attachments, is used in conjunction with the Property Receipt, and should be used to identify large or bulky items, such as bicycles, that cannot be packaged in standard departmental evidence envelopes/ bags. The hard copy of the form should be attached to the item with the wire. The top copy of the form should be forwarded to the Property/Evidence bureau for their records.

Both forms should be listed as related documents on the report.

#### 344.8.30 EVIDENCE ENVELOPE (FORM #1220)

The manila evidence envelope is the standard container for booking collected evidence items. All portions of the envelope should be completed as appropriate. Officers should check the appropriate box to classify the item inside as either evidence, safekeeping or found property. Officers should also check the box indicating whether the item inside is narcotics, currency, fingerprints, or other. The reporting officer should then complete the boxes for Victim, Case Number, Suspect, Item Number, Location, and Offense. The item should be described as clearly as possible, along with the identity of the recovering officer and the date and time of recovery. The chain of custody is documented using the appropriate section on the evidence envelope. If the envelope contains narcotics, the boxes at the bottom of the envelope should be checked to indicate what drug the substance should be analyzed for. The glue flap should be sealed and evidence tape should be placed over the flap. The sealing officer should write the case number, date and his/her badge number over the tape.

If the envelope contains currency, the amount of currency and/or coin should be noted in the blocks on the reverse of the envelope. The officer counting the money should place his/her name and badge number, as well as the date and time in the appropriate blocks.

If the envelope contains narcotics or currency, a witness signature is also required, in the witness block.

If the evidence item is too large to fit into the evidence envelope, the pre-printed evidence bag should be used. The bag should be completed in the same manner as the evidence envelope.

#### 344.8.31 TICKET EVIDENCE ENVELOPE (FORM #0720)

This white evidence envelope is intended only to contain BART tickets taken as evidence. It is completed in the same manner as the large evidence envelope.

#### 344.8.32 FORENSIC MEDICAL REPORT: NON-ACUTE (>72 HOURS) CHILD/ADOLESCENT SEXUAL ABUSE EXAMINATION (OCJP 925)

This form must be completed when documenting reported incidents of sexual abuse of children. It is meant to be completed in conjunction with a physician or other medical professional during a medical examination searching for evidence of sexual abuse. The original of the form should be retained as evidence by this department. Copies should be provided to Child Protective Services

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and the Medical Facility conducting the examination. This form should be listed as a related document on the report.

#### **344.8.33 REPORT OF SUSPECTED DEPENDENT ADULT/ELDER ABUSE (SOC 341)**

This form is used to document reports of possible dependent adult/elder abuse received by this department, as required by 15630 and 15658(a)(1) W&I. A "Dependent Adult" is anyone aged 18-64, residing in this state, who has physical or mental limitations that restrict his/her ability to carry out normal activities or to protect his/her rights. An "Elder" is anyone 65 years of age or older, who resides in this state.

Officers of this department are mandated reporters pursuant to 15630(a) W&I. As such, any instance of known or suspected abuse (physical abuse, sexual abuse, financial abuse, abduction, neglect (including self-neglect), isolation, and abandonment involving an elder or a dependent adult must be documented using this form. The original report must be completed and submitted to the Investigations bureau within two working days, if the instance of abuse took place in BART's jurisdiction. The original form should be placed in the case file. The responsible county Adult Protective Services office should be notified as soon as possible, and should be provided a copy of the report form. If the instance of abuse took place in another jurisdiction, the law enforcement agency with jurisdiction and the county Adult Protective Services agency must be notified within two working days of receiving the report, and both agencies should be provided a copy of the form. This form should be listed as a related document on the report.

Failure of a mandated reporter to report abuse of a dependent adult/elder is a misdemeanor offense.

### **344.9 SPECIAL CIRCUMSTANCES AND APPLICATIONS**

#### **344.9.1 MULTIPLE INCIDENTS/MULTIPLE VICTIM REPORTS**

A multiple incident/multiple victim event is one where a suspect commits separate acts against the person or property of others, resulting in multiple victims of the same/similar type of crime, for example, a suspect burglarizes several automobiles at the same station. In order to document this type of event, all involved victims, vehicles, property and evidence will be entered into one report. The narrative of this report will describe the entire investigation completed by the officer.

#### **344.9.2 MULTIPLE VICTIM REPORTS**

A multiple victim incident is caused by a suspect's singular act that results in injury or property loss to more than one person, such as a suspect committing an armed robbery of a group of people. Multiple victim reports should be documented in one case, listing all victims and involved parties in the same report.

#### **344.9.3 HATE MOTIVATED CRIMES**

Hate motivated crimes are any criminal act or attempt to cause physical injury, emotional suffering or property damage where there is reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's actual or perceived race, ethnicity, religion, gender, sexual

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orientation or physical or mental disability. (See Policy 338 for further details regarding Hate Crimes)

The reporting officer should notify a supervisor as soon as possible if he/she believes an incident is a hate crime. The supervisor will notify the on-duty watch commander. The watch commander will determine the need for additional notifications.

#### 344.9.4 CONFIDENTIAL CASES

A Confidential Case is an investigation that may involve a BART employee, BART affiliated contractor or person otherwise associated with BART, where disclosure of the person's identity or affiliation, or other facts could compromise the investigation.

When police personnel receive information regarding employee criminal activity, the investigating officer should discreetly gather sufficient facts to make an oral report to a supervisor. The supervisor will determine the appropriate response. In-progress crimes should be handled by officers as they normally would, with an immediate police response to stabilize the situation and investigate the crime at hand. A supervisor will coordinate the response and preliminary investigation to maintain confidentiality, if at all possible. The supervisor may consider the use of a telephone report or a delayed response if the appearance of uniformed police personnel at the scene might be detrimental to the successful investigation of the crime.

If the initial investigation indicates a more thorough, confidential investigation is warranted, these circumstances should be documented as a Confidential Case and the following procedures should be followed:

- (a) The reporting officer should obtain a case number from the Communications Section and request that the case be classified as "Confidential-Criminal Investigations," or "Confidential-Internal Affairs." Confidential reports will be entered directly into the Inform Records Management System and contained in a confidential folder with access granted to only the investigator and/or investigating supervisor.
- (b) The supervisor should notify either the investigations lieutenant, zone lieutenant/watch commander, or Internal Affairs lieutenant, as applicable.
- (c) The supervisor should approve the completed police report, and assign primary responsibility, as appropriate. No copies of the report should be printed.

#### 344.9.5 TELEPHONE REPORTS

Telephone reports may be taken in certain circumstances. Personal follow-ups on telephone reports should be conducted whenever the case appears to warrant it. Telephone reports may be taken in cases that meet any of the following criteria and they should be completed using the appropriate report form as outlined in this policy:

- The nearest officer is not available within a reasonable time.
- The reporting party/victim is unable or unwilling to wait or has already left the scene.
- The call does not require immediate police action.

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#### 344.9.6 REPORTS PREPARED BY COMMUNITY SERVICE OFFICERS

Community Service Officers (CSOs) are authorized to prepare police reports if the following criteria are met:

- The suspect has left the scene and cannot be located.
- There is no potential for immediate investigative follow-up which could lead to the identification and/or apprehension of the suspect.

The following are types of reports that may be completed by Community Service Officers:

- Petty Thefts
- Grand Thefts (except 487(c) PC)
- Burglaries
- Vehicle Thefts
- Vehicle Recoveries
- Vehicle Releases
- Vehicle Tows
- Vehicle Collisions (non-injury)
- Hit and Run Collisions (non-injury)
- Sick Persons/Employees (except where alcohol and/or drugs are a contributing factor)
- Injured Persons/Employees (except where alcohol and/or drugs are a contributing factor)
- Found Contraband (other than firearms)
- Vandalism
- Lost Property (when authorized by the Watch Commander)
- Other Reports as Determined by a Supervisor

#### 344.9.7 REPORT REVIEWS

A Report Review form should be used when a police supervisor or manager believes that a documented assessment of a police report is appropriate. As supervisors are responsible for the daily review of police reports generated in their zones, this will normally occur when a police supervisor finds a report to be either exceptional, or deficient. However, any police supervisor or manager may generate a report review. A report review may be challenged through the chain of command. The final decision concerning challenged report reviews will be made by the report writer's Bureau Deputy Chief. The following procedures apply to the preparation and filing of report reviews:

(a) Preparation:

1. The supervisor/manager preparing the review should document the facts in the report that make it exceptional or deficient in as much detail as possible. If the

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report is deficient, the deficiencies should be identified clearly, with required corrective action specifically listed. The review should be attached to a printed copy of the report so that the review comments can be matched to the written document.

2. Normally, reviews involving report deficiencies should have a due date assigned by the supervisor/manager who initiated the review. If the identified corrections must be made prior to the report being transmitted outside the department, the reviewing supervisor should mark the "immediate" box on the Report Review form. The reporting officer shall then be responsible for making the necessary corrections on his/her next work day. Other deficiencies may have longer due dates assigned by the reviewing supervisor/manager.

(b) Routing of Report Reviews:

1. When a review is generated, it is the responsibility of the supervisor/ manager preparing the review to route it to the reporting officer via the chain of command. If the reporting officer is assigned to the Field Training Officer program, the report review should be sent to the trainee via the field training chain of command. The supervisor of the reporting officer is responsible for making sure all necessary follow-up is completed and noted deficiencies are corrected.
2. The supervisor/manager preparing the review is responsible for directing copies of the review to any others that would be concerned with the information (e.g., Criminal Investigations, Records, etc...).

(c) Filing of Report Reviews:

1. Report reviews should be filed in the report writer's Employee Development Record (EDR) file and may be mentioned in the writer's performance evaluation. Employees should view and initial report review forms that are placed in their EDR file.



Summary  
11/6/2019 05:42:29

Differences exist between documents.

**New Document:**

[Contacts\\_and\\_Temporary\\_Detentions](#)

3 pages (14 KB)

11/6/2019 05:42:29

Used to display results.

**Old Document:**

[Contacts\\_and\\_Temporary\\_Detentions old](#)


4 pages (279 KB)


11/6/2019 05:42:28


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**How to read this report**

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## Contacts and Temporary Detentions

### 440.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

#### 440.1.1 DEFINITIONS

Definitions related to this policy include:

**Consensual encounter** - When an officer contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

**Field interview** - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

**Field photographs** - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video (MAV) system, body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

**Pat-down search** - A type of search used by officers in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee, or others.

**Reasonable suspicion** - When, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

**Temporary detention** - When an officer intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an officer actually restrains a person's freedom of movement.

### 440.2 POLICY

The Bay Area Rapid Transit Police Department respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the officer, the decision to temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the officer based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

### Contacts and Temporary Detentions

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#### 440.3 PAT-DOWN SEARCHES

Once a valid stop has been made, and consistent with the officer's training and experience, an officer may pat a suspect's outer clothing for weapons if the officer has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include but are not limited to:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
- ▲▲ (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or neighborhood where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other weapon. ▲

Whenever practicable, a pat-down search should not be conducted by a lone officer. A cover officer should be positioned to ensure safety and should not be involved in the search.

#### 440.4 FIELD PHOTOGRAPHS

All available databases should be searched before photographing any field detainee. If a photograph is not located, or if an existing photograph no longer resembles the detainee, the officer shall carefully consider, among other things, the factors listed below.

##### 440.4.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Field photographs may be taken when the subject being photographed knowingly and voluntarily gives consent. When taking a consensual photograph, the officer should have the individual read and sign the appropriate form accompanying the photograph.

##### 440.4.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The officer must be able to articulate facts that reasonably indicate that the subject was involved in or was about to become involved in criminal conduct. The subject should not be ordered to remove or lift any clothing for the purpose of taking a photograph. ▲

If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

All field photographs and related reports shall be submitted to a supervisor and retained in compliance with this policy. ▲▲

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#### 440.4.3 SUPERVISOR RESPONSIBILITIES

While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph is taken.

Access to, and use of, field photographs shall be strictly limited to law enforcement purposes.

#### 440.5 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an incident may become unavailable or the integrity of their statements compromised with the passage of time, officers should, when warranted by the seriousness of the case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available members for the following:

- (a) Identifying all persons present at the scene and in the immediate area.
  1. When feasible, a recorded statement should be obtained from those who claim not to have witnessed the incident but who were present at the time it occurred.
  2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Bay Area Rapid Transit Police Department members.
  1. A written, verbal, or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.

Summary  
11/6/2019 05:44:30

Differences exist between documents.

<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Body_Worn_Camera</a>	<a href="#">Body_Worn_Camera old</a>
7 pages (25 KB)	6 pages (285 KB)
11/6/2019 05:44:29	11/6/2019 05:44:29
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### How to read this report

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## Body Worn Camera

### 451.1 PURPOSE AND SCOPE

The San Francisco Bay Area Rapid Transit District Police Department (BART) is providing each of its sergeants, officers, and fare inspectors with a body worn camera for use while on-duty. The body worn camera is designed to record both video and audio activity of members during the course of their official police duties. The body worn camera is intended to assist officers in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident.

The use of the body worn camera provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. Such evidence shall be maintained by the Police Department as an investigatory record if it supports a criminal investigation based on reason to believe the subject of the investigation is or may be involved in criminal conduct, or for purposes of an administrative investigation on the conduct of a member(s) of the Police Department.

Officers shall utilize the body worn camera in accordance with the provision of this Policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.

### 451.2 DEFINITIONS

- (a) "AXON camera" This refers to the camera system that captures audio and video signals that is individually worn by officers and that includes at a minimum a recorder, microphone, and paired monitoring device.
- (b) "Audio Recording" is the electronic recording of sound. "Evidence.com" is the online web-based digital media storage facility. The virtual warehouse stores digitally-encrypted data (photographs, audio and video recordings) in a highly secure environment. The digital recordings are accessible to authorized personnel based upon a security clearance and maintain an audit trail of user activity.
- (c) "Evidence Transfer Manager" (ETM) is a docking station that simultaneously recharges the AXON camera and uploads all data captured from the camera's point of view during officer's shift to bartpd.evidence.com. The ETM ensures that evidence handling is secured and cannot be altered.
- (d) The AXON camera manages the video compression and storage and is capable of playback via a Bluetooth paired smart device. The AXON camera ensures that evidence handling is secured and cannot be altered. Once plugged into the docking station, the AXON camera will upload digitally-encrypted data through the Evidence Transfer Manager to bartpd.evidence.com.
- (e) "AXON Technician" An employee of the department assigned by the system administrator that will assign, oversees, and tracks Department equipment. The AXON Technician shall oversee needed repairs or replacement of the AXON cameras and Evidence Transfer Manager equipment through AXON representatives.

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### Body Worn Camera

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- (f) "System Administrator" The Administrative Services Supervisor will be the bartpd.evidence.com system administrator with full access to user rights who controls passwords, coordinates with the AXON Technician, and acts as liaison with AXON representatives.
- (g) "Video Recording" is the electronic recording of visual images with or without audio component.
- (h) "Impound" is the process by which video and audio files are uploaded to Evidence.com by docking the AXON camera to the Evidence Transfer Manager thereby ensuring files are secure and unable to be altered.

#### 451.2.1 CATEGORIES AND RETENTION PERIODS

The BART Police Department has twelve (12) categories to tag and retain our cases in Evidence.com. Each one is listed below with the current retention cycle. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs, Evidence Specialist, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

1. INFRACTION VIOLATIONS (2 YEARS)
2. DETENTIONS (2 YEAR)
3. SERVICE TO CITIZENS (1 YEAR)
4. COLD REPORT (1 YEAR)
5. ARREST (UNTIL MANUALLY DELETED)
6. OUTSIDE ASSIST (1 YEAR)
7. CONSENSUAL CONTACTS (1 YEAR)
8. SICK OR INJURED PATRONS (3 YEARS)
9. STATEMENTS (UNTIL MANUALLY DELETED)
10. USE OF FORCE (UNTIL MANUALLY DELETED)
11. UNATTENDED DEATH / HOMICIDE (UNTIL MANUALLY DELETED)
12. TESTING / ACCIDENTAL (30 DAYS)

#### 451.3 UNIFORMED OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed patrol officer equipped with a Department issued AXON camera will be responsible for making sure that the AXON camera is in good working order. The AXON camera shall be conspicuously placed on the officer's person and worn in such a way as to provide an unobstructed camera view of officer/citizen contacts. The camera shall be considered mounted correctly if it is mounted using an AXON approved mounting accessory.

Members of the Department that are assigned an AXON camera shall receive mobile video training prior to deployment of the device in an operational setting. At this training, each officer will be provided a standard checklist of steps they are required to complete in order to ensure their AXON camera and mounting systems are in good working order.

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### 451.4 NON-UNIFORMED OFFICER RESPONSIBILITIES

Any officer assigned to a non-uniformed position may carry a Department-issued AXON camera at any time the officer believes that such a device may be utilized in order to assist the officer in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident. However, whenever a non-uniformed officer is working a uniformed patrol assignment he/she shall wear a Department - issued AXON camera in accordance with this policy.

### 451.5 ACTIVATION OF THE VIDEO/AUDIO RECORDER

Penal Code Section 632 prohibits any individual from surreptitiously recording any conversation (confidential communication) in which any party to the conversation has a reasonable belief that the conversation is private or confidential. This excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded. However Penal Code Section 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation as follows:

- (a) No member of the Department may surreptitiously record a contact with or conversation of any other member of this Department without the expressed knowledge and consent of all parties present, including the member whose acts or conversation are being recorded. Nothing in this Section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code Section 3303(g).
- (b) Any member of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation:
  - 1. For the purpose of this Policy, any officer contacting an individual suspected of violating any law or during the course of any official, law enforcement-related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.
  - 2. For the purpose of this Policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted body worn camera will have knowledge that such a contact is being recorded. This subsection shall not apply to contact between a member of the Department wearing a conspicuously mounted body worn camera and other member(s) of the **Department or employees of the BART Office of the Independent Police Auditor**. For purposes of this policy, contact between members of this Department is governed by section 451.5(a), and 451.5(b) (1).
- (c) All on-scene officers (inclusive of all initiating and witness officers) equipped with a body worn camera shall activate their cameras prior to making contact with individuals in any of the following circumstances:



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1. Any law enforcement contact:
    - (a) detentions (as outlined in Policy Section 322.3.1),
    - (b) vehicle stops
    - (c) walking stops
    - (d) ejection of a subject from a BART station or train (no immediate voluntary compliance)
    - (e) probation and parole searches
    - (f) service of a search or arrest warrant
    - (g) any contact with a subject suspected for criminal behavior
    - (h) processing, transporting, and booking of all prisoners
  2. Any contact with a subject for a suspicious person
  3. Officers are encouraged to activate their body worn camera on consensual contacts (as outlined in Policy section 322.3)
- (d) Members of the Department are expected to activate their body worn camera any time they reasonably believe that a recording of an on-duty contact with a member of the public may be of future benefit to the Department.
1. At no time should an officer jeopardize his/her safety or the safety of another in order to activate their body worn camera.
  2. Members of the Department are expressly prohibited from utilizing Department recorders and recorded media for personal use.
  3. Members of the Department will not make copies of any recordings for their personal use and are prohibited from using a recording device (such as a phone camera or secondary video camera) to record media from bartpd.evidence.com or the AXON camera unit. Nothing in this policy shall be construed as limiting an officer's right to carry and use a personal device such as a smart-phone, however officers shall not carry or use another mobile video recorder in addition to the District issued body worn camera without express approval of the Chief of Police.
  4. When an equipment malfunction is identified as a reason for a non-activation or late activation, a supervisor must confirm whether the member performed the required equipment test prior to deployment.

#### 451.6 AXON CAMERA OPERATING PROCEDURES

Prior to going into service each officer shall perform an inspection and record a test video, to ensure that his/her AXON camera is operational. If problems are encountered with any component of the system, the AXON camera equipment will not be used. The officer to whom the problematic equipment is assigned shall report the problem to their immediate supervisor upon becoming aware of it. A spare AXON camera shall be issued to that officer through a supervisor prior to the officer going into service. The officer and supervisor shall inform the AXON Technician via email

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of problems that are occurring with the problem unit as well as what spare AXON camera was assigned to the officer (number of AXON camera unit). The problematic AXON camera shall be routed to the AXON Technician to diagnose and shall reassign a new unit to the affected employee.

- (a) The officers shall report the loss or theft of an AXON camera to their immediate supervisor. The officer shall prepare a memo to be routed via the chain of command to their Bureau Deputy Chief documenting the circumstances surrounding the loss or theft of the device. The AXON technician should be informed via email from the immediate supervisor of the loss. A spare AXON camera shall be issued to the officer through a supervisor prior to going back into service. The officer and supervisor shall inform the AXON Technician via email of what spare was issued (number of AXON camera unit). The AXON Technician shall assign a new unit to the officer as soon as possible after receiving notification of the loss or theft of the camera.
- (b) Once the AXON camera is activated pursuant to Section 451.5 of this policy, it shall remain on until the event giving rise to the activation has reached a conclusion and/or the officer leaves the scene of the event, whichever occurs first. Officers shall record further interaction with suspects, including searching, processing, transporting, and booking. Any exceptions will be documented in the police report and reported to a supervisor. When the officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the AXON camera from the recording mode. If the event giving rise to the activation resumes following the officer's termination of the AXON camera recording the officer shall reactivate their AXON camera.
- (c) When the AXON camera is used in any incident, investigation, or during a traffic stop, this fact will be documented on any relevant citation and/or report prepared regarding the incident. Conversely, when the AXON camera is not used in any incident, investigation, or during a traffic stop, the reason for non-use will be documented on any relevant citation and/or report prepared regarding the incident. Conversely, whenever the AXON camera is not activated as required by Section 451.5 of this policy, the reason for the lack of activation will be documented on the relevant citation and/or police report prepared regarding the event that otherwise would have given rise to activation. For the purposes of capturing the recording or lack of recording in the police report it should be mentioned at the beginning of the narrative summary.
- (d) Department personnel shall not intentionally erase, alter, reuse, modify or tamper with audio-video recordings, nor shall they attempt to erase, alter, reuse, modify or tamper with audio-video recordings.
- (e) If the AXON camera is accidentally activated, the officer shall inform his or her immediate supervisor requesting the recording be deleted. The request shall be sent via email and routed to the AXON Administrator. Once the video has been reviewed by the supervisor and administrator and deemed to have no evidentiary value the video will be categorized as "Testing/ Accidental" and retained for thirty (30) days prior to deletion. Officers should note accidental recordings by labeling them using their Department issued device prior to download.
- (f) Once an officer has completed a recordable encounter he or she shall label the recording using their Department issued device. The officers shall provide the event number, category, and title of the video. This information will be uploaded along with

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## BART PD Policy Manual

### Body Worn Camera

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the video once docked into the ETM at the end of shift. Supervisory personnel shall conduct regular audits to determine whether recordings are labeled in compliance with this section.

- (g) Officers working overtime assignments outside of their direct report locations will ensure they bring their issued AXON camera to the location of their overtime assignment.
- (h) When an officer discovers that his/her AXON camera battery is becoming depleted (as evidenced by a yellow indicator light and/or a sounding tone when recording), the officer shall immediately exchange the camera for a spare located in the Integrated Security Response Center (ISRC). If the officer will be delayed in exchanging the camera, or if the officer is unable to locate a charged spare Axon camera, the officer shall notify a supervisor and the supervisor will locate a charged spare Axon camera for the officer's use as soon as possible.

#### 451.7 AXON CAMERA IMPOUNDING PROCEDURE

To download the videos from their AXON cameras, officers shall place the AXON camera into an assigned open slot on the Evidence Transfer Manager (docking station). This will allow the data to be transferred from the AXON camera, via the docking station, to bartpd.evidence.com. The data is considered impounded at this point and the AXON camera is cleared of existing data.

Officers will ensure all videos capturing arrests, uses of force, and/or any incident deemed necessary by a supervisor, have been downloaded when not leaving their AXON camera in an ETM at the completion of a work shift. Any exceptions to this requirement will only be made in unusual circumstance and with supervisory approval.

#### 451.8 REVIEW OF RECORDED MEDIA

Recorded files may be reviewed in any of the following situations:

- (a) Officers are given access to review his/her recordings when preparing written reports and/or statements relevant to any incident, to help ensure consistency of accounts. Officers must wait for authorization from the Chief of Police, or his or her designee, prior to reviewing video of critical incidents (e.g. Officer Involved Shootings, In-custody Deaths).
- (b) By a supervisor investigating a specific incident, issue, and/or act of officer conduct.
- (c) By any member of the Department who is authorized to participate in an official investigation in the following type of cases only: personnel complaints, administrative investigations, or criminal investigations.
- (d) Pursuant to a lawful process or by members of the District Attorney's office or court personnel otherwise authorized to review evidence in a related case.
- (e) By the Independent BART Police Auditor or his/her investigator.
- (f) With the expressed permission of the Chief of Police or authorized designee.

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## *Body Worn Camera*

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- (g) By the "System Administrators" for the purpose of managing the video evidence, quality assurance, and to categorize, label, provide case numbers to videos when needed.

### **451.9 MOBILE VIDEO RECORDERS**

The Department assigned AXON camera shall be the only mobile video recorder allowed for Department employees while on-duty. Any other mobile video recorder shall only be used with the expressed permission of the Chief of Police.

Summary  
11/6/2019 05:47:31

Differences exist between documents.

New Document:	Old Document:
<a href="#">Personnel_Complaints</a>	<a href="#">Personnel_Complaints_old</a>
17 pages (52 KB)	15 pages (309 KB)
11/6/2019 05:47:27	11/6/2019 05:47:27

Used to display results.


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


No pages were deleted

### How to read this report

**Highlight** indicates a change.

**Deleted** indicates deleted content.

 indicates pages were changed.

 indicates pages were moved.

## Personnel Complaints

### 1020.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Bay Area Rapid Transit Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

#### 1020.1.1 DEFINITIONS

Personnel complaints shall be defined as any allegation of misconduct or improper job performance against any Department employee that, if true, would constitute a violation of Department policy, federal, state or local law. When an allegation warrants investigation, such complaints will be referred to the Internal Affairs Unit for assignment.

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.

#### Definitions:

- (a) **Allegation:** An unproven accusation that a member of the Police Department violated Department/District policy or procedure, or the law.
- (b) **Misconduct:** An act or omission by a Department member that is a violation of Department/District policy or procedure, or the law; which if sustained, could result in disciplinary action.
- (c) **Formal Complaint:** An expression of dissatisfaction or disapproval in regards to the performance of a Police Department employee.
- (d) **Informal Complaint:** A comment on the actions of a Department employee, where either 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), or the Department determines that the nature of the allegation(s) indicates that the investigation should be handled as an Informal Complaint.
- (e) **Supervisor Referral:** For instances involving an Informal Complaint, the Internal Affairs Unit may address the issue through a Supervisor Referral. An assigned supervisor would then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Unit.
  - 1. If the alleged involved employee cannot be identified by the complainant or through investigation by Internal Affairs, then the Supervisory Referral will be attributed to “unknown” employee.
  - 1. If the involved employee has a repeated history of similar complaints, the incident may be formally investigated.

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### Personnel Complaints

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2. If the nature of the allegation(s) warrants investigation, then a formal investigation will be conducted.
  3. Generally, the following will not be addressed through a Supervisory Referral: allegations of excessive/improper force, racial animus, bias-based policing, or workplace discrimination (exceptions may only be approved by the Chief of Police or his/her designee).
- (f) **Complaint Mediation Program:** For instances involving an Informal Complaint, the issue may also be addressed through Complaint Mediation as defined and specified in Policy 1021. Internal Affairs personnel will advise complainants of the Mediation Program option if the complaint is eligible for mediation.
1. Participation in the Complaint Mediation Program must be voluntary for both the complainant(s) and the involved employee(s).
  2. Complaints that include any of the following allegations will not be eligible for the Complaint Mediation program:
    - (a) Use of Deadly Force
    - (b) Suspicious and Wrongful Deaths
    - (c) Unnecessary or Excessive Use of Force
    - (d) Truthfulness
    - (e) Racial Animus
    - (f) Bias-Based Policing and/or Racial Profiling
    - (g) Sexual Orientation Bias
    - (h) Sexual Harassment
    - (i) Arrest or Detention
    - (j) Search or Seizure
    - (k) Reporting Misconduct
    - (l) **Workplace Discrimination/Harassment**
    - (m) Supervision
    - (n) Substantial injury suffered by any of the involved parties
  3. The Chief of Police, or the Chief's designee, at his or her discretion, may deem any complaint ineligible for mediation.
- (g) **Inquiry:** A question or comment regarding the actions of a Department employee or the implementation of Department policy, with no allegation of misconduct. An inquiry could also be a circumstance where a complainant initiates a complaint with Internal Affairs; however it is later determined that the involved party is not a BART Police employee. The case will be referred to the correct agency or department. The BART inquiry will be Administratively Closed.

### Personnel Complaints

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- (h) **Service Review:** When a citizen/customer raises a concern pertaining to a global practice throughout the Department such as Department policy, procedure and/or tactics. Depending on the circumstances, the concern may be evaluated and addressed through a Service Review conducted by Internal Affairs, a designated review committee, or a member of Command Staff. When appropriate, a Service Review could result in a change to Department policy, training and/or tactics.
- (i) **Administrative Closure:** Allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

A case may be administratively closed under (but not limited to) the following circumstances:

- The complaint fails to articulate an act, or failure to act, which would constitute a violation of policy, procedure or law that could lead to discipline if proven true.
- The complaint is received after one year or more has elapsed from the date of the incident, making it difficult to investigate the incident in a thorough, fair, and complete manner. (Particularly, allegations such as courtesy or minor procedural violations may be Administratively Closed if the Department is not made aware of the complaint in a timely manner.)
- The complaint lacks specificity and the complainant either refuses to cooperate or becomes unavailable to provide information necessary to investigate the incident.
- Complaints limited to parking or infraction citations, where there is no allegation of misconduct, shall be referred to the parking citation appeals process or the respective court.
- Complaints that appear to not be based in reality may be administratively closed, including but not limited to the following:
  - The complaint appears hallucinatory and/or fantastical, and there does not appear to be facts available to ground the complaint in reality.
  - The complaint is grossly illogical and/or incomprehensible.
  - The complaint centers on the alleged existence of a broad conspiracy; however there are no articulated facts to be investigated.
  - The complaint is largely similar in content and/or nature to a previous complaint brought by the same complainant, and the previous complaint resulted in a finding of "Unfounded."

A complaint may also be administratively closed under the following circumstances:

- If the incident giving rise to the complaint is recorded on video (body-worn video, surveillance video, and/or any other available video), and the video directly and completely refutes all allegations, then the complaint may be administratively closed based on the following conditions:



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- Internal Affairs reviews the complaint and the video and determines that the allegation is either unfounded or exonerated based on the video, and
- Internal Affairs determines that no further investigation is necessary to unfound or exonerate the allegation and
- The BART Office of Independent Police Auditor (OIPA) exercises its authority under the BART Citizen Oversight Model to review the Internal Affairs investigative processes and findings and determines that the findings and administrative closure are justified.
- In these circumstances, and only after review by OIPA pursuant to the Model, Internal Affairs will document the allegation, summarize the video, and justify a disposition of unfounded or exonerated in an Administrative Closure memorandum to file.
- If OIPA determines that the evidence does not support a finding of unfounded or exonerated and/or that an administrative closure is inappropriate, then a full Internal Affairs investigation will be conducted.

If a complaining party initiates a complaint but then either refuses to cooperate with the investigation or becomes unavailable, the Internal Affairs Unit will exercise due diligence and proceed with an investigation. Based on a lack of information, the Chief of Police or his/her designee may determine that a matter does not need to be classified as a personnel complaint and the investigation may be administratively closed. However, depending on the seriousness of the complaint and the availability of information, further investigation may be conducted by the Internal Affairs Unit.

#### 1020.1.2 ALLEGATION CLASSIFICATIONS

The following classifications of allegations will be used. The purpose of these classifications is to objectively characterize the potential misconduct while avoiding the use of value-laden words that could prejudice the investigation.

- (a) **Arrest or Detention:** An allegation that an arrest lacked probable cause or a detention lacked reasonable suspicion.
- (b) **Bias-Based Policing:** An allegation that a Department member engaged in conduct based on a person's race, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identify, medical condition, or disability.
- (c) **Courtesy:** An allegation that a Department member inappropriately used profane or derogatory language, obscene gesture, or an unprofessional demeanor during a contact with a member of the public.
- (d) **Conduct Unbecoming:** An allegation that a member's conduct, either on or off-duty, was conduct that a reasonable person would find unbecoming a police employee. The nature of the conduct could potentially reflect adversely upon the Department.
- (e) **Force:** An allegation that the amount of force used by a Department member was not objectively reasonable.

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- (f) **Neglect of Duty:** An allegation that a Department member neglected his/her duties and failed to take action as required by law, or by Department policy or procedure, or in compliance with a lawfully given order from a supervisor.
- (g) **Performance of Duty:** An allegation that a Department member did not exercise an appropriate amount of effort to meet Department expectations in the performance of his/her duty per Department policy, practice or procedure.
- (h) **Policy/Procedure:** An allegation that action taken by a Department member did not follow appropriate Department/District policy, procedures or guidelines.
- (i) **Policy Complaint:** An allegation regarding a current Department policy that was properly implemented by a Department member; but which the complainant believes is inappropriate or not valid. A policy complaint is not grounds for discipline.
- (j) **Reporting Misconduct:** An allegation that a Department member failed to notify a Department supervisor of misconduct that threatens the rights of private persons and/or the well being and reputation of the Department.
- (k) **Racial Animus:** An alleged expression or act of animosity toward an individual or group based on race or ethnicity.
- (l) **Supervision:** An allegation that a supervisor did not detect a pattern of misconduct by a Department member that he/she reasonably should have known about; and/or an allegation that a supervisor did not properly supervise and take corrective action for misconduct that he/she knows or reasonably should have known about.
- (m) **Search Or Seizure:** An allegation that a search or seizure was conducted by a Department member in violation of the 4th Amendment.
- (n) **Truthfulness:** An allegation that a Department member knowingly made a false statement or purposely omitted pertinent facts to a supervisor, in a police report, court testimony, or investigative interview conducted by the Department; or the fabrication or destruction of evidence.
- (o) **Workplace Discrimination and (WH) Workplace Harassment:** See BART Operations Rules and Procedures Manual section 1307.

The definitions of Discrimination and Harassment only apply to workplace interactions between BART employees and to Department Initiated Investigations that arise from allegations of workplace discrimination and harassment. Discrimination or harassment by Department members toward members of the public shall be characterized as an allegation of Bias Based Policing (BBP) and/or Racial Animus.

#### 1020.2 POLICY

The Bay Area Rapid Transit Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

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### Personnel Complaints

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It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

#### 1020.2.1 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, by e-mail, or by telephoning the Department.

- (a) Any Department employee who is informed of potential misconduct shall immediately notify a supervisor.
- (b) During normal operational hours, allegations of misconduct shall be referred to the Internal Affairs Unit. When an Internal Affairs investigator is unavailable, the complainant will be put in contact with a Watch Commander, or lastly a Zone Sergeant.
- (c) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint.
- (d) Supervisors shall receive and document all complaints from any source alleging misconduct of an employee.
  - (a) If the reporting party states that they would like to make a Formal Complaint, the supervisor shall use a complaint intake form to document the reporting person's contact information and the nature of the allegation. The supervisor shall then forward the information to the Internal Affairs Unit.
  - (b) If the reporting person makes an Informal Complaint, the receiving supervisor will forward the information to the Internal Affairs Unit.
  - (c) Even in the absence of a Formal or Informal Complaint request, if the nature of the allegation(s) warrants investigation and/or could result in discipline, then the statements made by the reporting person and their contact information shall be documented on a complaint intake form and forwarded to the Internal Affairs Unit.
- (e) When a complainant is intoxicated to a degree that his/her physical state may significantly inhibit his/her ability to give a thorough and complete statement, a supervisor should not attempt to take a detailed statement at that time. Instead, the supervisor should take a brief recorded statement, obtain the complainant's contact information, and give the complainant a complaint form for future reference. The Office of Internal Affairs will take appropriate actions to contact the complainant and take a detailed statement at a time when the complainant is no longer impaired due to intoxication.

#### 1020.2.2 DEPARTMENT INITIATED INVESTIGATIONS

Allegations of misconduct generated within the police department that cannot be addressed at the supervisory level will be investigated through the Internal Affairs Unit.

- (a) Any Department employee who witnesses potential misconduct shall immediately notify a supervisor.
- (b) Allegations of misconduct may be reported to the Department by employees, union representatives, or supervisors.

## Personnel Complaints

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- (c) The Internal Affairs Unit may initiate an allegation of misconduct based on cause.
- (d) If an investigation discloses misconduct or improper job performance which was not included in the original allegation(s), the investigation will address the additional allegation(s).

### 1020.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

#### 1020.3.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

### 1020.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

#### 1020.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other District facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

#### 1020.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall

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obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7). The Office of Internal Affairs will additionally provide complainants with a brochure from the BART Office of the Independent Police Auditor.

#### **1020.4.3 AVAILABILITY OF WRITTEN PROCEDURES**

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

#### **1020.5 DOCUMENTATION**

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form and emailed to the Office of Internal Affairs. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

#### **1020.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

##### **1020.6.1 SUPERVISOR RESPONSIBILITIES**

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - (a) The original complaint form will be directed to the Office of Internal Affairs of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  - (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Deputy Chief or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.

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- (c) Resolving those personnel complaints that can be resolved immediately.
  - (a) Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
  - (b) If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Office of Internal Affairs.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Office of Internal Affairs and the Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Human Resources Department and the Office of Internal Affairs for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Office of Internal Affairs, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 1020.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Internal Affairs Division, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Bay Area Rapid Transit Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.

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- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - (a) A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
  - (b) No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

#### 1020.6.3 INTERNAL AFFAIRS INVESTIGATION PROCESS

- (a) The Internal Affairs Unit shall be the principal entity for receiving, classifying, assigning, investigating, and filing allegations of misconduct. All allegations of misconduct will be forwarded to the Internal Affairs Unit.

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- (b) The Internal Affairs Unit is responsible for case tracking and the assignment of due dates for allegation of misconduct investigations. The assigned investigator is expected to complete each investigation in a timely manner. The investigator will conduct a thorough, accurate, and objective investigation.
- (c) The Internal Affairs Unit will apprise the Chief of Police of all allegations of misconduct and status of investigations.
- (d) If a command-level officer is the subject of an allegation of misconduct, the Chief of Police will review the allegation and assign an appropriate investigator. If the Chief of Police is the subject of an allegation, the BART General Manager will review the allegation and assign an appropriate investigator.

#### 1020.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

**Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

**Synopsis** - Provide a brief summary of the facts giving rise to the investigation.

**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

#### 1020.6.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member. 🙏🙏



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**Sustained** - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

#### 1020.6.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

#### 1020.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

#### 1020.7 ADMINISTRATIVE SEARCHES

An employee of this Department may be administratively ordered to submit to a blood, breath, or urine test for alcohol and drugs under any of the following circumstances:

- When the employee, whether on or off-duty, is involved in a shooting or police related death.
- When the employee is involved in an injury or fatal accident while on duty.
- When the employee is involved in an injury or fatal accident while operating any District owned vehicle whether on or off-duty.
- When the employee is found to be exhibiting objective symptoms of intoxication or drug influence while on duty.

The use of compelled testing results shall be restricted to the administrative investigation.

Any employee may also be required to be photographed, video and/or audio recorded, and/or ordered to participate in a line up during an Internal Affairs investigation.

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

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Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

#### 1020.7.1 DISCLOSURE OF FINANCIAL INFORMATION

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

#### 1020.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

#### 1020.8.1 ACCESS TO INTERNAL AFFAIRS RECORDS

Only those members of the Department authorized by the Chief of Police will be allowed access to Internal Affairs records. In addition, the Office of the Independent Police Auditor is authorized to access to the Internal Affairs records. Information within the record shall be kept with strict confidentiality. The following personnel are authorized access to a member's personnel file, with the indicated limitations:

- (a) The member: Members may review their own personnel file during normal business hours, after making the request through the Office of the Chief of Police.
- (b) Internal Affairs personnel: Any member assigned to the Internal Affairs Unit may review another member's Internal Affairs records for the purpose of effectively completing an internal investigation.
- (c) Outside requests: Any requests to review a member's Internal Affairs records by an outside agency must be approved by the BART Legal Department in accordance with California Evidence Code Section 1043, or requested pursuant to a Federal court order.

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#### **1020.9 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Bay Area Rapid Transit Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

#### **1020.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

##### **1020.10.1 DIVISION COMMANDER RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Division Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Division Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

##### **1020.10.2 CHIEF OF POLICE RESPONSIBILITIES**

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the

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event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
  1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
  2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

#### **1020.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT**

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(f)).

#### **1020.10.4 NOTICE REQUIREMENTS**

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

#### **1020.11 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

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- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

#### 1020.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

#### 1020.13 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

#### 1020.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

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### **1020.15 RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

Summary  
11/6/2019 05:49:29

Differences exist between documents.

<b>New Document:</b>	<b>Old Document:</b>
<a href="#">Personnel_Records</a>	<a href="#">Personnel_Records old</a>
8 pages (28 KB)	6 pages (284 KB)
11/6/2019 05:49:28	11/6/2019 05:49:28
Used to display results.	


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


No pages were deleted

### How to read this report

**Highlight** indicates a change.

**Deleted** indicates deleted content.

 indicates pages were changed.

 indicates pages were moved.

## Personnel Records

### 1026.1 PURPOSE AND SCOPE

This policy governs maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

### 1026.2 POLICY

It is the policy of this department to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California (Penal Code § 832.7).

### 1026.3 DEPARTMENT FILE

The department file shall be maintained as a record of a person's employment/appointment with this department. The department file should contain, at a minimum:

- (a) Personal data, including photographs, marital status, names of family members, educational and employment history, or similar information. A photograph of the member should be permanently retained.
- (b) Election of employee benefits.
- (c) Personnel action reports reflecting assignments, promotions, and other changes in employment/appointment status. These should be permanently retained.
- (d) Original performance evaluations. These should be permanently maintained.
- (e) Discipline records, including copies of sustained personnel complaints.
  1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least two years (Government Code § 26202; Government Code § 34090).
  2. Disciplinary action resulting from a sustained civilian's complaint shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).
- (f) Adverse comments such as supervisor notes or memos may be retained in the department file after the member has had the opportunity to read and initial the comment (Government Code § 3305).
  1. Once a member has had an opportunity to read and initial any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).
  2. Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).
  3. If a member refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall



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not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).

- (g) Commendations and awards.
- (h) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

#### 1026.4 BUREAU FILE

Bureau files may be separately maintained internally by a member's supervisor for the purpose of completing timely performance evaluations. The Bureau file may contain supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code § 3305 and Government Code § 3306.

#### 1026.5 TRAINING FILE

An individual training file shall be maintained by the Personnel and Training Lieutenant for each member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically (e.g., Daily Training Bulletin (DTB) records).

- (a) The involved member is responsible for providing the Personnel and Training Lieutenant or immediate supervisor with evidence of completed training/education in a timely manner.
- (b) The Personnel and Training Lieutenant or supervisor shall ensure that copies of such training records are placed in the member's training file.

#### 1026.6 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the Internal Affairs Division in conjunction with the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or the Internal Affairs Division lieutenant or deputy chief.

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition (Penal Code § 832.12). Investigations of complaints that result in the following findings shall not be placed in the member's file but will be maintained in the internal affairs file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

Investigation files arising out of civilian's complaints shall be maintained pursuant to the established records retention schedule and for a period of at least five years. Investigations that

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resulted in other than a sustained finding may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5).

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least two years (Government Code § 26202; Government Code § 34090).

#### **1026.7 MEDICAL FILE**

A medical file shall be maintained separately from all other personnel records and shall contain all documents relating to the member's medical condition and history, including but not limited to:

- (a) Materials relating to a medical leave of absence, including leave under the Family and Medical Leave Act (FMLA).
- (b) Documents relating to workers' compensation claims or the receipt of short- or long-term disability benefits.
- (c) Fitness-for-duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
- (d) Medical release forms, doctor's slips and attendance records that reveal a member's medical condition.
- (e) Any other documents or materials that reveal the member's medical history or medical condition, including past, present or future anticipated mental, psychological or physical limitations.

#### **1026.8 SECURITY**

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by the General Manager, General Counsel or other attorneys or representatives of the District in connection with official business.

##### **1026.8.1 REQUESTS FOR DISCLOSURE**

Any member receiving a request for a personnel record shall promptly notify the Custodian of Records or other person charged with the maintenance of such records.

Upon receipt of any such request, the responsible person shall notify the affected member as soon as practicable that such a request has been made (Evidence Code § 1043).

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

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All requests for disclosure that result in access to a member's personnel records shall be logged in the corresponding file.

#### 1026.8.2 RELEASE OF PERSONNEL INFORMATION

Personnel records shall not be disclosed except as allowed by law (Penal Code § 832.7; Evidence Code § 1043) (See also Records Maintenance and Release Policy).

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this department may be guilty of a misdemeanor (Penal Code § 146e).

The Department may release any factual information concerning a disciplinary investigation if the member who is the subject of the investigation (or the member's representative) publicly makes a statement that is published in the media and that the member (or representative) knows to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement (Penal Code § 832.7).

#### 1026.9 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF OFFICERS

Personnel records and records related to certain incidents, complaints, and investigations of officers shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

The Custodian of Records should work as appropriate with the Chief of Police or the Internal Affairs Division supervisor in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section, a record includes (Penal Code § 832.7(b)(2)):

- All investigation reports.
- Photographic, audio, and video evidence.
- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and department policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code § 832.7(b)(7) or other law, the following records shall be made available for public inspection upon request (Penal Code § 832.7):

- (a) Records relating to the report, investigation, or findings of:
  1. The discharge of a firearm at another person by an officer.
  2. The use of force against a person resulting in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) by an officer.
- (b) Records relating to an incident where a sustained finding (see the Personnel Complaints Policy) was made by the department or oversight agency regarding:
  1. An officer engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).
  2. Dishonesty of an officer relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure (Penal Code § 832.7(b)(3)).

When an investigation involves multiple officers, the Department shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an officer unless it relates to a sustained finding of a qualified allegation as provided by Penal Code § 832.7(b)(4) against the officer. However, factual information about the action of the officer during an incident or the statements of an officer shall be released if the statements are relevant to a sustained finding of the qualified allegation against another officer that is subject to release (Penal Code § 832.7(b)(4)).

#### 1026.9.1 REDACTION

The Custodian of Records, in consultation with the Chief of Police or authorized designee, shall redact the following portions of records made available for release (Penal Code § 832.7(b)(5)):

- (a) Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of officers
- (b) Information that would compromise the anonymity of complainants and witnesses
- (c) Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force
- (d) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person

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Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it (Penal Code § 832.7(b)(6)).

#### 1026.9.2 DELAY OF RELEASE

Unless otherwise directed by the Chief of Police, the Custodian of Records should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury due to any of the following conditions (Penal Code § 832.7):

(a) Active criminal investigations

1. Disclosure may be delayed 60 days from the date the use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.
2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or against someone other than an officer who used the force.

(b) Filed criminal charges

1. When charges are filed related to an incident where force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.

(c) Administrative investigations

1. Disclosure may be delayed until whichever occurs later:
  - (a) There is a determination from the investigation whether the use of force violated law or department policy, but no longer than 180 days after the date of the department's discovery of the use of force or allegation of use of force
  - (b) Thirty days after the close of any criminal investigation related to the officer's use of force

#### 1026.9.3 NOTICE OF DELAY OF RECORDS

When there is justification for delay of disclosure of records relating to the discharge of a firearm or use of force resulting in death or in great bodily injury during an active criminal investigation, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Penal Code § 832.7):

- (a) Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.
- (b) When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that

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disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.

1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:

- (a) When the criminal proceeding is against someone other than an officer and there are extraordinary circumstances to warrant a continued delay due to the ongoing criminal investigation or proceeding, then the Department must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest for prompt disclosure of records about use of serious force by officers.

In cases where an action to compel disclosure is brought pursuant to Government Code § 6258, the Department may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation (Penal Code § 832.7(b)(7)).

#### **1026.10 MEMBER ACCESS TO HIS/HER OWN PERSONNEL RECORDS**

Any member may request access to his/her own personnel records during the normal business hours of those responsible for maintaining such files. Any member seeking the removal of any item from his/her personnel records shall file a written request to the Chief of Police through the chain of command. The Department shall remove any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed. If the contested item is not removed from the file, the member's request and the written response from the Department shall be retained with the contested item in the member's corresponding personnel record (Government Code § 3306.5).

Members may be restricted from accessing files containing any of the following information:

- (a) An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.
- (b) Confidential portions of internal affairs files that have not been sustained against the member.
- (c) Criminal investigations involving the member.
- (d) Letters of reference concerning employment/appointment, licensing or issuance of permits regarding the member.
- (e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- (f) Materials used by the Department for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments,

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management bonus plans, promotions and job assignments or other comments or ratings used for department planning purposes.

- (g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (h) Records relevant to any other pending claim between the Department and the member that may be discovered in a judicial proceeding.

#### 1026.11 RETENTION AND PURGING

Unless provided otherwise in this policy, personnel records shall be maintained in accordance with the established records retention schedule.

- (a) During the preparation of each member's performance evaluation, all personnel complaints and disciplinary actions should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. Each supervisor responsible for completing the member's performance evaluation should determine whether any prior sustained disciplinary file should be retained beyond the required period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the required period, approval for such retention should be obtained through the chain of command from the Chief of Police.
- (c) If, in the opinion of the Chief of Police, a personnel complaint or disciplinary action maintained beyond the required retention period is no longer relevant, all records of such matter may be destroyed in accordance with the established records retention schedule.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

October 2019

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Issue date: November 18, 2019



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 **October 1, 2019 through October 31, 2019.**<sup>1</sup>

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

**QUANTITATIVE REPORT**

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	IAB Investigations Resolved*	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
October 2018	10	69		1	0	0
November 2018	13	69		1	0	0
December 2018	5	62		0	0	0
January 2019	15	64		1	0	0
February 2019	12	60		1	0	0
March 2019	14	57		1	0	0
April 2019	14	57		0	0	0
May 2019	10	56		2	0	0
June 2019	9	61		1	0	0
July 2019	11	61		0	0	0
August 2019	9	62		1	0	0
September 2019	13	53		1	0	0
October 2019	6	53	6	1	0	0

**TYPES OF CASES FILED**

Citizen Complaints (Formal)	5
Informal Complaints <sup>7</sup>	1
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>6</b>

**CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>**

OIPA	4
BART Police Department	1
<b>TOTAL</b>	<b>5</b>

\* OIPA added a new data column to the Monthly Report which will be populated going forward.

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During October 2019, **4 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-41) (IA2019-111)	Officers #1-2: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Conduct Unbecoming an Officer</li> </ul> Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Supervision</li> </ul>	OIPA initiated an investigation.	47
2 (OIPA #19-42) (IA2019-112)	Officers #1-4: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul> Officers #1-3 <ul style="list-style-type: none"> <li>• Force</li> </ul> Officers #1-2 <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul> Officer #4: <ul style="list-style-type: none"> <li>• Supervision</li> </ul>	OIPA initiated an investigation.	45
3 (OIPA #19-43) (IA2019-113)	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure (AXON Camera)</li> </ul>	OIPA notified BPD which initiated an investigation.	35
4 (OIPA #19-44) (IA2019-114)	Officers #1-2: <ul style="list-style-type: none"> <li>• Untruthfulness</li> <li>• Policy/Procedure</li> <li>• Courtesy</li> </ul>	OIPA notified BPD which initiated an investigation.	35

During October 2019, **1 Citizen Complaint (Formal)** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-116)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	34

During October 2019, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-115)	Officer #1: <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	BPD initiated a Supervisor Referral. <sup>10</sup>	32

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During October 2019, **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 #19-10) (IA2019-034)†	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: <ul style="list-style-type: none"> <li>Force – Not Sustained</li> <li>Conduct Unbecoming an Officer – Not Sustained</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>Policy/Procedure (AXON Camera) – Sustained</li> </ul>	250	218

During October 2019, **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 (IA2019-021)	Officers used unnecessary or excessive force during a contact.	Officers #1-2: <ul style="list-style-type: none"> <li>Force – Exonerated</li> </ul>	280	240
2 (IA2019-114)	Officers were rude to complainant, improperly ejected complainant from a train, and were untruthful.	Officers #1-2: <ul style="list-style-type: none"> <li>Untruthfulness – Administratively Closed<sup>11</sup></li> <li>Policy/Procedure – Administratively Closed</li> <li>Courtesy – Administratively Closed</li> </ul>	35	8
3 (IA2019-016)	Officers used excessive force and failed to provide appropriate medical care.	Officers #1-2: <ul style="list-style-type: none"> <li>Force – Exonerated</li> <li>Performance of Duty – Exonerated</li> </ul>	286	246

† This complaint remains 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.

During October 2019, **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 (IA2019-110)	Officer was confrontational during a law enforcement contact and would not listen to complainant.	Officer #1: • Courtesy – Supervisor Referral	54	34
2 (IA2019-115)	Officer was rude and unprofessional to complainant.	Officer #1: • Courtesy – Supervisor Referral	32	7

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During September 2019, **1 Informal Complaint** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2018-093)	Employee was traveling at unsafe speeds in a Department vehicle.	Unknown Officer #1: • Policy/Procedure – Supervisor Referral	94	47

### DISCIPLINE ISSUED DURING REPORTING PERIOD

No discipline was issued by BPD during October 2019.

### 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	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	39
Investigations Reviewed During Current Month	20†

†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.<sup>12</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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)).

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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 IA.

<sup>11</sup> Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

<sup>12</sup> 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.

# Celebrating NACOLE at 25 – Courage, Collaboration & Community

25<sup>th</sup> Annual NACOLE Conference | Detroit, Michigan | September 22 – 26, 2019

## DAILY SCHEDULE

### Sunday, September 22<sup>nd</sup>

12:30 p.m. – 1:30 p.m.	<i>Principles of Civilian Oversight and Effective Practices</i>
1:30 p.m. – 2:45 p.m.	<i>Hearing Multiple Voices: Town Hall Meetings in a Volatile Environment</i>
3:00 p.m. – 4:00 p.m.	<i>Conducting and Reviewing Investigations Workshop</i>
4:00 p.m. – 5:00 p.m.	<i>Creating a Trauma-Informed Culture Within Civilian Oversight</i>
5:15 p.m. – 6:15 p.m.	<i>Evening Forum: New and Emerging Oversight – A Roundtable Discussion</i>
6:30 p.m. – 8:30 p.m.	<i>Opening Reception: Join fellow attendees at the Detroit Marriott at Renaissance Center as we kick off the 25<sup>th</sup> Annual Conference and Celebration!</i>

### Monday, September 23<sup>rd</sup>

8:30 a.m. – 9:30 a.m.	A Welcome to this year’s conference: <i>Celebrating NACOLE at 25 - Courage, Collaboration &amp; Community</i>	
9:30 a.m. – 10:15 a.m.	Opening Keynote Speaker: The Honorable Judith E. Levy, United States District Judge for the Eastern District of Michigan	
	<b>TRACK I Training</b>	
10:30 a.m. – 11:45 a.m.	<i>Recalling the Origins of Oversight: Incidents, Tragedies, and Public Demands for Change</i>	
12:00 p.m. – 1:30 p.m.	Keynote Luncheon and Awards Ceremony featuring Barbara McQuade, former U.S. Attorney for the Eastern District of Michigan and Professor from Practice at University of Michigan Law School.	
	<b>TRACK I Training (Concurrent Session)</b>	<b>TRACK II Community Trust (Concurrent Session)</b>
1:30 p.m. – 3:00 p.m.	<i>The Importance of Policy Recommendations: The Role of Civilian Oversight in Long Term Reform</i>	<i>Driving Change Forward: Vehicles for Reform in a Time of Declining Checks and Balances</i>
3:15 p.m. – 4:45 p.m.	<i>Unmasking the Truth Behind Video-Driven Investigations</i>	<i>Data-Driven Policing: How the Gathering of Data by Law Enforcement Impacts the Public</i>
5:00 p.m. – 6:00 p.m.	Evening Forum: <i>TBD</i>	
6:30 p.m. – 9:30 p.m.	Annual Scholarship Fundraiser: <i>Attendees will enjoy dinner and good times with friends and colleagues while supporting the current and future leaders in the field of civilian oversight of law enforcement.</i>	

## Tuesday, September 24<sup>th</sup>

	<b>TRACK I Training (Concurrent Session)</b>	<b>TRACK II Community Trust (Concurrent Session)</b>	<b>TRACK III Institutional Culture and Correctional Oversight (Concurrent Session)</b>
8:30 a.m. – 10:00 a.m.	<i>The Detroit Evolution</i>		
10:15 a.m. – 11:45 a.m.	<i>Addressing Use-of-Force Reform in the New Orleans Police Department</i>	<i>Rethinking Oversight: Developing New Approaches to Fulfill Our Missions</i>	<i>Building Juvenile Correctional Oversight</i>
12:00 p.m. – 1:00 p.m.	Lunch on Your Own		
1:00 p.m. – 2:15 p.m.	<i>The Next Frontier: Body Worn Cameras and Civilian Oversight</i>	<i>Challenging Stigmas: Policing and the Muslim Community</i>	<i>Beyond Collaboration: Making Impact with State Corrections Agencies Through Civilian Oversight</i>
2:30 p.m. – 3:45 p.m.	<i>The Role of Independent Counsel for Civilian Oversight</i>	<i>Youth and Law Enforcement</i>	<i>Improving Grievance Procedures in Correctional Settings</i>
4:00 p.m. – 5:15 p.m.	<i>Oversight and Correctional Leadership</i>		
5:30 p.m. – 6:30 p.m.	Evening Forum: <i>A Crisis in Confidence – When Trust Breaks Down in the Correctional System</i>		

## Wednesday, September 25<sup>th</sup>

	<b>TRACK I Training (Concurrent Session)</b>	<b>TRACK II Community Trust (Concurrent Session)</b>	<b>TRACK IV Collaboration (Concurrent Session)</b>
8:30 a.m. – 10:00 a.m.	<i>Investigating Sexual Misconduct</i>	<i>Why Are They Always Calling the Cops on Me?</i>	<i>Chicago Oversight: Collaboration and Challenges in Practice</i>
10:15 a.m. – 11:45 a.m.	<i>Building Momentum in Use-of-Force Reform</i>	<i>Community-Police Mediation</i>	<i>Oversight from a Law Enforcement Perspective</i>
12:00 p.m. – 1:30 p.m.	Lunch on Your Own		
1:30 p.m. – 3:00 p.m.	<i>Auditing the Health and Safety Impacts of Officer Overtime</i>	<i>How to Analyze Awful but Lawful Police Shootings</i>	<i>Peril at the Top: Civilian Oversight's Role in Ensuring Command Staff Accountability</i>
3:15 p.m. – 5:00 p.m.	NACOLE Annual Membership Meeting and Elections		
6:30 p.m. – 8:30 p.m.	Sankofa Reception: A Celebration of 25 Years		





Thursday, September 26<sup>th</sup>

	<b>TRACK IV Collaboration</b>
8:30 a.m. – 10:00 a.m.	<i>Building Relationships with Law Enforcement While Maintaining Independence</i>
10:15 a.m. – 11:45 a.m.	<i>The Kerner Commission and Policing 50 Years Later</i>
11:45 a.m. – 12:00 p.m.	Closing Remarks

Please note this schedule is subject to change without notice



**Color Legend:**

-  Training for Oversight
-  Community Trust
-  Institutional Culture and Correctional Oversight
-  Collaboration





# Office of the Independent Police Auditor (OIPA)

## BART Rider Survey

*Conducted by: BART Research Division.*

*Survey Findings – September 2019*



# Study Objectives & Methodology

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- **Study objectives:**
  - Measure awareness of OIPA and ad recall
  - Measure understanding of OIPA role
- **Methodology**
  - Online survey among randomly-selected BART riders
  - 9,800 riders invited to participate in the study via email
  - 15% response rate
  - Data is weighted by ethnicity to match BART rider demographics
- **Survey dates:** September 6-16, 2019
- **Incentive:** Drawing to win one of two \$50 Amazon.com gift cards for participating in the survey

# Survey Design & Summary

## Awareness of OIPA

*(respondents are asked to select which BART departments they are aware of)*



## OIPA ad recall

*(respondents are shown 4 ads: OIPA, BART Police Now Hiring, Protect Your Phone, BART Watch)*



## Understanding of OIPA role after seeing ad

*(respondents are asked to review the ad and indicate if statements are true or false)*



## Understanding of OIPA after explaining OIPA role – Agreement with statements

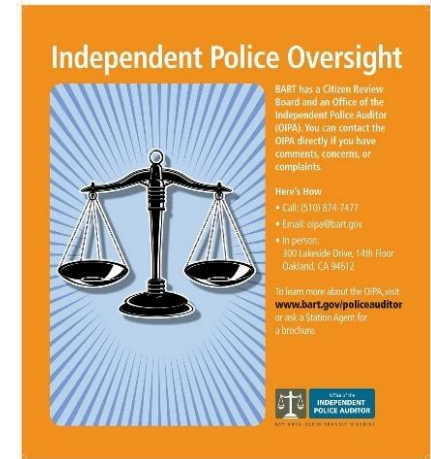
*(respondents are asked to read a short paragraph about OIPA role and they indicate their agreement with statements)*

**11% aware**

**34% have seen the ad**

**78% correctly understood “ad told me who to contact to file a complaint about BART Police”**

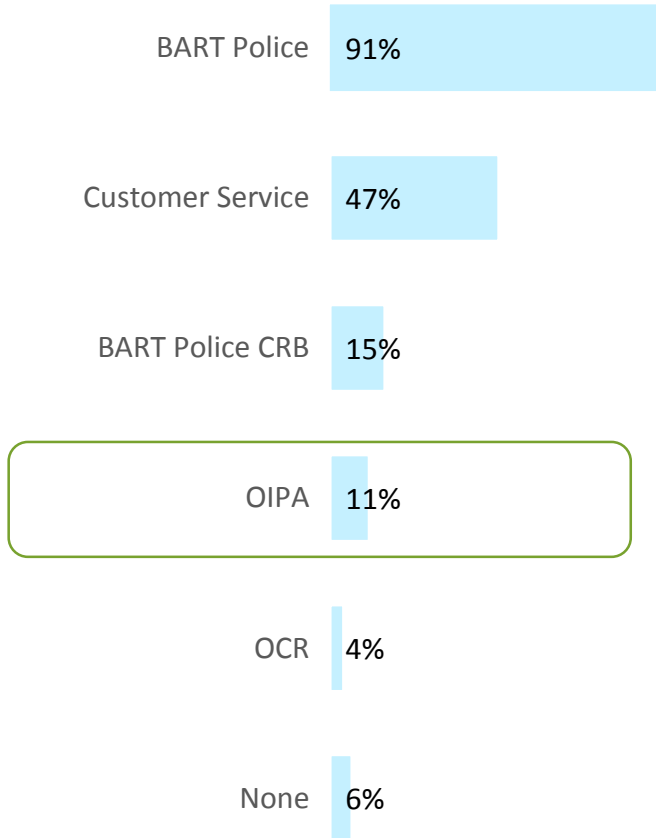
**59% Agree that “OIPA helps deter police misconduct”**



# Awareness compared with other BART departments and recall of ads

## Awareness\*

Q: Which of the following BART departments and services are you aware of? (n=1,502)



## Ad Recall

Q: Which of the following ads, if any, have you seen on BART trains and stations in the past 3 months? (n=1,460)

### Protect your phone!

- Especially near train doors and while waiting on the platform.
- Put it away or at least secure it when approaching stops.
- Be aware of your surroundings at all times.

### ¡Proteja su teléfono!

- En especial cerca de las puertas del tren y al esperar en la plataforma.
- Guárdelo o póngalo en un lugar seguro al acercarse a las paradas.
- Este atento a lo que lo rodea en todo momento.

### 保護您的手機！

- 尤其是在火車門旁邊，還有等候在月台邊的時候。
- 將手機收起來，或至少在火車進站時握好手機。
- 隨時注意您的周圍環境。



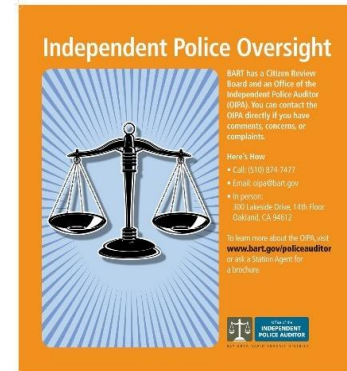
BP Now Hiring 58%

Protect your phone 36%

OIPA 34%

BART Watch 32%

None of these 20%

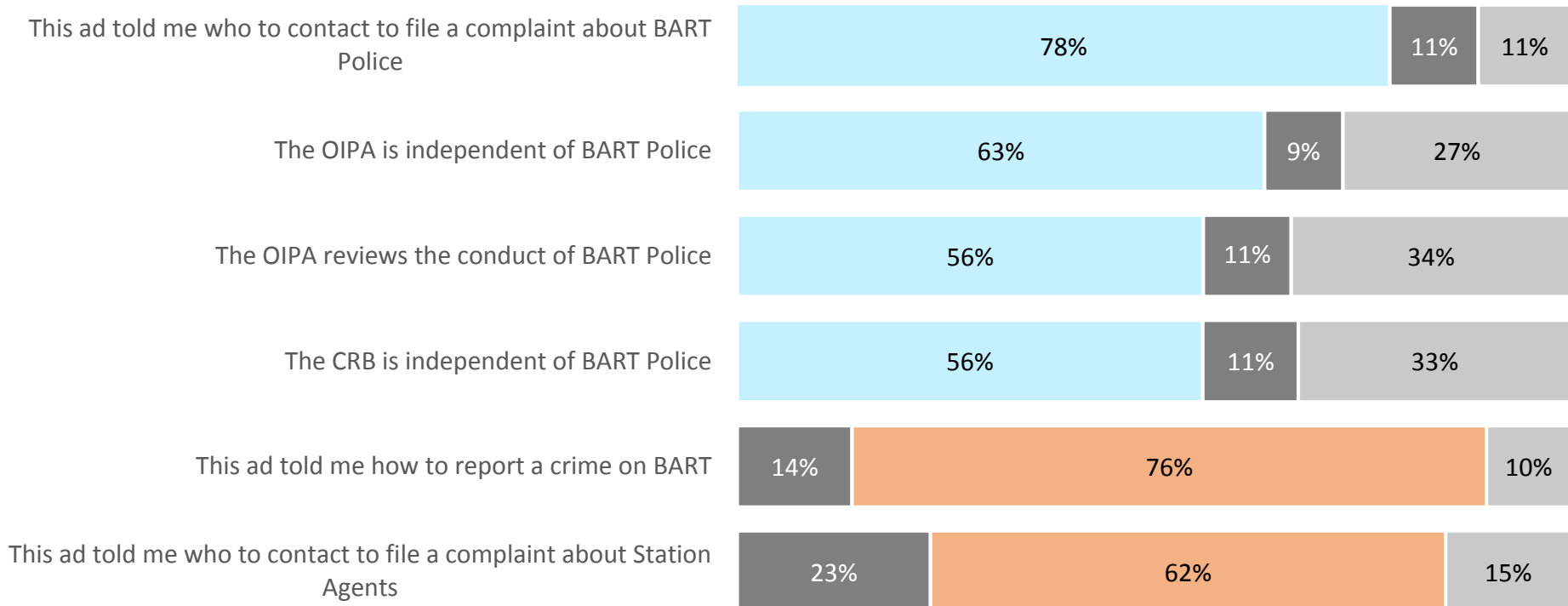


\* Awareness might be overstated by up to 4% (this is based on a 4% false positive rate for awareness of an "Office of Civic Engagement," which does not exist)

# Understanding of OIPA role from the ad

Q: Based on the advertisement, please indicate if these statements are true or false. (n=~1,450)

■ Correctly indicated "TRUE" ■ Correctly indicated "FALSE" ■ Don't Know ■ Answer is inconsistent with the ad message



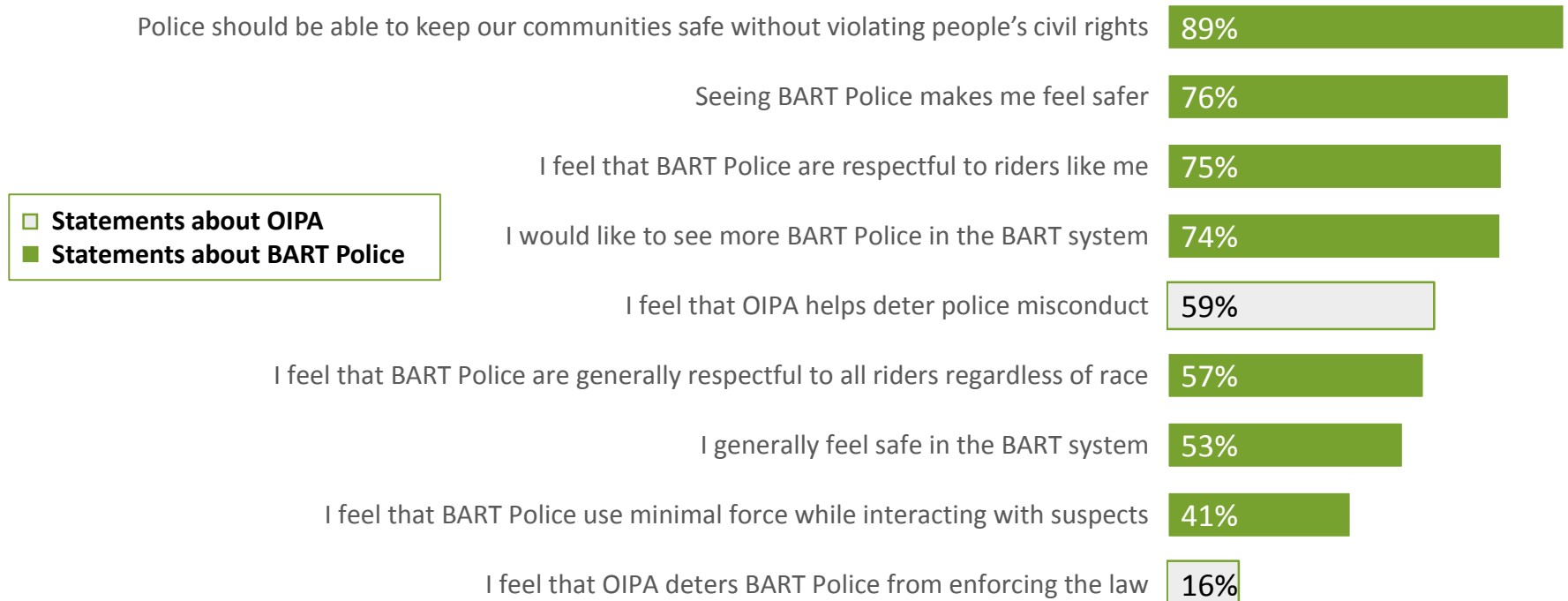
# Perceptions after explaining OIPA role

## OIPA Role

*The OIPA is responsible for BART Police oversight. Anyone can file a complaint against BART Police. OIPA ensures that any allegations of misconduct against BART Police are investigated, including all use-of-force incidents.*

*The OIPA is independent of BART Police. OIPA ensures that BART Police activities are in line with existing policies, which will help maintain personnel accountability and improve community trust.*

**Q: How much do you agree or disagree with the following statements? (Strongly+Somewhat Agree; n=~1,470)**



# Sample comments about OIPA

*I believe it's a good way to keep police honest by having an independent review board that also reviews their bodycam footage.*

*It was interesting to find out about the appropriate office to file a complaint with at BART.*

*I have never heard of any oversight on BART police prior to this survey. And I don't know that I believe it's independent.*

*BART can't announce "independent oversight" on ads within its system, it's a conflict of interest, and the people that care about it won't believe you. Technically I have no idea whether this entity is real or merely a puppet of BART. [The ad] doesn't list its purpose or explain exactly "we are required by law to investigate police excess reported in this way". That said, I don't care either; the BART Police seem to do a good job already.*

*Having an independent agency to oversee BART police is a complete waste of taxpayer's money and deters them from doing their job. In rare cases where citizens feel they are being discriminated or harassed because of race or other factors, they can always file a complaint to the BART Office. But having BART Police walking around BART Station, especially at nighttime, generally makes people feel safer and deters any potential crime which otherwise might have happened without the presence of BART police. So no oversight please!*

*I filed a complaint with the oversight board about police officers' rude treatment of me on the BARTWatch app and was not satisfied with the resolution. I never got an apology from the officers involved or even knew their names, and my request to have badge numbers of responding officers displayed on BART Watch was denied, for "technical reasons" which I don't buy.*

*Racial profiling by BART police and by riders is a huge issue. Your "independent" board doesn't do anything as officers have so much protection that they can get away with just about anything.*

# Feedback on ad – *sample open-end comments*

*The ad did not give enough information on the Independence of the group. Calling it Independent means nothing.*

*The ad didn't say anything at all about what the police oversight did or what you contact them for*

*The ads seem like they were written by attorneys who intentionally wanted to be vague.*

*[Ad] says that it is an independent department, but it still uses the BART website address which makes me think that the department is within BART governance.*

*The ad you asked about could be improved by stating what kind of complaints and activity you can report. As it currently is, It just mentions the existence of an OIPA but not what it's there for or how riders should use them.*

*I feel the ad about Police auditors is vague and unclear. It should say something very specific such as: If you have complaints about BART Police or Station Agents' behavior, you can contact 'X' agency to register a complaint.*

*The ad you asked about could be improved by stating what kind of complaints and activity you can report. As it currently is, It just mentions the existence of an OIPA but not what it's there for or how riders should use them.*



# Comments about BART Police

*Let the BART police do their job - arrest the drug addicts, fare jumpers, thieves. BART has been too lax on crime for too long and the system is a mess. Most do not feel safe as the BART police are kept for treating criminals like criminals.*

*Why is police such a rare sight on BART?*

*Why do I see 3 and 4 BART police people together ? Spread them out so they can be more visible...cover more cars or station areas... walk the cars to see if there are homeless taking up 4 seats or begging....and it would be nice to see more at night when symphony, theaters are over as they are needed in Civic Center boarding area to patrol homeless who are always there and others lighting cigarettes, the station stinks of marijuana.*

*What are you going to do about fare evaders and mentally ill passengers who pose danger to other patrons? ... Panhandling is still going on as well as drug use particularly smoking and injecting leaving needles on trains. Police should be vigilant about these issues.*

*Unfortunately, I believe some police will not be able to do their job for fear of being called a racist. I've noticed that the increase in police has definitely lowered the amount of crime. When I started riding BART from Concord to SF in 2016, we had delays frequently due to police activity. Now, it rarely happens. The police presence has helped a lot.*

*The BART police don't have a good reputation. So while I'd like to see more of them when people are doing things like smoking or shooting up on a train, I also don't want to feel like we're under surveillance....*

*I've never personally seen BART police act disrespectfully toward any riders. Whether it is BART police or some other type of BART employee, I think the primary issue on the system is fare evasion and subsequent crimes committed by those who do not pay fares.*

# Demographics

## Gender

	n	1484
Male	45%	
Female	53%	
Another gender	1%	

## Age

	n	1493
13 to 17	0%	
18 to 24	7%	
25 to 34	22%	
35 to 44	22%	
45 to 54	18%	
55 to 64	19%	
65 and older	12%	

## HH Income before taxes

	n	1403
Under \$25,000	8%	
\$25,000 - \$34,999	6%	
\$35,000 - \$39,999	3%	
\$40,000 - \$49,999	5%	
\$50,000 - \$59,999	5%	
\$60,000 - \$74,999	9%	
\$75,000 to \$99,999	15%	
\$100,000 to \$149,999	22%	
\$150,000 to \$199,999	12%	
\$200,000 or above	15%	

## Ethnicity

	n	1465
White	35%	
Asian or Pacific Islander	32%	
Hispanic, Latino or Spanish origin	17%	
Black / African American	10%	
Am Indian / Alaska Native	1%	
Other	2%	
Multiple race	3%	

## HH Size

	n	1464
1 person (just you)	25%	
2 people	36%	
3 people	19%	
4 people	14%	
5 people	4%	
6 or more people	2%	

## Language spoken

	n	1472
English	70%	
Other	30%	

## How well do you speak English?

	n	351
Very well	86%	
Well	13%	
Not well	1%	