

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**

February 12, 2018

A Meeting of the BART Police Citizen Review Board (BPCRB) will be held on Monday, February 12, 2018, at 4:00 p.m. The Meeting will be in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 344 20th Street, Oakland, California.

AGENDA

1. Call to Order.
2. Call for Quorum.
3. Pledge of Allegiance Recital.
4. Approval of Minutes of Prior Board Meeting. For Discussion and Action.
5. General Discussion and Public Comment. Limited to 3 minutes per speaker.
(An opportunity for members of the public to address the BPCRB on matters under their jurisdiction and not on the agenda.)
6. BPCRB Onboarding and Training Syllabus Subcommittee–Assignment of Subcommittee Members. For Discussion and Action.
7. Revised BPCRB Training Plan for 2018-2019. For Discussion and Action.
8. BPCRB Training Session (The curriculum to be addressed will not satisfy AB 1234 training requirements for legislative body members.)
 - a. BART Citizen Oversight Model Basics
9. National Association of Civilian Oversight (NACOLE) Annual Conference Attendance. For Discussion and Action.
10. Independent Police Auditor’s Report. For Discussion and Action.
 - a. Office of the Independent Police Auditor (OIPA) Monthly Report for January 2018
11. Chief of Police’s Report. For Discussion and Action.
 - a. BART Police Department (BPD) Monthly Report for December 2017
 - b. Rescinded BPD Fare Evasion Policy
 - c. BPD Officer and Employee Vacancy Report
 - d. Use of Force Analysis Report Pursuant to BPD Policy 300 (Section 300.9)
 - e. Proof of Payment Ordinance Enforcement Manual and Protocol
12. Adjournment.

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

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

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

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

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2888

BART Police Citizen Review Board
Monday, January 08, 2018

A regular meeting of the BART Police Citizen Review Board (BPCRB) was held on Monday, January 8, 2018 convening at 4:00 p.m. The meeting consisted of a simultaneous teleconference call at the following locations:

BART Board Room Kaiser Center 20 th Street Mall – Third Floor 344-20 th Street Oakland, CA 94612	Four Points by Sheraton Room 426 22 Woodfin Street Asheville, NC 28801 The Warner Library 121 North Broadway Tarrytown, NY 10591
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Members Present: Chairperson George Perezvelez, Vice Chairperson William White, Kenneth Loo, Cathryn Freitas, Darren White, Les Mensinger, David Rizk, Cydia Garrett, and Richard Knowles.

BART Staff: BART Police Department (BPD) Chief Carlos Rojas, BPD Deputy Chief Lance Haight, BPD Deputy Chief Jeffrey Jennings, BPD Deputy Chief Ed Alvarez, BPD Lieutenant Chris Vogan, BPD Officer Stephen Christ, BPD Senior Administrative Analyst LaTonia Peoples-Stokes, Independent Police Auditor Russell Bloom, Independent Police Investigator Patrick Caceres, and Senior Administrative Analyst Sarah Celso.

Others Present: Director Raburn

Agenda items discussed:

- 1. Call to Order.**
The regular meeting was called to order at 4:05 p.m. by Chairperson George Perezvelez.
- 2. Call for Quorum.**
Chairperson George Perezvelez, Vice Chairperson William White, Cathryn Freitas, Darren White, Les Mensinger, Cydia Garrett, and Richard Knowles were present, amounting to a quorum.
- 3. Pledge of Allegiance Recital.**
The pledge of allegiance was recited.
- 4. Approval of Minutes of Prior Board Meeting. For Discussion and Action.**

A motion to approve the minutes of the prior BPCRB meeting was made by Mr. Mensinger and it was seconded by Mr. D. White. The motion passed with six votes in favor, zero against and one abstention.

5. General Discussion and Public Comment. Limited to 3 minutes per speaker. (A opportunity for members of the public to address the BPCRB on matters under their jurisdiction and not on the agenda.)

No general discussion. No public comment.

6. Training and Community Outreach Planning. For Discussion and Action.

Mr. Rizk entered the meeting at 4:08 p.m.

Chairperson Perezvelez presented and discussed the proposed training schedule for 2018 to the BPCRB.

Ms. Freitas made a motion to accept the proposed training schedule for 2018 and Ms. Garrett seconded the motion.

Mr. Bloom addressed the BPCRB.

Mr. Loo entered the meeting at 4:15 p.m.

Chairperson Perezvelez tabled the original motion.

A motion was made by Mr. Mensinger to approve the February 2018 Training Plan: Oversight Agency Basics, BPCRB Operating Model, and National Organization of Black Law Enforcement Executives (NOBLE) Report and it was seconded by Mr. Rizk. The motion passed unanimously.

The BPCRB discussed training for new BPCRB members.

A motion to create subcommittee to develop training materials for new BPCRB members was made by Mr. Rizk and it was seconded by Mr. Loo. The motion passed unanimously.

Chairperson Perezvelez presented the suggested reading list to the BPCRB.

Mr. Bloom addressed the BPCRB.

7. Online Posting of Agenda Materials. For Discussion and Action.

Mr. Bloom discussed this item.

The BPCRB discussed this item.

The BPCRB and OIPA came to an understanding that agenda materials will be posted online within 72 hours prior to a meeting when feasible. It was discussed that items should be received by OIPA prior to Noon on the Friday before the meeting.

No action taken.

8. Chief of Police's Report. For Discussion and Action.

Chief Rojas wished the BPCRB a Happy New Year. Chief Rojas stated he and his staff will make the best effort to submit agenda materials to OIPA in a timely manner. He mentioned the Proof of Payment manual will be ready for review next month. He also provided an update regarding officer involved shooting that took place on January 3, 2018 near the West Oakland BART Station. Chief Rojas answered questions from the BPCRB.

a. BPD Monthly Report for November 2017.

The BPD Monthly Report for November 2017 was distributed to the BPCRB.

Mr. D. White exited the meeting at 5:16 p.m.

Chief Rojas provided an update on hiring for BPD.

9. Independent Police Auditor's Report. For Discussion and Action.

Mr. Bloom answered questions from the BPCRB regarding the officer involved shooting on January 3, 2018.

a. OIPA Monthly Report

Mr. Bloom presented the OIPA Monthly Report for December 2017.

Mr. Bloom answered questions from the BPCRB.

10. Closed Session.

a. To Consider a Public Employee Discipline/Dismissal/Release in OIPA Case #17-34. Govt Code Section 54957.

The BPCRB reconvened in open session at 5:54 p.m., and Chairperson Perezvelez announced the votes taken during the closed session with regards to agenda item #10a. The BPCRB voted to accept the findings reached by OIPA with seven votes in favor, zero against and zero abstentions.

11. Adjournment.

Chairperson Perezvelez called for the meeting to be adjourned.

The meeting was adjourned at approximately 5:55 p.m.

BART Police Citizen Review Board Proposed Training Schedule 2018-2020

- February 2018: BART Police Citizen Oversight Model – (Materials to be uploaded to New Member Materials)
- April 2018: BART Police Department Internal Affairs Division and BART Office of the Independent Police Auditor Investigation Processes
- June 2018: Tour of BART Stations / Beat Review and Public Safety Outlook
- August 2018: Use of Force / Crisis Intervention Training
- October 2018: Procedural Justice / Implementing Legitimacy in Policy
- December 2018: Monitoring Protests: Crowd Management / Crowd Control
- February 2019: Force Option Simulation
- March 2019: Legal Decisions Impacting Police Oversight
- May 2019: Bias-Based Policing/Racial Profiling
- July 2019: To Be Determined
- September 2019: No Training
- November 2019: To Be Determined
- January 2020: Training Plan Recap and Discussion



Training on Laws Relevant to Your Service on the BPCRB

February 12, 2018

By Byron K. Toma



Outline of Matters to be Covered

- Brown Act
- California Public Record Act
- Standard Rules of Parliamentary Procedure (Sturgis)
- Peace Officers' Procedural Bill of Rights (POBR)
- Copley Press v. Superior Court
- New Cases and Law Relevant to Your Work

Brief Review of the Brown Act

- The basic principle behind the Brown Act is that the deliberations of all public bodies should be visible and transparent.
- Transparency in regard to the affairs of government is a very important feature of our democracy.
- Transparency ensures that the public will have faith in their government and government officials
- Notice of the business before legislative bodies and subordinate legislative bodies must be clearly posted so all may attend.
- The business of the body (deliberations) should always take place publicly and not behind closed doors except in exceptional cases authorized by law.

Basic Noticing Rules

- REGULAR MEETING: 72 hour notice of **regular meetings**
- SPECIAL MEETING: 24 hour notice of **special meetings** (called by chair or majority of the body)
- EMERGENCY MEETING: 1 hour notice of **emergency meetings** (requires a 2/3 finding of an emergency i.e. crippling activity, work stoppage, or other activity which severely impairs public health, safety or both.)
- DIRE EMERGENCY MEETING: Notice at or near the same time as notice is provided to members of the body for **dire emergency meetings** (requires only a simple majority finding of crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one hour notice may endanger public health, safety or both).

Subcommittees of a Brown Act covered body

- Subcommittees come in two flavors
 - Ad Hoc Subcommittees
 - Wholly consisting of less than a quorum of the body (Exempt from Act)
 - Consisting of non body members or a mix of members and non-members or a quorum of the body (Subject to the Act)
 - Standing Subcommittees (Always subject to the Act)
 - Defined by either:
 - having a regular time and place for meeting or
 - having a regular subject matter that the body addresses

Closed Sessions

- Closed sessions are very rarely used by subordinate legislative bodies – however, they are very appropriate to the work of the BART Police Citizen Review Board.
- The Brown Act expressly permits matters involving personnel discipline or termination to be considered in closed session unless the employee who is being reviewed desires the matter to be addressed in open session.
- Remember that every meeting must first convene in open session, and then convene in closed session after which a report out of closed session is required.

Things to remember about closed sessions

- What happens in closed session should remain confidential after the closed session. (“What happens in Vegas stays in Vegas.”)
- The deliberations in closed session should not be disclosed to persons outside the proceeding.
- The holder of the privilege is the BPCRB, and a majority of the quorum is necessary to make matters in closed session public.
- Only the report out of closed session is normally appropriate.

Beware of simple mistakes

- BPCRB members should be careful not to engage in seriatum or serial meetings, i.e. discussions about matters that are within the subject matter jurisdiction of the BPCRB that are discussed outside regularly noticed meetings by a majority of the Board.
 - Beware of emailing everyone on the Board regarding your point of view.
 - Beware of speaking to four other members of the Board about pending matters before the body.
 - Don't use third parties to press your point of view to other members of the Board.
- BPCRB members should likewise be careful not to disclose what happened in closed session deliberations.
- In short, those things intended to be public must be public, and those things intended to be confidential must be treated confidentially.

Accommodating Public Comment

- The public must be allowed to participate in a meaningful way in the discussion of agenda items.
- The public must be allowed to comment on matters outside the agenda.
- The public must be allowed to criticize elected officials, appointed officials, staff, public policy and District operations.
- Only disruptive behavior is subject to taking appropriate and measured sanctions.
- Questions from the public should be taken through the Chair.
- Questions from the public, if calling for deliberative action by the body, should be referred to staff for possible future agendas.

NEXT: Things to remember about the California Public Records Act

- The California Public Record Act is the other great transparency law upon which the public's confidence in its public officers rest.
- It guarantees every member of the public access to what are identified as public records.
- Most documents prepared by, retained by, received by, or used by a public body will likely be deemed a public record.
- The Legislature has, however, adopted a myriad of exemptions from disclosure when there are important interests that outweigh the public's right to know.

Exemptions relevant to the BPCRB

- Government Code Section 6254(c) exempts personnel record from being released to the public.
- Government Code Section 6254(f) exempts law enforcement investigations from being disclosed to the public.
- Government Code Section 6254(h) exempts privileged documents from being disclosed to the public.
- Government Code Section 6255 exempts documents where the interests in disclosure are outweighed by the interests in non-disclosure.

There is wide public support for the California Public Records Act

- In 2004, 83 percent of voters supported enshrining the California Public Records Act in the California Constitution.
- The law has been on the books since 1978.

NEXT: Things to remember about the parliamentary procedures applicable to the BPCRB.

- The BPCRB and all of the subordinate legislative bodies at the BART District follow the Standard Rules of Parliamentary Procedure by Alice Sturgis.
- Like Robert's Rules of Order, the Standard Rules establish a means by which a body's business may be orderly addressed.
- Unlike Robert's Rules of Order, Alice Sturgis emphasized the use of common sense over complicated technical rules that merely served to allow those more informed about procedure to delay or thwart the business of the body.

Precedence of Motions

- Since only one question may be considered at a time, the sequence in which motions may be taken up is fixed by parliamentary law.
- The main motion is the basic motion and all other legitimate motions are taken up and acted upon before the main motion is finally disposed of.
- In other words, motions are acted upon one at a time in REVERSE ORDER of proposal, with the main motion acted on last.
- Subsidiary and incidental motions which are introduced must be given priority so that the action finally taken on the main motion will accurately reflect the will of the assembly.
- Privileged and subsidiary motions have the highest status and are arranged in an explicit order of precedence. Let's look at them more closely.

Ranking of PRIVILEGED and subsidiary motions

- 1. ADJOURN (privileged)
- 2. RECESS (privileged)
- 3. RAISE A QUESTION OF PRIVILEGE (privileged)
- 4. Postpone Temporarily or “Table” (subsidiary)
- 5. Close debate – requires 2/3 vote (subsidiary)
- 6. Limit debate – requires 2/3 vote (subsidiary)
- 7. Postpone to a certain time (subsidiary)
- 8. Refer to a committee (subsidiary)
- 9. Amend (subsidiary)

NEXT: Peace Officers’ Procedural Bill of Rights (POBR)

- POBR was enacted in 1977 to
 - Curb perceived abuses of peace officers’ (now all public safety officers’) rights
 - The essence of the Act is the protection of public safety officers from abusive or arbitrary treatment in their employment by their employers.
 - Maintain stable labor relations
 - Labor unrest and work stoppages by police officers were key factors that led to the adoption of POBR.
- POBR provides specific statutory protections to sworn peace officers.

Chief Protections Provided by POBR

- POBR sets out what can and cannot happen in the course of an internal affairs investigation of an officer.
- POBR sets out a specific time period, one year, during which an investigation must, under ordinary circumstances, be concluded.
- POBR sets out requirements for an administrative appeal if one is desired by an officer.
- POBR requires all adverse comments in an officer's personnel file to be read by the officer and signed (unless the officer refuses to sign, in which case that fact will be duly noted).
- POBR sets out that an officer's name merely being present on a DA's Brady List will not authorize punitive action or a denial of promotion.
- POBR permits an officer to file a written response to any adverse comment entered into the officer's personnel file within 30 days.

More features of POBR re privacy

- Under POBR, an officer cannot be compelled to take a lie detector test.
- Under POBR, an officer cannot be required to allow the officer's employer to post a photo or their identity as a public safety officer on the internet.
- Under POBR, an officer's financial status need not be disclosed to the employer unless it is for the purposes of being assigned to a special unit where bribes or other unlawful inducements may be offered.
- Under POBR, an officer's locker may only be searched in the officer's presence, or with his consent, unless a search warrant has been secured.

More Privacy Protections for Peace Officers – Penal Code Section 832.7

- In 1978, two years after the adoption of POBR, the Legislature adopted a law that prohibited releasing peace officer personnel files in the absence of a finding of “good cause” as determined by a court of law.
- This law was enacted in the aftermath of Pitchess v. Superior Court wherein the California Supreme Court unanimously upheld a criminal defendant’s right to have access to an arresting officer’s record of complaints made by the public.
- The Legislative response was the adoption of Penal Code Section 832.7.
- While the law authorizes a process for securing access to police personnel files, the contents of these documents remains confidential and persons securing access are precluded from disclosing the contents thereof to members of the public.

Sanctions will be imposed on the public safety employer for malicious violation of a peace officer’s rights

- Under POBR, if a public safety employer is found to have maliciously violated the rights of a officer with the intent to injure the officer, the Department will be liable for a civil penalty of a sum not to exceed \$25K for each violation together with reasonable attorney’s fees.

NEXT: Copley Press v. Superior Court

- History: On August 29, 2006, the California Supreme Court held that records of an administrative appeal of sustained misconduct charges are confidential and may not be disclosed to the public.
- Effect: The decision prevents Civil Service Commissions and entities that serve in the same role from disclosing the extent to which police officers have been disciplined as a result of misconduct.
- Consequences: The Copley Press decision essentially undid the legislatively enacted distinction between employing agencies and independent agencies.
 - Before Copley Press, Penal Code Section 832.7 prevented public access to citizen complaints held by a police officer's "employing agency." Hence internal affairs records were confidential, while records of administrative appeals to outside bodies such as civil service commissions were open to the public.
 - After Copley Press, Civil Service Commissions and Citizen Review bodies may no longer release even the identity of the subject officers.

NEXT: New case law to be aware of relevant to the BPCRB's work (POBR)

- *Ellins v. City of Sierra Madre*. (B261968, California Court of Appeal – 2nd District 2016) An Officer who was only momentarily prior to an interrogation told about the circumstances of the investigation (stalking his ex-girlfriend), and who was eventually terminated for insubordination, sued seeking to have his job restored. HOLDING: An Officer must be informed of the nature of an investigation "reasonably prior to the investigation" -- that is, with enough time for the Officer to meaningfully consult with any representative that he elects to have present. See 3303(c) of the Gov. Code (POBR).

NEXT: New case law re POBR administrative appeal requirements

- The City and County of San Francisco's charter provisions concerning discipline of police officers did not provide the same rights or protections provided by POBR. This issue was taken up in *Morgado v. City and County of San Francisco* (2017) 220 Ca.Rptr.3d 497. An actual conflict existed between POBR and the City's charter provisions concerning discipline of police officers, requiring a determination as to whether charter provisions were enforceable. The Court of Appeal ruled that as a general law seeking to assure fair labor practices, POBR's administrative appeal requirements may constitutionally be applied to charter cities, even though it impinges upon local control to a limited extent. The Court noted POBR addressed a matter of statewide concern, namely the maintenance of stable employment relations between police officers and their employers, and POBR is reasonably related and narrowly tailored to achieve that purpose.

New Legislation impacting the work of the BPCRB. [SB 1286 (Leno) 2/19/16]

- SB 1286 proposes to make administrative appeals of citizen complaints open to the public and seeks to make some or all documents filed available for public inspection. (Changes the Brown Act and the California Public Records Act.)
- SB 1286 will require notification to the complainant to include the charges framed in response to the complaint, the agency's disposition with respect to each of those charges, any factual findings on which the agency based its dispositions and any discipline imposed or corrective action taken. (Changes Citizen Complaint law.)
- SB 1286 would allow such records to be available directly to requestors. (Changes the requirement to file a Pitchess Motion to access peace officer personnel records.)

SB 1286 Update

- The Bill failed.

New Brown Act Requirement for Public Comment

- Govt. Code Section 54954.3(b)(2) states: “Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.”

Questions?

- If not, thank you very much for your attention!

THE BROWN ACT

OPEN MEETINGS FOR
LOCAL LEGISLATIVE BODIES



2003

CALIFORNIA ATTORNEY
GENERAL'S OFFICE

THE

BROWN

ACT

OPEN MEETINGS FOR
LOCAL LEGISLATIVE BODIES

Office of the Attorney General
Bill Lockyer
Attorney General

Prepared by the Division of Civil Law

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State of California
Office of the Attorney General

Bill Lockyer
Attorney General

Throughout California's history, local legislative bodies have played a vital role in bringing participatory democracy to the citizens of the state. Local legislative bodies - such as boards, councils and commissions - are created in recognition of the fact that several minds are better than one, and that through debate and discussion, the best ideas will emerge. The law which guarantees the public's right to attend and participate in meetings of local legislative bodies is the Ralph M. Brown Act.

While local legislative bodies generally are required to hold meetings in open forum, the Brown Act recognizes the need, under limited circumstances, for these bodies to meet in private in order to carry out their responsibilities in the best interests of the public. For example, the law contains a personnel exception based on notions of personal privacy, and a pending litigation exception based upon the precept that government agencies should not be disadvantaged in planning litigation strategy. Although the principle of open meetings initially seems simple, application of the law to real life situations can prove to be quite complex.

The purpose of this pamphlet is to provide a brief description of the Brown Act, along with a discussion of court decisions and opinions of this office that add to our understanding by applying it in specific factual contexts. We hope this pamphlet will assist both public officials and those who monitor the performance of local legislative bodies to minimize and resolve disputes over interpretations of the Brown Act. In recent years, both the California Supreme Court and the courts of appeal have recognized the benefit of pamphlets issued by our office. This recognition by the courts, along with many favorable comments from members of the public, strengthens our resolve to continue producing reliable informational materials on the Brown Act and other California laws. Publication of these materials constitutes a tradition of service that we value greatly.

Ideas and suggestions for future editions of this pamphlet are welcomed and should be addressed to the editor.

Sincerely,

BILL LOCKYER
Attorney General

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INTRODUCTION

This pamphlet concerns the provisions of the Ralph M. Brown Act, which govern open meetings for local government bodies. The Brown Act is contained in section 54950 et seq. of the Government Code. Accordingly, all statutory references in this pamphlet are to the Government Code unless otherwise noted. The pamphlet contains a table of contents, which may also serve as a topical outline for the reader. The pamphlet also includes a brief summary of the main provisions of the Brown Act, along with references to the appropriate Government Code sections and chapters of the text. The text includes a discussion of the law along with tips on how the law should be applied in particular situations. Numerous references are made to legal authorities throughout the text. A copy of the Brown Act in its entirety is set forth in the appendix to the pamphlet. Lastly, the pamphlet contains a table of authorities so that the reader can determine all of the places in the text where references are made to a particular authority.

In preparing this pamphlet, we relied on a variety of legal resources. Appellate court cases were consulted and are cited throughout the pamphlet. While most of the more significant cases are discussed, this pamphlet is not intended to be a compendium of all court cases in this area. In addition, we drew upon published opinions and unpublished letter opinions issued by this office. Attorney General opinions, unlike appellate court decisions, are advisory only and do not constitute the law of the state. However, with respect to the Brown Act, the courts have frequently adopted the analysis of Attorney General opinions, and have commented favorably on the service afforded by those opinions and this pamphlet. (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672; *Freedom Newspapers v. Orange County Employees Retirement System* (1993) 6 Cal. 4th 821, 829.)

Published opinions are cited by volume and page number (e.g., 32 Ops.Cal.Atty.Gen. 240 (1958)). Unpublished letter opinions are cited as indexed letters by year and page number (e.g., Cal.Atty.Gen., Indexed Letter, No. IL 76-201 (October 20, 1976).) Published opinions are available through law libraries and some attorneys' offices. As a general rule, indexed letters are available only in the Office of the Attorney General. Copies may be obtained by a request to the Public Inquiry Unit of the Office of the Attorney General.

If you have specific questions or problems, the statutes, cases and opinions should be consulted. You also may wish to refer the matter to the attorney for the agency in question, a private attorney or the district attorney.

The pamphlet is current through January 2003 with respect to statutes, case law, and Attorney General opinions.

SUMMARY OF KEY BROWN ACT PROVISIONS

COVERAGE

PREAMBLE:

Public commissions, boards, councils and other legislative bodies of local government agencies exist to aid in the conduct of the people's business. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created.

54950 Ch. I

GOVERNING BODIES:

Includes city councils, boards of supervisors, and district boards. Also covered are other legislative bodies of local government agencies created by state or federal law.

54952(a) Ch. I & II

SUBSIDIARY BODIES:

Includes boards or commissions of a local government agency as well as standing committees of a legislative body. A standing committee has continuing subject matter jurisdiction or a meeting schedule set by its parent body. Less-than-a-quorum advisory committees, other than standing committees, are exempt.

54952(b) Ch. II

PRIVATE OR NONPROFIT CORPORATIONS OR ENTITIES:

Covered only if:

- a. A legislative body delegates some of its functions to a private corporation or entity; or
54952(c)(1)(A) Ch. II
- b. If a legislative body provides some funding to a private corporation or entity and appoints one of its members to serve as a voting member of entity's board of directors.
54952(c)(1)(B)

MEETING DEFINED

INCLUDES:

Any gathering of a quorum of a legislative body to discuss or transact business under the body’s jurisdiction; serial meetings are prohibited. 54952.2 Ch. III

EXEMPTS:

- (1) Individual contacts between board members and others which do not constitute serial meetings; 54952.2(c)(1) Ch. III
- (2) Attendance at conferences and other gatherings which are open to public so long as members of legislative bodies do not discuss among themselves business of a specific nature under the body’s jurisdiction; 54952.2(c)(2), (3) and (4)
- (3) Attendance at social or ceremonial events where no business of the body is discussed. 54952.2(c)(5)

LOCATIONS OF MEETINGS:

A body must conduct its meetings within the boundaries of its jurisdiction unless it qualifies for a specific exemption. 54954 Ch. IV

TELECONFERENCE MEETINGS:

Teleconference meetings may be held under carefully defined conditions. The meeting notice must specifically identify all teleconference locations, and each such location must be fully accessible to members of the public. 54953 Ch. III

PUBLIC RIGHTS

PUBLIC TESTIMONY:

Public may comment on agenda items before or during consideration by legislative body. Time must be set aside for public to comment on any other matters under the body’s jurisdiction. 54954.3 Ch. IV & V

NON-DISCRIMINATORY FACILITIES:

Meetings may not be conducted in a facility that excludes persons on the basis of their race, religion, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. 54953.2; 54961 Ch. V

COPY OF RECORDING:

Public may obtain a copy, at cost, of an existing tape recording made by the legislative body of its public sessions, and to listen to or view the body's original tape on a tape recorder or viewing device provided by the agency. 54953.5 Ch. V

PUBLIC VOTE:

All votes, except for those cast in permissible closed session, must be cast in public. No secret ballots, whether preliminary or final, are permitted. 54953(c) Ch. VI

CLOSED MEETING ACTIONS/DOCUMENTS:

At an open session following a closed session, the body must report on final action taken in closed session under specified circumstances. Where final action is taken with respect to contracts, settlement agreements and other specified records, the public may receive copies of such records upon request. 54957.1 Ch. IV, V & VI

TAPING OR BROADCASTING:

Meetings may be broadcast, audio-recorded or video-recorded so long as the activity does not constitute a disruption of the proceeding. 54953.5; 54953.6 Ch. V

CONDITIONS TO ATTENDANCE:

Public may not be asked to register or identify themselves or to pay fees in order to attend public meetings. 54953.3; 54961 Ch. V

PUBLIC RECORDS:

Materials provided to a majority of a body which are not exempt from disclosure under the Public Records Act must be provided, upon request, to members of the public without delay. 54957.5 Ch. V

REQUIRED NOTICES AND AGENDAS

REGULAR MEETINGS:

Agenda containing brief general description (approximately twenty words in length) of each matter to be considered or discussed must be posted at least 72 hours prior to meeting. 54954.2 Ch. IV

SPECIAL MEETINGS:

Twenty-four hour notice must be provided to members of legislative body and media outlets including brief general description of matters to be considered or discussed. 54956 Ch. IV

EMERGENCY MEETINGS:

One hour notice in case of work stoppage or crippling activity, except in the case of a dire emergency. 54956.5 Ch. IV

CLOSED SESSION AGENDAS:

All items to be considered in closed session must be described in the notice or agenda for the meeting. A model format for closed-session agendas appears in section 54954.5. Prior to each closed session, the body must orally announce the subject matter of the closed session. If final action is taken in closed session, the body generally must report the action at the conclusion of the closed session. 54954.2; 54954.5; 54957.1 and 54957.7 Ch. IV

AGENDA EXCEPTION:

Special procedures permit a body to proceed without an agenda in the case of emergency circumstances, or where a need for immediate action came to the attention of the body after posting of the agenda. 54954.2(b) Ch. IV

CLOSED-SESSION MEETINGS

PERSONNEL EXEMPTION:

The body may conduct a closed session to consider appointment, employment, evaluation of performance, discipline or dismissal of an employee. With respect to complaints or charges against an employee brought by another person or another employee, the employee must be notified, at least 24 hours in advance, of his or her right to have the hearing conducted in public. 54957 Ch. VI

PUBLIC SECURITY:

A body may meet with law enforcement or security personnel concerning the security of public buildings and services. 54957 Ch. VI

PENDING LITIGATION:

A body may meet in closed session to receive advice from its legal counsel concerning existing litigation, initiating litigation, or situations involving a significant exposure to litigation. The circumstances which constitute significant exposure to litigation are expressly defined in section 54956.9(b)(3). 54956.9 Ch. VI

LABOR NEGOTIATIONS:

A body may meet in closed session with its negotiator to consider labor negotiations with represented and unrepresented employees. Issues related to budgets and available funds may be considered in closed session, although final decisions concerning salaries of unrepresented employees must be made in public. 54957.6 Ch. VI

REAL PROPERTY NEGOTIATIONS:

A body may meet in closed session with its negotiator to consider price and terms of payment in connection with the purchase, sale, exchange or lease of real property. 54956.8 Ch. VI

REMEDIES AND SANCTIONS

CIVIL REMEDIES:

Individuals or the district attorney may file civil lawsuits for injunctive, mandatory or declaratory relief, or to void action taken in violation of the Act. 54960; 54960.1 Ch. VII

Attorneys' fees are available to prevailing plaintiffs. 54960.5

CRIMINAL SANCTIONS:

The district attorney may seek misdemeanor penalties against a member of a body who attends a meeting where action is taken in violation of the Act, and where the member intended to deprive the public of information which the member knew or has reason to know the public was entitled to receive. 54959 Ch. VII

Return to Main Body

2 of 29 DOCUMENTS

Copley Press, Inc. v. Superior Court

S128603

SUPREME COURT OF CALIFORNIA

39 Cal. 4th 1272; 141 P.3d 288; 48 Cal. Rptr. 3d 183; 2006 Cal. LEXIS 10229; 34 Media L. Rep. 2419; 2006 Cal. Daily Op. Service 8182; 2006 Daily Journal DAR 11839

August 31, 2006, Filed

PRIOR HISTORY: Superior Court of San Diego County, No. GIC807922, Wayne L. Peterson, Judge. Court of Appeal of California, Fourth Appellate District, Division One, No. D042251. The Copley Press, Inc. v. Superior Court, 122 Cal. App. 4th 489 [18 Cal. Rptr. 3d 657, 2004 Cal. App. LEXIS 1553] (Cal. App. 4th Dist., 2004)

DISPOSITION: The judgment of the Court of Appeal is reversed and the matter is remanded for further proceedings consistent with this opinion.

LexisNexis(R) Headnotes

JUDGES: Chin, J. with George, C. J., Kennard, Baxter, Moreno, and Corrigan, JJ., concurring. Dissenting opinion by Werdegar, J.

OPINION BY: Ming W. Chin [*1279]

OPINION

[**291] [***186] **CHIN, J.**--We granted review in this case to consider the extent, if any, to which the California Public Records Act (CPRA or Act) (Gov. Code, § 6250 et seq.) requires disclosure to a newspaper publisher of records of the County of San Diego Civil Service Commission (Commission) relating to a peace officer's administrative appeal of a disciplinary matter. The Court of Appeal held that the trial court erred in denying the disclosure request in its entirety, and ordered the Commission to disclose the requested records, including the name of the peace officer, redacted only to exclude certain written material in the personnel file

maintained by the officer's "employing agency," as that term is used in Penal Code section 832.8,¹ and oral testimony that is a recitation from that material. We find that the Court of Appeal read the term "employing agency" too narrowly. [***187] We therefore reverse the Court of Appeal's judgment.

¹ All further unlabeled statutory references are to the Penal Code.

Factual and Procedural Background

In January 2003, The Copley Press, Inc. (Copley), which publishes the San Diego Union-Tribune newspaper, learned that the Commission had scheduled a closed hearing in case No. 2003-0003, in which a deputy sheriff of San Diego County (sometimes hereafter referred to as County) was appealing from a termination notice. Copley requested access to the hearing, but the Commission denied the request. After the appeal's completion, Copley filed several CPRA requests with the Commission asking for disclosure of any documents filed with, submitted to, or created by the Commission concerning the appeal (including its findings or decision) and any tape recordings of the hearing. The Commission withheld most of its records, including the deputy's name, asserting disclosure exemptions under Government Code section 6254, subdivisions (c) and (k).

Copley then filed in the superior court a petition for a writ of mandate and complaint for declaratory and injunctive relief, seeking access to the remaining records and a declaration that the Commission must hold public hearings unless closure is otherwise justified by law. With the court's permission, the San Diego Police

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Officers Association and the San Diego County Sheriffs' Association (interveners) intervened. On May 14, 2003, the trial court denied relief, citing *San Diego Police Officers Assn. v. City of San Diego Civil Service Com.* (2002) 104 Cal.App.4th 275 [128 Cal. Rptr. 2d 248] (*SDPOA*) and sections 832.7 and 832.8.

Shortly after the trial court filed its decision, Copley filed two more CPRA requests with the Commission asking for all documents regarding the appeal [*1280] "in unredacted form." ² In response, the Commission provided [**292] a number of additional documents, including the termination order--which cited the grounds for discipline and outlined the facts supporting each ground--the hearing officer's recommendation that the Commission accept a stipulation disposing of the appeal, and the minutes of the meeting during which the Commission approved the recommendation. According to those documents, the termination order was based on the deputy's failure to arrest a suspect in a domestic violence incident despite having probable cause to do so, failure to prepare a written report documenting the incident, and dishonesty in falsely indicating in the patrol log that the victim bore no signs of injury and the suspect was "gone on arrival." In the stipulation, the deputy voluntarily resigned and withdrew the appeal, and the sheriff's department withdrew the termination action and agreed to change the deputy's exit status to "terminated--resignation by mutual consent" and to "line out" the untruthfulness charge.

2 Copley's stated "purpose" for these requests was to obtain documents "that were not available at the time of [its earlier] requests" and "to make sure [it had] all documents relating to the case that" the Commission was "going to release."

Unsatisfied, Copley filed a petition for writ of mandate with the Court of Appeal seeking relief from the trial court's order of May 14, 2003. It asked for an order requiring the Commission to disclose the deputy's name and all documents, evidence, and audiotapes from the appeal. It also requested a declaration that the Commission's denial of access to the appeal hearing and its failure to disclose all hearing materials were unlawful, and an injunction precluding future denials of access.

The Court of Appeal granted partial relief. Regarding disclosure of the Commission's [***188] records, the court first held that the confidentiality provisions of Penal Code section 832.7 "should be imported into the CPRA

through" Government Code section 6254, subdivision (k), which provides that the CPRA does not require disclosure of "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." The Court of Appeal next reasoned that Penal Code section 832.7's "confidentiality provision has a fundamental limitation [under Penal Code section 832.8]: it applies only to files maintained *by the employing agency* of the peace officer," i.e., "written material maintained in the peace officer's personnel file or oral testimony that is a recitation from material in that file." Thus, it "does not apply to information about a peace officer the source of which is other than the employing agency's file maintained under the individual's name, even if that information is duplicated in that file." It does not apply to "[t]estimony of a percipient witness to events, or from documents not maintained in the personnel file ... even though that information may be identical to or [*1281] duplicative of information in the personnel file." It also does not apply to material from the appeal that is "added to the peace officer's file maintained by the employing agency." The Court of Appeal thus concluded that insofar as the Commission's records "are not documents from a personnel file or recited from documents in a personnel file," they "are outside the definitional limitations applicable to [Penal Code] section 832.7, [and] a CPRA request for those records may not be denied under [Government Code section 6254,] subdivision (k)'s exemption for records 'the disclosure of which is exempted or prohibited pursuant to' section 832.7."

The Court of Appeal applied "[a] similar rationale" to reject the Commission's reliance on Government Code section 6254, subdivision (c), which exempts from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy." This provision, the Court of Appeal held, applies only to information that "is within the definitional limitation of Penal Code section 832.8," i.e., that it be part of a "file maintained ... by [the officer's] employing agency." Thus, the Court of Appeal held that the Commission had "erred by relying on [Government Code] section 6254, subdivisions (c) and (k) to reject Copley's CPRA request in its entirety." It ordered issuance of a writ directing the trial court to order the Commission "to release its records in appeal Case No. 2003-0003, including the name of the peace officer, redacted only to exclude information within the limited

[**293] ambit of Penal Code sections 832.7 and 832.8, as defined in [the court's] opinion." ³

3 Because the deputy sheriff withdrew the administrative appeal and settled the matter by stipulation without an appeal hearing, the Court of Appeal declined to decide whether the Commission may close such hearings to the public.

We granted interveners' petition for review.

Discussion

(1) In 1968, the Legislature enacted the CPRA "for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies. [Citation.]" (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425 [121 Cal. Rptr. 2d 844, 49 P.3d 194].) This purpose is evident from the Act's very first provision, in which "the Legislature ... declares that access to information concerning the conduct of the people's business is a fundamental and [***189] necessary right of every person in this state." (Gov. Code, § 6250.) To implement this purpose, the Act provides that "[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided." (Gov. Code, § 6253, subd. (a).) The term "[p]ublic records" is broadly defined to "include ... any writing containing information relating to the conduct of the [*1282] public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Gov. Code, § 6252, subd. (e).) The term "[l]ocal agency" includes a county ... or any board, commission or agency thereof." (Gov. Code, § 6252, subd. (a).) Under these definitions, the County of San Diego, the Commission and the San Diego County Sheriff's Department are all local agencies under the CPRA and the requested records all appear to qualify as public records; the parties do not contend otherwise. ⁴

4 The Act's definition of a "[w]riting" appears to be broad enough to include a tape recording of a hearing. (See Gov. Code, § 6252, subd. (g) ["every ... means of recording upon any tangible thing any form of communication"].)

(2) The right of access to public records under the CPRA is not absolute. In enacting the CPRA, the

Legislature, although recognizing this right, also expressly declared that it was "mindful of the right of individuals to privacy." (Gov. Code, § 6250.) Thus, the express policy declaration at the beginning of the Act "bespeaks legislative concern for individual privacy as well as disclosure." (*Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 652 [117 Cal. Rptr. 106] (*Kehoe*).) "In the spirit of this declaration, judicial decisions interpreting the Act seek to balance the public right to access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy. [Citations.]" (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447 [186 Cal. Rptr. 235, 651 P.2d 822].)

(3) "The same dual concern" for privacy and disclosure the Legislature stated in Government Code section 6250 "appears throughout the [A]ct." (*Kehoe, supra*, 42 Cal. App. 3d at p. 652.) As noted above, Government Code section 6253, subdivision (a), provides for the inspection of public records "except as hereafter provided." In the provisions that follow, the Act states a number of exemptions that permit government agencies to refuse to disclose certain public records. (Gov. Code, §§ 6254-6255.) "In large part, these exemptions are designed to protect the privacy of persons whose data or documents come into governmental possession." (*Kehoe, supra*, 42 Cal. App. 3d at p. 652.) A qualifying agency refusing to disclose a public record must "justify" its decision "by demonstrating that the record ... is exempt under" one of the CPRA's "express [exemption] provisions ... or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).)

The CPRA exemptions the Commission relied on here are in Government Code section 6254, subdivisions (c) and (k). We must decide whether either [*1283] of these exemptions justifies the Commission's decision to withhold [**294] certain records regarding the disciplinary appeal in this case.

(4) Because the parties primarily discuss Government Code section 6254, subdivision [***190] (k), we turn first to that exemption, which applies to "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." As is evident from the statutory language,

this exemption "is not an independent exemption. It merely incorporates other prohibitions established by law. [Citations.]" (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656 [230 Cal. Rptr. 362, 725 P.2d 470].) In 1998, the Legislature added an article to the CPRA specifically "list[ing] and describ[ing]" over 500 statutes that provide disclosure exemptions through Government Code section 6254, subdivision (k). (Gov. Code, § 6275; see also *id.*, §§ 6276-6276.48.) Among the listed statutes are "[s]ections 832.7 and 832.8, Penal Code." (Gov. Code, § 6276.34.)

In relevant part, section 832.7, subdivision (a), provides that certain "[p]eace officer or custodial officer" records and "information obtained from these records[] are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code." The statute applies to two categories of records. The first is "personnel records" (§ 832.7, subd. (a)), which section 832.8 defines as "any file maintained under [an officer's] name by his or her employing agency and containing records relating to," among other things, "[p]ersonal data" (§ 832.8, subd. (a)), "[e]mployee advancement, appraisal, or discipline" (§ 832.8, subd. (d)), and "[c]omplaints, or investigations of complaints, concerning an event or transaction in which he or she participated ... and pertaining to the manner in which he or she performed his or her duties." (§ 832.8, subd. (e).) The second category of records to which section 832.7, subdivision (a), applies is "records maintained by any state or local agency pursuant to [s]ection 832.5." The latter statute requires "[e]ach department or agency in [California] that employs peace officers [to] establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies" (§ 832.5, subd. (a)(1).) It also requires that "[c]omplaints and any reports or findings relating to these complaints ... be retained for a period of at least five years ... either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy." (§ 832.5, subd. (b).) The " '[g]eneral personnel file' " is "the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline." (§ 832.5, subd. (d)(1).)

[*1284] For several reasons, Copley argues that section 832.7, subdivision (a), does not justify the

Commission's refusal to disclose the appeal records. First, Copley argues that the statute applies only to a "criminal or civil proceeding" (§ 832.7, subd. (a)), and that the proceeding at issue here is neither; it is an "administrative" proceeding. Second, Copley argues that the statute applies only to records "kept by departments or agencies 'that employ peace officers' " or "maintained by the 'employing agency,' " and that the Commission "neither employ[s] peace officers, nor create[s] or maintain[s] ... [s]ection 832.5 or [s]ection 832.8 records." Finally, Copley argues that it has both a constitutional and common law right of access to the records in question. For the reasons set forth below, we reject Copley's arguments.

A. Section 832.7 is not limited to criminal and civil proceedings.

Copley's first argument--that section 832.7, subdivision (a), applies only to [***191] criminal and civil proceedings--is premised on the phrase in the statute providing that the specified information is "confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code." In *Bradshaw v. City of Los Angeles* (1990) 221 Cal. App. 3d 908, 916 [270 Cal. Rptr. 711] (*Bradshaw*), the court opined that the word "confidential" in this phrase "is in its context susceptible to two reasonable interpretations." On the one hand, because the word "is followed [**295] by the word 'and,' " it could signify "a separate, independent concept [that] makes the [specified] records privileged material." (*Ibid.*) "On the other hand," the word could also be viewed as merely "descriptive and prefatory to the specific legislative dictate [that immediately] follows," in which case it could mean that the specified records "are confidential only in" the context of a " 'criminal or civil proceeding.' " (*Ibid.*) The *Bradshaw* court adopted the latter interpretation, concluding that the statute affords confidentiality only in criminal and civil proceedings, and not in "an administrative hearing" involving disciplinary action against a police officer. (*Id.* at p. 921.)

(5) We reject Copley's argument because, like every appellate court to address the issue in a subsequently published opinion, we disagree with *Bradshaw's* conclusion that section 832.7 applies only in criminal and civil proceedings.⁵ When faced with a question of statutory interpretation, we look first to the language of the statute. (*People v. Murphy* (2001) 25 Cal.4th 136, 142

[105 Cal. Rptr. 2d 387, 19 P.3d 1129].) In interpreting that language, we strive to give effect and significance to every word and phrase. (*Garcia v. [*1285] McCutchen* (1997) 16 Cal.4th 469, 476 [66 Cal. Rptr. 2d 319, 940 P.2d 906].) If, in passing section 832.7, the Legislature had intended "only to define procedures for disclosure in criminal and civil proceedings, it could have done so by stating that the records 'shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code ... ,' without also designating the information 'confidential.' (Pen. Code, § 832.7, subd. (a).)" (*Richmond, supra*, 32 Cal.App.4th at p. 1439; see also *SDPOA, supra*, 104 Cal.App.4th at p. 284.) Thus, by interpreting the word "confidential" (§ 832.7, subd. (a)) as "establish[ing] a general condition of confidentiality" (*Hemet, supra*, 37 Cal.App.4th at p. 1427), and interpreting the phrase "shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code" (Pen. Code, § 832.7, subd. (a)) as "creat[ing] a limited exception to the general principle of confidentiality," we "give[] meaning to both clauses" of the provision in question. (*Hemet, supra*, 37 Cal.App.4th at p. 1427.)

5 See *Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 901-902 [31 Cal. Rptr. 2d 266]; *SDPOA, supra*, 104 Cal.App.4th at pages 281-288; *Rosales v. City of Los Angeles* (2000) 82 Cal.App.4th 419, 426 [98 Cal. Rptr. 2d 144]; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1425-1430 [44 Cal. Rptr. 2d 532] (*Hemet*); *City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430, 1439-1440 [38 Cal. Rptr. 2d 632] (*Richmond*).

(6) Other subdivisions of section 832.7 support this interpretation. (See *SDPOA, supra*, 104 Cal.App.4th at p. 284.) Section 832.7, subdivision (c), provides that "[n]otwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, [***192] type, or disposition of complaints ... made against its officers if that information is in a form which does not identify the individuals involved." Section 832.7, subdivision (d), provides: "Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or

representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. ... Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative." These provisions, which specify circumstances under which information may be released to the general public and the scope of information that may be released, would be unnecessary if, as *Bradshaw* concluded, confidentiality under section 832.7, subdivision (a), extends only to civil and criminal proceedings and a public agency is free to release information to the general public under the CPRA. "Well-established [**296] canons of statutory construction preclude a construction [that] renders a part of a statute meaningless or inoperative." (*Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274 [41 Cal. Rptr. 2d 220, 895 P.2d 56]; cf. *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, 1181-1182 [245 Cal. Rptr. 774, 751 P.2d 1329] (*McClatchy*) [[*1286] statute authorizing grand jury to release materials only to succeeding grand jury is "most compelling indication that the Legislature has not authorized disclosure of [those] materials to the public".)

(7) Finally, *Bradshaw's* narrow interpretation of section 832.7 would largely defeat the Legislature's purpose in enacting the provision. "[T]here is little point in protecting information from disclosure in connection with criminal and civil proceedings if the same information can be obtained routinely under CPRA." (*Richmond, supra*, 32 Cal.App.4th at p. 1440.) Thus, "it would be unreasonable to assume the Legislature intended to put strict limits on the discovery of police personnel records in the context of civil and criminal discovery, and then to broadly permit any member of the public to easily obtain those records" through the CPRA. (*SDPOA, supra*, 104 Cal.App.4th at p. 284.) "Section 832.7's protection would be wholly illusory unless [we read] that statute ... to establish confidentiality status for [the specified] records" beyond criminal and civil proceedings. (*SDPOA, supra*, at p. 284.) We cannot conclude the Legislature intended to enable third parties, by invoking the CPRA, so easily to circumvent the privacy protection granted under section 832.7. ⁶ We therefore reject Copley's argument that section 832.7 does not apply beyond criminal and civil proceedings,

and we disapprove *Bradshaw v. City of Los Angeles*, *supra*, 221 Cal. App. 3d 908, to the extent it is inconsistent with this conclusion.

6 Nor can we conclude the Legislature intended to grant the general public greater access to this information than it granted litigants in civil and criminal proceedings, which would be the result of adopting *Bradshaw's* conclusion.

B. Commission records of disciplinary appeals, including the officer's name, are protected under section 832.7.

As noted above, Copley asserts that the Commission's records are not protected [***193] under section 832.7, subdivision (a), because they are neither "personnel records" nor "records maintained by any state or local agency pursuant to Section 832.5." (§ 832.7, subd. (a).) For the reasons set forth below, we disagree.

Copley's view that the Commission's records do not qualify under section 832.7, subdivision (a), as "personnel records," which the Court of Appeal adopted, 7 is premised on section 832.8. As noted above, that section provides that "[a]s used in [s]ection 832.7, 'personnel records' means any file maintained under [an officer's] name by his or her employing agency and containing records relating to" specified matters, including "discipline" and [*1287] "[c]omplaints, or investigations of complaints, concerning an event or transaction in which [the officer] participated ... and pertaining to the manner in which he or she performed his or her duties." (§ 832.8, subs. (d) & (e).) Copley asserts that the Commission's records do not meet this definition because the Commission does not "employ peace officers" and, therefore, the file it maintains regarding a peace officer's disciplinary appeal is not a file "maintained ... by [the officer's] employing agency." (§ 832.8.)

7 The Court of Appeal did not expressly state that the Commission's records do not qualify as records maintained by the employing agency. However, that conclusion is implicit in the court's analysis and conclusion.

(8) Copley's argument fails to take into account the nature of the Commission and its role in disciplinary proceedings for peace officers in San Diego County. Government Code section 3304, subdivision (b), which is part of the Public Safety Officers Procedural Bill of

Rights Act (Gov. Code, § 3300 et seq.) (POBRA), prohibits a "public agency" from taking "punitive action ... against any [nonprobationary] public safety officer ... without providing the public safety officer with an opportunity for administrative appeal." We [**297] have explained that this provision sets forth one of the "basic rights" that "must be accorded individual public safety officers *by the public agencies which employ them.*" (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 679 [183 Cal. Rptr. 520, 646 P.2d 191] (*White*), italics added; see also *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 569 [273 Cal. Rptr. 584, 797 P.2d 608] [POBRA "sets forth the basic rights that law enforcement agencies must provide to their peace officer employees"]; *Baggett v. Gates* (1982) 32 Cal.3d 128, 138 [185 Cal. Rptr. 232, 649 P.2d 874] [statute "require[s] the city to provide peace officers 'an opportunity for administrative appeal' ".]) As described by our Courts of Appeal, the "purpose" of this provision is, in part, to give a peace officer "an opportunity ... 'to convince *the employing agency* to reverse its decision' " to take punitive action. (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806 [20 Cal. Rptr. 2d 903] (*Binkley*), italics added, quoting *Browning v. Block* (1985) 175 Cal. App. 3d 423, 430 [220 Cal. Rptr. 763]; see also *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1359 [49 Cal. Rptr. 2d 238] [appeal under Gov. Code, § 3304, gives peace officer "a chance to ... try to convince his employer to reverse its decision"].)

(9) In San Diego County, this statutory duty is satisfied by offering peace officers administrative appeals through the Commission, which is established by the San Diego County Charter (Charter) as a department of the County. (Charter, §§ 106, 903.) The Charter designates the Commission as "the administrative appeals body for the County in personnel matters authorized by this Charter." (Charter, § 904.1.) This "appellate authority includes [***194] appeals from actions involving [¶] discipline of classified employees with permanent status" and "charges filed by a citizen against a person in the classified status." (*Id.*, § 904.2.) The Charter authorizes the Commission to "affirm, revoke or modify any disciplinary order, and ... make any appropriate orders in connection with appeals under its jurisdiction," and specifies that "[t]he [*1288] Commission's decisions shall be final, and shall be followed by the County unless overturned by the courts on appeal." (*Id.*, § 904.1.) Because the Commission, a department of the County,

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has been designated to provide the appeal that the officer's employer is required by law to provide in connection with taking punitive action, it is reasonable to conclude that for purposes of applying the relevant statutes in this case, the Commission is functioning as part of "the employing agency" and that any file it maintains regarding a peace officer's disciplinary appeal constitutes a file "maintained ... by [the officer's] employing agency" within the meaning of section 832.8.

(10) The operative statutory language viewed in the context of the entire statutory scheme supports this conclusion. Although the relevant statutes do not define the term "employing agency" for purposes of applying section 832.8, section 832.5 offers assistance in determining the term's scope. As noted above, section 832.5 addresses "complaints by members of the public against the personnel of" any California "department or agency ... that employs peace officers." (§ 832.5, subd. (a)(1).) As also noted above, it requires that "[c]omplaints and any reports or findings relating to these complaints ... be retained for a period of at least five years ... either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy." (§ 832.5, subd. (b).) As especially relevant here, the statute provides that complaints "determined by the peace ... officer's *employing agency* to be frivolous ... or unfounded or exonerated ... shall not be maintained in that officer's general personnel file" (§ 832.5, subd. (c), italics added), and "shall be removed from" that file "prior to any official determination regarding promotion, transfer, or disciplinary action." (§ 832.5, subd. (b).) The Legislature passed these provisions to " 'ensure that [peace officers] are not penalized by false charges languishing in their personnel files.' " (Assem. Off. of Research, 3d reading analysis of Assem. Bill No. 3434 (1995-1996 Reg. Sess.) as amended May 14, 1996, p. 2.) Under Copley's interpretation, this protection would not be triggered by a *Commission* determination on appeal that a complaint is frivolous, unfounded, or exonerated, because the Commission, [**298] although the County department designated to provide the final, statutorily required step in the administrative disciplinary process, is not the "employing agency." (§ 832.5, subd. (c).) This interpretation would be neither reasonable nor consistent with the Legislature's intent. Thus, reasonably understood, the term "employing agency" as used in section 832.5, subdivision (c), includes the Commission insofar as it hears disciplinary appeals. Under settled

principles of statutory interpretation, it is appropriate to give that term the same meaning in applying section 832.8. ⁸ (See *Walker v. [*1289] [***195] Superior Court* (1988) 47 Cal.3d 112, 132 [253 Cal. Rptr. 1, 763 P.2d 852] ["Identical language appearing in separate provisions dealing with the same subject matter should be accorded the same interpretation"]; *County of Placer v. Aetna Cas. etc. Co.* (1958) 50 Cal.2d 182, 188-189 [323 P.2d 753] ["statutes relating to the same subject matter are to be construed together and harmonized if possible"].)

8 The dissent, which would adopt Copley's construction, errs in suggesting that our analysis rests on "speculation that a law enforcement agency would (or could) disregard the Commission's decision on appeal." (Dis. opn., *post*, at p. 1309.) Like the dissent, we presume that a County law enforcement agency would abide by an unappealed decision of the Commission, as the Charter requires. (Charter, § 904.1.) However, under the dissent's view that the Commission is not acting as part of the employing agency, the fact that a law enforcement agency *abides by* a Commission decision does not transform that decision into a "determin[ation] by the peace ... officer's employing agency" (§ 832.5, subd. (c).) Thus, under the plain language of the relevant statute, the law enforcement agency would not be *required* to remove from officers' personnel files complaints the Commission finds to be frivolous, unfounded, or exonerated, and could abide by the Commission's decision without doing so. Whether a local agency would *choose* to remove such complaints is a separate question. Thus, the dissent's construction would strip many peace officers of the assurance and protection the Legislature sought to guarantee.

In arguing for a contrary interpretation, Copley unpersuasively cites *Civil Service Com. v. Superior Court* (1984) 163 Cal. App. 3d 70 [209 Cal. Rptr. 159] (*CSC*). Specifically, Copley relies on that decision's characterization of the Commission "as a 'quasi-independent' county agency." (*Id.* at p. 77.) However, "the term 'quasi' is used in legal phraseology 'to indicate that one subject resembles another ... in certain characteristics, but that there are intrinsic and material differences between them.' [Citation.]" (*In re McNeill*

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(Bankr. E.D.N.Y. 1996) 193 B.R. 654, 661.) In other words, it "presupposes both resemblance *and* difference." (*Wiseman v. Calvert* (1950) 134 W. Va. 303 [59 S.E.2d 445, 454], italics added.) Thus, CSC's characterization of the Commission as a " 'quasi-independent' county agency" (*CSC, supra*, at p. 77) does not establish that the Commission is an independent body for all purposes.⁹ (Cf. *People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430, 438-439 [119 Cal. Rptr. 193, 531 P.2d 761] [grand jury enjoys "full independence of action," but is " 'part of the court by which it is convened' " and " 'under the control of the court' "]; *Johnson v. Fontana County F.P. Dist.* (1940) 15 Cal.2d 380, 391 [101 P.2d 1092] [" 'generally a political subdivision and the officers, boards, commissions, agents and representatives thereof form but a single entity' "].) The CSC court made this characterization in determining whether county counsel, in advising the Commission, had "an attorney-client relationship" with the Commission "separate and distinct from county counsel's fundamental relationship with the County," such that county [*1290] counsel could not represent the county in the county's lawsuit against the Commission. (*CSC, supra*, at p. 77.) Thus, the considerations that informed that court's decision were far different from the considerations at issue here in determining whether the file of an administrative disciplinary appeal provided by a peace officer's employer through the Commission is a "file maintained ... by [the officer's] employing agency" within the meaning of section 832.8. [*299] Given these differences, Copley's [***196] reliance on *CSC* is unavailing.¹⁰

9 As already noted, under the County Charter, the Commission is a department of the County. (Charter, §§ 106, 903.) Moreover, each member is appointed by the County's Board of Supervisors (Charter, § 903) and "may be removed by a majority vote of the Board if the Board serves the Commissioner [with] a written statement containing the reasons for removal, records the statement in its minutes, and allows the commissioner an opportunity to be heard publicly." (*Id.*, § 903.2.)

10 At oral argument, Copley asserted that both Government Code section 3304 and the Charter require administrative appeals to be conducted by a "neutral factfinder," and that it is "illogical" to characterize the Commission as both neutral and, at the same time, part of the employing agency.

Without commenting on the former assertion, we note that the latter is inconsistent with California case law. (See *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 178-179 [125 Cal. Rptr. 2d 474] (*Brown*) [regulation requiring that hearing officer for administrative disciplinary appeal be selected from members of police department satisfies due process]; *Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1142 [73 Cal. Rptr. 2d 695] [medical center's board of directors is "impartial adjudicator" for administrative appeal notwithstanding that its administrator "initiated" physician's suspension and its "risk management staff prosecuted the action"]; *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1443 [277 Cal. Rptr. 478] (*Stanton*) [police chief hearing administrative appeal of discipline imposed by another officer is " 'a reasonably impartial, noninvolved reviewer' "]; *Doyle v. City of Chino* (1981) 117 Cal.App.3d 673, 681-682 [172 Cal. Rptr. 844] [city council hearing police chief's administrative appeal of termination decision made by city manager " 'was an impartial body' "].)

(11) For several reasons, Copley's argument that the Commission's records cannot qualify as "records maintained by any state or local agency pursuant to [s]ection 832.5" (§ 832.7, subd. (a)) also fails.¹¹ Copley asserts that only records kept by departments or agencies that employ peace officers are "maintained ... pursuant to [s]ection 832.5" (§ 832.7, subd. (a)), and that the Commission's records do not meet this criterion because the Commission does not employ peace officers. However, the preceding analysis regarding sections 832.7 and 832.8 also supports the conclusion that for purposes of applying section 832.5, the Commission, in hearing disciplinary appeals, is functioning as part of a department or agency that employs peace officers and that any records it maintains regarding such appeals are being maintained by such a department or agency.

11 As noted above, section 832.5 deals with "complaints by members of the public against" peace officers. (§ 832.5, subd. (a)(1).) The record does not disclose whether this case involves such a complaint. As explained, the result would be the same in any event.

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In any event, the statutory language does not support Copley's assertion (which the dissent erroneously repeats (dis. opn., *post*, at p. 1308)), that only records kept by departments or agencies that employ peace officers are "maintained ... pursuant to [s]ection 832.5." (§ 832.7, subd. (a).) Section 832.5 requires "[e]ach [California] department or agency ... that employs peace officers [to] establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies" (§ 832.5, [*1291] subd. (a)(1)), and directs that "[c]omplaints [by members of the public] and any reports or findings relating to these complaints shall be retained for a period of at least five years." (*Id.*, subd. (b).) It does *not*, however, specify the entity that must maintain these records. Moreover, it *does* expressly specify that "complaints retained pursuant to [the statute] may be maintained ... in a separate file designated by the department or agency" (*Ibid.*) In light of these provisions, it is reasonable to conclude that because the Commission has been designated to hear disciplinary appeals, its records qualify under section 832.7, subdivision (a), as "records maintained by any state or local agency pursuant to Section 832.5." ¹² (See *San Francisco [***197] Police Officers' Assn. v. Superior Court* (1988) 202 Cal. App. 3d 183, 190 [248 Cal. Rptr. 297] (*SFPOA*) ["the Legislature, in mandating the establishment of appropriate mechanisms for the investigation of citizens' complaints, has relegated the format and operating procedures to the authority of each local agency, so long as the complaints [*300] and related findings are kept confidential and maintained for a minimum period of five years"].)

¹² Contrary to the dissent's assertion, the meaning of the phrase "maintained ... by [the officer's] employing agency" in section 832.8 is not, either alone or in context, so "plain" (dis. opn., *post*, at p. 1309) as to exclude records maintained by a County department that has been designated to hear appeals that the County must, by law, provide. Nor does the dissent identify any language in section 832.5 that has that "plain meaning." (Dis. opn., *post*, at p. 1309.) On the contrary, the dissent's view of section 832.5 is based on what it finds "apparent" from the language of the section's various subdivisions "[c]onsider[ed] ... together." (Dis. opn., *post*, at p. 1308.)

(12) To the extent this examination of the statutory

language leaves uncertainty, it is appropriate to consider "the consequences that will flow from a particular interpretation. [Citation.]" (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165 [278 Cal. Rptr. 614, 805 P.2d 873] (*Harris*)). Where more than one statutory construction is arguably possible, our "policy has long been to favor the construction that leads to the more reasonable result. [Citation.]" (*Webster v. Superior Court* (1988) 46 Cal.3d 338, 343 [250 Cal. Rptr. 268, 758 P.2d 596].) This policy derives largely from the presumption that the Legislature intends reasonable results consistent with its apparent purpose. (*Harris, supra*, at pp. 1165-1166.) Thus, our task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results. (*People v. Jenkins* (1995) 10 Cal.4th 234, 246 [40 Cal. Rptr. 2d 903, 893 P.2d 1224]; *People v. Simon* (1995) 9 Cal.4th 493, 517 [37 Cal. Rptr. 2d 278, 886 P.2d 1271]; *Fields v. Eu* (1976) 18 Cal.3d 322, 328 [134 Cal. Rptr. 367, 556 P.2d 729].) We will not adopt "[a] narrow or restricted meaning" of statutory language "if it would result in an evasion of the evident purpose of [a statute], when a permissible, but broader, meaning [*1292] would prevent the evasion and carry out that purpose." (*In re Reineger* (1920) 184 Cal. 97, 103 [193 P. 81].)

Regarding these considerations, it is significant that under Copley's interpretation, the extent of confidentiality available to peace officers would turn on several fortuities: the entity hearing an appeal and the timing of the request. As to the former, although the law requires a "public agency" to provide nonprobationary peace officers with "an opportunity for administrative appeal" in connection with taking "punitive action" (Gov. Code, § 3304, subd. (b)), it also expressly gives "local public agenc[ies]" discretion to determine "rules and procedures" for these "administrative appeal[s]." ¹³ (Gov. Code, § 3304.5; see *Binkley, supra*, 16 Cal.App.4th at p. 1806 ["details" of required appeal "are left to be formulated by the local agency"].) In San Diego County, this statutory discretion has been exercised by designating the Commission to hear administrative appeals. However, other local agencies at various times have designated individuals within the law enforcement department to hear such appeals. (See *Brown, supra*, 102 Cal.App.4th at p. 173 [***198] ["a member of the Department of the rank of captain through deputy chief"];

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Riveros v. City of Los Angeles, *supra*, 41 Cal.App.4th at pp. 1358-1361 [hearing officer was captain in the department, with chief retaining final decision]; *Stanton*, *supra*, 226 Cal. App. 3d at p. 1440 ["'Chief of Police'"]; *Holcomb v. City of Los Angeles* (1989) 210 Cal. App. 3d 1560, 1562 [259 Cal. Rptr. 1] ["board of rights" consisting of "two watch commanders and one captain from the LAPD"].) Under Copley's interpretation, the record of the officer's appeal in this case is unprotected only because in San Diego County, the Commission has been designated to hear the administrative appeal the law requires the officer's employer to provide; if the officer worked in a jurisdiction where administrative appeals are heard within the law enforcement agency, then the records of that appeal would be protected. (Cf. *SFPOA*, *supra*, 202 Cal. App. 3d at p. 191 [tape recording of hearing before office of citizen complaints is a "confidential record[] disclosure of which is expressly governed by the statutory scheme"].)

13 Of course, discretion must be exercised consistent with any constitutional and statutory limitations. (Cf. *SFPOA*, *supra*, 202 Cal.App.3d at p. 190.)

As for timing, Copley's interpretation would yield inconsistent results regarding disclosure of identical records, depending on when the disclosure request is made. As noted above, section 832.5, subdivision (b), *requires* that "[c]omplaints [by members of the public against peace officers] and any reports or findings relating to these complaints [*301] ... be retained for a period of at least five years." If, as Copley contends, the Commission's records are not "maintained ... pursuant to [s]ection 832.5" within the meaning of section 832.7, subdivision (a), then the Commission's retention of its own reports and [*1293] findings would not satisfy the requirements of section 832.5 and the employing agency or department itself would be required by law to retain copies of those reports and findings in its own files for at least five years. The copies of the Commission's reports and findings in the employing agency's files would, under the express language of section 832.7, subdivision (a), be "records maintained ... pursuant to [s]ection 832.5" and would be "confidential." However, because those same reports and findings in the Commission's own files would not be "maintained ... pursuant to [s]ection 832.5" (§ 832.7, subd. (a)), they would not be confidential and would have to be disclosed unless they were destroyed before filing of a disclosure request (or some other CPRA

exception applied).¹⁴ Thus, under Copley's interpretation, disclosure would depend, fortuitously, on whether a disclosure request is made to the Commission before or after it destroys its records.¹⁵

14 Under Copley's interpretation, because the Commission's records are not "maintained ... pursuant to [s]ection 832.5" (§ 832.7, subd. (a)), the five-year retention requirement of section 832.5, subdivision (b), would not apply to them. Thus, nothing would prevent the Commission from destroying its records immediately after completing an appeal.

15 The dissent's assertion that under its construction, copies of Commission reports and findings kept by the sheriff's department would not be confidential (dis. opn., *post*, at pp. 1311-1312), is inconsistent with the plain language of section 832.5, subdivision (b), which requires that "any reports or findings relating to" citizen complaints be retained for at least five years, and of section 832.7, subdivision (a), which specifies that "records maintained by any state agency pursuant to [s]ection 832.5 ... are confidential" It is also inconsistent with our decision in *Williams v. Superior Court* (1993) 5 Cal.4th 337 [19 Cal. Rptr. 2d 882, 852 P.2d 377] (*Williams*), on which the dissent erroneously relies. (Dis. opn., *post*, at p. 1311.) There, in construing the CPRA exception for certain "investigatory or security files" (Gov. Code, § 6254, subd. (f)), we explained that "nonexempt materials"--i.e., those "not on their face exempt from disclosure" under the CPRA--"nevertheless become exempt through inclusion in an investigatory file. [Citations.]" (*Williams*, *supra*, at pp. 354-355.) Thus, contrary to the dissent's analysis, *Williams* actually *supports* the view that an agency may refuse to disclose an otherwise "disclosable document" that it has properly "plac[ed]" in a file that is protected from disclosure. (Dis. opn., *post*, at p. 1311.) Therefore, if, as the dissent argues, the Commission's files are not confidential under Penal Code section 832.7 because they are not maintained by the employing agency pursuant to Penal Code section 832.5, then copies of the Commission's reports and findings nevertheless become confidential when, as section 832.5, subdivision (b), requires, they are properly placed in the employing

agency's files.

As the dissent observes (dis. opn., *post*, at p. 1311), we also explained in *Williams* that a public agency cannot make the CPRA exemption for investigatory files applicable to a particular record "simply by placing it in a file labeled 'investigatory' " (*Williams, supra*, 5 Cal.4th at p. 355); the file can properly be called investigatory only if the "prospect of enforcement proceedings" is "concrete and definite," and the record in question must "properly belong in the file" because it "relate[s] to the investigation." (*Id.* at p. 362.) Contrary to the dissent's analysis, this discussion is completely consistent with the view that copies of Commission reports and findings that the employing agency is properly maintaining as required by section 832.5, subdivision (b), are confidential under section 832.7, subdivision (a).

The dissent's reliance on *New York Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97 [60 Cal. Rptr. 2d 410] (*New York Times*) is similarly misplaced. There, a news agency filed a CPRA request, not for disclosure of records, but for information: the names of deputy sheriffs who fired weapons during an incident. (*Id.* at p. 99.) The sheriff's department argued that the information was protected from disclosure by the CPRA exemption for "personnel ... files." (Gov. Code, § 6254, subd. (c).) The court disagreed, explaining that although the information could be found, among other places, in the officers' personnel files, it could "be readily provided ... without disclosure of any portion of the deputies' personnel files." (*New York Times, supra*, 52 Cal.App.4th at pp. 103-104, fn. omitted.) The court reasoned that the names of the officers, which was "otherwise ... unrestricted information," did not become exempt from disclosure merely by being "plac[ed] into a personnel file" (*Id.* at p. 103.) This reasoning, even if correct, has no application here, because section 832.7, subdivision (a), protects both the specified records *and* "information obtained from [those] records." Nor does *New York Times* stand for the proposition that records within a public agency's possession lose protection to which they are otherwise entitled merely because they were, at some time, available from some other source.

[*1294] [**302] Given these consequences, we cannot say that adopting Copley's interpretation [***199] would produce reasonable results that most closely comport with the Legislature's apparent intent. The statutes disclose a legislative intent both to *require* retention of "*any* reports or findings" generated as part of an agency's procedure for investigating citizen complaints against peace officers (§ 832.5, subd. (b), italics added) and to make records "maintained by *any* state or local agency pursuant to" this requirement "confidential." (§ 832.7, subd. (a), italics added; see *SFPOA, supra*, 202 Cal. App. 3d at p. 190 [statutes "evidence[]" legislative "purpose to provide retention of relevant records while imposing limitations upon their discovery and dissemination"].) Copley's interpretation produces results inconsistent with this intent, by stripping the Commission's reports and findings of confidentiality, at least so long as the Commission retains copies of them. Nothing in the legislative history suggests a legislative intent to create the confidentiality exception Copley asserts.

Moreover, it is doubtful the Legislature intended to make the extent of confidentiality [***200] available to a peace officer turn on whether he or she works in a jurisdiction where responsibility for administrative appeals has been assigned to someone outside the law enforcement department. In enacting section 832.7, the Legislature did not *directly* give a local agency discretion to release records of disciplinary appeals. Thus, although a particular local agency might have good reasons for wanting to grant public access to disciplinary records regarding peace officers, in jurisdictions where all aspects of disciplinary matters and citizen complaints--including appeals--are handled *within* the law enforcement department, the statutes do not give the employing agency discretion to disclose disciplinary records without consent of the involved peace officer. It is unlikely the Legislature, in declining to confer this discretion directly, nevertheless intended to allow an officer's employer to exercise such discretion *indirectly*, by designating someone outside the agency to hear these matters.¹⁶ Of course, some jurisdictions may [*1295] assign responsibility for such matters to persons outside the agency for reasons unrelated to--and without considering the implications for--public disclosure. Again, it is unlikely the Legislature, which went to great effort to ensure that records of such matters would be confidential and subject to disclosure under very limited circumstances, intended that such protection would be

lost as an inadvertent or incidental consequence of a local agency's decision, for reasons unrelated to public disclosure, to designate someone outside the agency to hear such matters. Nor is it likely the Legislature intended to make loss of confidentiality a factor that influences this decision.

16 Logically, Copley's interpretation would not apply only to records of an administrative appeal. Under Copley's analysis, records relating to any part of a disciplinary matter handled outside the law enforcement department would not be confidential within the meaning of section 832.7.

Having reviewed the statutory language and the legislative history, we find no evidence the Legislature intended that one officer's privacy rights would be less protected than another's simply because his or her employer, for whatever reason, conducts administrative appeals using an entity like the Commission. In enacting section 832.7, the Legislature appears to have made a statewide decision regarding confidentiality of such records, and has expressly specified the circumstances where a local agency "may"--i.e., has discretion to--release very limited information from those records. (§ 832.7, subs. (c), (d).) Nothing suggests the Legislature intended to leave it up to local departments and agencies, through the mechanism chosen for handling these matters, to determine--either intentionally or by accident--how much, if any, protection to afford peace officers. Nor does Copley even attempt to explain why the considerations that led the Legislature to enact Penal Code section 832.7, and later expressly to recognize this statute as a CPRA exception (Gov. Code, § 6276.34), apply differently depending on [**303] whether a disciplinary matter is handled inside or outside the law enforcement agency.¹⁷ In a prior case involving records made confidential by section 832.7, we explained that "[p]eace officers' privacy interests do not vary with the age of the accused who seeks personnel records." (*City of San Jose v. Superior Court* (1993) [***201] 5 Cal.4th 47, 54 [19 Cal. Rptr. 2d 73, 850 P.2d 621].) Nor do those interests vary with the relationship of the person hearing an administrative appeal to a peace officer's employer.¹⁸

17 To the extent differences exist, there may be more justification for public disclosure where the matter is heard entirely within the law enforcement agency than where the appeal is heard by an entity like the Commission.

Arguably, in the latter context, the public has more reason to trust the objectivity of the decision maker and, consequently, less need for disclosure. 18 We do not, as the dissent asserts, "assume[]" that "the level of confidentiality" available "must be the same" for all peace officers. (Dis. opn., *post*, at p. 1310, italics added.) Rather, we note the disparity that exists under the dissent's construction because, as explained, it is relevant in determining the Legislature's intent, which is "the objective of statutory interpretation" (*People v. Flores* (2003) 30 Cal.4th 1059, 1063 [135 Cal. Rptr. 2d 63, 69 P.3d 979].) We also do not, as the dissent suggests, believe that a local agency's desire to provide more public disclosure would be "unreasonable." (Dis. opn., *post*, at p. 1310.) We simply find--and the dissent offers--no evidence suggesting that the Legislature, which has precluded local agencies from implementing this desire directly, intended to permit them to do so indirectly, by designating an entity like the Commission to hear disciplinary appeals.

[*1296] Adopting Copley's interpretation would also significantly impact a peace officer's right of administrative appeal under Government Code section 3304, subdivision (b). As noted above, that right is one of the "basic rights" a public employer must provide peace officers under the POBRA. (*White, supra*, 31 Cal.3d at p. 679.) Adopting Copley's interpretation would create a strong disincentive to exercising this basic statutory right in jurisdictions where appeals are heard by persons outside the law enforcement department. In such jurisdictions, in order to exercise this right, peace officers would have to give up much of their right of confidentiality under Penal Code section 832.7, subdivision (a). Thus, Copley's interpretation presents peace officers with a Hobson's choice between their right of confidentiality under Penal Code section 832.7 and their right of administrative appeal under Government Code section 3304.¹⁹ There is no evidence the Legislature intended to give *local* agencies discretion to force peace officers to make such a choice. Nor is there evidence the Legislature intended that the basic statutory right of administrative appeal would effectively be less available in some jurisdictions than in others. (Cf. *Seattle Times Co. v. Rhinehart* (1984) 467 U.S. 20, 36, fn. 22 [81 L. Ed. 2d 17, 104 S. Ct. 2199] [noting that individuals may "forgo the pursuit of their just claims" to avoid "unwanted publicity," "causing" "frustration of [a

valuable] right' "].) On the contrary, such a conclusion would be inconsistent with the Legislature's express declaration that a peace officer's rights under the POBRA--including the right of appeal--are "a matter of *statewide* concern" and must be available "to *all* public safety officers, ... *wherever situated within the State of California*." (Gov. Code, § 3301, italics added.) Citing this declaration, we have explained that statutory constructions making the opportunity for administrative appeal "more widely available" "accord ... with the express purpose of the [POBRA]." (*White, supra*, 31 Cal.3d at p. 683.) Thus, from the perspective of both statutory language [***202] and practical consequences, Copley's narrow interpretation is not the more reasonable one, and would not produce reasonable results [**304] that most closely comport with the Legislature's apparent intent.²⁰

19 A Hobson's choice is defined as, among other things, "the necessity of accepting one of two or more equally objectionable things." (Webster's 3d New Internat. Dict. (2002) p. 1076, col. 1.) In this sense, the dissent's construction, by forcing certain peace officers to give up either their right of appeal or their right of confidentiality, surely presents them with a Hobson's choice. The dissent errs in suggesting that our construction limits the options of peace officers who want their appeals heard by bodies "drawn from outside [their] immediate chain of command." (Dis. opn., *post*, at p. 1312.) Nothing in our opinion precludes peace officers from choosing such an appellate body if a local agency offers one.

20 According to the dissent, under its construction, a peace officer who must choose between the right of appeal and the right of confidentiality is the same as any civil litigant seeking to vindicate legal rights in court. (Dis. opn., *post*, at pp. 1311-1312.) This assertion, even if correct, is beside the point. By statute, the Legislature has expressly provided peace officers with *both* rights, and the question here is whether the Legislature intended to make officers choose between those rights only if they happen to work for an agency that, for whatever reason, has designated a body like the Commission to hear appeals. Nothing suggests that such unequal treatment of peace officers would be consistent with the Legislature's intent.

The dissent errs in asserting that Government Code section 3304.5 evidences a legislative intent to allow such unequal treatment. (Dis. opn., *post*, at p. 1312.) That section, which provides that "administrative appeal[s] ... shall be conducted in conformance with rules and procedures adopted by" local public agencies (Gov. Code, § 3304.5), does not authorize public agencies to adopt rules or procedures that abrogate the confidentiality legislatively established in Penal Code section 832.7. (Cf. *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1029 [130 Cal. Rptr. 2d 662, 63 P.3d 220] [agencies may not adopt regulations that are inconsistent with statutes]; *SFPOA, supra*, 202 Cal.App.3d at p. 190.) Were that the case, even in a jurisdiction where disciplinary appeals are handled within the law enforcement department, nothing would prevent the local agency from providing disclosure notwithstanding Penal Code section 832.7. Even the dissent apparently would not go so far.

[*1297] (13) Insofar as the Court of Appeal specifically addressed disclosure of the deputy's identity, it erred in finding that this information is not confidential under section 832.7. (14) This conclusion derives largely from section 832.7, subdivision (c), which permits, "[n]otwithstanding subdivision (a)" of section 832.7, a department or agency that employs peace officers to disclose certain data regarding complaints against officers, but only "if that information is in a form which does not identify the individuals involved." The language limiting the information that may be disclosed under this exception demonstrates that section 832.7, subdivision (a), is designed to protect, among other things, "the identity of officers" subject to complaints. (*Richmond, supra*, 32 Cal.App.4th at p. 1440, fn. 3; cf. *Daily Journal Corp. v. Superior Court* (1999) 20 Cal.4th 1117, 1129 [86 Cal. Rptr. 2d 623, 979 P.2d 982] [provision prohibiting disclosure of information that would identify grand jury witnesses "reaffirms the general legislative concern to safeguard grand jury secrecy"].) The legislative history of this provision confirms the Legislature's intent to "prohibit any information identifying the individuals involved from being released, in an effort to protect the personal rights of both citizens and officers." (Assem. Com. on Public Safety, Republican Analysis of Assem. Bill No. 2222 (1989-1990 Reg. Sess.) Sept. 2, 1989, p. 2; see also Assem. Com. on Ways & Means, Analysis of Assem. Bill

No. 2222 (1989-1990 Reg. Sess.) as amended May 17, 1989 [exception allows release of summary data "as long as the information does not identify the officers involved".] Given the statutory language and the legislative history, the Court of Appeal erred in ordering disclosure of the name of the deputy involved in this case.

In reaching this conclusion, we reject Copley's reliance on *New York Times*, *supra*, 52 Cal.App.4th 97. There, through a CPRA request, a news organization sought the names of deputy [***203] sheriffs who fired weapons during a criminal incident. (*New York Times*, at p. 100.) The county sheriff, who determined this information during an internal investigation of the incident, agreed to [*1298] provide the names of *all* deputies who were present at the crime scene, but refused to identify the particular officers who fired their weapons. (*Id.* at pp. 99-100.) The court ordered disclosure of the information, holding in relevant part that it was not confidential under section 832.7. (*New York Times*, *supra*, at pp. 101-104.) Without any analysis, the court broadly declared that "[u]nder ... sections 832.7 and 832.8, an individual's name is not exempt from disclosure." (*New York Times*, *supra*, at p. 101.) As the preceding discussion of the statutory language and legislative history demonstrates, the court's unsupported assertion is simply incorrect, at least insofar as it applies to disciplinary [**305] matters like the one at issue here. Thus, we disapprove *New York Times Co. v. Superior Court*, *supra*, 52 Cal.App.4th 97, to the extent it is inconsistent with the preceding discussion, and we reject Copley's reliance on that decision.

(15) Finally, Copley's appeal to policy considerations is unpersuasive. Copley insists that "public scrutiny of disciplined officers is vital to prevent the arbitrary exercise of official power by those who oversee law enforcement and to foster public confidence in the system, especially given the widespread concern about America's serious police misconduct problems." There are, of course, competing policy considerations that may favor confidentiality, such as protecting complainants and witnesses against recrimination or retaliation, protecting peace officers from publication of frivolous or unwarranted charges, and maintaining confidence in law enforcement agencies by avoiding premature disclosure of groundless claims of police misconduct. (Cf. *McClatchy*, *supra*, 44 Cal.3d at pp. 1173-1178 [discussing reasons for confidentiality in grand jury

proceedings]; *Gubler v. Commission on Judicial Performance* (1984) 37 Cal.3d 27, 60 [207 Cal. Rptr. 171, 688 P.2d 551] [discussing judicial disciplinary matters].) In enacting and amending sections 832.5, 832.7, and 832.8, the Legislature, though presented with arguments similar to Copley's, made the policy decision "that the desirability of confidentiality in police personnel matters *does* outweigh the public interest in openness." ²¹ (*Hemet*, *supra*, 37 Cal.App.4th at p. 1428, fn. 18.) Copley [*1299] fails to explain why the considerations underlying the Legislature's policy decision apply differently, depending on whether a part of a disciplinary matter that the officer's employer must, by statute, provide is handled inside or outside the law enforcement department [***204] itself. In any event, it is for the Legislature to weigh the competing policy considerations. As one Court of Appeal has explained in rejecting a similar policy argument: "[O]ur decision ... cannot be based on such generalized public policy notions. As a judicial body, ... our role [is] to interpret the laws as they are written." ²² (*SDPOA*, *supra*, 104 Cal.App.4th at p. 287.)

21 The American Civil Liberties Union opposed the 1978 legislation that enacted sections 832.7 and 832.8 and amended section 832.5, arguing that the statutes would "seal[] ... off" records regarding complaints against peace officers "forever." (Legis. Advocate Brent Barnhart, American Civil Liberties Union, letter to Sen. Dennis Carpenter, Mar. 30, 1978, regarding Sen. Bill No. 1436 (1977-1978 Reg. Sess.)) The California Attorneys for Criminal Justice opposed a 2000 amendment to section 832.7, arguing that it was "bad public policy" because it would "allow peace officers to avoid accountability for their misconduct." (Legis. Advocate Wendy Taylor, Cal. Attorneys for Criminal Justice, letter to Assem. Member Dennis Cardoza, May 11, 2000, regarding Assem. Bill No. 2559 (1999-2000 Reg. Sess.)) The California Public Defenders Association opposed amendments in 2002 to sections 832.5 and 832.7 that extended confidentiality to custodial officers, arguing that "greater public exposure affords greater protection to the public, by insuring greater accountability." (Sen. Com. on Public Safety, Analysis of Assem. Bill No. 2040 (2001-2002 Reg. Sess.) as amended May 13, 2002, p. 10.)

22 We thus agree with the dissent that "it is for

the Legislature ... to make the policy decision" regarding confidentiality. (Dis. opn., *post*, at p. 1314.) The dissent errs, however, in asserting that by adopting the construction we find to be reasonable, we are improperly "imposing" our "own view of" what public policy should be. (*Id.* at p. 1314.) Our decisions have long recognized that a court's "overriding purpose" in construing a statute is "to give the statute a *reasonable* construction conforming to [the Legislature's] intent [citation], keeping in mind that 'the meaning of the enactment may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible' [citation]." (*Massey v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 674, 681 [20 Cal. Rptr. 2d 825, 854 P.2d 117], italics added.) Indeed, the dissent's criticisms--and its overall analytical approach--are inconsistent with an opinion the dissent's author wrote for a majority of this court just last year. In *In re Reeves* (2005) 35 Cal.4th 765 [28 Cal. Rptr. 3d 4, 110 P.3d 1218], after finding "ambiguities" in "seemingly plain [statutory] language" (*id.*, at p. 770), the majority "search[ed] for a reasonable construction" of the statute at issue, explaining that "[w]hen a statute is capable of more than one construction, ' [w]e must ... give the provision a *reasonable* and commonsense interpretation consistent with the apparent purpose and intention of the lawmakers, *practical rather than technical in nature*, which upon application will result in wise policy rather than mischief or absurdity.' " [Citations.]" (*Id.* at p. 771 & fn. 9, italics added.) Our analysis, unlike the dissent's, is completely consistent with this approach.

[**306] C. *Common law and constitutional considerations do not support Copley's interpretation.*

As noted above, Copley argues in part that it has both a common law and constitutional right of access to the records in question. Copley's constitutional argument amounts to a claim that section 832.7 is unconstitutional insofar as it permits nondisclosure of the records in question. For the reasons stated below, we reject these arguments.²³

23 Copley made these arguments in its petition for writ of mandate, but the Court of Appeal did not address them in its opinion. Copley did not bring this omission to the Court of Appeal's attention by filing a petition for rehearing, notwithstanding the court's holding that some of the requested records are confidential under section 832.7 and are not subject to disclosure under the CPRA. Nor did Copley file either a petition for review in this court or an answer to interveners' petition for review, which did not mention common law or constitutional issues and raised only the statutory question of whether "the identity of a disciplined officer and appeal records regarding that disciplinary action, requested from a Civil Service Commission" should "be provided pursuant to a request under" the CPRA. Under these circumstances, we could properly decline to decide these issues. (See *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 700, fn. 3 [37 Cal. Rptr. 3d 149, 124 P.3d 719].) However, the parties have briefed the issues, and we will address them "in order to lay to rest any doubts about the [statute's] constitutionality." (*People v. Hansel* (1992) 1 Cal.4th 1211, 1219 [4 Cal. Rptr. 2d 888, 824 P.2d 694].)

[*1300] **(16)** Copley's common law argument fails under well-established principles. As we have explained, "[t]he common law is only one of the forms of law and is no more sacred than any other. ... [I]t may be changed at the will of the [L]egislature, unless prevented by constitutional limitations." (*People v. Hickman* (1928) 204 [***205] Cal. 470, 479.) Thus, "we may consider common law practices ... only if they are not superseded by or in conflict with constitutional or statutory provisions. [Citation.]" (*People ex rel. Deukmejian v. Brown* (1981) 29 Cal.3d 150, 157 [172 Cal. Rptr. 478, 624 P.2d 1206].) Indeed, the only California authority Copley cites in support of its argument recognizes that the common law right to inspect public records does not apply where "a specific exception makes specific records nonpublic. [Citation.]" (*Estate of Hearst* (1977) 67 Cal. App. 3d 777, 782 [136 Cal. Rptr. 821].) Here, as explained above, the Legislature has enacted a specific statute that makes the records in question "confidential." (Pen. Code, § 832.7, subd. (a); see also Gov. Code, §§ 6275, 6276, 6276.34 [Pen. Code, § 832.7 constitutes CPRA exemption pursuant to Gov. Code, § 6254, subd.

(k).) Given this statute, the common law, even if it is as Copley asserts, does not govern this case.²⁴

24 Copley also cites *Nixon v. Warner Communications, Inc.* (1977) 435 U.S. 589 [55 L. Ed. 2d 570, 98 S. Ct. 1306]. There, the high court "assume[d], *arguendo*," that "the common-law right of [public] access" applied to the judicial records at issue in that case, and therefore declined "to delineate precisely the contours of" that right. (*Id.* at p. 599.) Notably, the high court held that disclosure of the records in question was controlled, not by the common law, but by "statutory standards" enacted by the United States Congress. (*Id.* at p. 607, italics added.) That holding supports our conclusion that section 832.7, not the common law, controls the disclosure request in this case.

(17) Copley's argument under the California Constitution fails for a similar reason. Copley relies on article I, section 3, subdivision (b)(1), of the California Constitution, which provides: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." However, subdivision (b)(3) of the same section provides in relevant part that "[n]othing in this subdivision ... affects the construction of any statute ... to the extent that it protects th[e] right to privacy" guaranteed by article I, section 1 of the California Constitution, "including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer." (Cal. Const., art. I, § 3, subd. (b)(3).) One of section 832.7's purposes is "to protect the right of privacy of peace officers." (71 Ops.Cal.Atty.Gen. 247, 249 (1988); see also *People v. Mooc* (2001) 26 Cal.4th [*1301] 1216, 1227 [**307] [114 Cal. Rptr. 2d 482, 36 P.3d 21] [§ 832.7 is part of "statutory scheme" enacted "to protect" peace officers' "interest in privacy to the fullest extent possible"].) Thus, under the express language of the state Constitution, the constitutional provision Copley cites does not "affect ... the construction" of section 832.7, subdivision (a). (Cal. Const., art. I, § 3, subd. (b)(3).)

Copley's argument under the First Amendment to the United States Constitution, which applies to the states through the Fourteenth Amendment (*Keenan v. Superior*

Court (2002) 27 Cal.4th 413, 416 [117 Cal. Rptr. 2d 1, 40 P.3d 718]), is inconsistent with binding high court authority. In *Los Angeles Police Dept. v. United Reporting Publishing Corp.* (1999) 528 U.S. 32, 37 [145 L. Ed. 2d 451, 120 S. Ct. 483] (*United Reporting*), the high court rejected a First Amendment challenge to Government Code section 6254, subdivision (f)(3), which is a CPRA provision authorizing nondisclosure of address information regarding arrestees and crime victims unless the requester declares under penalty of perjury that the request is being made [***206] for one of five purposes and that the information will not be used directly or indirectly to sell a product or service. The majority opinion in *United Reporting*, written by Chief Justice Rehnquist for seven justices, explained: "This is not a case in which the government is prohibiting a speaker from conveying information that the speaker already possesses. [Citation.] ... For purposes of assessing the propriety of a facial invalidation, what we have before us is nothing more than a governmental denial of access to information in its possession. *California could decide not to give out arrestee information at all without violating the First Amendment.* [Citation.]" (*United Reporting, supra*, at p. 40, italics added, fn. omitted.) The two remaining justices expressly endorsed this aspect of the majority opinion, although they dissented on other grounds. (*Id.* at p. 45 (dis. opn. of Stevens, J.)) Thus, in *United Reporting*, the high court unanimously held that California could, without violating the First Amendment, decide to withhold the information altogether.

(18) Notably, in reaching its conclusion, the majority in *United Reporting* cited *Houchins v. KQED, Inc.* (1978) 438 U.S. 1, 14 [57 L. Ed. 2d 553, 98 S. Ct. 2588] (*Houchins*). (*United Reporting, supra*, 528 U.S. at p. 40.) In *Houchins*, the high court reversed an injunction prohibiting the Sheriff of Alameda County from denying members of the news media access to jail facilities, finding that the First Amendment does not guarantee such access. (*Houchins, supra*, 438 U.S. at pp. 7-16 (lead opn. of Burger, C. J.)) On the page cited in *United Reporting*, Chief Justice Burger, representing a majority of the justices deciding the case, explained: "There is no discernible basis for a constitutional duty to disclose, or for standards governing disclosure of or access to information. Because the Constitution affords no guidelines, absent statutory standards, hundreds of judges would, under the Court of Appeals' approach, be at large to fashion ad hoc standards, in individual cases, according to their own ideas of what seems 'desirable' or

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'expedient.' We, therefore, reject the [*1302] Court of Appeals' conclusory assertion that the public and the media have a First Amendment right to government information regarding the conditions of jails and their inmates and presumably all other public facilities such as hospitals and mental institutions. [¶] 'There is no constitutional right to have access to particular government information, or to require openness from the bureaucracy. [Citation.] The public's interest in knowing about its government is protected by the guarantee of a Free Press, but the protection is indirect. The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.'" ²⁵ (*Houchins*, at p. 14.)

25 Only seven justices participated in *Houchins*. Justice White and then-Justice Rehnquist joined Chief Justice Burger's lead opinion. Justice Stewart wrote a separate opinion concurring in the judgment and stating: "The First and Fourteenth Amendments do not guarantee the public a right of access to information generated or controlled by government, nor do they guarantee the press any basic right of access superior to that of the public generally. The Constitution does no more than assure the public and the press equal access once the government has opened its doors. Accordingly, I agree substantially with what the opinion of The Chief Justice has to say on that score." (*Houchins*, *supra*, 438 U.S. at p. 16, fn. omitted (conc. opn. of Stewart, J.)) Justice Stevens wrote a dissenting opinion, which Justice Brennan and Justice Powell joined. Justice Marshall and Justice Blackmun did not participate in the case.

[**308] (19) Under our constitutional system of government, "a statute, once duly enacted, 'is presumed to be constitutional.'" [***207] (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1086 [17 Cal. Rptr. 3d 225, 95 P.3d 459].) Unconstitutionality must be clearly, positively, and certainly shown by the party attacking the statute, and we resolve doubts in favor of the statute's validity. (*Ibid.*; *Metropolitan Co. v. Brownell* (1935) 294 U.S. 580, 584 [79 L. Ed. 1070, 55 S. Ct. 538]; *In re York* (1995) 9 Cal.4th 1133, 1152 [40 Cal. Rptr. 2d 308, 892 P.2d 804]; *San Francisco v. Industrial Acc. Com.* (1920) 183 Cal. 273, 279-280 [191 P. 26].) In light of *United Reporting* and *Houchins*, Copley cannot meet its burden of showing that section 832.7 is unconstitutional insofar as it permits

nondisclosure of the records in question.

Notably, in making its argument, Copley completely fails to mention these high court decisions. Instead, it relies on a line of high court cases finding a qualified First Amendment right of public access to various parts of a *criminal* proceeding. (*Press-Enterprise Co. v. Superior Court* (1986) 478 U.S. 1 [92 L. Ed. 2d 1, 106 S. Ct. 2735] [transcript of preliminary hearing]; *Press-Enterprise Co. v. Superior Court of Cal.* (1984) 464 U.S. 501 [78 L. Ed. 2d 629, 104 S. Ct. 819] [voir dire]; *Waller v. Georgia* (1984) 467 U.S. 39 [81 L. Ed. 2d 31, 104 S. Ct. 2210] [hearing on motion to suppress]; *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596 [73 L. Ed. 2d 248, 102 S. Ct. 2613] [trial examination of victim of specified sexual offense]; *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555 [65 L. Ed. 2d 973, 100 S. Ct. 2814] [criminal trial].) Copley also relies on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178 [86 Cal. Rptr. 2d [*1303] 778, 980 P.2d 337] (*NBC Subsidiary*) and *Detroit Free Press v. Ashcroft* (6th Cir. 2002) 303 F.3d 681 (*Detroit Free Press*). In the former, we extended the high court's line of authority involving access to criminal proceedings to the civil context, finding a qualified "First Amendment ... right of access to ordinary civil trials and proceedings." (*NBC Subsidiary*, *supra*, [**309] at p. 1212.) In the latter, the federal Sixth Circuit Court of Appeals extended the same line of authority to the administrative context, finding a qualified "First Amendment right of access to deportation hearings." (*Detroit Free Press*, *supra*, at p. 705.)

Copley's reliance on these cases is unpersuasive. As we noted in *NBC Subsidiary*, all of the high court cases Copley cites arose in the criminal context, and the high court has not expressly extended its First Amendment right-of-access jurisprudence in those cases to any other context. (*NBC Subsidiary*, *supra*, 20 Cal.4th at pp. 1207, 1209; see also *Tennessee v. Lane* (2004) 541 U.S. 509, 523 [158 L. Ed. 2d 820, 124 S. Ct. 1978] ["we have recognized that members of the public have a right of access to criminal proceedings secured by the First Amendment".]) Although we so extended that jurisprudence in *NBC Subsidiary*, we expressly limited the extension "to *ordinary* civil proceedings in general," and stressed that we were not addressing "any right of access to particular proceedings governed by specific statutes." (*NBC Subsidiary*, at p. 1212, fn. 30, italics added.) Moreover, after acknowledging the validity of

concern that a constitutional right of access, " 'if not subjected to practical limitations, would theoretically warrant permitting the public to sit and contemporaneously eavesdrop upon everything their government does,' " we explained that this concern "has been accounted for in decisions that have been careful not to extend the public's right of access beyond the adjudicative proceedings and filed documents of *trial and appellate* [***208] *courts*." ²⁶ (*NBC Subsidiary*, at p. 1212, italics added, fn. omitted.)

26 Civil service commissions, "while they may be invested with mixed powers, including, among others, the power to act judicially in a matter before them, are not courts. At best, they are, in the exercise of that power, proceeding as *quasi* judicial bodies, something quite distinct from courts, and in no manner do they constitute inferior courts, as that term is used in the [state] constitution." (*Chinn v. Superior Court* (1909) 156 Cal. 478, 482 [105 P. 580]; see also *Swars v. Council of City of Vallejo* (1949) 33 Cal.2d 867, 873-874 [206 P.2d 355] [in hearing police officer's appeal of dismissal order, civil service commission was not "a 'court of justice' within meaning of" statute providing that sittings of every court of justice shall be public]; cf. *McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 520-521 [116 Cal. Rptr. 260, 526 P.2d 268] [rejecting judge's constitutional due process claim to open hearing, reasoning that proceedings before Commission on Judicial Qualifications "are neither criminal nor before a 'court of justice' ".])

Only a few months later, the high court issued just such a decision, holding unanimously in *United Reporting* that California could, without violating the First Amendment, refuse to provide public access to information regarding arrestees and crime victims. (*United Reporting*, *supra*, 528 U.S. at p. 40.) [*1304] Notably, in reaching its conclusion, the majority opinion did not even cite the court's earlier cases finding a qualified First Amendment right of access to criminal proceedings, and did not apply the analytical framework set forth in those earlier cases. Nor were those earlier cases or their analytical framework mentioned in any of the separate opinions, all of which agreed that California could constitutionally refuse to disclose the information in question. (*United Reporting*, *supra*, 528 U.S. at pp.

41-42 (conc. opn. of Scalia, J.); *id.* at pp. 42-44 (conc. opn. of Ginsburg, J.); *id.* at pp. 44-48 (dis. opn. of Stevens, J.)) Lower courts have subsequently applied *United Reporting* in finding no First Amendment right of access to administrative records. (*Center for Nat. Sec. Studies v. Dept. of Justice* (D.C. Cir. 2003) 356 U.S. App. D.C. 333 [331 F.3d 918, 935] [no First Amendment right of access to government records regarding persons detained after terrorist attacks]; *Amelkin v. McClure* (6th Cir. 2000) 205 F.3d 293, 296 [no First Amendment right of access to police accident reports]; *Spottsville v. Barnes* (N.D.Ga. 2001) 135 F. Supp. 2d 1316, 1318-1323 [same]; see also *In re Boston Herald, Inc.* (1st Cir. 2003) 321 F.3d 174, 180 ["constitutional ... right[] of access ha[s] applied only to judicial documents".]) In light of the above, Copley's reliance on *NBC Subsidiary* and the high court cases involving criminal proceedings is unavailing.

For several reasons, Copley's reliance on *Detroit Free Press* is also unpersuasive. First, the only question the court decided there was whether the First Amendment guaranteed public access to a deportation hearing, and the court expressly declined to express an opinion on whether the First Amendment guarantees public access to transcripts and documents from completed hearings. (*Detroit Free Press*, *supra*, 303 F.3d at p. 684, fn. 4.) Thus, *Detroit Free Press* has little to say regarding the question before us: whether Copley has a First Amendment right of public access to *records* of the Commission. ²⁷ Second, *Detroit Free Press* failed even to mention *United Reporting*, which was decided only three years earlier and which directly addressed [***209] the question of First Amendment access to nonjudicial government records. Finally, *Detroit Free Press* incorrectly discounted *Houchins* as a "plurality opinion" that "was neither accepted nor rejected by a majority of the Court" and that "the Court ha[d] since moved away from" (*Detroit Free Press*, *supra*, 303 F.3d at pp. 694-695.) In making this statement, the court in *Detroit Free Press* failed to appreciate that because Justice Stewart's concurring opinion in *Houchins* agreed with what the lead opinion said regarding an alleged First Amendment "right of access to information generated or controlled by government" (*Houchins*, *supra*, 438 U.S. at p. 16 (conc. opn. of Stewart, J.)), "a four-member majority" held in *Houchins* "that [*1305] the First Amendment [does not] guarantee ... public access to sources of information under government control." (*San Jose Mercury-News v. Municipal Court* (1982) 30 Cal.3d 498, 503 [179 Cal. Rptr. 772, 638 P.2d 655], fn. omitted.)

The court in *Detroit Free Press* also failed to realize that in 1999, seven high [**310] court justices in *United Reporting* expressly reaffirmed *Houchins*'s vitality by citing it in holding that California could, without violating the First Amendment, deny all public access to information in police records about arrestees and crime victims (*United Reporting*, *supra*, 528 U.S. at p. 40), and that even the two dissenting justices in *United Reporting* agreed with the majority's holding on this issue. (*Id.* at p. 45 (dis. opn. of Stevens, J.)) For these reasons, *Detroit Free Press* is of little assistance here. ²⁸ Thus, under *United Reporting* and *Houchins*, we reject Copley's First Amendment claim. ²⁹

27 We express no opinion regarding whether Copley has a constitutional right to attend Commission appeal hearings. As the Court of Appeal explained, the facts of this case do not present that question. (See *ante*, fn. 3.)

28 We also note that several courts have disagreed with and criticized *Detroit Free Press*. (*Center for Nat. Sec. Studies v. Dept. of Justice*, *supra*, 331 F.3d at p. 932 [no First Amendment right of access to government records regarding persons detained after terrorist attacks]; *North Jersey Media Group, Inc. v. Ashcroft* (3d Cir. 2002) 308 F.3d 198, 201, 204-205 [no First Amendment right to attend deportation hearings].)

29 In light of our conclusion under section 832.7 and Government Code section 6254, subdivision (k), we need not decide whether the information requested here is also protected under Government Code section 6254, subdivision (c).

Conclusion

The judgment of the Court of Appeal is reversed and the matter is remanded for further proceedings consistent with this opinion.

George, C. J., Kennard, J., Baxter, J., Moreno, J., and Corrigan, J., concurred.

DISSENT BY: Werdegar

DISSENT

WERDEGAR, J., Dissenting.--We consider in this case the interest of the public, here represented by a major San Diego daily newspaper, in full disclosure of the records of a San Diego County Sheriff's deputy's

administrative appeal of departmental discipline. We also consider the extent of the deputy's right to keep his personnel matters private and out of the public eye. The majority correctly recognizes we must interpret the applicable statutory language in the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), and its incorporation of the limitations on disclosure set forth in Penal Code section 832.7, with the goal of implementing the Legislature's intent. Faithful adherence to the plain meaning of these statutory provisions will ensure that the ultimate result in this case is consistent with the balance struck by the Legislature regarding the relative importance of disclosing the secret inner workings of the government, on the one hand, and maintaining [***210] the individual privacy of the officer, on the other.

[*1306] Because the majority misconstrues the applicable statutes, it incorrectly holds that every aspect of the deputy's administrative appeal should remain secret, including even the deputy's name. By so doing, the majority overvalues the deputy's interest in privacy, undervalues the public's interest in disclosure, and ultimately fails to implement the Legislature's careful balance of the competing concerns in this area. Accordingly, I dissent.

I

As the majority explains, The Copley Press, Inc. (Copley Press), publisher of the San Diego Union-Tribune newspaper, sought disclosure from the County of San Diego Civil Service Commission (the Commission) of certain documents related to the Commission's hearing on a deputy sheriff's appeal from his department's proposed discipline of him. In seeking such disclosure, Copley Press relied on the CPRA, which "was enacted in 1968 to safeguard the accountability of government to the public, for secrecy is antithetical to a democratic system of 'government of the people, by the people [and] for the people.' The Act 'was enacted against a "background of legislative impatience with secrecy in government" (53 Ops.Cal.Atty.Gen. 136, 143 (1970).)" (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal. App. 3d 762, 771-772 [192 Cal. Rptr. 415].) As this court has explained: "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals [**311] must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the

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political process. However, a narrower but no less important interest is the privacy of individuals whose personal affairs are recorded in government files." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 [230 Cal. Rptr. 362, 725 P.2d 470], fns. omitted; see also Gov. Code, § 6250 [Legislature's declaration in enacting the CPRA that access to government information "is a fundamental and necessary right"].)

Although the CPRA begins with the general rule of openness and disclosure of government information, it exempts from disclosure 29 categories of materials.¹ (Gov. Code, § 6254.) "These exemptions are permissive, not mandatory. The [CPRA] endows the agency with discretionary authority to override the statutory exceptions when a dominating public interest favors disclosure." (*CBS, Inc. v. Block, supra*, 42 Cal.3d at p. 652.) If an agency denies a request for disclosure under the CPRA, it must justify its denial by showing the CPRA expressly exempts the record in question from disclosure. (Gov. Code, § 6255, subd. (a).)

1 As one court describes it: "The objectives of the Public Records Act thus include preservation of islands of privacy upon the broad seas of enforced disclosure." (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653 [117 Cal. Rptr. 106].)

[*1307] In denying Copley Press's claim for disclosure under the CPRA, the Commission cited two statutory provisions, but (like the majority) I need discuss only one, Government Code section 6254, subdivision (k) (section 6254(k)).² That statute provides [***211] in relevant part: "[N]othing in this chapter shall be construed to require disclosure of records that are any of the following: [¶] ... [¶] (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law" This subdivision "is not an independent exemption" (*CBS, Inc. v. Block, supra*, 42 Cal.3d at p. 656), but incorporates other statutes that protect against disclosure. In this case, real parties in interest allege section 6254(k) incorporates Penal Code section 832.7, which renders confidential two types of law enforcement records, prohibiting their disclosure "in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."³ (Pen. Code, § 832.7, subd. (a).) The first type are "[p]eace officer or custodial officer personnel records" or information obtained from such records. (*Ibid.*) Such personnel

records, in turn, are defined in Penal Code section 832.8 as "any file maintained under that individual's name *by his or her employing agency ...*" (Italics added.) Thus, the first category of material made confidential by Penal Code section 832.7 is expressly limited to personnel records *maintained by the officer's employing agency or department.*

2 The Commission relied also on Government Code section 6254, subdivision (c), which provides in pertinent part: "[N]othing in this chapter shall be construed to require disclosure of records that are any of the following: [¶] ... [¶] (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." The bulk of the Commission's records, however, do not fall under the terms of this provision. With the exception of the deputy's actual personnel file and information obtained from that file (see Pen. Code, § 832.7, subd. (a)), the statutory exception from disclosure set forth in section 6254, subdivision (c) provides no basis on which to withhold the Commission's records from Copley Press.

Although Copley Press also claims a constitutional right to disclosure of the Commission's records, I would not reach the constitutional issue inasmuch as I would find disclosure is required under the CPRA. (See *People v. Brown* (2003) 31 Cal.4th 518, 534 [3 Cal. Rptr. 3d 145, 73 P.3d 1137] [courts should decline to reach constitutional questions if a statutory claim is dispositive].)

3 I agree with the majority that this language does not preclude application of Penal Code section 832.7 to administrative proceedings, as here. (Maj. opn., *ante*, at pp. 1284-1286.)

The second type of law enforcement records made confidential by Penal Code section 832.7 (and thus protected from disclosure by Government Code section 6254(k)) are "records [or information obtained from such records] maintained by *any state or local agency pursuant to Section 832.5*" (Pen. Code, § 832.7, subd. (a), italics added), i.e., records relating to citizen complaints. Subdivision (a)(1) of Penal Code section 832.5 [***312] states that "[e]ach department or agency in this state *that employs peace officers*" must "establish a procedure to investigate complaints by members of the public" against

their personnel. (Italics added.) Subdivision (b) requires that such complaints [*1308] and any related reports be retained for at least five years either in the officer's "general personnel file or in a separate file designated by the department or agency," provided that "prior to any official determination regarding promotion, transfer, or disciplinary action," complaints described in subdivision (c) must be "removed from the officer's general personnel file and placed in [a] separate file designated by the department or agency." Subdivision (c) provides that complaints or any portion of a complaint the officer's "*employing agency*" (italics added) finds to be "frivolous, ... unfounded or exonerated" must not be maintained in the officer's general personnel file. Finally, subdivision (d)(1) defines "[g]eneral personnel file" as "the file maintained by the agency" containing the officer's employment records.

Considering the subdivisions of Penal Code section 832.5 together, it is apparent [***212] the Legislature used the terms "agency" and "department" to refer to the public entity that *employs* the officer involved. Thus, files deemed confidential under Penal Code section 832.7's second category of material, like its first, are limited to those maintained by the peace officer's *employing agency or department*. This agency may be a city police department (employing a police officer), a county sheriff's department (employing a deputy sheriff) or the Department of Corrections and Rehabilitation (employing a correctional officer).

The law applicable to this case is not unlike a set of nesting dolls, in which one law fits within another. We begin with the general rule of disclosure of government records (the CPRA), move to a possible exception to the general rule (Gov. Code, § 6254(k)), which in turn incorporates a law establishing the confidentiality of certain law enforcement records (Pen. Code, § 832.7), which specifically renders confidential only peace officer personnel records as defined by Penal Code section 832.8, and records maintained by any state or local agency as defined by Penal Code section 832.5, both of which are limited to files maintained by *the officer's employing agency*. It is in these final definitions, located deep within this network of self-referential statutory provisions, that the majority purports to strike gold. Declaring that because the Commission has been designated to provide administrative appeals for employees of the San Diego County Sheriff's Department, the majority opines "it is reasonable to

conclude that for purposes of applying the relevant statutes in this case, the Commission *is functioning as part of 'the employing agency'* and that any file it maintains regarding a peace officer's disciplinary appeal constitutes a file 'maintained ... by [the officer's] employing agency' within the meaning of section 832.8." (Maj. opn., *ante*, at p. 1288, italics added.)

What the majority has found is fool's gold. No amount of judicial juggling or legal legerdemain can convert a county's civil service commission into the [*1309] agency that employs the county's law enforcement officers. Certainly no evidence appears in the record--and the majority cites none--showing that the Commission has ever accepted a job application from this deputy; conducted a background check or hired him; issued a paycheck to him; contacted him about his medical, dental or retirement benefits; had the power to promote or demote him; or had any say over his day-to-day assignments. That the deputy was employed by the San Diego County Sheriff's Department, not the Commission, is plain.

Even accepting as accurate the majority's characterization--dubious at best--of how the Commission is "functioning," Penal Code section 832.7 does not sweep within its embrace all entities that merely function or act as part of the employing agency; it requires that the files be maintained by the entity that *actually is* the employing agency. (See Pen. Code, § 832.8 [file maintained "by his or her employing agency"]; *id.*, § 832.5, subd. (a)(1) [referring to "[e]ach department or agency in this state that employs peace officers"].) In concluding otherwise, the majority strays far [***313] from the plain meaning of the applicable statutory language.

The majority posits that if the Commission is not the employing agency, a citizen complaint the *Commission* finds frivolous or unfounded need not be removed but can remain in the deputy's file, a result the majority finds unreasonable. (Maj. opn., *ante*, at p. 1288.) This concern is baseless. Where, as here, a county civil service commission is designated to hear [***213] appeals in peace officer disciplinary cases, the officer's employing agency must abide by the commission's decision. " 'The Commission's decisions shall be final, and *shall be followed by the County* unless overturned by the courts on appeal.' " (*Civil Service Com. v. Superior Court* (1984) 163 Cal. App. 3d 70, 77 [209 Cal. Rptr. 159].)

Thus, for example, had the Commission here found the complaint against the deputy to be frivolous, the sheriff's department, absent an appeal, presumably would in all respects adopt and abide by that decision. The contrary conclusion--that the department would retain the complaint in the deputy's personnel file on the ground that it was the Commission, and not the department, that had found the complaint frivolous or unfounded--seems farfetched. Certainly nothing the majority says supports the speculation that a law enforcement agency would (or could) disregard the Commission's decision on appeal.

Taking a somewhat different tack, the majority concludes that the Commission's *own records* qualify as records "maintained ... pursuant to Section 832.5" (Pen. Code, § 832.7, subd. (a)) and thus are confidential under the statutory scheme. The majority reasons that because Penal Code section 832.5, requiring the retention for at least five years of citizen complaints and any related reports or findings, does not specify the entity that must maintain [*1310] these records and "does expressly specify that 'complaints retained pursuant to [the statute] may be maintained ... in a separate file designated by the department or agency' " (maj. opn., *ante*, at p. 1291), "it is reasonable to conclude that because the Commission has been designated to hear disciplinary appeals, its records qualify under section 832.7, subdivision (a), as 'records maintained by any state or local agency pursuant to Section 832.5' " (*ibid.*). But the absence of any evidence or suggestion in the record that the sheriff's department has in fact designated the Commission to retain a file of complaints for five years, as required by section 832.5, subdivision (b), wholly undermines the majority's analysis on this point.

The majority next argues its conclusion the Commission employs the deputy sheriff must be correct, because a contrary conclusion would render the scope of confidentiality available to peace officers dependent "on several fortuities: the entity hearing an appeal and the timing of the request." (Maj. opn., *ante*, at p. 1292.) Neither rationale is persuasive.

Because a law enforcement agency has discretion to decide the mechanism for administrative review of disciplinary matters (Gov. Code, § 3304.5), different agencies likely will choose different mechanisms. The majority erroneously assumes--with no support from legal authority or legislative history--that regardless of the review mechanism chosen (or, as here, imposed on

the agency), the level of confidentiality attaching to the record of a peace officer's appeal of proposed discipline must be the same. (Maj. opn., *ante*, at pp. 1292-1293.) But no such "equality" principle is apparent in the statutory scheme, nor is the possibility of different levels of mandatory disclosure under the CPRA contrary thereto. By limiting the exception to the CPRA to personnel files maintained by the "employing agency," the Legislature left open the possibility that law enforcement-related files maintained by *other* public agencies would be subject to disclosure under the CPRA.

A law enforcement agency may have any number of reasons to provide for independent commission--rather than in-house--review of police disciplinary matters, with [***214] its attendant greater public scrutiny. Community concerns about police brutality, oversight imposed by the city council or county board of supervisors, a charter mandate (as here), the size of the department (does it [*314] have several hundred officers or just two?), negotiated outcomes between a department and the union representing the rank-and-file, all these factors can no doubt play a part in the choice of an independent commission to provide administrative review. That an option exists to provide less disclosure to the public does not logically preclude an option providing for greater openness in government. The majority fails to explain why a law enforcement agency's or local government's choice to use an administrative review mechanism that involves more disclosure to the community is unreasonable.

[*1311] The majority also contends that if the Commission is not considered the deputy's employing agency, the level of disclosure would turn arbitrarily on the timing of any request to disclose. Thus, according to the majority, if only the sheriff's department is the deputy's employer, only the sheriff's department would be statutorily required to maintain the record of his disciplinary appeal. (Pen. Code, § 832.5, subd. (b).) In that case, disclosure could be had from the Commission under the CPRA; but if the Commission destroyed its records before the request, the copy of the record in the sheriff's department's possession would acquire confidentiality as a "personnel record" maintained pursuant to Penal Code section 832.5, precluding its disclosure. (Maj. opn., *ante*, at pp. 1292-1293.)

The majority is incorrect. If the Commission's record of the appeal is subject to disclosure under the CPRA, the

sheriff's department could not shield it from disclosure by placing it in the deputy's personnel file. *Williams v. Superior Court* (1993) 5 Cal.4th 337 [19 Cal. Rptr. 2d 882, 852 P.2d 377] is instructive. There we addressed the exception to CPRA disclosure set forth in Government Code section 6254, subdivision (f), concerning law enforcement investigatory files. The parties in *Williams* disputed whether the information in such files would remain confidential after the investigation ended. This court concluded the exception applied even after the investigation ended, but also stated that "the law does not provide ... that a public agency may shield a record from public disclosure, regardless of its nature, simply by placing it in a file labelled 'investigatory.' " (*Williams v. Superior Court*, at p. 355.) Similarly, the Court of Appeal in *New York Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97, 103 [60 Cal. Rptr. 2d 410], commenting on that possibility, opined: "The labels of 'personnel records' and 'internal investigation' are captivatingly expansive, and present an elasticity menacing to the principle of public scrutiny of government. A public servant may not avoid such scrutiny by placing into a personnel file what would otherwise be unrestricted information. A conclusion to the contrary would weaken and despoil the Public Records Act." Because a law enforcement agency cannot avoid the mandate of the CPRA by placing a disclosable document into a peace officer's personnel file, the level of confidentiality does not turn on the timing of the disclosure request.

Finally, the majority reasons that failure to adopt the fiction that the Commission is the deputy's employing agency would "significantly impact a peace officer's right of administrative appeal," presenting deputies with a "[h]obson's choice" of vindicating their rights on appeal or retaining the confidentiality of their personnel records. (Maj. opn., *ante*, at p. 1296.) A hobson's choice is [***215] defined as either "an apparent freedom to take or reject something offered when in actual fact no such freedom exists" (Webster's 3d New Internat. Dict. (2002) p. 1076, col. 1) or "the necessity of accepting one of two equally objectionable things" (*ibid.*). As to the first definition, a peace [*1312] officer facing disciplinary charges has a viable choice: he may appeal to the Commission, in which case the proceedings before the Commission (but not his actual personnel file) will be disclosable under the CPRA, or he can decline to appeal, accept his discipline and keep everything secret. The officer's situation is no different than that of any civil litigant who, in order to vindicate legal rights in court,

must submit to pretrial discovery and endure a public trial. That a choice may come freighted with some disadvantages does not render it illusory. As for the second definition, even if these choices as the majority suggests are "equally objectionable" to the [**315] officer, the majority does not explain why a peace officer facing discipline is entitled to pursue an administrative appeal free from uncomfortable choices. Guarding the confidentiality of the deputy's actual personnel file, maintained by the sheriff's department, but allowing for the disclosure of other information having an origin outside that file, hardly places a burden on a deputy's administrative right to appeal so intolerable and objectionable that we may conclude the Legislature could not have intended that result. So far as we know, a peace officer may be desirous of having his appeal heard by an independent body, one drawn from outside his immediate chain of command. Although the majority states "[t]here is no evidence the Legislature intended to give local agencies discretion to force peace officers to make" a choice between appeal and disclosure (maj. opn., *ante*, at p. 1296), there likewise is no evidence the Legislature intended to *preclude* such discretion. Indeed, because Government Code section 3304.5 leaves the "precise details" of an officer's right to administrative appeal⁴ to be determined by individual local law enforcement agencies (*Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, 443 [126 Cal. Rptr. 2d 3]), equally likely is that the Legislature intended to give such agencies the discretion to require more disclosure on appeal, so long as the review procedures established, as here, do not violate any express provision of the statutory scheme set forth in Penal Code sections 832.5, 832.7, 832.8, or in the CPRA.

4 Government Code section 3304, subdivision (b) provides: "No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal."

II

No doubt San Diego County chose the Commission to hear peace officer appeals for a specific reason. The Commission is "a 'quasi-independent' county agency. In

contrast to most county agencies, which are directly supervised by the board of supervisors [citation], the Commission's unique review function demands an independence which is specifically provided for in section 904.1 of the San Diego County Charter (as amended Dec. 17, [*1313] 1982): 'The Commission is the administrative appeals body for the County in personnel matters authorized by this Charter. Upon appeal, the Commission may affirm, revoke or modify any disciplinary order, and may make any appropriate orders in connection with appeals under its jurisdiction. The Commission's decisions shall be final, and [***216] shall be followed by the County unless overturned by the courts on appeal.' " (*Civil Service Com. v. Superior Court*, *supra*, 163 Cal. App. 3d at p. 77, italics omitted.)⁵

5 That *Civil Service Com. v. Superior Court*, *supra*, 163 Cal.App.3d 70, does not establish the Commission's independence "for all purposes" (maj. opn., *ante*, at p. 1289), as the majority opines, does not of course mean the Commission lacks independence for any purpose. Significantly, the majority identifies no reason San Diego County would designate the Commission to hear disciplinary appeals, other than the Commission's independence.

Because the Commission does not employ the deputy being disciplined in this case, its records are presumptively open under the CPRA. Only to the extent qualifying records maintained by the deputy's employer--the San Diego County Sheriff's Department--or information obtained from those records (Pen. Code, § 832.7, subd. (a)) are introduced in the appeal hearing would the Commission's records remain confidential under Government Code section 6254(k) and Penal Code section 832.7. Even information presented to the Commission that is duplicated in the officer's file would not necessarily be rendered confidential by section 6254(k) (incorporating Pen. Code, § 832.7) if it had a source independent from the personnel file itself. Only if the information is "obtained from" that file (Pen. Code, §

832.7), as would be the case if the file were read into evidence, would the exception to disclosure apply. For example, the name of an officer and the nature of his alleged misconduct may be [**316] derived from testimony before the Commission by the complaining witness herself or from other eyewitnesses to the alleged misconduct. As the Court of Appeal below observed: "Testimony of a percipient witness to events, or from documents not maintained in the personnel file, is not information subject to section 832.7 even though that information may be identical to or duplicative of information in the personnel file." On the other hand, investigative information in the file that does not come out at the hearing remains confidential.

Contrary to the majority's assertions, unlike *In re Reeves* (2005) 35 Cal.4th 765 [28 Cal. Rptr. 3d 4, 110 P.3d 1218], cited by the majority (maj. opn., *ante*, at p. 1299, fn. 22), reference in the statutory scheme to the officer's "employing agency" is not ambiguous. By ignoring the actual language of the CPRA and Penal Code sections 832.5, 832.7 and 832.8, the majority unjustifiably enlarges the confidentiality of law enforcement personnel files and concomitantly reduces the amount of information disclosable to the public under the CPRA regarding how our law enforcement officers are performing their duties. Although the majority relies throughout on its view of what is [*1314] "reasonable," I submit it is for the Legislature, and not this court, to make the policy decision concerning the appropriate balance between a peace officer's right to confidentiality of his or her personnel records and the public's right to accountability in government. In imposing its own view of what is reasonable, the majority departs from the clear statutory language that should be our only guide.

Because I disagree the Commission employs this deputy sheriff, I would find the Commission's records are not privileged under Penal Code section 832.7 and thus should have been disclosed under the CPRA. Because the majority finds otherwise, I dissent.

Important Jurisprudence and Amendments on California's Public Safety Officers Procedural Bill of Rights (POBR) from 2012-2016

AMENDMENTS

Section 3305.5 was amended in 2013, effective since January 1, 2014, to prohibit public agencies from taking punitive action, or denying promotion on grounds other than merit because the officer's name was placed on a "Brady list". Now, if not permitted by an exception, the introduction of any evidence in administrative appeals of a punitive action that the officer's name was placed on a Brady list is prohibited. However, an agency can still make a punitive action based on the *underlying acts or omissions* for which the officer's name is on the Brady list.

PROPOSED BILLS

In February 16, 2016 the Bill No. SB 1286 was introduced to amend various sections of the Evidence Code, Government Code and Penal Code. This bill will authorize a public agency that employs peace officers to hear and adjudicate administrative appeals, or to empower a body to adjudicate those appeals in proceedings opened to the public and where all or some of the documents on file are available for public inspection. Also the notification of the agency's disposition should include the charges framed in the response of the complaint, agency's disposition, factual findings, and any discipline or corrective action taken. This bill would require that the personnel records relating to complaints against peace officers be available for public inspection pursuant to the California Public Records Act (some information will be redacted; i.e. home address, telephone number, etc.). In addition, this bill would make inapplicable the provision that a party needs to seek records through alternate means before filing a motion pursuant to the general discovery provisions.

IMPORTANT RECENT CASE LAW

Important recent case law regarding § 3303. Investigations and interrogations; conduct; conditions; admissibility of statements; representation; reassignment.

Right to Counsel

- California Court of Appeal
 - *Quezada v. City of Los Angeles*, 222 Cal.App.4th 993 (2014) -
 - Interrogation of police officers regarding shots outside of working hours did not violate POBR. Because of the seriousness of this event, officers are not entitled of the right of waiting for counsel.
 - Officers right under POBR to choose legal counsel is not unlimited.
 - Under POBR an officer must choose a representative who is reasonably available and who is also physically able to represent the officer at an interrogation.
 - It is the officer' s responsibility to secure the attendance of her chosen representative at interrogation.
 - Officer's chosen representative need not be an attorney.

Proceedings to Remove

- California Court of Appeal
 - *Ellins v. City of Sierra Madre*, 244 Cal.App.4th 445 (2016)
 - *Under PROBA a public officer must be informed of the "nature of the investigation" reasonably prior to an interrogation. Notice is reasonable if it grants the officer sufficient time to meaningfully consult with the representative she elects to have present during the interview.*
 - *If there is reason to believe that earlier disclosure would jeopardize the safety of any interested parties or the integrity of evidence under the investigated officer's control, disclosure can be postponed until the scheduled time of the interview. In such case, the commencement of the interview has to be at least briefly postponed to allow time for consultation.*

Time of Interrogation

- California Court of Appeal
 - *Quezada v. City of Los Angeles*, 222 Cal.App.4th 993 (2014)
 - When an interrogation is taking effect because of a very serious incident mandates an investigation at the earliest opportunity, for example, randomly firing a weapon while drunk, it is not relevant if the officers were awake more than 24 hours, were hung over (intoxicated) and their counsel was not available at the time.
 - The seriousness of the investigation may allow an interrogation at an unreasonable off duty time.

Personal physical necessities

- California Court of Appeal
 - *Quezada v. City of Los Angeles*, 222 Cal.App.4th 993 (2014)
 - POBR's provision which states that the interrogated officers shall be allowed to attend to their physical necessities is not violated although a the process took from 2:30 am to 9:00 pm although at times they were denied access to food, water or restrooms given that they had access to them at other times and they did not ask for medical attention or proved that they suffered adverse mental and physical health consequences.

Punitive Action

- California Court of Appeal
 - *Los Angeles Police Protective League v. City of Los Angeles*, 232 Cal.App.4th 136 (2014).
 - To determine if an involuntary transfer was put into effect as a punishment, a court cannot deem it punitive because it was aimed at addressing the officer's performance in a particular assignment where there was no indication that that the agency's intention was to punish the officer.

- There is not right to an administrative hearing under POBR when the transfer was not a transfer for purposes of punishment and there is no evidence that the the transfer would cause adverse employment consequences to the officer (i.e. reputation, loss of promotional opportunities).
 - There is not transfer for purposes of punishment when an officer is transferred because there are two sexual harassment complaints against him and such complaints reduced his effectiveness working with his co-workers.
 - *Ellins v. City of Sierra Madre*, 244 Cal.App.4th 445 (2016)
 - When an officer has sufficient time to meaningfully consult with her representative about the investigation, PROBA does not preclude the department from relying upon officer's refusal to participate in interrogation as basis for her termination.
- Federal District Court
 - *San Joaquin Deputy Sheriffs' Ass'n v. County of San Joaquin*, 898 F.Supp.2d 1177 (2012).
 - Punitive action may exist when the action taken *may* lead to adverse employment consequences in the future.

Salary and benefits

- California Court of Appeal
 - *Los Angeles Police Protective League v. City of Los Angeles*, 232 Cal.App.4th 136 (2014).
 - An involuntary transfer is not a reduction of salary that triggers a right to a hearing under PROBA, even if in the new posting the officer is working less overtime hours and lost the use of a take-home vehicle absent proof that the officer was entitled to them in her previous post.

§ 3304. Punitive action barred for lawful exercise of rights; administrative appeal; removal of chief of police; limitations period for investigations; predisciplinary or grievance procedures; notice of intended discipline; reopening investigations

Notice Required:

- Court of Appeal of California
 - *Earl v. State Personnel Board*, 231 Cal.App.4th 459 (2014).
 - Under POBR's requirement to notify a peace officer of a proposed disciplinary action within one year from discovery, the word notify means actual notification and excludes constructive notification.
 - A letter of intent by certified mail is insufficient notification under POBR.

Injunctive Relief:

- Supreme Court of California
 - *Riverside County Sheriff's Dept. V. Stiglitz*, 60 Cal.4th 624 (2014)
 - POBR's provision in regards to the right of extraordinary relief to remedy a violation does not give right to the agency to file in a superior court a challenge to an arbitrator's order that grants a peace officer a right to examine personnel records.

Evidentiary hearing

- California Court of Appeal
 - *Neves v. California Dept. of Corrections & Rehabilitation*, 203 Cal.App.4th 61 (2012)
 - PROBA's provision on the requirements of completion of the investigation within one year and notice of a disciplinary decision in 30 days, does not require predisciplinary response or hearings.

Limitation of actions

- California Court of Appeal, 234 Cal. App. 4th 1479 (2015)
 - *Telish v. California State Personnel Board*, 234 Cal. App 4th 1479 (2015)
 - The one-year statute of limitations for punitive action to be undertaken against an agent is triggered when the person authorized to initiate investigation knows or has reason to know of agent's alleged misconduct when a subordinate reports misconduct.
 - *Pedro v. City of Los Angeles*, 229 Cal.App.4th 87 (2014)
 - An administrative tribunal known as a board of rights that makes the final administrative decision has the responsibility to determine if PROBA's limitation period has run and cannot rely on the determination by the chief of police that the limitations period has expired.
 - The one-year POBR limitations period for allegations that police officer conducted personal business while on duty and made a discourteous statement to a member of the public while on duty began to run no later than the date when an investigation of a complaint containing those allegations was assigned to a lieutenant in the area where the officer was assigned.
 - *Richardson v. City and County of San Francisco*, 214 Cal.App.4th 671 (2013)
 - Officer's request to examine in the hearing the sergeant who was the investigating officer is properly denied when the statute of limitations issue was already fully briefed and pending before the commission.

Tolling of limitations

- California Court of Appeal
 - *Richardson v. City and County of San Francisco*, 214 Cal.App.4th 671 (2013)
 - There is substantial evidence that a disciplinary action is tolled when there is a memorandum prepared by the investigations division that states that an investigation is not being conducted and that the alleged misconduct was related to a separate report of misconduct.

- City produced substantial evidence that officer's suspected check fraud was the subject of an "actual and active" pending criminal investigation over a one-year period after the investigating police department changed the status of the case to "Closed".
- Neves v. California Dept. of Correction & Rehabilitation, 203 Cal.App.4th 61 (2012)
 - Thirty-day period under POBR to give formal notice to public safety officer of its "decision to impose discipline, including the date that the discipline will be imposed" began to run on the date the warden signed the formal notice, rather than on the earlier date when CDCR sent officer an informal notice that a decision had been made to take disciplinary action against him absent evidence that the final decision to dismiss officer was made at any time before the warden signed the formal notice.

Settlement

- California Court of Appeal
 - *Hughes v. County of San Bernardino*, 244 Cal.App.4th 542 (2016)
 - *Officer's counsel oral agreement with county to settle the administrative appeal from a disciplinary action is not enforceable, thus it does not terminate the officer's right to an administrative hearing on the disciplinary action under POBR.*

Introduced by Senator LenoFebruary 19, 2016

An act to amend Sections 1043 and 1045 of the Evidence Code, to amend Section 3304.5 of the Government Code, and to amend Sections 832.5 and 832.7 of the Penal Code, relating to peace officers

LEGISLATIVE COUNSEL'S DIGEST

SB 1286, as introduced, Leno. Peace officers: records of misconduct.

(1) The Public Safety Officers Procedural Bill of Rights Act provides a set of rights and procedural protections to specified public safety officers. That act requires an administrative appeal instituted by a public agency under the act to be conducted in conformance with rules and procedures adopted by the local public agency. Existing law also establishes the Administrative Procedure Act, and requires enumerated state agencies to hold hearings under that act that are conducted by administrative law judges.

This bill would, notwithstanding any confidentiality afforded the personnel records of peace officers or custodial officers, authorize a municipality or local public agency that employs peace officers or custodial officers to hear and adjudicate administrative appeals, or to empower a body to hear and adjudicate those appeals, in proceedings that are open to the public and in which some or all documents file are available for public inspection.

(2) Existing law requires a department or agency that employs peace officers to establish a procedure to investigate complaints by members of the public against those officers. Existing law authorizes a department or agency that employs custodial officers to establish a similar procedure for its officers. Existing law establishes retention requirements and access privileges, as specified, for those complaints and related reports

or findings. Existing law requires the department or agency to provide written notification to the complaining party of the disposition of a complaint made pursuant to those provisions within 30 days of the disposition.

This bill would require that notification to include, at a minimum, the charges framed in response to the complaint, the agency's disposition with respect to each of those charges, any factual findings on which the agency based its dispositions, and any discipline imposed or corrective action taken. By increasing the duties of local officials, the bill would impose a state-mandated local program.

(3) The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions. Existing law provides that peace officer or custodial officer personnel records, as defined, and records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or information obtained from these records, are confidential and prohibits the disclosure of those records in any criminal or civil proceeding except by discovery. Existing law describes exceptions to this policy for investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office

This bill would expand the scope of the exceptions to apply to, among other things, investigations or proceedings conducted by civilian review agencies, inspectors general, personnel boards, police commissions, civil service commissions, city councils, boards of supervisors, or any entities empowered to investigate peace officer misconduct on behalf of an agency, conduct audits of peace officer discipline on behalf of an agency, adjudicate complaints against peace officers or custodial officers, hear administrative appeals, or set policies or funding for the law enforcement agency. The bill would also require an entity described in those exceptions to comply with specified confidentiality provisions.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to complaints against peace officers and custodial officers to be available for public inspection pursuant to the California Public Records Act. The bill would provide that this information includes but is not limited to, the framing allegation or complaint, the agency's full investigation file, any evidence gathered, and any findings or recommended findings discipline, or corrective action taken. The bill would require records

disclosed pursuant to this provision to be redacted only to remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officer and custodial officers, or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others.

(4) Existing law establishes discovery procedures for obtaining peace officer and custodial officer personnel files and files relating to complaints against peace officers and custodial officer

This bill would specify that those provisions do not bar or limit access in any proceeding to peace officer or custodial officer personnel records or records relating to complaints against peace officers and custodial officers, and would provide that those provisions do not require a party to a proceeding pending in a court or administrative agency to seek records through alternate means before filing a motion pursuant to the discovery provisions described above.

(5) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Peace officers help provide one of our state's most
4 fundamental government services — keeping our communities
5 safe. These working men and women risk their lives daily in order
6 to protect the people of California. The public greatly appreciates
7 peace officers hard work and dedication to public safety. The
8 good names of these public servants should not be tarnished by
9 the actions of those amongst their ranks who may engage in
10 wrongdoing.

11 (b) To empower peace officers to fulfill their mission, the people
12 of California vest them with extraordinary authority — the powers
13 to detain, search, arrest, and use deadly force. Our society depends
14 on peace officers faithful exercise of that authority. Its misuse
15 can lead to grave constitutional violations, harms to liberty, and
16 the inherent sanctity of human life, as well as significant public
17 unrest.

18 (c) Concealing crucial public safety matters such as office
19 violations of civilians' rights, or inquiries into deadly use of force
20 incidents, undercuts the public's faith in the legitimacy of law
21 enforcement, makes it harder for tens of thousands of hardworking
22 peace officers to do their jobs, and endangers public safety .

23 (d) The public has a strong, compelling interest in law
24 enforcement transparency because it is essential to having a just
25 and democratic society.

26 SEC. 2. Section 1043 of the Evidence Code is amended to read:

27 1043. (a) ~~In any case in which~~ *If* discovery or disclosure is
28 sought of peace *office* or custodial officer personnel records or
29 records maintained pursuant to Section 832.5 of the Penal Code
30 *and for which that section or Section 832.7 of the Penal Code bar*
31 *or limit disclosure*, or information from those records, the party
32 seeking the discovery or disclosure shall file a written motion with
33 the appropriate court or administrative body upon written notice
34 to the governmental agency ~~which~~ *that* has custody and control of
35 the records. The written notice shall be given at the times
36 prescribed by subdivision (b) of Section 1005 of the Code of Civil
37 Procedure. Upon receipt of the notice the governmental agency

1 served shall immediately notify the individual whose records are
2 sought.

3 (b) The motion shall include all of the following:

4 (1) Identification of the proceeding in which discovery or
5 disclosure is sought, the party seeking discovery or disclosure, the
6 peace *office* or custodial officer whose records are sought, the
7 governmental agency ~~which~~ *that* has custody and control of the
8 records, and the time and place at which the motion for discovery
9 or disclosure shall be heard.

10 (2) A description of the type of records or information sought.

11 (3) Affidavits showing good cause for the discovery or
12 disclosure sought, setting forth the materiality thereof to the subject
13 matter involved in the pending litigation and stating upon
14 reasonable belief that the governmental agency identified has the
15 records or information from the records.

16 (c) ~~No~~ *A* hearing upon a motion for discovery or disclosure shall
17 *not* be held without full compliance with the notice provisions of
18 this section except upon a showing by the moving party of good
19 cause for noncompliance, or upon a waiver of the hearing by the
20 governmental agency identified as having the records.

21 (d) *A party to a proceeding pending in a court or administrative*
22 *agency is not required to seek records through alternate means*
23 *before filing a motion pursuant to this section.*

24 SEC. 3. Section 1045 of the Evidence Code is amended to read:

25 1045. (a) ~~Nothing in this article shall be construed to~~ *This*
26 *article does not* affect the right of access to records of complaints,
27 or investigations of complaints, or discipline imposed as a result
28 of those investigations, concerning an event or transaction in which
29 the peace officer or custodial officer, as defined in Section 831.5
30 of the Penal Code, participated, or which he or she perceived, and
31 pertaining to the manner in which he or she performed his or her
32 duties, provided that information is relevant to the subject matter
33 involved in the pending litigation.

34 (b) In determining relevance, the court shall examine the
35 information in chambers in conformity with Section 915, and shall
36 exclude *all of the following* from disclosure:

37 (1) Information consisting of complaints concerning conduct
38 occurring more than five years before the event or transaction that
39 is the subject of the litigation in aid of which discovery or
40 disclosure is sought.

1 (2) In any criminal proceeding the conclusions of any office
 2 investigating a complaint filed pursuant to Section 832.5 of the
 3 Penal Code.

4 (3) Facts sought to be disclosed that are so remote as to make
 5 disclosure of little or no practical benefit

6 (c) In determining relevance where the issue in litigation
 7 concerns the policies or pattern of conduct of the employing
 8 agency, the court shall consider whether the information sought
 9 may be obtained from other records maintained by the employing
 10 agency in the regular course of agency business ~~which~~ *that* would
 11 not necessitate the disclosure of individual personnel records.

12 (d) Upon motion seasonably made by the governmental agency
 13 ~~which~~ *that* has custody or control of the records to be examined
 14 or by the officer whose records are sought, and upon good cause
 15 showing the necessity thereof, the court may make any order ~~which~~
 16 *that* justice requires to protect the officer or agency from
 17 unnecessary annoyance, ~~embarrassment~~ *embarrassment*, or
 18 oppression.

19 (e) The court shall, in any case or proceeding permitting the
 20 disclosure or discovery of any peace *office* or custodial office
 21 records requested pursuant to Section 1043, order that the records
 22 disclosed or discovered may not be used for any purpose other
 23 than a court proceeding pursuant to applicable law.

24 (f) *This article does not bar or limit access in any proceeding*
 25 *to peace officer or custodial officer personnel records or records*
 26 *maintained pursuant to Section 832.5 of the Penal Code for which*
 27 *Sections 832.5 or 832.7 of the Penal Code do not prohibit*
 28 *disclosure.*

29 SEC. 4. Section 3304.5 of the Government Code is amended
 30 to read:

31 3304.5. (a) An administrative appeal instituted by a public
 32 safety officer under this chapter shall be conducted in conformance
 33 with rules and procedures adopted by the local public agency.

34 (b) *Notwithstanding any confidentiality given to the personnel*
 35 *records of peace office s or custodial office s under this chapter*
 36 *or under the provisions governing regulation of peace office s*
 37 *contained in Chapter 4.5 (commencing with Section 830) of Title*
 38 *3 of Part 2 of the Penal Code, a municipality or local public agency*
 39 *that employs peace office s may hear and adjudicate an*
 40 *administrative appeal under this chapter, or the municipality or*

1 *local public agency may empower a body to hear and adjudicate*
2 *those appeals, in proceedings that are open to the public and in*
3 *which some or all documents filed are available for public*
4 *inspection.*

5 SEC. 5. Section 832.5 of the Penal Code is amended to read:

6 832.5. (a) (1) ~~Each~~*A* department or agency in this state that
7 employs peace officers shall establish a procedure to investigate
8 complaints by members of the public against the personnel of these
9 departments or agencies, and shall make a written description of
10 the procedure available to the public.

11 (2) ~~Each~~*A* department or agency that employs custodial officers
12 as defined in Section 831.5, may establish a procedure to
13 investigate complaints by members of the public against those
14 custodial officers employed by these departments or agencies,
15 provided however, that any procedure so established shall comply
16 with the provisions of this section and with the provisions of
17 Section 832.7.

18 (b) Complaints and any reports or findings relating to these
19 complaints shall be retained for a period of at least fi e years. All
20 complaints retained pursuant to this subdivision may be maintained
21 either in the peace *officer s* or custodial officer s general personnel
22 file or in a separate file designated by the department or agency
23 as provided by department or agency policy, in accordance with
24 all applicable requirements of law. However, prior to any officia
25 determination regarding promotion, transfer, or disciplinary action
26 by an officer s employing department or agency, the complaints
27 described by subdivision (c) shall be removed from the officer s
28 general personnel file and placed in separate file designated by the
29 department or agency, in accordance with all applicable
30 requirements of law.

31 (c) Complaints by members of the public that are determined
32 by the peace *officer s* or custodial officer s employing agency to
33 be frivolous, as defined in Section 128.5 of the Code of Civil
34 Procedure, or unfounded or exonerated, or any portion of a
35 complaint that is determined to be frivolous, unfounded, or
36 exonerated, shall not be maintained in that officer s general
37 personnel file. However, these complaints shall be retained in
38 other, separate files that shall be deemed personnel records for
39 purposes of the California Public Records Act (Chapter 3.5

1 (commencing with Section 6250) of Division 7 of Title 1 of the
2 Government Code) and Section 1043 of the Evidence Code.

3 (1) Management of the peace *officer s* or custodial officer s
4 employing agency shall have access to the files described in this
5 subdivision.

6 (2) Management of the peace *officer s* or custodial officer s
7 employing agency shall not use the complaints contained in these
8 separate files for punitive or promotional purposes except as
9 permitted by subdivision (f) of Section 3304 of the Government
10 Code.

11 (3) Management of the peace *officer s* or custodial officer s
12 employing agency may identify any officer who is subject to the
13 complaints maintained in these file ~~which~~ *that* require counseling
14 or additional training. However, if a complaint is removed from
15 the officer s personnel file, any reference in the personnel file to
16 the complaint or to a separate file shall be deleted

17 (d) As used in this ~~section~~, *section and Section 832.7*, the
18 following definitions apply

19 (1) ~~General~~ *“Exonerated” means that the investigation clearly*
20 *established that the actions of the peace officer or custodial office*
21 *that formed the basis for the complaint are not violations of law*
22 *or department policy.*

23 (2) *“General personnel file” means the file maintained by the*
24 *agency containing the primary records specific to each peace*
25 *officer s or custodial officer s employment, including evaluations,*
26 *assignments, status changes, and imposed discipline.*

27 (3) *“Sustained” means that the investigation disclosed sufficien*
28 *evidence to prove, by a preponderance of evidence, the truth of*
29 *the allegation in the complaint or that the actions of the peace*
30 *officer or custodial officer violated law or department poli .*

31 ~~(2)~~

32 (4) *“Unfounded” means that the investigation clearly established*
33 *that the allegation is not true.*

34 ~~(3) “Exonerated” means that the investigation clearly established~~
35 ~~that the actions of the peace or custodial officer that formed the~~
36 ~~basis for the complaint are not violations of law or department~~
37 ~~policy.~~

38 (e) (1) *A municipality, county, or agency that employs peace*
39 *office s may do both of the following:*

1 (A) Hold hearings to hear complaints by members of the public,
2 consider evidence, and adjudicate the complaints or recommend
3 adjudications.

4 (B) Establish a body to hold the hearings described in
5 subparagraph (A).

6 (2) Notwithstanding any confidentiality given to the general
7 personnel file or other personnel records of peace office s or
8 custodial office s, the hearings described in paragraph (1) may
9 be open to the public.

10 SEC. 6. Section 832.7 of the Penal Code is amended to read:

11 832.7. (a) ~~Peace~~ Except as set forth in subdivision (c), peace
12 officer or custodial officer personnel records and records
13 maintained by any state or local agency pursuant to Section 832.5,
14 or information obtained from these records, are confidential and
15 shall not be disclosed in any criminal or civil proceeding except
16 by discovery pursuant to Sections 1043 and 1046 of the Evidence
17 Code. ~~This~~

18 (b) (1) This section shall not apply to investigations or
19 proceedings concerning the conduct of peace officers or custodial
20 officers, or an agency or department that employs those officers
21 conducted by a grand jury, a district attorney's office ~~or the~~
22 Attorney General's ~~office~~ office, civilian review agencies,
23 inspectors general, personnel boards, police commissions, civil
24 service commissions, city councils, boards of supervisors, or any
25 entities empowered to investigate peace officer misconduct on
26 behalf of an agency, conduct audits of peace officer discipline on
27 behalf of an agency, adjudicate complaints against peace office s
28 or custodial office s, hear administrative appeals pursuant to
29 Section 3304.5 of the Government Code, or set policies or funding
30 for the law enforcement agency.

31 (2) An entity allowed access to the personnel and complaint
32 records of peace office s or custodial office s under this
33 subdivision shall comply with the confidentiality provisions of this
34 section.

35 (c) (1) Notwithstanding any other law, all of the following peace
36 officer or custodial officer personnel records and records
37 maintained by any state or local agency pursuant to Section 832.5
38 shall be available for public inspection pursuant to the California
39 Public Records Act (Chapter 3.5 (commencing with Section 6250)
40 of Division 7 of Title 1 of the Government Code):

1 (A) A record related to the investigation or assessment of any
2 use of force by a peace officer that is likely to or does cause death
3 or serious bodily injury, including but not limited to, the discharge
4 of a firearm, use of an electronic control weapon or conducted
5 energy device, and any strike with an impact weapon to a person's
6 head.

7 (B) A record related to any finding by a law enforcement agency
8 or oversight agency that a peace officer or custodial officer
9 engaged in sexual assault, an excessive use of force, an unjustified
10 search, detention or arrest, racial or identity profiling, as defined
11 in subdivision (e) of Section 13519.4, discrimination or unequal
12 treatment on the basis of race, color, ethnicity, national origin,
13 age, religion, gender identity or expression, sexual orientation, or
14 mental or physical disability, or any other violation of the legal
15 rights of a member of the public.

16 (C) A record related to any finding by a law enforcement agency
17 of job-related dishonesty by a peace officer or custodial officer,
18 including, but not limited to, perjury, false statements, filing false
19 reports, or destruction or concealment of evidence.

20 (2) Records that shall be released pursuant to this subdivision
21 include, but are not limited to, the framing allegation or complaint,
22 the agency's full investigation file, any evidence gathered, and
23 any findings or recommended findings, discipline, or corrective
24 action taken.

25 (3) A record disclosed pursuant to this section shall be redacted
26 only to remove personal data or information, such as a home
27 address, telephone number, or identities of family members, other
28 than the names and work-related information of peace and
29 custodial officers, to preserve the anonymity of complainants and
30 witnesses, or to protect confidential medical, financial, or other
31 information in which disclosure would cause an unwarranted
32 invasion of personal privacy that clearly outweighs the strong
33 public interest in records about misconduct by peace officers and
34 custodial officers, or where there is a specific, particularized
35 reason to believe that disclosure of the record would pose a
36 significant danger to the physical safety of the peace officer,
37 custodial officer, or others.

38 (b)

1 ~~(d)~~ Notwithstanding ~~subdivision (a)~~, *subdivisions (a) and (c)*,
2 a department or agency shall release to the complaining party a
3 copy of his or her own statements at the time the complaint is filed

4 ~~(e)~~

5 ~~(e)~~ Notwithstanding ~~subdivision (a)~~, *subdivisions (a) and (c)*,
6 a department or agency that employs peace *office s* or custodial
7 officers may disseminate data regarding the number, type, or
8 disposition of complaints (sustained, not sustained, exonerated, or
9 unfounded) made against its officers if that information is in a
10 form which does not identify the individuals involved.

11 ~~(d)~~

12 ~~(f)~~ Notwithstanding ~~subdivision (a)~~, *subdivisions (a) and (c)*, a
13 department or agency that employs peace *office s* or custodial
14 officers may release factual information concerning a disciplinary
15 investigation if the officer who is the subject of the disciplinary
16 investigation, or the officer s agent or representative, publicly
17 makes a statement he or she knows to be false concerning the
18 investigation or the imposition of disciplinary action. Information
19 may not be disclosed by the peace *officer s* or custodial officer s
20 employer unless the false statement was published by an
21 established medium of communication, such as television, radio,
22 or a newspaper. Disclosure of factual information by the employing
23 agency pursuant to this subdivision is limited to facts contained
24 in the officer s personnel file concerning the disciplinary
25 investigation or imposition of disciplinary action that specificall
26 refute the false statements made public by the peace *office* or
27 custodial officer or his or her agent or representat ve.

28 ~~(e)~~

29 ~~(g)~~ (1) The department or agency shall provide written
30 notification to the complaining party of the disposition of the
31 complaint within 30 days of the disposition. *The notification shall*
32 *include, at a minimum, the charges framed in response to the*
33 *complaint, the agency's disposition with respect to each of those*
34 *charges, any factual findings on which the agency based its*
35 *dispositions, and any discipline imposed or corrective action taken.*

36 (2) The notification described in this subdivision shall not be
37 conclusive or binding or admissible as evidence in any separate
38 or subsequent action or proceeding brought before an arbitrator,
39 court, or judge of this state or the United States.

40 ~~(f)~~ Nothing in this section shall

1 *(h) This section does not* affect the discovery or disclosure of
2 information contained in a peace *officer s* or custodial officer s
3 personnel file pursuant to Section 1043 of the Evidence Code

4 SEC. 7. The Legislature finds and declares that Section 6 of
5 this act, which amends Section 832.7 of the Penal Code, furthers,
6 within the meaning of paragraph (7) of subdivision (b) of Section
7 3 of Article I of the California Constitution, the purposes of that
8 constitutional section as it relates to the right of public access to
9 the meetings of local public bodies or the writings of local public
10 officials and local agencies. Pursuant to paragraph (7) of
11 subdivision (b) of Section 3 of Article I of the California
12 Constitution, the Legislature makes the following findings

13 The public has a strong, compelling interest in law enforcement
14 transparency because it is essential to having a just and democratic
15 society.

16 SEC. 8. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution for certain
18 costs that may be incurred by a local agency or school district
19 because, in that regard, this act creates a legislative mandate that
20 is within the scope of paragraph (7) of subdivision (b) of Section
21 3 of Article I of the California Constitution.

22 However, if the Commission on State Mandates determines that
23 this act contains other costs mandated by the state, reimbursement
24 to local agencies and school districts for those costs shall be made
25 pursuant to Part 7 (commencing with Section 17500) of Division
26 4 of Title 2 of the Government Code.



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Charter

Ordinance

Independence of the Police Auditor

City Organizational Chart

IPA Organizational Chart

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Charter

Section 809 - Office of the Independent Police Auditor

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

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

The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

Added at election November 5, 1996

Section 809.1 - Independent Police Auditor - Power of Appointment

(a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.

(b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.

(c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996

San José City Hall

200 E. Santa Clara St.

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive



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Ordinance

Section 8.04.010 - Duties and Responsibilities

In addition to the functions, powers and duties set forth elsewhere in this code, the Independent Police Auditor shall have the duties and responsibilities set forth in this section.

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

1. The minimal number of complaints to be reviewed annually are:
 1. All complaints against police officers which allege excessive or unnecessary force; and
 2. No less than twenty percent of all other complaints.
2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.
3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.
4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.

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

C. Community function:

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

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

1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.
2. Analyze trends and patterns.
3. Make recommendations.

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

San José City Hall

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San José, CA 95113
408 535-3500 Main
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The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

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For Employees

**2018 Annual NACOLE
Conference**

**SAVE THE
DATE!**

**24th Annual Conference
of the National
Association for Civilian
Oversight of Law
Enforcement
September 30 - October 4,
2018
St. Petersburg, Florida**

Current Language on attendance to NACOLE

The BART Board of Directors has budgeted/allocated funds for members of the Citizen Review Board to attend the National Association for Citizen Oversight of Law Enforcement (NACOLE) annual conference. Full and/or Partial reimbursement for CRB member expenses will be based on BART standard administrative procedures and the following guidelines.

1. As soon as practical after the conference registration has been announced, the CRB chairperson shall make a good faith estimate of the total reimbursable costs (including conference fees, transportation from the Bay Area to the conference, accommodations at the conference's designated hotel, or other similar hotel, and customary per diem for meals) for one member to attend the conference and then, based on the available funds (\$3,500 for FY 15/16), determine the number of members who could attend with full reimbursement and how much would be left for one member to attend with partial reimbursement

Proposed language change

“for any member to attend the conference and then, based on the available funds (\$3,500 for FY 15/16), determine the equal distribution of funds to any and all members who express interest and register for the convention”

In addition, The Chairman asks Unanimous consent to petition the Board of Director to increase the allowance from \$3500 to \$5000 for FY 18/19



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

January 2018

Issue date: February 12, 2018

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **January 1, 2018 through January 31, 2018**.¹

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

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
January 2017	6	52	0	0	0
February 2017	7	41	0	0	0
March 2017	9	43	0	0	0
April 2017	8	42	1	0	0
May 2017	13	47	1	0	0
June 2017	11	44	1	0	0
July 2017	13	48	0	0	0
August 2017	12	35	0	0	0
September 2017	12	31	1	0	0
October 2017	11	33	0	0	0
November 2017	11	32	0	1	0
December 2017	9	34	1	0	0
January 2018	7	32	0	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁸

OIPA	0
BART Police Department	5
TOTAL	5

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2018, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2018-002)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	39
2 (IA2018-003)	Officer #1: • Arrest or Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	40
3 (IA2018-004)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	31
4 (IA2018-005)	Officer #1: • Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	31
5 (IA2018-007)	Officer #1: • Force	BPD initiated an investigation.	17

During January 2018, **2 Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2018-001)	Officer #1: • Force	BPD initiated an investigation.	40
2 (IA2018-006)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	32

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2018, **3 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2017-055)	Officers improperly detained complainant and harassed and degraded complainant. One officer used excessive force during the detention and one officer did not properly document the contact.	Officer #1: • Force – Exonerated Officer #2: • Policy/Procedure – Not Sustained Officers #1-2: • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded	225	200
2 (IA2017-094)	Officer was rude to complainant and initiated enforcement contact because of complainant's race.	Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded	119	93
3 (IA2017-099)	Officers improperly arrested complainant and used excessive force while doing so. Officers also did not advise complainant of rights, denied medical aid, and unlawfully took property from complainant.	Officers #1-2: • Force – Unfounded • Arrest or Detention – Exonerated • Performance of Duty (Count 1) – Exonerated • Performance of Duty (Count 2) – Unfounded • Conduct Unbecoming an Officer – Not Sustained	104	92

During January 2018, **4 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2017-087)	Officers denied assistance to complainant upon request.	Officers #1-3: • Performance of Duty – Supervisor Referral ⁹	137	110

BART POLICE DEPARTMENT



DECEMBER 2017

MONTHLY REPORT

BPD Monthly Reports

December 2017

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

*Not included in Year-End or Monthly BPCRB Reports

BART Police Department (07) Staffing Status

As of: 01/09/18
Vacancy Factor: 0.0

	Pos'n Code	Job Title	FY18 Adopted	Reclass	As of 01/09/18	Filled	On Leave or TMD	Vacant
NON-SWORN (Rep)	027	Community Service Officer	63		63	46	5	17
	045	Police Admin Specialist	12		12	10	-	2
	048	Police Dispatcher	16		16	16	1	-
	098	Revenue Protection Guard	19		19	16	1	3
	836	Police Sup./CAD/RMS Admin**	6		6	6	-	-
SWORN	778	Police Officer	76		76	60	6	14
		In Academy = 7						-
		Field Training = 2						-
	788	Senior Police Officer	91		91	74	5	21
	798	Master Police Officer	14		14	11	-	3
	838	Police Sergeant	34		34	32	4	2
	888	Police Lieutenant	10		10	10	1	-
	898	Police Deputy Chief	3		3	3		-
	980	Police Chief	1		1	1		-
Non-Sworn (Non-Rep)	SF100	Mgr of Security Programs**	1		1	-		1
	000065	Emergency Preparedness Mgr.	1		1	1	-	-
	000074	Crisis Outreach Coordinator	1		1	1		-
	000081	Accreditation Manager	1		1	1	-	-
	AF200	Sr. Administrative Analyst	1		1	1		-
DEPARTMENT TOTAL			350	-	350	289	23	63

Notes

>1 ea. LT show as unbudgeted

Add people on TMD to the filled position

EBART - Ofc 5, CSO 4

Fare Evasion - 6 CSOs, 1 PAS

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

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

BART PD DIVERSITY MONTHLY REPORT

As of 1/9/18

+

<u>ETHNICITY</u>		<u>S</u>		<u>C</u>	
White	37% 108	43%	77	32%	31
Black	21% 62	21%	40	22%	22
Asian	21% 61	16%	31	30%	30
Hispanic	17% 53	18%	40	12%	13
American/ Indian	0% 0	0%	0	0%	0
Native Hawaiian/Pac Island	2% 5	2%	3	2%	2
Total:	100% 289	100%	191	100%	98
<u>DEMOGRAPHIC</u>		<u>S</u>		<u>C</u>	
Female	21% 59	9%	18	47%	46
Male	79% 225	91%	173	53%	52
Total:	100% 284	100%	191	100%	98
<u>CLASSIFICATION</u>					
Sworn	66% 191				
Civilian	34% 98				
Total:	100% 289				

CRISIS INTERVENTION TRAINING AS OF: JANUARY 1, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	(Not in Academy or Field Training) Eligible to Attend Training	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions Trained
Chief	1	1	0	1	0	0%	0%
Deputy Chiefs	3	3	0	3	3	100%	100%
Lieutenants	11	10	1	9	9	90%	100%
Sergeants	34	32	2	32	32	100%	100%
Officers	183	145	38	135	131	90%	97%
Dispatchers	16	16	0	14	14	88%	100%
Dispatch Supervisors	2	2	0	2	2	100%	100%
CSOs	63	46	17	45	43	93%	96%
Crisis Outreach Coordinator	1	1	0	1	1	100%	100%
Total	314	256	58	242	235	92%	97%

Personnel Positions that are not designated to attend CIT Training

	Total	Filled	Vacant
Revenue Protection Guards	19	16	3
Police Administrative Specialists	12	10	2
Police Sup./CAD RMS Admin	4	4	0
Civilian Managers/Analyst	3	2	1
Sub Total	38	32	6
TOTAL PERSONNEL	352	288	64

FAIR AND IMPARTIAL / BIASED BASED TRAINING AS OF January 1, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	Eligible to Attend (Not in Academy or Field Training)	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions
Chief	1	1	0	1	0	0.0%	0.0%
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	11	10	1	10	10	100.0%	100.0%
Sergeants	34	32	2	32	32	100.0%	100.0%
Officers	181	145	38	137	137	94.5%	100.0%
CSOs	63	46	17	43	39	84.8%	90.7%
Total	293	237	58	226	221	93.2%	97.8%

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

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

POLICE ROADWAY PROTECTION TRAINING AS OF: January 1, 2018

Personnel Positions	Total Positions	Filled Positions	Vacant Positions	Eligible to Attend (Not in Academy, FTO, or IND/Leave)	Total of Filled Positions Trained	Percentage of Total Filled Positions Trained	Percentage of Eligible Filled Positions
Chief	1	1	0	1	0	0.0%	0.0%
Deputy Chiefs	3	3	0	3	3	100.0%	100.0%
Lieutenants	11	10	1	10	9	90.0%	90.0%
Sergeants	34	32	2	31	31	97%	100.0%
Officers	181	145	38	137	134	92.4%	97.8%
CSOs-Not Required	63	46	17	43	40	87.0%	93.0%
Total	293	237	58	225	217	91.6%	96.4%

Personnel Positions that are REQUIRED to attend Police Roadway Protection Training

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

Use of Force Incidents - 2017

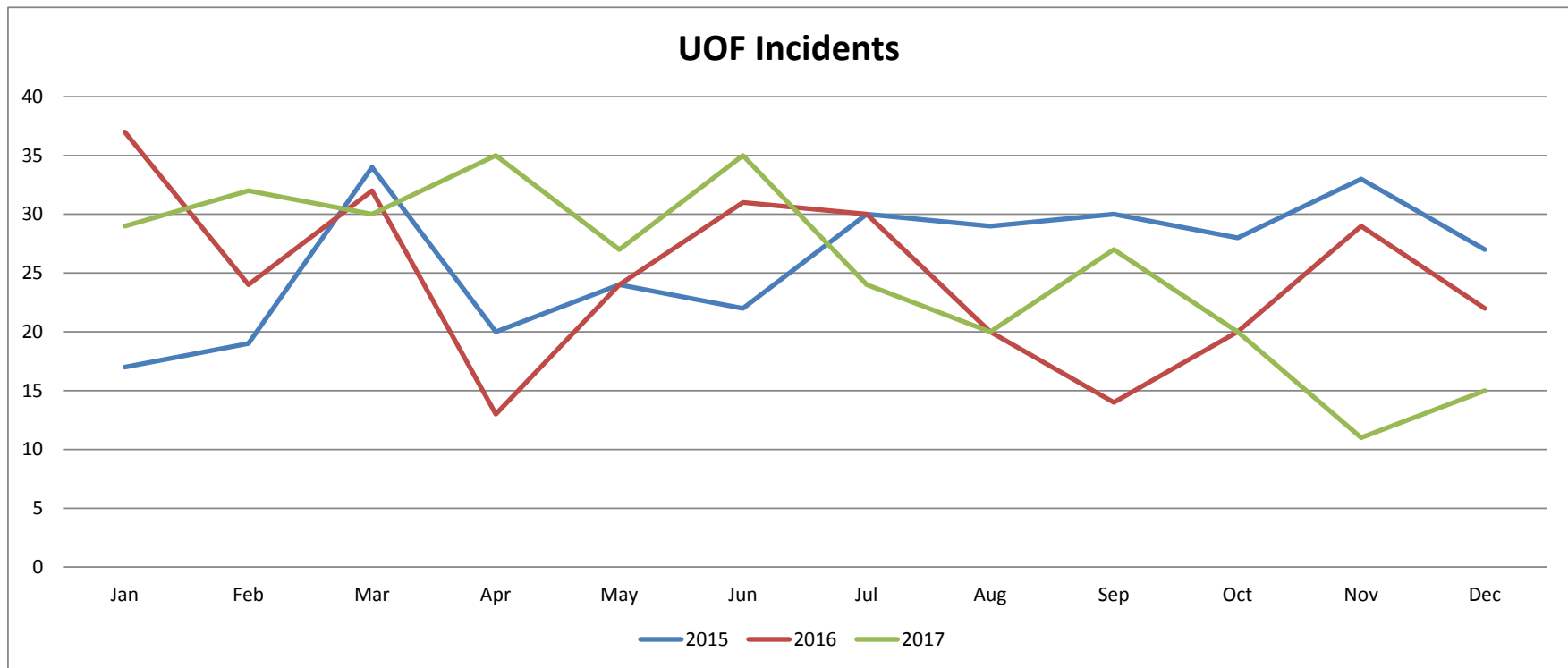
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	29	32	30	35	27	35	24	20	27	20	11	15	305
YTD 2017	29	61	91	126	153	188	212	232	259	279	290	305	

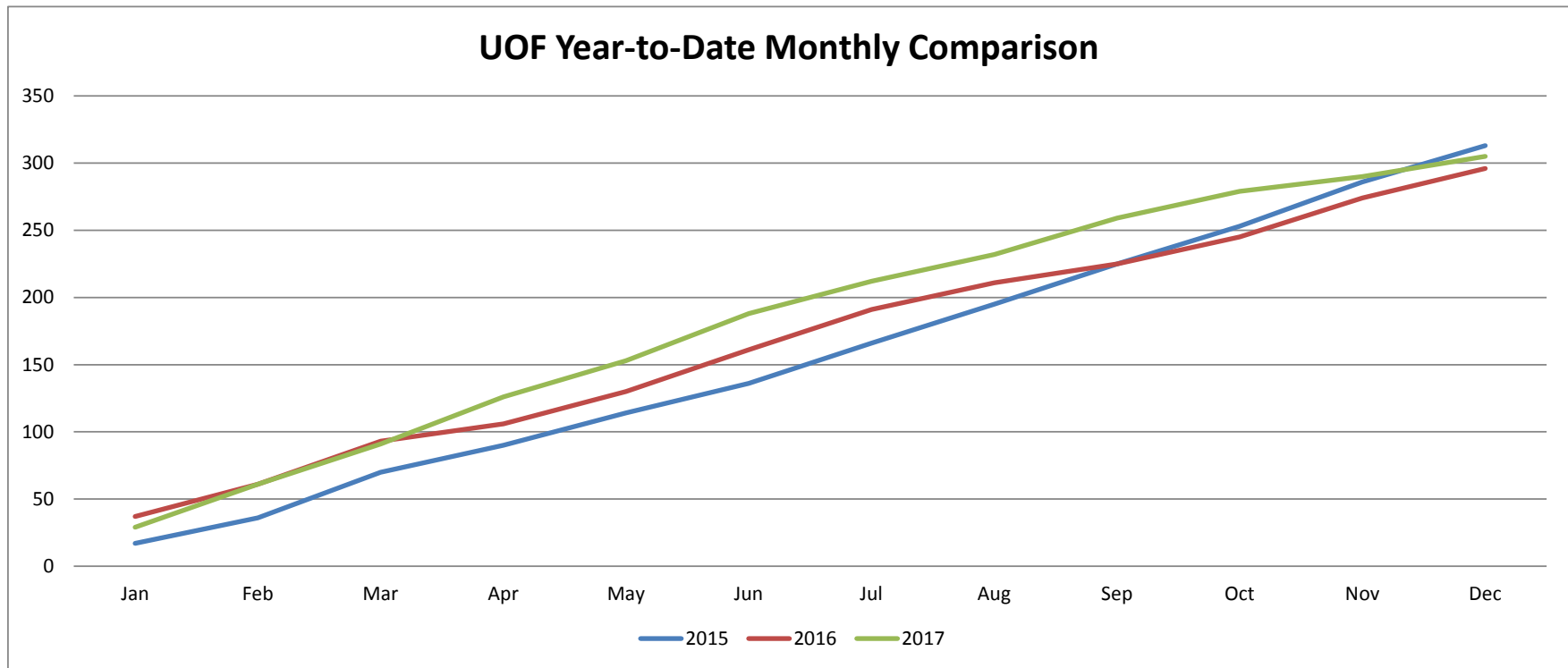
Use of Force Incidents - 2016

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

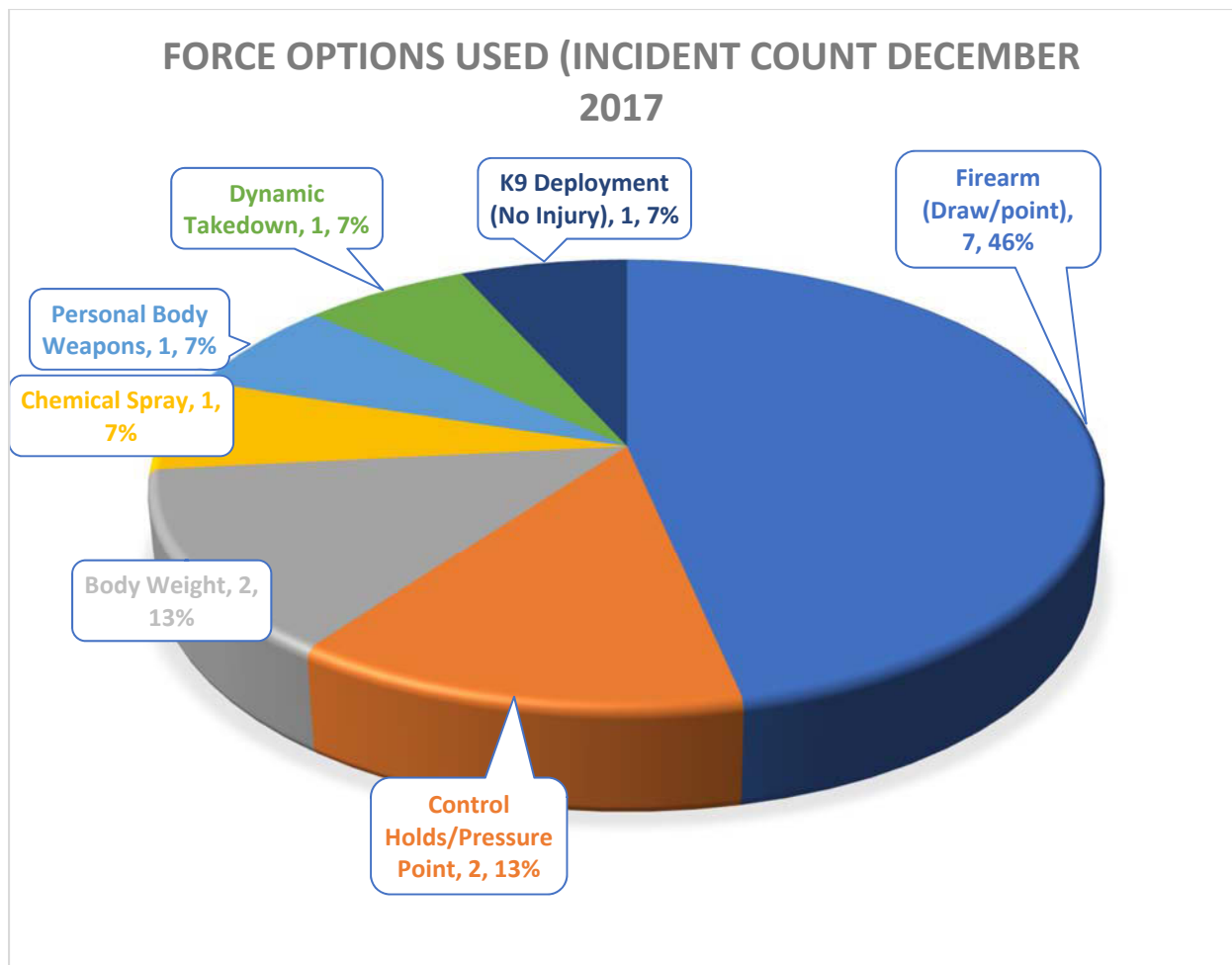
Use of Force Incidents - 2015

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



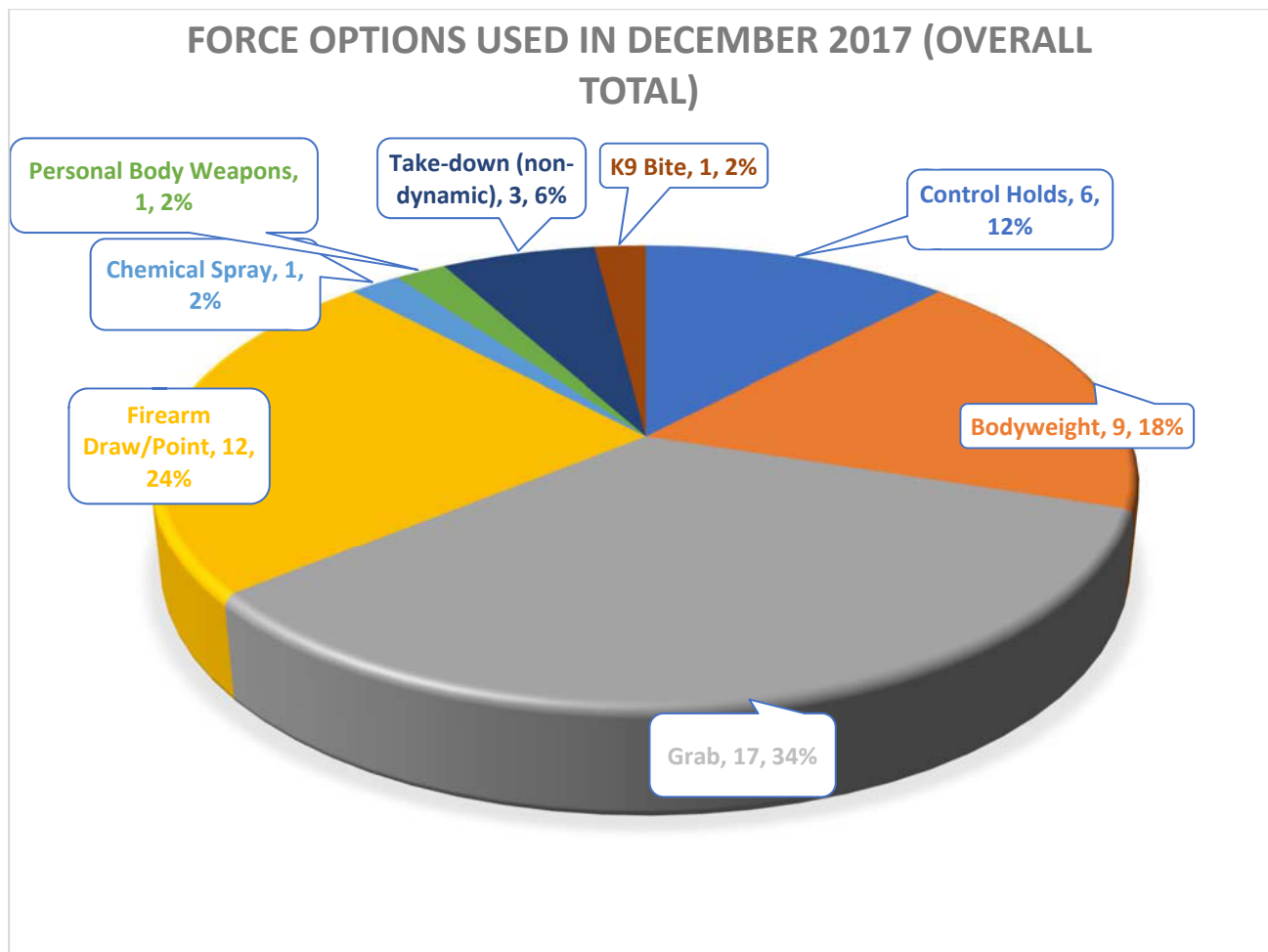


Force Options Used (Incident Count), December 2017



*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, December 2017 (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 - 2017

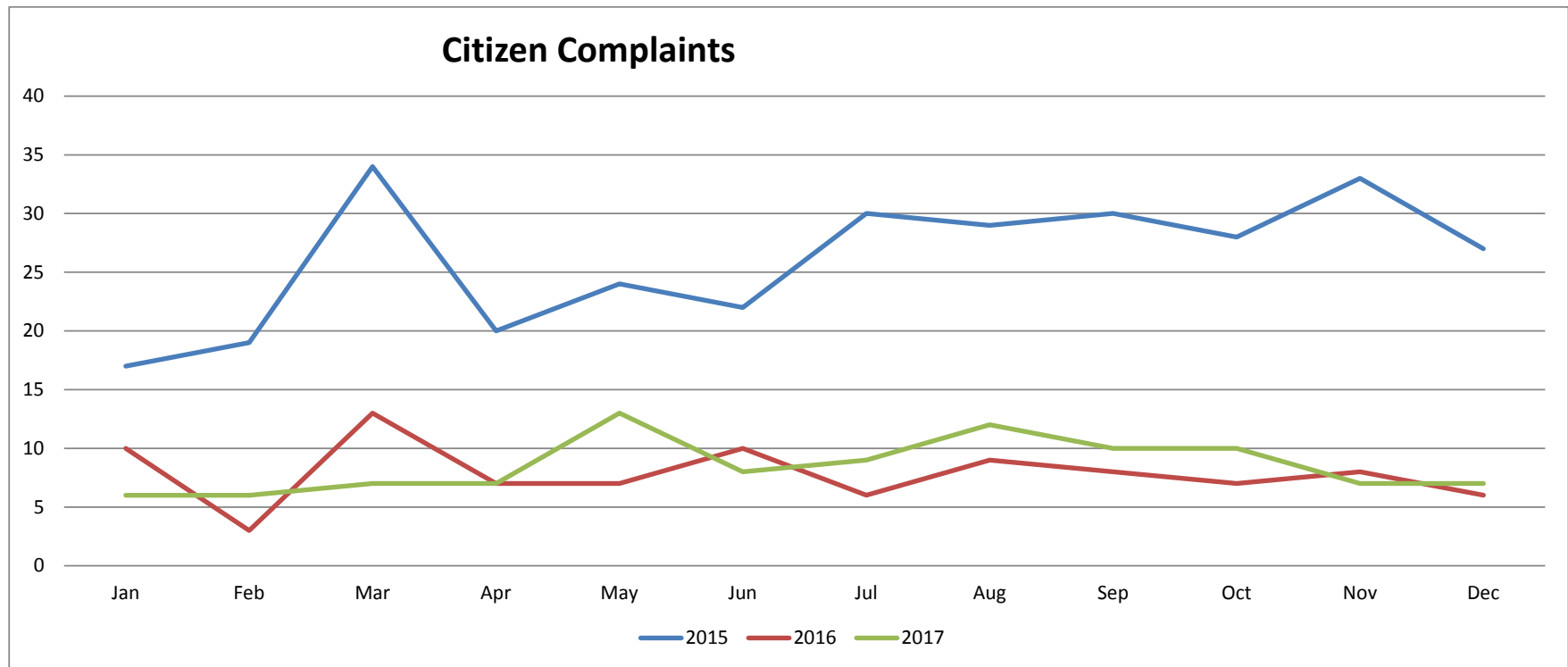
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2017	6	6	7	7	13	8	9	12	10	10	7	7	102
YTD 2017	6	12	19	26	39	47	56	68	78	88	95	102	

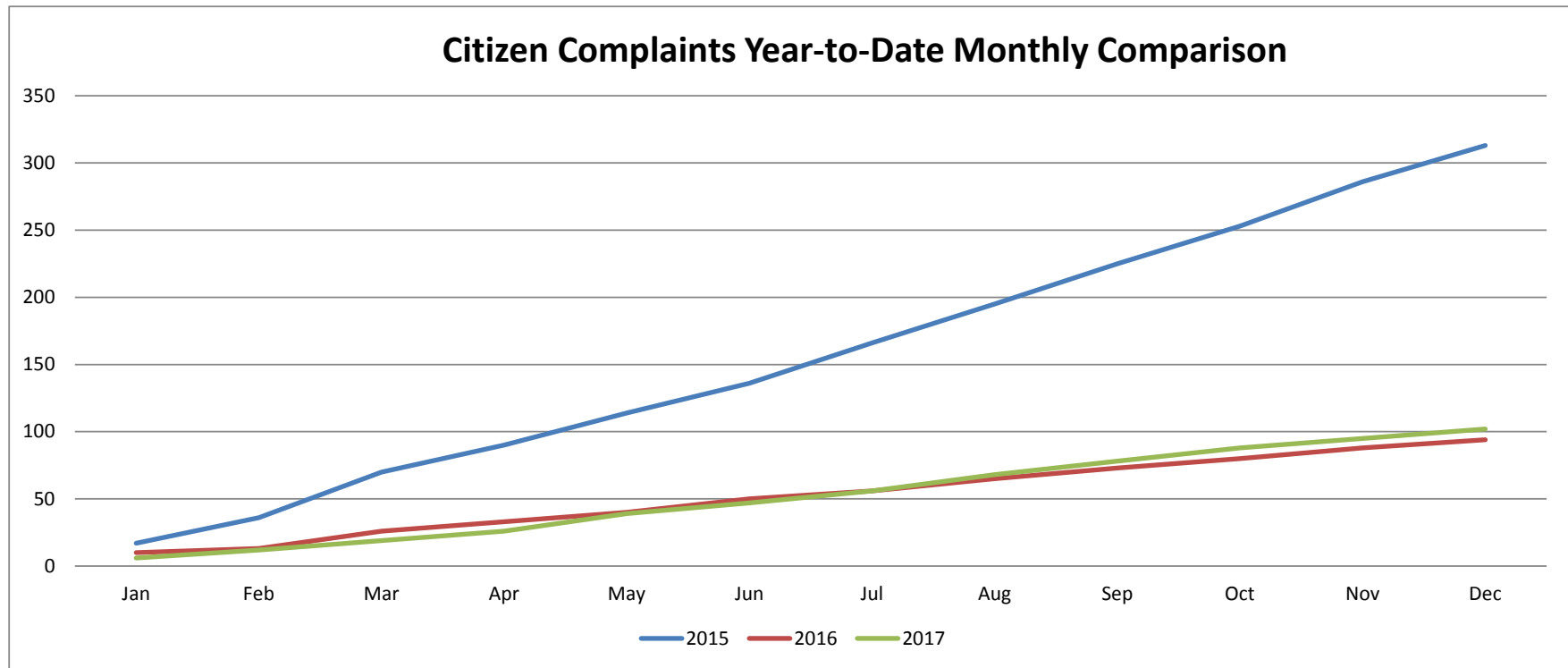
Citizen Complaints - 2016

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

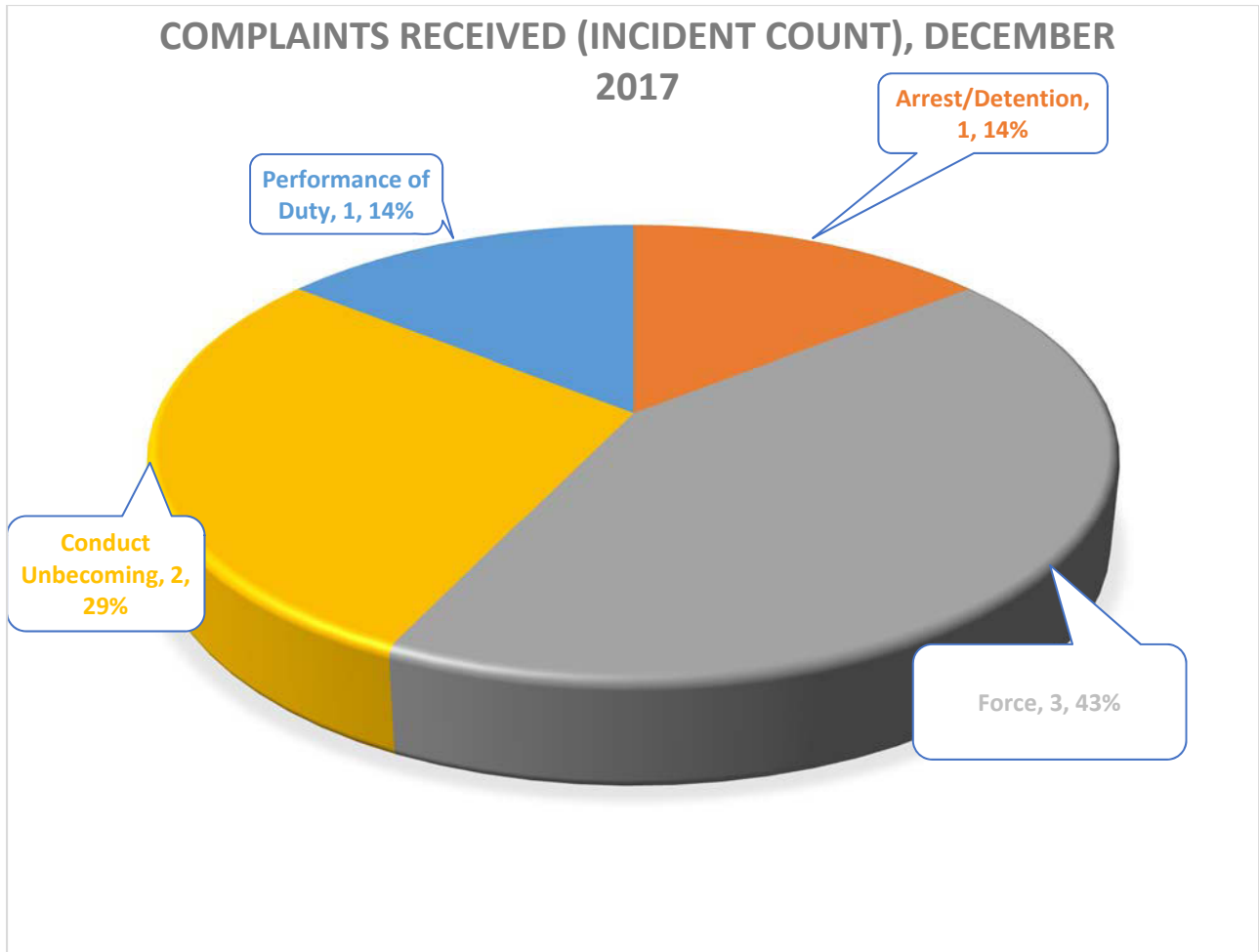
Citizen Complaints - 2015

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2015	9	8	9	15	10	11	13	11	9	15	6	10	126
YTD 2015	9	17	26	41	51	62	75	86	95	110	116	126	





BART Police Department - Office of Internal Affairs							
Investigation Log - December 2017							
IA	DATE						COMPLETED DATE
CASE #	OCC'D	REC'D	ALLEGATION	FINDING	INVESTIGATOR	DUE DATE	
IA2016-071	07/29/16	07/29/16	Force, Bias, Arrest		Lt. Kwon	12/28/16	
			Force, Bias, Arrest		(Tolled)	01/27/17	
			Force, Bias, Arrest				
			Force, Bias, Arrest				
IA2017-040	1/31/2017	5/18/2017	Force		Sgt. Togonon	10/17/2017	
			Force		Tolled		
IA2017-045	6/5/2017	6/5/2017	Bias-Based Policing		Sgt. T. Salas	11/4/2017	Submitted C5
			Bias-Based Policing				
IA2017-055	4/26/2017	7/2/2017	Force/Cubo		Sgt. T. Salas	12/1/2017	Submitted L21
			Cubo				
IA2017-060	3/2/2016	7/19/2017	Conduct Unbecoming		Sgt. T.Salas	12/18/2017	
			Courtesy				
IA2017-062		7/27/2017	Racial Animus, CUBO		Sgt. Togonon	12/26/2017	Submitted L21
			Supervision				
IA2017-074	6/5/2017	8/22/2017	Conduct Unbecoming		Sgt. Salas	1/21/2018	
			Policy/Procedure				
IA2017-079	8/30/2017	9/8/2017	CUBO		Sgt. T. Salas	2/7/2018	
					Hesson	10/14/2017	
IA2017-081	8/31/2017	8/31/2017	CUBO		Sgt. T. Salas	1/30/2018	
			CUBO				
			CUBO				
IA2017-083	9/13/2017	9/13/2017	CUBO	Admin Closure	Sgt. T. Salas	2/7/2018	
IA2017-084	9/17/2017	9/18/2017	Force, CUBO		Sgt. Togonon	2/17/2018	
IA2017-085	9/7/2017	9/20/2017	CUBO	Supervisor Referral	Lt. Kwon	1/30/2018	Submitted by Carter on 11/1/17
			Bias-Based Policing				
IA2017-087	10/18/2016	9/28/2017	Performance of Duty	Supervisor Referral	Sgt. Togonon	2/27/2018	
IA2017-093	10/4/2017	10/4/2017	Force		Sgt. T. Salas	3/5/2018	
IA2017-094	10/16/2017	10/18/2017	Bias-Based Policing		Sgt. Togonon	3/17/2018	Submitted L21
			Performance of Duty		Sgt. Fenner		
			CUBO				
IA2017-095	10/13/2017	10/18/2017			Sgt. T. Salas	3/19/2018	
IA2017-096	10/20/2017	10/23/2017	Bias Based Policing		Sgt.T. Salas	3/24/2018	
IA2017-097	10/13/2017	10/18/2017	CUBO		Sgt. Togonon	3/19/2018	
			Bias-Based Policing				
IA2017-099	10/31/2017	10/31/2017	Performance of Duty		Sgt. Togonon	4/1/2018	
IA2017-101	10/30/2017	10/31/2017	Performance of Duty		Sgt. T. Salas	3/22/2018	
IA2017-102	11/3/2017	11/3/2017	Performance of Duty		Sgt. Togonon	4/4/2018	
					Sgt. Henderson		
IA2017-103	11/7/2017	11/7/2017	Conduct Unbecoming		T.Salas	4/8/2018	
					Sgt. Williamson	1/5/2018	
IA2017-105	11/15/2017	11/16/2017	Performance of Duty		T. Salas		
			Bias-Based Policing				



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

PART 1 CRIMES	2012	2013	2014	2015	2016	YTD December		% change from '16
						2016	2017	
Homicide	0	1	0	1	1	1	0	-100%
Rape	2	0	2	3	4	4	8	100%
Robbery	202	209	153	161	232	232	290	25%
Aggravated Assault	41	29	44	35	42	42	49	17%
Violent Crime Subtotal	245	239	199	200	279	279	347	24%
Burglary (Not including Auto)	27	25	7	4	12	12	15	25%
Larceny	2356	2524	2597	2325	2217	2217	2584	17%
Auto Theft	433	483	522	480	480	480	419	-13%
Arson	0	0	0	0	1	1	4	300%
Property Crime Subtotal	2816	3032	3126	2809	2709	2710	3022	12%
TOTAL	3061	3271	3325	3009	2988	2989	3369	13%

N.C. - Not Calculable



BART Police Performance Measurements

December 2017

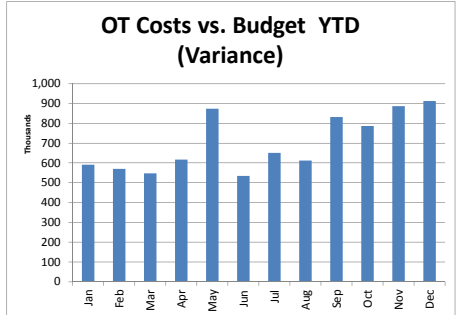
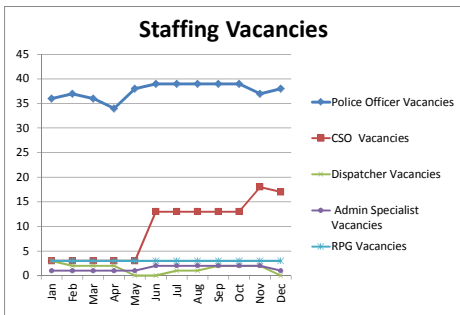
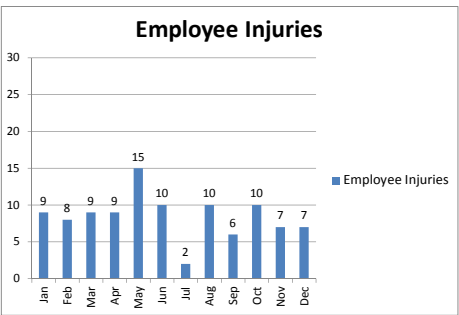
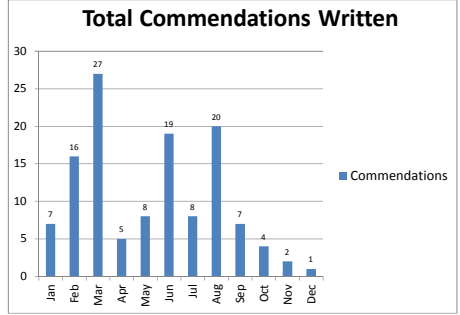
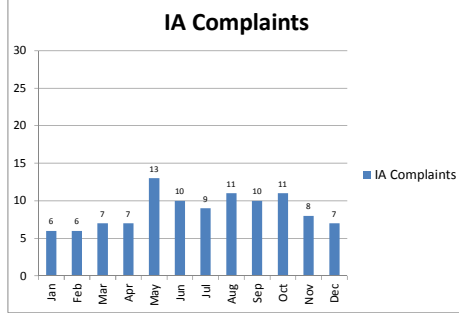
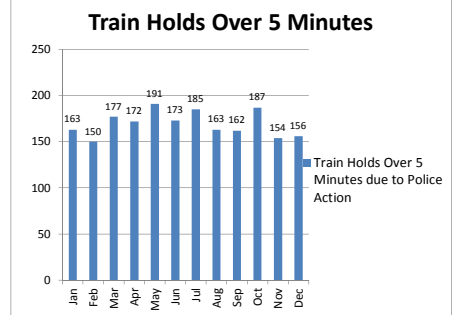
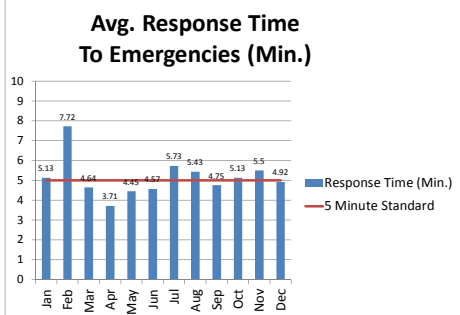
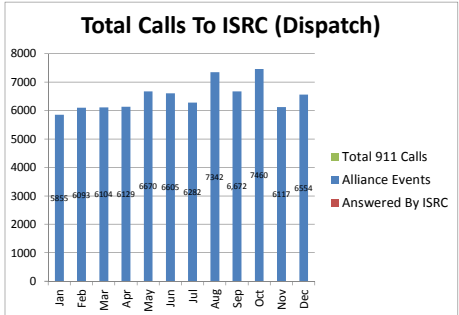
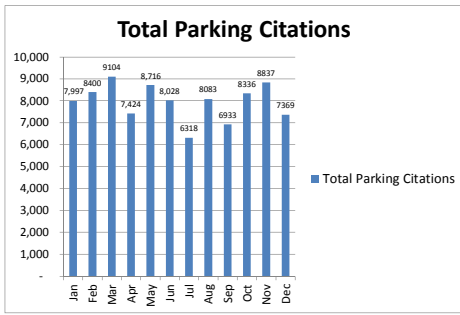
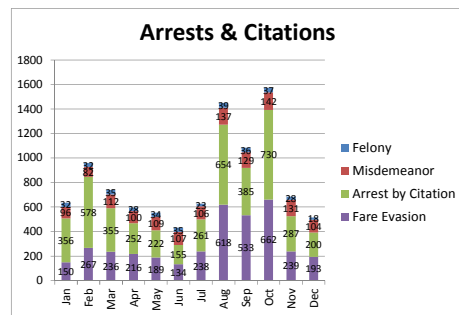
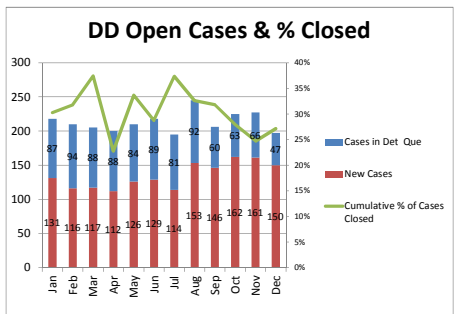
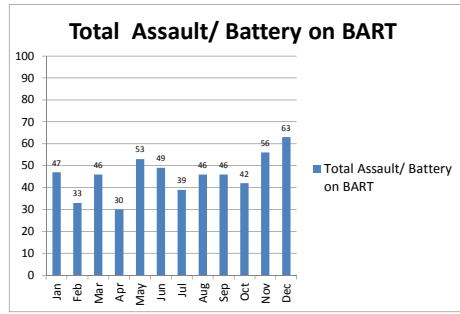
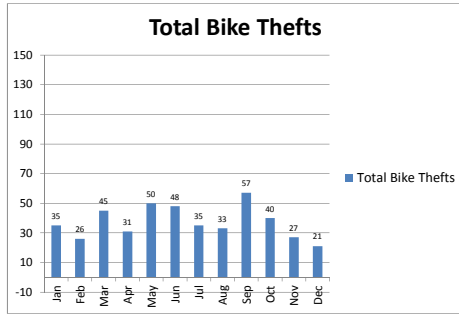
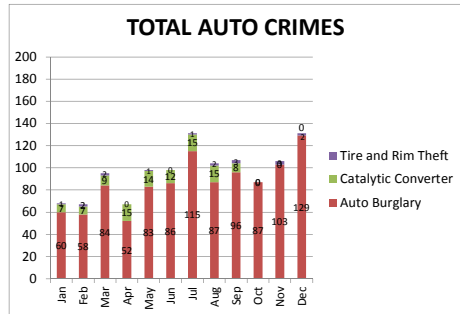
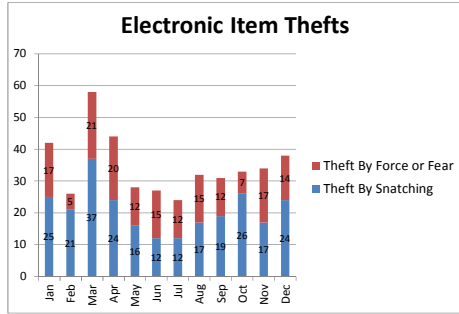
Disclaimer--**The data is drawn from the BART Police Department TriTech computer database, and they are unaudited. The numbers may not match the official monthly totals reported to the FBI through the Uniform Crime Reporting (UCR) program. Late reporting, the reclassification or un-founding of crimes,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

Top 5 Stations For Part 1 Crimes

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

Most Frequent all of 2016 YEAR
 Coliseum
 Fruitvale
 Bay Fair
 Concord
 East Dublin

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



Enforcement Contacts - 2017

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

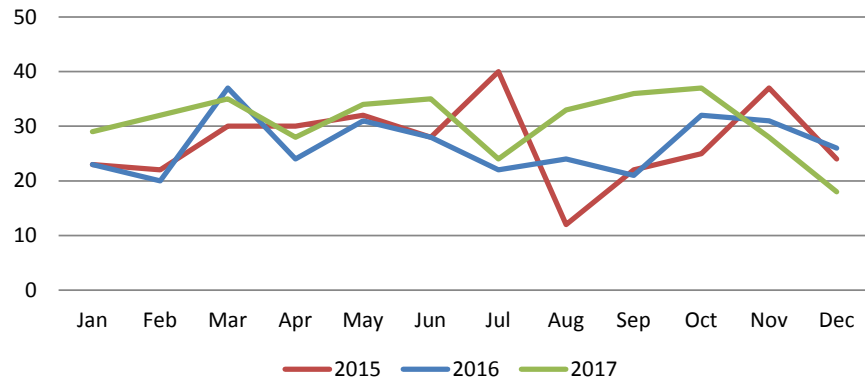
Enforcement Contacts - 2016

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

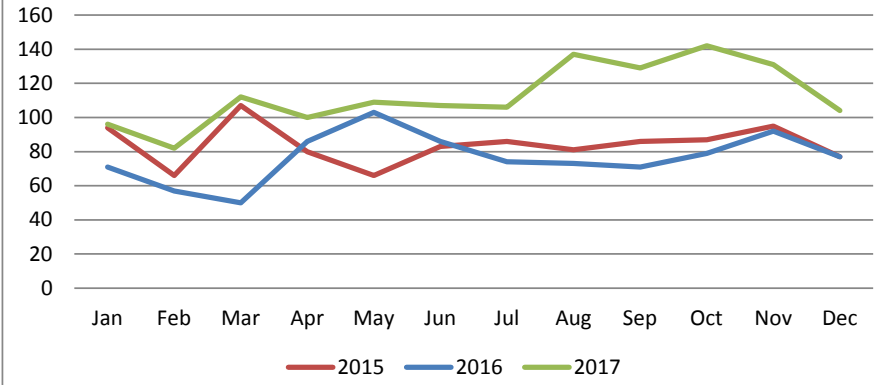
Enforcement Contacts - 2015

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Felony Arrest	23	22	30	30	32	28	40	12	22	25	37	24	325
YTD 2015	23	45	75	105	137	165	205	217	239	264	301	325	
Misd. Arrest	94	66	107	80	66	83	86	81	86	87	95	77	1,008
YTD 2015	94	160	267	347	413	496	582	663	749	836	931	1,008	
Cite & Release	588	360	456	521	334	405	470	507	491	607	488	458	5,685
YTD 2015	588	948	1,404	1,925	2,259	2,664	3,134	3,641	4,132	4,739	5,227	5,685	
Field Interview	522	372	516	537	475	464	589	600	532	737	652	511	6,507
YTD 2015	522	894	1,410	1,947	2,422	2,886	3,475	4,075	4,607	5,344	5,996	6,507	

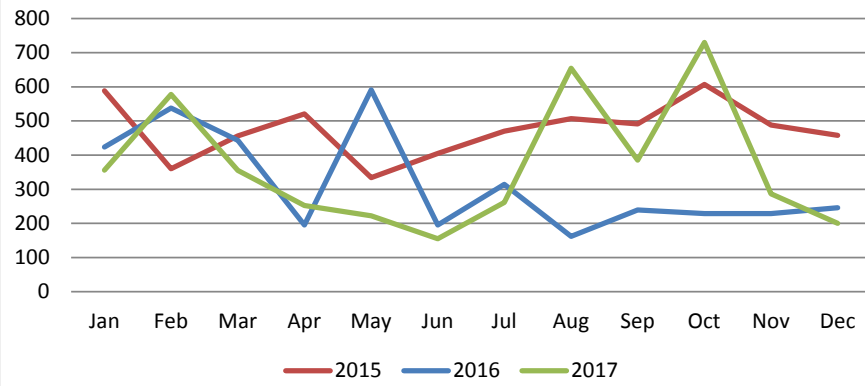
Felony Arrests



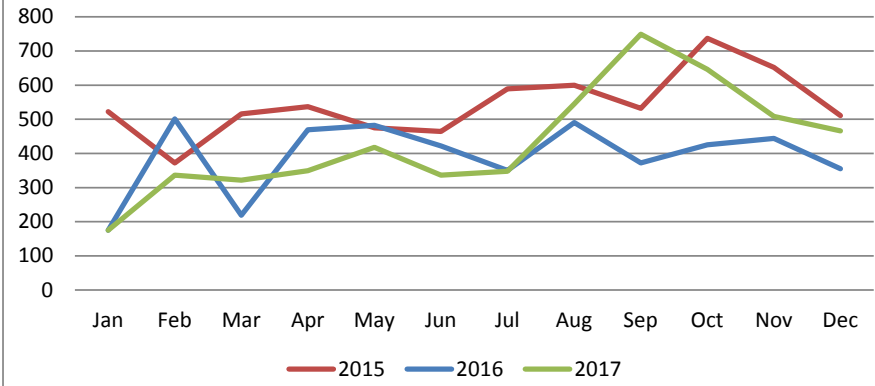
Misdemeanor Arrests



Cite & Release



Field Interviews



Parking Enforcement - 2017

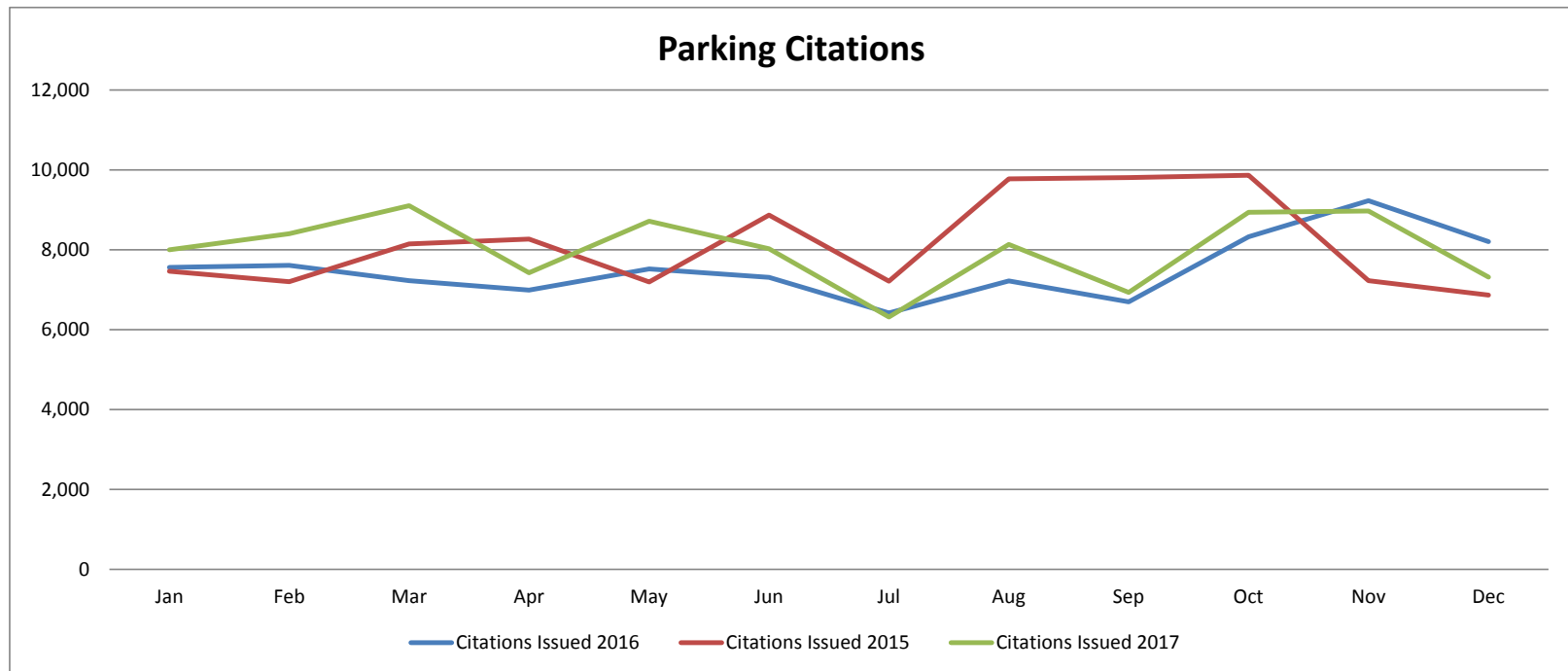
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	7,997	8,400	9,104	7,424	8,716	8,028	6,318	8,131	6,933	8,939	8,973	7,316	96,279
YTD 2016	7,997	16,397	25,501	32,925	41,641	49,669	55,987	64,118	71,051	79,990	88,963	96,279	
Contested	1,324	1,673	1,761	1,796	1,912	1,681	1,587	1,734	1,578	1,793	1,556	2,116	20,511
YTD 2016	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 2016	821	1,821	2,957	4,180	5,468	6,538	7,536	8,651	9,588	10,695	11,635	13,010	

Parking Enforcement - 2016

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

Parking Enforcement - 2015

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Citations Issued	7,465	7,199	8,144	8,266	7,195	8,868	7,214	9,774	9,805	9,866	7,226	6,866	97,888
YTD 2015	7,465	14,664	22,808	31,074	38,269	47,137	54,351	64,125	73,930	83,796	91,022	97,888	
Contested	946	870	1,870	1,353	1,916	1,666	1,350	1,287	1,768	1,358	1,898	1,067	17,349
YTD 2015	946	1,816	3,686	5,039	6,955	8,621	9,971	11,258	13,026	14,384	16,282	17,349	
Dismissed	614	592	1,295	916	1,410	1,217	902	913	1,159	870	1,257	732	11,877
YTD 2015	614	1,206	2,501	3,417	4,827	6,044	6,946	7,859	9,018	9,888	11,145	11,877	



Warrant Arrests

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



San Francisco Bay Area Rapid Transit Police Department Criminal Investigations Section Monthly Summary Report December 2017

Detective Assignments

Total number of cases assigned to detectives during the month	Number of cases that are still being investigated by detectives	Number of cases that all current leads have been exhausted	Number of cases that were sent to the district attorney's offices for a review	Number of cases that the district attorney's offices has not made a final disposition	Number of cases that were charged by the district attorney / probation violation	Number of cases that were not charged by the district attorney's offices	Percentage of cases that the district attorney's offices filed charges	Total number of cases that are assigned to a detective as of Jan 9, 2018
150	47	29	74	47	19	8	26%	96

Submitted By: Sgt. J. Power S-49

Date: 01/09/2018

San Francisco Bay Area Rapid Transit Police Department

Criminal Investigations Section

December 2017

Detective Closure Rate

	Total number of cases assigned to detectives previous 12 months (Jan 2017 - Dec 2017)	Number of cases that are still being investigated by detectives	Number of cases that all current leads have been suspended	Number of cases that were sent to the district attorney's offices for a review (suspect identified)	Percentage of cases closed by identification of suspect	Percentage of cases suspended	Percentage of cases Open
	1878	87	421	1352	72%	22%	5%
D39	229	18	34	176	77%	15%	8%
D51	200	13	29	157	79%	15%	7%
D89	57	6	3	48	84%	5%	11%
D75	166	6	17	137	83%	10%	4%
D31	422	21	135	263	62%	32%	5%
D55	532	0	137	392	74%	26%	0%
D27	212	13	59	136	64%	28%	6%
D54	58	9	7	42	72%	12%	16%

CASES IN DETECTIVE QUEUE

	Total	Past 60 days
D39	6	0
D51	19	0
D75	6	0
D55	8	0
D31	28	1
D27	11	0
D54	18	0

Submitted by: Sgt. John J. Power #S49
Date: Jan 9, 2018

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

Assembly Bill 716 - 2017

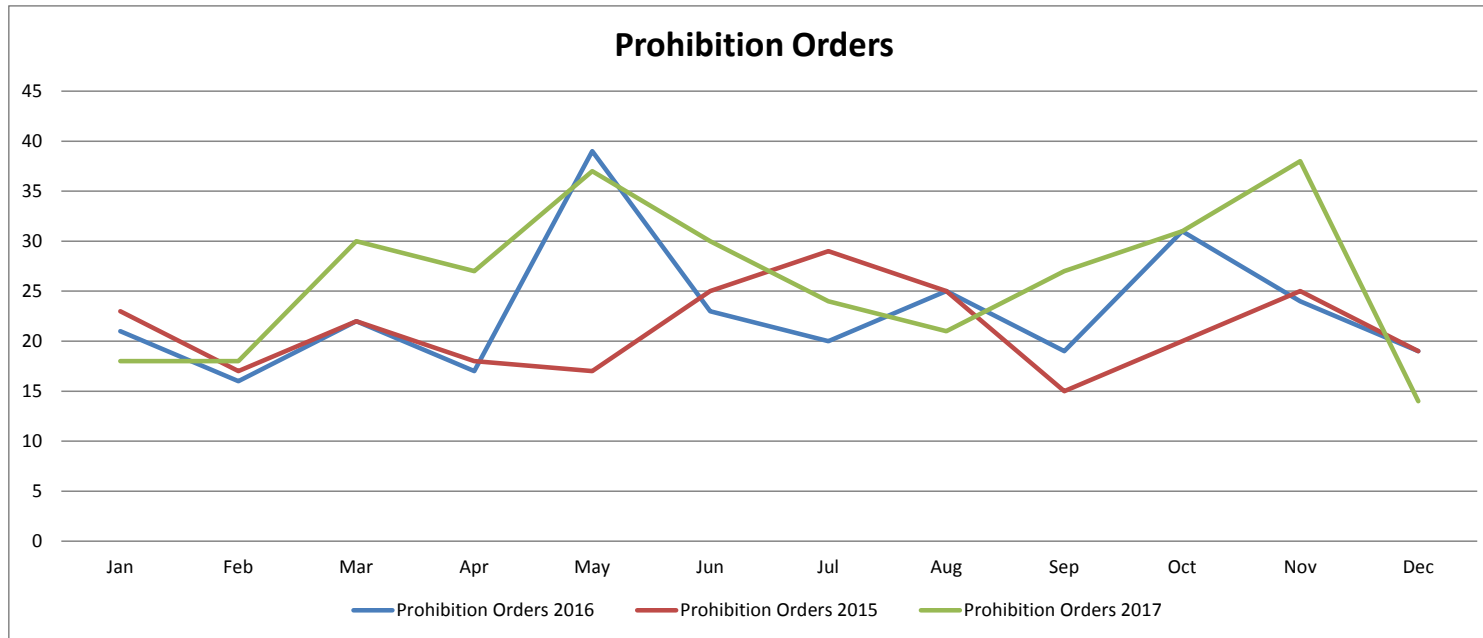
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	18	18	30	27	37	30	24	21	27	31	38	14	315
YTD 2017	18	36	66	93	130	160	184	205	232	263	300	315	

Assembly Bill 716 - 2016

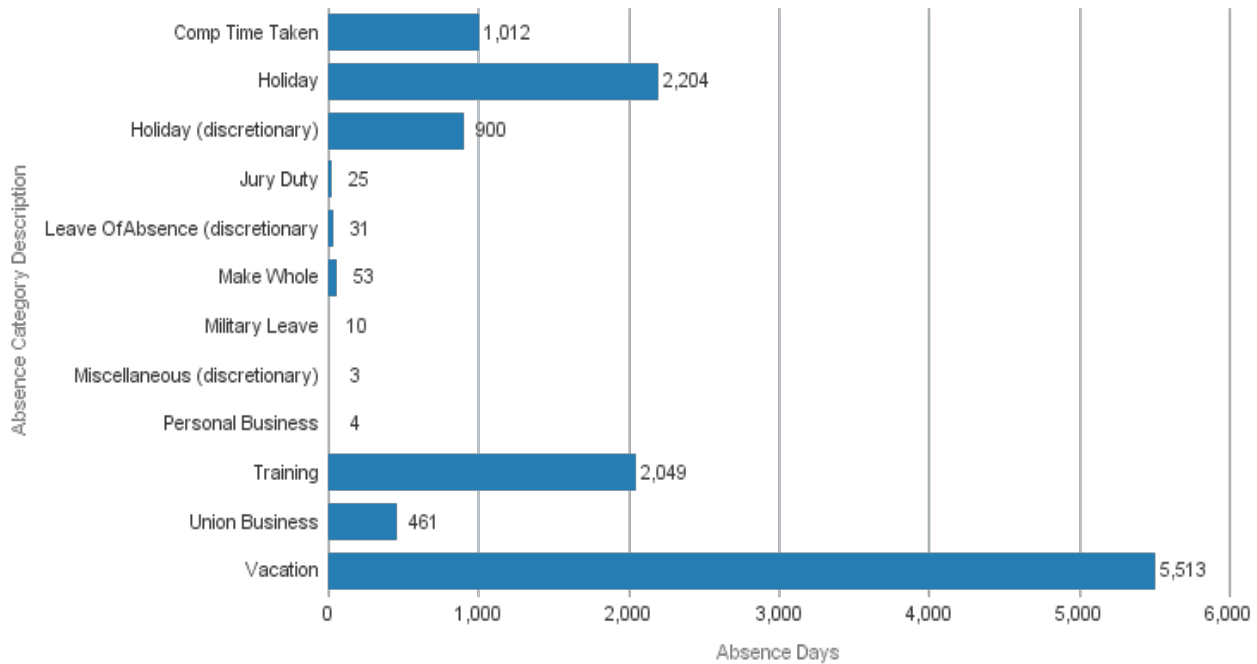
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	21	16	22	17	39	23	20	25	19	31	24	19	276
YTD 2016	21	37	59	76	115	138	158	183	202	233	257	276	

Assembly Bill 716 - 2015

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Prohibition Orders Issued	23	17	22	18	17	25	29	25	15	20	25	19	255
YTD 2015	23	40	62	80	97	122	151	176	191	211	236	255	

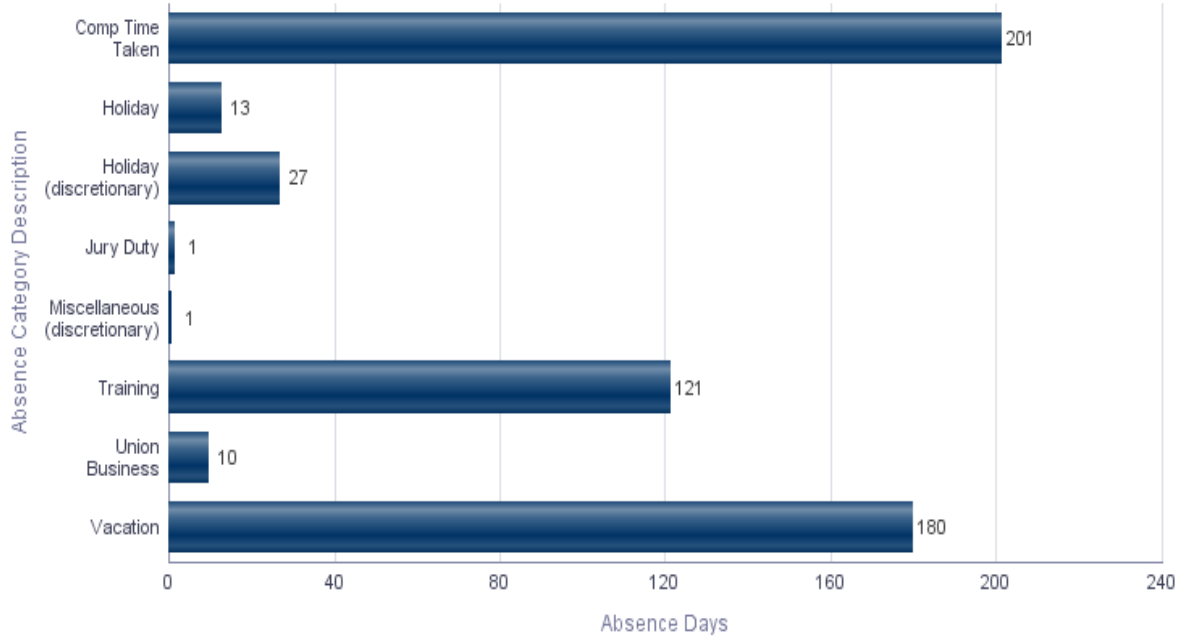


Scheduled Absence Overview - December 2017



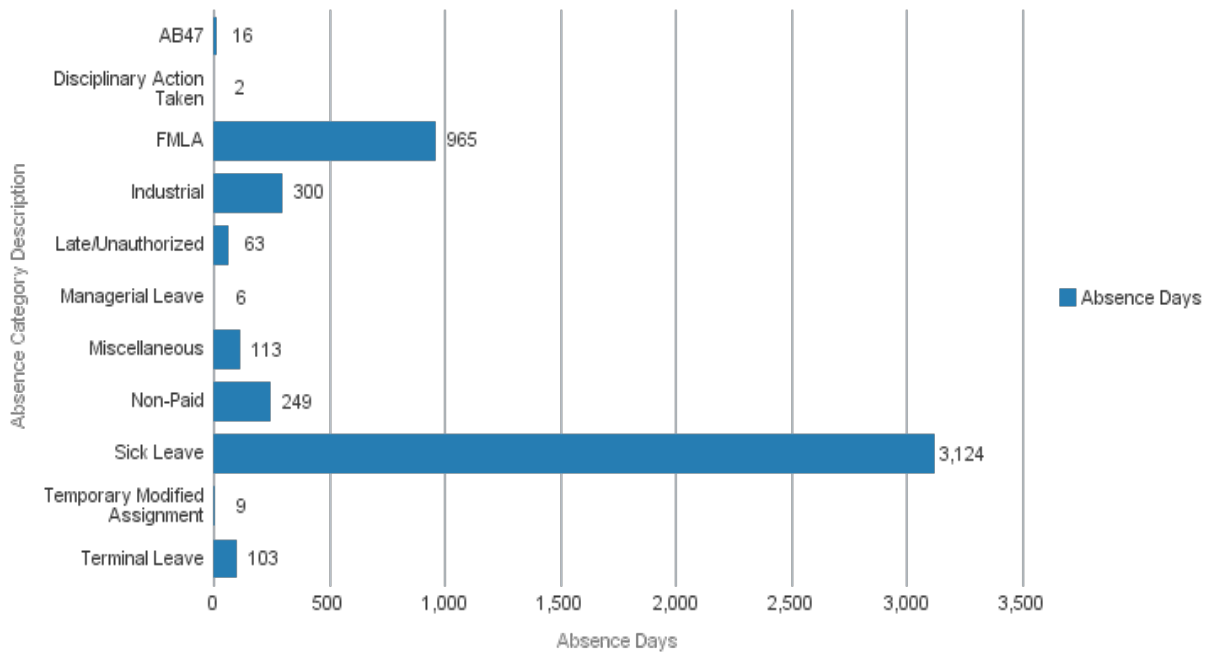
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	8,885	1,012	8%
Holiday	18,199	2,204	18%
Holiday (discretionary)	7,482	900	7%
Jury Duty	219	25	0%
Leave OfAbsence (discretionary)	235	31	0%
Make Whole	430	53	0%
Military Leave	80	10	0%
Miscellaneous (discretionary)	24	3	0%
Personal Business	29	4	0%
Training	17,091	2,049	17%
Union Business	3,894	461	4%
Vacation	45,997	5,513	45%
Grand Total	102,566	12,264	100%

Scheduled Absence Overview - December 2016



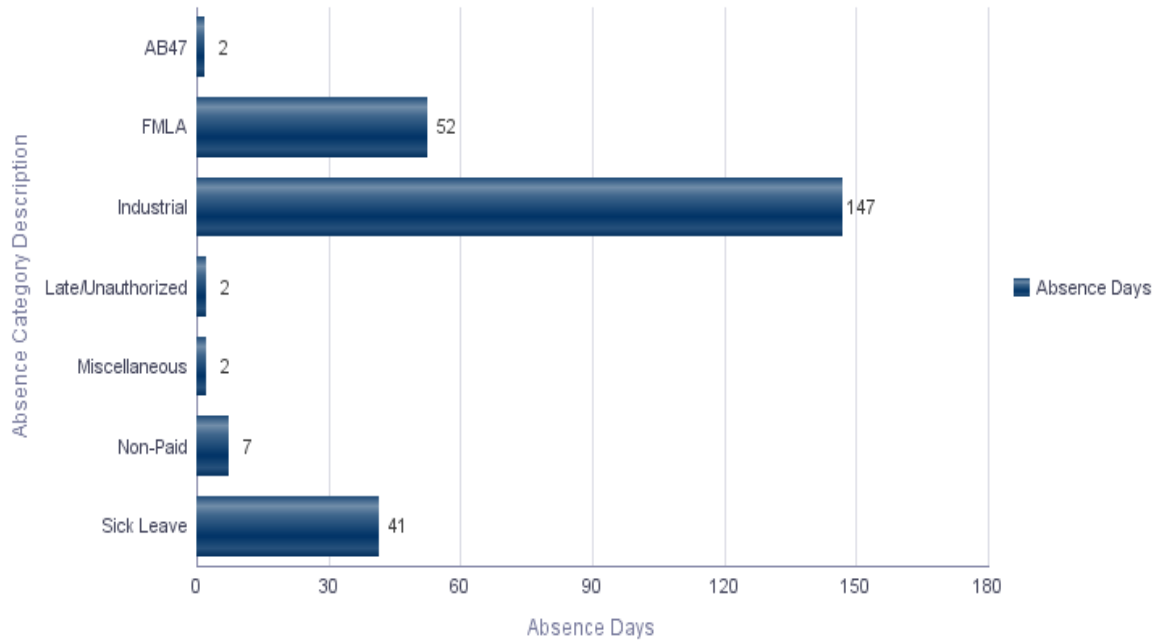
Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	2,070	201	36%
Holiday	143	13	2%
Holiday (discretionary)	262	27	5%
Jury Duty	11	1	0%
Miscellaneous (discretionary)	8	1	0%
Training	1,169	121	22%
Union Business	114	10	2%
Vacation	1,879	180	32%
Grand Total	5,655	554	100%

Unscheduled Absence Overview - December 2017



Absence Category Description	Absence Hours	Absence Days	% Total
AB47	133	16	0%
Disciplinary Action Taken	16	2	0%
FMLA	8,128	965	19%
Industrial	2,753	300	6%
Late/Unauthorized	523	63	1%
Managerial Leave	68	6	0%
Miscellaneous	953	113	2%
Non-Paid	1,942	249	5%
Sick Leave	25,913	3,124	63%
Temporary Modified Assignment	72	9	0%
Terminal Leave	839	103	2%
Grand Total	41,339	4,950	100%

Unscheduled Absence Overview - December 2016



Absence Category Description	Absence Hours	Absence Days	% Total
AB47	16	2	1%
FMLA	609	52	21%
Industrial	1,588	147	58%
Late/Unauthorized	24	2	1%
Miscellaneous	22	2	1%
Non-Paid	82	7	3%
Sick Leave	446	41	16%
Grand Total	2,786	254	100%

BART PD OVERTIME MONTHLY REPORT

Decemeber 2017

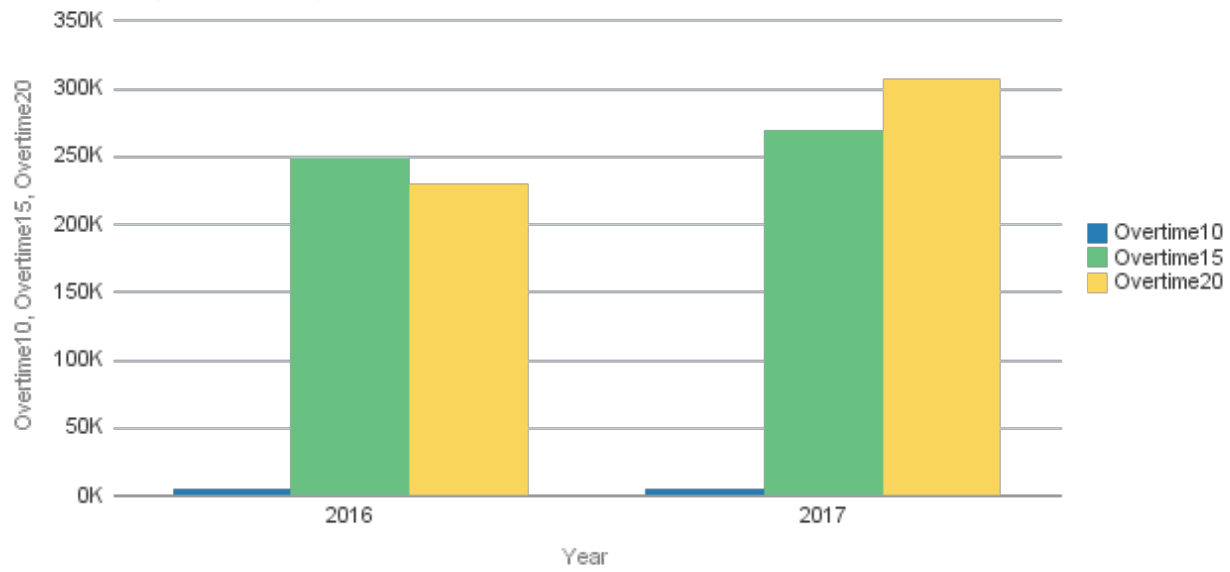
Activity Name	Activity ID	2016			2017		
		Overtime10	Overtime15	Overtime20	Overtime10	Overtime15	Overtime20
Administration	ADMIN	0	347	491	0	468	0
Adv Officer Training	ADVOF	0	11,079	10,900	188	9,813	11,966
BART Labor	BLABR	0	714	0	0	814	384
BF OT Admin Leave BPD	BFALV	0	758	0	0	0	0
BF OT Discr Day BPD	BFDSC	0	6,302	5,219	0	452	3,940
BF OT Industrial Leave BPD	BFILV	837	5,803	15,697	0	9,701	18,735
BF OT Minimum Rest	BFRST	0	69	486	0	69	460
BF OT Patrol TRN	BFTRN	0	7,341	8,615	0	6,593	5,637
BF OT Recovery Day	BFRCV	1	7,367	7,817	186	5,686	27,602
BF OT Training BPD	BFTRN	0	7,341	8,615	0	6,593	5,637
BF OT Vacancy BPD	BFVCN	532	20,848	24,938	0	11,326	9,327
BF OT Vacation BPD	BFVAC	971	40,997	62,438	377	31,354	67,511
BF Sick/FMLA/Brvment	BFSLV	0	8,457	10,488	0	11,230	13,331
Boardroom Security	BRDRM	0	41	951	0	372	1,128
COPPS Project/Event	COPPS	0	4,923	2,338	0	6,012	2,390
Calendar Year 2016	CY2016	0	0	0	0	0	0
Calendar Year 2017	CY2017	0	0	0	0	832	0
Coliseum Events	CEOPS	303	11,857	12,508	305	7,049	23,204
Construction Management	CNMGT	0	0	0	0	240	0
Contra Costa County Task Force	CCCTF	0	332	0	0	0	0
Court Appearance	COURT	0	574	0	0	353	401
Crowd Ctrl for Spec	CROWD	0	439	994	0	0	0
Detectives Unit OT	INVST	0	1,628	1,587	28	6,111	537
EMS/OWS Pltfrm Detail	PLTFM	843	9,037	7,058	0	5,417	7,811
Evidence Collection	EVIDN	0	0	0	0	5,044	502
Explorer Advisors	EXPLR	0	398	0	0	1,377	0
Final Design	FDSGN	0	2,095	693	0	187	0
Held Over/Late Case	HLDOV	0	8,708	885	0	11,814	1,077
Honor Guard Detail	HONOR	0	0	0	0	1,037	0

IA Unit Overtime	IAUNT	0	6,100	3,917	0	3,121	3,000
Jnt Terrorism Tskfrce	JTTF0	0	0	957	0	0	1,764
K-9 Team Training	K9TTR	0	1,125	0	0	0	712
Meeting Attendance	MTNGS	0	2,639	1,352	0	4,715	730
Mgr of Sec Programs	SECPR	0	0	0	0	3,114	0
New Year's Eve SVC 2	NYEVE	0	162	1,362	646	2,612	1,662
Operating	OPRTN	144	22,779	8,055	1,050	27,342	16,286
P&T Unit Overtime	PTUNT	224	9,972	4,869	408	17,365	8,003
Police Admin OT	PADMN	292	8,548	0	56	17,459	3,511
Ptrl Special Enforcement	SPECL	1	29,032	16,858	1,184	46,783	56,689
Raiders - Walkway	RAIDR	0	0	0	0	0	509
Raiders Game Cleanup	RAIDR	0	0	0	0	0	509
Range Staff Training	RANGE	0	0	0	0	615	0
Rev Protection Unit OT	RVPRT	0	624	831	0	694	0
SWAT Team Expenses	SWATT	0	1,249	1,039	0	0	2,266
SWAT Team Training	SWATT	0	1,249	1,039	0	0	2,266
Training	TRNNG	0	684	0	0	994	579
Training Other	TRNOT	0	6,621	4,817	0	2,645	4,170
Union Business	UNBUS	0	0	1,039	0	734	1,018
Total:		4,147	248,241	228,854	4,428	268,138	305,255

Decemeber 2017

481,243

577,821

Overtime10, Overtime15, Overtime20

Communications Center - 2017

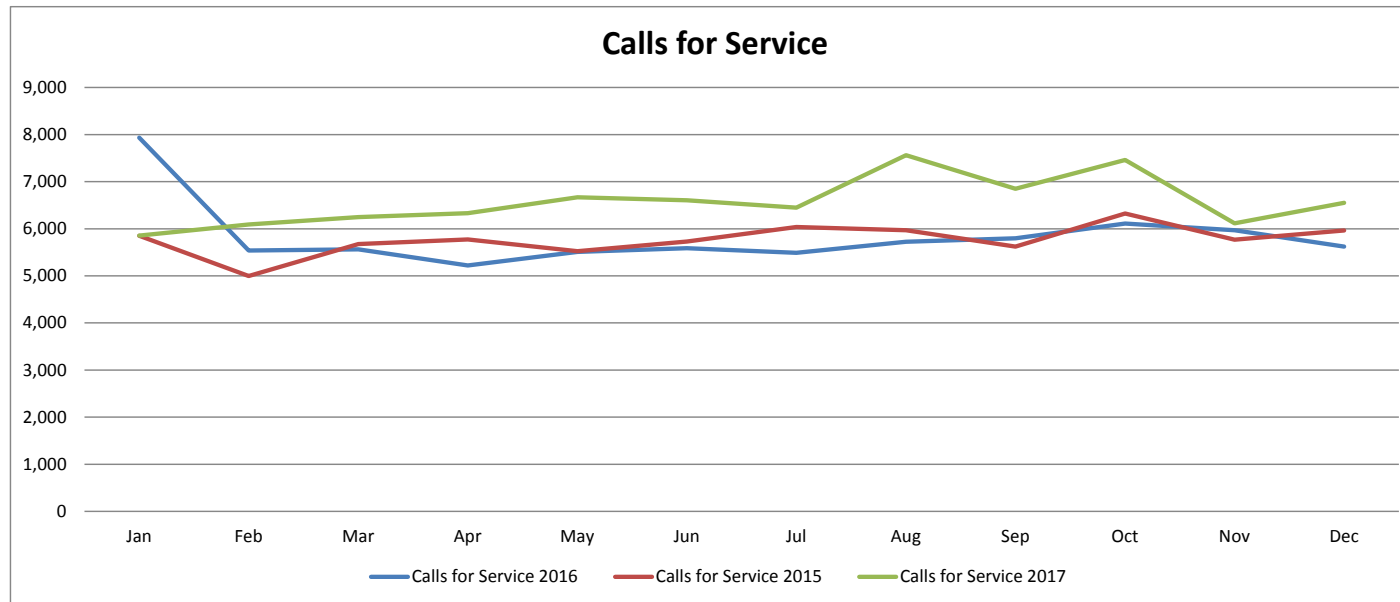
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	5,855	6,093	6,250	6,331	6,670	6,605	6,448	7,562	6,850	7,460	6,117	6,553	78,794
YTD 2017	5,855	11,948	18,198	24,529	31,199	37,804	44,252	51,814	58,664	66,124	72,241	78,794	
Priority 1 Calls	214	192	194	182	209	234	210	185	174	204	154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

Communications Center - 2016

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

Communications Center - 2015

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Calls for Service	5,851	4,997	5,677	5,771	5,525	5,728	6,037	5,968	5,620	6,324	5,769	5,963	69,230
YTD 2015	5,851	10,848	16,525	22,296	27,821	33,549	39,586	45,554	51,174	57,498	63,267	69,230	
Priority 1 Calls	178	154	190	153	173	181	202	190	183	167	182	174	2,127
YTD 2015	178	332	522	675	848	1,029	1,231	1,421	1,604	1,771	1,953	2,127	
Medical Emergencies	334	286	273	295	276	304	318	279	287	283	292	363	3,590
YTD 2015	334	620	893	1,188	1,464	1,768	2,086	2,365	2,652	2,935	3,227	3,590	



BART Watch - 2017

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Panhandling or Disruptive Behavior*	0	0	0	0	0	0	0	0	0	0	0	0	-
Other*	0	0	0	0	0	0	0	0	0	0	0	0	-
Suspicious Activity	79	85	91	92	107	87	109	129	97	146	119	123	1,264
Crime in Progress	70	70	53	54	81	71	83	99	109	103	84	96	973
Illegally Parked Vehicle	13	27	20	12	21	14	21	25	15	20	16	19	223
Vandalism	27	22	37	27	41	33	44	52	43	60	43	38	467
Unattended Bag or Package	30	35	36	34	32	31	23	37	33	35	30	26	382
Sexual Assault/Lewd Behavior	15	24	9	17	15	26	26	13	18	29	14	25	231
Report a Crime Tip	15	11	20	18	19	23	18	37	28	29	32	22	272
Robbery/Theft	8	6	9	13	8	6	20	14	10	15	10	13	132
Unsecure Door	8	10	4	6	6	6	9	7	12	15	4	10	97
Disruptive Behavior	460	532	489	507	664	588	564	642	607	704	645	578	6,980
Panhandling	89	98	98	105	204	178	163	168	140	109	105	68	1,525
Total	814	920	866	885	1198	1063	1080	1223	1112	1265	1102	1018	12,546

Total Downloads: 44,182

Total Reports Made

Anonymous: 39.95%

Non-Anonymous: 60.05%

*Categories no longer active. Some activity will continue until all active users have updated their version of the app.

Statistics

Statistics	Six Week Average	01/22-01/28	01/15-01/21	01/08-01/14	01/01-01/07	12/25-12/31	12/18-12/24
Alerts Sent	0.33	0	0	2	0	0	0
Description	<i>The total number of alerts sent.</i>						
Incoming Reports	278.50	340	305	340	257	169	260
Description	<i>The number of reports sent from users.</i>						
Replies to Reports	267.33	380	279	290	235	180	240
Description	<i>The number of replies sent to users from ELERTS EPICenter console.</i>						

Report Type	# of Reports (all time)	
Disruptive Behavior (A)	14038	40.21%
Panhandling (A)	3450	9.88%
Other (D)	3080	8.82%
Suspicious Activity (A)	3006	8.61%
[none selected]	2910	8.34%
Panhandling or Disruptive Behavior (D)	1967	5.63%
Crime in Progress (A)	1964	5.63%
Vandalism (A)	1102	3.16%
Unattended Bag or Package (A)	928	2.66%
Report a Crime Tip (A)	675	1.93%
Illegally Parked Vehicle (A)	666	1.91%
Sexual Assault / Lewd Behavior (A)	563	1.61%
Robbery / Theft (A)	337	0.97%
Unsecure Door (A)	221	0.63%
Text a Tip (A)	5	0.01%
Total	34912	100 %
(A) Active Disabled (D)		

Identification	Total
Anonymous	39.95 %
Description	<i>Reports sent anonymously.</i>
Non-Anonymous	60.05 %
Description	<i>Reports sent non-anonymously.</i>

App Statistics (including tests)	
Total Messages (iOS)	42155
Description	<i>Reports and replies via iOS devices.</i>
Total Messages (Android)	22094
Description	<i>Reports and replies via Android devices.</i>
Total Messages (SMS)	2
Description	<i>Reports and replies via SMS.</i>

TEST-THIS IS ONLY A TEST	# of Reports (all time)
TEST Report Total	5332

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

2 (IA2017-109)	Officer unsafely operated motor vehicle near complainant.	Officer #1: • Policy/Procedure – Supervisor Referral	79	59
3 (IA2017-113)	Officer treated subject aggressively and used unnecessary and excessive force during enforcement contact.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	62	44
4 (IA2017-116)	Officers improperly detained and harassed subject.	Officers #1-2: • Arrest or Detention – Supervisor Referral • Conduct Unbecoming an Officer – Supervisor Referral	68	36

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

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Address Complaint
1 (IA2017-062)	Officer made inappropriate derogatory comments that also expressed racial bias and officer generated an unfair and inaccurate supervisory report.	Officer #1: • Racial Animus – Not Sustained • Conduct Unbecoming an Officer (Counts 1-2) – Unfounded	200	180

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR PERIOD

During October 2017, **1 Informal Complaint** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2017-085)	Officer improperly detained and cited complainant on the basis of race and verbally assailed complainant during the enforcement contact.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	145	36

DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 2018, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document law enforcement contact.	Officer #1: • Policy/Procedure	Officer #1: • Oral Counseling
2	Officers did not properly handle subject's property.	Officers #1-2: • Property	Officers #1-2: • Informal Counseling

ADDITIONAL NOTES

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

Investigations Being Conducted	3
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	19
Investigations Reviewed During Current Month	23 [†]

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

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹⁰

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

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

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

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

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

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

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

⁸ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

⁹ A 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.

¹⁰ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.

Fare Evasion

419.1 PURPOSE AND SCOPE

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

419.2 POLICY

It shall be the policy of the BART Police Department to vigorously enforce transit specific crimes including fare evasion.

419.2.1 FARE EVASION ENFORCEMENT

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

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

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

419.2.2 FARE EVASION DEFINED

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

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

419.2.3 CONSENSUAL ENCOUNTER, REASONABLE SUSPICION, AND PROBABLE CAUSE

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

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

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BART PD Policy Manual

Fare Evasion

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

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

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

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

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

419.3 LEGAL ISSUES REGARDING FARE EVASION CONTACTS

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

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

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

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

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Fare Evasion

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

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

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

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

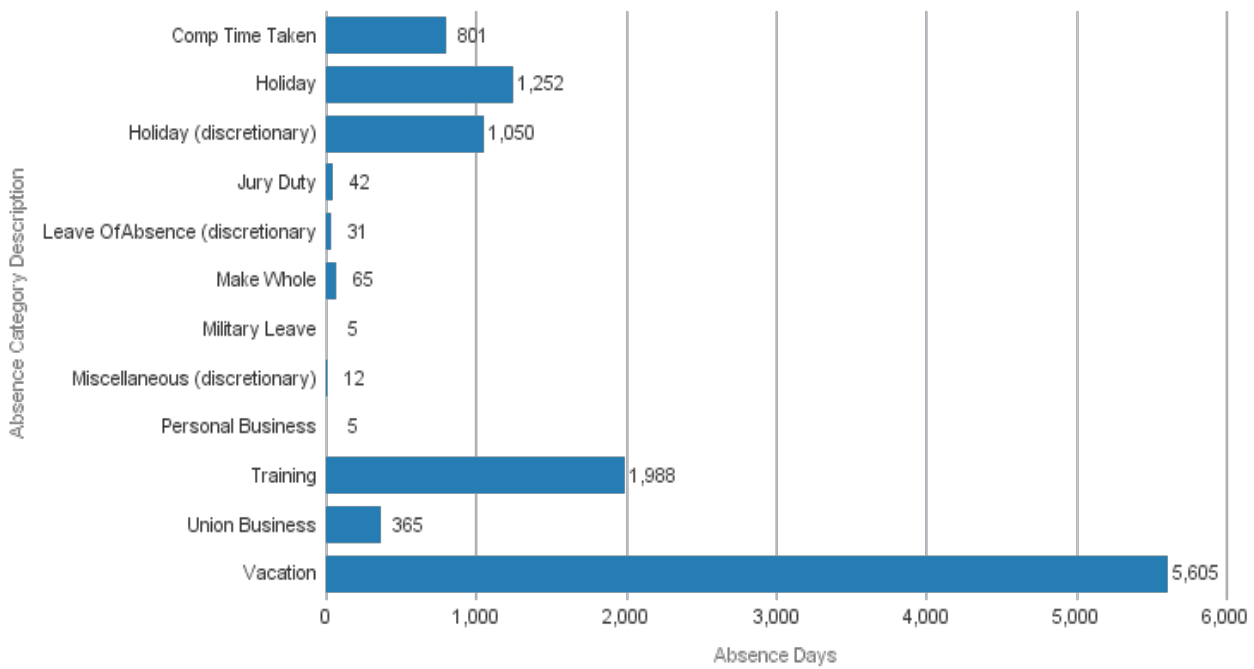
Without more facts, a crime has not occurred in the above examples. In order for the officer to develop cause to detain a person, the officer has to be patient and observe the actions of the person to gather more facts. A person who uses the emergency gate to enter the station, buys a newspaper, then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

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

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

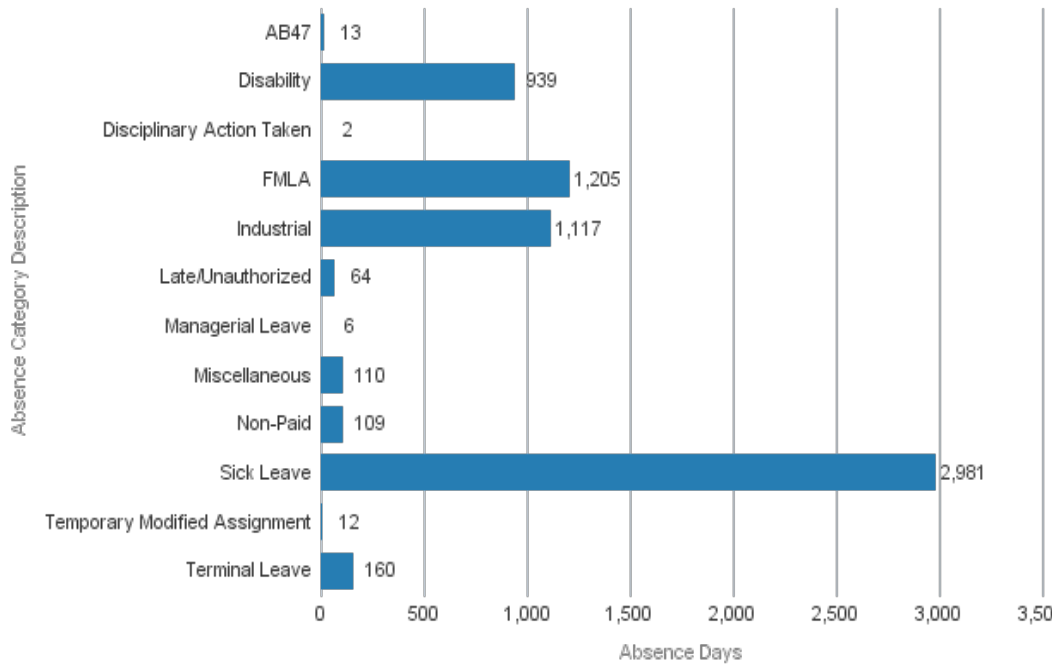
Officers must have reasonable suspicion or probable cause to believe that the person has committed some crime or infraction in order to detain and arrest someone and to check his or her ticket. Ultimately, officers should be guided by their training and experience in determining whether reasonable suspicion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

Scheduled Absence Overview - December 2016 (Updated)



Absence Category Description	Absence Hours	Absence Days	% Total
Comp Time Taken	7,316	801	7%
Holiday	10,351	1,252	11%
Holiday (discretionary)	8,819	1,050	9%
Jury Duty	336	42	0%
Leave OfAbsence (discretionary)	227	31	0%
Make Whole	527	65	1%
Military Leave	42	5	0%
Miscellaneous (discretionary)	96	12	0%
Personal Business	39	5	0%
Training	16,526	1,988	18%
Union Business	3,079	365	3%
Vacation	47,240	5,605	50%
Grand Total	94,598	11,220	100%

Unscheduled Absence Overview - December 2016 (Update)



Absence Category Description	Absence Hours	Absence Days
AB47	116	13
Disability	7,614	939
Disciplinary Action Taken	18	2
FMLA	10,155	1,205
Industrial	9,497	1,117
Late/Unauthorized	558	64
Managerial Leave	60	6
Miscellaneous	925	110
Non-Paid	913	109
Sick Leave	24,754	2,981
Temporary Modified Assignment	92	12
Terminal Leave	1,328	160
Grand Total	56,030	6,719

d)

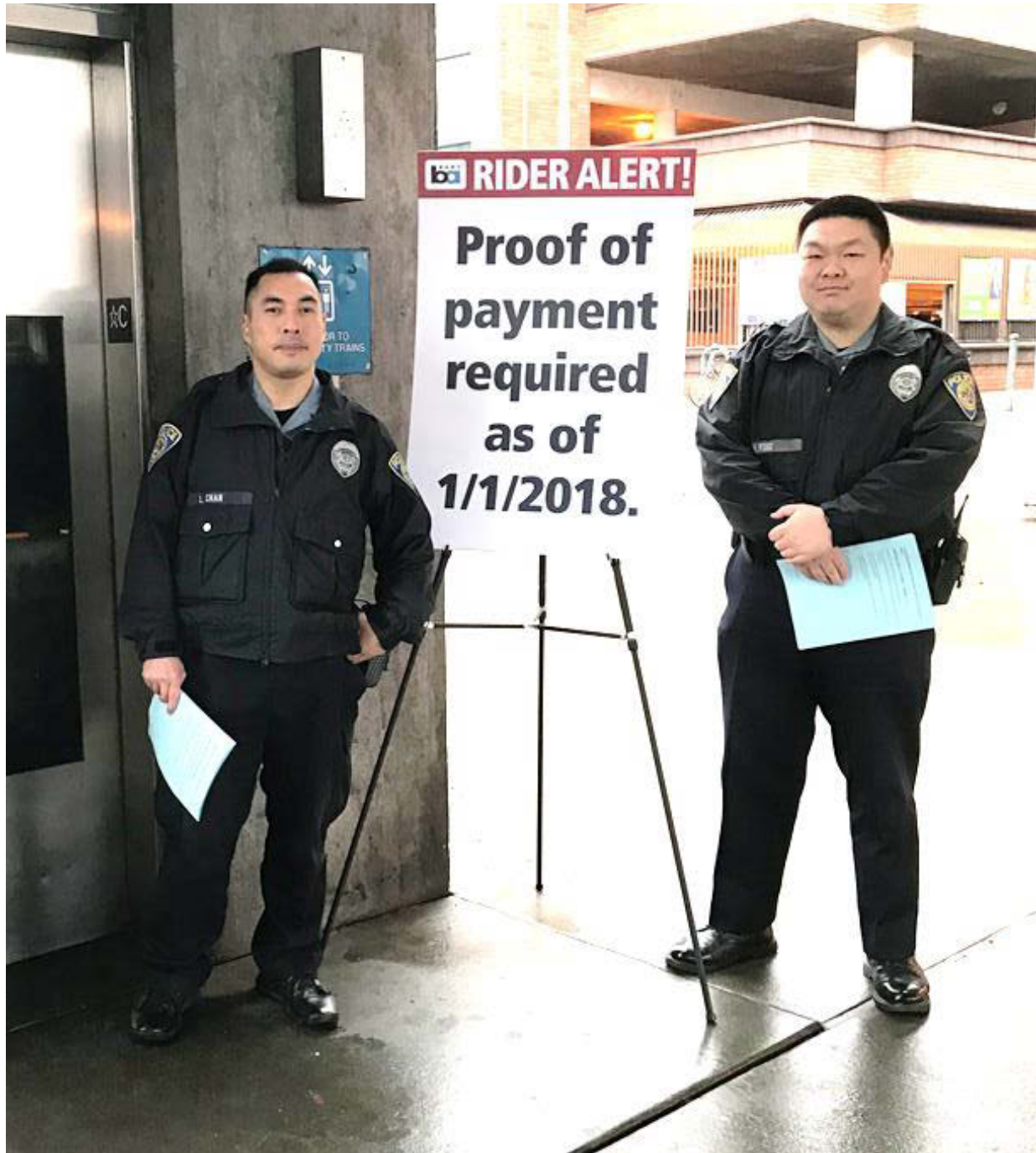
■ Absence Days

10

% Total
0%
14%
0%
18%
17%
1%
0%
2%
2%
44%
0%
2%
100%

BART Police

Proof of Payment Manual



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INTRODUCTION

The Bay Area Rapid Transit District estimates it loses millions of dollars to fare evasion each year, and fare cheaters erode the trust of honest, fare paying customers. As a result of these factors the Board of Directors adopted reasonable Proof of Payment regulations to ensure compliance with fare payment requirements.

The Board of Directors passed Proof of Payment Ordinance No. 2017-2 as part of a multipronged approach to reducing fare evasion, which includes public education, improved barriers between the free and paid areas of stations, data collection, and enforcement.

The BART Police Department will utilize the Proof of Payment Ordinance as an enforcement tool in a fair and impartial manner. This manual will outline the Proof of Payment Program and Fare Inspection protocol.

PROOF OF PAYMENT PROGRAM OVERVIEW

The primary purpose of the Proof of Payment Program is to ensure that BART passengers adhere to BART fare payment requirements and that those who do not pay fare are issued citations as a corrective measure.

Passengers are required to process valid fare media to enter and to exit the paid area of BART. Passengers are now also required to present a valid exit-coded BART ticket when requested by a BART Police employee. Individuals who fail to present proof of payment shall be in violation of BART Ordinance 1702-2. Violation of the ordinance is an infraction.

Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of section 2017-2.3(b) of the Proof of Payment Ordinance. This violation is an infraction.

The goal of the Proof of Payment program is to reduce fare evasion, but it is also noted that the visible presence of BART Fare Inspectors in BART Stations and on BART trains will increase safety and security for passengers and employees alike.

Public Utilities Code Section 28766 authorizes the BART Board of Directors to regulate its transit facilities including the fixing of charges and the making and enforcement of rules for or in connection with any transit facility owned or controlled by the District. The imposition of civil administrative penalties is a typical type of charge imposed by governments to serve a regulatory purpose and to facilitate the recovery of governmental expenses incurred as a consequence of a rule violation.

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Adults who fail to show proof of payment in the paid area or on a train, upon a first or second violation within a 12-month period, will be assessed an administrative penalty of seventy-five dollars (\$75) or may be required to perform 5 hours of community service.

Juveniles who fail to show proof of payment in the paid area or on a train will be assessed an administrative penalty of fifty-five dollars (\$55) or may be required to perform 4 hours of community service.

Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

Fare Inspectors may take the following actions:

1. Request proof of payment from passengers;
2. Request personal identification from a passenger who does not produce proof of payment when requested;
3. Issue a civil citation;
4. Request that a passenger leave the paid area of BART when they are in violation of BART Ordinance 2017-2.

DEFINITIONS

Exit coded: The term "exit coded" means a ticket programmed with sufficient value for the minimum BART fare and which has been used in a BART fare gate to enter the BART system. Exit coded tickets remain valid for a limited period of time as designated by the BART fare schedule.

Fare: The term "fare" as used herein means the current passenger fare structure as approved by the Board of Directors.

Ticket: The term "ticket" as used herein is intended to include Clipper Cards, BART magnetic stripe tickets, BART-issued voucher or pass, or other fare media as otherwise authorized by BART.

Paid Area: The demarcated areas within the BART system accessible only to people with a valid ticket (or other approved fare media) processed for entry via a fare gate or by a station agent. The "paid area" includes; the area of the station concourse enclosed by barrier walls and fare gates, any concourse to platform elevators which access train platforms, the train platforms, and train cars.

Proof of Payment: The term "proof of payment" means the valid ticket medium that may be requested from any individual upon entry to, or anywhere within the paid area.

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PROOF OF PAYMENT MANUAL

ORDINANCE

Proof of Payment Ordinance No. 2017-2

Section 3: *Prohibition on being in the paid area or on a train without a valid exit-coded ticket.*

No individual may enter into or exit from the paid area of a BART Station other than through the use of a BART ticket at the fare gates.

- (a) Individuals in the paid area of the station or on a BART train are required to present a valid exit-coded BART ticket when requested by the District. Individuals who fail to present proof of payment shall be in violation of this ordinance. This violation is an infraction.*
- (b) Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance. This violation is an infraction.*

Section 5. *Penalty for Violation*

Violation of this ordinance shall be an infraction, which may result in the following:

5.1 Civil Administrative Citation

Public Utilities Code Section 28766 authorizes the BART Board of Directors to regulate its transit facilities including the fixing of charges and the making and enforcement of rules for or in connection with any transit facility owned or controlled by the District. The imposition of civil administrative penalties are a typical type of charge imposed by governments to serve a regulatory purpose and to facilitate the recovery of governmental expenses incurred as a consequence of a rule violation. A civil administrative citation shall be the preferred first option, as opposed to a criminal citation.

Adults who fail to show proof of payment in the paid area or on a train, upon a first or second violation within a 12 month period, will be assessed an administrative penalty not to exceed one hundred and twenty dollars (\$120) or may be required to perform up to 8 hours of community service.

Juveniles who fail to show proof of payment in the paid area or on a train will be assessed an administrative penalty not to exceed sixty dollars (\$60) or may be required to perform up to 8 hours of community service.

Individuals who are unable to show proof of payment may be subject to ejection from the BART system.

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PROOF OF PAYMENT MANUAL

5.2. Criminal Infraction Citation

- (a) Upon a third proof of payment violation within any 12 month period for an adult, a peace officer will issue a criminal citation to the adult.*
- (b) Any person who knowingly gives false information to a peace officer or District employee engaged in proof of payment inspections, and/or any person who otherwise obstructs the issuance of a proof of payment citation, shall be in violation of this ordinance and are subject to a criminal citation.*

Any person found to be in violation of this ordinance upon a criminal citation shall be guilty of an infraction, and may be punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment.

BART Police Department PROOF OF PAYMENT MANUAL

PROOF OF PAYMENT ENFORCEMENT PROTOCOL

Keys elements relating to Proof of Payment Enforcement are outlined below:

1. Fare Inspectors are to greet all customers in a friendly, courteous, and professional manner.
2. Fare Inspectors are to treat every passenger with dignity and respect including those passengers without valid fare.
3. Fare Inspectors are not discriminate based on Age, Race, Religion, Gender, Physical Disability or Economic Status.
4. Fare Inspectors are required to systematically request proof of payment from one person to the next nearest person, in a fair and impartial manner.
5. Fare Inspectors will attempt to educate violators regarding BART Proof of Payment Policy.

CONCEPT OF OPERATIONS

Fare Inspector Procedures

1. Fare Inspectors work in teams consisting of at least two members.
2. They conduct fare inspections at times and locations designated by their supervisor on a day to day basis.
3. When conducting inspections, they will activate their AXON camera. Videos will be labeled with the train destination and departure station (Pittsburg train from McArthur), or the station name for platform inspections.
4. They will document the time, location, the number of persons contacted, and the number of citations issued. This information will be recorded daily.
5. All Fare Inspectors are trained to meet the expectations outlined in the Proof of Payment Manual.
6. Fare Inspectors are taught that use of their professional judgment, common sense, and limited discretion will achieve outcomes that are consistent with BART's policies and goals. Successful implementation of these policies and goals will prevent and avoid outcomes that are fundamentally unfair and/or prevent the perception and opportunity for biased or unfair treatment of customers.
7. Fare Inspections will be conducted in a fair and impartial manner.
 - a. When conducting fare inspections on a BART concourse platform, Fare Inspectors will position themselves in a conspicuous area, begin inspections by contacting the nearest person, inspect that person's ticket, then progress to the next closest person, not skipping any persons in between. Inspectors will attempt to request proof of payment from all persons in the immediate area. This process may be interrupted/curtailed when a Fare Inspector encounters a passenger who fails to provide valid proof of payment, which will result in enforcement action. Fare

BART Police Department PROOF OF PAYMENT MANUAL

Inspectors are not expected to contact other passengers during the process of identifying and issuing a citation to a violator.

- b. When conducting fare inspections on BART trains, Fare Inspectors will commence inspections at one end of the train car, then progress from one person to the next closest person, not skipping any persons in between. Inspectors will attempt to request proof of payment from all persons in the train car. This process may be curtailed when a Fare Inspector encounters a passenger who fails to provide valid proof of payment, which will result in enforcement action. Fare Inspectors are not expected to contact all passengers on a train car when time does not allow.
6. The Fare Inspectors will attempt to accomplish the following during contact with a violator who has failed to provide valid Proof of Payment,
 - a. Educate the violator regarding BART's fare payment policy to include fare media payment options.
 - b. Request and record personal identification information from the customer.
NOTE: Fare Inspectors are instructed NEVER to photograph or record information from a passenger's credit card/credit card number or Social Security card/Security Card number. Acceptable forms of identification include but are not limited to: Government issued identification, Passport, Shelter Card, School ID, or other identification where the fare inspector has a reasonable belief that the information presented represents the true and accurate identity of the individual being cited.
 - c. When a Fare Inspector has reason to believe that a subject is giving false identification, the Fare Inspector will make a reasonable effort to obtain valid identification. The Fare Inspector will determine whether the violator has prior Proof of Payment contacts, from the Data Ticket database.
 - d. Issue a civil administrative citation when applicable.
7. A Fare Inspector may request an officer to respond to the scene when there is reasonable suspicion to believe that the subject is knowingly giving false information and/or otherwise obstructing the issuance of a proof of payment citation.
8. When conducting fare inspections on an out of service train, Fare Inspectors may check the entire consist.
9. Fare Inspectors are instructed to never sit down during a contact with a violator. If the violator is standing or stands up, the Fare Inspectors should always use safety techniques during the contact to enhance their own safety.
10. If a BART train car is too full for a Fare Inspection team to safely and efficiently conduct an inspection, Fare Inspectors should not perform an inspection on the train car at that time.
11. After contacting a violator and issuing a citation, Fare Inspectors will tell violators that they need to leave the paid area of BART and process a ticket to re-enter. Fare Inspectors may escort violators out of the paid area when appropriate.
12. Fare Inspectors will not physically detain or physically eject violators.

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PROOF OF PAYMENT MANUAL

Police Officer Procedures

1. Police Officers may utilize the Proof of Payment Ordinance as an enforcement tool during the normal course of their duties.
2. Police Officers may ask a person inside the paid area of BART for proof of payment under the following types of circumstances:
 - a. When an officer is summoned to the scene of a criminal violation, the officer may ask the involved suspect(s) to provide proof of payment during the normal course of duty.
 - b. When conducting a welfare check, officers should ask routine questions, including the following when applicable:
 - i. What is the passenger's destination on BART?
 - ii. When did the passenger enter BART?
 - iii. How long has the passenger been on BART?The response to these questions may present reasonable suspicion that the subject may not have a valid ticket in their possession.
 - c. Any person who remains on an out-of-service train is in violation of 369i(b) PC, and the officer may ask to see proof of payment.
369i(b) PC: Any person who enters or remains upon any transit-related property without permission or whose entry, presence, or conduct upon the property interferes with, interrupts, or hinders the safe and efficient operation of the transit-related facility is guilty of a misdemeanor.
 - d. An officer may detain a subject and ask to see proof of payment whenever the officer has reasonable suspicion to do so.

BART Police Department PROOF OF PAYMENT MANUAL

FARE INSPECTION PERSONNEL

Training

All BART Fare Enforcement Officers specific to their assigned duties. This training is outlined below:

1. Program Overview - Proof of Payment Manual
 - a. Ordinance
 - b. Definitions
2. Fare Inspection and Citation Equipment
 - a. Ticket Readers
 - b. Citation Tablets
 - c. Citation Printers
3. Fare Inspection Protocol – Proof of Payment Manual
 - a. Methodology
 - b. Data Collection and Reporting
4. Tactical Communication
 - a. Fare Inspectors are to greet all customers in a friendly, courteous, and professional manner.
 - b. Fare Inspectors are to treat every passenger with dignity and respect including those passengers without valid fare.
 - c. See Tactical Communication training outline in manual appendix.
5. Body Worn Cameras
 - a. Fare Inspectors will continuously record Proof of Payment Operations.
 - b. See Body Worn Camera training outline in manual appendix.
6. Defensive Tactics
 - a. This training will focus on tactics to detect and avoid physical attack, and how to disengage and create distance in self-defense.
 - b. See Defensive Tactics training outline in manual appendix.
7. Practice Scenarios and Simulator Training

Performance Evaluation

1. Daily
 - a. Uniform/Equipment Inspection
 - b. Daily Observations
 - c. Paperwork Review - Daily Activity Logs
2. Weekly
 - a. Weekly audits of team data
 - b. Contact Log numbers

BART Police Department PROOF OF PAYMENT MANUAL

3. Monthly
 - a. Review of the overall team performance
 - b. Monthly Statistics review
4. Quarterly
 - a. Review for trends in team performance.
 - b. Evaluations to keep Fare Inspectors updated on their performance to provide assistance with areas of opportunity and potential improvement.
 - c. Quarterly Performance Discussions
 - d. Quarterly Demographic Review
5. Annually
 - a. Review for trends in team performance and compare trends from prior years.
 - b. Annual Performance Evaluations to keep Fare Inspectors updated on their performance and to provide assistance with areas of opportunity and potential improvement.
 - c. Annual Statistical Analysis

UNIFORMS AND EQUIPMENT

All Fare Inspectors are provided with the equipment listed below.

1. Issued Equipment
 - a. Uniforms
 - b. Ballistic Vest
 - c. Flashlight
 - d. Portable fare media reader
 - e. The Data Ticket tablet
 - f. The Data Ticket printer
 - g. AXON camera
 - h. Cell phone
 - i. High visibility Fare Inspector vest
 - j. OC Spray

Fare Inspectors shall wear the high visibility Fare Inspector vest at all times when conducting Proof of Payment inspections. Fare Inspectors shall record all Fare Inspection operations on AXON camera.

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PROGRAM ANALYSIS

Operational statistics are collected and recorded by Fare Inspectors daily. They are reviewed for accuracy by the Fare Enforcement Supervisor who then develop monthly reports for the Operations Deputy Chief.

1. Monthly Statistics and Data Analysis

Total people checked	
Total Ridership	
Inspection Rate *	
Train Cars Inspected	
Violations	
Walkaways	
Police Requested	
Police Intervention	

* The inspection rate = Total number of contacts divided by the total ridership.

REPORTING AND AUDIT PROCESS

1. Six months after implementation, BART Police will report numbers of the following to the BART Board of Directors:
 - a. Proof of Payment contacts
 - b. Warnings in lieu of citations
 - c. Civil administrative citations
 - i. Requests for community service
 - ii. Delinquent payments
 - d. Repeat offenders
 - e. Criminal citations
2. Quarterly report on citations
 - a. Age
 - b. Gender
 - c. Race
 - d. Location
3. To ensure that enforcement activities are fair and unbiased, body camera videos of BPD Officers and CSOs engaged in proof of payment activities will be randomly selected for analysis and reporting on a monthly basis.
4. Above will be available to the Office of the Independent Police Auditor, who will conduct random audits (spot checks).

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AREAS TO ASSESS DURING IMPLEMENTATION

1. Passenger response to Proof of Payment inspections.
2. Paying customers response to observation of enforcement.
3. Do paying passengers generally feel safer and more secure when the Fare Inspectors board a train car?

PROTOCOL UNDER CONSIDERATION

1. Deploy multiple strategies when boarding BART train cars to develop a more customer friendly relationships with customers.
 - a. Fare Inspection
 - i. Purpose: This type of trip would be used to conduct normal fare enforcement operations. It would emphasize identifying patrons without proper proof of payment and issuing appropriate level of adjudication.
 - ii. Speech: Good Morning, BART Fare Enforcement. Please have your fare cards accessible for inspection.
 - iii. Team Size: 2 or 3-person team
 - b. Safety Ride
 - i. Purpose: This type of trip will be used to enhance presence on the trains, emphasizing customer service and identifying patrons who are committing unlawful transit conduct.
 - ii. Speech: Good Morning, BART Fare Enforcement, we are conducting a safety and security ride. If you have any questions or concerns, please ask while we move about the consist.
 - c. Education Ride
 - i. Purpose: This type of trip will be used to facilitate the education of the ridership regarding fare payment policies and procedures. No citations or misdemeanor statements will be issued.
 - ii. Speech: Good Morning, BART Fare Enforcement, we are conducting fare payment policies and procedures instruction. Please have your fare cards accessible for inspection.
2. Smart Devices – Reduce the number of devices (The Data Ticket tablet, printer, fare media reader, mobile phone, camera) the Fare Inspectors utilize to perform their work to increase efficiency.
3. Supporting Software for Devices – ID Reader, fare media scanner integrated into tablet, and language translation software.

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- a. Electronic collection of information and generation of citations would reduce the exposure time with fare evaders.
- b. Language translation software would assist Fare Inspectors who make contact with patrons that do not understand the same language(s) the Fare Inspector knows. This would help to include these patrons in the process and to communicate with them about inspections and education about fare payments if needed.

CITATION PROCESSING

1. Civil administrative citations will be processed by our contracted vendor, Data Ticket.
 - a. Fare Inspectors will enter citation information into the Data Ticket handheld tablet.
 - b. The citation information will be transmitted to Data Ticket.
 - c. Data Ticket will send a letter to adults who have been issued a citation and to the parents of unemancipated minors who have been issued a citation. The letter will explain the following options:
 - 1) Pay the fine within 28 calendar days (28 days) from the date that the citation was issued.
 - a) \$55 fine for juveniles
 - b) \$75 fine for adults
 - 2) Voluntarily elect to perform community service in lieu of paying the fine:
 - a) 4 hours of community service for juveniles
 - b) 5 hours of community service for adults
 - 3) Request to appeal the citation through an Administrative Hearing.
 - a) The request must be made to Data Ticket within 28 calendar days from the date the citation was issued.
 - b) The person must submit the fine at the time of the appeal request.
 1. If the appeal is granted, the fine payment will be refunded.
 2. If the appeal is denied, the fine payment will not be refunded.
 - c) The person may request that the fine submission be waived during the appeals process. Data Ticket sends the following instructions to the person: *You may request an Administrative Hearing without payment of Total Amount Due upon satisfactory proof of inability to pay.*

The person must complete and submit the following information on an Indigent Form:
 - d. If Data Ticket does not receive either payment, a community service waiver, or an administrative hearing request, within 28 calendar days from the date that the citation was issued, then Data Ticket will send a second notice to the person,

**BART Police Department
PROOF OF PAYMENT MANUAL**

notifying them of a \$20 late fee. The second notice will advise the person that they have 4 additional weeks to do one of the following:

- 1) Pay the fine plus the late fee, within 28 calendar days of the date of the second notice.
 - a) Juveniles pay \$75 fine (\$55 initial fine plus \$20 late fee)
 - b) Adults pay \$95 fine (\$75 initial fine plus \$20 late fee)
- 2) Voluntarily elect to perform community service in lieu of paying the fine and the late fee.
 - a) community service for juveniles increased from 4 hours to 5 hours
 - b) community service for adults increased from 5 hours to 6 hours
- e. If Data Ticket does not receive either payment or a community service waiver within 28 calendar days from the date of the second notice, then Data Ticket will report the matter to the Franchise Tax Board for collection.

COMMUNITY SERVICE IN LIEU OF PAYING A FINE, CIVIL PROCESS

Persons who have been issued a civil citation for a Proof of Payment violation may elect to perform community service rather than paying a fine, under the following conditions and terms:

1. Community service is a voluntary option.
2. Participants must locate and voluntarily select an organization that is willing to supervise and endorse completion of community service, such as:
 - a. Non-profit or social service organization
 - b. Faith-based organizations
 - c. Educational institutions
 - d. A public entity
3. Participants will not be able to perform community service directly to BART or BART Police.
4. Participants must complete and sign a waiver form prior to performing service. The form will stipulate that BART will not be held liable for any circumstances resulting from the performance of community service.
5. The participant must then mail the waiver to Data Ticket within 28 calendar days of the date of the citation.
6. Data Ticket will then notify the participant that they cleared to perform the community service.
7. Participants must complete the required hours of community service.
8. Participants must have the receiving organization endorse the completion form:
 - a. Signature from organization representation.
 - b. Organization stamp on completion form, or attach organization card/letterhead.

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9. Participants must send the completion form to Data Ticket within 56 calendar days of the date of the citation.

APPEALS PROCESS

Persons who have been issued a civil citation for a Proof of Payment violation may elect to appeal the citation as follows:

APPEALS PROCESS

There are two components to the appeals process:

1. **Administrative Hearing**

Persons who wish to contest the citation may request an Administrative Hearing. Data Ticket send the following information with the initial notice:

If you wish to contest the citation, you may request an Administrative Hearing by following the instructions below:

1. *Submit a request for an Administrative Hearing within 28 calendar days from the date that the citation was issued. Submit the request online at www.CitationProcessingCenter.com or via mail using this form.*
2. *Remit payment for the Total Amount Due online at www.CitationProcessingCenter.com or via mail using this form. PLEASE NOTE: the Hearing will not be scheduled if the correct Total Amount Due does not accompany the Administrative Hearing Request.*
3. *You may request an Administrative Hearing without payment of Total Amount Due upon satisfactory proof of inability to pay. To request an Indigent Form, submit the request online at www.CitationProcessingCenter.com or via mail using this form.*

Persons who request an Indigent Form (example attached as an exhibit to this manual) will be given parameters to submit proof of inability to pay to Data Ticket. If Data Ticket receives the information requested, then the Administrative Hearing will be scheduled. If the person does not meet the qualifications or does not submit the necessary information, then Data Ticket will advise the person that they are required to remit payment for the Total Amount Due in order to request an Administrative Hearing. The person will have 28 calendar days from the date of the notice to submit the Total Amount Due.

Persons who have requested an Administrative Hearing, and who have submitted a request for the hearing within 28 calendar days of the date of the citation, will be granted

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an Administrative Hearing. The hearing is conducted by a third-party hearing officer contracted by BART. The person requesting the hearing may elect to either appear in person or present their case in writing to the hearing officer.

The hearing officer will render a judgment and the person will be informed of the finding.

2. Court Appeal

If the citation is not dismissed through the Administrative Hearing, the person may appeal to the judicial court. Data Ticket will send a form with the following instructions to the person on how to request a court hearing:

The contestant/appellant in the above-entitled action hereby appeals to the Court identified above from the final Administrative Decision on citation no. _____ which was originally issued by the above agency on _____.

The notice of appeal must be filed within 30 days after personal delivery (The appeal will NOT be accepted if mailed) or within 35 days after mailing of the processing agency's final decision to the contestant/appellant. The fee for filing to Court Appeal is \$25 and must be paid to the Court when requesting the appeal. If the Court dismisses the citation, the full amount of the fine and the \$25 Court filing fee will be refunded by the issuing agency. When the court returns a copy of this notice to you with the date, place and the time of hearing filled in, you must file a copy of the original Proof of service of this notice with the court at least 10 days prior to the hearing date. The court may not proceed on your appeal if service has not been made.

ATTACHMENT A

BART Community Service Program
(for use in regard to emancipated minors)

The San Francisco Bay Area Rapid Transit District (BART), through its Community Service Program, allows individuals under the age of 18 to perform community service in lieu of paying a civil administrative citation of \$55. Juveniles who voluntarily elect to perform community service instead of paying the \$55 civil penalty, will be allowed to perform four (4) hours of community service at a placement of their choosing with the understanding that such placement will be fully vetted with their custodial parent(s)/guardian(s). Emancipated minors are entitled to participate in this program at the same rate as juveniles who are under the age of 18, but will **not** need to secure a custodial parent's/ a legal guardian's consent to participate.

Program Terms and Conditions

Participant must be emancipated minors under the age of 18 at the time that the citation was issued.

1. Participants must complete a Community Service Work Waiver of Liability form prior to the performance of community service.
2. BART does not provide participants with a list of volunteer opportunities or agencies to oversee community service. It is the responsibility of the participant to appropriately vet, select and schedule their community service. Community Service may be performed for the following types of organizations:
 - Non-profit, eleemosynary, or social service organizations eligible for tax exempt status
 - Faith-based organizations eligible for tax exempt status
 - Educational institutions eligible for tax exempt status
 - City, county, or other local agencies registered with the California Secretary of State as a local government.

Participants may contact their local government agency for upcoming volunteer opportunities or call 211 to be connected with community programs in your area. 211 is confidential and available 24 hours a day in more than 150 languages.

3. Electing to voluntarily perform community service is an acknowledgement of the following:
 - Performing community service may involve some degree of risk, some of which cannot be eliminated due to the nature of the work. Even reputable volunteer/charitable/religious organizations sometimes harbor individuals who may prey on the young. For that reason, unemancipated minors should carefully evaluate the proposed worksites and placements before agreeing to be placed at such sites or placements. The program participant does hereby forever release, discharge and acquit BART and its officers, agents and employees from any and all claims for death, personal injury or damage to property of any nature which may arise from or in connection with his or her participation in this program.

BART Community Service Program
(for use in regard to emancipated minors)

- The participant recognizes that he or she is acting as a private and gratuitous volunteer to provide time, services and labor to their chosen community service organization/recipient qualified to participate in this program. The participant understands that they are engaged in activities in donative service to their chosen charity, and not as an employee, agent or contractor in service to BART.
4. After participant vets the available volunteer placements, select the organization, and schedule the service, participants must submit original executed copies of the liability release and verification form to both the organization receiving the service and to the Citation Processing Center at P.O. Box 10479, Newport Beach, CA 92685-0479. Failure to provide an original executed copy of the liability release to the Citation Processing Center prior to engaging in the volunteer activity will make such community service ineligible for this Program. **YOU MUST SUBMIT A FULLY EXECUTED WAIVER AND RELEASE FORM TO THE CITATION PROCESSING CENTER BEFORE UNDERTAKING YOUR COMMUNITY SERVICE. YOU MUST SEND THE WAIVER FORM TO THE CITATION PROCESSING CENTER WITHIN 4 WEEKS FROM THE DATE THAT YOU RECEIVED THE CITATION TO BE ELIGIBLE FOR THE COMMUNITY SERVICE PROGRAM.** The Citation Processing Center will send you a letter confirming receipt of your waiver form and giving approval for you to proceed.
 5. After the participant performs the service, the participant must have the organization sign the verification form. The organization must also stamp the form or attach a business card or letterhead for verification.
 6. Completed Community verification forms must be sent to the Citation Processing Center within eight (8) weeks from the date the citation was issued to be eligible to be credited with alternative satisfaction of the \$55 fine.
 7. If a participant does not complete their community service hours and submit the completed form within eight weeks, the entire fine of fifty-five dollars (\$55) must be paid.

BART Community Service Program
(for use in regard to emancipated minors)

COMMUNITY SERVICE VERIFICATION

Citation Number: _____

Citation Date: _____

Name: _____
(Last) (First) (Middle)

I hereby certify that I completed four (4) hours of community service. When this work was performed, I was not employed or compensated.

Participant's Signature: _____ Date: _____

Organization Name: _____

Organization Address: _____

Organization Phone: _____

Signature of Organization Representative: _____ Date: _____

NOTICE TO ORGANIZATION: Please imprint organization stamp below OR attach business card of agency representative.

Participant: Submit completed verification form to the Citation Processing Center at P.O. Box 10479, Newport Beach, CA 92658-0479. VERIFICATION FORMS MUST BE SENT TO THE CITATION PROCESSING CENTER WITHIN EIGHT (8) WEEKS FROM THE DATE THE CITATION WAS ISSUED TO BE ELIGIBLE TO BE CREDITED WITH ALTERNATIVE SATISFACTION OF THE \$55 FINE.

BART Community Service Program (for use in regard to adults)

The San Francisco Bay Area Rapid Transit District (BART), through its Community Service Program, allows adults to perform community service in lieu of paying a civil administrative citation of \$75. Adults who voluntarily elect to perform community service instead of paying the \$75 civil penalty, will be allowed to perform five (5) hours of community service at a placement of their choosing. Participants have eight (8) weeks from the date of the citation to complete community service and submit a verified time sheet to the Citation Processing Center.

Program Terms and Conditions

Participant must be adults (18 years of age or older) at the time that the citation was issued.

Participants must complete a Community Service Work Waiver of Liability form prior to the performance of community service.

1. BART does not provide participants with a list of volunteer opportunities or agencies to oversee community service. It is the responsibility of the participant to appropriately vet, select and schedule their community service. Community Service may be performed for the following types of organizations:
 - Non-profit, eleemosynary, or social service organizations eligible for tax exempt status
 - Faith-based organizations eligible for tax exempt status
 - Educational institutions eligible for tax exempt status
 - City, county, or other local agencies registered with the California Secretary of State as a local government.

Participants may contact their local government agency for upcoming volunteer opportunities or call 211 to be connected with community programs in your area. 211 is confidential and available 24 hours a day in more than 150 languages.

2. Electing to voluntarily perform community service is an acknowledgement of the following:
 - Performing community service may involve some degree of risk, some of which cannot be eliminated due to the nature of the work.
 - The program participant does hereby forever release, discharge and acquit BART and its officers, agents and employees from any and all claims for death, personal injury or damage to property of any nature which may arise from or in connection with his or her participation in this program.
 - The participant recognizes that he or she is acting as a private and gratuitous volunteer to provide time, services and labor to their chosen community service organization/recipient qualified to participate in this program. The participant understands that they are engaged in activities in donative service to their chosen charity, and not as an employee, agent or contractor in service to BART.

BART Community Service Program
(for use in regard to adults)

3. After participant vets the available volunteer placements, select the organization, and schedule the service, participants must submit original executed copies of the liability release and verification form to both the organization receiving the service and to the Citation Processing Center at P.O. Box 10479, Newport Beach, CA 92685-0479. Failure to provide an original executed copy of the liability release to the Citation Processing Center prior to engaging in the volunteer activity will make such community service ineligible for this Program. **YOU MUST SUBMIT A FULLY EXECUTED WAIVER AND RELEASE FORM TO THE CITATION PROCESSING CENTER BEFORE UNDERTAKING YOUR COMMUNITY SERVICE. YOU MUST SEND THE WAIVER FORM TO THE CITATION PROCESSING CENTER WITHIN 4 WEEKS FROM THE DATE THAT YOU RECEIVED THE CITATION TO BE ELIGIBLE FOR THE COMMUNITY SERVICE PROGRAM.** The Citation Processing Center will send you a letter confirming receipt of your waiver form and giving approval for you to proceed.
4. After the participant performs the service, the participant must have the organization sign the verification form. The organization must also stamp the form or attach a business card or letterhead for verification.
5. Completed Community verification forms must be sent to the Citation Processing Center within eight (8) weeks from the date the citation was issued to be eligible to be credited with alternative satisfaction of the \$55 fine.
6. If a participant does not complete their community service hours and submit the completed form within eight weeks, the entire fine of fifty-five dollars (\$55) must be paid.

BART Community Service Program
(for use in regard to adults)

COMMUNITY SERVICE VERIFICATION

Citation Number: _____ Citation Date: _____

Name: _____
(Last) (First) (Middle)

I hereby certify that I completed four (4) hours of community service. When this work was performed, I was not employed or compensated.

Participant's Signature: _____ Date: _____

Organization Name: _____

Organization Address: _____

Organization Phone: _____

Signature of Organization Representative: _____ Date: _____

NOTICE TO ORGANIZATION: Please imprint organization stamp below OR attach business card of agency representative.

Participant: Submit completed verification form to the Citation Processing Center at P.O. Box 10479, Newport Beach, CA 92658-0479. VERIFICATION FORMS MUST BE SENT TO THE CITATION PROCESSING CENTER WITHIN EIGHT (8) WEEKS FROM THE DATE THE CITATION WAS ISSUED TO BE ELLIGIBLE TO BE CREDITED WITH ALTERNATIVE SATISFACTION OF THE \$75 FINE.

BART Community Service Program
(for use in regard to juveniles)

The San Francisco Bay Area Rapid Transit District (BART), through its Community Service Program, allows individuals under the age of 18 to perform community service in lieu of paying a civil administrative citation of \$55. Juveniles who voluntarily elect to perform community service instead of paying the \$55 fine, will be allowed to perform four (4) hours of community service at a placement of their choosing with the understanding that such placement will be fully vetted with their custodial parent(s)/guardian(s). Participants have eight (8) weeks from the date of the citation to complete community service and submit a verified time sheet to the Citation Processing Center.

Program Terms and Conditions

1. Participant must be under the age of 18 at the time that the citation was issued.
2. Participant's legal guardian must approve of the Community Service option and agree to investigate the suitability of the proposed placement for their child.
3. Participants and a custodial parent/legal guardian must complete a Community Service Work Waiver of Liability form prior to the performance of community service.
4. BART does not provide participants with a list of volunteer opportunities or agencies to oversee community service. It is the responsibility of the participant and their custodial parent/legal guardian to appropriately vet, select and schedule their community service. Community Service may be performed for the following types of organizations:

- Non-profit, eleemosynary, or social service organizations eligible for tax exempt status
- Faith-based organizations eligible for tax exempt status
- Educational institutions eligible for tax exempt status
- City, county, or other local agencies registered with the California Secretary of State as a local government.

Participants may contact their local government agency for upcoming volunteer opportunities or call 211 to be connected with community programs in your area. 211 is confidential and available 24 hours a day in more than 150 languages.

5. Electing to voluntarily perform community service is an acknowledgement of the following:
 - Performing community service may involve some degree of risk, some of which cannot be eliminated due to the nature of the work. Even reputable volunteer/charitable/religious organizations sometimes harbor individuals who may prey on the young. For that reason, parents/guardians should carefully evaluate the proposed worksites and placements before agreeing to place their children at such sites or placements. The program participant does hereby forever release, discharge and acquit BART and its officers, agents and employees from any and all claims for death, personal injury or damage to property of any nature which may arise from or in connection with his or her participation in this program.

BART Community Service Program
(for use in regard to juveniles)

- The participant recognizes (as does his or her parent/guardian) that he or she is acting as a private and gratuitous volunteer to provide time, services and labor to their chosen community service organization/recipient qualified to participate in this program. The participant and his or her parent/guardian understand that they are engaged in activities in donative service to their chosen charity, and not as an employee, agent or contractor in service to BART.
6. After participant and his custodial parent/guardian vet the available volunteer placements, select the organization, and schedule the service, participants must submit original executed copies of the liability release and verification form to both the organization receiving the service and to the Citation Processing Center at P.O. Box 10479, Newport Beach, CA 92685-0479. Failure to provide an original executed copy of the liability release to the Citation Processing Center prior to engaging in the volunteer activity will make such community service ineligible for this Program. **YOU MUST SUBMIT A FULLY EXECUTED WAIVER AND RELEASE FORM TO THE CITATION PROCESSING CENTER BEFORE UNDERTAKING YOUR COMMUNITY SERVICE. YOU MUST SEND THE WAIVER FORM TO THE CITATION PROCESSING CENTER WITHIN 4 WEEKS FROM THE DATE THAT YOU RECEIVED THE CITATION TO BE ELIGIBLE FOR THE COMMUNITY SERVICE PROGRAM.** The Citation Processing Center will send you a letter confirming receipt of your waiver form and giving approval for you to proceed.
 7. After the participant performs the service, the participant must have the organization sign the verification form. The organization must also stamp the form or attach a business card or letterhead for verification.
 8. Completed Community verification forms must be sent to the Citation Processing Center within eight (8) weeks from the date the citation was issued to be eligible to be credited with alternative satisfaction of the \$55 fine.
 9. If a participant does not complete their community service hours and submit the completed form within eight weeks, the entire fine of fifty-five dollars (\$55) must be paid.

REQUEST FOR WAIVER OF BAIL DEPOSIT

**BAY AREA RAPID TRANSIT
CITATION PROCESSING CENTER
P.O. BOX 11024
NEWPORT BEACH, CA 92658**

**DATE SENT:
DATE DUE:
DEFENDANT NAME:
CITATION NUMBER:
TOTAL DUE:**

I hereby request a waiver of required bail deposit and that the officer proceeds with hearing on my infraction for the following reason:

1. EMPLOYMENT:	2. SUPPORTED BY:	3. PERSONS SUPPORTED:
<input type="checkbox"/> Employed	<input type="checkbox"/> Self	<input type="checkbox"/> Self
<input type="checkbox"/> Full-Time	<input type="checkbox"/> Spouse	<input type="checkbox"/> Spouse
<input type="checkbox"/> Part-Time	<input type="checkbox"/> Parents	<input type="checkbox"/> Children (# of) _____
<input type="checkbox"/> Unemployed	<input type="checkbox"/> Welfare	<input type="checkbox"/> Other _____
<input type="checkbox"/> Disabled	<input type="checkbox"/> S.S.I.	<input type="checkbox"/> TOTAL _____
<input type="checkbox"/> Student	<input type="checkbox"/> A.F.D.C	
<input type="checkbox"/> Homemaker	<input type="checkbox"/> Unemployed	
<input type="checkbox"/> Military	<input type="checkbox"/> Other	
<input type="checkbox"/> Other _____		

4. Your NET Income (take home pay, welfare, etc.): \$ _____ every _____ days

5. If unemployed; months of unemployment: _____ Occupation _____

6. TOTAL ASSETS (Value) _____	7. TOTAL MONTHLY EXPENSES _____
Motor Vehicle(s) \$ _____	Rent/Mortgage \$ _____
Home \$ _____	Utilities \$ _____
Property \$ _____	Loans/CR Cards \$ _____
Savings Account(s) \$ _____	Food/Clothing \$ _____
Checking Account(s) \$ _____	Transportation \$ _____
Cash on Hand \$ _____	Medical/Dental \$ _____
All Other \$ _____	All Other \$ _____

You must send supporting documentation showing why you are unable to pay the full fine. You must produce documentation confirming your monthly income and expenses. Form will be disregarded if paperwork is not received and your request for waiver will be denied. At that time you will be liable to pay the full fine and your hearing request will not be granted, penalties will be added and a hold will be placed on your vehicle registration at CA DMV.

DEFENDANT SIGNATURE / DATE: _____

FOR CITATION PROCESSING CENTER USE ONLY	Waiver <input type="checkbox"/> Granted <input type="checkbox"/> Denied <input type="checkbox"/>
Date: _____	Signature: _____

**INFORMATION SHEET ON WAIVER
OF CITATION FEE**

If you cannot afford to pay citation fee prior to your hearing, you may not have to pay if:

1. You are receiving **financial assistance** under one or more of the following programs:
 - SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
 - CalWORKS (California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families, formerly AFDC, Aid to Families with Dependent Children Program)
 - The Food Stamp Program
 - County Relief, General Relief (G.R.), or General Assistance (G.A.)

If you are claiming eligibility for a waiver of fee because you receive financial assistance under one or more of these programs, and you must produce documentation confirming benefits from public assistance agency or one of the following documents:

PROGRAM	VERIFICATION
SSI/SSP	Medi-Cal Card or Notice of Planned Action or SSI Computer-Generated Printout or Bank Statement Showing SSI Deposit or "Passport to Services"
CalWORKs/TANF (formerly known as AFDC)	Medi-Cal Card or Notice of Action or Income and Eligibility Verification Form or Monthly Reporting Form or Electronic Benefit Transfer Card or "Passport to Services"
Food Stamp Program	Notice of Action or Food Stamp ID Card or "Passport to Services"
General Relief/General Assistant	Notice of Action or Copy of Check Stub or County Voucher

-OR-

2. Your gross monthly household income is less than the following amounts:

NUMBER IN FAMILY	FAMILY INCOME
1	2,513
2	3,383
3	4,254
4	5,125
5	5,996

NUMBER IN FAMILY	FAMILY INCOME
6	6,867
7	7,738
8	8,608
9	9,479
10	10,350

3. Your income is not enough to pay for common necessities of life for yourself and the people you support and also pay the citation. You must produce documentation confirming your monthly income and expenses.

To apply, fill out the Request For Waiver of Bail Deposit.

Please understand this form does not waive the fee, it allows you to have an Administrative Hearing without posting bail. If you are found liable for the citation, you will have 30 days from the denial date to pay the full fine amount.

ATTACHMENT B



Passenger Bulletin

News of Special Interest to Our Passengers

Bay Area Rapid
Transit
300 Lakeside Dr.
Oakland, CA 94612
(510) 464-6000
www.bart.gov

PROOF OF PAYMENT REQUIRED INSIDE FARE GATES & ONBOARD TRAINS STARTED JANUARY 1, 2018

Dear Customer:

The BART Board of Directors passed the proof of payment requirement on October 26, 2017 to crack down on fare evasion. The new ordinance took effect January 1, 2018. There will be a one-month grace period when violators will be warned instead of cited.

Any person inside the paid area of BART must be prepared to show a magnetic stripe ticket or Clipper® card with valid fare. People who violate the ordinance will be issued a citation.

Juveniles who fail to show proof of payment in the paid area or on a train will be issued civil administrative citations for proof of payment violations.

Adults who fail to show proof of payment in the paid area or on a train, upon a first or second violation within any 12-month period, will be issued a civil administrative citation. A third violation by an adult within any 12-month period will result in a criminal citation, issued by a police officer.

A Police Officer may also issue a criminal citation to any person who knowingly gives false information to a Police Officer or Fare Inspector engaged in the enforcement of this ordinance, or if the person otherwise obstructs the issuance of a proof of payment citation.

What are the penalties?

Civil citation fines will be \$75 for adults and \$55 for minors. Community service options are available.

Criminal citation fines are not to exceed \$250.

Why require proof of payment?

The Board of Directors took the action of passing the ordinance as part of a multipronged approach to reducing fare evasion, which includes education, better barriers between the free and paid areas of stations and better data collection in addition to increased enforcement. BART estimates it loses \$15 million to \$25 million to fare evasion each year and fare cheaters erode the trust of honest, fare paying customers.

If you have a question about the proof of payment program, warnings, or citations, you may call BART Police at 510-464-7020.

ATTACHMENT C

**BART PD
TASER® Axon Flex
Implementation Training**

Please follow the instructors'
prompts and **do not** manipulate
items unless instructed to do so

TASER® Axon Flex Training 2017/2018 BART PD TASER® Training Staff

Development of the Axon Flex®

TASER® Axon Flex Training 2017/2018 BART PD TASER® Training Staff

Equipment

- Axon Flex
 - Device is assigned to you by serial number
 - You should have the following items*
 - ✓ Axon Camera
 - ✓ Axon Controller (battery pack)
 - ✓ Connectivity Wire (between battery and camera)
 - ✓ USB cable and white 110v wall charger

TASER® Axon Flex Training 2017/2018 BART PD TASER® Training Staff

Equipment

- Samsung Galaxy Player
- ✓ Device is assigned to you
- ✓ USB cable and black wall charger

SMART Asset Plus
Training 2017/2018

SMART ID
SMART Training Staff

Setting Up the Device

Pick up Controller (battery pack) and install thin wire into the hole next to power switch (do not turn Controller on)

Pick up Camera and install other end of thin wire into the end of the camera

Make sure both ends of thin wire are **firmly** installed – Now turn Controller on.

SMART Asset Plus
Training 2017/2018

SMART ID
SMART Training Staff

Set Up Continued

The Controller (battery pack) should have orange sticker visible next to the sliding on/off switch and a **red** LED light illuminated.

Wait a few moments and the **red** LED will change to flashing **green**

At this point, the system is in “buffering” standby mode

SMART Asset Plus
Training 2017/2018

SMART ID
SMART Training Staff

Pairing Axon and Galaxy Player

Turn on Galaxy player by pushing and holding small button on upper right side of device – about 3 seconds

The Galaxy player is wifi capable – **Do not** activate or turn on the **wifi** or **GPS** options. If wifi is activated, the player will not properly receive the data from the Axon.

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Pairing Continued

Follow instructor prompts into Bluetooth settings and subsequently into pairing Mode

Caution – Make sure you are selecting your camera to pair with. Your camera has four numbers on the camera lens housing. If you pair with a different device, you will not capture the proper data.

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Axon Application

From Galaxy Player desktop, touch “Applications” icon on lower right of screen.

“Swipe” screen to locate “AXON Mobile” application, follow instructor prompts on how to move icon onto main desktop screen. This should be done for ease of access in the future.

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Pairing Confirmation

Locate Axon icon on your Galaxy Player desktop and touch/tap it

Your display should show the Axon camera in a "live preview" mode. This will show the camera and Samsung are paired, move camera to confirm pairing

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Wearing Options

Per Lexipol policy #451, the camera "shall be worn in such a way as to provide an unobstructed view of officer/citizen contacts".

Instructor will discuss Pros & Cons of mounting location options – After next video

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MVR Mounting Comparisons

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Select a Location for You

AXON® Axon Flex
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Mounting Options

Eye Glass Clip Low Rider



Collar Clip Epaulet Clip



AXON® Axon Flex AXON®
Training 2017/2018 Training Staff

Operating Axon Flex

AXON® Axon Flex
Training 2017/2018

AXON®
Training Staff

How to Record

Push the round lightning bolt on the Battery Pack twice, the flashing green LED (on Controller) should turn red and then begin flashing. A red blinking/flashing LED on the battery pack means the camera is recording.

To stop recording, press and hold round button (with lightning bolt in the center of Controller/battery pack) for three seconds.

MSRP Item #15 Training 2013/2014 MSRP Training Staff

Equipment Confirmation

- Depress the small button on the camera to confirm that audio "signal" is working.
- Work through all four settings.
- The auditory sound allows you to confirm that the camera is on and in a recording status.

MSRP Item #15 Training 2013/2014 MSRP Training Staff

Video Segment

- Next, a Series of videos will be played
- If you have seen any of the upcoming videos, please refrain from making any comments to ensure other students have the same experience you did when you viewed them for the first time

MSRP Item #15 Training 2013/2014 MSRP Training Staff

Officer Involved Shooting

©2018 Alton Rex Training 2017/2018 0401-00
©2018 Alton Rex Training Staff

What do you think?

- Tell us your:
 - Opinion
 - Feelings
- What are the potential media issues
- Could this be criminal for the involved officers

©2018 Alton Rex Training 2017/2018 0401-00
©2018 Alton Rex Training Staff

Another View OIS

©2018 Alton Rex Training 2017/2018 0401-00
©2018 Alton Rex Training Staff

Now, what do you think?

- New Information, tell us your:
 - Opinions
 - Feelings
- Media control / issues
- Criminal Issues for involved officers

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Important Information

- Confirm correct date and time on Samsung "Galaxy Player" per policy.
- Video recorded over 30 Minutes, should be "Labelled in notes" like this clip-a, clip-b, clip-c
- If Samsung appears to malfunction. Turn it all the way off and have it re-boot/re-start.

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Camera Recording

Walk around and record your interactions for 10 seconds, then stop the recording

Use Galaxy player to "View" the "Evidence List" through the "Axon" icon on the desktop

Tap on the video in your list, your video should be visible at this point

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“Labelling” your event

In the “ID” box you will log your event/case number for the contact (per Lexipol Policy)

Next, add a title in the “Title box

Then select the correct item in the “Category” drop menu, now tap “save”.

This activity should be done after each contact.

Lexipol Asset Plus Training 2017/2018 Lexipol Training Staff

How to Label an Incident

- ID number is the case/event number ONLY and absolutely nothing else
- Title= Employee #, Part #, then other details. There are only so many characters that can be used in this box
- Category=Use the most appropriate category for the situation. Confirm with your partners on the most appropriate category to use.

Lexipol Asset Plus Training 2017/2018 Lexipol Training Staff

Label Example

ID = Case Number 1604-0123
Incident Number 2016-01234

Title = 012345, Part 1, 2, etc., 11-95 @ PHS driver cited

Category = Use the category drop down menu for the most appropriate category for the situation

Lexipol Asset Plus Training 2017/2018 Lexipol Training Staff

Practice, Practice, Practice

Practice turning on the camera system, move around and record your interactions, then "label" and save your recordings.

Make five recordings, remember this is recorded and being saved to a data management system, which can be viewed by others!

©2017 Alion Flex Training 2017/2018 ©2017 Alion Flex Training 2017/2018

Video "Labelling" Confirmation

- The instructors will now check your "Galaxy Player" to make sure that your videos have been tagged.
- If video has not been "labeled" please properly tag the video.

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Evidence Management

At the end of your shift, place the Camera and Controller into your assigned ETM (Evidence Transfer Management) station locations.

The Data collected on the MVR will be automatically uploaded to evidence.com

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Uploading via ETM

ETM® Asset Flex
Training 2017/2018 ETM®
Training Staff

Load Your Equipment into ETM

For diagnostic download
information see the placard on
the side of the ETM for details

ETM® Asset Flex
Training 2017/2018 ETM®
Training Staff

ETM status indicators

- Device ready and fully charged = solid green
- In queue awaiting upload = solid yellow
- Initial connection (momentary) = solid red
- No communication with DVR = LED off
- Uploading data = blinking yellow
- Firmware update/Internal battery charging/Memory full = blinking red and yellow

ETM® Asset Flex
Training 2017/2018 ETM®
Training Staff

Important ETM Status Information

- If there is an ETM/Network error the camera will blink red, yellow, green – If this occurs notify your immediate supervisor and Justin Morgan and via email/voice mail.

ETM® Asset Flex Training 2017/2018 ETM® Training Staff

Other Uploading Option

There are other uploading options if necessary

The option is not preferred, but possible. The preferred and recommended uploading option is via ETM.

ETM® Asset Flex Training 2017/2018 ETM® Training Staff

Other Uploading Option

ETM® Asset Flex Training 2017/2018 ETM® Training Staff

Lets Use the System

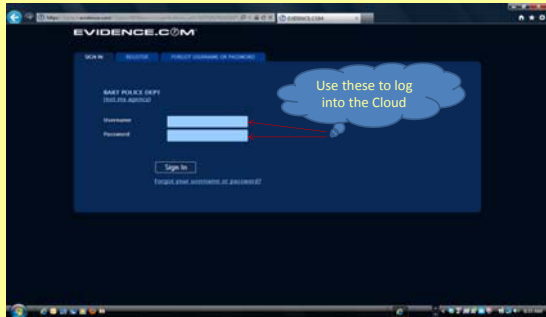
Follow along as we navigate Evidence.com

Prior to attending the class, you should have been sent an "invitation" to register and use "evidence.com". Please use your log in information for this part of the class.

MSAP® Basic Plus
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Logging in Evidence.com



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When should/shall our cameras be off?

- Bathroom - Yes
- Locker Rooms - Yes
- Private Conversations -Yes
- Closed Door Meetings or Discussions - Yes
- Hospitals - Discuss
- Jails - Discuss
- Others- Please advise to the group

MSAP® Basic Plus
Training 2017/2018

MSAP®
Training Staff

Thanks for your time!

MSRP - Ryan Plev
Training 2017/2018

MSRP -
MSRP - Training Staff

ATTACHMENT D



S.F. Bay Area Rapid Transit District Police Department

Defensive Tactics

Proof of Payment Training 2018 Curriculum

MISSION: Arrest and Control instructors will provide members of this department with training regarding Defensive Tactics techniques.

GOAL: By utilizing hands-on guidance, Arrest and Control instructors will teach the members of this department the self-defense and escape techniques.

1. Lecture

A) Mindset

- a. Full contact chess analogy
- b. What are you prepared to do?
- c. Why are you doing it?

B) Typical signs of Impending Violence

- a. Suddenness
- b. Aggressiveness
- c. Destructiveness

C) Creating distance

- a. Starts with Position of Interview
- b. Movement allows time to call for assistance, report situation
- c. Use of Force Options (OC)

D) 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 incident
 - 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

E) Report Articulation

2. Warm-up

- 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. Footwork (from Position of Interview)

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

5. Self Defense

A) Blocking strikes

- a. Recognizing incoming strikes
- b. Overhead
- c. Hooks
 - i. Upper
 - ii. Lower

B) Disengaging from an attack, creating distance through striking when necessary. The purpose of striking is to create distance from a close-quarters violent and/or assaultive encounter in order to retreat and call for assistance.

- a. Proper targets

- b. Open hand
 - c. Bottom fist
 - d. Elbows
 - e. Knees
 - f. Low kicks
- C) Disengaging from your shift being grabbed- Escapes
- a. One hand
 - b. Two hands
 - c. Pinned
 - i. On a wall
 - ii. On the ground
- D) Wrist grabs - Escapes
- a. One on one
 - i. From the front
 - 1. Same side
 - 2. Cross grab
 - ii. From the rear
 - 1. Same side
 - 2. Cross grab
 - b. Two on one
 - i. From the front
 - ii. From the rear
 - c. Two on two
 - i. From the front
 - ii. From the rear
- E) On the ground - Escapes
- a. Mounted
 - i. Supine
 - ii. Prone
 - b. Choke escapes
-

REMINDER

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

END LESSON

NOTES:

ATTACHMENT E

FAIR AND IMPARTIAL POLICING

COURSE OUTLINE (4 HOURS)

I. INTRODUCTION: UNDERSTANDING HUMAN BIAS (2 Hours)

Performance/Learning Objective:

At the completion of this module the student (officer) will be able to:

- 1. Understand biases are normal and that all people, even well-intentioned people, have biases.*
- 2. Understand how unconscious or implicit bias works in the human mind*
- 3. Describe the impact of bias on officer's perceptions and behavior.*

A. Understanding Racially Biased Policing in Well-Meaning Employees

1. Student will understand the social-psychological research on implicit bias:
That all people, even well-intentioned people have biases.
 - A. Susan Boyle video
2. Students will understand that policing based on biases can be unsafe, ineffective and unjust.
 - A. Policing based on relevant facts and circumstances rather than human biases.
 - B. Recognition of one's own human/implicit biases.
 - C. Ambiguous Stimuli-filled in characteristics (pre-judge)
 - I. Exercise: role play- man/woman with a gun. The purpose of this scenario is to show that officer's biases about gender and weapons could impact their own safety. Officers do not react to the "woman with a gun" call the same way they react to the "man with a gun" call. The female has a concealed gun (red training gun) and is seated in a chair. The officer responds to a call that a store owner reports he's been robbed several times before by a woman dressed in black and that he thinks the woman standing at the intersection in front of his store has a gun. He describes the female role player target who is dressed in black. As the officer contacts her, a second female role player, dressed in black, runs over to her frantically and is screaming that she has to go with her because her husband was just in a serious car accident on the freeway with her kids. The point is to see if the officer will let the woman leave before he can pat her down due to a gender bias.
Observe and discuss results. If officers allowed her to leave show that they missed the gun and discuss bias and the dangers of lack of vigilance. If they did find the gun, discuss how these officers did not succumb to the stereotypical "blink response".
 - D. Blink response – Money Train video example
 - E. Homelessness experiment – Princeton Univ Prof Susan Fiske
 - I. Exercise: Flashcard response. A video of a homeless person is shown to the trainees. On a flashcard they write down their thoughts that come to mind regarding these individuals or what would be the general public's descriptors of these people. Common responses are dirty, lazy, drunk, mentally ill. The responses are read by the instructor anonymously. The discussion is about that these biases are not based one race/ethnicity but on social economic status. The exercise makes those biases real by

FAIR AND IMPARTIAL POLICING

demonstrating Susan Fiske's experiment on the MRI of the brain when looking at a photo of a homeless person. The brain doesn't register them as human but registers with activity consistent with disgust and avoidance.

3. Students will reflect and understand the destructive nature of racially biased policing and understanding how "rethinking" racially biased policing (that is, thinking about it in terms of the science of bias) can promote constructive police-citizen partnerships and change.
 - A. Ambiguous stimuli
 - B. Implicit bias and officer safety
 - I. Turban Effect – Australian research-Police were more likely to shoot Muslim looking people even if they were carrying an innocent item instead of weapons. They were also more likely to shoot a man than a woman even when the men were harmless.
4. Students will understand that they have a responsibility to attempt to identify biased policing amongst their subordinates and take appropriate actions.
5. Students will learn that officers can learn skills that will help them override their normal biases and practice safe unbiased and effective policing.
 - B. Recognizing two "remedies"
 - I. Try to reduce our implicit biases and
 - II. Recognize our biases and thwart their impact on our behavior
 - C. Contact Theory
 - I. Positive contact with other groups reduces both conscious and implicit biases.

B. *Biases are often unconscious or implicit*

1. Students will have an understanding of the meaning of unconscious or implicit biases
2. Students will be able to describe the impact of bias on officer's perception and behavior.
 - A. Over vigilance and under vigilance. Over vigilance: May increase scrutiny of people of color, interpret ambiguous behavior on the part of people of color as more threatening, and may respond to people of color more aggressively. Under vigilance: Race-Crime implicit bias is dangerous causing officers to not react or be slow to react to a real threat.

C. *Social Psychological Research and Studies*

1. The narrow and broad view of racially biased policing. (Racial Profiling)
 - B. Studies focusing on professions
 - C. Shove Study
 2. The Race-Crime Association - How we humans connect race and demographics.
 - A. Primed- study by Jennifer Eberhardt of Stanford black-crime association. Her study showed that exposure to black male faces facilitated the identification of crime-relevant objects. Her study also revealed that white faces hindered the recognition of crime objects-threats.
-

FAIR AND IMPARTIAL POLICING

I. Levels of degradation, crime relevant, crime neutral objects graph
II. Exercise: Threat/no threat slide show by Dr. Josh Correll. Trainees view quick slide show of people holding a gun or harmless object. About 1 second is allowed per frame. Trainees will shout “shoot” if they see someone holding a gun. If the object is harmless, say nothing. People in the slide show vary by race and whether they are holding a gun. The exercise may identify unconscious biases. This exercise may reveal speed and errors in the identification just as the Correll study did.

3. Other bases on which people are judged and stereotypes are based at least in part on facts.
 - A. Economic status, race and crime
 - I. Policing on stereotype does not justify making policing decisions based on those stereotypes.
 - a. Scene from the movie Crash example
4. Understanding and addressing our own Implicit Bias
 - A. Manifests in people who consciously hold non-prejudiced ideals and attitudes

II. INTRODUCTION: THE IMPACT OF BIASED POLICING ON COMMUNITY MEMBERS AND THE DEPARTMENT (30 MINUTES)

At the completion of this module the student (officer) will be able to:

1. *Reflect upon and articulate the impact biased policing has on community members.*
2. *Reflect upon and articulate the impact of biased policing on their law enforcement organizations.*
3. *Reflect upon and articulate the impact that biased policing may have on the willingness of community members to cooperate with law enforcement officers.*
4. *Understand how fair and impartial policing is fundamental to the legitimacy of police in society.*

A. Video testimonials from the community (POST DVD Racial Profiling Issues and Impact and/or Fair and Impartial Sample videos.

B. Off duty testimonial examples of impact biased based policing has.

C. Good policing can promote community trust in, respect for and collaboration between the community and police agencies.

D. Round Robin on how does our agency benefit when the community trusts and respects you?

- I. Research demonstrated that police cannot be effective without support/cooperation of the community.
- II. Community members who perceive the police as being fair see them as a legitimate authority.

III. SKILLS FOR PRODUCING FAIR, IMPARTIAL AND EFFECTIVE POLICING (1.5 HOURS)

FAIR AND IMPARTIAL POLICING

A. *Students will Understand the Benefits and Components of Community Respect and Cooperation*

1. Shots fired in a park scenario or DV Scenario Example: Shots fired in a park, heard by officer patrolling nearby hears shots. Only a nice dressed couple talking while sitting at a picnic table. No one else around.
 - A. What is the “assumption?”
 - B. Did the officer contact them?
 - C. Risks and consequences associated with assuming that they aren’t involved
 - D. What skills does the officer need to investigate?
 - I. Challenge what we see and recognize first impressions.
2. Recognize implicit biases and implement controlled (unbiased) responses.
 - A. Officer Taylor Scenario biased traffic stops. Meehan and Ponder study: Found that police were more likely to run warrants checks on African Americans than Whites in white neighborhoods....but less likely to find warrants on the African Americans compared to the whites.
 - I. Critical Thinking-challenge what you think and see. Recognize implicit bias. Proceed in bias-free manner.
 - B. Test yourself question: Would I be proceeding this way, but not for the fact that this person is Male? Asian? Black? Poor?
 - C. Gut Reaction-Recognize the biases.
 - I. Don’t be “Susun Boyaled”, taken in or led astray by biases.
3. Critical Thinking: Avoid “Profiling by Proxy”
 - A. Be aware of others biases (20/20 video police called for gay people). Consider bias free options.
 - B. Caller to 911 for “race out of place” in a neighborhood. Round robin options of how to deal with the call. Consider the viewpoint of the people with whom you are dealing. Minimize a negative impact on people.
4. Reduce Ambiguity
 - A. We prejudice people who are “ambiguous stimuli”. We attribute group stereotype, biases to them. We do not always show we are doing this.
 - I. Slow it down, when feasible
 - II. Engage with community members
 - a. Man on the Porch scenario-Dialo NYPD Case
5. Connect with the community.
 - A. Round table list 3 specific things you could do in a week’s time to engage with members of a community.

ATTACHMENT F

Bay Area Rapid Transit Police Department
POST Perishable Skills Program (PSP)

IV-TACTICAL COMMUNICATIONS (2 Hours)

Expanded Course Outline

COURSE GOAL:

The course will provide the trainee with the minimum topics of Tactical Communications required in the POST Perishable Skills Training Program. The intent of the course is to improve the trainees' ability to generate voluntary compliance through the art of persuasion and utilizing the tools of interpersonal communication. The trainee will receive an overview of Tactical Communication concepts such as: tactical communication within the use of force scale; communication elements, inappropriate language, questioning techniques and other communication principles.

I. TACTICAL COMMUNICATIONS

A. Minimum topics/Exercises

1. Class Exercise/Student Evaluation/Testing
2. Tactical- officer to officer/suspect/citizen
3. Tactical Communication role within the use of force scale
4. Communication Elements (e.g.-approach, body language, posturing, observing, listening, asking paraphrasing redirecting, defusing, responding, interest, empathy, influence, resolution.)
5. Officer safety (e.g- positioning, environment, reading suspect(s), control/voluntary compliance)
6. Professional/Non-professional/Inappropriate language
7. Intentional/unintentional contact escalation versus de-escalation (the 415 ficer)
8. Questioning techniques (e.g.- fact-finding, leading, opinion/feedback, general)

II. COURSE OBJECTIVES

A. The trainee will:

1. Demonstrate knowledge of the basic components of communication skills and techniques.

2. Demonstrate knowledge of the importance of listening and persuasion skills as they relate to effective tactical communication.
3. Demonstrate knowledge of the skills needed to effectively deal with difficult people.
4. Demonstrate a minimum standard of tactical communication skills with every technique and exercise, to include:
 - a. Listening/Persuasion
 - b. Judgment and Decision Making
 - c. Officer Safety
 - d. De-escalation, Verbal Commands
 - e. Effectiveness under Stress Conditions

Minimum standards of performance shall be tested by an instructor observing the trainee during their performance of each technique and exercise. If the trainee does not meet minimum standards, as established by the presenter, remediation will be provided until the standard is met.

III. GOALS OF TACTICAL COMMUNICATIONS

A. Course Goals

1. Safety- yours and theirs
2. Enhanced professionalism
3. Decrease in complaints
4. Decrease in liability
5. Less personal stress
6. Decrease in injuries (fewer officers on 4850)

IV. INSTRUCTIONAL RESOURCES

- A. 2007 POST DVD
- B. Officer Rivieri Video
- C. Ryan Moats Stop Video
- D. Officer Powell Resignation Video
- E. Sgt. Kuehnlein Video
- F. Laughter therapy Video

V. TACTICAL COMMUNICATION'S ROLE WITHIN THE USE OF FORCE SCALE

- A. Professional presence
- B. Verbalization

VI. COMMUNICATION ELEMENTS

- A. Content = 7-10% - has little power to persuade or convince
- B. Voice = 33-40%
 - 1. Tone = Attitude – 90% of complaints in P.D. are tone related
 - 2. Pace = slow/fast vs. pitch
 - 3. Other Non-Verbals = 50-60% = presence

VII. PROFESSIONAL/NON-PROFESSIONAL & INAPPROPRIATE

- A. Separate attitude from behavior, Focus only on behavior
- B. You are a PEACE OFFICER- Where you go, there should be PEACE!
- C. Re-spect vs. Respect

VIII. FIVE TYPES OF QUESTIONING TECHNIQUES

- A. Fact Finding- Who, What, Where, When, Why and How
- B. General- Open-ended. A What's the matter?
- C. Opinion Seeking- Is there some way we can handle this?

IX. TACTICAL-OFFICER TO: OFFICER/SUSPECT & CITIZEN

- A. Greeting
- B. ID Self/Dept.
- C. Reason for stop.
- D. Any justification reason?
- E. Drivers license
- F. Registration and Insurance
- G. Decision
- H. Close

X. INTENTIONAL/UNINTENTIONAL CONTACT ESCALATION VS. DE-ESCALATION

- A. The Five Step
 - 1. Ask
 - 2. Set Context
 - 3. Present Options
 - 4. Confirmation

5. Act

XI. OFFICER SAFETY

- A. Security Officer Safety (e.g. – MVR activation, positioning, environment, reading suspect(s), control/voluntary compliance)

XII. CLASS EXERCISE/STUDENT EVALUATION/TESTING

- A. Officer will simulate MVR activation during testing/exercise.
- B. Class discussion testing and review of key concepts

Testing: Any student scoring below standard on any exercise, as IX-Tactics (a) established by the presenter, will be remediated, tested until standard is achieved.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BART Police Citizens Review Board

Date: January 25, 2018

FROM: Carlos Rojas, Chief of Police

SUBJECT: BART Police Lexipol Manual

As a follow up to the discussion regarding the rescinding of Lexipol Policy 419 – Fare Evasion during the BART Police Citizen’s Review Board meeting on January 8, 2018, I would like to clarify my reasoning for eliminating the policy. Again, my overall goal for any policy rescission is to create a more clear and concise policy manual by eliminating policies which are redundant, not applicable, and/or unnecessary.

Lexipol Policy 419 – Fare Evasion outlined the policy of the BART Police Department was to vigorously enforce transit specific crimes. Although the statement is true, it is not all encompassing as it is my expectation is the vigorous enforcement of all criminal activity within the BART system which coincides with our Department Mission Statement.

Section 419.2.1 mostly reiterated the statutory definition of the law found in California Penal Code section 640(c)(1), as well as outline the fines reiterated by California Penal Code section 640(a)(1). The only requirement found within this section was statutorily modified by the passage of District Ordinance 2017-2, which I will discuss further in regard to a policy section below.

Section 419.2.2 attempted to create a definition of fare evasion, however the list was not all inclusive and only covered a few of the possible ways in which a person may commit the crime of fare evasion. Our field training program provides all officers, entry levels and laterals, expansive training on enforcing transit related crimes. During the field training program, all new officers are taught how to enforce fare evasion since it is a very prevalent crime within any transit system. With that being said, the true definition of fare evasion is found in the element of California Penal Code section 640(c)(1) which states, “...fare evasion includes entering an enclosed area of a public transit facility beyond posted signs prohibiting entrance without obtaining a valid fare, in addition to entering a transit vehicle without a valid fare.” Any attempt to provide complete list of all the way to commit the crime of fare evasion would be unattainable, as it would surely lead to an almost never-ending list of possibilities. My officers are taught to articulate the elements defined by California Penal Code 640(c)(1) PC in order to justify an enforcement stop for fare evasion.

Section 419.2.3 covered the three basic fundamental principles for law enforcement officers in regard to laws of arrest, which are: consensual encounters, reasonable suspicion, and probable cause. These topics are so important, the California Commission on Peace Officer Standards and Training require all police academies to provide a minimum of 12 hours of instruction on these topics (Regular Basic Course Learning Domain 15 – Laws of Arrest). In addition, our field training program expands on the academy training by providing additional hours of training in regard to these principals. These three fundamental

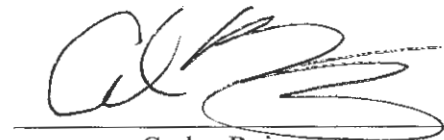
principles govern every law enforcement interaction and are not only applicable to fare evasion.

Section 419.2.4 only required an officer to speak with a BART employee who reported any fare evasion or misuse of a discount ticket to determine if they wanted to place the person under citizen's arrest. This policy section applied only to the investigation of fare evasion or misuse of a discount ticket, however to conduct a thorough investigation the reporting and/or witnessing party should be contacted in regard to any criminal enforcement contact. Citizen's arrests are governed by California Penal Code section 847 and our officers are taught in our field training program to take all lawful citizen arrest, not just those associated with fare evasion or misuse of a discount ticket.

The last section of the policy, section 419.3, again attempted to provide further examples of fare evasion. However, as stated above, my officers are trained to articulate the elements found in California Penal Code section 640(c)(1) PC. This policy section also outlined the inability of officers to ask to see people's tickets within the paid area of the BART system absent reasonable suspicion or probable cause, however the District Ordinance 2017-2 passed by the BART Board of Directors in October 2017 provided the new statutory ability for officers to request to see people's tickets anytime within the paid area of the BART system by making the District a proof of payment system.

It is important to note that violations of fare evasion are not the same as a proof of payment violation. Proof of payment violations occur when you do not have a valid ticket (Clipper Cards, BART magnetic stripe tickets, BART-issued voucher or pass, or other fare media as otherwise authorized by BART) in one's possession when inside the paid area of the system. Fare evasion violations occur at official (fare gates/emergency exits) and unofficial (fences, walls, emergency doors) entry and/or exit points of the system when someone enters or exits the system using a way to purposely evade paying the fare.

As I have shared my reasoning regarding the rescinding of Lexipol Policy 419 – Fare Evasion, I hope this helps with your understanding on why the I made the changes. I welcome any comments or feedback on areas you are concerned with keeping as part of a policy, which may not be covered elsewhere within our policy manual.



Carlos Rojas
Chief of Police

Enclosed:

- Attachment A – Printout of California Penal Code Section 640
- Attachment B – Printout of California POST Minimum Hour Training Requirements
- Attachment C – Table of Contents from POST Learning Domain Workbook 15
- Attachment D – Printout of California Penal Code Section 847
- Attachment E – Printout of Field Training Officer Sign-off Sheet

cc: General Manager
Deputy General Manager



ATTACHMENT A

PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680] (Part 1 enacted 1872.)

TITLE 15. MISCELLANEOUS CRIMES [626 - 653.75] (Title 15 enacted 1872.)

CHAPTER 2. Of Other and Miscellaneous Offenses [639 - 653.2] (Chapter 2 enacted 1872.)

640. (a) (1) Any of the acts described in paragraphs (1) to (6), inclusive, of subdivision (b) is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment. Except as provided in subdivision (g), any of the acts described in paragraphs (1) to (3), inclusive, of subdivision (c), upon a first or second violation, is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during the violator's hours of school attendance or employment. Except as provided in subdivision (g), a third or subsequent violation of any of the acts described in paragraphs (1) to (3), inclusive, of subdivision (c) is a misdemeanor punishable by a fine of not more than four hundred dollars (\$400) or by imprisonment in a county jail for a period of not more than 90 days, or by both that fine and imprisonment. Any of the acts described in subdivision (d) shall be punishable by a fine of not more than four hundred dollars (\$400), by imprisonment in a county jail for a period of not more than 90 days, or by both that fine and imprisonment.

(2) This section shall apply only to acts committed on or in a facility or vehicle of a public transportation system.

(b) (1) Eating or drinking in or on a system facility or vehicle in areas where those activities are prohibited by that system.

(2) Playing unreasonably loud sound equipment on or in a system facility or vehicle, or failing to comply with the warning of a transit official related to disturbing another person by loud or unreasonable noise.

(3) Smoking in or on a system facility or vehicle in areas where those activities are prohibited by that system.

(4) Expectorating upon a system facility or vehicle.

(5) Skateboarding, roller skating, bicycle riding, roller blading, or operating a motorized scooter or similar device, as defined in Section 407.5 of the Vehicle Code, in a system facility, vehicle, or parking structure. This paragraph does not apply to an activity that is necessary for utilization of the transit facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a transit vehicle, if that activity is conducted with the permission of the transit agency in a manner that does not interfere with the safety of the bicyclist or other patrons of the transit facility.

(6) Selling or peddling any goods, merchandise, property, or services of any kind whatsoever on the facilities, vehicles, or property of the public transportation system if the public transportation system has prohibited those acts and neither the public transportation system nor its duly authorized representatives have granted written consent to engage in those acts.

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

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) (A) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155 of the Public Utilities Code and posted system identification policies when entering or exiting a transit station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

(B) If an eligible discount ticket user is not in possession of acceptable proof at the time of request, a citation issued shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed.

- (d) (1) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.
- (2) Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle.
- (3) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.
- (4) Willfully blocking the free movement of another person in a system facility or vehicle. This paragraph shall not be interpreted to affect any lawful activities permitted or First Amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.
- (5) Willfully tampering with, removing, displacing, injuring, or destroying any part of a facility or vehicle of a public transportation system.
- (e) Notwithstanding subdivision (a) or (g), a public transportation agency, as defined in paragraph (4) of subdivision (c) of Section 99580 of the Public Utilities Code, may do either of the following:
- (1) Enact and enforce an ordinance providing that a person who is the subject of a citation for any of the acts described in subdivision (b) of Section 99580 of the Public Utilities Code on or in a facility or vehicle described in subdivision (a) for which the public transportation agency has jurisdiction shall, under the circumstances set forth by the ordinance, be afforded an opportunity to complete an administrative process that imposes only an administrative penalty enforced in a civil proceeding. The ordinance for imposing and enforcing the administrative penalty shall be governed by Chapter 8 (commencing with Section 99580) of Part 11 of Division 10 of the Public Utilities Code.
- (2) Enforce as an infraction pursuant to subdivision (b) the act of failing to yield seating reserved for an elderly or disabled person in a facility or vehicle for which the public transportation agency has jurisdiction, provided that the governing board of the public transportation agency enacts an ordinance to that effect after a public hearing on the issue.
- (f) For purposes of this section, "facility or vehicle of a public transportation system" means any of the following:
- (1) A facility or vehicle of a public transportation system as defined by Section 99211 of the Public Utilities Code.
- (2) A facility of, or vehicle operated by, an entity subsidized by, the Department of Transportation.
- (3) A facility or vehicle of a rail authority, whether owned or leased, including, but not limited to, any part of a railroad, or track of a railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached or connected to a railroad.
- (4) A leased or rented facility or vehicle for which any of the entities described in paragraph (1), (2), or (3) incurs costs of cleanup, repair, or replacement as a result of any of those acts.
- (g) A minor shall not be charged with an infraction or a misdemeanor for violation of paragraphs (1) to (3), inclusive, of subdivision (c). Nothing in this subdivision shall limit the ability of a public transportation agency to assess an administrative penalty as established in paragraph (1) of subdivision (e) and in Section 99580 of the Public Utilities Code, not to exceed one hundred twenty-five dollars (\$125) upon a first or second violation and not to exceed two hundred dollars (\$200) upon a third or subsequent violation, to permit the performance of community service in lieu of payment of the fare evasion or passenger conduct penalty pursuant to Section 99580 of the Public Utilities Code, or to allow payment of the fare evasion or passenger conduct penalty in installments or deferred payment pursuant to Section 99580 of the Public Utilities Code.

(Amended by Stats. 2017, Ch. 219, Sec. 1. (SB 614) Effective January 1, 2018.)

ATTACHMENT A

**MINIMUM CONTENT AND HOURLY REQUIREMENTS
REGULAR BASIC COURSE (RBC) - STANDARD FORMAT**

February 15, 2017

DOMAIN NUMBER	DOMAIN DESCRIPTION	MINIMUM HOURS
01	Leadership, Professionalism & Ethics	8 hours
02	Criminal Justice System	2 hours
03	Policing in the Community	18 hours
04	Victimology/Crisis Intervention	6 hours
05	Introduction to Criminal Law	4 hours
06	Property Crimes	6 hours
07	Crimes Against Persons/Death Investigation	6 hours
08	General Criminal Statutes	2 hours
09	Crimes Against Children	4 hours
10	Sex Crimes	4 hours
11	Juvenile Law and Procedure	3 hours
12	Controlled Substances	12 hours
13	ABC Law	2 hours
15	Laws of Arrest	12 hours
16	Search and Seizure	12 hours
17	Presentation of Evidence	6 hours
18	Investigative Report Writing	48 hours
19	Vehicle Operations	40 hours
20	Use of Force	12 hours
21	Patrol Techniques	12 hours
22	Vehicle Pullovers	14 hours
23	Crimes in Progress	20 hours
24	Handling Disputes/Crowd Control	8 hours
25	Domestic Violence	10 hours
26	Unusual Occurrences	4 hours
27	Missing Persons	4 hours
28	Traffic Enforcement	16 hours
29	Traffic Collision Investigations	12 hours
30	Crime Scenes, Evidence, and Forensics	12 hours
31	Custody	2 hours
32	Lifetime Fitness	40 hours
33	Arrest and Control	60 hours
34	First Aid, CPR, and AED	21 hours
35	Firearms/Chemical Agents	72 hours
36	Information Systems	2 hours
37	People with Disabilities	15 hours
38	Gang Awareness	2 hours
39	Crimes Against the Justice System	4 hours
40	Weapons Violations	4 hours
41	Hazardous Materials Awareness	4 hours
42	Cultural Diversity/Discrimination	16 hours
43	Emergency Management	16 hours
	Minimum Instructional Hours	577 hours
	The minimum number of hours allocated to testing in the Course are shown below. ¹	
	Additional instructional and testing hours for POST-required content	18 hours
TESTS		HOURS
	Scenario Tests (40 hours test administration; 18 hours scenario demonstration) (LDs 1,4,7,20,21,22,23,25,30 and 37)	58 hours
POST-Constructed Comprehensive Tests		
	LD 34	1 hour
	RBC Test 1 (LDs 2,3,5,15,16,20,39)	3 hours
	RBC Test 2 (LDs 2,3,5,6,7,8,9,10,15,16, ,20, and 39)	3 hours
	RBC Test 3 (LDs 2,3,5,6,7,8,9,10,11,12,15,16,20,25,26, 28,31,36,37,39,40, and 43)	4 hours
Total Minimum Required Hours		664 hours

ATTACHMENT B

¹Time required for exercise testing, instructional activities, and the Work Sample Test Battery is included in instructional hours.

LD 15: Laws of Arrest

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ATTACHMENT C

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ATTACHMENT C



PENAL CODE - PEN

PART 2. OF CRIMINAL PROCEDURE [681 - 1620] (*Part 2 enacted 1872.)*

TITLE 3. ADDITIONAL PROVISIONS REGARDING CRIMINAL PROCEDURE [777 - 883] (*Heading of Title 3 amended by Stats. 1951, Ch. 1674.)*

CHAPTER 5. Arrest, by Whom and How Made [833 - 851.92] (*Chapter 5 enacted 1872.)*

847. (a) A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest under any of the following circumstances:

- (1) The arrest was lawful, or the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful.
- (2) The arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested.
- (3) The arrest was made pursuant to the requirements of Section 142, 837, 838, or 839.

(Amended by Stats. 2003, Ch. 468, Sec. 13. Effective January 1, 2004.)

ATTACHMENT D

KNOWLEDGE AND PERFORMANCE OBJECTIVES

I. General

- A. The trainee will understand the concepts “spirit of the law” and “letter of the law.”

- B. The trainee will be able to define the following:
 - 1. Infraction
 - 2. Misdemeanor
 - 3. Felony

- C. The trainee will understand and be able to explain the following types of contacts:
 - 1. Consensual encounter
 - a. A conversation with a subject, considered information gathering
 - (1) May ask for I.D., permission to search, etc.
 - b. At anytime the subject may refuse to answer, or is free to leave
 - c. Cannot exert authority or demand answers

 - 2. Detention
 - a. There must be a reasonable suspicion
 - (1) Something out of the ordinary has, or is taking place
 - (2) The activity is related to a crime
 - (3) The person is connected to the activity
 - b. The subject is not free to leave during the course of the investigation (detention)
 - c. The subject is obligated to identify himself

 - 3. Arrest and search (probable cause)
 - a. A group of facts, which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime charged.
 - (1) Probable: The factual and practical realities of everyday life on which reasonable and prudent men act
 - (2) Cause: Arrest or search be made for cause; not suspicion, not hunch, or guess
 - b. More than mere suspicion.
 - c. Less than evidence to convict.

OBJECTIVES COMPLETED	
FTO INITIALS & DATE	TRAINEE INITIALS & DATE

ATTACHMENT E

ATTACHMENT E LAW

KNOWLEDGE AND PERFORMANCE OBJECTIVES

public transportation system... or who utters, publishes, or puts into circulation any fare media with intent to defraud is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

- L. 502(c)(1)(B) PC Knowingly accesses and without permission, alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to wrongfully control or obtain money, property, or data.
 - 1. "Access" means to gain entry to, instruct, communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.
 - 2. All ticket vendors have a computer logic function within their operating system.
 - 3. When a suspect enters a BART station with the intent to wrongfully obtain tickets via computer access, then they are guilty of 459 PC
 - 4. 640(b) PC Acts committed on facilities or vehicles of public transportation systems

- M. Any of the following acts committed on or in the facilities or vehicles of public transportation system as defined by section 99211 of the Public Utilities Code is an **infraction** punishable by fine not to exceed **\$250**:
 - a. 640(b)(1) PC – Eating or drinking
 - b. 640(b)(2) PC – Disturbing another by unreasonable noise
 - c. 640(b)(3) PC - Smoking
 - d. 640(b)(4) PC - Expectorating
 - e. 640(b)(5) PC –Skateboarding, roller skating, bicycle riding, or rollerblading
 - f. 640(c)(1) PC – Fare evasion
 - g. 640(c)(2) PC - Misuse of a transfer, pass, ticket
 - h. 640(c)(3)(A) PC – Unauthorized use of a discount ticket or failure to present ticket
 - The following Sections are Misdemeanors*
 - i. 640(d)(1) PC - Willfully disturbing others by unruly behavior
 - j. 640(d)(2) PC - Carrying a hazardous material
 - k. 640(d)(3) PC – Urinating or defecating

OBJECTIVES COMPLETED	
FTO INITIALS & DATE	TRAINEE INITIALS & DATE

LAW

KNOWLEDGE AND PERFORMANCE OBJECTIVES

OBJECTIVES COMPLETED	
FTO INITIALS & DATE	TRAINEE INITIALS & DATE
<p style="margin-left: 40px;">i. 640(d)(4) PC – Willfully blocking free movement of a person in a system facility</p> <p style="margin-left: 40px;">m. 640(d)(5) PC – Willfully tampering with any system facility or vehicle</p> <p>N. 640a.1 PC Theft from a coin operated vending machine...by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever...shall be guilty of a misdemeanor. This section is to be utilized in such instances as:</p> <ol style="list-style-type: none"> 1. The use of a notched or altered one dollar bill to defraud BART change machine of a non-substantial amount of money 2. The use of pennies, foreign coins, slugs, or altered coins to defraud BART change machines 3. The use of a coin attached to a piece of string to defraud a BART change machine 4. The use of any device or tool/trick to defraud any coin operated vending machine, i.e. news racks, etc. 5. If the suspect enters a BART structure with the intent to defraud (pre-made tool), burglary should also be charged <p>III. Obstruction of Justice</p> <p>A. The trainee will be able to recognize and identify violations of California laws that pertain to the obstruction of justice, including:</p> <ol style="list-style-type: none"> 1. Obstructing or resisting executive officer in performance of their duties 69 PC 2. Resisting, delaying, or obstructing officer 148 PC 3. Destroying or concealing evidence 135 PC 4. Preventing or dissuading a witness 136 PC 5. Officer refusing to receive or arrest person charged with an offense 142 PC 6. False report of criminal offense 148.5 PC 7. Falsely identifying oneself 148.9 PC 	

ATTACHMENT E