

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

**NOTICE OF MEETING AND AGENDA**  
**BART POLICE CITIZEN REVIEW BOARD**

March 8, 2021  
4:00 p.m.

A regular meeting of the BART Police Citizen Review Board (BPCRB) will be held on Monday, March 8, 2021 at 4:00 p.m.

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

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

You may listen to the Meeting by calling 1-833-827-2778 and entering access code 583 290 054#.

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

**Individuals may also be given an opportunity by the moderator to speak on any item on the agenda by calling (833) 827-2778 and entering access code 583 290 054# in advance of the item.** Public comment will be limited to three (3) minutes per person. Your phone will be muted until you are called upon.

**AGENDA**

1. Call to Order.
  - a. Roll Call.
  - b. Pledge of Allegiance.
2. Announcements from February 8, 2021 and March 8, 2021 Closed Session, if any.
3. Announcement from the Appeal and Final Disposition by the General Manager of the Public Employee Discipline/Dismissal/Release in the Office of the Independent Police Auditor (OIPA) Cases #20-07 and #20-11. For information.
4. [Approval of Minutes of the Meeting of February 8, 2021.](#) For Discussion and Action.
5. Chief of Police's Report. For Discussion and Action.
  - a. [BART Police Department's Monthly Reports for January 2021.](#)
6. Independent Police Auditor's Report. For Discussion and Action.
  - a. [Office of the Independent Police Auditor \(OIPA\) Monthly Report for February 2021.](#)
7. [Update to Roll Call for Introductions Item No. RCI 20-832, BART Progressive Policing](#) (Continued from the February 8, 2021 BPCRB meeting). For Discussion and Action.

8. [Discussion of Lexipol Policy 419 - Fare Evasion](#). For Discussion and Action.
9. Revisions to the BART Citizen Oversight Model. For Discussion and Action.
  - a. [BART Citizen Oversight Model](#)
  - b. [Independent Review of the BART Police Oversight Structure – OIR Group Report](#)
  - c. [Independent Review of the BART Police Oversight Structure – OIR Group Report Addendum](#)
10. Center for Policing Equity Final Report - BART Police Department. For Discussion and Action.
  - a. [Center for Policing Equity Final Report - BART Police Department – Presentation](#)
  - b. [Center for Policing Equity Final Report - BART Police Department – BPCRB Presentation](#)
  - c. Center for Policing Equity Final Report - BART Police Department – Video  
<https://vimeo.com/497021083/df2b8eec93>
11. 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.)
12. Adjournment

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

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

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

**BART Police Citizen Review Board Meeting Minutes**  
**Monday, February 8, 2021**

A regular meeting of the BART Police Citizen Review Board (BPCRB) was held Monday, February 8, 2021, convening at 4:07 p.m. via teleconference, pursuant to Governor Gavin Newsom's Executive Order N-29-20 and the California Shelter-in-Place mandate. The meeting was called to order by Chairperson David Rizk; Mag Tatum, Recording Secretary.

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

**1. Call to Order.**

The regular meeting was convened at 4:07 p.m. by Chairperson David Rizk.

Members Present:

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

Absent:

None.

The Pledge of Allegiance was recited.

**2. Announcement from January 11, 2021, Closed Session.**

Chairperson Rizk announced that the Board voted to accept the findings in OIPA Case #20-07. Accepts – 6: Members Armstrong, Longmire, Loo, Mensinger, Perezvelez, and W. White. Rejects – 2: Members Davis and Rizk. Abstain – 0. Absent – 2: Members C. Gomez and D. White. Vacant – 1.

Chairperson Rizk announced that the Board voted unanimously to accept the findings in OIPA Case #20-11.

**3. Approval of Minutes of the Meeting of January 11, 2021.**

Member Armstrong moved that the Minutes of the Meeting of January 11, 2021 be approved. Member Gomez seconded the motion, which carried by a unanimous roll call vote. Ayes – 9: Members Armstrong, Gomez, Longmire, Loo, Mensinger, Perezvelez, D. White, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 1: Member Davis. Vacant – 1.

Member Todd Davis entered the meeting.

**4. Approval of Memoriam Letter to the Family of Ken Jones, LGBTQ+ Advocate, and Original Member of the Citizen Review Board.**

Chairperson Rizk moved the Memoriam Letter to the Family of Ken Jones be approved as

amended to include all BART Police Citizen Review Board member names. Member Darren White seconded the motion, which carried by a unanimous roll call vote. Ayes – 10: Members Armstrong, Davis, Gomez, Longmire, Loo, Mensinger, Perezvelez, D. White, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 0. Vacant – 1.

The following individuals addressed the Board:

LaSandra Henderson

**5. Resolution Honoring Ken Jones and in Support of His Nomination to the Castro’s Rainbow Honor Walk.**

Member Perezvelez moved that the Resolution Honoring Ken Jones and in Support of His Nomination to the Castro’s Rainbow Honor Walk be adopted. Member Armstrong seconded the motion, which carried by a unanimous roll call vote. Ayes – 10: Members Armstrong, Davis, Gomez, Longmire, Loo, Mensinger, Perezvelez, D. White, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 0. Vacant – 1.

The following individuals addressed the Board:

LaSandra Henderson

**6. Chief of Police’s Reports.**

**a. BART Police Department’s Monthly Reports for December 2020.**

Chief of Police Ed Alvarez presented the BPD Monthly Reports for December 2020. The reports were discussed.

Member Darren White exited the meeting.

**7. Independent Police Auditor’s Report.**

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

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

Chairperson Rizk moved to extend the meeting time by 30 minutes. Member Gomez seconded the motion, which carried by a unanimous roll call vote. Ayes – 9: Members Armstrong, Davis, Gomez, Longmire, Loo, Mensinger, Perezvelez, W. White and Rizk. Noes – 0. Abstain – 0. Absent – 1: Member D. White. Vacant – 1.

**8. Center for Policing Equity Final Report - BART Police Department.**

Chairperson Rizk presented the Center for Policing Equity Final Report, BART Police Department. The report was discussed and continued to a future meeting.

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

The report was continued to a future meeting.



7. **Public Comment.** No Comments were received.

8. **Closed Session.**

a. **To Consider Public Employee Discipline/Dismissal/Release in OIPA Case #20-14. Govt. Code §54957.**

Chairperson Rizk announced that the Board would enter closed session under Item 11-A (Public Employee Discipline/Dismissal/Release in OIPA Case 20-14) of the Regular Meeting agenda, and that the closed session votes, if any, would be announced in open session at the beginning of the next regular BPCRB meeting.

**Adjournment.**

The Meeting adjourned at 6:19 p.m.

DRAFT

# BART POLICE DEPARTMENT



January 2021

MONTHLY REPORT



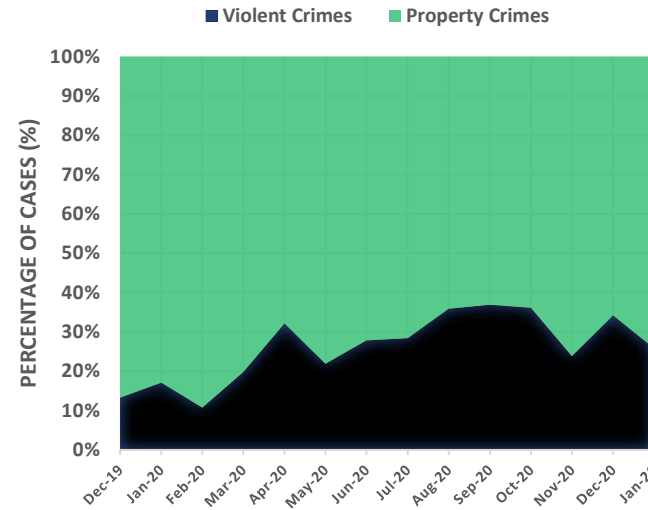
# Bay Area Rapid Transit Police Department

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

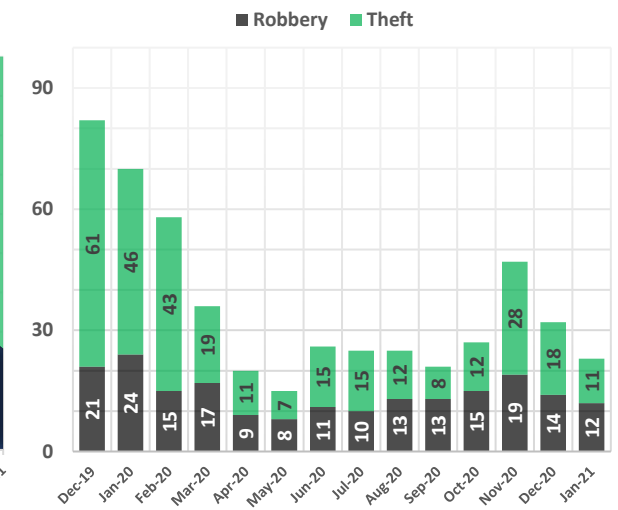
January 2021 Performance Measurement Review - **Systemwide**

PART 1 UCR Crime	2015	2016	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	1	1	0	3	2	0	0	0	-%
Rape	3	4	8	3	7	5	1	0	-100%
Robbery	161	232	290	345	378	252	35	14	-60%
Aggravated Assault	73	93	125	130	112	95	8	3	-63%
<b>Violent Crime Subtotal</b>	<b>238</b>	<b>330</b>	<b>423</b>	<b>481</b>	<b>499</b>	<b>352</b>	<b>44</b>	<b>17</b>	<b>-61%</b>
Burglary (Structural)	4	12	15	18	16	12	0	0	-%
Larceny & Auto Burglary	2,325	2,217	2,593	2,565	3,177	1,038	197	47	-76%
Auto Theft	480	480	420	348	247	100	17	2	-88%
Arson	0	1	4	4	4	4	0	0	-%
<b>Property Crime Subtotal</b>	<b>2,809</b>	<b>2,710</b>	<b>3,032</b>	<b>2,935</b>	<b>3,444</b>	<b>1,154</b>	<b>214</b>	<b>49</b>	<b>-77%</b>
<b>TOTAL</b>	<b>3,047</b>	<b>3,040</b>	<b>3,455</b>	<b>3,416</b>	<b>3,943</b>	<b>1,506</b>	<b>258</b>	<b>66</b>	<b>-74%</b>

## PART 1 CRIME OVERALL



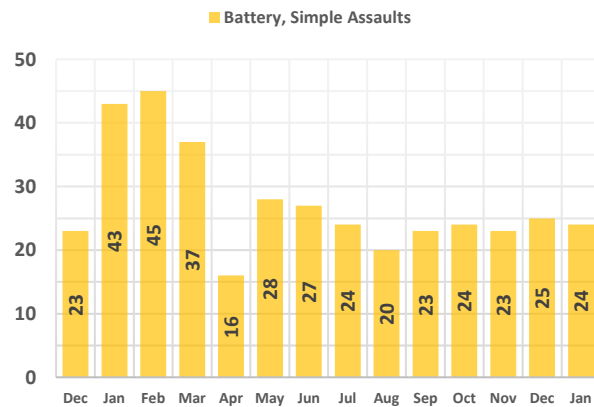
## ELECTRONIC THEFT



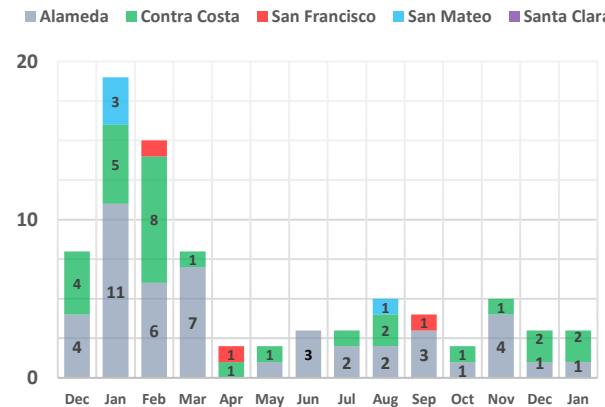
## Part 1 Crimes: Top Five Stations

January 2021: M90/DCS M60/TFS M10/OWS A50/BFS A10/LMS  
 Full Year 2020: A30/COS A20/FVS M60/TFS M50/SSS A60/HAS

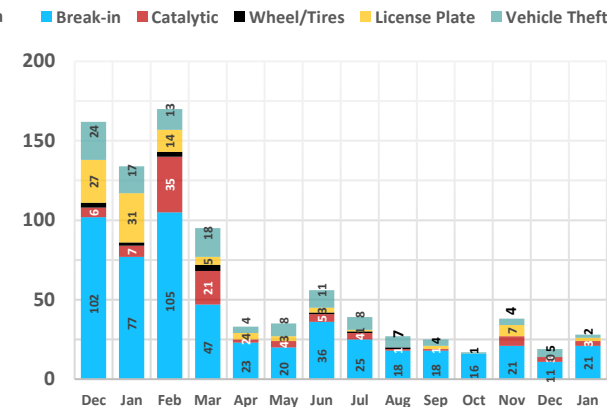
## BATTERY & ASSAULT ON BART



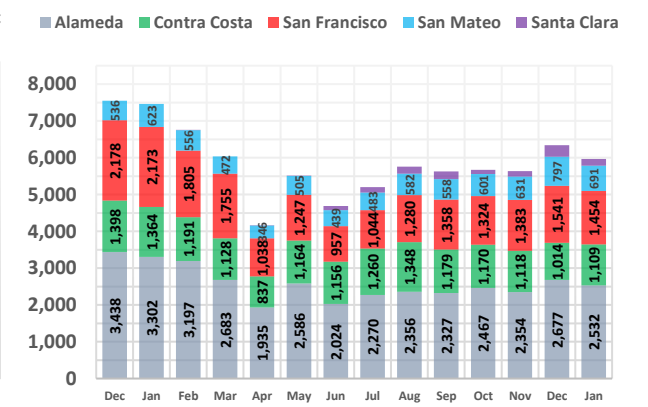
## BICYCLE THEFT



## VEHICLE CRIME



## CALLS TO DISPATCH



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

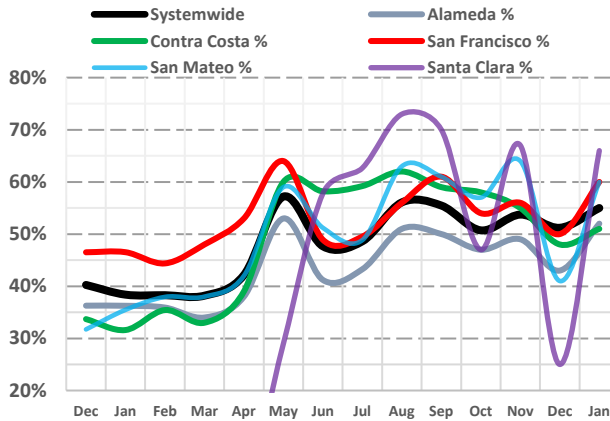


# Bay Area Rapid Transit Police Department

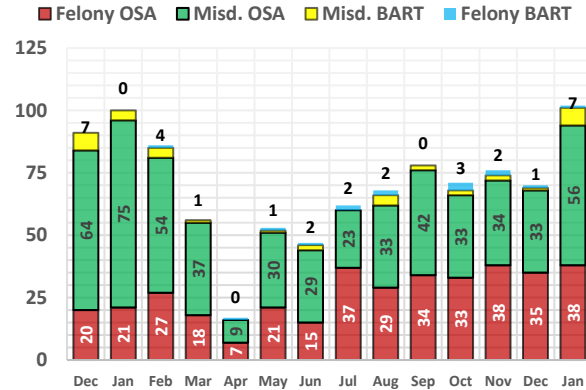
101 8th St, Oakland, CA, 94607 (510) 464-7000 [www.bart.gov/police](http://www.bart.gov/police)

January 2021 Performance Measurement Review - **Systemwide**

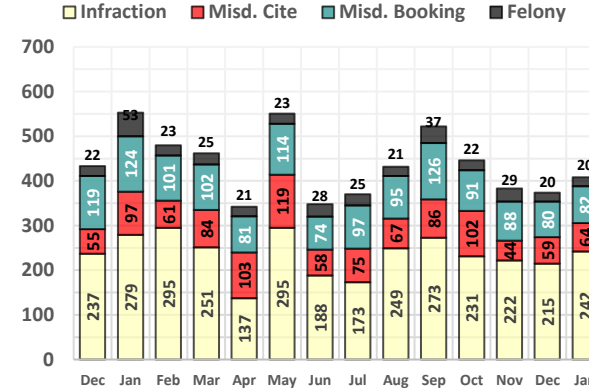
## OFFICER-INITIATED INCIDENTS



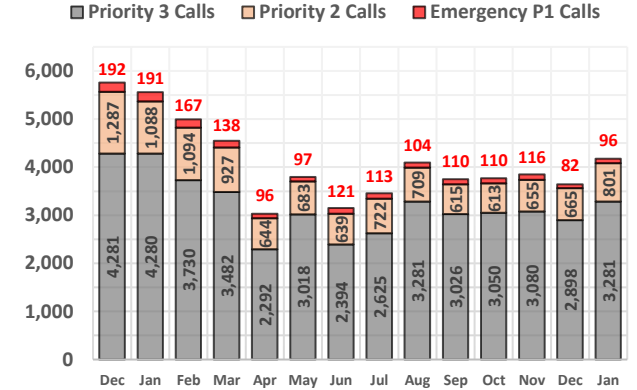
## WARRANT ARRESTS



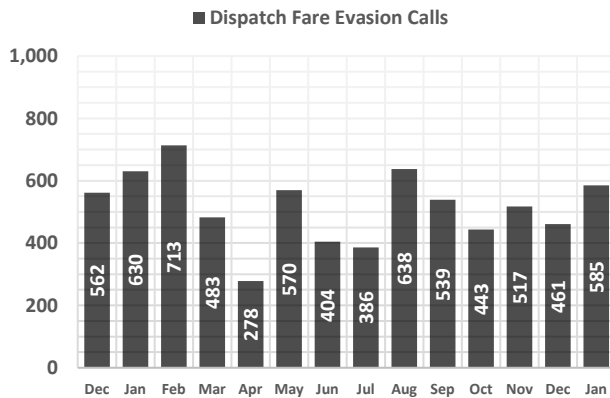
## ALL BOOKINGS & ARRESTS



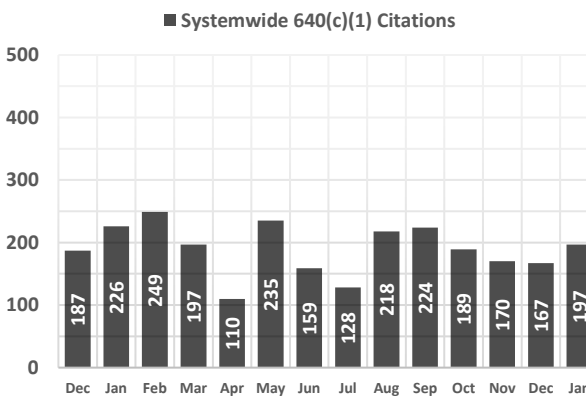
## PRIORITY TYPE 1 - 3 CALLS



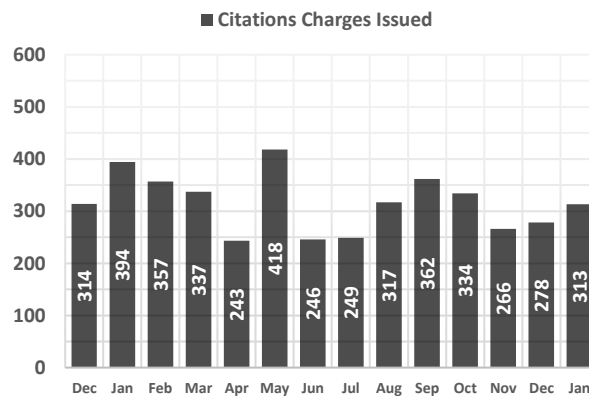
## FARE EVASION CAD CALLS



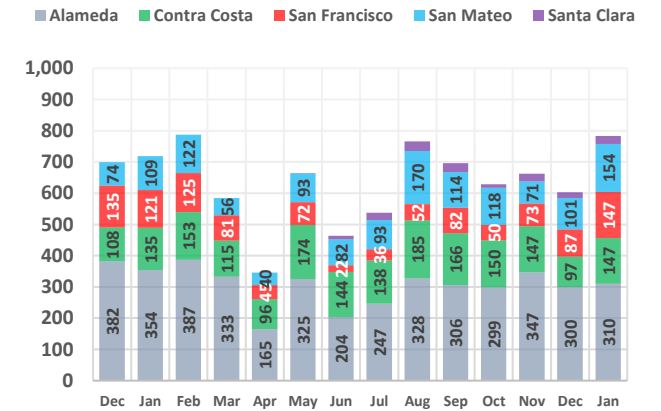
## FARE EVASION CITATIONS



## ALL CITATIONS



## FIELD INTERVIEWS



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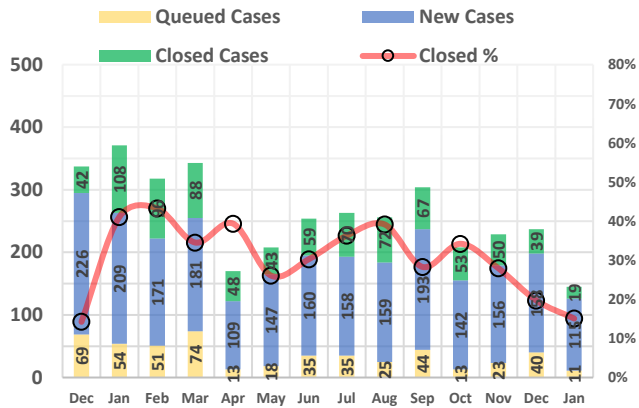


# Bay Area Rapid Transit Police Department

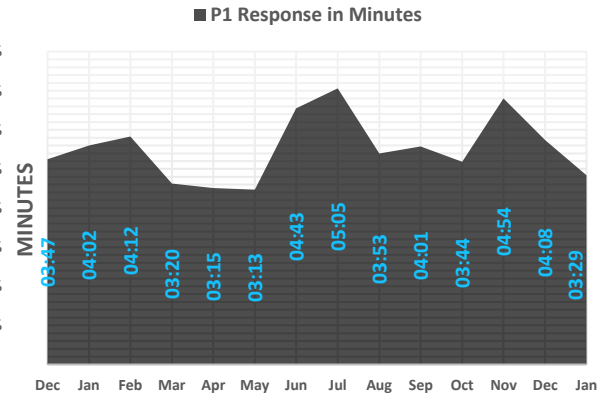
101 8th St, Oakland, CA, 94607 (510) 464-7000 [www.bart.gov/police](http://www.bart.gov/police)

January 2021 Performance Measurement Review - Systemwide

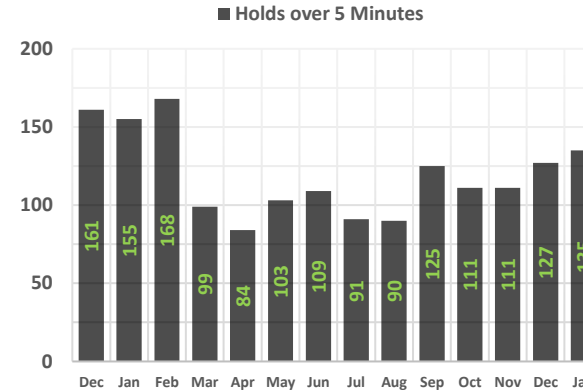
## INVESTIGATIONS CASELOAD %



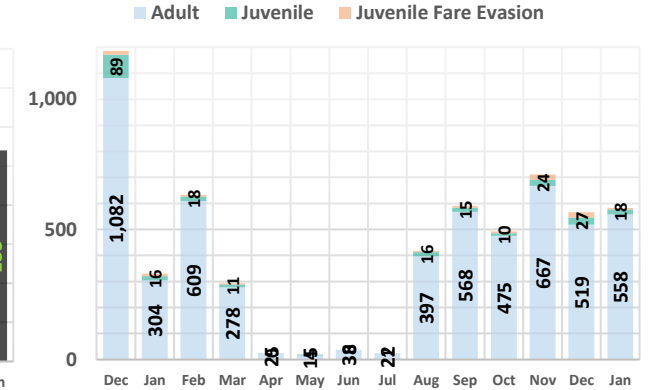
## SYSTEM RESPONSE TIME (P1) AVG



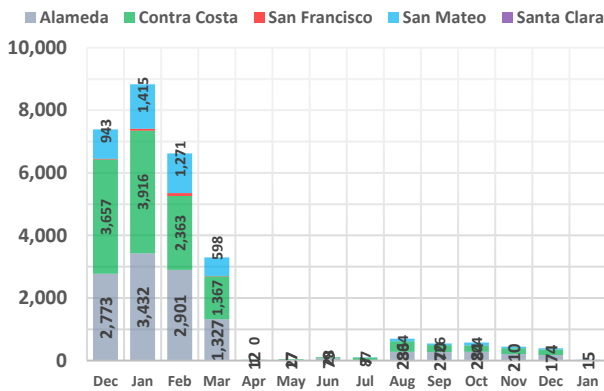
## POLICE TRAIN HOLDS



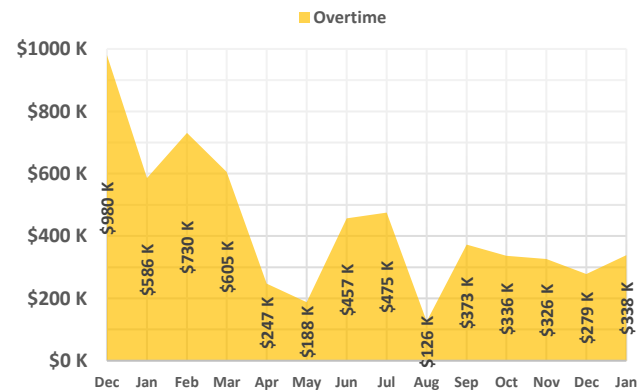
## PROOF OF PAYMENT CITATIONS



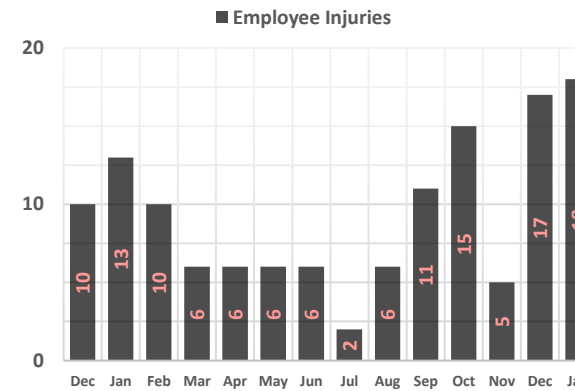
## PARKING CITATIONS



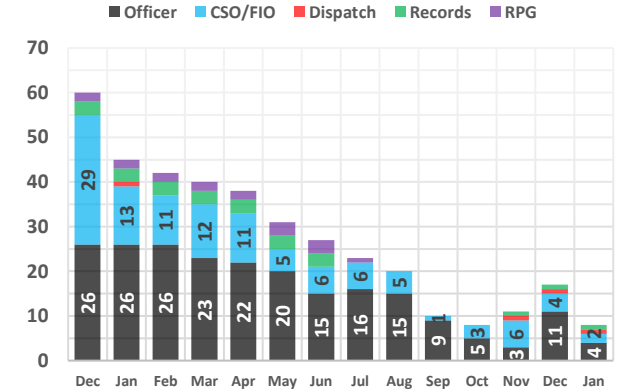
## OVERTIME UTILIZATION (IN THOUSANDS)



## EMPLOYEE INJURIES



## VACANCIES



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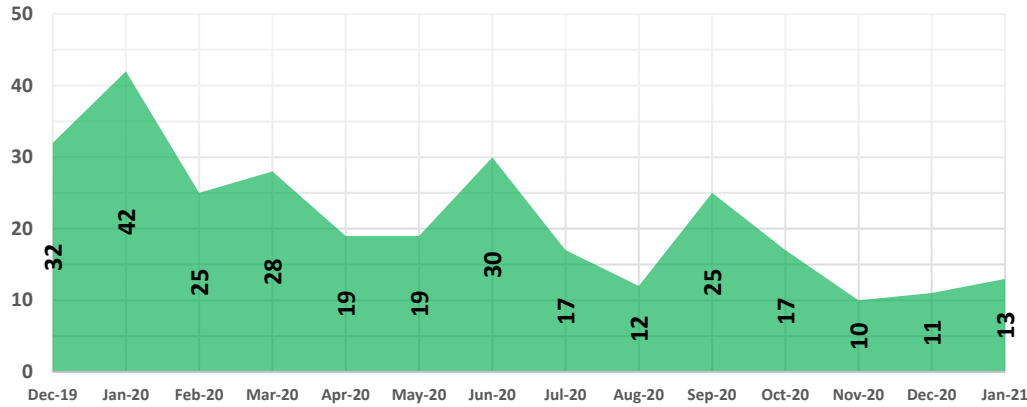


# Bay Area Rapid Transit Police Department

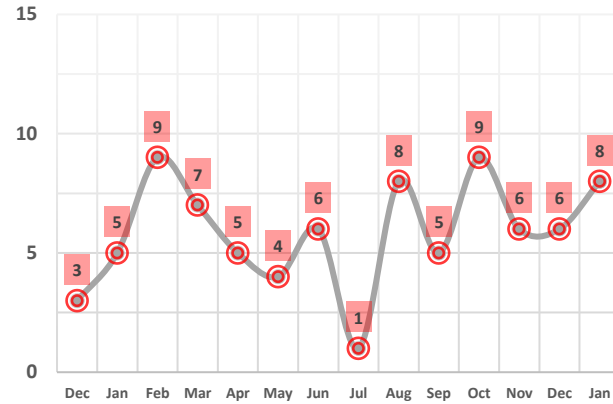
101 8th St, Oakland, CA, 94607 (510) 464-7000 [www.bart.gov/police](http://www.bart.gov/police)

January 2021 Performance Measurement Review - **Systemwide**

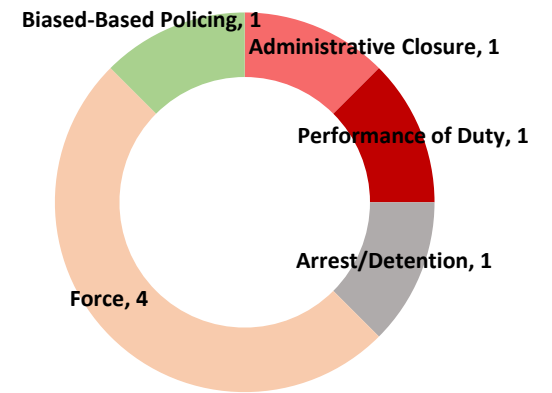
AB716 - PROHIBITION ORDERS



INTERNAL AFFAIRS COMPLAINTS

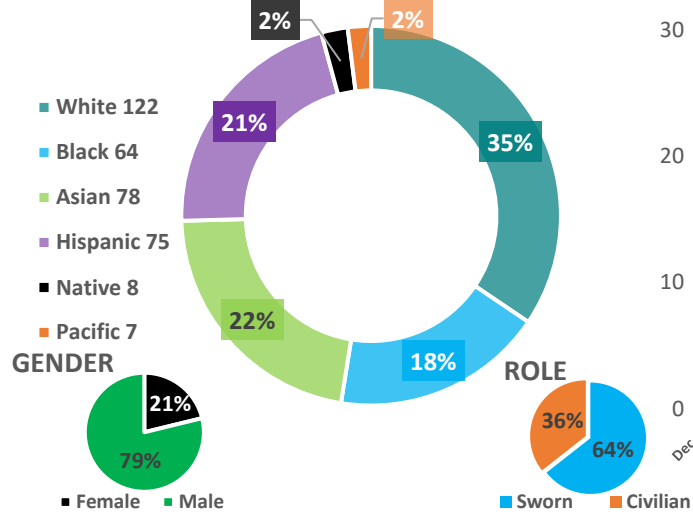


IA COMPLAINTS RECEIVED<sup>1</sup>

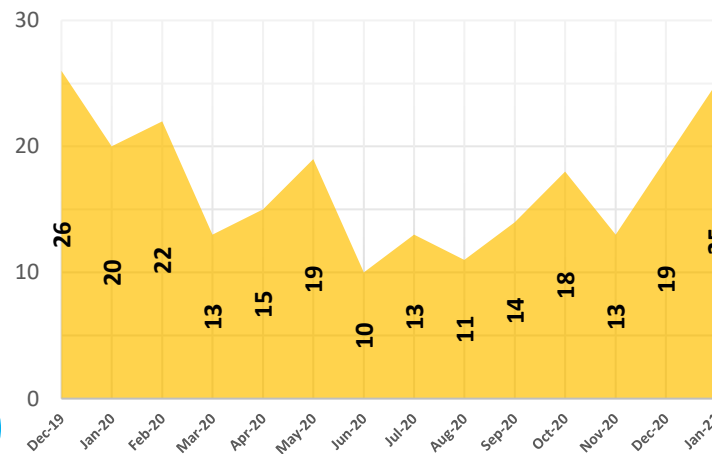


<sup>1</sup>: Each incident could contain more than one allegation. This chart reflects the most significant allegation per incident.

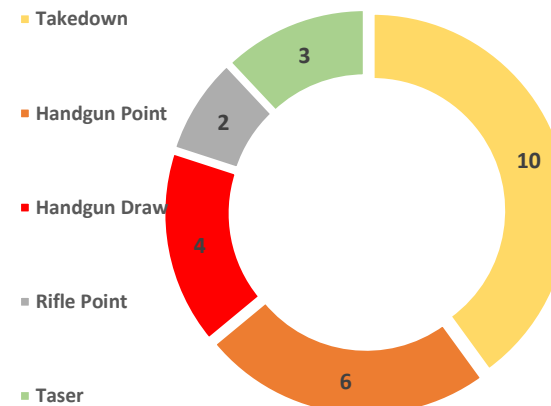
DEPARTMENT ETHNIC DIVERSITY



USE OF FORCE INCIDENTS

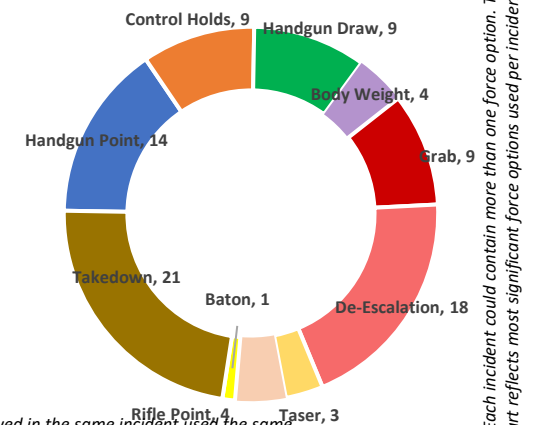


INCIDENT FORCE OPTIONS USED<sup>2</sup>



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

TYPES OF FORCE USED<sup>3</sup>



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



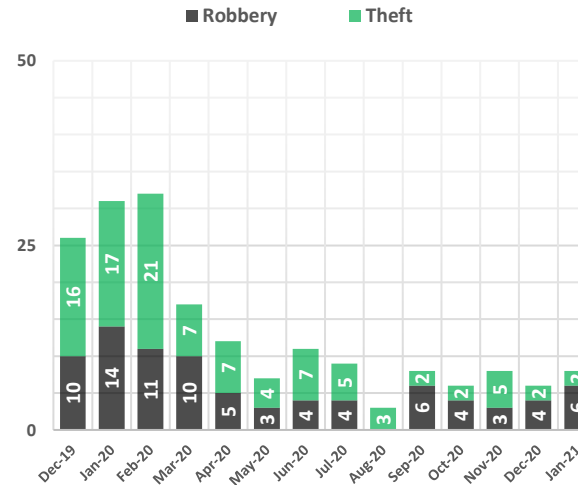
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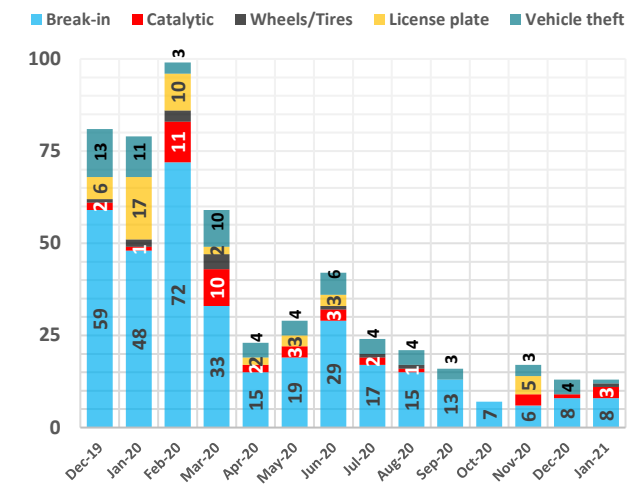
January 2021 Performance Measurement Review - Alameda County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	2	1	0	0	0	-%
Rape	6	3	2	3	1	0	-100%
Robbery	191	211	229	122	23	7	-70%
Aggravated Assault	73	87	52	54	4	1	-75%
<b>Violent Crime Subtotal</b>	<b>270</b>	<b>303</b>	<b>284</b>	<b>179</b>	<b>28</b>	<b>8</b>	<b>-71%</b>
Burglary (Structural)	8	11	13	9	0	0	-%
Larceny & Auto Burglary	1,471	1,262	1,634	577	107	17	-84%
Auto Theft	266	201	149	56	11	1	-91%
Arson	2	3	5	2	0	0	-%
<b>Property Crime Subtotal</b>	<b>1,747</b>	<b>1,477</b>	<b>1,801</b>	<b>644</b>	<b>118</b>	<b>18</b>	<b>-85%</b>
<b>TOTAL</b>	<b>2,017</b>	<b>1,780</b>	<b>2,085</b>	<b>823</b>	<b>146</b>	<b>26</b>	<b>-82%</b>

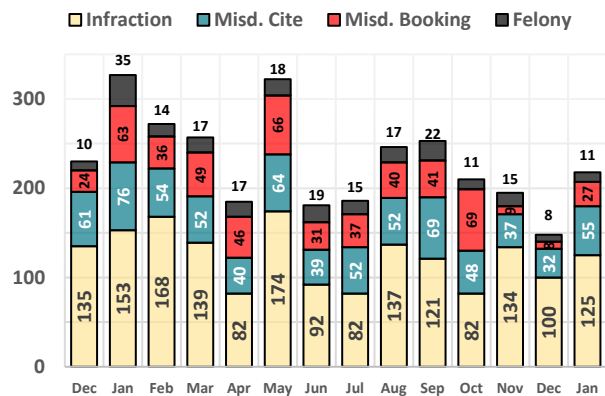
## ALAMEDA ELECTRONIC THEFT



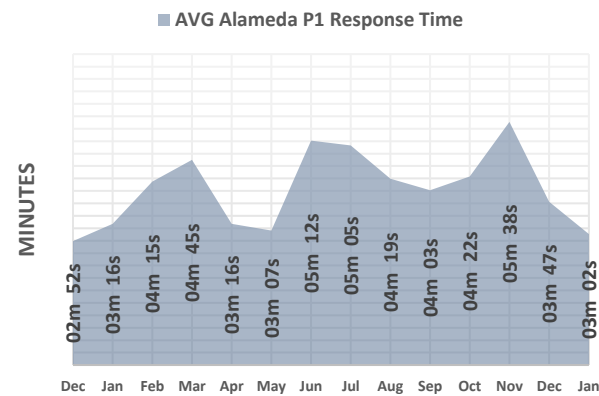
## ALAMEDA VEHICLE CRIME



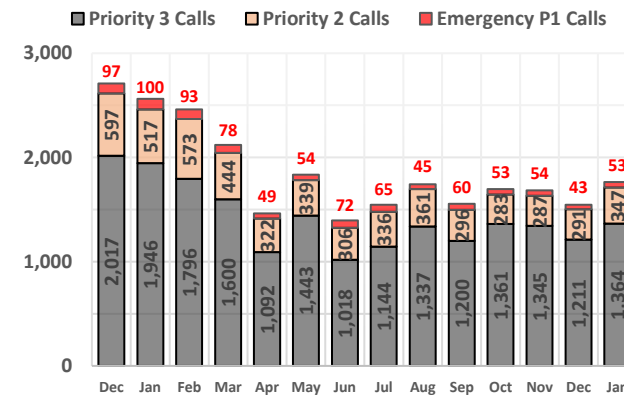
## ALAMEDA ARRESTS & CITATIONS



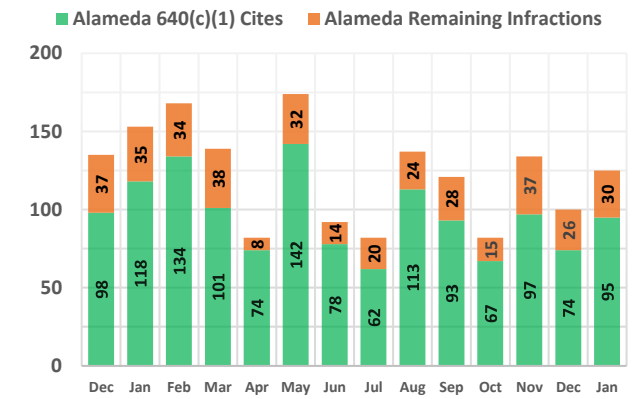
## RESPONSE TIME (P1) AVG



## ALAMEDA PRIORITY 1 - 3 CALLS



## ALAMEDA FARE EVASION



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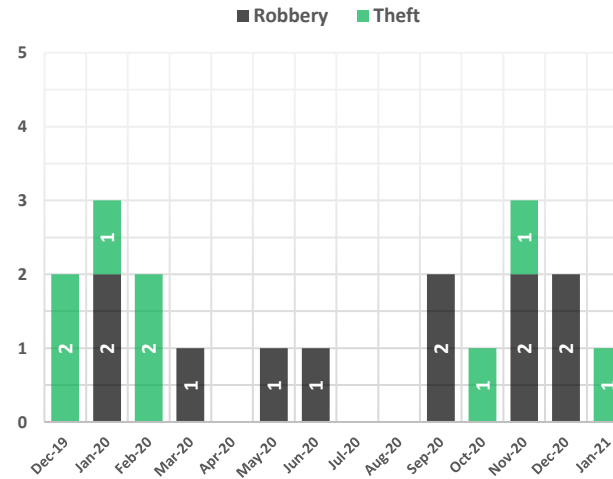
# Bay Area Rapid Transit Police Department

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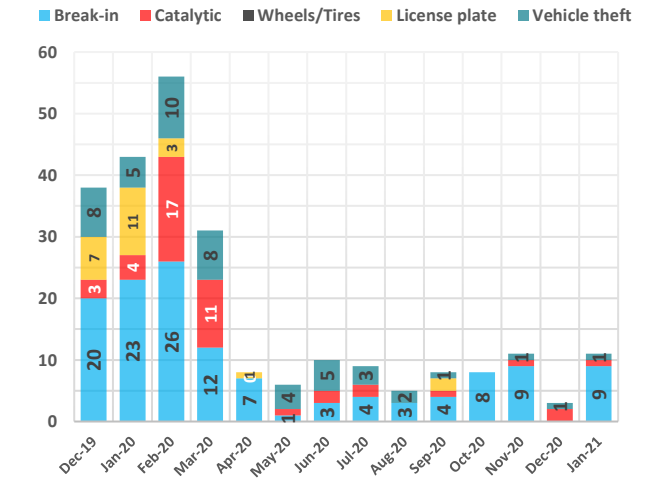
January 2021 Performance Measurement Review - Contra Costa County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	1	0	0	0	0	-%
Rape	1	0	4	0	0	0	-%
Robbery	35	29	34	23	3	0	-100%
Aggravated Assault	23	20	23	17	0	2	-%
<b>Violent Crime Subtotal</b>	<b>59</b>	<b>50</b>	<b>61</b>	<b>40</b>	<b>3</b>	<b>2</b>	<b>-33%</b>
Burglary (Structural)	2	1	2	1	0	0	-%
Larceny & Auto Burglary	675	669	592	202	47	13	-72%
Auto Theft	134	124	81	40	5	1	-80%
Arson	3	1	0	0	0	0	-%
<b>Property Crime Subtotal</b>	<b>814</b>	<b>795</b>	<b>675</b>	<b>243</b>	<b>52</b>	<b>14</b>	<b>-73%</b>
<b>TOTAL</b>	<b>873</b>	<b>845</b>	<b>736</b>	<b>283</b>	<b>55</b>	<b>16</b>	<b>-71%</b>

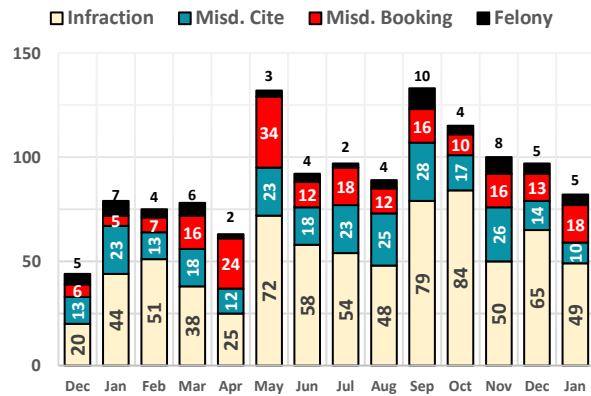
## CONTRA COSTA ELECTRONIC THEFT



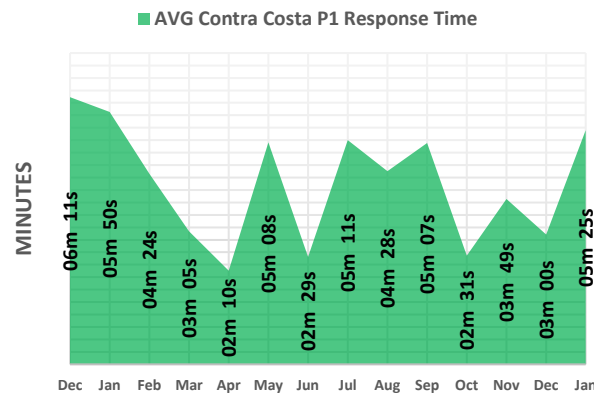
## CONTRA COSTA VEHICLE CRIME



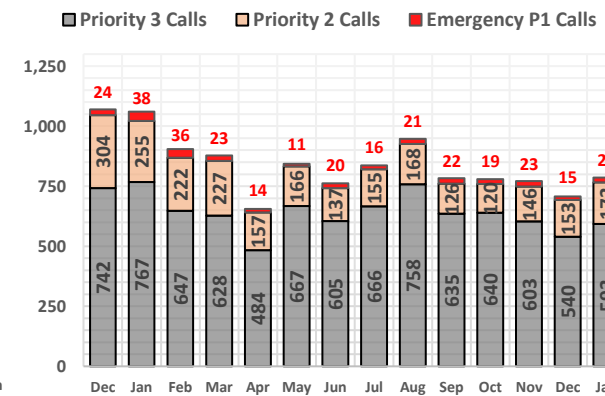
## COCO ARRESTS & CITATIONS



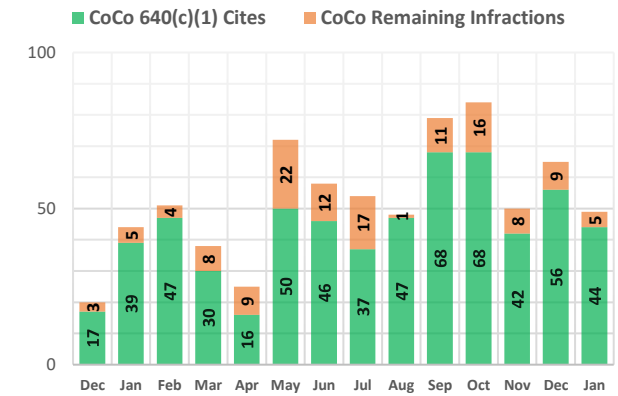
## RESPONSE TIME (P1) AVG



## COCO PRIORITY 1 - 3 CALLS



## COCO FARE EVASION



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

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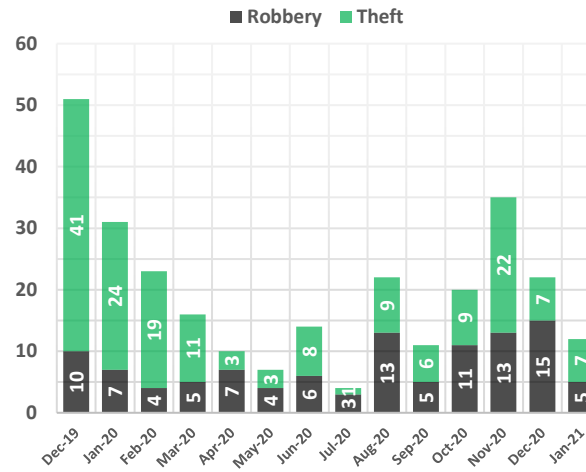
# Bay Area Rapid Transit Police Department

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

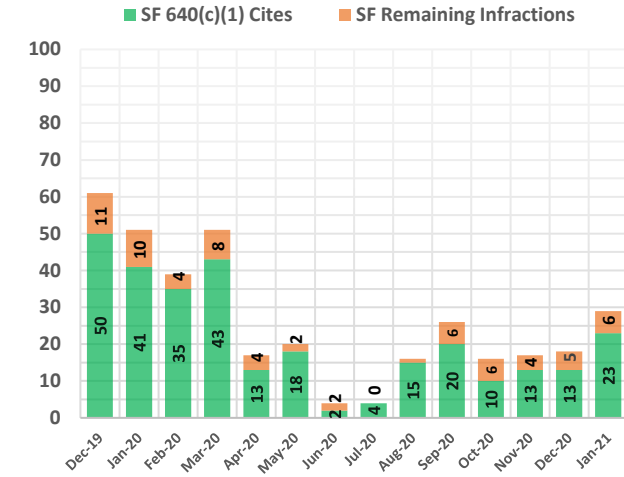
January 2021 Performance Measurement Review - San Francisco County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2020	YTD 2021	PCT %
Homicide	0	0	0	0	0	0	-%
Rape	0	0	0	4	0	0	-%
Robbery	49	97	104	101	8	6	-25%
Aggravated Assault	23	18	28	19	2	0	-100%
<b>Violent Crime Subtotal</b>	<b>72</b>	<b>115</b>	<b>132</b>	<b>124</b>	<b>10</b>	<b>6</b>	<b>-40%</b>
Burglary (Structural)	5	6	4	1	0	0	-%
Larceny & Auto Burglary	244	473	619	200	47	10	-79%
Auto Theft	2	1	1	0	0	0	-%
Arson	0	0	0	1	0	0	-%
<b>Property Crime Subtotal</b>	<b>251</b>	<b>480</b>	<b>624</b>	<b>202</b>	<b>47</b>	<b>10</b>	<b>-79%</b>
<b>TOTAL</b>	<b>323</b>	<b>595</b>	<b>756</b>	<b>326</b>	<b>57</b>	<b>16</b>	<b>-72%</b>

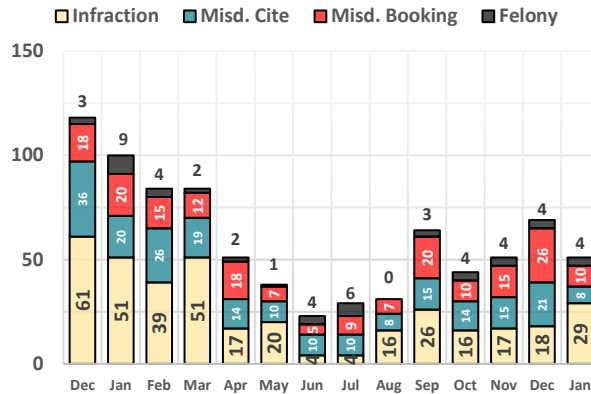
## SAN FRANCISCO ELECTRONIC THEFT



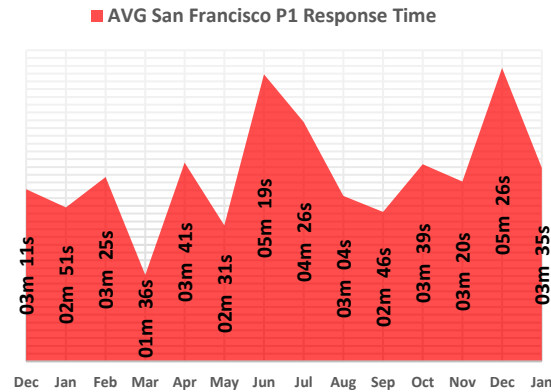
## SAN FRANCISCO FARE EVASION



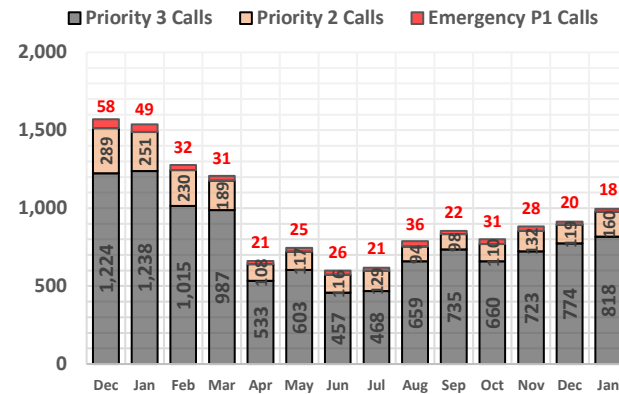
## SF ARRESTS & CITATIONS



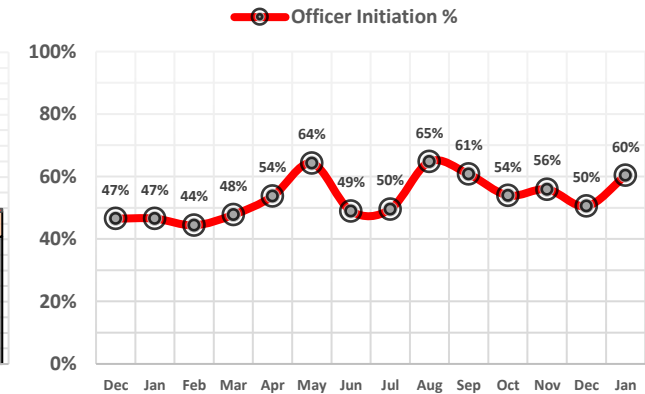
## RESPONSE TIME (P1) AVG



## SF PRIORITY 1 - 3 CALLS



## SF OFFICER-INITIATED INCIDENTS



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

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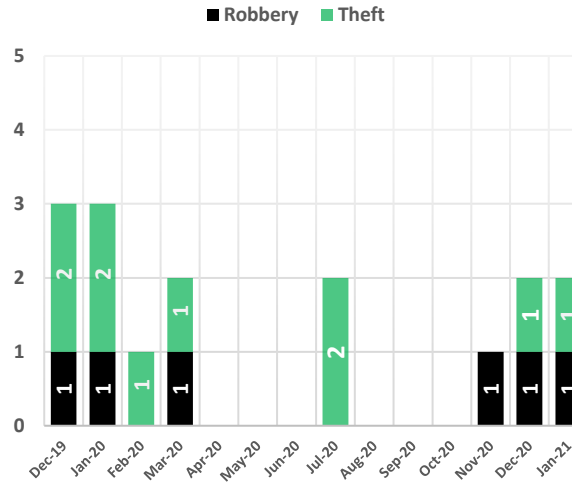
# Bay Area Rapid Transit Police Department

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

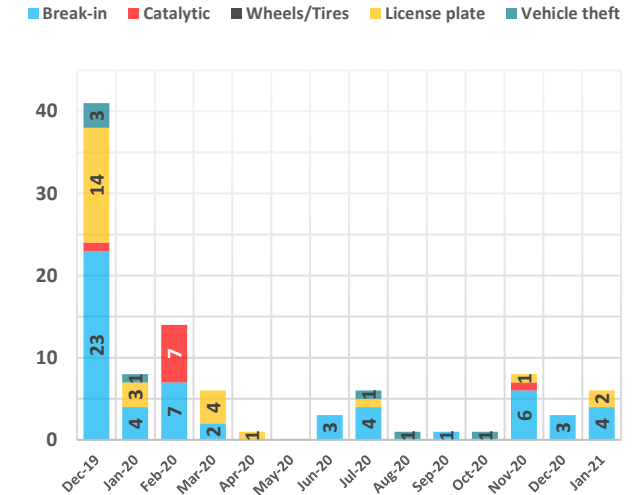
January 2021 Performance Measurement Review - San Mateo County

PART 1 UCR Crime	2017	2018	2019	2020	YTD 2019	YTD 2020	PCT %
Homicide	0	0	0	0	0	0	-%
Rape	1	0	1	1	0	0	-%
Robbery	15	8	13	6	1	1	0%
Aggravated Assault	6	5	8	4	2	0	-100%
<b>Violent Crime Subtotal</b>	<b>22</b>	<b>13</b>	<b>22</b>	<b>11</b>	<b>3</b>	<b>1</b>	<b>-67%</b>
Burglary (Structural)	0	0	0	1	0	0	-%
Larceny & Auto Burglary	208	161	332	75	12	7	-42%
Auto Theft	18	19	13	4	1	0	-100%
Arson	0	0	0	1	0	0	-%
<b>Property Crime Subtotal</b>	<b>226</b>	<b>180</b>	<b>345</b>	<b>81</b>	<b>13</b>	<b>7</b>	<b>-46%</b>
<b>TOTAL</b>	<b>248</b>	<b>193</b>	<b>367</b>	<b>92</b>	<b>16</b>	<b>8</b>	<b>-50%</b>

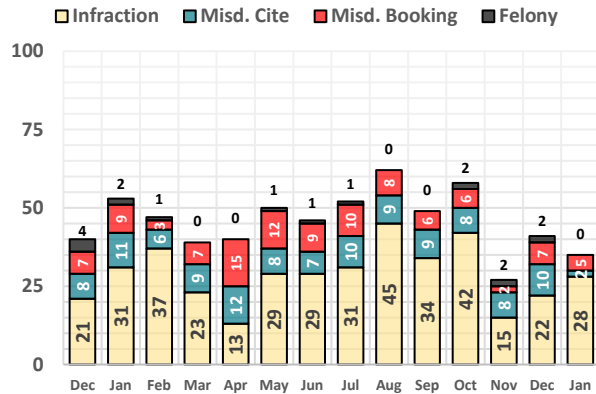
## SAN MATEO ELECTRONIC THEFT



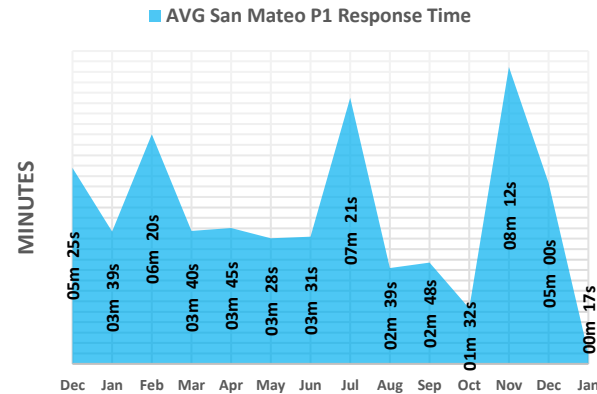
## SAN MATEO VEHICLE CRIME



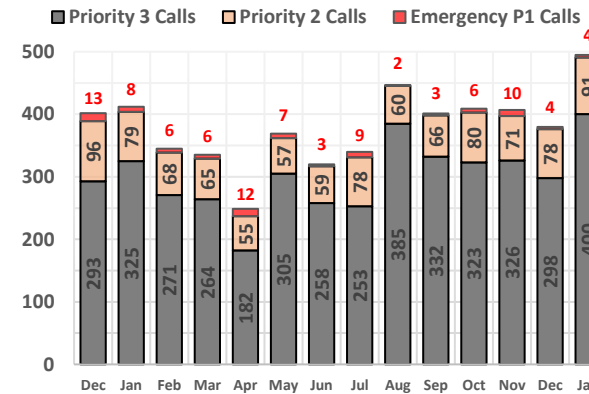
## SMC ARRESTS & CITATIONS



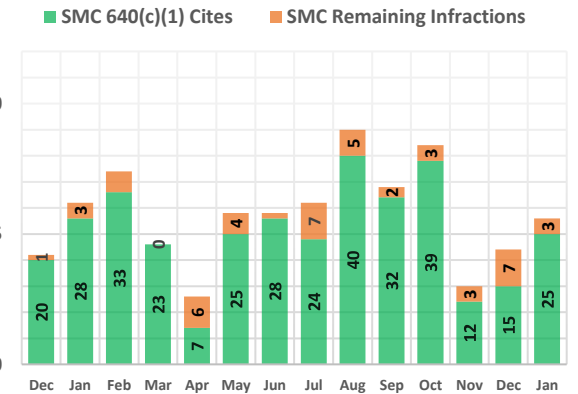
## RESPONSE TIME (P1) AVG



## SMC PRIORITY 1 - 3 CALLS



## SMC FARE EVASION



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

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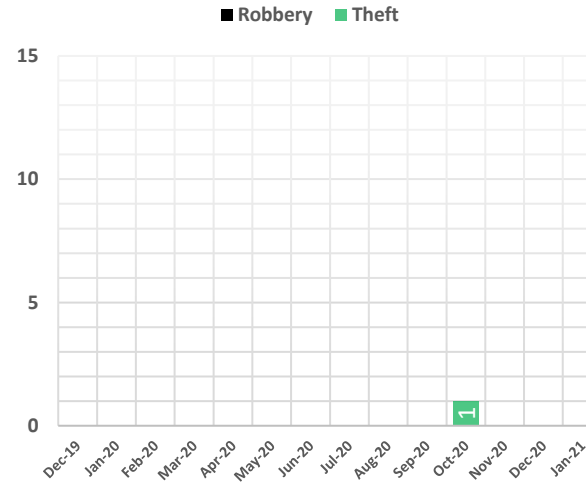
# Bay Area Rapid Transit Police Department

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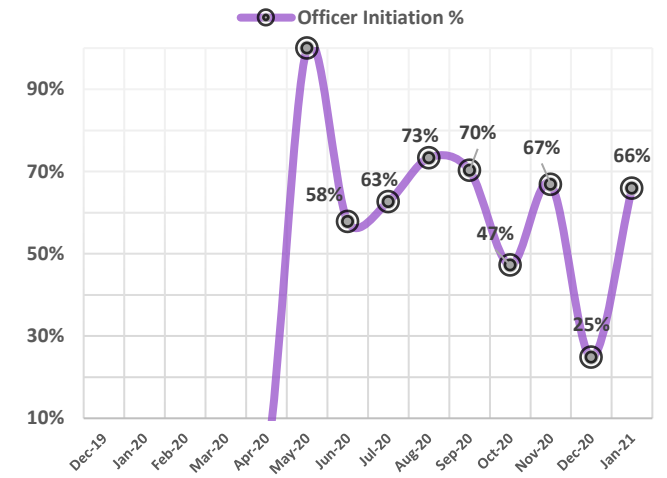
January 2021 Performance Measurement Review - Santa Clara County

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

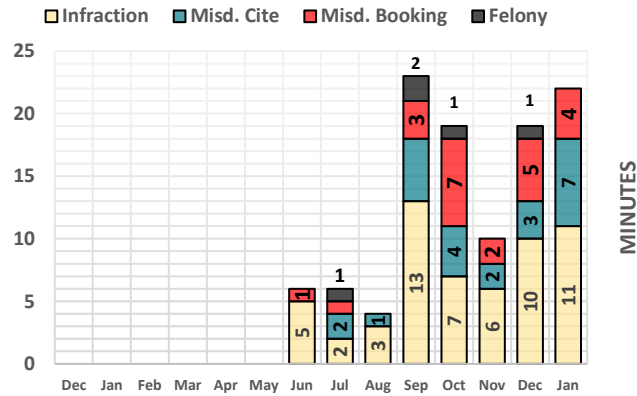
## SANTA CLARA ELECTRONIC THEFT



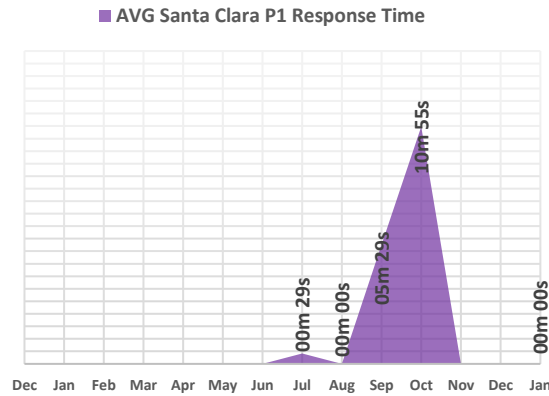
## SCC OFFICER-INITIATED INCIDENTS



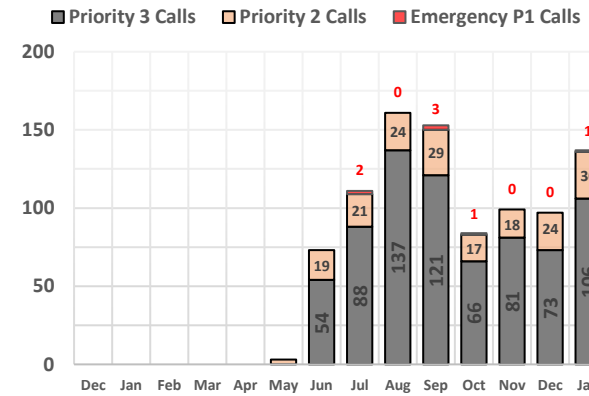
## SCC ARRESTS & CITATIONS



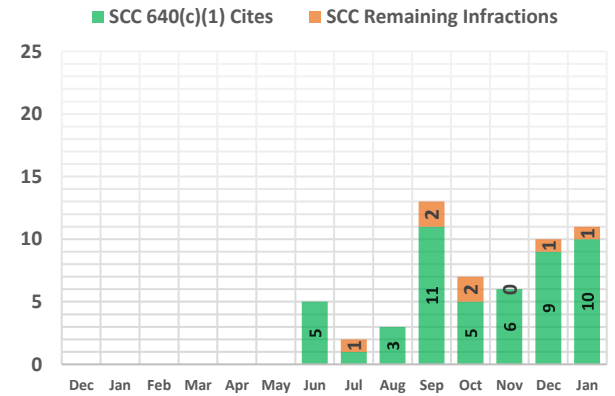
## RESPONSE TIME (P1) AVG



## SCC PRIORITY 1 - 3 CALLS



## SCC FARE EVASION



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## BART Police Department - Office of Internal Affairs

### Investigation Log

IA#:	DATE OCC'D	DATE REC'D	ALLEGATION	MISC	INVESTIGATOR	STATUS	5 Month Date	Due Date
IA2018-001	1/3/2018	1/3/2018	Force (OIS)		Lt. Salas	Tolled	6/4/2018	
IA2018-043	6/6/2018	6/6/2018	Force		Sgt. Spears	Pending Approval	11/5/2018	
IA2018-060	7/22/2018	7/23/2018	Service Review		Lt. Salas	Tolled	12/23/2018	
IA2020-017	2/15/2020	2/15/2020	Force		Sgt. Spears	Tolled	7/16/2020	2/15/2021
IA2020-015	2/12/2020	2/12/2020	Force, Arrest/Detention	Deferred to OIPA #20-07	OIPA	OIPA Investigation	7/13/2020	2/12/2021
IA2020-020	3/6/2021	2/20/2020	Force	OIPA Intake #20-10	Sgt. Spears	Pending Approval	7/21/2020	2/20/2021
IA2020-022	2/19/2020	2/21/2020	Force, Arrest/Detention, Bias Based Policing, Search or seizure	Deferred to OIPA #20-11	OIPA	OIPA Investigation	7/22/2020	2/21/2021
IA2020-026	3/5/2020	3/9/2020	Arrest/Detention, BBP, Axon Policy/Procedure	Deferred to OIPA #20-14	OIPA	OIPA Investigation	7/30/2020	3/9/2021
IA2020-027	11/10/2019	3/12/2020	POD, Supervision		Lt. Salas	In Progress	4/10/2020	3/12/2021
IA2020-028	3/12/2020	3/12/2020	Force		Sgt. Mavrakis	In Progress	8/11/2020	3/12/2021
IA2020-035	4/26/2020	4/26/2020	BBP,CUBO, Axon	Formal/Admin Investigation	Lt. Salas	In Progress	9/25/2020	4/26/2021

IA2020-036	Unk	4/30/2020	Arrest/Detention, POD, Axon	OIPA Intake #20-17	Lt. Salas	In Progress	9/29/2020	4/30/2021
IA2020-037	Unk	4/30/2020	POD	OIPA Intake #20-18	Sgt. Mavrakis	In Progress	10/3/2020	4/30/2021
IA2020-039	5/14/2019	5/14/2020	POD		Sgt. Mavrakis	In Progress	10/12/2020	5/14/2021
IA2020-042	6/2/2020	6/3/2020	CUBO, Force, BBP		Sgt. Mavrakis	In Progress	11/2/2020	6/3/2021
IA2020-044	6/4/2020	6/5/2020	CUBO, Courtesy, Policy/Procedure	Deferred to OIPA #20-19	OIPA	In Progress	11/4/2020	6/5/2021
IA2020-046	6/8/2020	6/8/2020	BBP, CUBO		Sgt. Mavrakis	In Progress	11/7/2020	6/8/2021
IA2020-047	6/11/2020	6/12/2020	CUBO	Clear by Video	Sgt. Mavrakis	In Progress	11/11/2020	6/12/2021
IA2020-048	7/23/2020	7/23/2020	Force		Sgt. Mavrakis	In Progress	12/22/2020	7/23/2021
IA2020-050	7/7/2020	8/17/2020	Arrest/Detention, Force		Sgt. Spears	In Progress	1/16/2021	8/17/2021
IA2020-051	8/18/2020	8/21/2020	BBP		Sgt. Spears	In Progress	1/20/2021	8/21/2021
IA2020-056	8/29/2020	8/31/2020	CUBO	Possible Clear by Video	Sgt. Mavrakis	In Progress	1/30/2021	8/31/2021
IA2020-057	8/12/2020	8/27/2020	CUBO	Deferred to OIPA #20-22	OIPA	In Progress	1/26/2021	8/27/2021
IA2020-058	9/2/2020	9/3/2020	Force, CUBO	Deferred to OIPA #20-23	OIPA	In Progress	2/2/2021	9/3/2021
IA2020-059	9/4/2020	9/4/2020	POD, Policy/Procedure		Sgt. Spears	In Progress	2/3/2021	9/4/2021

IA2020-060	9/9/2020	9/11/2020	POD, CUBO, Force, Policy/Procedure		Lt. Salas	In Progress	2/10/2021	9/11/2021
IA2020-061	9/9/2020	9/17/2020	CUBO, Courtesy, Axon		Lt. Salas	In Progress	2/16/2021	9/17/2021
IA2020-062	5/21/2020	9/17/2020	Bias Based Policing, CUBO		Sgt. Spears	In Progress	2/21/2021	9/17/2021
IA2020-063	9/18/2020	9/18/2020	Arrest/Detention - Handcuffing, CUBO, Search/Seizure, Axon		Sgt. Spears	In Progress	2/22/2021	9/18/2021
IA2020-065	9/14/2020	9/14/2020	Force, CUBO, POD		Lt. Salas	In Progress	2/13/2021	9/14/2021
IA2020-066	9/17/2020	9/18/2020	Force, CUBO, Bias, POD, Axon		Sgt. Spears	In Progress	2/17/2021	9/18/2021
IA2020-069		10/14/2020	POD	Deferred to OIPA #20-26	OIPA	OIPA Investigation	3/15/2021	10/14/2021
IA2020-070	10/20/2020	10/21/2020	Force, Arrest/Detention, Search/Seizure	OIPA Intake #20-28	Lt. Salas	In Progress	3/22/2021	10/21/2021
IA2020-071	10/15/2020	10/16/2020	Courtesy, POD	Possible Clear by Video	Sgt. Spears	In Progress	3/17/2021	10/16/2021
IA2020-075	10/23/2020	10/23/2020	BBP, Courtesy	Possible Admin Closure	Sgt. Spears	In Progress	3/24/2021	10/23/2021

IA2020-076	10/27/2020	10/29/2020	Arrest/Detention, CUBO, POD, Axon		Sgt. Spears	In Progress	4/3/2021	10/29/2021
IA2020-077	10/16/2020	11/9/2020	Force, Arrest/Detention, CUBO	Deferred to OIPA #20-29	OIPA	In Progress	3/16/2021	11/9/2021
IA2020-078	11/3/2020	11/13/2020	Courtesy	Possible Clear by Video	Sgt. Spears	In Progress	4/3/2021	11/13/2021
IA2020-079	11/9/2020	11/9/2020	POD	Possible Admin Closure	Sgt. Spears	In Progress	4/9/2021	11/9/2021
IA2020-080	9/14/2020	10/26/2020	Arrest/Detention		Sgt. Spears	In Progress	2/14/2021	10/26/2021
IA2020-081	11/18/2020	11/18/2020	Policy/Procedure		Lt. Salas	In Progress	4/19/2021	11/17/2021
IA2020-082	11/17/2020	11/17/2020	BBP, CUBO		Sgt. Mavrakis	In Progress	4/19/2021	11/17/2021
IA2020-083	11/19/2020	11/19/2020	Force, Axon		Sgt. Spears	In Progress	4/20/2021	11/19/2021
IA2020-085	11/27/2020	11/30/2020	CUBO, Axon	Possible Admin Closure	Lt. Salas	In Progress	5/1/2021	11/30/2021
IA2020-086		11/25/2020	POD, Axon		Lt. Salas	In Progress	4/26/2021	11/25/2021
IA2020-087			Awaiting Information					12/31/1900
IA2020-089	12/15/2020	12/15/2020	Force		Sgt. Spears	In Progress	5/16/2021	12/15/2021
IA2020-090	12/11/2020	12/13/2020	CUBO	S.R.	Sgt. Mavrakis	In Progress	1/12/2021	12/13/2021
IA2020-091	11/29/2020	11/29/2020	Force		Sgt. Mavrakis	In Progress	4/30/2021	11/29/2021

IA2020-092	11/24/2020	11/30/2020	Arrest/Detention	Inquiry	Sgt. Mavrakis	In Progress	12/30/2020	11/30/2021
IA2020-093	12/3/2020	12/18/2020	CUBO	OIPA Intake #20-32, S.R.	Sgt. Mavrakis	In Progress	1/17/2021	12/18/2021
IA2020-095	12/24/2020	12/29/2020	CUBO, POD		Sgt. Mavrakis	In Progress	5/30/2021	12/29/2021
IA2020-096	12/29/2020	12/29/2020	Force		Sgt. Mavrakis	In Progress	5/30/2021	12/29/2021
IA2021-001	1/2/2021	1/2/2021	Arrest/Detention		Sgt. Mavrakis	In Progress	6/30/2021	1/2/2022
IA2021-002	1/2/2021	1/4/2021	BBP, CUBO		Sgt. Mavrakis	In Progress	6/5/2021	1/4/2022
IA2021-003	9/11/2019	1/7/2019	Force		Sgt. Mavrakis	In Progress	6/8/2021	1/7/2020
IA2021-004	1/5/2021	1/5/2021	Force		Sgt. Spears	In Progress	6/6/2021	1/5/2022
IA2021-005	1/20/2021	1/22/2021	POD		Sgt. Mavrakis	In Progress	6/6/2021	1/22/2022
IA2021-006	1/20/2021	1/20/2019	Force		Sgt. Mavrakis	In Progress	6/21/2021	1/20/2020
IA2021-007	1/26/2021	1/26/2021	Unk		Sgt. Spears	In Progress	6/27/2021	1/26/2022
IA2021-008	1/8/2021	1/11/2021	Unk	Admin Closure	Lt. Salas	In Progress	6/12/2021	1/11/2022



# BART Watch - 2021

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
Crime in Progress	7												7
Disruptive Behavior	163												163
Drug Use	61												61
Human Trafficking	0												0
Illegally Parked Vehicle	1												1
Aggressive Panhandling	4												4
Report a Crime Tip	5												5
Robbery/Theft	4												4
Sexual Assault/Lewd Behavior	5												5
Suspicious Activity	26												26
Unattended Bag or Package	4												4
Unsecure Door	2												2
Vandalism	9												9
Welfare Check	28												28
<b>Total</b>	<b>319</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>319</b>
Text-a-Tip	1031												1,031

Total Downloads:

**91,186**



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

February 2021

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Issue date: March 8, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **February 1, 2021 through February 28, 2021**.<sup>1</sup>

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

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>5</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	0
BART Police Department	5
<b>TOTAL</b>	<b>5</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

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

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-009)	Officers #1-2: • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	32
2 (IA2021-010)	Officers #1-2: • Force	BPD initiated an investigation.	20
3 (IA2021-011)	Unknown # of Officers/Employees: • Performance of Duty	BPD initiated an investigation.	22
4 (IA2021-012)	Officer #1: • Force • Bias-Based Policing	BPD initiated an investigation.	19
5 (IA2021-013)	Officers #1-3: • Force	BPD initiated an investigation.	20

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During February 2021, **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 (IA2020-020)	Officers used excessive force during an arrest.	Officers #1-3: • Force – Exonerated	384	368
2 (IA2020-027)	Two officers failed to properly secure a detainee, one employee used inappropriate language and injured complainant while using force on the detainee, and a supervisor failed to properly manage the scene and did not take appropriate disciplinary action against the involved officers for generating inaccurate reports.	Officers #1-2: • Performance of Duty – Exonerated  Officer #3: • Force – Exonerated • Conduct Unbecoming – Unfounded  Officer #2: • Policy/Procedure (AXON Camera) – Sustained  Officer #4: • Supervision – Unfounded	361	337
3 (IA2020-028)	Officers used excessive force during a detention.	Officers #1-2: • Force – Exonerated	361	350

## OIPA FINDINGS OVERTURNED BY THE BART GENERAL MANAGER AFTER APPEAL BY THE CHIEF OF POLICE\*

During February 2021, the Chief of Police and the BART General Manager took the following action in a case where one allegation of misconduct was sustained by OIPA and approved unanimously by the BPCRB:

Complaint #	Nature of Complaint	REVISED Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1	Officer improperly cited subject for fare evasion.	Officer #1: • Arrest/Detention (Citation) – <b>Not Sustained</b> †	389	329

## DISCIPLINE ISSUED DURING REPORTING PERIOD

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

Case #	Nature of Sustained Allegation(s) ‡	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion <sup>10</sup>
2	Officers initiated an improper detention and used excessive force during the detention.	Officers #1-2: • Force • Arrest/Detention	Officer #1: • Informal Counseling (Not Documented) <sup>11</sup>  Officer #2: • Written Reprimand <sup>12</sup>

\* Details regarding the appeal process that was finalized during this reporting period are included in the narrative section below.

† OIPA reached a finding of **Sustained** for this allegation.

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

## ADDITIONAL NOTES

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

Investigations Being Conducted	9
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	60
Investigations Reviewed During Current Month	8†

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

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

The BPD Internal Affairs investigations, Supervisor Use of Force Reports (SUFRs), officer contacts, and body-worn camera recordings reviewed by OIPA during this reporting period generated recommendations for policy/practice revisions and requests for additional action.<sup>13</sup>

### **BPD Supervisor Use of Force Reports**

OIPA's review of SUFRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend review by BPD Command Staff and the Office of Internal Affairs in some instances.

These referrals were related to:

- Late or failed AXON body-worn camera activations
  - Including late activations reported as "timely" by officers and reviewing supervisors
  - In one instance, discipline has yet to be issued in connection with this policy violation despite clear written instructions to the officer's supervising Lieutenant
- Discipline not properly recorded as required for an AXON body-worn camera policy violation
  - The progressive discipline system under which the Department operates requires proper documentation of issued discipline so that subsequent violations may be appropriately addressed
- Incomplete supervisory reviews
  - Including a use of force involving multiple baton strikes and a TASER activation

- A supervisor determined the force to be within policy without viewing available station video.
- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance
  - Some sworn BPD officers have initiated detentions by asking riders for proof of payment absent reasonable suspicion in violation of Constitutional protections from such detentions
  - This application of the PoP Ordinance does not reflect the systematic approach to enforcement that was proposed by BPD when the BART Board of Directors voted to approve the Ordinance
  - This practice may exacerbate existing racially disparate outcomes by allowing officers to decide whom to detain based solely on the officer's perceptions about who may be using the system without carrying valid proof of payment
- Mis-categorization of a use of force in BPD Blue Team
  - A supervisor described a use of force as "Handgun Draw" despite video evidence showing that the weapon was pointed at the subject.
    - There is a category for "Handgun Point"
- Officer's use of a face covering bearing graphics despite the Chief's prohibition
  - According to BPD Bulletin 20-269, officers may only wear a solid white, navy blue, light blue (surgical), or solid black mask with the word "Police" in white lettering.
  - The officer was wearing a face covering identifiable as a "flag design," though there is no clear indication that it was a "Thin Blue Line" flag design.
- Mis-categorization of body-worn camera video
  - After an internal BPD audit, an adjustment to video retention times to facilitate that audit, and updated instructions transmitted to all personnel via a Bulletin from the Chief, OIPA detected instances in which a Field Training Officer labeled his recordings as a required daily test of the equipment when they were, in fact, recordings of law enforcement contacts
  - These violations raise concerns about the efficacy of the training related to body-worn camera use

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

As previously reported here, BPD command staff have committed to improving data collection efforts to better document the underlying reason for a contact that results in an arrest.

Improved data collection is expected to facilitate more effective analysis of contact outcomes related to low level criminal activity and the manner in which enforcement contributes to racially disparate outcomes.

I will continue to monitor the efforts of the department as they endeavor to make improvements.

## **BPD Appeals of OIPA Findings and Recommendations**

In 2017 the BART Board of Directors approved an independent examination of the BART Citizen Oversight System to determine whether the need existed to make improvements to the system. This review was performed by the OIR Group and their final report, including 54 recommendations, was submitted to the Board of Directors in early 2018. The Board of Directors approved implementation of 50 OIR recommendations and rejected adoption of 4 recommendations.

The Model has always included a mechanism by which the BPD Chief of Police may appeal OIPA findings and recommendations after approval by a majority of the BPCRB. Prior to the 2018 Model revision, this process required only that the Chief communicate to the BART General Manager (GM) a desire to overturn the findings and the GM could then make a final determination absent any discussion with either the Independent Police Auditor (IPA) or the BART Police Citizen Review Board (BPCRB). Further, the GM was historically permitted to overturn the independent findings and recommendations without any explanation for the reversal or any factual or evidentiary analysis.

The revised Model still provides that the Chief may appeal OIPA findings and recommendations to the GM. Under the existing Model, however, the Chief must convey his intention to appeal to the GM who must then convene a confidential meeting including the IPA, the Chief of Police, and a representative of the BPCRB. The Chief is also now required to put forth the reasons and arguments for the appeal in writing, setting forth his disagreements and his own recommended findings.

OIPA received two citizen complaints on February 12 and February 21, 2020, respectively. After a thorough investigation, OIPA reached findings including sustained allegations and disciplinary recommendations for subject officers in each of the two cases.

Both investigative reports were presented to the BPCRB in closed session on January 11, 2021. The BPCRB approved OIPA's findings in both cases and a memo documenting the outcome was transmitted to the Chief on January 12, 2021.

State law requires that any discipline must be issued within one year of receipt of the associated complaint or the launch of an administrative investigation by the Department. At the time of OIPA's transmittal of the investigative findings, there was one month remaining within which discipline could be issued pursuant to state law. The transmittal email included an additional notification advising the Chief of the relatively small window of time within which to issue the discipline or appeal the findings.

The GM received one appeal memorandum from the Chief on February 5, 2021. This memo was forwarded to OIPA and to the Chair of the BPCRB on February 9, 2021. The GM also received a second appeal memorandum from the Chief on February 5, 2021 related to the second OIPA investigation. This memorandum was forwarded to OIPA and to the Chair of the BPCRB on February 8, 2021.

The GM convened a meeting on February 11, 2021. This meeting, described in the Model as a confidential meeting to include the GM, the Chief, the IPA, and a representative of the BPCRB, also included the BART Deputy General Manager.



On February 12, 2021, the GM issued a memo documenting his rejection of the Chief's appeal of one of the cases and leaving intact the findings of OIPA as approved by the BPCRB.

On February 16, 2021, the GM issued a second memo in which he overruled OIPA's finding related to one sustained allegation and a related recommendation for discipline. This memo documented the GM's imposition of a new disposition of Not Sustained.<sup>§</sup>

OIPA maintains that the factual analysis on which we relied warranted a Sustained finding and that sufficient facts were established and analyzed to reach that conclusion. It is my opinion that OIPA's findings were fully supported by the existing applicable BPD policy language that was not effectively refuted by the arguments put forth by the Chief. The Chief's appeal memo for this case included a recommendation for a finding of Exonerated, which was also rejected by the GM.

The OIR Group's appeal process revision recommendation was intended to allow the GM to make a "better-informed determination" based on input from the parties and to provide for a public accounting of the process and the outcomes. The language of the approved OIR recommendation related to this issue requires that the GM "set out her/his findings in writing." While the GM's memos of February 12 and February 16 are informative as to the outcome, the memos did not provide OIPA with any insight into the analysis or reasoning for the findings.

Mere disagreement with the outcome should not be considered sufficient to undermine the independence of the Citizen Oversight System, which includes checks and balances to ensure that OIPA's findings are supported by sound analysis and objective investigative processes.

This appeal process has reached its end and the GM's decision is final. The Model requires reporting on the outcome by OIPA. This Model provides, specifically, that where a final determination rescinds or modifies the initial disposition, OIPA is required to identify any systemic issues and/or the potential for the serious erosion of accountability related to such modifications.

Erosion of accountability and community trust are both of concern in light of these events. OIPA is prohibited by state law from revealing confidential information related to personnel matters, but it is important to identify that both the initiation of the appeal and the final determination necessarily implicate the Department's approach to enforcing fare evasion violations.

Communities served by BPD may reasonably bristle at an approach to enforcement that eliminates officers' responsibility to evaluate mitigating factors and evidence by treating fare evasion as a general intent crime for which intent to evade fare payment is not required.

This reversal empowers BPD officers to disregard evidence of accidental or mitigated entry/exit via fare gates, elevators, and emergency exits. That is, officers may determine that the criminal act of fare evasion is completed, and a citation may be issued based solely

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<sup>§</sup> It is the practice of both OIPA and IA to apply a finding of Not Sustained where an investigation reveals that insufficient information or evidence was available to reach a reasoned finding of Sustained or Exonerated.

on the mere appearance of fare evasion, regardless of any mitigating factors or explanation provided by the rider (e.g. broken ticketing machine, malfunctioning fare gate, absent station agent, lost wallet, lost Clipper Card, medical emergency, etc.).

OIPA agrees that the Chief of Police should be provided an avenue to appeal OIPA outcomes that have been approved by the BPCRB. However, OIPA believes that the appeal should be centered firmly on an alternative and objective analysis of existing facts, and that officers must be consistently held to the requirements of the policy language in effect at the time of the contact at issue.

To maintain officer accountability and community trust in BART's system of civilian oversight of the police department, the GM should avoid changing findings reached via the independent police oversight system unless the Chief can provide a clear and reasoned argument as to the inaccuracy of OIPA's findings.

Unfortunately, absent additional transparency requirements related to the issuance of the GM's decision memo, it remains unclear how the GM analyzed the available evidence to reach a finding of Not Sustained.

#### **Fare Evasion Enforcement Policy (#419)**

Separate from consideration of the Chief's appeal, the GM has directed the Chief to revise BPD Policy #419 to exclude existing examples of fare evasion that contain the requirement of an intent element. The revised policy will include language instructing officers that the appearance of fare evasion, i.e. moving from the paid to free or free to paid area of a station, represents a completion of the criminal act fare evasion for which officers may issue a citation.

The existing policy language provides little guidance as to interpretation of an intent requirement in Penal Code Section (§640(C)(1)) and whether officers should or must consider available evidence and information which would allow them to make an evidence-based determination about whether the subject intended to evade payment.

It is my opinion that systematic and authorized disregard for available mitigating information and evidence dehumanizes these contacts and may undermine the Department's efforts to generate and maintain community trust.

The new policy language will allow officers to issue a citation to apparent fare evaders, at their discretion, regardless of any available evidence indicating an intent to pay. This approach may result in the issuance of citations to riders who intended to pay the District and is likely to raise concerns about the equitable application of that discretion.

Importantly, the application of discretion by officers has historically resulted in racially disparate outcomes at BART, including a significantly higher likelihood that Black people will be contacted, cited, detained, arrested, issued prohibition orders, and subjected to more use of force than any other racial group. Eliminating a requirement that officers minimally inquire or clarify available evidence to determine criminal intent undermines efforts to mitigate those racial disparities, which stands in contrast to the District's and the Department's commitment to racial equity and progressive policing.

OIPA disagrees with the propriety of this policy revision and will continue to illuminate areas where the Department and the District might do more to increase the trust of the communities we serve.

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

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

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

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

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

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

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

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

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

<sup>10</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>11</sup> Informal Counseling (first level of pre-discipline): When warranted, an informal counseling may be the first step of the process. It is an informal discussion between a supervisor and an employee about conduct, attendance, or work performance. It is not documented and is pre-disciplinary.

<sup>12</sup> Written Reprimand (first level of formal discipline): If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement (up to 3 years), the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee’s personnel files.

<sup>13</sup> OIPA may submit recommendations to IAB 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.



# ▶ Roll Call for Introduction

Progressive Policing

BART Police Citizen Review Board Meeting

March 8, 2021



# Roll Call for Introduction 20-832

*"In response to Black Lives Matter, the tragic murder of George Floyd by Minneapolis Police, Bay Area social justice protests and public demand, the Board of Directors requests that the General Manager works with the Board of Directors on an immediate stakeholder process to develop changes to the BART Police model that de-emphasize the use of sworn personnel to respond to homelessness, behavioral health and substance use, among other issues that do not need an armed police response. Recognizing that much has been done to implement progressive and equitable policing practices, we also need to consider a different model of public safety that is more effective and prevents racially biased policing."*

# Progressive Policing at BART & BART PD Statistics

# BART Progressive Policing to Date

- BART Board created a police review committee in 2009
- Established the Office of the Independent Police Auditor in 2011 and BART Police Citizen Review Board in 2012
- Partnered with the Center for Policing Equity (CPE) in 2012
- Created Crisis Intervention Training (CIT) and Community Outreach Coordinator positions in 2014
- One of the first transit agencies to implement the use of body-worn cameras for all officers in 2013



# BART Progressive Policing to Date (Cont.)

- The first California agency to have POST-certified instructors for Fair and Impartial Policing training in 2016
- A pilot agency for the Police Executive Research Forum's Integrating Communications, Assessment and Tactics (ICAT) program in 2016
- Implemented the Law Enforcement Assisted Diversion (LEAD) program in partnership with San Francisco PD and Public Health in 2017
- Launched a pilot project of 10 unarmed Ambassadors and have since formalized and expanded the program in 2020
- Established a new Progressive Policing and Community Engagement Bureau in 2020



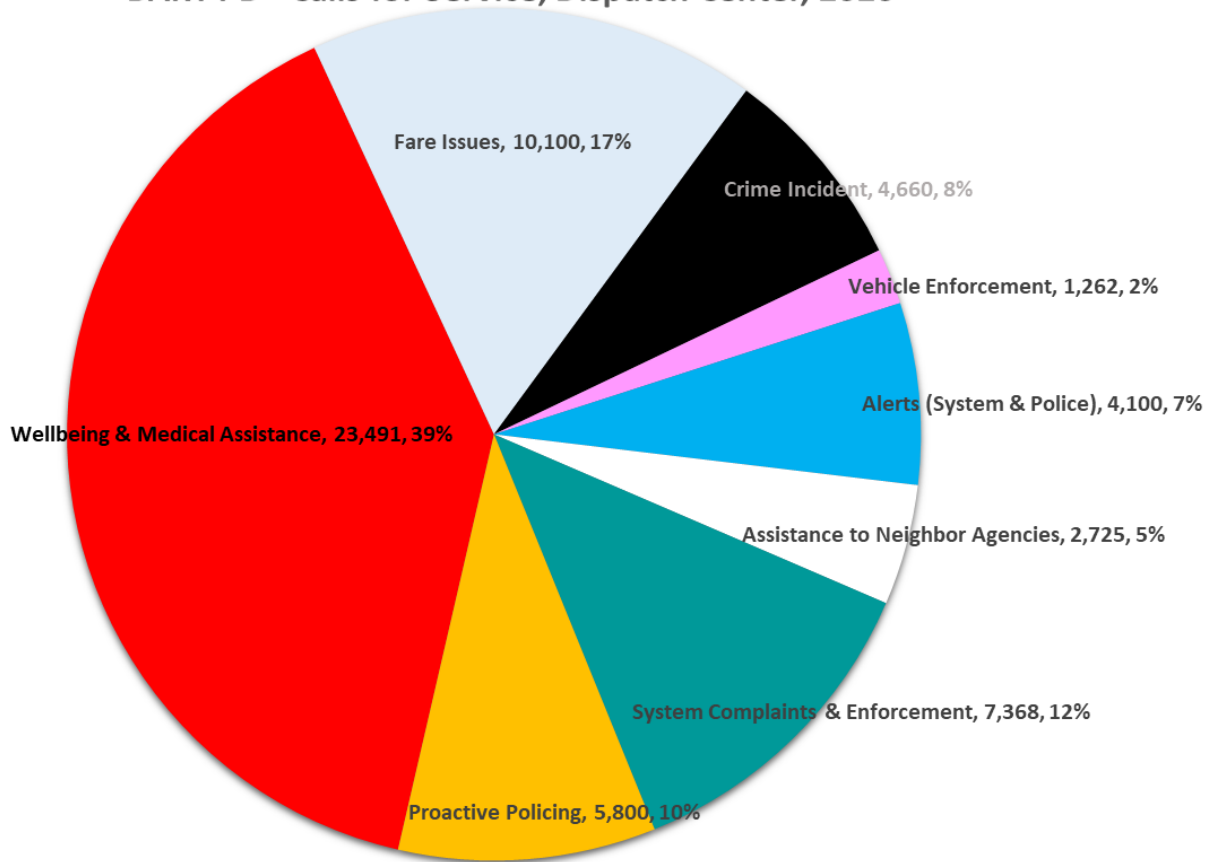


# BART Progressive Policing Classifications

Sworn	Supervisor of Crisis Intervention and Outreach Programs	Crisis Intervention Specialist	Transit Ambassador
<ul style="list-style-type: none"> <li>• Supervises</li> <li>• Patrols</li> <li>• Responds</li> <li>• Proactive</li> <li>• Reactive</li> <li>• Armed</li> <li>• Uniformed</li> </ul>	<ul style="list-style-type: none"> <li>• Supervises</li> <li>• All skillset of Crisis Intervention Specialist (CIS)</li> <li>• Monitor and deploy CIS</li> <li>• County/City homeless coordination</li> <li>• Monitor Quality of Life (QOL) data w/ system</li> <li>• Unarmed</li> <li>• Plain clothes</li> </ul>	<ul style="list-style-type: none"> <li>• Engage those experiencing QOL issues; identify potential services for mental health, crisis intervention, homeless and supportive housing services</li> <li>• Coordination w/ field reps from counties and cities</li> <li>• BART point for Hot Teams</li> <li>• Proactive</li> <li>• Reactive</li> <li>• Unarmed</li> <li>• Clothing with BART logo</li> </ul>	<ul style="list-style-type: none"> <li>• Presence in system</li> <li>• Observe and report</li> <li>• Proactive</li> <li>• Max visibility on trains</li> <li>• Unarmed</li> <li>• BART uniform</li> </ul>

# Calls for Service - Overview

BART PD - Calls for Service, Dispatch Center, 2020



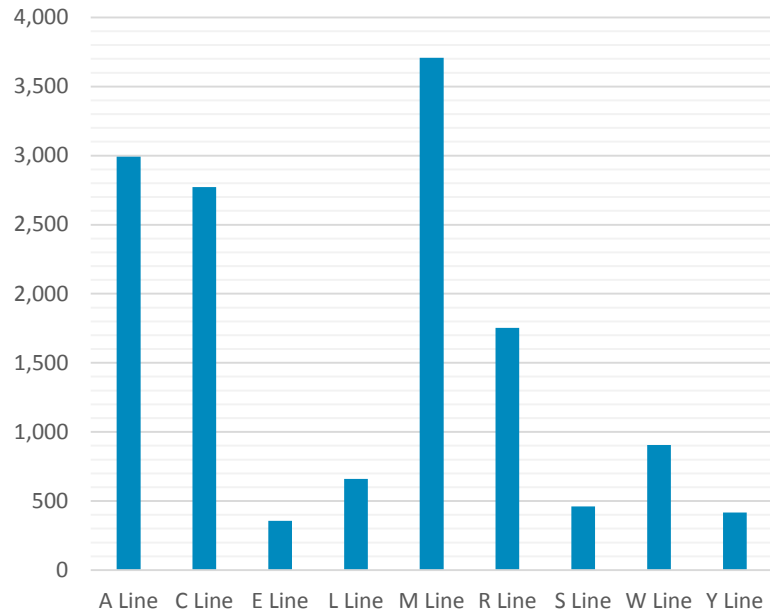
- Grouped 210 dispatch call for service types into eight distinct categories as shown on the graph
- New calls for service types are often created to best represent the situation
  - Example: Communicable Disease Violation created in 2020 to document instances of BPD contacts with persons not wearing masks within the station property.

# Welfare Checks

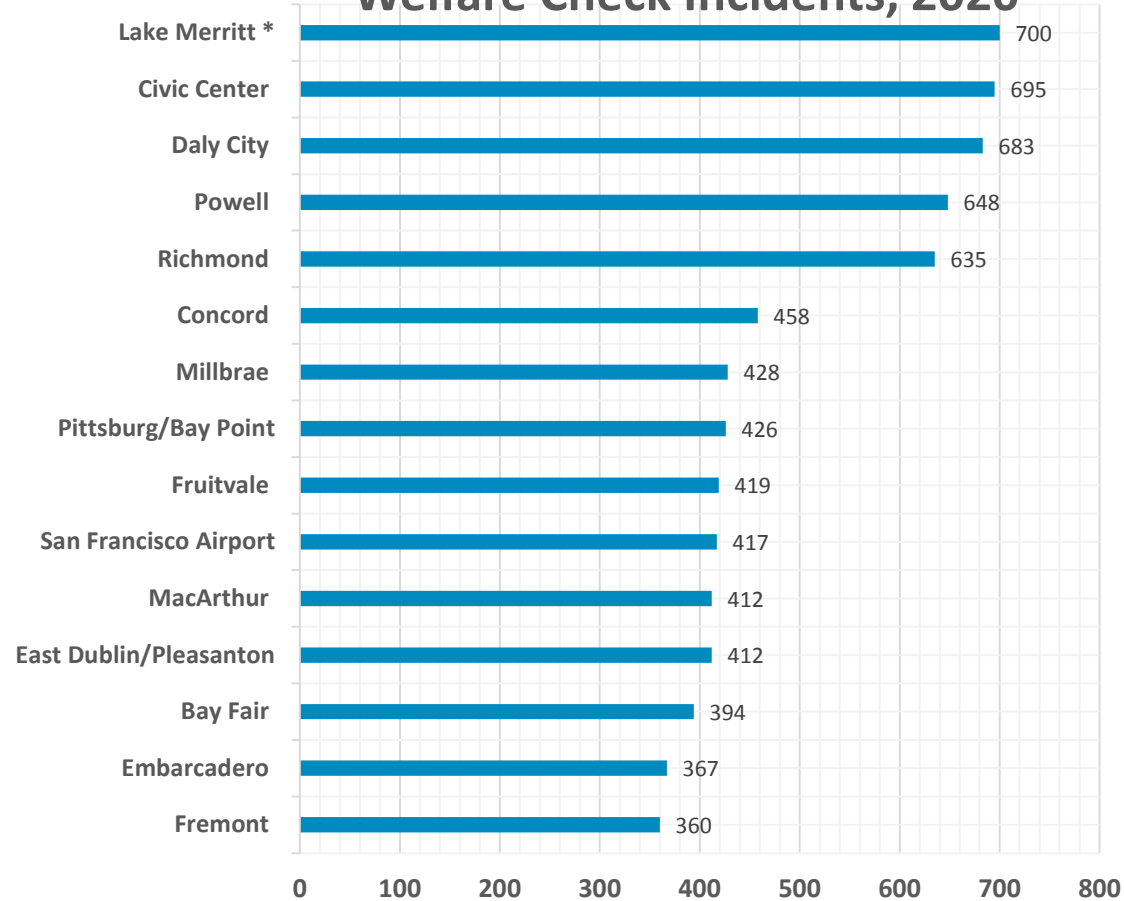
Code used: Welcheck

Top 15 stations represent over 50% of the call volumes for Welfare Checks (estimated 15,000/year)

Welfare Checks by BART Line, 2020



Welfare Check Incidents, 2020



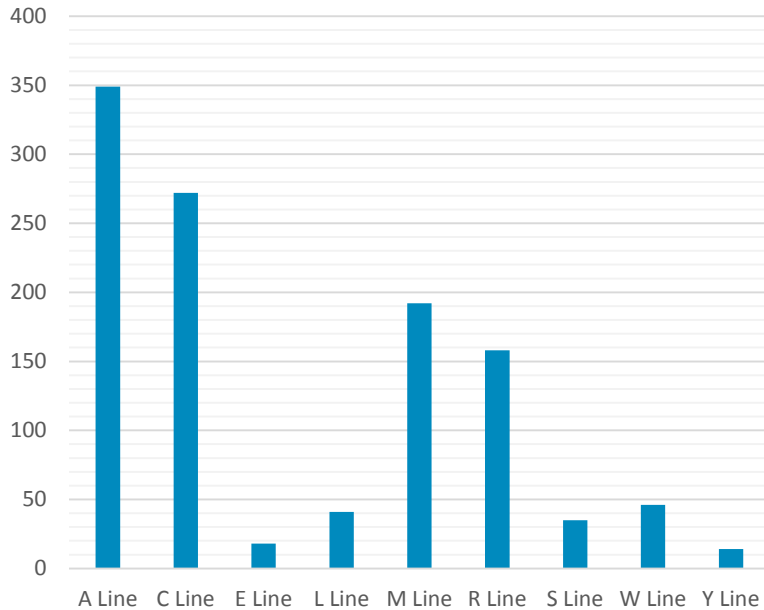
\*Lake Merritt is a default catch-all location for most incidents during a moving train without a precise location anywhere in the district.

# Mental Health

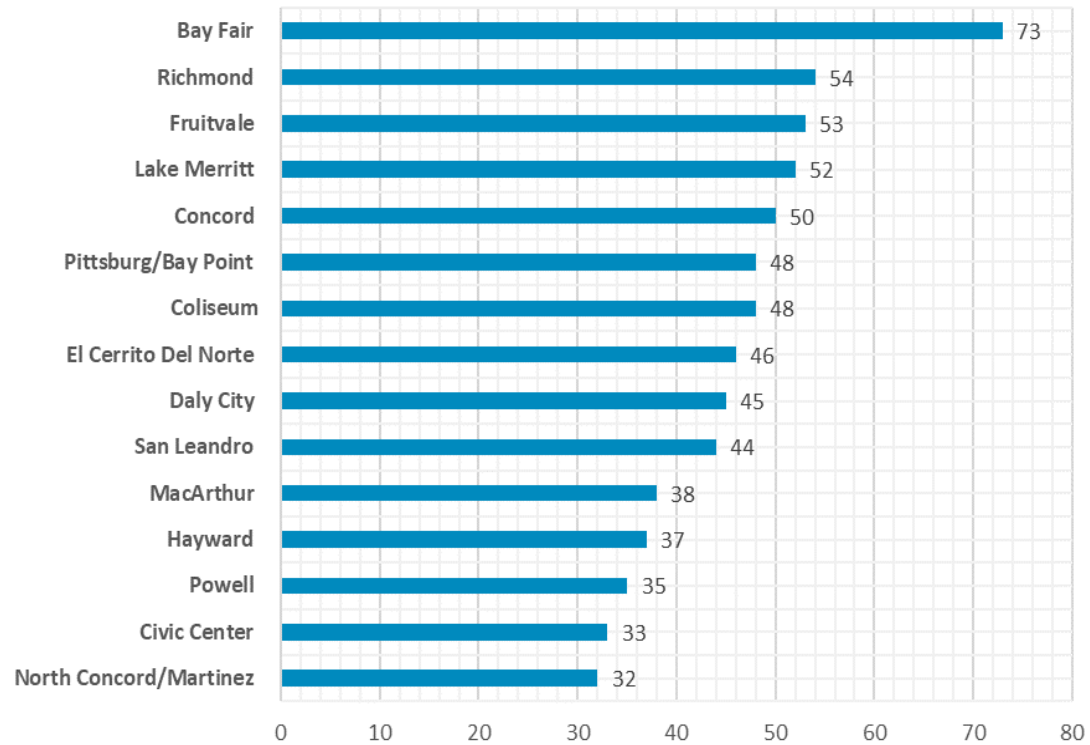
Code used: WI5150

Top 15 stations represent 60% of the call volumes for Health and Mental Evaluations (estimated at 1,300 incidents per given year)

### Mental Health Incident by BART Line, 2020



### Psychiatric Evaluation Incident, 2020

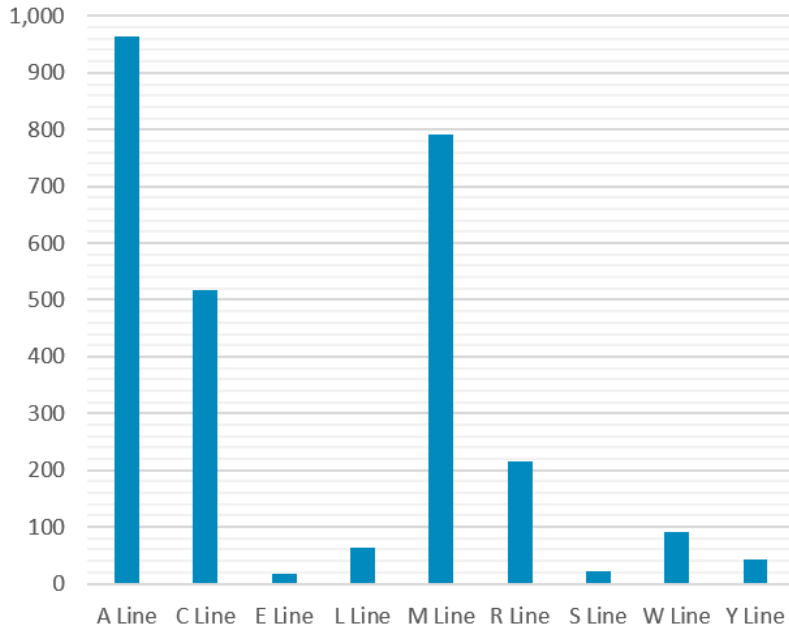


# Substance Use

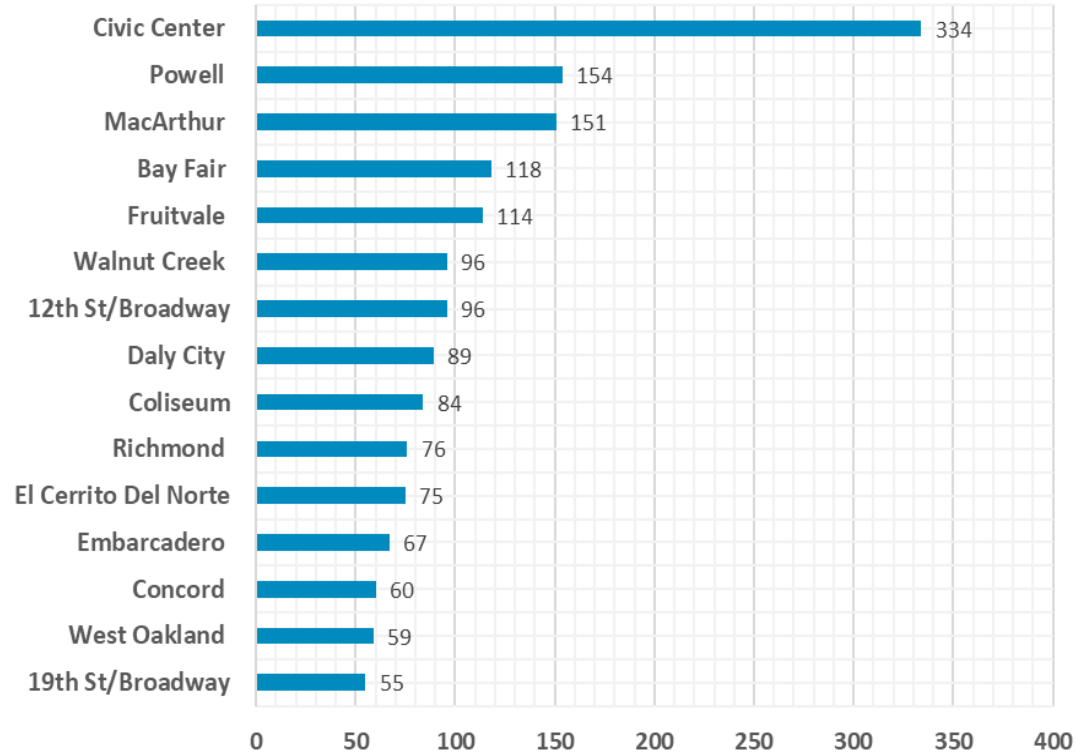
Code used: Multiple Vaping, Possess Drugs & Narcotics, Smoking on Train, Under the Influence, Visibly Intoxicated, Carrying possible narcotics, General Health & Safety violation codes, etc.

Top 15 stations make up over 50% of incidents, excluding Lake Merritt, which has 21% of overall system issues. These incidents are estimated at 3,000 instances per given year.

Substance Use by BART Line, 2020



Substance Use Incidents, 2020



# Stakeholder Engagement Process

# Overview of Stakeholder Engagement Process

Seek input from a variety of internal and external stakeholder groups through two primary methodologies: stakeholder discussion sessions and a survey



- Stakeholder Sessions

- Interactive discussion design where participants had the opportunity to think collectively about the issues of drug use, unhoused riders, and behavioral health on BART.
- Participants began by envisioning what individual and community safety could and should look like on BART, followed by brainstorming three scenarios questions.
- Participants could also provide examples from their own experiences in which situations were handled well or, conversely, when they escalated.

# Methodology 1: Discussion Sessions

## Scenario Questions

- Scenario 1: "Imagine there is a person using drugs while on the BART train."
- Scenario 2: "Imagine there is an unhoused person on the train with their belongings spread out across several seats. The person appears to be either asleep or passed out."
- Scenario 3: "Imagine there is an individual who is acting erratically in the train."

## Follow up questions for each scenario

- "What issues of individual and community safety are at play in this scenario?"
- "Who should respond?"
- "What should their response be?"
- "In your experience, what are some examples of when a scenario like this was handled really well?"
- "In your experience what are some examples of when a scenario like this escalated?"
- "What additional interventions, supports or resources could have helped in this case?"



# Methodology 2: Surveys

## Internal Stakeholders (n=56)

- Respondents included members of the BART Police Department, BART Police Union Leaders, BART Frontline Workers, BART Accessibility Task Force, Frontline Workers' Union Leaders & Members of the BART Police Citizen Review Board

## External Stakeholders (n=944)

- Respondents included Riders who are part of BART's Research database(n=441), Session Participants (n=54) & General Public (n=449)



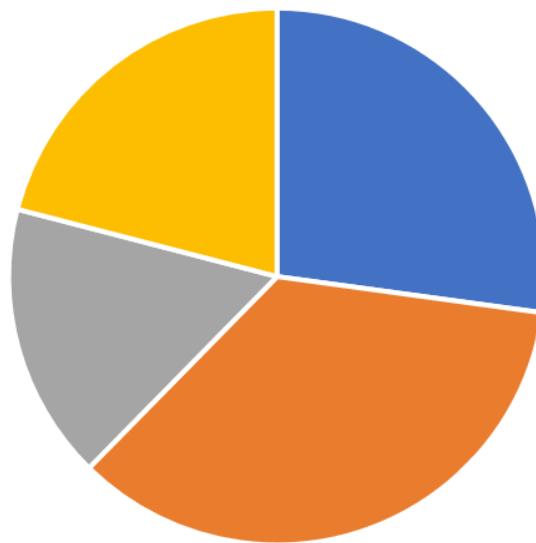
How do you think BART should address **drug use on BART**; what type of Personnel, interventions, tactics etc.?

How do you think BART should address **unhoused riders**; what type of personnel, interventions, tactics etc.?

How do you think BART should address **riders experiencing behavioral health issues**; what type of personnel, interventions, tactics etc.?

# Combined Survey Results on How BART Should Address 3 Key Issues Identified in the RCI

Combined Surveys



■ Police Response (824) 27.2%

■ Civilian Response (1068) 35.2%

■ Combination Police and Civilian (506) 16.7%

■ Other\* (636) 21.0%

\*Top 'Other' categories are:

- Stop fare evasion, station hardening, monitor gates
- If not causing trouble, let them be
- Clean the system/Make it safe/Do something
- Do not allow drug use at all
- Don't know/Not much can be done
- BART is for transit, not a BART issue/BART should continue to do what it does best - safe, clean, green transportation

# Takeaways from the Stakeholder Engagement Process

# Be The Change Recommendations Based on Stakeholder Feedback

1. Increase number and type of civilian staff to respond to societal issues
2. Establish more collaboration with human services organizations and counties
3. More enforcement and more uniformed presence
4. Engage and educate the public on BART rules, current BART efforts and issue reporting options
5. Provide additional training and improve hiring practices in BPD
6. Engage frontline workers in first response
7. BART to explore creative ways to leverage their facilities to meet needs

Plan

# Plan Based on Stakeholder Feedback

## *1. Increase number and type of civilian staff to respond to societal issues*

Action Plan	Short-Term Implementation	Medium-Term Implementation	Long-Term Implementation
<p>Implement Pilot Crisis Intervention teams consisting of:</p> <ul style="list-style-type: none"> <li>• Supervisor of Crisis Intervention and Outreach Programs</li> <li>• Crisis Intervention Specialist</li> <li>• Plain clothes Officer (security)</li> </ul>	<p>Add resources dedicated to BPD Progressive Policing Bureau:</p> <ul style="list-style-type: none"> <li>• 20 New Crisis Intervention Specialists (10 + 10)</li> <li>• 2 additional Sergeants and 10 additional Officers (existing)</li> </ul>	<p>Establish response protocol</p>	<p>Evaluate program for 18-month period by setting data driven benchmarks and reevaluate to determine if modifications need to be made</p>

# Plan Based on Stakeholder Feedback (Cont.)

## *2. Establish more collaboration with human services organizations and counties*

Action Plan	Short-Term Implementation	Medium-Term Implementation	Long-Term Implementation
Create and socialize a Districtwide Homelessness Action Plan	<ul style="list-style-type: none"> <li>• Launch BART Homelessness Advocacy delegation and begin discussions with Bay Area leaders to convey homelessness priorities</li> <li>• Hire Senior Manager of Social Services Partnerships to coordinate BART efforts with external programs</li> </ul>	<ul style="list-style-type: none"> <li>• Establish agreements; identify funding</li> <li>• Clarify regional roles and responsibilities</li> </ul>	Advocate for specific funding opportunities to enhance services

# Plan Based on Stakeholder Feedback (Cont.)

## 2a. Senior Manager of Social Services Partnerships

### Senior Manager of Social Services Partnerships Job Duties Include:

Develops and administers the Strategic Homeless Action Plan for BART.

Develops and manages partnerships with external stakeholders – including cities, counties, state and federal agencies, and non-profit organizations; coordinates priorities and services with external stakeholders; and leads advocacy efforts focused on securing support and resources from external partners. Develop fiscal advocacy strategy and implement with regional partners.

Partners with BART Communications Department to create and distribute program updates, announcements, stories, and other relevant information to a wide range of stakeholders.

Partners with BART Police Department to ensure all programs are in alignment with the Progressive Policing policies.

Directs outreach and passenger wellness programs, including elevator attendant program, homeless outreach activities, and restroom attendant program.



# Plan Based on Stakeholder Feedback (Cont.)

## 3. *More enforcement and more uniformed presence*

Action Plan	Short-Term Implementation	Medium-Term Implementation	Long-Term Implementation
Review current BPD deployment strategy and focus on enhancements that prioritize more BPD personnel on trains	Conduct review of current deployment and re-assign as many personnel to trains as possible	Add additional BPD Train Team and more Non-Sworn personnel to continue to increase presence within the system	Prioritize uniformed (sworn and non-sworn) presence on trains

# Plan Based on Stakeholder Feedback (Cont.)

## 4. Engage and educate the public on BART rules, current BART efforts and issue reporting options

Action Plan	Short-Term Implementation	Medium-Term Implementation	Long-Term Implementation
<p>Launch communication campaign focusing on:</p> <ul style="list-style-type: none"> <li>Progressive Policing and Community Engagement Bureau</li> <li>BPD Train Team(s)</li> <li>Media tour with key BPD and OIPA officials</li> </ul>	<ul style="list-style-type: none"> <li>Partnership with Alliance for Girls on youth safety</li> <li>Promote BART Watch and Text BART Police</li> <li>Support the OIPA's efforts to increase visibility and provide patrons with options to engage</li> </ul>	<ul style="list-style-type: none"> <li>Conduct virtual community meetings with focus on introducing the new Deputy Chief and announcing the staffing levels dedicated to new bureau</li> <li>Increase community engagement with the Chief of Police</li> </ul>	<p>Conduct rider survey to evaluate effectiveness of communications campaign and modify if necessary</p>

# Plan Based on Stakeholder Feedback (Cont.)

## *5. Provide additional training and improve hiring practices in BPD*

Action Plan	Short-Term Implementation	Medium-Term Implementation	Long-Term Implementation
Design and Implement new training programs for all staff engaged in community policing	Develop progressive policing curriculum using training funding identified in the FY21 budget; Train all BPD staff by October 2021	Conduct review of BPD hiring to determine what enhancements to expand skillset of personnel	Implement hiring enhancement recommendations

# Plan Based on Stakeholder Feedback (Cont.)

## 6. *Engage frontline workers in first response*

Action Plan	Short-Term Implementation	Medium-Term Implementation	Long-Term Implementation
Provide additional avenues for frontline staff to report disturbances and aid BPD	Enhance partnerships between frontline staff and Police liaisons to enhance relationships	Create voluntary training program for frontline workers that focus on de-escalation techniques	Evaluate outcomes and enhance as necessary

# BART Recommendation Based on BTC Feedback (Cont.)

*7. BART to explore creative ways to leverage their facilities to meet needs*

## Action Plan

- Incorporate into action plan #2 and emphasize potential land use opportunities
- Expand temporary housing partnerships (Salvation Army)

# BART Deployment Plan

Line	Deployment Location	Staffing	Hours
Yellow	Walnut Creek	2 Crisis Intervention Specialists, 1 Police Officer	4:00am – 12:00pm; 3:30pm – 11:30pm
Green (Pink)	Fremont / Berryessa	2 Crisis Intervention Specialists, 1 Police Officer	4:00am – 12:00pm; 3:30pm – 11:30pm
Orange	El Cerrito Del Norte	2 Crisis Intervention Specialists, 1 Police Officer	4:00am – 12:00pm; 3:30pm – 11:30pm
Blue	Castro Valley	2 Crisis Intervention Specialists, 1 Police Officer	4:00am – 12:00pm; 3:30pm – 11:30pm
Red (Purple)	Powell Street	2 Crisis Intervention Specialists, 1 Police Officer	4:00am – 12:00pm; 3:30pm – 11:30pm

# Discussion



# BART Progressive Policing: Stakeholder Engagement Recommendations

JANUARY 14, 2021





# Executive Summary

Our country, our state and the Bay Area are experiencing a crisis with regard to increasing numbers of people experiencing homelessness, behavioral health issues and substance use. These national crises are visible in BART stations and on trains as unhoused people, individuals experiencing behavioral health issues and individuals using illegal substances are increasingly using BART for shelter. Rising rates of homelessness and related quality-of-life issues on BART present unique challenges for a transit system, and highlight a pressing need for action and understanding from us, our riders, and our partner agencies in the communities we serve.

During the past 6 months, BART engaged in a comprehensive stakeholder engagement effort designed to seek input on the most effective ways to address this growing challenge and build a safe and healthy response.

Key stakeholder voices contributing to this conversation included people who ride BART, frontline BART employees, sworn and non-sworn police personnel, BART Police Citizen Review Board, and other key community stakeholders. Participants were asked to share their experiences, their recommendations and their visions for a safe and healthy BART system.

Nearly every stakeholder engaged in this process noted they had seen issues of homelessness, substance use and behavioral health show up on BART trains and in the stations. Through extensive categorization of data and analysis of responses, recommendations and suggestions, the following broad categories of recommendations emerged and are listed in order of frequency:

- Increase the number and type of civilian professionals who respond to societal issues on BART.
- Establish more collaboration with human service organizations and counties.
- More enforcement and more uniformed presence.
- Engage and educate about BART rules, what BART is doing, and how to report issues.
- Provide additional training for the BART Police Department, improve hiring practices for the BART Police Department.
- Engage frontline workers in first response.

BART is heeding the call to more effectively build safety within the system, but this challenge cannot be addressed alone.

BART has initiated a number of promising practices that support implementation of an effective approach and those should be studied and scaled. In addition, there are a series of recommendations that have been developed to embed a team approach to these issues—both across the region and within the system. With safety and wellness as the goal, BART can invest in preventing further harm and intervening effectively when someone is in crisis.

This report seeks to outline the approach to this process, current efforts underway and provide a series of recommendations for next steps.

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# 1. Defining the Context



*BART Police Chief Ed Alvarez introduces the unarmed ambassador program*

At its June 25, 2020 meeting, the BART Board of Directors directed staff to conduct a stakeholder engagement process to determine alternatives to using armed police for issues of homelessness, behavioral health and substance use in the BART system.

“Recognizing that much has been done to implement progressive and equitable policing practices, we also need to consider a different model of public safety that is more effective and prevents racially biased policing,” stated the measure, which was introduced by Director Rebecca Saltzman.

The action came in the context of the Black Lives Matter movement, the

death of George Floyd under the knee of a Minneapolis police officer in May 2020, and the subsequent nationwide social justice demonstrations over disproportionate policing impacts.

The issue of policing equity has deep history at BART in light of one of the transit agency’s most painful chapters. On January 1, 2009, a white BART Police officer shot and killed a 22-year-old African-American man, Oscar Grant, on a platform at Fruitvale Station. The officer was ultimately charged and convicted of manslaughter. It was one of the first cases in the United States where cellphone video from bystanders galvanized protests and drove a call for reforms, and it changed BART in profound ways.

Since that time, the BART Police Department has seen more than a decade of significant reforms, many of which have been on the leading edge of progressive policing in America. Today, BART has more personnel dedicated to public safety—not just armed officers, but also positions such as ambassadors and fare inspectors—than it has had at any point in its 48-year-history.

These reforms include structural changes such as adding citizen oversight and reforms like the use of body-worn cameras by officers.

- The creation by the BART Board of a police review committee that engaged the National Organization of Black Law Enforcement Executives (NOBLE) to examine police incidents and provide greater focus on BART's police responsibilities.
- The establishment of the Office of the Independent Police Auditor and BART Police Citizen Review Board filled with a diverse range of laypeople and subject matter experts drawn from throughout the BART service area.
- Partnership with the Center for Policing Equity (CPE), a national research and action think tank that works to analyze racial disparities in data of law enforcement contacts and reduce potential police bias as a possible contributing factor. Partnership with CPE includes training and data analysis.
- Creation of the position of Crisis Intervention Training (CIT) and Community Outreach Coordinator, filled by Armando Sandoval.
- In 2013, BART Police fully implemented the use of body-worn cameras for all officers, becoming one of the first transit agencies to issue the cameras to personnel. In 2014, BPD launched the BART Watch app, which allows riders to communicate discreetly and in real time with police dispatchers and send files such as photographs or videos.



*An unarmed fare inspector checks a rider's ticket for proof of payment*

In 2015, the Office of the Independent Police Auditor, BART Citizen Review Board and BPD worked collaboratively to adopt a policy for interactions with transgender people, on the forefront of this civil rights issue.



*BART was one of the first agencies to issue body-worn cameras to its personnel*

BART PD was the first California agency to have POST-certified instructors for Fair and Impartial Policing training. Officers also receive training in bias-based policing, crisis intervention, cultural competence, and de-escalation.

BART PD also was a pilot agency for the Police Executive Research Forum's ICAT program—Integrating Communications, Assessment and Tactics.

Meanwhile, in 2017 BART PD implemented the Law Enforcement Assisted Diversion (LEAD) program in partnership with San Francisco PD and Public Health, focusing on harm reduction by allowing low-level offenders to choose treatment instead of jail. This pilot program was not renewed due to funding cuts, but it gave valuable insights into the harm reduction model.

In addition to increased outreach, on a parallel track, BART also expanded the role of fare inspection teams and piloted various “station hardening” improvements, such as higher barriers and different styles of faregates. In 2018, a Proof of Payment ordinance went into effect, and BPD created and filled civilian Fare Inspector positions.

In 2019, BART PD gained a prestigious accreditation from CALEA, the Commission on Accreditation for Law Enforcement Agencies, an accreditation that is given to fewer than 6% of agencies nationwide.

In February 2020, BART launched a pilot project of 10 unarmed Ambassadors, with the goal of increasing the presence of uniformed personnel on trains, focusing on education and outreach. Ambassadors wear easily identifiable uniforms distinct from those of Community Service Officers or Fare Inspectors. They are equipped with radios to report safety and security concerns or biohazards. The Ambassadors are also trained to respond to customers’ questions, complaints or requests for service. They also observe and report and call upon an officer when enforcement is needed.



*A new, harder-to-evade style of faregate shown at Concord Station, part of parallel “station hardening” efforts for greater safety and security*

During the pilot program, customer surveys showed an increase in the perception of uniformed presence aboard trains. The Ambassadors conducted over 5,700 platform checks and were contacted by over 6,700 customers.

Especially important during the pandemic, Ambassadors conducted over 7,300 additional educational contacts, serving as an important component of BART’s educational campaign to encourage compliance with mandated face coverings.

The Ambassador program was formalized and expanded upon in October 2020 using \$1.8 million in funds identified for pandemic response including staff to encourage physical distancing and mask compliance.

Also, in 2020, BPD Chief Ed Alvarez established a new Community Engagement and Progressive Policing Bureau to be headed by Deputy Chief Angela Averiett. Averiett will be in charge of the expanded non-sworn personnel, which will include one Community Outreach Specialist Supervisor and 10 social-work trained Crisis Intervention Specialists. Recruitment for the new positions will be at [www.bart.gov/jobs](http://www.bart.gov/jobs).

The Progressive Policing and Community Engagement Bureau personnel will build upon the work done for the past several years by dedicated BPD staff, like Sandoval, and crisis-intervention/homeless outreach focused police officers.





*Sonja Hagins Perry was reunited with her son with help from BART Police*

The officers work with social-resource partners to connect those in need with services. For example, BART Police have helped countless people struggling with homelessness, mental illness and drug addiction to reunite with family members, get treatment and begin to restore their lives.

Over the coming weeks, BART will finalize our Strategic Action Plan on Homelessness. It will be a road map for how BART moves forward in dealing with societal issues, and will be informed by this public outreach process.

To improve information sharing, BART is working on a pilot with OpenLattice to create a specialized CARE app (Coordination, Assessment, Responses, Engagement) for internal use. The CARE app will include a HIPAA-compliant database of homeless services across the Bay Area region. It will be available to frontline officers or other personnel who engage with homeless individuals within BART's system, allowing them to track contacts and share changes in an individual's resource needs. BART understands that many service providers and shelters are at capacity due to the region's homelessness crisis. By engaging with the full range of available services and documenting outcomes of referrals, BART will improve its outreach and help facilitate better support for its transit homeless.

BART is and always has been centered around its customers. Their safety is BART's number one priority. BART has created multiple ways that customers can contact BPD Dispatchers directly and discreetly. Dispatchers are trained to ask the right questions to assess what type of response may be needed, including sending staff to check on the welfare of individuals who may be in crisis.

BART has an ongoing public awareness campaign that includes a website with information to educate BART's passengers on ways to report issues. The public can also utilize the Official BART app or the BART Watch app (both available for free in the App store) to send in reports in real time. The more eyes and ears on the system, the better positioned BART can be in supporting those in need of services. It is also important that BART customers understand the homeless have civil rights protections; it is not illegal to be homeless, to have a mental illness or to suffer from addiction.

## You Can Now Text BART Police

**Text  
(510) 200-0992**




- Available 24/7
- Include station name or train car number
- Save the number in your contacts

**We Still Offer the BART Watch App**



**For Non-emergencies Only.**  
For emergencies dial 911 or call BART Police at (510) 464-7000



## 2. Overview of the Stakeholder Engagement Process

The stakeholder engagement process included seeking input from a variety of internal and external stakeholder groups through two primary methodologies: stakeholder discussion sessions and a survey.

**Stakeholder Sessions.** Stakeholder sessions utilized an interactive discussion design where participants had the opportunity to think collectively about the issues of drug use, unhoused riders, and behavioral health on BART. Participants began by envisioning what individual and community safety could and should look like on BART, followed by brainstorming responses to three scenarios. Through the discussion of the scenarios and who should respond to them, participants could also provide examples from their own experiences in which situations were handled well or, conversely, when they escalated.

- Scenario 1: "Imagine there is a person using drugs while on the BART train."
- Scenario 2: "Imagine there is an unhoused person on the train with their belongings spread out across several seats. The person appears to be either asleep or passed out."
- Scenario 3: "Imagine there is an individual who is acting erratically in the train."

Follow up questions for each scenario included some or all of the following, time permitting

- "What issues of individual and community safety are at play in this scenario?"
- "Who should respond?"
- "What should their response be?"
- "In your experience, what are some examples of when a scenario like this was handled really well?"
- "In your experience what are some examples of when a scenario like this escalated?"
- "What additional interventions, supports or resources could have helped in this case?"

After discussion of the scenarios, the sessions moved into open discussion/public comment and also allowed time for participants to fill out a survey where their anonymous feedback could be collected. Stakeholder sessions were conducted primarily on Zoom (a few internal sessions were held in person with participants wearing masks) and lasted approximately 1.5-2 hours each.

The process began in mid-September through early October with internal stakeholders including

- the BART Police Citizen Review Board
- members of the BART Police Department including BART Police Officers, Community Service Officers (CSOs), Fare Inspection Officers (FIOs), Police Administrative Specialists and Ambassadors
- frontline workers such as Train Operators, System Service Workers and Station Agents;
- union leadership for the BART Police Department
- union leadership for frontline workers

External stakeholder sessions began in early October and continued into November. Stakeholder sessions were conducted in each of the 9 BART Directors district's with BART Directors present as well as a few meetings with targeted groups to gain further feedback (one with LGBTQ+ advocates and mental health/social service providers).

**Table 1: Stakeholder Engagement Sessions**

Session	Date	# Attendees
BART Police Citizen Review Board	08/10/20	11
BART Police Department	09/28/20	14
BART Police Department	09/29/20	12
BART Police Union Leadership	09/30/20	5
BART Frontline Workers	10/01/20	10
BART Police Department	10/02/20	12
Frontline Union Leadership	10/06/20	6
BART District #6	10/19/20	3
BART District #3	10/20/20	15
BART District #4	10/26/20	17
BART District #5	10/27/20	15
BART District #2	10/28/20	15
BART District #7	10/29/20	30
LGBTQ+ Advocates Session	10/30/20	11
Mental Health/Social Service	11/05/20	19
Joint Session 1: BART Districts #8 & 9	11/05/20	51
BART District #6 (Makeup)	11/09/20	21
BART District #1	11/09/20	17
Joint Session 2: BART Districts #8 & 9	11/21/20	5

## Survey

The survey was open-ended and designed to collect respondent perspectives on how to address the issues of drug use, unhoused riders, and behavioral health in the BART system, mirroring the questions/scenarios raised in the stakeholder sessions. During each stakeholder session, participants were provided the survey link to offer further ideas and recommendations related to what was discussed in the session.



Additionally, a survey link was sent to 5,000 riders from the BART Research database from across the 9 BART Districts and areas served in San Mateo and Santa Clara counties. A survey link was provided on the bart.gov website so other interested parties could provide feedback. 1,000 total surveys were completed by the following groups:

### Internal Stakeholders (n=56)

- These respondents included members of the BART Police Department, BART Accessibility Task Force, BART Police Union Leaders, BART Frontline Workers, Frontline Workers’ Union Leaders & Members of the BART Police Citizen Review Board.

### External Stakeholders (n=944)

- Riders (n=441): Riders who are part of BART’s Research database.
- Session Participants (n=54) & General Public (n=449): these included participants in stakeholder sessions who were directed to the survey during the discussion and those who encountered it on the bart.gov website or via Twitter.

The survey started with collection of demographic data and then offered respondents the opportunity to provide answers to three sets of questions:

- “What do you think BART should do to address drug use? What type of personnel, interventions, tactics, etc.?”
- “What do you think BART should do to address unhoused riders? What type of personnel, interventions, tactics, etc.?”
- “What do you think BART should do to address riders experiencing behavioral health issues? What type of personnel, interventions, tactics, etc.?”

**Table 2: Timeline & Methodology for Stakeholder Process**

	September	October	November
<b>Internal Stakeholder Feedback Sessions</b> (7 sessions in total)	✓	✓	
<b>External Stakeholder Feedback Sessions</b> (12 sessions in total)		✓	✓
<b>Survey Collection</b> (56 Internal + 944 External) 1000 total surveys collected	✓	✓	✓

At each stakeholder session, extensive notes were taken and reviewed afterwards on a weekly basis for representative themes emerging from the discussions. Ideas for how to deal with issues of drug use, unhoused riders, and behavioral health given by participants in the sessions were placed into a list of emerging recommendations that were organized by categories (e.g., collaboration with counties and agencies, better training, hiring of new personnel to address issues, etc.). The surveys were also reviewed for themes and suggestions that were factored into the analysis and the development of the recommendations.

### 3. Key Findings from Stakeholder Engagement Process

Nearly every stakeholder engaged in this process noted that they had seen issues such as drug use, the presence of the unhoused, and behavioral health issues on BART trains and in stations. Participants converged in their desire for more presence of BART personnel and/or social service providers to address such issues; where respondents differed was in who should constitute that presence. Responses ranged from advocating for (a) more law enforcement; to (b) BART hiring more ambassadors; to (c) more engagement with organizational partners who can access BART to provide services or referrals; to (d) BART undertaking initiatives to provide direct service to those in need; to other suggestions.

#### Existing Partnerships

One key finding across stakeholder groups was the efficacy of partnerships that exist at present, and the need for scaling up such efforts. BART has an extensive network of partnerships, some formal and some informal, with community-based organizations and other partners in the counties it serves to deal with quality-of-life issues. Some of the partnerships mentioned in the listening sessions included:

- In **San Francisco County**: Swords to Plowshares, for veteran outreach; San Francisco Homeless Outreach Teams (SFHOT); the Syringe Access and Disposal Project; Salvation Army Homeless Outreach Teams (HOT); Pit Stop public restrooms; and Urban Alchemy for elevator attendants.
- In **Contra Costa County**, this includes the CORE (Coordinated Outreach, Referral, & Engagement) homeless outreach program;
- In **Alameda County**, these include: Mobile Crisis, Everyone Home, Swords to Plowshares Operation Dignity, Abode, and La Familia;
- In **San Mateo County**, these include Lifemoves; PERT (Psychiatric Emergency Response Team); SMART mobile psychiatric evaluation vehicle;
- In **Santa Clara County**, the newest service area, this includes Lifemoves;
- In all counties, BART participates in **Forensic Multidisciplinary Teams (FMDT)**, which work with the homeless, mentally ill, and those struggling with drug dependency.

In the stakeholder sessions and surveys, respondents made repeated mention of these programs and their efficacy, as excerpted in Table 3.

**Table 3: Selected Responses on Existing BART Partnerships**

“Initiatives that are not just the police make a huge difference here in BART. We started partnering with **Urban Alchemy** (UA) to provide elevator attendants. It completely changed the dynamic of what was happening in stations. People coming out of jail and in UA’s program were working at BART in our elevators. They helped us take our stations back. They helped with fare evasion and difficult people coming into stations too. I want it to get healthier. I want these kinds of initiatives.” (Station Agent)

“The BART Police Department (BPD) has someone who meets with **HOT teams** in different counties to help them call for the services they need. It is so important that BPD is taking that initiative. They are already doing a lot. I’ve seen homeless people come back after getting the services they need. We need more homeless outreach teams. The work BPD is doing is so important in the counties in which BART operates.” (Frontline Worker)

“A progressive engagement model would be more effective than a one-size-fits-all approach with a de-escalation attempt first. It’s tricky when there’s a matter that police get involved, when is that actually necessary? Who else can enforce the rules besides police? We have a **CORE outreach team** (5pm–1am; M–F) working at end of the line stations; this partnership has been super beneficial. These community members are routinized, and we can know what they need if we take a multi-pronged approach to serving them.” (External Stakeholder Session Participant)

“You guys are doing good with the **ambassadors**; I’ve seen them walking around, making sure that everything’s okay, and they’re very friendly. That is a major good thing for BART... It lets us know that ‘we’re watching you and we see you. ... we need more substations for ambassadors.” (External Stakeholder Session participant)

In stakeholder sessions, participants noted that some existing programs and partnerships were only for certain counties and that they should be scaled up across the five counties BART serves. For example, internal and external stakeholders in Alameda county who were aware of initiatives underway—particularly those led primarily in San Francisco by BART’s Crisis Intervention Training Coordinator and Community Outreach Liaison Armando Sandoval--repeatedly mentioned wanting those efforts to be scaled system-wide across the five counties.

## Internal Stakeholders

Internal stakeholders had distinct perspectives about addressing the issues of drug use, unhoused riders and behavioral health. In Table 4, the key concerns and themes of each discussion are listed from both the stakeholder session and the survey that was completed by members of each stakeholder group.

**Table 4: Internal Stakeholders’ Key Concerns/Themes**

Stakeholder Group	Key Concerns/Themes
<b>BART Police Department</b>	<ul style="list-style-type: none"> <li>Highlighted innovations that are working: e.g., BPD have crisis intervention training, carry NARCAN, ambassadors program, fare inspectors at some stations</li> <li>Fare evasion is a key concern; increased presence of fare inspectors needed.</li> <li>Use a centralized intake process to direct calls for help, dispatching police for issues where their skills in de-escalation and intervention will be most effective, and leveraging other partnerships for less extreme needs.</li> </ul>
<b>BPD Union Leadership</b>	<ul style="list-style-type: none"> <li>Increased violence in society in recent years is impacting BART</li> <li>Fare evasion is a principal cause of issues</li> <li>Need for hardening the system</li> <li>Lack of support/appreciation for the risks BPD takes</li> </ul>
<b>BART Police Citizen Review Board</b>	<ul style="list-style-type: none"> <li>Ambassadors as first responders who can de-escalate, police as back up</li> <li>More collaboration with professionals in counties/organizations</li> <li>Secure BART for paid riders; direct people in need to social services</li> </ul>
<b>Frontline Workers</b>	<ul style="list-style-type: none"> <li>Threats of violence that workers face &amp; concerns for safety is an issue</li> <li>Hire other professionals to work with BPD as partners</li> <li>Increase training for BPD to ensure greater cultural competency</li> <li>Maintain uniformed presence often a deterrent for illegal and/or dangerous behaviors</li> </ul>
<b>Frontline Union Leadership</b>	<ul style="list-style-type: none"> <li>Improve communication internally among BART divisions</li> <li>Increase community involvement (i.e., more collaborations with organizations)</li> <li>Integrate other partners to call besides BPD to deal with issues of drug use, unhoused &amp; behavioral health</li> <li>Train frontline workers to respond to issues</li> </ul>

Three BART Police Department sessions were held that included sworn officers and non-sworn personnel including CSOs, FIOs and Ambassadors. The themes and concerns that emerged from these sessions included the need to address fare evasion and the “porousness” of the stations that participants felt increased the presence of drug use, unhoused riders, and behavioral health issues on BART. While some participants advocated for an increase in the number of sworn officers, others suggested a “layered approach.” In the words of one stakeholder session participant, when responding to mental and behavioral health issues, “The police officer would be accompanied by a second set of eyes, possibly a mental health person... ideally it would be a layered approach that consists also of a clinician.”

The BPD Union Leadership stakeholder session echoed the themes and concerns laid out by members of BPD. Participants added that society is becoming increasingly violent (examples were given of the number of armed incidents increasing) and this enters into the BART system. Participants echoed the calls for “hardening the system” as well as expressing skepticism in the ability of “civilians” to effectively handle the issues that BPD addresses such as drug use and behavioral health issues.

The BART Police Department Citizen Review Board advocated for a mix of sworn and non-sworn personnel and others to respond to the issues raised. For example, one participant noted that BART should “use unarmed personnel to assess the issue and provide them resources and information that they can refer to this population; they can also... determine if law enforcement needs to be deployed (of course this requires training).” Certain Citizen Review Board members also advocated for securing BART by enhancing entry barriers, more referrals to social service providers or to make BART more accessible by eliminating fares altogether.

Frontline workers and their union leadership expressed concerns about workers’ safety: arriving to work at early hours and fearing for their safety while walking through an empty BART parking lot, having to clean up used syringes or finding themselves inadvertently inhaling toxic fentanyl while doing their job. One system service worker noted, “It’s scary not knowing if someone is coming up from behind. Finding needles. Having to clean it up, it’s my job but it’s hazardous. You never know what is going to happen. I had an instance of someone going at me on a platform; BPD showed up and told me to be careful because that person hit someone with an axe before.”

Frontline workers and their union leadership did note that often they will try to address an issue (and some advocated for more training to be able to intervene more effectively) but that it often doesn’t get resolved until a sworn officer arrives and can enforce a resolution with more punitive measures; this resulted in some participants noting that uniformed personnel (whether sworn or non-sworn) presented a deterrent for illegal behavior such as drug use or erratic actions. A participant gave the recent example of a man loudly cursing and exposing himself to riders, getting on and off the train at different stations, and that multiple frontline workers attempted to address; nothing worked until a uniformed officer showed up and the person complied with their directions to exit the station. Frontline workers also noted that their only option is to call BPD and there should be other resources for issues that do not warrant a police response. There were also sentiments that better communication among BART entities as well as better training for BPD for cultural competency in addition to hiring more BPD personnel from local communities of color. One frontline worker shared, “The officers who I see do really well know their community. That makes a world of difference. Our police need some education about the community they are working in.”

## External Stakeholders

External stakeholders included community advocates as well as riders and the general public.

### Riders & General Public

For the riders who were surveyed (n=441), a majority of respondents wanted more enforcement of drug use on BART, especially given the health risks posed to riders and especially children of exposure drugs such as fentanyl or through exposure to a used syringe. A majority of riders also advocated for greater support by BART staff or external partners who could provide social services to the unhoused and those experiencing behavioral health crises. For example, one rider noted they would like to see more “Mental health workers who are trained in de-escalation and can provide on-the-spot assessments and treatment if necessary.”

Surveys completed through the bart.gov homepage also suggested similar attitudes towards drug use, unhoused riders, and behavioral health issues on BART. Suggestions ranged from more secure fare barriers to prevent entry to the provision of more resources such as trained mental health professionals and social service providers, and bathrooms with needle disposal facilities.

## Director Sessions

Spanning community input from across the BART system’s nine districts, these listening sessions included invited representatives of community-based organizations advocating for their members who rely on the BART transit system. Participants attending each Director listening session were offered the scenario prompts detailed above, and asked to offer responses that were germane to their respective Director’s geographical constituency. Participants represented city and county government, not-for-profit organizations that cater to the needs of marginalized populations (e.g., Black, trans, disabled, immigrant, and youth populations) and unaffiliated riders and community members. Many of the emergent themes that surfaced across district constituents did overlap. However, District Directors heard distinct and localized perspectives about addressing the issues of drug use, unhoused riders and behavioral health in their district’s transit hubs. In Table 6, the key concerns and themes of each discussion are listed from both the stakeholder session and the survey that was completed by members of each stakeholder group.

**Table 5: Director Session Stakeholders’ Key Concerns/Themes**

Stakeholder Group	Key Concerns/Themes
District #1	<ul style="list-style-type: none"> <li>• A large proportion of riders rely on the system for their commute to work in SF, but opt out of using the system for recreational travel (reasons cited: safety, cleanliness, expense)</li> <li>• The Millbrae stop absorbs a disproportionate share of the end-of-the-line vulnerabilities of unhoused riders</li> <li>• BART must address its failure to manage fare evasion</li> </ul>
District #2	<ul style="list-style-type: none"> <li>• Women-identified respondents reported a range from verbal harassment to physical assault; one person reported BART police instrumental in de-escalating an unsafe moment. Interventions must include non-violent, noncoercive, and harm reduction approaches</li> <li>• In the moment of COVID-19, “safe” transit has become an even tougher goal post to meet</li> </ul>
District #3	<ul style="list-style-type: none"> <li>• Safety amounts to using the system without anticipation of harassment or imminent threat</li> <li>• BART must pursue equal enforcement of punitive policies and extend equally lenient decisions of discretion</li> <li>• Riders need a much more accessible infrastructure (i.e., costs and architecture)</li> <li>• Community safety might be more achievable if riders and BART frontline workers were more familiar with one another—de-escalation responses are possible when we are less foreign to one another</li> </ul>
District #4	<ul style="list-style-type: none"> <li>• A meaningful and productive partnership between BART and its customer base is entirely possible—union interference could undermine these police reform efforts, however</li> <li>• Gender-based discrimination and harassment are persistent threats for women and girls relying on the system</li> <li>• A safe and community-driven system will include a workforce that represents the riders and proceeds in ways consistent with the community’s values</li> <li>• Collaborating with organizations like La Familia and Unity Council would assist BART in connecting riders with behavioral health and social service support</li> </ul>
District #5	<ul style="list-style-type: none"> <li>• BART’s essential workers require support in this moment of COVID</li> <li>• Parking lots are not adequately staffed/patrolled; parking lot usage is also cost-prohibitive for some, who must then walk further to and from a station that is already under-served</li> <li>• Commuting students rely on this system heavily—it must be safe and affordable</li> </ul>

<p><b>District #6</b></p>	<ul style="list-style-type: none"> <li>• Unhoused riders travel from Richmond to Warm Springs; support from initiatives like Armando Sandoval’s should be expanded</li> <li>• Establishing proactive collaborations with the county Departments of Health will help to address public health challenges like those listed in the hypothetical scenarios</li> <li>• Safety requires thoughtful collaboration between BART and city/county officials</li> <li>• Stations need more lighting and surveillance technology</li> </ul>
<p><b>District #7</b></p>	<ul style="list-style-type: none"> <li>• Riders need non-violent approaches to social problems, that prioritize care and empathy; different uniforms for these personnel</li> <li>• Vulnerable folks with diminished mobility (e.g. elderly and disabled) have even fewer options to ensure their safety than other riders—when technology fails (call button malfunctions, etc.) they’re in big trouble relative to other riders</li> <li>• disproportionate harassment of young Black men must stop; explicit and implicit bias against this demographic needs addressing</li> <li>• BART should rely on the expertise of community organizations who know this work and know the people who are in need; localized stakeholders could collaborate to triage the needs of riders at certain stops or neighborhoods</li> <li>• stations should be lit and clean and present as accessible for all of its riders (examples: safe, clean, and reliable restroom access; multilingual signage; messages of respect and inclusion)</li> <li>• de-escalation training doesn’t include cultural competency -- BART personnel would benefit from spending time with the community members that they’re charged with policing</li> <li>• bolster service referral knowledge and execution protocols</li> </ul>
<p><b>District #8 &amp; 9</b></p>	<ul style="list-style-type: none"> <li>• The Millbrae stop absorbs a disproportionate share of the end-of-the-line vulnerabilities of unhoused riders</li> <li>• System is too porous, frontline workers are not preventing unpaid ridership, and system is unclean</li> <li>• Fares are cost-prohibitive for many working-class commuters and preclude weekend/family/recreational use of the system</li> <li>• Short of shuttling unhoused riders back to SF and Oakland to get the resources they need, BART PD will not provide a value add to the system</li> </ul>

Many District session participants offered policy suggestions for both local and system-wide implementation. One participant offered the following post-session survey response, which captures the overlapping concerns and desires expressed by riders:

“No one should be criminalized for being poor and unhoused. And pushing unhoused riders off of BART for sleeping in the chairs or staying on for too long isn't a sustainable solution. I think that if there was a model of intervention that included peers, clinicians, and service providers that work together who can respond and intervene for unhoused riders, offering them resources and referrals. If I were to dream big, I would love to see BART have "line ambassadors" on each train line that just really get to know every commuter and frequent rider on a particular ride. They would get to know all the stations, all the drivers, and become familiar to the riders. They could be trained in de-escalation so that they knew when someone like an unhoused person was a frequent rider, they could get to know some of the background of that person, like if they are already receiving social services through some agency, and could help to build partnerships”

—Post-Session Stakeholder Survey

### Focused Sessions with Advocates

Additional sessions were held to gather information pertaining to the specific experiences of LGBTQ+ communities, the perspectives of mental health and social service providers working with issues of drug use, homelessness and behavioral health across the Bay Area, and advocates. From these sessions, several themes emerged as salient to the reforms under consideration. Advocates discussed (a) the need for specific approaches/training/accessibility for distinct populations such as the adverse experiences that gender non-conforming individuals face on BART, and the fact that some LGBTQ+ youth leave home due to family conflicts and may end up unhoused. Advocates also noted that (b) evening hours are particularly risky and expose riders to sexual violence and harassment (especially women, gender non-conforming individuals, and unhoused riders). Advocates suggested that BART (c) assume a harm reduction approach that could include safe syringe disposal, welfare checks, open gender-neutral bathrooms and a reframing of encountering “erratic” individuals to not assume they are always dangerous. Advocates also mentioned that for individuals with mental illness who are on medication, the use of tasers could adversely affect them physiologically and interrupt the efficacy of their psychiatric medications.

Tailored recommendations from advocates included to:

- Hire community stewards/peer counselors especially persons with lived experience to form mobile community crisis teams to ride the BART frequently.
- Update visual messaging by adding numbers and resources for community members to assist others and themselves, if needed. Ensuring that disabled riders can access whatever public information and resources (such as the BARTWatch app or emergency call buttons to train operators) exist.
- Explore marketing campaigns combined with education (via social media or other platforms) to humanize people experiencing homelessness in the BART and people experiencing mental health symptoms. This will help riders not be as scared of people who are generally not a safety issue.
- Fund programs within BART or partner with community organizations to assist in leading trauma-informed responses on BART.



## 4. Recommendations for BART

Over the past several years, BART has built a foundation of programs and partnerships that are working well to improve quality-of-life concerns. For example, the elevator attendant program in downtown San Francisco has been hugely popular with the public, and could be a model for future partnerships. Customer complaints about cleanliness and inappropriate use of elevators went to nearly zero since the attendants have been in place.

Tim Chan, BART's Group Manager for Station Planning, has taken the lead on BART's quality-of-life partnerships. "We will be looking for any and all opportunities to partner on funding these programs," he said. "We will be continuing our advocacy work with the counties, the state and the federal government. We desperately need it because this is not a problem BART alone can solve."

BART's quality-of-life funding umbrella has included the areas of fare evasion, homelessness, cleanliness, safety and security. Over the past seven years, BART has allocated more than \$59 million and has increased staffing by more than 90 full-time equivalent (FTE) employees dedicated to these areas. While there can be overlap between program areas, there has nonetheless been significant financial support for these priorities.

Other examples of BART's longstanding commitment to quality-of-life issues include elements of the Station Modernization Program, which has been revised and refined over time to address security, fare evasion and homelessness. As knowledge is gained, BART Facilities Standards (BFS) have been updated to reflect the design standards necessary to reduce fare evasion.

The BART system was conceived, designed and built under a guiding philosophy of creating a positive customer experience within a safe environment. BART will continue to pursue a better customer experience through improvements in existing operating practices, implementation of new programs, and incorporation of best-practice design procedures. These will continue to be funded through targeted and general grant programs, existing operating budget allocations, and annual operating initiatives, where feasible.

### **Increase the number and type of professionals who respond to societal issues on BART.**

Issues of homelessness, substance abuse and behavioral health are not unique to BART and therefore any solution must recognize that a meaningful response requires the right people and agencies at the table. BART has begun leveraging partnerships to expand the non-sworn presence to assist riders and staff. Based on the emerging success of these efforts, they must scale proven strategies to improve the efficacy of interventions and pilot promising practices to more effectively intervene.

*"BART personnel and non-profit partners that are on call and who can actually provide resources should respond. The response should be one of love and compassion. Bring someone in who can provide someplace to go"*

*—Director Session Participant*

## Recommendations:

Expand effective models of intervention that begin with non-sworn personnel, are centered on the humanity of the individuals in crisis and take a humane but firm approach to resolving issues with people experiencing these issues.

- **Ambassador Program:** Make permanent the Ambassador pilot program and expand it. The Ambassadors wear easily identifiable uniforms distinct from those of Community Service Officers or Fare Inspectors. They are equipped with radios to report safety and security concerns or biohazards. The ambassadors are also trained to respond to customers' questions, complaints or requests for service. They observe and report and call upon an officer when enforcement is needed.
- **Urban Alchemy:** Expand partnership with Urban Alchemy to expand their role to one that works specifically on the initial contact with people experiencing behavioral health issues, using substances or experiencing homelessness. Their firm but humane approach has worked well in the Elevator Attendant program and could round out the team approach to initial intervention in these areas.
- **Salvation Army:** Expand existing partnership between BART and the Salvation Army to better address quality of life issues in and around the stations the Salvation Army can serve.
- **CORE in CoCo County:** CORE stands for Coordinated Outreach, Referral, & Engagement and their role is to engage unhoused individuals seeking refuge in the BART stations and on board trains or under aerial tracks and connect them with available services and shelters in this county. This work needs to be supported and expanded.
- **Homeless Outreach teams:** Survey data reveals that there is an interest in expanding these roles to having HOT team members ride the trains most impacted and intervene outside of the stations. BART currently funds a partnership between BART, MUNI and the City of San Francisco's Department of Homelessness to provide full-time Homelessness Outreach Team (HOT) employees focusing on particular stations. However, these roles are currently only funded for 4 days a week and must be expanded.

Partner with service providers to better address issues of safety for women, girls and trans folks within the BART system.

- Due to COVID-19, the full implementation of the BART Board of Directors resolution in support of partnering with the Alliance for Girls to launch a sexual harassment prevention campaign has been delayed. However, it is critical to take steps to form a working group who is able to make recommendations to advance a gender-equity safety action plan for transit spaces.

## Establish more collaboration with human service organizations and counties.

A common theme that emerged from the data was that BART is a means for individuals to travel from county to county but there isn't a regional approach to tackling the issues that are presenting themselves on the train and in the stations. As a result, if the behavior was happening in Contra Costa or Alameda County, there would be a local county intervention. However, when someone in crisis is riding the BART train through these jurisdictions, there is a gap in services.

To address this gap, BART needs to more deeply engage the five counties it serves to build a collaborative 5 county protocol for prevention, intervention and restoration. This protocol will recognize the fact that these issues are not confined to one county, but are experienced by people across our 5 counties and when these issues present themselves on BART, it is an opportunity for meaningful system wide intervention and restoration.

“We need more HOT teams, they are trained to handle these social issues that we experience. We need them in all counties, more participation from cities and counties. BART can’t handle all of this by themselves. We are serving the cities and counties that we go through and we need more help than what we can budget-wise do. Right now, only BPD can respond, but we service the whole Bay Area.”

—Frontline Workers 10/1

### Recommendations:

**Convene a Regional Task Force Across 5 Counties:** BART should convene a regional task force that consists of public health officials from all 5 counties, representatives of police agencies and social service organizations in each county that address the issues of substance abuse, behavioral health and assisting our unhoused riders. This joint effort will focus on identifying the key strategies to address the public health crisis, prioritize identifying local, state and federal funding streams to support joint efforts and set up standard methods of regular communication amongst agencies and service providers.

### More enforcement and more uniformed presence.

While respondents did not all agree on the best approach to take, the vast majority, preferred to see a non-sworn initial approach to issues that arise from these three areas. Others preferred to see more enforcement by the police and zero tolerance of these activities. A common theme throughout the data is a desire for a greater presence of people trained and able to help address issues that arise from homelessness, substance use and behavioral health, whether those are sworn officers with appropriate training for dealing with such issues or non-sworn personnel with expertise in social service provision.

“I think the best solution is a hybrid team of Law Enforcement and clinicians to work as a team to address these issues. A lot of issues around behavioral issues sometimes involve criminal activities, but having an additional expert available to address the health issues that might be used to de-escalate and or provide resources. All BPD personnel are trained in CIT, so are experts in some capacity.”

—BPD survey

### Recommendations:

Build a team protocol that applies to dispatch, BPD and all non-sworn responders that outlines how BART will respond to calls for service regarding issues involving people experiencing homelessness, using illegal substances or experiencing a behavioral health issue.

- The protocol must clearly outline how to code calls for service, who to dispatch, under what circumstances a non-sworn approach is appropriate, under what circumstances a sworn approach is needed and when to have the initial approach be by non-sworn officers with a sworn team prepared to provide back up if needed.

Create a clear policy with procedures and tactics for who responds to specific calls for service, how the non-sworn staff can quickly call for BPD backup and how BPD can transfer calls that are more appropriate for non-sworn staff. In dynamic situations, a scenario can escalate quickly and it’s critical that the BPD and non-sworn staff have the training backed by clear policy so that everyone understands their role and how to give and get assistance quickly and safely.

- A recommendation that emerged was to offer the Force Option Simulator training for all Civilians responding to these three issues, so they are prepared for escalating circumstances and are prepared to seek back up if needed.

Implement Data Driven Staffing Models to Increase Presence When/Where Most Needed: Using data as the guiding force, categorize the type and volume of calls for support by station and time of day. Modify staffing levels and approaches to ensure tailored sworn and non-sworn response. Sworn and Non-Sworn Staff should publish detailed calls for service data permitting analyses of type and volume of responses needed.

Increase presence of non-sworn Ambassadors, community service officers and Elevator Attendants at stations and on trains to be the initial contact for de-escalating people in crisis.

### **Promoting education and awareness about BART rules, what BART is doing, and how to report issues.**

There are a number of existing programs that allow riders to request assistance, notify BART of problems and seek follow up on particular issues happening on trains and in the stations. However, these existing programs are not widely understood either by the ridership or the existing communities that BART currently serves. As a result, it is critical that BART invest in a significant public awareness campaign geared to riders, staff and the larger community to ensure everyone knows how to seek and get help when needed.

“We can do a lot of things like services, and partnerships, but we need to educate everyone about what those resources are. People should know what’s there. You don’t need to call the police if someone is trying to get a few hours of sleep. We can do marketing, educating the community, providing information, 1-800 numbers, creating partnerships and networks. That’s what BART stands for and that’s what this community has asked for. We should be educating the ridership about alternative options; educating the staff on what they can do and building partnerships with other organizations to see how they can help.”

—Director Session Participant

### **Recommendation:**

Launch an internal and external communications campaign. BART has implemented internal communication tools that work when used. A clear need exists for both employees and riders to better understand how to leverage these options to seek help when they see someone in crisis. This campaign must provide options for the public to describe the issue so that an internal dispatcher can decide if a police, non-police, or combined response is most appropriate. Campaigns must take into account BART’s multi-lingual ridership and ensure accessibility for riders with disabilities.

- A theme that emerged from the data was the concern that riders had with calling the police to respond to an issue that had to do with homelessness, substance use or mental illness. Stakeholders overwhelmingly want to see an appropriate initial intervention with the option of seeking back up from a sworn BART police officer if the situation warrants such a response. In order to create these teams, BART will need to deepen its investment in hiring and training Ambassadors, community service officers and expanding partnerships with organizations like Urban Alchemy, Salvation Army and others.

## Additional training for the BART Police Department, better hiring practices for the BART Police Department.

The data showed that communities most impacted by the criminal justice system, including members of the BIPOC community, LGBTQ+, Trans Community believe that BART PD would benefit from additional training to address issues of biased policing and criminalization of people of color. Some segments of the community believe that BART PD would benefit from reviewing their hiring practices making changes to prioritize hiring a police force that represents the rich diversity of the Bay Area.

“The officers who I see do really well in these situations really know their community. They’ve been working in their community, they volunteer, they’re not scared of their community. That makes a world of difference. Our police need some education about the community in which they are working. Sometimes I see the look in their eyes that they don’t really understand working here—they have this job, but they have never come to East Oakland before. ... They really need that help and understanding and not being fearful.”

—Frontline Workers Session 10/1

### Recommendations:

- Invest in team building and training for BPD, Ambassadors and Community Service Officers to train them on the new policy on responding to people experiencing homelessness, using substances or having a behavioral health issue.
- Review current hiring, recruitment and retention practices at BPD and bring recommendations to the BART Board with ways to improve the recruitment and retention of BIPOC, women and members of the LGBTQ+ communities.
- Identify focal group populations that experience disproportional criminalization (LGBTQ communities, BIPOC, Youth) to transform this dynamic and build trust.
- Create Police Advisory Boards to supplement existing Civilian Oversight efforts to provide community members with direct access to the Chief of Police and BPD leaders to discuss issues occurring that are impacting trust between BPD and riders and develop strategies in partnership to address them.

### Engage frontline workers in first response.

Frontline workers at BART play a critical role in building safety. They are often the first person to observe or interact with a person in crisis and must be fully trained on what options are available to them to appropriately deal with whatever behavior they are witnessing.

“Your most accessible resource is the frontline employees. You’ll get the quickest response from them, I see a blend between having a team of professionals that are somehow accessible by phone or by radio, “I have this situation.” The frontline workers could be our first responders so to speak, obviously with their consent and on a volunteer basis.”

—Frontline Union 10/6

## Recommendations:

- Train everyone in the system—train operators, station agents, transportation managers, operations supervisors and maintenance crews—on effective interventions with people experiencing behavioral health issues, using substances or experiencing homelessness. Frontline staff need to get properly trained to understand these issues and fully understand the resources BART makes available for someone in crisis to ensure they know how to get help in all situations.
- Ensure frontline staff understands how to request assistance from non-sworn teams who are trained to address various behaviors and de-escalate situations effectively.

## BART to explore creative ways to leverage their facilities to meet needs.

BART is a transit system that specializes in transportation. However, given the fact that BART is operating amidst a public health crisis involving homelessness, behavioral health and substance abuse, BART plays a role in directing people to services to more effectively cycle people out of crisis.

“There should be a crisis response team on board. If we can have BART police at every station, we can have a team of social workers at every station. Pretty much, we use our common sense most of the time to deal with emergencies. You can get someone off the train but what about after that? After they leave, they’ll get back on the train again because we are not addressing the problem. There’s no follow up. We need services at every station.”

—District session Participant

## Recommendations:

- Increase lighting in and around the BART stations
- Expand partnership with Urban Alchemy, who recruits and trains formerly incarcerated individuals, to build on the success of the Elevator Attendant program. The Elevator Attendant Program places attendants in the street and platform elevators at Civic Center, Powell St., Montgomery and Embarcadero stations during BART operating hours. This program has virtually eliminated inappropriate behavior in the elevators. The attendants greet customers, operate the elevator, collect data on the number of users and their demographics and deter inappropriate behavior in the elevator. This is a model program that can be replicated in other counties by identifying community organizations working with formerly incarcerated individuals to build out this successful model in the other 4 counties.
- Pit Stop Program: BART can expand their current efforts to fund the San Francisco Public Works' Pit Stop Program to provide clean and safe public toilets, as well as used-needle receptacles and dog waste stations, in the City's most impacted neighborhoods. There are currently Pit Stop bathrooms above four BART stations (Powell St. Station, Civic Center Station, 16th and Mission St. Station and 24th and Mission St. Station).
- Explore promising practices like the Hub of Hope in Philadelphia that created an on-site drop-in service center to connect people in crisis in their transit system to appropriate county resources.
- Expand outposts at the most impacted stations where Ambassadors and community service officers are present and available to respond to people in crisis and trained to connect them to local services.

## 5. Staffing and Budget Implications

Due to the budget crisis facing BART and other transit agencies, it is crucial that any new proposals be cost-neutral as much as possible. BART will be counting on partnerships, grants and cost-sharing with local, state and national stakeholders for creative solutions that can be scaled up and which are fiscally achievable.

An analysis of the recommendations set forth found that resources in BART's FY21 budget can support the recommendations. By reallocating vacant positions and utilizing funds earmarked for COVID-19 response, both labor and non-labor costs associated with the recommendations can be met utilizing FY21 budgeted resource levels. The positions added in FY21 will be carried forward into FY22.

## 6. Conclusion

BART has answered the call to take a deeper look at how issues of homelessness, mental illness and substance abuse are impacting riders, employees and members of the larger community. This call requires engaging internal BART staff, sworn officers, union leaders, external stakeholders and riders in a robust dialogue. It is clear that BART is experiencing the impacts of a national, state and local crises involving people who are unhoused, experiencing mental health issues, or engaging in drug activity in the BART system. BART has pioneered many promising interventions and partnerships that can be augmented or expanded. BART can also build on these successes and further imbed a team approach, both regionally and in how BART responds to individual situations. BART has the opportunity to continue to lead from the front and redefine how to collaborate to build shared safety in the BART system by making the most strategic use of sworn officers and non-sworn personnel. Continuing to evolve the most strategic use of sworn officers to keep the riders safe and enforce public safety protocols will help this crucial transit system lead the way for other public entities.

## Fare Evasion

### 419.1 PURPOSE AND SCOPE

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

### 419.2 POLICY

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

#### 419.2.1 FARE EVASION ENFORCEMENT

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

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

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

#### 419.2.2 FARE EVASION DEFINED

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

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

#### 419.2.3 CONSENSUAL ENCOUNTER, REASONABLE SUSPICION, AND PROBABLE CAUSE

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

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



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### *Fare Evasion*

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

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

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

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

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

#### 419.3 LEGAL ISSUES REGARDING FARE EVASION CONTACTS

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

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

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

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

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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.

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
**CITIZEN OVERSIGHT MODEL**

**Purpose:** To provide an effective independent citizen oversight system that promotes integrity and encourages systemic change and improvement in the police services that the San Francisco Bay Area Rapid Transit District (BART) provides to the public by ensuring that internal police accountability system functions properly; that behavioral, procedural, and policy deficiencies are identified and appropriately addressed, including racial profiling and allegations of racially abusive treatment; and, that complaints are investigated through an objective and fair process for all parties involved. The system will analyze allegations of misconduct; utilize data to identify trends, including disciplinary outcomes and trends; recommend corrective action and or training; maintain confidentiality; make policy recommendations; and report regularly to the BART Board of Directors and the public. The essential community involvement component of the system shall be accomplished through the inclusion of a BART Police Citizen Review Board.

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## **Chapter 1-01 OFFICE OF THE INDEPENDENT POLICE AUDITOR**

Pursuant to California Public Utilities Code Section 28767.8, the Office of the Independent Police Auditor (OIPA) shall be established by the Board of Directors (Board) in keeping with the Core Principles for an Effective Police Auditor's Office.<sup>1</sup>

## **Chapter 1-02 APPOINTMENT OF THE INDEPENDENT POLICE AUDITOR**

The Independent Police Auditor (IPA) shall be appointed by and report directly to the Board.

## **Chapter 1-03 SCOPE**

OIPA shall have the authority to exercise its duties and responsibilities as outlined below, regarding any and all law enforcement and police activities or personnel operating under the authority of the BART Police Department (BPD). OIPA shall be authorized to investigate any complaints alleging police officer misconduct that implicate the policies of the BPD. OIPA shall be committed to the prompt, timely, and efficient resolution of all complaints, including, but not limited to, adherence to all applicable statutory requirements. OIPA's scope of authority shall not extend beyond the BPD.

## **Chapter 1-04 DUTIES AND RESPONSIBILITIES**

### **A. Complaints Received from Members of the Public**

Any person may file a complaint or allegation of wrongdoing with the OIPA against any BPD employee. Upon receipt of a complaint or allegation, OIPA shall:

- i) Ensure that a timely, thorough, complete, objective, and fair investigation into the complaint is conducted by OIPA or BPD.
- ii) Provide the complainant and all other officers who are the subject(s) of the investigation with timely updates on the progress of all investigations conducted by OIPA, unless the specific facts of the investigation would prohibit such notification.
- iii) Reach an independent finding as to the facts of an investigation.
- iv) The OIPA shall assess the conduct of the BPD employee considering the facts discovered through investigation, the law, the policies, and training of the BPD.

### **B. Recommendations for Corrective Action**

- i) Independent investigative findings of "Sustained" made by OIPA shall include recommendations for corrective/punitive action, up to and including termination where warranted, and shall include prior complaints and their disposition. When the evidence does not support the allegations of misconduct, the IPA shall recommend a finding of Unfounded, Exonerated, or Not Sustained.
- ii) In a confidential personnel meeting, the IPA shall submit his/her investigative findings and recommendations to the BART Police Citizen Review Board (BPCRB) for review. Should the BPCRB agree by simple majority with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action. The Chief of Police shall implement the recommended action, absent appeal.
- iii) The BPCRB shall announce each member's vote regarding its acceptance of the OIPA findings and recommendations for discipline in open session, and in cases in which a non-unanimous majority agrees with the OIPA findings and recommendations, the dissenting

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<sup>1</sup> Report of the First National Police Auditors Conference, March 26-27, 2003, Prepared by Samuel Walker

- members should generate a memorandum including the rationale for diverging from the majority opinion without divulging privileged or confidential information and evidence.
- iv) Should the Chief of Police disagree with the findings and recommendations of OIPA and the BPCRB, the Chief of Police may appeal to the General Manager (GM) within 45 calendar days of the issuance of the findings and recommendations. The Chief of Police will submit his/her appeal in a writing setting forth his/her disagreements with the findings and provide recommendations to the IPA, the BPCRB, and the GM. After receipt of the appeal, the GM shall convene a confidential personnel meeting to include the Chief of Police, the IPA, and a representative of the BPCRB. After receiving input from the Chief of Police, the IPA, and the BPCRB representative, the GM shall rule and submit his/her decision in writing to the Chief of Police, the IPA and the BPCRB. The Chief of Police shall implement the GM's decision.
  - v) Should the BPCRB disagree with the OIPA findings by simple majority, in a confidential personnel meeting, the IPA and the BPCRB shall attempt to come to a consensus. If the BPCRB and the IPA fail to come to a consensus, by simple majority, the BPCRB may appeal. The efforts made to achieve consensus shall be documented by the BPCRB and shall be forwarded to the GM as a part of the appeal. All appeals regarding findings and recommendations for corrective/punitive action or dismissal, between the BPCRB and the IPA will be appealed to the GM, in a confidential personnel meeting to include the Chief of Police. At the confidential personnel meeting, The BPCRB Chair and the IPA will submit their disagreements and recommendations to the GM. The GM shall rule on the matter and make his/her decision known to the Chief of Police, the BPCRB and the IPA. The Chief of Police shall implement the GM's decision, which will be final.
  - vi) Discipline recommended pursuant to these processes shall be subject to an administrative hearing prior to implementation in a manner consistent with addressing the due process rights of public employees, when applicable. Any final determinations that modify or rescind initial dispositions and arbitration determinations shall be evaluated by the IPA to identify any systemic issues and/or potential for the serious erosion of accountability related to such modifications, and shall be included in a public IPA report. The IPA shall work with BPD to remedy any such issues identified by the evaluation.

#### C. Review Legal Claims, Lawsuits, and Settlements

- i) OIPA shall be authorized to review any legal claims and/or lawsuits against BART that relate to the conduct of BPD personnel to ensure that all allegations of misconduct are thoroughly investigated by OIPA and/or BPD, and to identify any systemic issues regarding BPD practices and/or policies.
- ii) OIPA shall be authorized to review any significant settlements and adverse judgments involving BPD.
- iii) OIPA shall work with BPD to develop corrective action intended to remediate any systemic issues identified through review of any significant settlements or adverse judgements involving the BPD.
- iv) OIPA shall publicly report its involvement in the review of legal claims, lawsuits and settlements in a manner consistent with all applicable confidentiality requirements.

#### D. Review Investigations Conducted by BPD

- i) OIPA shall be authorized to review BPD Internal Affairs Bureau (IA) investigations to determine whether the investigations are complete, thorough, objective, and fair.

- ii) The IPA shall, subject to his or her discretion, have authority to monitor or require follow-up investigation into any citizen complaint or allegation that is investigated by BPD.
- iii) OIPA should provide recommendations to the BPD regarding investigative quality and/or appropriateness of disciplinary recommendations prior to the finalization of the investigative report and notification of disposition to subject officers and complainants.
- iv) OIPA is authorized to publicly report any resistance by the BPD to conduct reasonable additional investigative tasks, including by way of notification to the Board, the BPCRB, and the GM.

E. Review Uses of Force by BPD Officers

- i) OIPA shall have the authority and responsibility to review all Use of Force (UOF) incidents by BPD officers to determine whether the UOF should be the subject of an IA investigation and/or whether other issues are implicated for the individual officer or for BPD, including but not limited to training, equipment, supervision, and policy.
- ii) OIPA shall be authorized to regularly participate in the BPD UOF Review Board process by attending meetings and/or reviewing determinations made by the BPD UOF Review Board.
- iii) OIPA shall report publicly on its involvement in the BPD UOF review process including determinations made by BPD UOF reviewers in a manner consistent with all applicable confidentiality requirements.

F. BPD Early Intervention Systems

- i) OIPA shall be involved in the review and evaluation of data, alerts, and reports related to the BPD Early Intervention System (EIS).
- ii) The OIPA may use the EIS data to determine whether conduct or disciplinary issues regarding BPD or individual officers exist.
- iii) OIPA shall regularly report on the status and effectiveness of the BPD EIS in a manner consistent with all applicable confidentiality requirements.

G. Auditing

- i) OIPA shall have the necessary access and authority to review BPD data, records, and staffing information for the purpose of conducting systemic audits of BPD functions that impact the quality of the Department and the services provided by BPD to the public.
- ii) OIPA shall have the necessary access and authority to monitor any audits conducted by the BPD regarding BPD functions that impact the quality of the Department and the services provided by the BPD to the public.
- iii) OIPA shall be authorized to publicly report on the results of any audits or monitored audits as described in this section in a manner consistent with all applicable confidentiality requirements.

H. Mediation

OIPA shall develop a voluntary alternative dispute resolution (ADR) process for resolving complaints which involve conduct that may most appropriately be corrected or modified through alternative means. OIPA shall review a draft of the voluntary ADR process with the BPCRB and BART Police Associations and secure their concurrence prior to implementation.

I. Appeal of IA Findings

Any complainant may file an appeal of an internal investigation conducted by BPD with the OIPA. Upon receipt of an appeal, OIPA shall:

- i) Review the completed BPD investigation.
- ii) Determine whether further investigation is warranted and, if necessary, ensure that a timely, thorough, complete, objective and fair follow-up investigation into the complaint or allegation is conducted. A follow-up investigation may, at the discretion of the IPA, be conducted by the OIPA, the BPD or any other competent investigative agency.
- iii) Provide timely updates on the progress of the review and any follow-up investigation to the complainant and the BPD employee who was the subject of the original investigation, to the extent permitted by law unless the specific facts of the investigation would prohibit such notification.
- iv) Based on the review of the original investigation and, where appropriate, the results of any follow-up investigation, OIPA shall reach an independent finding as to the facts of the underlying allegation or complaint.
- v) Independent investigative findings of "Sustained" made by OIPA shall include recommendations for corrective/punitive action, up to and including termination where warranted. When the evidence does not support the allegations of misconduct, the IPA shall recommend a finding of Unfounded, Exonerated, or Not Sustained.
- vi) All BPD investigative findings that are appealed to OIPA shall be subject to the procedures defined in Chapter 1-04(B).

J. Critical Incidents

- i) The IPA shall be notified immediately by BPD personnel to respond to the investigative scene(s) of any BPD officer-involved shooting, use of force resulting in life threatening injury, use of force resulting in bodily injury requiring transportation and admittance to a hospital, , or in-custody death.
- ii) The BPD officer in charge at the investigative scene(s) shall provide the IPA and OIPA staff with access to the investigative scene(s) equivalent to BPD Internal Affairs Investigators upon their arrival at the investigative scene.
- iii) The OIPA shall have the authority to monitor all aspects of the ensuing investigation that the BPD Internal Affairs investigators have authority to monitor while the investigation is in progress. The BPD will grant the OIPA access equivalent to BPD Internal Affairs investigators to the site(s) of all interviews related to a critical incident involving BPD personnel.
- iv) The IPA may observe interviews of employees, public complainants, and witnesses that are conducted by BPD Internal Affairs Investigators and may submit questions to the interviewer to be asked by the interviewer in accordance with state and federal law.

K. Recommendations on Procedures, Practices and Training

- i) OIPA shall develop specific recommendations concerning policies, procedures, practices, and training of BPD personnel. The goal of the above OIPA recommendations, shall be improving the professionalism, safety record, effectiveness, and accountability of BPD employees. OIPA shall consult with the Chief of Police and other stakeholders and shall present its recommendations to the BPCRB for review and comment.

- ii) Should BPD reject policy recommendations submitted by OIPA, the IPA may forward the recommendations to the GM and/or the Board for further consideration.
- iii) OIPA shall have the authority and responsibility to provide input to the BPD during the development of any significant BPD-initiated policy creation or revision.
- iv) OIPA shall publicly report on its involvement in the development and revision of BPD policies and shall report annually regarding any outstanding recommendations and the degree to which they were endorsed by the BPCRB and accepted by BPD.

L. BART Police Associations

- i) The IPA shall meet periodically with and seek input from the BART Police Managers Association (BPMA) and the BART Police Officers Association (BPOA) regarding the work of OIPA.
- ii) OIPA shall report annually on whether meetings with BPMA and BPOA occurred.

M. Community Outreach

OIPA shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The OIPA community outreach program shall set out to educate the public regarding the responsibilities and services of OIPA and the functions of the BPCRB.

N. Reporting

The IPA shall prepare annual reports to the Board and the public in a manner consistent with all applicable confidentiality requirements, which prior to being finalized shall be reviewed, in draft form, by the BPCRB. To the extent permitted by law, reports shall include the number and types of cases filed, number of open cases, the disposition of and any action taken on cases including recommendations for corrective/punitive action, and the number of cases being appealed; findings of trends and patterns analyses; and recommendations to change BPD policy and procedures, as appropriate. The reports shall include all complaints regarding police officers received by OIPA, BPD, BART District Secretary (DSO), and other District departments.

O. Public Statements

The IPA shall be authorized to make public statements regarding any aspect of BPD policies and practices, the Citizen Oversight Model, and in conjunction with any public report or findings in a manner consistent with all applicable confidentiality requirements.

## **Chapter 1-05 RELATIONSHIP BETWEEN OIPA AND THE BPCRB**

- A. OIPA and the BPCRB shall be established and operated as separate, complementary entities with different roles that are and shall remain independent of one another.
- B. On a no less than monthly basis, the BPCRB shall receive reports from OIPA in a manner consistent with all applicable confidentiality requirements, including the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective/punitive action, including discipline and dismissals, and the number of independent investigations concluded by OIPA. The report shall also include the



number and outcome of cases being appealed either to OIPA by members of the public, the BPCRB or the Chief of Police pursuant to the appeals process described in Chapter 1-04(B), above.

- i) Reports shall include all complaints received by OIPA, BPD, BPCRB, DSO, and other District departments.
  - ii) For tracking and timeliness purposes, this report shall include the number of days that have elapsed between the date of the complaint and the date of the written report to the BPCRB.
- C. OIPA may present reports related to OIPA-monitored BPD investigations to the BPCRB in closed session for its input and feedback. BPD personnel may be present during the closed session to respond to any BPCRB inquiries regarding the investigation and/or related investigative processes.
  - D. OIPA shall, for informational purposes, promptly notify the Chair of the BPCRB whenever the IPA is informed of a critical incident as described in Chapter 1-04(J).
  - E. The BPCRB and OIPA will coordinate community outreach activities and communication with the public.

#### **Chapter 1-06 RELATIONSHIP BETWEEN OIPA, BPD, DSO, AND OTHER DISTRICT DEPARTMENTS**

- A. The Chief of Police, DSO and other Executive Managers with employees that routinely receive comments/complaints from the public shall each, jointly with the IPA, develop standard operating procedures to govern the relationship and flow of communication regarding complaints involving police officers between OIPA and each of their respective departments.
- B. OIPA and the Chief of Police shall provide each other with timely notification of complaints, investigations, appeals and findings and with such information and cooperation as is appropriate and necessary.

#### **Chapter 1-07 COOPERATION WITH OIPA**

- A. OIPA shall have unfettered access to police reports and police personnel records. All parties who have access to confidential information shall comply with all confidentiality requirements of the BPD, the District, and all state and federal laws.
- B. During an investigation, all involved BPD personnel shall be compelled to meet and cooperate with OIPA in accordance with Government Code Section 3300-3313.
- C. No person shall directly or indirectly force, or by any threats to person or property, or in any manner willfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent, another person, including a child, from freely and truthfully cooperating with OIPA.

#### **Chapter 1-08 INDEPENDENCE OF OIPA**

- A. The IPA and any employee of the OIPA shall, at all times, be totally independent. All investigations, findings, recommendations, and requests made by OIPA shall reflect the views of OIPA alone.
- B. No District employee or Director shall attempt to unduly influence or undermine the independence of the IPA or any employee of the OIPA in the performance of his or her duties and responsibilities set forth herein.

- C. DSO staff shall perform administrative and organizational tasks for the BPCRB, which will be intended to clarify, strengthen, and maintain the delineation and separation of the BPCRB and OIPA.

### **Chapter 1-09 CONFIDENTIALITY OF RECORDS AND INFORMATION**

OIPA shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and respect the privacy of all individuals involved.

### **Chapter 1-10 CODE OF ETHICS**

The employees of OIPA shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

### **Chapter 1-11 TIMELINESS**

Nothing in this Model is intended to delay or interfere with the timely investigation and disposition of internal affairs investigations of alleged police misconduct. OIPA and the BPCRB shall jointly develop a timeline for completion of the disciplinary process that will be concluded within 365 days from the time of discovery by BPD Internal Affairs, BPD supervisory level personnel, the OIPA, or the BPCRB.

### **Chapter 2-01 BART POLICE CITIZEN REVIEW BOARD**

A BART Police Citizen Review Board shall be established by the Board of Directors to increase visibility for the public into the delivery of BART police services, to provide community participation in the review and establishment of BPD policies, procedures, practices and initiatives, and to receive citizen complaints and allegations of misconduct by BPD employees. Results of investigations into allegations of misconduct by BPD employees and recommendations for corrective/punitive action, including discipline, will be reviewed by the BPCRB. The members of the BPCRB shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics and comply with all applicable state and federal laws regarding confidentiality.

### **Chapter 2-02 APPOINTMENT OF BPCRB MEMBERS**

- A. The BPCRB shall report directly to the Board.
- B. The BPCRB shall consist of eleven (11) members appointed as follows:
  - i) Each BART Director shall appoint one (1) member.
  - ii) The BPMA and BPOA shall jointly appoint one (1) member.
  - iii) There shall be one (1) Public-at-Large member to be appointed by the Board.
  - iv) All appointments or re-appointments to the BART Police Citizen Review Board shall be for two-year terms. Those members appointed by Directors representing odd numbered

Districts, as well as the Public-at-Large member shall have their terms expire on June 30th of the respective even numbered year. Those members appointed by Directors from even numbered Districts, as well as the BART Police Associations' member, shall have their terms expire on June 30th of the respective odd numbered year.

- v) Service on the BPCRB shall be voluntary.
- vi) A newly-elected Director may replace the seated BPCRB appointee representing their District within ninety 90 calendar days of taking office, otherwise the seated BPCRB member will continue to serve until expiration of the applicable term, unless otherwise disqualified as described herein

### **Chapter 2-03 BPCRB MEMBER QUALIFICATIONS AND RESTRICTIONS**

- A. Members of the BART Police Citizen Review Board must reside within Alameda, San Francisco, Contra Costa, or San Mateo County.
- B. BPCRB members shall agree to adhere to the Code of Ethics described in Chapter 2-10.
- C. BPCRB members must be fair-minded and objective with a demonstrated commitment to community service.
- D. No person currently employed in a law enforcement capacity, either sworn or non-sworn, shall be eligible for appointment to the BPCRB.
- E. No current or former BPD employee shall serve on the BPCRB, and no relative of any current or former BPD employee shall serve on the BPCRB.<sup>2</sup>
- F. All appointees to the BPCRB shall be subject to background checks.
- G. No person convicted of a felony shall serve on the BPCRB.
- H. Members serving on the BPCRB are not required to be U.S. citizens.

### **Chapter 2-04 BPCRB MEMBER MEETING ATTENDANCE**

- A. BPCRB members may not miss three regularly scheduled meetings per year.
  - i) The appointment of any BPCRB member who has been absent from three (3) regular meetings during the fiscal year, shall automatically expire effective on the date that such absence is reported by the OIPA to the DSO, except in the case of an approved absence or leave of absence as described herein.
  - ii) The DSO shall notify any BPCRB member whose appointment has automatically terminated, and report to the Board and the BART Police Associations that a vacancy exists on the BPCRB. The vacancy shall then be filled in accordance with Chapter 2-06.
- B. Excused Absences from Regularly Scheduled Meetings
  - i) A BPCRB Member may request an excused absence from their appointing Director, and that excuse shall be transmitted to the DSO. Such excused absences shall be granted by the Board President regarding the Public-at-Large appointee, or from the Police Associations regarding the Police Associations' appointee. Such excused absences will not count against the member's absence limitations.
  - ii) BPCRB members may be granted a leave of absence by their appointing Director not to exceed three (3) months. When such a leave of absence is granted, the seat may be

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<sup>2</sup> Relatives include spouse, domestic partner, child, parent, brother, sister, grandparent, step-parent, step-child, legal guardian, father-in-law and mother-in-law.

filled for the period of such leave and may be filled in accordance with the procedure described herein, subject to ratification by the Board. Such leaves of absence shall be granted by the Board President regarding the Public-at-Large appointee, or from the Police Associations regarding the Police Associations' appointee.

#### **Chapter 2-05 BPCRB VACANCIES**

- A. Vacancies on the BPCRB shall be filled for the unexpired portion of the term, subject to ratification by the Board.
- B. A vacancy in a seat representing one of the nine BART Districts shall be filled by the Director whose appointee has ceased to serve.
- C. A vacancy in the seat that represents the BART Police Associations shall be filled by the BART Police Associations.
- D. A vacancy in the seat representing the Public-at-Large shall be filled by the Board from the pool of qualified applications submitted during the most recent application period for the Public-at-Large seat. If no qualified Public-at-Large applicants are available or willing to serve, the Board shall solicit new applications.
- E. The IPA may provide input to the Board regarding the performance of any BPCRB member who seeks reappointment.
- F. The Board should consider a BPCRB member's annual outreach activity when deciding whether to reappoint a member to the BPCRB.

#### **Chapter 2-06 SCOPE**

The BPCRB shall have the authority to exercise its duties and responsibilities as outlined below, regarding law enforcement and police activities or personnel operating under authority of BART.

#### **Chapter 2-07 DUTIES AND RESPONSIBILITIES**

- A. Complaints Received from Members of the Public  
Any person may file a complaint or allegation of wrongdoing against any BPD employee with the BPCRB. Upon receipt of a complaint or allegation, the BPCRB shall immediately turn the complaint or allegation over to the OIPA, and OIPA shall proceed according to Chapter 1-04 above.
- B. Recommendations for Corrective Action
  - i) The IPA shall submit his/her investigative findings and recommendations to the BPCRB for review in a confidential personnel meeting, where the processes described in Chapter 1-04(B)(ii-vi) including, but not limited to, appeal procedures shall apply.
  - ii) The BPCRB shall announce each member's vote regarding its acceptance or rejection of the OIPA findings and recommendations for discipline in open session, and in cases in which a non-unanimous majority agrees with the OIPA findings and recommendations, the dissenting members should generate a memorandum including the rationale for diverging from the majority opinion without divulging privileged, protected, or confidential information and evidence.

- C. Recommendations on Policies, Procedures, Practices and Training
- i) The BPCRB shall develop and review recommendations as to the policies, procedures, and practices of BPD in consultation with the IPA.
  - ii) The goal of BPCRB recommendations shall be to improve the professionalism, safety record, effectiveness, and accountability of BPD employees.
  - iii) The BPCRB may make recommendations to the Chief of Police, GM, and Board, as appropriate.
  - iv) The BPCRB shall review and comment on all additions and changes to policy, procedures and practices as well as all new initiatives (including training and equipment) proposed by BPD or OIPA and make recommendations to the Board.
- D. Disagreements Regarding Proposed Policies, Procedures, Practices, and Training
- The Board shall review and resolve all disagreements regarding proposed policies, procedures, practices and training that may arise between the BPCRB and the Chief of Police, IPA, or GM. The Board shall make the final determination in all such instances.
- E. BART Police Associations
- The BPCRB shall meet periodically with and seek input from the BPMA and BPOA on issues of interest to the parties. The BPCRB shall report annually on whether meetings with the BPMA and the BPOA occurred.
- F. Community Outreach
- The BPCRB shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The BPCRB community outreach program shall seek to educate the public about the responsibilities and services of OIPA and functions of the BPCRB.
- i) The DSO will provide staff support to and facilitate training for the BPCRB.
  - ii) The BPCRB should endeavor to conduct meetings in varying locales, where feasible to increase exposure of its work to a wider array of community members.
- G. Reporting
- The BPCRB shall file quarterly reports of its activities with the DSO for distribution to the Board and shall prepare an annual report on its accomplishments and activities (including recommendations to improve BPD services) for presentation to the Board and the public.
- H. Monitor Study Recommendations
- The BPCRB shall report on the accomplishments and progress made by BPD in implementing recommendations resulting from periodic studies that may be conducted to look at departmental policies, procedures, practices, and training.
- I. Public Statements
- The Chair of the BPCRB shall be authorized to make public statements on behalf of the BPCRB regarding the role and processes of the BPCRB when an exigency to respond to an inquiry is presented.

J. Selection of the Chief of Police

The BPCRB (as well as the BART Police Associations) shall participate in an advisory role in the selection of the Chief of Police by interviewing finalist candidates.

K. Staff Support for the BPCRB

The DSO will provide staff support to the BPCRB including but not limited to the following:

- i) Facilitation of training for the BPCRB.
- ii) Preparation and maintenance of records of meetings of the BPCRB.
- iii) Distribution of reports by the BPCRB to the Board and the public.
- iv) Facilitation of the application process for appointment to the BPCRB and coordination of the selection and ratification processes with the Board.
- v) Provision of training including a curriculum designed for newly-appointed BPCRB members.
- vi) Provision and maintenance of an ongoing in-service training program.

## **Chapter 2-08 RELATIONSHIP BETWEEN THE BPCRB AND OIPA**

- A. No less than monthly, the BPCRB shall receive reports from the IPA including the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective/punitive action, including discipline and dismissals, and the number of independent investigations concluded by OIPA.
  - i) The report shall also include the number of cases being appealed either to OIPA by members of the public or by the BPCRB pursuant to the appeals process described in Chapter 1-04(B), above.
  - ii) OIPA reports to the BPCRB shall include all complaints received by OIPA, BPD, the BPCRB, DSO, and other District departments.
  - iii) This report shall also include the number of days that have elapsed between the date of the complaint and the report to the BPCRB.
  - iv) OIPA reports shall include the degree to which OIPA and BPCRB disciplinary recommendations were implemented by BPD.
- B. The Chair of the BPCRB shall, for informational purposes, be promptly informed by the OIPA of all critical incidents involving BPD.
- C. The BPCRB may report to the Board of Directors' Personnel Committee on the performance and effectiveness of OIPA.
- D. The BPCRB (as well as the BART Police Associations) shall participate in an advisory role in the process of selecting all successors to the first IPA.
- E. The BPCRB will participate in a regular program of community outreach and communication with the public, in conjunction with OIPA.
- F. The BPCRB shall make forms available at BPCRB meetings to accept complaints and allegations of police misconduct from the public and shall forward any received complaints to OIPA for appropriate action.

## **Chapter 2-09 CONFIDENTIALITY OF RECORDS AND INFORMATION**

Members of the BPCRB shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and shall respect the privacy of all individuals involved.

### **Chapter 2-10 CODE OF ETHICS**

The members of the BPCRB shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

### **Chapter 3-01 OVERSIGHT SYSTEM EVALUATION**

The Board, with input from the BPCRB, IPA, BART Police Associations, GM, DSO, complainants and the public will evaluate the BART Police citizen oversight structure every 3 years to determine whether the need exists to make changes and/or otherwise make adjustments to the system to improve its continued performance. These evaluations shall in no way be intended to eliminate the BART Police citizen oversight structure.

# **Independent Review of the BART Police Oversight Structure**

**June 2017**



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# I. Executive Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Other recommendations and findings:**

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

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

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

## II. Introduction

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### A. Background.

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

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

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

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

**BART Public Safety Accountability Act:** In September 2009 – immediately following the Meyers Nave report and before the completion of the NOBLE report – a bill was proposed in the state legislature to create an independent oversight system for BART PD. In July of 2010, the BART Public Safety Accountability Act was enacted. It directed the BART Board of Directors to “establish an office of independent police auditor, reporting directly to the board, to investigate complaints against district police personnel” and assigned the following “powers and duties” to the appointed auditor<sup>5</sup>:

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

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

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

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

<sup>5</sup> CA Pub. Util. Code § 28767.8(a) (2016).

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

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

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

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

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

## **B. Scope and Methodology**

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

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

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

We sought to answer two basic sets of questions:

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<sup>6</sup> CA Pub. Util. Code § 28767.8(b)(1)-(3) (2016).

<sup>7</sup> CA Pub. Util. Code § 28767.8(c) (2016).

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

**Overview of methodology:** To these ends, we evaluated:

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

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

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

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

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

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

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

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

**Best practices and standards:** In addition to drawing from our own experience and exposure to various oversight models and practices, we consulted best practices and standards from a variety of sources, including the National Association for the Civilian Oversight of Law Enforcement (NACOLE) reports and reports by other professional organizations; scholarly literature on oversight; the NACOLE code of ethics (cited in the Model); the Core Principles for an Effective Police Auditor's Office (cited in the Model); U.S. Department of Justice, Civil Rights Division investigations and consent decrees<sup>8</sup> and COPS Collaborative Reform Initiative reports<sup>9</sup>; and the Final Report of the President's Task Force on 21<sup>st</sup> Century Policing (May 2015).<sup>10</sup>

### C. Acknowledgements

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

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

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

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



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

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

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

## **III. Findings and Recommendations**

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

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

### **A. Clarifying Oversight's Scope**

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

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

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

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

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

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

## **B. Increasing OIPA's Monitoring Responsibilities**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **C. Making the Complaint Process Available to All**

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

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

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

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

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

### **D. Enhancing OIPA Investigations**

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

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

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

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

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

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

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

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

### **OIPA Should Develop an Investigative Handbook.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## **E. Improving the Disposition Process of OIPA Investigations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **OIPA Should Report Publicly the Results of Any Completed Investigation.**

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

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

#### **F. Additional Risk Management Role for OIPA.**

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

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

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

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

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

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

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

## **G. Developing a Mediation Program**

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

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

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

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

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

## **H. Ensuring Prompt OIPA Notification of All Critical Incidents**

### **OIPA Should Receive Notification as to All Critical Incidents.**

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

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

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

## **I. Enhancing OIPA's Footprint Regarding Use of Force**

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

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

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

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



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

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

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

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

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

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

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

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

### **OIPA Should Be Involved in the Early Identification System.**

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

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

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

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

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

## **K. Increasing OIPA's Role as Auditor**

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

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

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

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

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

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

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

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

## **L. Expanding OIPA's Role in Policy Development**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **N. Ensuring Regular Dialogue Between Oversight and BART Police Associations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

## **Q. Providing Increased Transparency Authority for BART Oversight**

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

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

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

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

## **R. Ensuring Periodic Review of BART Oversight**

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

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

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

# Independent Review of the BART Police Oversight Structure

**July 2017**

**ADDENDUM**



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## INDEPENDENT REVIEW OF THE BART OVERSIGHT STRUCTURE: ADDENDUM

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

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

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

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

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

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

---

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

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

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

# **Independent Review of the BART Police Oversight Structure**

**July 2017**

**ADDENDUM**



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# The Bay Area Rapid Transit Police Department Report

# We do science to promote justice.



## CENTER FOR POLICING EQUITY

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Co-founder and CEO

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## Bay Area Rapid Transit Police Department is Committed to Enhancing Equity & Improving Community Trust

Bay Area Rapid Transit (BART) Police Department has a long history with the Center for Policing Equity (CPE). The police department began its relationship with CPE in 2012, when CPE trainers conducted a workshop on the masculinity threat in policing.

In 2013 and 2014, CPE worked with BART to produce two reports entitled “Police-Initiated Stops for Fare Evasion in the BART System: Embarcadero, Powell, 12th Street and Dublin/Pleasanton Stations” (a preliminary report shared in June 2013 and an addendum to it shared in April 2014).

In November 2015, BART PD began to share data with CPE as part of the **National Justice Database (NJD)**.

In 2017-2018, BART officers participated in focus groups in the course of CPE’s development of the COPS Guidebook, which was published in 2019.

During the course of its work with CPE, BART PD has been led by several different chiefs. Most recently, in May 2019, Interim Chief Ed Alvarez took over leadership of the department from former Chief Carlos Rojas, who retired in April 2019. Chief Alvarez was promoted from Interim Chief to Chief in January 2020.

By participating in CPE's National Justice Database, and various reports and CPE initiatives, BART PD has shown itself to be a leader in its commitment to advancing policing outcomes. BART PD initiated the partnership with CPE and has participated with courage and transparency, knowing that disparities would be found. CPE commends BART PD for their proactive and ongoing participation in enhancing equity, and encourages BART PD to undertake additional steps enhance their commitment to fair and equitable policing.



## Key Findings

The Center for Policing Equity partnered with the Bay Area Rapid Transit (California) Police Department to examine policing practices and behavior from 2012 to 2017 as part of the **National Justice Database (NJD) project**. CPE examined the incidences of vehicle stops, pedestrian stops, and use of force in order to:

- Identify any racial disparities in police interactions with civilians
- Determine if disparities were caused by inequitable practices or other factors
- Identify any attitudinal dispositions by officers or within the department that may be risk factors for inequitable practices

CPE analyzed data provided by BART PD to generate this report. Findings and recommendations are summarized in the following pages.



## Key Findings

Results of the study did show racial disparities in BART PD interactions with community members during the study period. Key findings include:

Black persons comprise under 9% of the estimated residential population served by BART, but 63% of persons who experienced force were Black.

The force type most commonly recorded in BART use-of-force incidents was “hands-on” (including physical restraint, which was used in 45% of recorded force incidents, and physical striking in 2%) —and the second most recorded was the pointing or display of a firearm.

After taking into account crime, poverty, and racial demographics of the area around each BART station, the estimated rate of BART PD rider stops was eight times higher for Black riders than for White riders, and more rider stops were made in areas with higher poverty rates.

## What does this mean?

Disparities do not necessarily indicate that police officers have engaged in biased or discriminatory behavior.

Disparities in rates of police contact and the outcomes of this contact mean racial groups in California's Bay Area have different experiences of BART PD policing.

This is important to measure, as these differences can represent pain points for communities.



- **Factors outside of a department's control (e.g., poverty and crime rates) contribute to disparities. Measuring these factors can help infer what portion of the disparity is likely related to officer behavior and/or departmental policies and practices.**

## Recommendations

CPE developed six recommendations to improve police and community relations :

- **Updating use of force, stops, and searches data collection.** CPE recommends that BART PD adopts a written policy requiring officers to collect data on all stops in accordance with the Racial and Identity Profiling Act of 2015. This ensures that officers are trained to record racial data for stops and use of force and requires that arrests at vehicle/rider stops or after a use-of-force incident are recorded.





## Recommendations

- **Requiring supervisor review of stop records.** CPE recommends BART PD require officers to submit brief daily narratives to their supervisors about stops conducted, and that supervisors review these reports in a timely manner.



- **Reviewing fare enforcement policies.** Since BART PD indicates a majority of its activities consist of fare enforcement, CPE recommends the department monitors locations of enforcement and times of enforcement to ensure efficient and equitable deployment.

## Recommendations

- **Adopting a new policy on drawing or displaying firearms.** CPE recommends BART PD revise Policy 300.3.5 by adopting a policy stating that officers may only draw or display their firearms if they reasonably believe that there is a substantial risk that the situation may escalate to the point where deadly force may be justified.



## Recommendations

- **Further examining the cause of distrust with the community.** CPE recommends BART PD explore the underlying causes of distrust for both officers and community members by hosting open dialogues and listening sessions or administering community surveys. BART PD must implement responsive changes that are transparent to all concerned.
- **Collaborating with other officials.** CPE recommends BART PD work in collaboration with the BART Office of the Independent Police Auditor and the BART Police Citizen Review Board to implement the recommendations made in the full report.

**CPE's hope is that BART PD can leverage the information to address racial disparities and improve police-community relations.**



Wins

## Ways in Which The BART PD Proactively Enhances Equity Already

*BART PD has described the following equity initiatives above and beyond those evaluated by CPE as part of the NJD project:*

Progressive modules with policing experts

The use of body-worn cameras

The adoption of a progressive Civilian Oversight Model



Serving as an ICAT pilot agency

Earning the Commission on Accreditation for Law Enforcement Agencies (CALEA) accreditation

- To promote even more transparency and accountability, BART PD also publishes an Annual Internal Affairs Report, which started in 2010 and describes data around the nature of complaints, the number and type of incidents involving officer use of force, and the demographics of complainants.
- CPE's full Bay Area Rapid Transit Police Department Report is available on BART's website at [www.bart.gov](http://www.bart.gov).





Thank you

for supporting CPE's  
data-driven solutions that  
communities want and  
law enforcement can stand behind



# BART PD and the Center for Policing Equity Study

A PROGRESSIVE PARTNERSHIP



# Respect for the Process

- This report is the result of years of partnership between BPD and the Center for Policing Equity
- BPD voluntarily agreed to this process with the hope the findings would form the foundation of a data-driven approach to ensuring equitable policing.
- The partnership with CPE, submitting data to the National Justice Database, and adopting CPE's recommendations are all consistent with BPD's commitment to progressive policing.

# RECOMMENDATIONS

## #1: Updating use of force, stops, and searches data collection

BPD Action: Advancing procedures to comply with the California Racial Identity and Profiling (RIPA) Act of 2015. BPD is required to issue its first RIPA report by April 2023 but anticipates being able to do so well before deadline.

## #2 Supervisor review of stop records

BPD Action: Set goal of collecting and reviewing all stop data by October of 2021. Setting this ambitious goal allows time to solve logistical challenges prior to the April 2023 deadline.



# RECOMMENDATIONS

## #3: Review fare enforcement policies

BPD Action: Reviewed policy and practice to ensure Fare Inspectors approach every single rider during focused enforcements in downtown SF. No exclusion policy ensures equitable policing.

## #4: Update policy on drawing or displaying firearms

BPD Action: Initiated review and updated firearm policy to ensure compliance with all state mandates. Specifically addressed issue of pointing or displaying firearm. Now require that any such display be documented in a police report.

# Recommendations

## #5: Redouble efforts to build mutual trust and open productive channels of communication between BART PD and the community

BPD Action: Launched and in process of building new Progressive Policing and Community Engagement Bureau. BPD to host series of town-hall style public meetings to build engagement and start ongoing discussion with communities we serve.

## #6: Collaborating with other officials

BPD Action: Committed to building up collaborative relationship with the Office of the Independent Police Auditor, the Citizen Review Board and other entities.



# QUESTIONS





# The Science of Justice

Bay Area Rapid Transit Police Department  
National Justice Database City Report

August 2020



**Edgardo Alvarez**  
*BART Chief of Police*



Center For  
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## CENTER FOR POLICING EQUITY

The Center for Policing Equity (CPE) is a research and action think tank, providing leadership in equity through excellence in research. CPE specializes in partnering with law enforcement and communities, with the mission of bridging the divide of communication, generational mistrust, and suffering. CPE's work is powered by science. Using advanced analytics to diagnose

disparities in policing, the organization's work sheds light on police behavior and answers questions that police and communities have asked for years about how to build a healthy relationship. Using CPE's analyses and recommendations, partners can chart a path toward better practices that are consistent with their values.

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# EXECUTIVE SUMMARY

The Center for Policing Equity (CPE) partnered with the Bay Area Rapid Transit Police Department (BART PD) to analyze the department's policing practices between January 2012 and December 2017.

The project's overall goals were (1) to identify any racial disparities in police interactions with community members; (2) if disparities are observed, to determine whether they were caused by inequitable practices on the part of officers or could be explained by other factors; (3) to identify any attitudinal dispositions on the part of officers or departmental contexts that can perpetuate inequities or make it probable that inequities, if not already present, will manifest in the future; and (4) to provide recommendations for reducing any identified disparities.

Using data contributed by BART PD to CPE's National Justice Database (NJD), we examined the incidences of stops involving major racial groups during the six-year period, adjusting for the relative population size of each group. We also administered a climate survey to assess officer attitudes and beliefs that could enhance or decrease vulnerability to expressing bias. Finally, we conducted a review of BART PD's policy manual, focusing on policies related to (1) collection of data regarding police interactions with members of the public; (2) equitable policing practices; and (3) use of force.

It should be noted that BART PD has significantly advanced its data collection and management practices since data were collected for this report. We commend BART PD on these efforts, and expect that future analysis will be enriched by these advancements.

The NJD analytic framework aims to distinguish among five broad types of explanations for racial disparities in policing, all of which are likely to play some role in producing racial disparities in BART PD, as elsewhere. These explanations are elaborated upon in the report's Introduction section below and include: (1) the characteristics or behaviors of individual community members; (2) neighborhood and community conditions and characteristics; (3) the characteristics or behaviors of individual officers;

(4) departmental culture, policy, or law; and (5) relationships between the communities and the police.

While the whole story likely incorporates elements of each explanation, the comprehensive NJD framework analyzes the role that community- and police-level factors may contribute to racial disparities. By combining police administrative data with population data (e.g., income, racial demographics, neighborhood crime rates) and a police department climate survey, we can examine the role that these explanations play in the disparities that both police departments and communities want to reduce.

BART PD is the first transit police department to participate in the NJD. CPE is excited to partner with BART PD and commends the department for paving the way for transit authority participants. Transit departments are unique (compared to municipal law enforcement agencies) and, as such, we adapted the NJD analytic plan to account for the mobile population BART PD officers interact with.

## Summary of Findings

Overall, the analysis revealed reasons for optimism along with areas for improvement in advancing the goal of equitable policing. The climate survey revealed generally positive officer perceptions of organizational distributive justice within BART PD regarding the fairness of departmental procedures. Moreover, officers reported feeling that they are treated with dignity and respect by their supervisors. Additionally, they expressed egalitarian attitudes and a strong commitment to community-oriented and procedurally just policing.

The analysis also revealed areas that warrant additional attention. The stop and use-of-force data shared with us suggest that residents experience BART PD policing

in disparate ways by race: Compared to Whites and all other non-Black racial groups, Black persons are more likely to be stopped in their cars or in the BART system. Members of Black communities also experience more incidents involving force. Although the data and analytical limitations of the present study do not allow us to identify the causes of differential rates of contact observed in BART PD stops and use of force, they offer reasons for further investigation.

The analysis also found 322 incidents involving display or pointing of a firearm by BART PD over the six-year period, and revealed that the majority of persons who experienced this type of force were Black. Our analysis does not determine whether the use of force in any given situation is appropriate or justified. However, the display or pointing of firearms is an area that potentially warrants additional departmental attention to ensure BART PD firearm policy and practice reflect the department's commitment to public safety.

## Vehicle and Rider Stops

Among other important findings, our analysis of BART PD vehicle and rider stops revealed the following:

- **Per capita, there were twice as many vehicle stops of Black as of White persons.** BART PD conducted 1.1 stops of Black persons per 1,000 Black residents, compared to a rate of 0.46 per 1,000 White residents.
- **Nearly half of riders stopped by BART PD (49%) were Black,** compared to their 8.7% share of the estimated racial population served by BART.<sup>1</sup> At most stations in the BART system,<sup>2</sup> a majority or plurality of riders stopped by BART PD were Black.
- **Black persons experienced BART PD rider stops at a rate eight times higher than the stop rate for White riders.** This finding holds true when we take

into account the crime rate, poverty rate, and racial demographics of the area surrounding each BART station. Although the analysis cannot affirmatively identify the causes of this disparity, we also found:

- There were more stops made in locations with higher poverty rates.
  - The Black–White racial disparity existed at all neighborhood income levels, but it was larger in wealthier neighborhoods than in those with lower incomes.
- **A sizable percentage of records were missing racial data for rider stops** for the initial five years of the study period. Data collection was significantly improved in 2017, when only 4% of rider stop records were missing racial data.
    - At five BART stations, officers did not record racial data in more than one third of their stops: Pleasant Hill/Contra Costa Centre (49% of stop records were missing racial data), South San Francisco (48%), Union City (41%), Millbrae (40%), and Dublin/Pleasanton (37%).
    - At most stations, fewer than 20% of stops were missing racial data.

## Use of Force

Among other important findings, our analysis of BART PD use-of-force incidents revealed the following:

- **Overall, 63% of persons who experienced force were Black** (compared to their 8.7% share of the population served by BART).
- **Black persons were 13 times more likely to experience BART PD use of force than their White**

1 The population of residents BART serves was estimated based on U.S. Census estimates of the resident population within a one-mile radius of each station. This population is used as the benchmark in calculating per capita rates. A benchmark of the specific population of each station is utilized in the regression analyses, which include both resident information and BART data on passenger entry points for the population that disembarked at each station. The methodologies for estimating this “resident” and “rider” population are described in more detail in Section I of the report (in the subsection entitled “Methodology for Estimating Benchmark Population at Each BART Station”).

2 This includes stops BART PD officers make in BART stations as well as in areas surrounding the station.

**counterparts were.** This increases to 15 times more likely when we take into account the crime rate, poverty rate, and racial demographics of the area surrounding each BART station. While this analysis does not account for all potential factors, these findings suggest the disparity might be mitigable by changes to BART PD policy and practice.

- **Other than Black persons, all other racial groups were the subjects of force at per capita rates lower than that of White persons.**

- **“Hands-on” force was the type most commonly recorded in BART PD use-of-force incidents.** This includes physical restraint, which was used in 66% of recorded force incidents, and physical striking, which was used in 3.4%.

- **Pointing or display of a firearm was the second most common force type recorded in BART PD use-of-force incidents.** Over the six-year period, 23% of all use-of-force incidents recorded by BART PD involved a firearm (323 incidents).

- The dataset received from BART PD did not consistently include records of OIS or other firearm discharges.<sup>3</sup> We are advised by BART PD that it recorded five officer-involved shootings (OIS) from 2009 to 2017.<sup>4</sup> We are further advised that the agency has since revised their data collection procedures to ensure that records of OIS and other firearm discharges are included in use of force data.

- BART PD policies on firearm display and pointing should be evaluated to ensure alignment with the context in which BART PD officers most frequently operate and to ensure that they are in line with public safety and building of trust with community members.

- **Frequency of firearm incidents varied across racial groups and geographic locations.**

- Overall, 63% of incidents of pointing or display of a firearm involved persons who were Black. White persons were the subjects of the next largest proportion of firearm incidents (17%).

- Incidents involving a firearm were concentrated in and around Oakland and other parts of the East Bay. Across the observation period, 113 firearm incidents (35% of the total) were logged in Zone 1 (Oakland); 59 firearm incidents (18% of the total) were logged in Zone 3 (South Bay). No other zone recorded more than 35 firearm incidents across the observation period.

Although the data show racial disparities in BART PD interactions with community members during the study period, these disparities do not necessarily indicate that police officers have engaged in biased or discriminatory behavior. The NJD analytic plan, described in the introduction to the full report, suggests that disparities may be explained by community characteristics, individual characteristics, individual officer behavior, and department policies and culture, as well as by the relationship between the police and the community. Accordingly, racial differences in policing data should be contextualized with other contributing factors.

### **Officer Climate Survey**

To gain better insight into social attitudes, beliefs, and morale, which can serve as risk factors for inequitable officer behavior in the field, we conducted a climate survey of BART PD officers. The survey focused on attitudes and beliefs that enhance or decrease vulnerability to expressing bias and relate to (1) inequitable and burdensome policing; (2) community trust; and (3) workplace well-being and optimal job performance.

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3 One use-of-force incident, recorded during the 2016–2017 period, reflects two discharges of a firearm.

4 Per email from BART PD personnel, September 9, 2019, there were five OIS from 2009 through 2017, as well as two non-OIS firearm discharges. Records of these incidents were not included in the data provided and are not included in our analysis.

Because only 40 persons responded to the survey, and a majority of them were in supervisory roles, the results of the survey may not be generalizable to officers in the BART PD as a whole. Nonetheless, the climate survey revealed a number of departmental strengths.

- **Respondents expressed little explicit racial bias** and egalitarian attitudes toward various social groups.
- **Respondents expressed a deep commitment to procedural justice** and were supportive of **community-oriented policing**.

The survey also suggests police–community relations is an area with opportunity for improvement.

- **Survey respondents expressed low levels of trust of the community** and believed that the community in general, and Black persons in particular, may stereotype police officers and have negative attitudes toward police.
- **Structured efforts to improve the police–community relationship might be warranted**, and the current community programs administered by BART PD (e.g., Barbershop Forum, Coffee with a Cop) could be evaluated to assess how they might be enhanced.



# RECOMMENDATIONS

In this report, we advance six specific recommendations. While not an exhaustive list of possible solutions to the issues raised in this report, we recommend BART PD adopt these actionable steps to enhance the department's commitment to fair and equitable policing. We additionally recommend BART PD draw on existing departmental strengths, including those revealed in the climate survey, when implementing these recommendations.

- 1.** Implement key changes to data collection efforts, specifically with respect to stops, searches, and use-of-force incidents, as follows:
  - a.** Update the BART PD policy manual by adopting a written policy requiring officers to collect data on all stops in accordance with the Racial and Identity Profiling Act of 2015 (RIPA).
  - b.** Adopt a policy requiring supervisors to review stop and use-of-force records in a timely fashion to ensure that their supervisees are completing them properly.
  - c.** Ensure that officers are trained to record racial data for every stop and use-of-force incident. Officers should not ask persons for racial self-identification, but should record their perception of the person's racial identity. If they are not sure, they should record "Unknown."
  - d.** Record every search, and include in these records the reason for the search and whether contraband was found. Yield rate data can be calculated based on categorical lists of contraband or a more detailed accounting that allows for specific weapons or drugs to be identified. These categories are listed in the RIPA stop-data regulations and are also required to be reported under BART PD Policy 322.5.
  - e.** Record the nature of the offense(s) when a person is arrested at a vehicle or rider stop or after a use-of-force incident.
  - f.** In use-of-force incidents involving firearms, record whether the weapon was discharged and whether any person was injured. Officer-involved shootings should be included in use-of-force data sets.
  - g.** Implement the recommendations for RIPA compliance outlined in the *COPS Stop Data Guidebook: Pilot Implementation Reports*, which was drafted by CPE and the Policing Project.
- 2.** Adopt a policy requiring officers to write a brief narrative explanation of the reason for each stop they conduct and submit the same to their supervisors at the end of each shift. While RIPA already requires that this information be collected and submitted to the California Attorney General,<sup>5</sup> we recommend that BART PD establish a policy requiring that it also be submitted to supervisors on a daily basis for review. We further recommend that BART PD adopt a policy requiring supervisors to review these reports in a timely manner to ensure that stops are supported by reasonable suspicion and consistent with BART PD policy and applicable law.

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<sup>5</sup> Racial and Identity Profiling Act, Cal. Code Regs. Tit. 11 § 999.226(a)(10)(B).

- 3.** Monitor the locations and times of fare enforcement operations—which represent a large majority of BART PD’s activities—to ensure efficient and equitable deployment.
- 4.** Revise the BART PD policy on drawing/deploying firearms (Policy 300.3.5) to clarify when an officer may draw a firearm or point a firearm at a member of the public, and about the role of bystander safety in the determination of whether to draw, point, or discharge a firearm. We recommend that BART PD adopt a policy stating that officers may only draw or display their firearms if they reasonably believe that there is a substantial risk that the situation may escalate to the point where deadly force may be justified.
- 5.** Redouble efforts to build mutual trust and open productive channels of communication between BART PD and the community. The climate survey data show that some officers distrust the community and believe that community members, especially members of Black communities, have a negative attitude toward police. We recommend BART PD explore the underlying causes of distrust for both officers and community members. This could include hosting open dialogues (e.g., listening sessions) or administering a community survey. Once the core issues are brought to light, BART PD must implement responsive change in a way that is transparent to both officers and community members.
- 6.** Work in collaboration with the BART Office of the Independent Police Auditor and the BART Police Citizen Review Board to implement the recommendations made in this report.

# INTRODUCTION

How do you measure justice? Despite the philosophical, methodological, and logistical difficulty of this question, law enforcement executives are increasingly asked to turn over data with the aim of evaluating how fairly they are doing their jobs.

At the same time, many community members perceive law enforcement activities to be targeted toward—and biased against—non-White people. Communities wracked by mass incarceration and highly publicized policing incidents have called for greater transparency and accountability on the part of the police. And research shows that positive police–community relationships are crucial for safer communities: Citizens are more likely to engage as witnesses and as partners in crime reduction if they believe in the legitimacy of police as equitable and impartial agents of the law.

Increasingly, then, courageous and forward-looking law enforcement executives are seeking hard metrics on current practices as a way to identify effective policy reforms aimed at reducing bias and improving police–community relations. They are seeking out partnerships with prominent researchers to solve this riddle and to lead policing in the nation with respect to civil rights and public accountability. Toward this end, the Bay Area Rapid Transit Police Department (BART PD) partnered with the Center for Policing Equity (CPE), a 501c(3) research and action think tank dedicated to advancing equity by way of rigorous scientific research. This report describes the data analysis resulting from this partnership.

CPE aims to address the needs of both law enforcement and communities by building the National Justice Database (NJD) to better understand and improve policing practices. Through the NJD, we collect policing data to measure fairness and improve policing equity, and make

these findings transparent to law enforcement and to communities. The NJD offers a rigorous analytic framework to make sense of policing data in order to identify and understand the consequences of policing activities and the sources of racial disparity.<sup>6</sup>

Data collection and analysis are essential tools that can reveal empirical realities and illuminate options that might advance equity in public safety. Too often, law enforcement data have been captured with an eye toward accounting or litigation, and the data have not been leveraged to optimize performance. But just as CompStat ushered in a new era where police could be accountable for crime rates, data on racial disparities—and the inferential analyses we pair with them here—can be used to identify opportunities to improve public trust and safety. Consequently, together with specific policies designed to address opportunities for improvement revealed by careful analysis, better data accountability is a vital part of the path forward.

This report is designed to provide BART PD with a valuable resource toward that end. It is intended as a preliminary guide to illuminate options that might advance equity in public safety and provide straightforward statistical answers to some of the most pressing questions facing this department and other law enforcement agencies. In the sections that follow, we present empirical documentation of the degree of racial disparities in BART PD’s policing practices, as well as analysis and interpretation of the factors that might contribute to such disparities. While the

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<sup>6</sup> In this report, “racial group” refers to groups described in BART PD records by racial category (e.g., Black, Asian). When our analysis compares BART PD policing statistics to U.S. Census Bureau data, these identities are mapped onto the following census categories: Hispanic (referred to as Latinx in this report), non-Latinx Asian, non-Latinx Black, non-Latinx White, and non-Latinx Other Race. The census considers Hispanic as an ethnicity that encompasses all racial backgrounds. The description of Asian, Black, Latinx, White, and Other Race as “racial” designations does not represent a claim that any person belongs to a monolithic “race,” or indeed that the category of “race” has objective meaning independent of its social context.



results are mixed, our analysis reveals encouraging findings and heartening trends. It also flags questions and issues that warrant further investigation and reform.

Our purpose is to demonstrate what can be learned when policing data are analyzed by qualified, independent researchers. This report, like those produced for other NJD participants, aims to offer law enforcement officials a road map toward greater transparency and accountability in police practices so they can transform agencies and adopt more just and equitable means of promoting public safety.

## National Justice Database Analytic Framework

The NJD analytic framework aims to distinguish among five broad types of explanations for racial disparities in policing, all of which are likely to play some role in producing racial disparities in the Bay Area, as elsewhere:

- 1. Individual characteristics or behaviors.** Individual conditions or behaviors—such as mental health challenges, homelessness, or participation in criminal activity—can lead to disparate contact with law enforcement.
- 2. Community characteristics.** Characteristics such as high crime rates or poverty may draw increased police attention to certain communities.
- 3. Officer characteristics or behaviors.** Some officers may view members of certain communities with a higher level of suspicion, resulting in a disproportionate rate of stops or a more punitive disposition after a stop for these individuals.
- 4. Police department organizational culture or policy.** Police departments may have established practices or policies that increase law enforcement contact with some members of the population more than others. For example, officers may be deployed to patrol some communities more frequently than others. Moreover, department

culture and policy can be affected by local ordinances, outside of a police department’s purview, that force officers to sanction certain segments of the population more than others. Examples of such ordinances are those related to closing public parks at night and other forms of curfew.

### 5. Relationships between communities and police.

Mistrust of law enforcement can reduce community members’ willingness to cooperate with police. Similarly, a sense that communities do not trust or respect police may cause officers to feel unsafe or defensive in some neighborhoods.

While the whole story likely incorporates elements of each of these explanations, the comprehensive NJD framework analyzes the role that community-level and police-level factors (with a specific focus on the first three explanations above) may contribute to racial disparities. By combining police administrative data with population data (e.g., income, racial demographics, neighborhood crime rates) and a police department climate survey, we can examine the role that these explanations play in the disparities that both police departments and communities want to reduce.

### DEPARTMENTAL DATA

With regard to police administrative and population data, the NJD analytic framework leverages data that departments collect on officer–community interactions, such as stops and incidences of use of force. These are then integrated with American Community Survey data from the U.S. Census Bureau and neighborhood serious crime rates reported by departments and coded for Part I crimes according to the Uniform Crime Reporting system of the U.S. Federal Bureau of Investigation.<sup>7</sup> While no police department in the country currently collects all the data recommended by the NJD analytic framework, BART PD has been forthcoming in response to our requests for data-sharing and information.

We commend BART PD for their thorough data collection procedures, and recent updates to ensure the inclusion of officer involved shootings in their use-of-force records

<sup>7</sup> Part 1 crimes are serious crimes—specifically a category of eight offenses used in the FBI’s Uniform Crime Reporting Statistics: murder and non-negligent homicide, rape (legacy and revised), robbery, aggravated assault, burglary, motor vehicle theft, larceny theft, and arson.



system. We encourage BART PD to continue its collection of stop and search data, and to include information on whether these stops lead to criminal charges. This additional information will allow more powerful and comprehensive analysis to be conducted on a more comprehensive dataset that could identify trends and policy effects across multiple years of BART PD practice. Expanded data collection and analysis will also afford a significant opportunity to better understand and foster fairness in policing, which will benefit BART PD as well as the communities it serves.

### **OFFICER CLIMATE SURVEY DATA**

In addition to analyzing police administrative and population data, the NJD analytic framework explores conditions that serve as risk factors for ineffective and unjust policing practices. In line with that goal, we administered a climate survey to officers within BART PD, providing them the opportunity to voluntarily share their perspectives about working within the department as well as their views about the communities they serve and protect. The survey measured dispositions that can:

- increase the risk that officers will engage in inequitable and burdensome policing practices;
- increase the likelihood that officers will be resistant to policies and procedures that enhance community trust; and
- undermine the optimal job performance of officers.

With these survey findings, BART PD can better assess the types of departmental culture shifts or professional development trainings that may need to be adopted to further the goal of equitable policing.

By leveraging police administrative data, climate survey data, and a review of department policies, the NJD analytic framework produces comprehensive findings regarding a department's strengths and areas in which improvements are needed. The resulting analysis can be used to steer community engagement, relationship building, and continued departmental reform.

It is important to emphasize that the persuasive power of analytics grows substantially with the length of time a

department measures and analyzes important indicators. **As a result, we encourage BART PD, its community, and all law enforcement agencies involved in the NJD to treat this analysis as an initial benchmark against which future progress can be measured.** With many departments set to receive similar research reports in the coming years, we hope this analytic framework will serve as a road map for police and communities to establish where they are now and to chart a path toward a more just and equitable future.

### **History of BART PD Involvement in the National Justice Database**

BART PD began its relationship with CPE in 2012, when CPE trainers conducted a workshop on masculinity threat in policing. In 2013 and 2014, we worked with BART PD to produce two reports, both entitled *Police-Initiated Stops for Fare Evasion in the BART System: Embarcadero, Powell, 12th Street, and Dublin/Pleasanton Stations*. (A preliminary report was delivered in June 2013, with an addendum in April 2014.) In November 2015, BART PD began to share data with us as part of the NJD. In 2017–2018, BART PD officers participated in focus groups in the course of our development of the *COPS Guidebook*, which was published in 2019.

During its work with CPE, BART PD has been led by several different chiefs. Most recently, in May 2019, Interim Chief Ed Alvarez took over leadership of the department from former Chief Carlos Rojas, who retired in April 2019. Chief Alvarez was promoted from Interim Chief to Chief in January 2020.

BART PD implemented a number of trainings during the study period related to enhancing equity in policing, including curriculum on implicit bias, procedural justice, crisis intervention, and de-escalation. Both the Office of Independent Police Auditor and the BART Police Citizen Review Board provide oversight of the department, including through independent investigations of complaints and oversight of internal investigations, as well as by providing recommendations on policy changes and facilitating community outreach. The department has collaborated with these oversight agencies in revising departmental policy, including the creation of policy on interactions with transgender people in 2015 and a revision to the use-of-force policy to require de-escalation in 2017.

# SECTION I: DATA AND CONTEXT

Our ability to evaluate issues of equity and offer recommendations is directly related to the quality and quantity of data provided by each department.

In particular, an essential component of the NJD analytic framework is the analysis of geographic and demographic information collected when officers have interactions with individuals. These data include (but are not limited to) the location of each incident and the race and gender characteristics of all officers, suspects, and individuals involved.

With this in mind, departments participating in the NJD are invited to share data as completely as possible. The higher the quality of the data, the more the robust analysis that can be provided to departments. We analyze all data using descriptive statistical methods, and some are additionally analyzed with multilevel regression models. In Section I, we focus on the quantity and quality of the data BART PD provided to us for analysis in this report.

### Data Provided by the Department

Table 1 outlines a subset of the data that were requested of and provided by BART PD. This is not a comprehensive list of data petitioned from the department, but it

identifies the major pieces of data necessary for holistic assessment. In addition, BART PD allowed us to administer a climate survey to all sworn officers. Of the officers invited to participate, 40 completed the survey.

The datasets we received on BART PD stops were reasonably comprehensive but were subject to several limitations. First, BART PD recording protocols did not clearly distinguish vehicle stops from pedestrian or rider stops. To disambiguate them, we classified stop records that contained vehicle data as vehicle stops; stop records without vehicle data were grouped as pedestrian stops.

Another challenge was that some stops recorded disposition as “field interview,” while a separate dataset recorded “field interviews” with other dispositions. To address this challenge, we reviewed incidents from both datasets to ascertain whether they were duplicates. Upon finding that stops with “field interview” recorded as the disposition were not duplicated in the other dataset, we

**Table 1. Data Requested and Received from BART PD**

Data Requested	Requested Timeframe	Data Received	Information Provided		
			Location	Individual Race	Officer Characteristics
Vehicle Stops	2012–2017	2012–2017	Yes	Yes	No
Rider Stops	2012–2017	2012–2017	Yes	Yes	No
Use-of-Force Incidents and Types of Force per Incident	2012–2017	2012–2017	Yes	Yes	Yes
Field Interviews	2012–2017	2012–2017	Yes	Yes	Yes
Crime Data	2012–2017	2012–2017	Yes	Yes	n/a

combined all of these field interviews with all other stops, coding them as vehicle stops if they contained vehicle information, and as rider stops if they did not.

BART PD stop records did not document whether a person was searched, whether the search uncovered contraband, or what kind of contraband was found. The collection and analysis of these data are essential to understanding any observed racial disparities in stop and search rates.

Finally, BART PD recorded 322 incidents that involved the pointing or display of a firearm, and one incident in which a firearm was discharged. The datasets shared with us did not include comprehensive records on officer-involved shootings (OIS) and other firearm discharges by BART PD, and they did not reflect whether anyone was injured or killed. Limited information on firearm discharge (whether OIS or other discharge, such as accidental discharge or shooting an animal) was provided via personal communications between BART PD and CPE. Integration of these data, the racial demographics of the individuals involved, and the geolocations of the incidents is essential for analyzing use-of-force incidents, including any racial or geographic disparities observed in these incidents. In the period since we completed data collection for this report, we have been advised by BART PD that the agency has revised their data collection procedures to ensure that records of OIS and other firearm discharges are now included in use of force data.

With these limitations, we were still able to use descriptive methods to analyze and present data on BART PD stops and use-of-force incidents.

## The Data Context

The data provided for this report must be contextualized by the people they represent. It is important to account for the demographics of those who are served by BART PD. Because not all residents of the Bay Area are likely to use the BART, we relied on two sources to estimate the demographics of the population that BART PD officers are likely to encounter: data collected in the 2016 “BART Station Profile Study” on rider entry and exit counts per station and U.S. Census data. (The methodology used to calculate this population benchmark is described in

the next subsection.) We estimate that the residential population served by BART comprises approximately 1,662,435 persons, whose racial breakdown is approximately as follows:

- 36% are non-Latinx White (“White”)
- 29% are non-Latinx Asian (“Asian”)
- 25% are Latinx
- 8.7% are non-Latinx Black (“Black”)
- 0.6% are Indigenous Hawaiian or Pacific Islander
- 0.3% are Indigenous American (Native American or Alaska Native)

As of 2017, BART PD employs a diverse force of approximately 189 sworn officers and 99 civilian employees to serve the BART system. The racial breakdown of the 183 sworn officers for whom racial data were available in 2017 is approximately as follows:

- 74 (40%) were White
- 39 (21%) were Black
- 32 (17%) were Asian
- 35 (19%) were Latinx
- 3 (1.6%) were “Other Race”

## Methodology for Estimating Benchmark Population at Each BART Station

Given that nearly all persons stopped by BART PD were riders on the transit system or were on or near BART property, we benchmarked data about BART PD pedestrian and vehicle stops against the estimated demographics of the “benchmark population” with which BART PD officers might interact. Any estimate of this population must take into account not only the demographics of the local resident population at the location where the incident occurred, but also the demographics of the population that might be commuting to or through the station from other neighborhoods. For example, the commuter population using a transit station in an affluent downtown business district is unlikely to reflect the demographics of those who live in the immediate neighborhood.

To estimate the population demographics of individuals passing through each station, our analysts developed a customized methodology that uses BART data on the station at which each passenger entered and exited the

BART system. These data are combined with census data for the neighborhoods near each station to estimate the racial demographics of the benchmark population in or near each station, who are thus available for interactions with BART PD officers.

To calculate the demographics of the benchmark population, we used the following approach:

- We assumed that persons who live within a mile of a BART station are the population most likely to enter the BART system there. Studies show that an individual is more likely to utilize public transportation if it is within one-quarter to one-half of a mile of their home.<sup>8</sup> Using data from the 2017 U.S. Census American Community Survey five-year estimate, we estimated the demographics of the population within a one-mile radius of each station. The one-mile radius was chosen in order to include those who might walk, bike, drive, or use a bus to access a BART station.
- If two BART stations are less than a mile apart, we assumed that residents use the BART station that is closest to them.
- We estimated the racial demographics of the disembarking population at each station based on the demographics of the neighborhood (within a one-mile radius) where they had entered the BART system. Thus, for example, if 2% of people who exit at Embarcadero entered at Richmond station, we calculated that 2% of persons exiting Embarcadero reflects the racial demographics of the census tracts within one mile of Richmond station.

This benchmarking methodology is subject to several limitations, including:

- The American Community Survey demographics relied upon in this report do not include the homeless population. Homeless individuals often use public transportation and seek shelter in stations.

Also, Black people are more likely than Whites to experience homelessness, so our benchmark may underestimate the number of Black persons using the BART system.<sup>9</sup>

- Persons who travel more than one mile (by foot, bike, car, bus, or other means) to access a BART station are not accounted for in our benchmarking methodology.
- Our methodology does not account for persons who pass through a station without entering or exiting the train.

Two other, more general caveats about benchmarking police data should also be kept in mind when evaluating the analysis presented in this report. The first involves limits on drawing conclusions based on local populations. Specifically, for BART PD, as for any other police department, it cannot be assumed that persons with whom the department's officers interact are necessarily residents of the neighborhood immediately surrounding the station at which they entered or exited the BART system. Some riders may walk, cycle, drive, or ride a bus to enter a BART station that is more than a mile from their place of residence. And some riders who use BART may be visitors from outside the Bay Area, or even outside the state or country. Furthermore, to the extent that persons experience a stop or use-of-force incident while aboard a train or while at a station waiting to change trains, census demographics of the location of the incident may not offer information about the demographics of the site of the person's entry or exit from the BART system.

It is impossible to calculate precisely what the racial distribution of police encounters would look like if they precisely reflected the demographics of the persons with whom BART PD officers interact. Our estimate of rider demographics, based on station-by-station demographic estimates, represent the most precise possible effort to estimate the population that BART PD officers are most likely to encounter.

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8 Cervero and Duncan (2002); Dill (2003); Murray, Davis, Stimson, and Ferreira (1998).

9 North and Smith (1994); Moses (2019).

The second caveat is that disparities do not necessarily indicate that police officers have engaged in biased or discriminatory behavior. We cannot know, for example, the racial distribution of drivers or riders who engage in behaviors that might result in a stop or in use of force. There is also no reason to suspect that racial disparities observed in law enforcement are unrelated to the racial

disparities in education, housing, employment, health-care, and other socioeconomic indicators that characterize American society are outside the control of BART PD. Accordingly, racial differences in policing data must be contextualized with other contributing factors, including but not limited to those modeled in the regression analysis presented in Sections IIB and III of this report.



# SECTION II: RACIAL DISPARITIES IN BART PD STOPS

In this section, we describe and analyze data provided by BART PD about its vehicle and rider stops between January 2012 and December 2017.

Because BART PD is a transportation safety department, its stop patterns differ from those of a typical municipal police department. We are advised by BART PD that 77% of its officers' discretionary enforcement activities are directed at fare enforcement, with the balance of their activities designed to prevent and address other kinds of lawbreaking that may occur on or near BART PD vehicles, train lines, stations, or parking lots.<sup>10</sup> Vehicle stops for BART PD officers typically involve citing drivers for moving violations on station access roads, bus zones, and parking lots. As a result, BART PD records many more pedestrian stops than vehicle stops.

Unfortunately, as discussed above, BART PD recording protocols did not clearly distinguish vehicle stops from pedestrian stops. To disambiguate them, we classified stop records that indicated a vehicle-related reason for the stop (e.g., “basic speed law,” “DUI,” “license plates”) as vehicle stops. Stop records—including those categorized as pedestrian stops or field interviews—were otherwise grouped as rider stops. Since many people stopped by BART PD are not actually pedestrians on foot but are riding BART vehicles or waiting for them, this report describes these non-vehicle stops as “rider stops.”

According to BART PD Policy 420.6, field interviews are stops based on reasonable suspicion. BART PD policy does not mandate that officers make records of field interviews that they conduct. Rather, Policy 420.6 states that field interviews “*may* be documented to provide other officers, investigators, and crime analysts with information concerning suspicious persons and situations” (emphasis added). As a result, some field interviews may have gone unrecorded, and BART PD records of such interactions may be incomplete.

For the purposes of this report, a stop is defined as a single event in which an individual is stopped by one or more BART PD officers, regardless of the number of officers or other individuals involved in the stop. This section presents the frequency of vehicle and rider stops recorded by BART PD, along with their racial distribution. We also examine the population-adjusted, or per capita, number of stops of drivers from each of the racial groups most frequently stopped by BART PD. Drivers identified by officers as being Black, Hispanic (Latinx), White, or Asian (includes persons identified by officers as Cambodian, Chinese, Filipino, Guamanian, Hawaiian, Korean, Laotian, Pacific Islander, Samoan, Vietnamese, “Other Asian or East Indian,” and “Other Asian”) accounted for about three quarters of all BART PD stops during this time period. Drivers who were identified by officers as “Other” accounted for 18% of all stops; 5.3% of all vehicle stops were missing racial data.

In addition to descriptive statistics, we present findings from multilevel regression models designed to assess whether observed racial disparities in BART rider stops could be explained by neighborhood characteristics such as poverty, crime rates, or racial demographics.

## Section IIA: BART PD Vehicle Stops and Racial Disparities

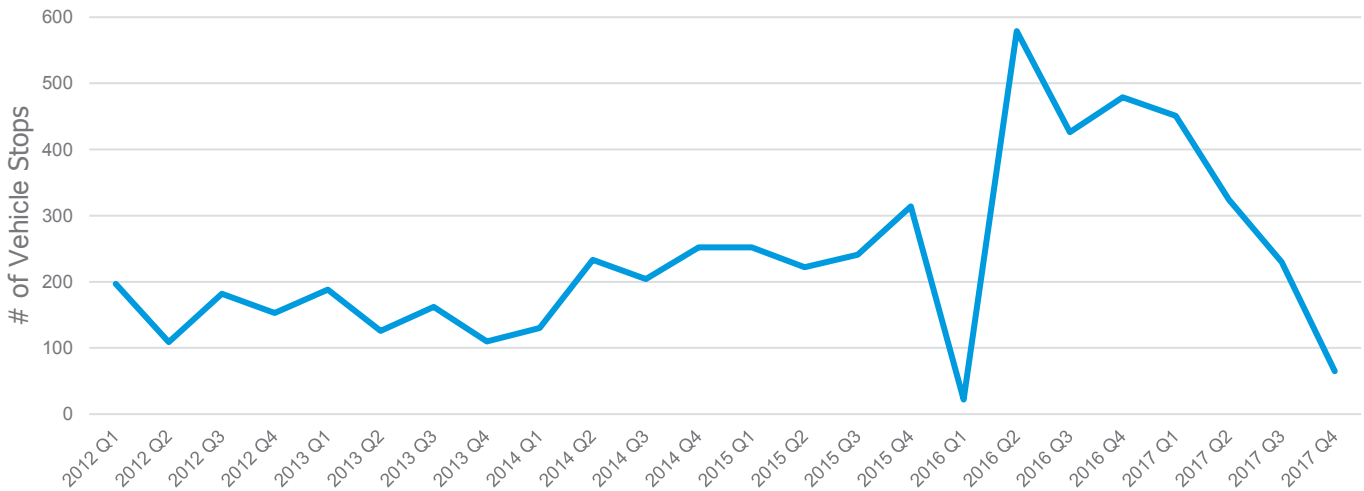
In this section, we present findings related to BART PD vehicle stops. As noted above, stop records that indicated a vehicle-related reason for the stop—for example, “basic speed law,” “DUI,” or “license plates”—were counted as vehicle stops. A stop may involve one or more BART PD officers.

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<sup>10</sup> Per telephone conversation with BART PD personnel, November 13, 2019.



**Figure 1. Number of Vehicle Stops per Quarter, 2012–2017**



**SUMMARY OF FINDINGS**

We are advised by BART PD that most of the department’s vehicle stops occur when a private vehicle drives onto roadways that are reserved for BART vehicles.<sup>11</sup> The size and direction of racial disparities observed in BART PD vehicle stops varied widely among BART stations, but overall they were smaller than those we found in rider stops or use-of-force incidents. On a per capita basis, Black drivers were twice as likely to be stopped by BART PD as their White counterparts.

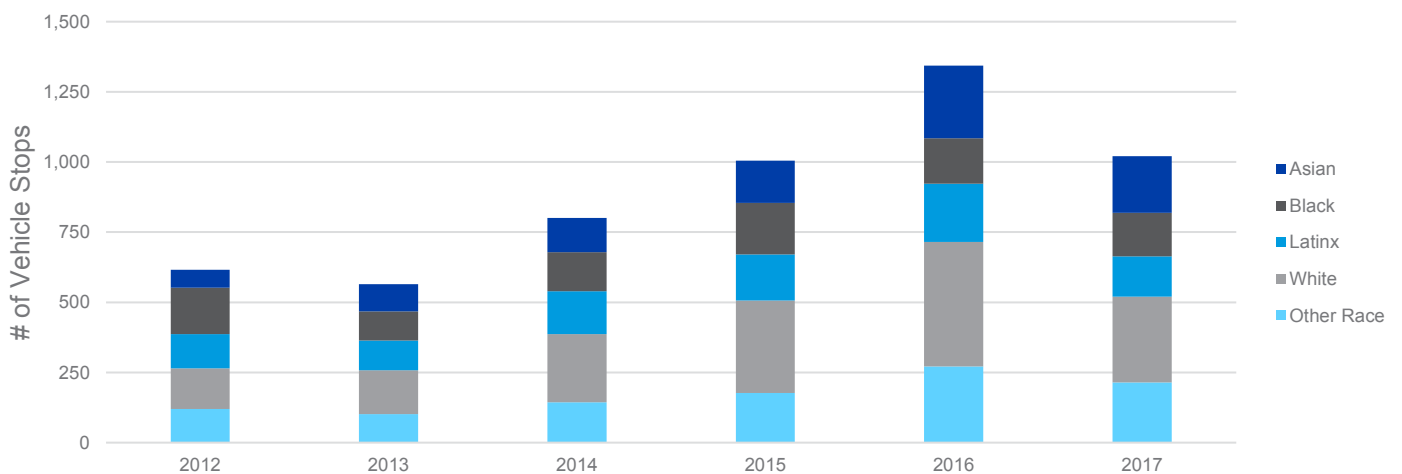
BART PD did not collect or share data about whether the persons it stopped were searched, and whether those

searches revealed contraband. This prevented assessment of whether racial disparities in searches during vehicle and rider stops might reflect inequitable treatment.

Figure 1, above, shows the number of vehicle stops recorded by BART PD officers during each quarter of the six-year observation period.

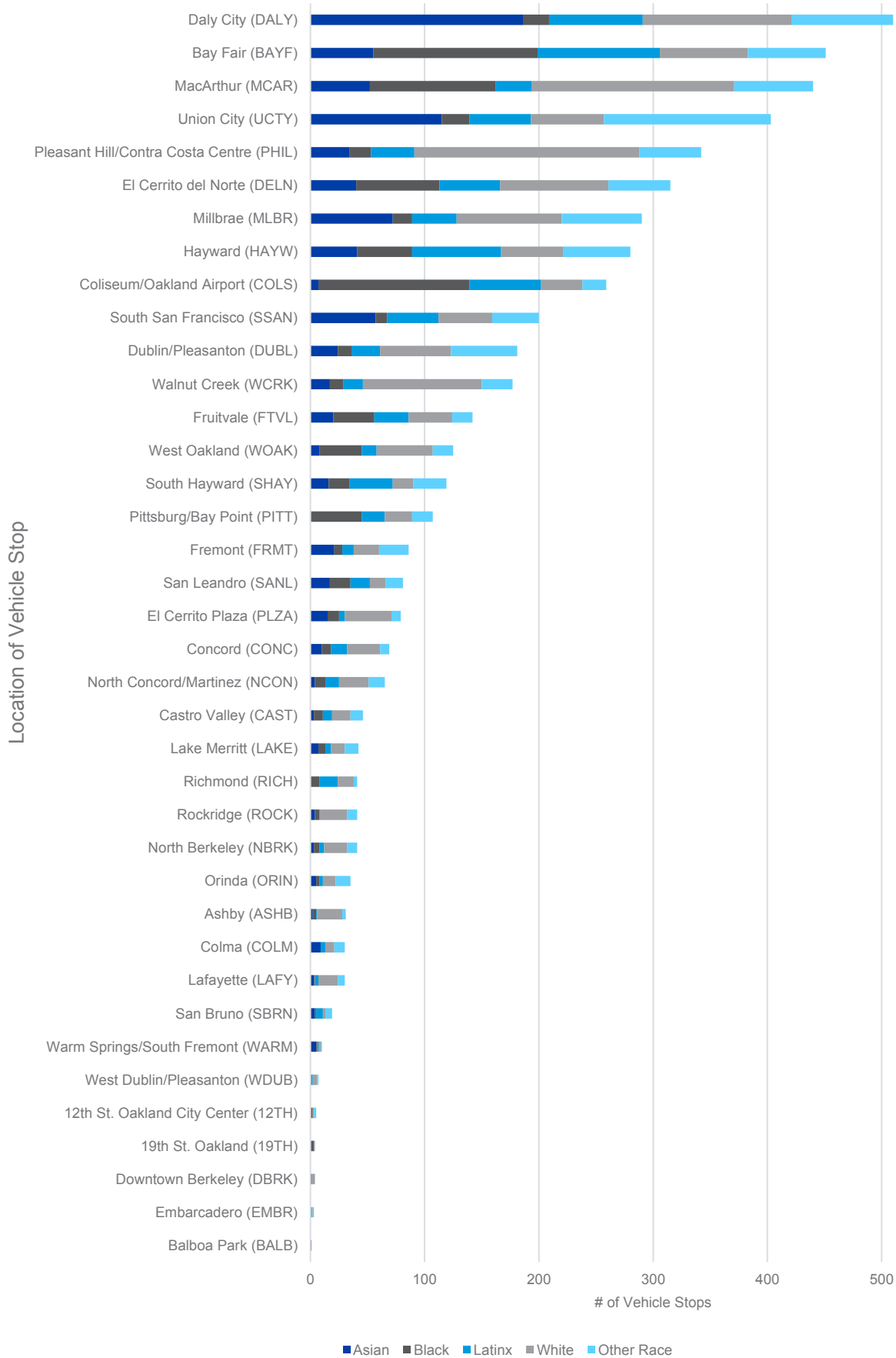
In total, BART PD officers recorded 5,651 vehicle stops during the observation period, ranging from a quarterly low of 22 vehicles stopped in January–March of 2016 to a high of 579 stops recorded in April–June of 2016.

**Figure 2. Number of Vehicle Stops by Race and Year, 2012–2017**



11 Per telephone conversation with BART PD personnel, November 13, 2019.

**Figure 3. Number of Vehicle Stops by Race and BART Station, 2012–2017**





The sharp dip in vehicle stops observed in the first quarter of 2016 may reflect incomplete recording of vehicle stops as BART PD transitioned to a new stop-recording system. For both vehicle and rider stops, field interview data were missing for January 1 through March 14, 2016.

As noted earlier, about 5.3% of vehicle stops recorded by BART PD were missing racial data. Figure 2, above, shows that of the vehicle stops that contained data on the race of the driver, no racial group made up a clear majority. Of stops for which racial data were recorded, a plurality of stopped drivers were White (30%), followed by Other (19%), Black (17%), Latinx (17%), and Asian (17%).

The racial distribution of BART PD vehicle stops varied considerably by station (Figure 3). For example:

- Persons identified as White constituted the largest proportion of drivers stopped at the following stations: Ashby (71% of stops were of White persons), Rockridge (59%), Walnut Creek (59%), Pleasant Hill/Contra Costa Centre (58%), Lafayette (57%), El Cerrito Plaza (52%), North Berkeley (49%), Concord (42%), MacArthur (40%), North Concord/Martinez (40%), West Oakland (39%), Castro Valley (35%), Dublin/Pleasanton (34%), Millbrae (32%), El Cerrito del Norte (30%), and Fruitvale (27%).
- Persons identified as Asian constituted the largest proportion of drivers stopped at Warm Springs/

South Fremont (50%), Dale City (37%) Colma (30%), and South San Francisco (29%).

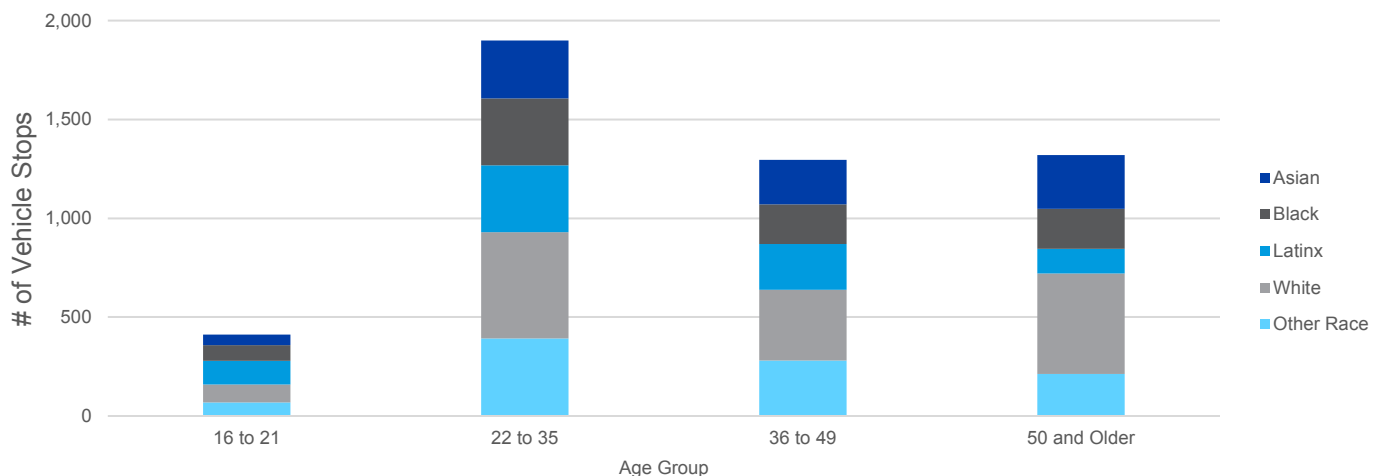
- Persons identified as Latinx constituted the largest proportion of drivers stopped at Richmond (39%), San Bruno (32%), South Hayward (32%), and Hayward (28%).
- Persons identified as Black constituted the largest proportion of drivers stopped at Coliseum/Oakland Airport (51%), Pittsburg/Bay Point (42%), Bay Fair (39%), and San Leandro (22%).
- Persons identified as “Other Race” constituted the largest proportion of drivers stopped at Orinda (37%), Union City (36%), Dublin/Pleasanton (34%), and Fremont (30%).

In nearly every age group, White persons constituted the largest number of drivers stopped. The one exception was in the age group that was stopped least frequently—ages 16 to 21—where Latinx drivers were the most frequently stopped (See Figure 4 below).

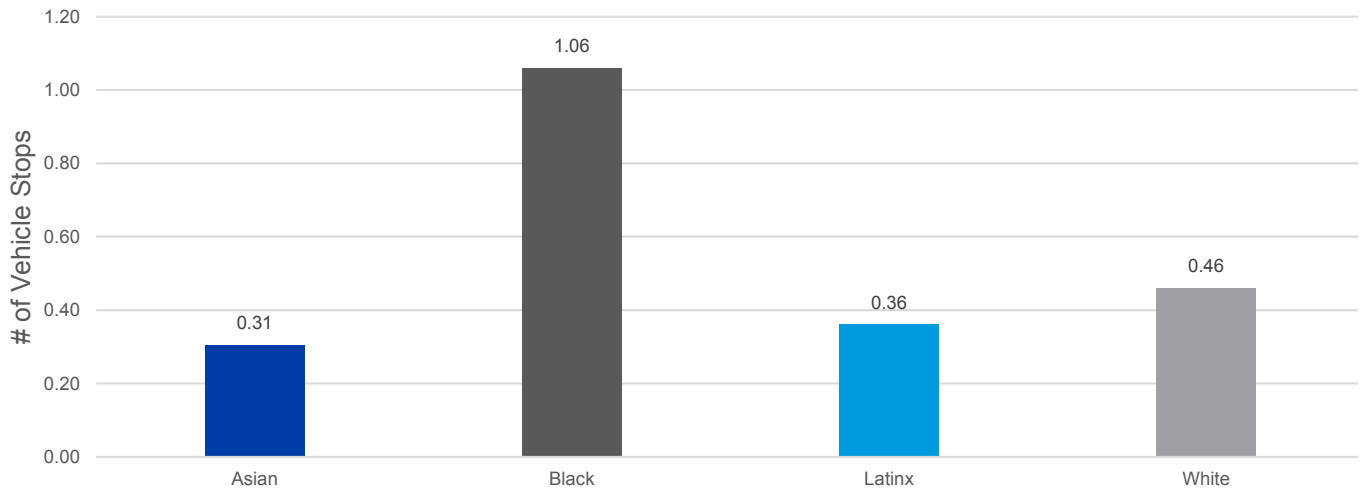
Figure 5, on the next page, shows shows the rate of vehicle stops per the benchmark population of each race passing through BART stations. (See the explanation of population benchmarking methodology above in Section I.)

Across the six-year observation period, BART PD conducted 1.1 stops of Black persons per 1,000 Black residents, compared to 0.46, 0.36, and 0.31 stops per 1,000 White,

**Figure 4. Number of Vehicle Stops by Race and Age, 2012–2017**



**Figure 5. Rate of Vehicle Stops per 1,000 Residents by Race, 2012–2017**



Latinx, and Asian residents, respectively. Proportionate to population, a Black driver was more than twice as likely as a White driver to experience a BART PD vehicle stop.

Figure 6, below, shows the number of BART PD stops experienced by each racial group as a share of its population in each year of the observation period.

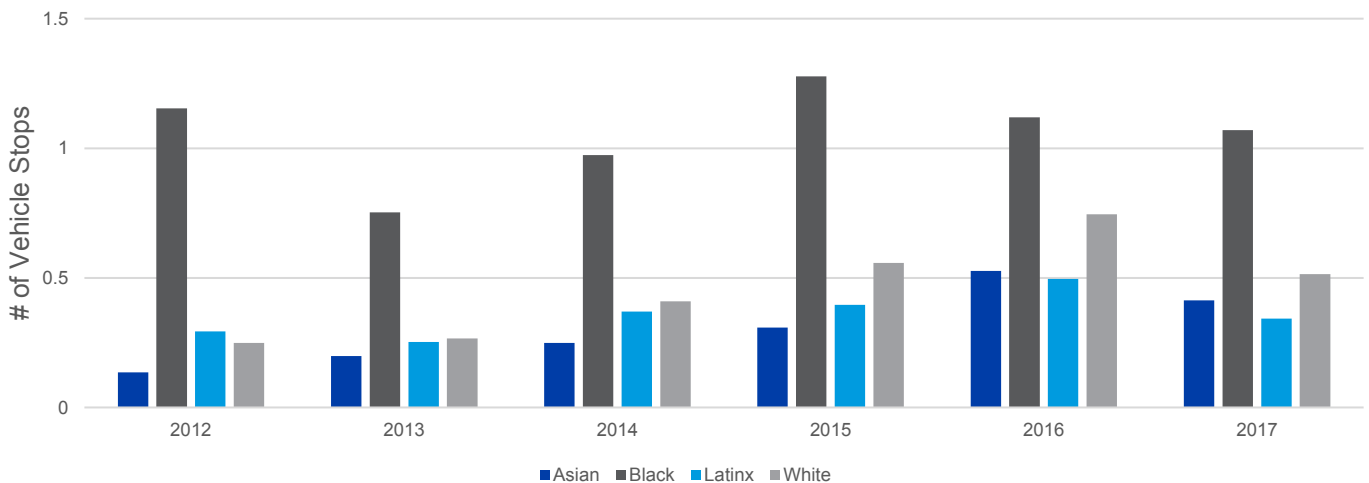
In each of the six years, for all drivers other than Black drivers, the number of vehicle stops per capita was less than 1.0 per 1,000 residents. Black drivers were stopped at a rate that ranged from 0.75 (in 2013) to 1.3 (in 2015). The Black-to-White disparity in per capita vehicle stop rates decreased during the observation period, however.

In 2012, Black drivers were stopped more than four times more frequently per capita than White drivers were (1.2 stops per 1,000 Black drivers, compared to 0.25 for White drivers); in 2017, Black drivers were stopped about twice as frequently as White drivers (1.1 stops per 1,000 Black drivers, compared to 0.52 for White drivers).

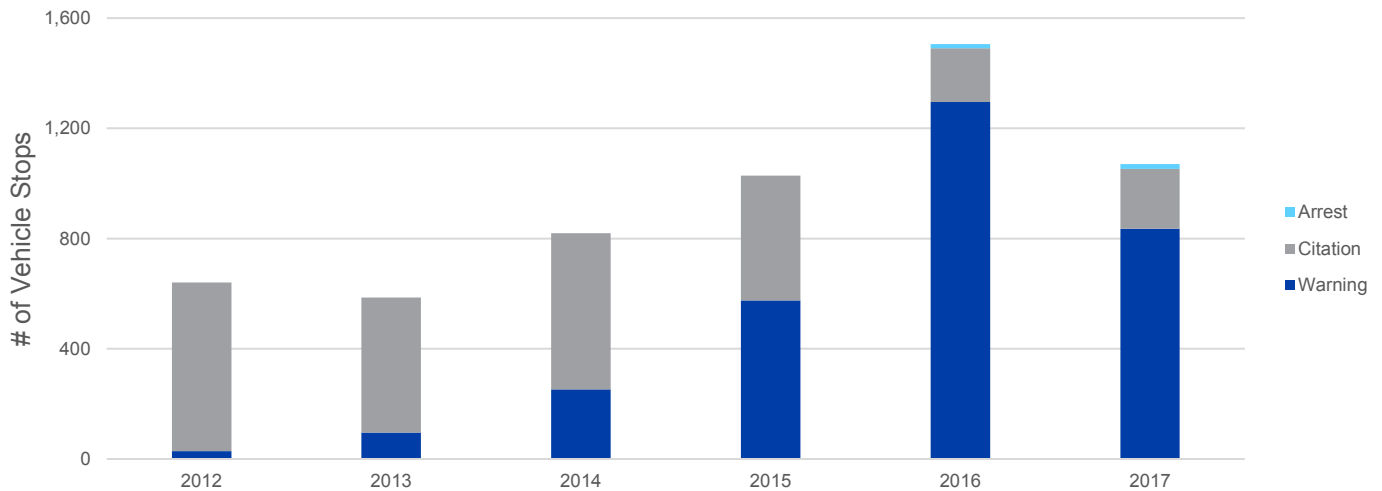
Asian and Latinx drivers were less frequently stopped, per capita, than White drivers were, except in 2012, when the per capita stop rate for Latinx drivers was slightly higher than for White drivers.

Across the observation period, from 2012 through 2017, the likelihood that a stopped driver would receive a

**Figure 6. Rate of Vehicle Stops per 1,000 Residents by Race and Year, 2012–2017**



**Figure 7. Vehicle Stop Outcomes by Year, 2012–2017**



warning rather than a citation increased (Figure 7). In 2012, 96% of stopped drivers received a citation while only 4.4% received a warning. Over time, the percentage of citations decreased and the percentage of warnings increased; by 2016, 86% of drivers received a warning while only 13% received a citation. The following year was only slightly different: In 2017, 78% of stopped drivers received a warning, while 20% received a citation.

BART PD shared no demographic data on arrests at vehicle stops prior to 2016, so arrests from 2012–2015 are not included in Figure 7. In 2016, 15 drivers (1.0%) were arrested at vehicle stops. In 2017, 17 drivers (1.6%) were arrested at vehicle stops.

### **Section IIB: BART PD Rider Stops and Racial Disparities**

As described above, stop or field interview records that did not indicate a vehicle-related stop reason were counted as rider stops. We are advised by BART PD that most of its stops designated as pedestrian stops and non-vehicle field interviews involved persons who were in BART trains, in BART stations, or on BART property (such as sidewalks or parking lots). We are further advised by BART PD that a large majority of its pedestrian stops are aimed at fare enforcement.<sup>12</sup> Because many people stopped by BART PD are not actually

pedestrians on foot but are riding BART vehicles or waiting for them, this report describes persons stopped by BART PD as “riders.”

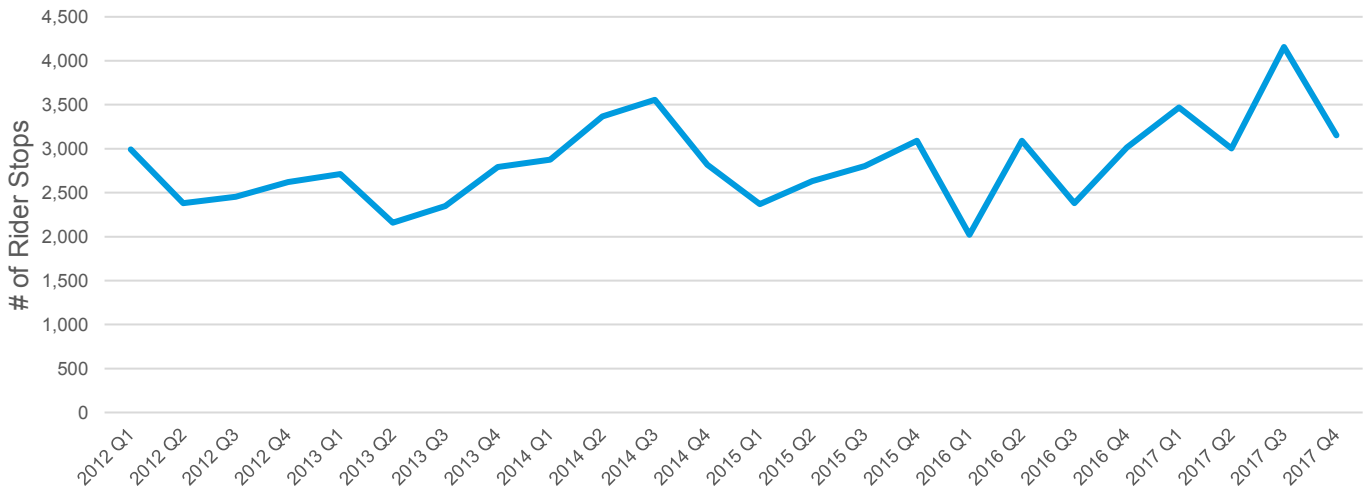
### **SUMMARY OF FINDINGS**

Racial disparities observed in BART PD rider stops were much larger than those observed in vehicle stops, and the disparities were quite consistent across locations in the BART system. At most BART stations, Black persons were the racial group most frequently stopped by BART PD. Per capita, BART riders who were Black were more than eight times as likely to be stopped by BART PD officers than were their White counterparts. Black persons make up less than 9% of the resident population, but nearly half of riders stopped by BART PD (49%) were Black. In three of the six years observed (2012, 2013, and 2014), most riders stopped by BART PD officers were Black.

Racial data collection does not appear to have been consistent across the department or over time. Between 2012 and 2016, 16%–21% of rider stop records were missing racial data; in 2017, only 4% of rider stop records were missing racial data. Across the six years of the study, however, at five BART stations—Pleasant Hill/Contra Costa Centre, South San Francisco, Union City, Millbrae, and Dublin/Pleasanton—more than 35% of stop records were missing racial data.

<sup>12</sup> Per telephone conversation with BART PD personnel, November 13, 2019.

**Figure 8. Number of Rider Stops per Quarter, 2012–2017**

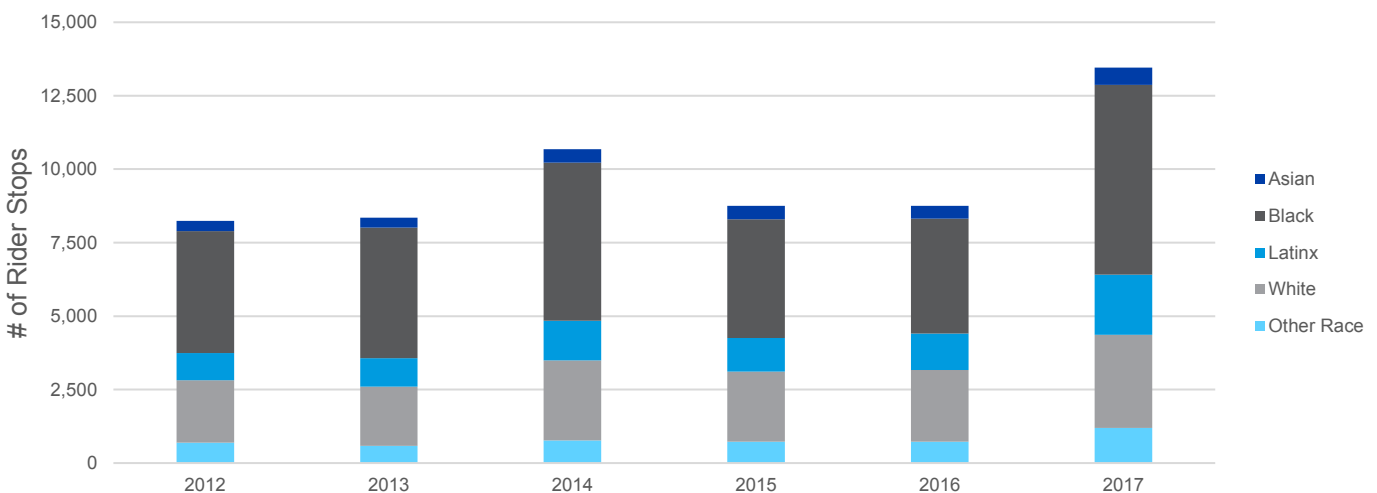


To evaluate whether the observed racial disparities in rider stops might be explained by variations in local crime rates, poverty, or neighborhood demographics, we conducted statistical analysis that controlled for these factors. In short, we found that crime, poverty, and neighborhood demographics contribute to, but do not fully explain, the observed racial disparity in rider stops. After these factors were taken into account, on a per capita basis, Black riders were 8.0 times more likely than their counterparts to be stopped by a BART PD officer. To the extent that the observed racial disparities are not explained by crime, poverty, or local demographics, these disparities may be (but are not necessarily) attributable to factors within the control of BART PD.

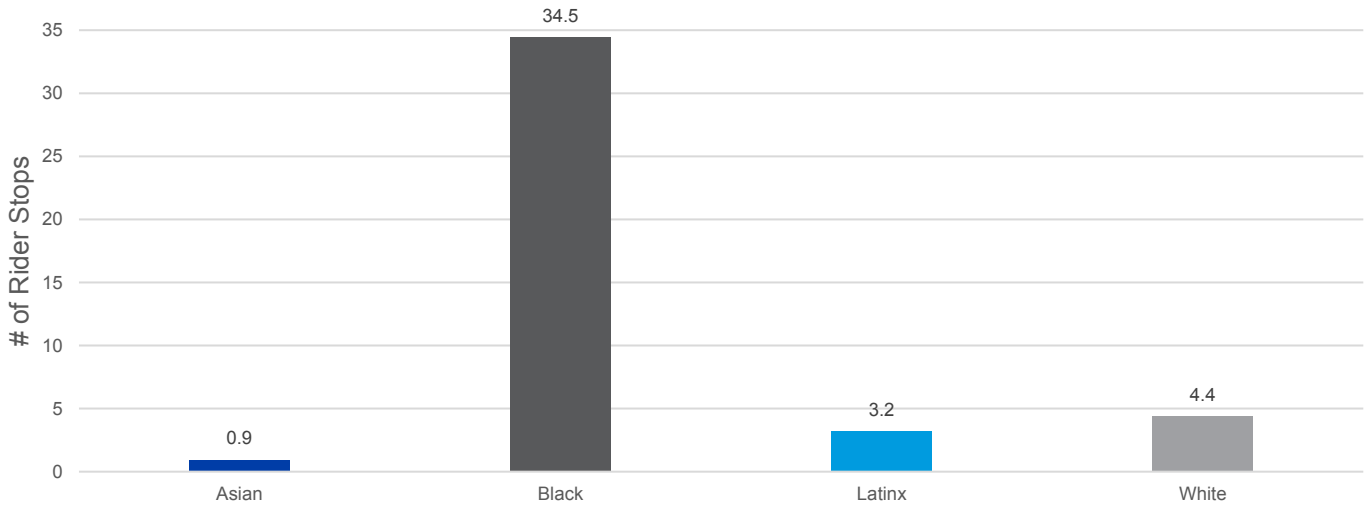
The number of riders stopped by BART PD increased gradually across the six-year observation period (Figure 8). The quarterly frequency of rider stops conducted by BART PD officers varied widely over time, with peaks in the third quarter of 2014 (3,555 stops) and the third quarter of 2017 (4,157 stops).

The lowest number of stops was recorded in the first quarter of 2016 (2,021 stops). As in the vehicle stop data (see Figure 1, above), the sharp dip in rider stops observed in the first quarter of 2016 may reflect incomplete recording as BART PD transitioned to a new stop-recording system. For both vehicle and rider stops, field interview data were missing for January 1–March 14, 2016.

**Figure 9. Number of Rider Stops by Race and Year, 2012–2017**



**Figure 10. Rate of Rider Stops per 1,000 Residents by Race, 2012–2017**



Although Black persons make up 8.7% of the resident population surrounding BART stations, nearly half of riders who were stopped by BART PD officers were Black (See Figure 9 on the previous page). Of 58,248 stops for which BART PD officers collected racial data, 49% were of Black riders. In 2012, 2013, and 2014, among stops for which racial data were recorded, Black persons made up more than one half of persons stopped by BART PD officers.

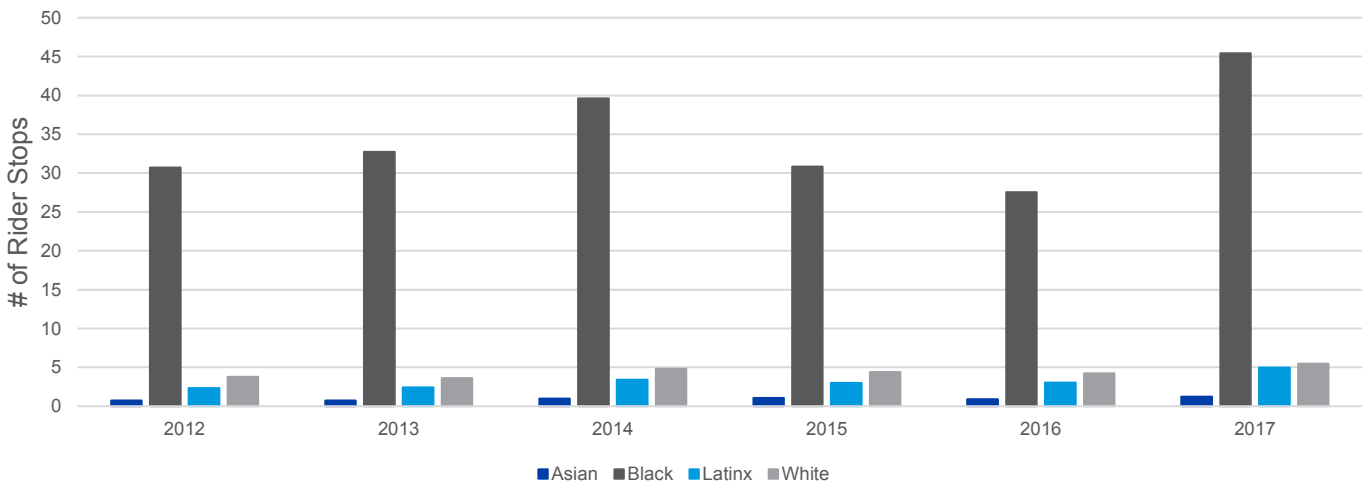
The next most frequently stopped group, White riders, made up only 26% of rider stops. Latinx riders accounted for 13% of stops, riders identified as “Other” race accounted for 8.1%, and riders identified as Asian made up 4.5% of BART stops. Although the number of stops

increased somewhat over time, the racial distribution of the stops was fairly consistent across the observation period.

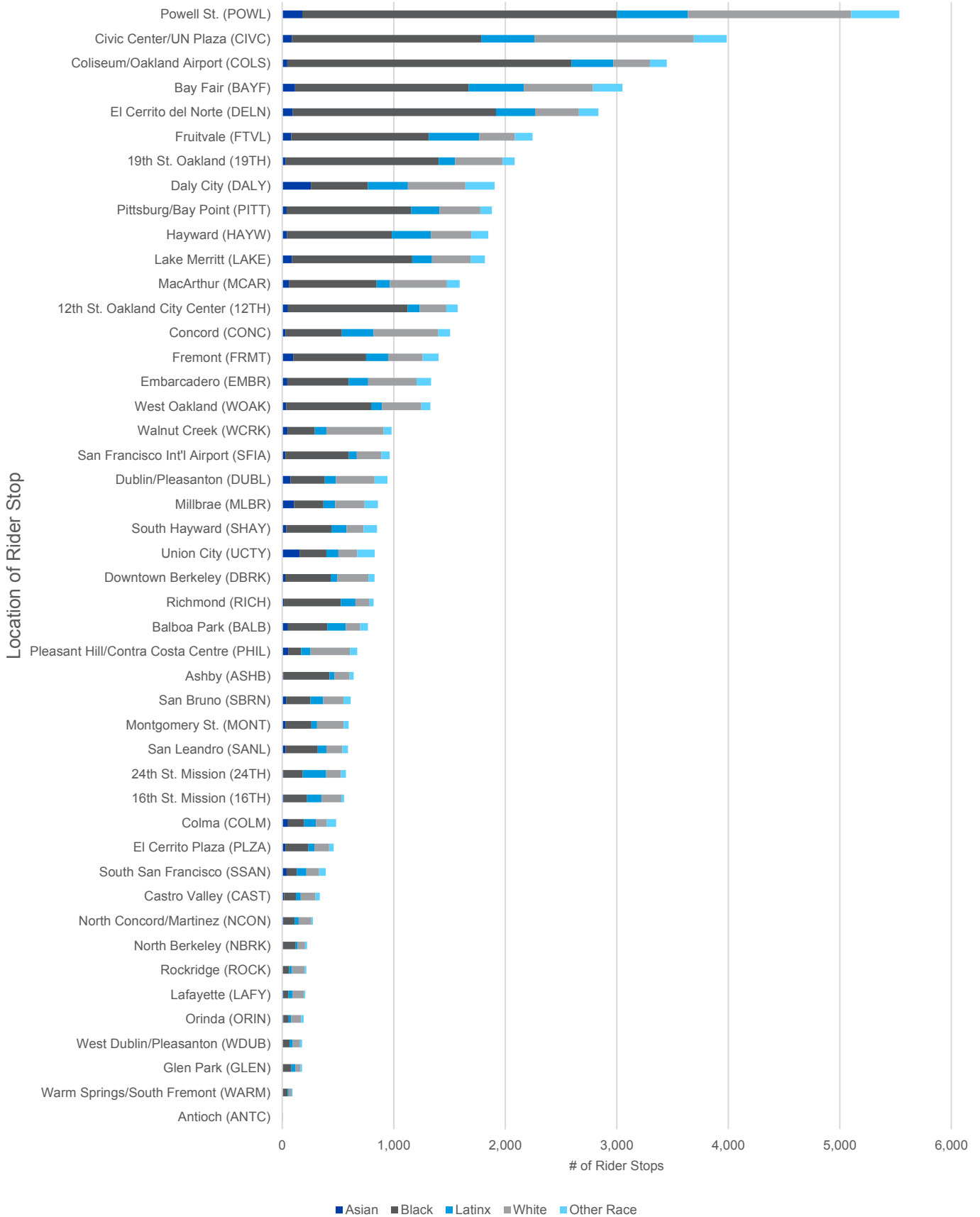
Figure 10 presents the number of rider stops of each racial group per 1,000 residents in the benchmark population across the six-year observation period.

The per capita rate at which Black riders were stopped was eight times as high as for any non-Black group. Across the six-year observation period, BART PD officers made about 35 stops of Black riders per 1,000 Black residents, compared to 4.4 stops of White riders per 1,000 White residents. Latinx and Asian riders were

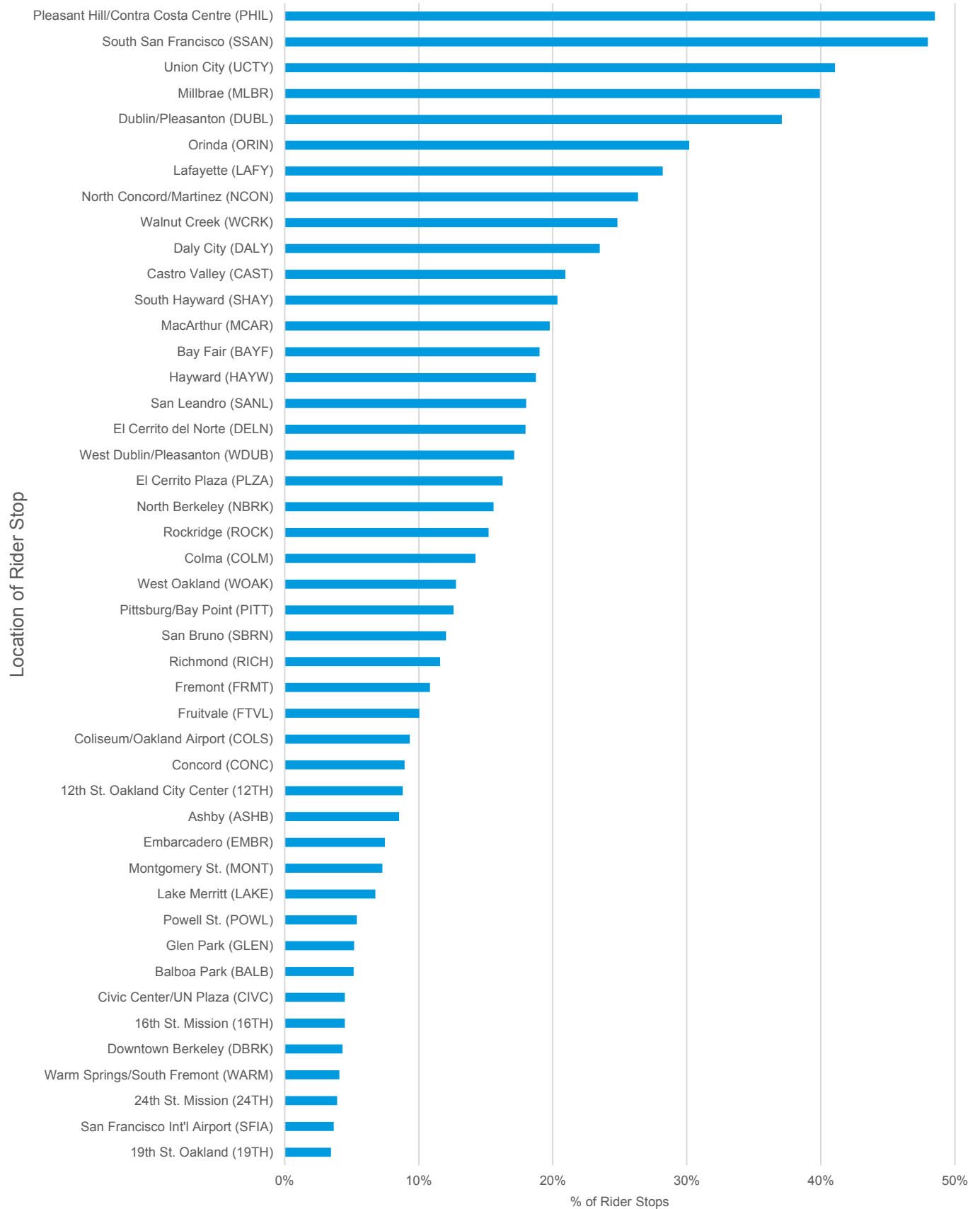
**Figure 11. Rate of Rider Stops per 1,000 Residents by Race and Year, 2012–2017**



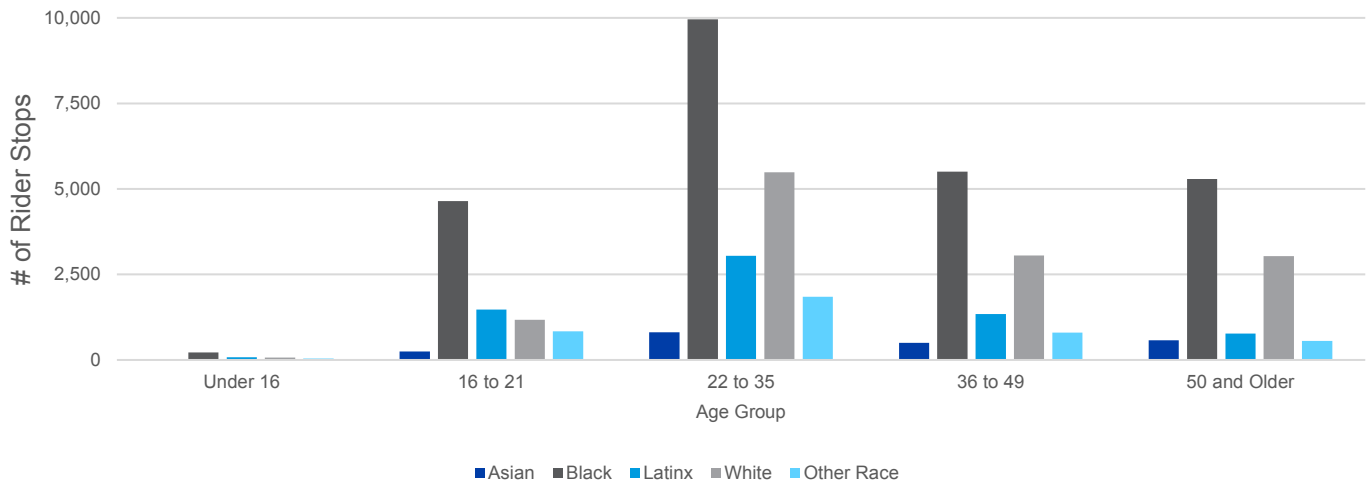
**Figure 12. Number of Rider Stops by Race and BART Station, 2012–2017**



**Figure 13. Percentage of Rider Stops Missing Racial Data by Station, 2012–2017**



**Figure 14. Number of Rider Stops by Race and Age Group, 2012–2017**



stopped at lower per capita rates than their White counterparts (3.2 and 0.94, respectively).

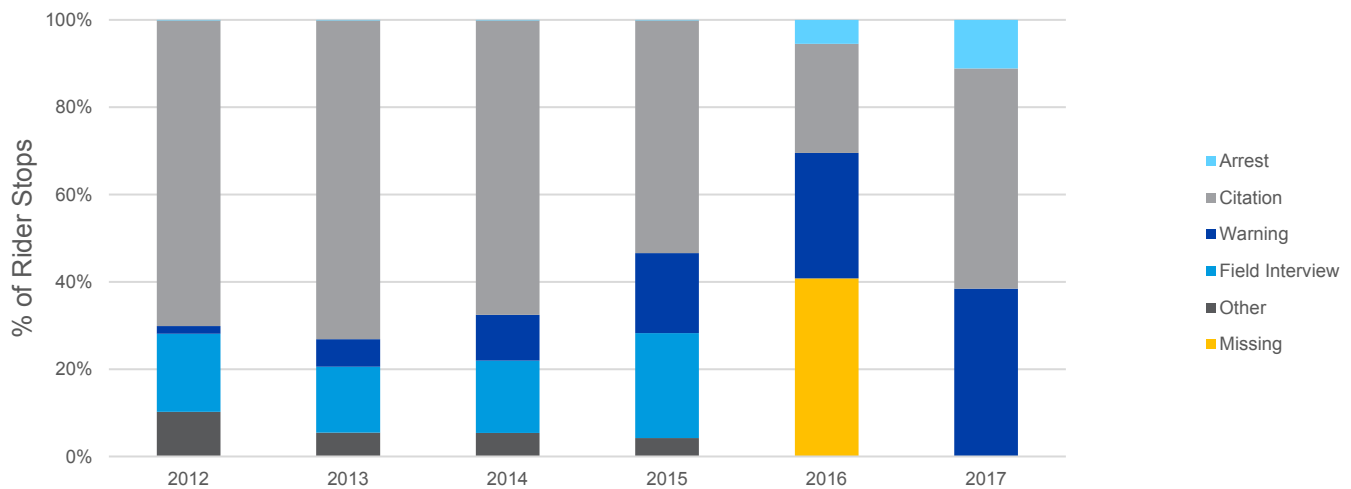
A marked Black–White disparity in per capita stop rates was observed in every year for which data were collected. In 2016—the year with the lowest Black–White disparity in rider stops—the per capita stop rate for Black riders was 6.5 times higher than for White riders (28 stops of Black riders per 1,000 Black population, compared to 4.2 stops of White riders per 1,000 White population). In 2013, the per capita stop rate was 9.1 times higher for Black riders than for their White counterparts (33 and 3.6 rider stops per 1,000 residents, respectively).

As shown in Figure 12, at the majority of BART stations, Black riders were stopped more frequently than any other group. At each of the three stations that reported the largest number of rider stops—Powell Street, Civic Center/UN Plaza, and Coliseum/Oakland Airport—the majority of persons stopped were Black (51%, 43%, and 74%, respectively).

At nearly every station, White riders made up the second largest group of riders stopped by BART PD officers, followed by Latinx riders, followed by riders identified as Other or Asian.

In every year except 2017, 16%–21% of stop records we received from BART PD were missing racial data;

**Figure 15. Rider Stop Outcomes by Year, 2012–2017**





in 2017, by contrast, only 4% of rider stop records were missing racial data. This suggests that documentation of the racial ascription of stopped riders may have improved in 2017. Continued collection and analysis of data will allow for assessment of whether this improvement in data collection practices has been sustained over time. Figure 13, on page 24, shows the percentage of logged rider stops at each station that were missing racial data across the observation period.

Recording practices for racial data about rider stops appear inconsistent across the department. At most stations, fewer than 20% of stops were missing racial data. But at five BART stations, officers failed to record data in more than one third of stops: Pleasant Hill/Contra Costa Centre (49% of stop records were missing racial data), South San Francisco (48%), Union City (41%), Millbrae (40%), and Dublin/Pleasanton (37%).

As shown in Figure 14, in every age group, Black persons constituted the largest proportion of riders stopped by BART PD. This was especially acute among 16- to 21-year-old riders, among whom the number of Black persons stopped was more than three times the number of Latinx persons of the same age, and nearly four times the number of White persons of the same age.

From 2012 through 2014, a large majority of stops recorded by BART PD officers resulted in the issuance of a citation; relatively few resulted in a warning. The proportion of stops resulting in a warning increased in every year of the observation period, from 1.8% in 2012 to 38% in 2017. In 2016, 5.5% of rider stops resulted in arrests; in 2017, 11% of rider stops resulted in arrests (Figure 15).

### **MULTILEVEL REGRESSION ANALYSIS**

To better understand factors that might contribute to the observed Black–White disparity in BART rider stops, we

turned to multilevel regression analysis. We used this technique to explore whether factors other than subject race might be statistically associated with the observed disparities. For example, higher crime rates in neighborhoods with larger shares of Black residents might explain, at least in part, the disproportionately high rate of Black encounters with the police.

The statistical analysis we conducted determines whether the following factors may explain why Black persons are overrepresented, relative to population, in rider stops: (1) the race of individual riders; (2) neighborhood demographics surrounding a BART station; (3) poverty rates surrounding a BART station; and (4) local crime rates surrounding a BART station.<sup>13</sup> Our statistical analysis calculates whether, alone or in combination, these factors may contribute either to the overall number of stops at a BART station, or to the Black–White racial disparity observed at this station. The findings are reported in Table 2 and summarized in the text below.

Using this methodology, our findings were as follows:

- After controlling for crime rates, poverty rates, and racial demographics, Black persons experienced BART PD rider stops at a rate 8.0 times higher than the stop rate for White riders. Thus, the Black–White racial disparity in rider stops was not fully explained by local poverty rates, crime rates, or the racial demographics of surrounding station areas.<sup>14</sup>
- The Black–White racial disparity was larger in wealthier neighborhoods than in poorer ones. Nonetheless, in both high- and low-income neighborhoods, Black riders experienced higher rates of stops than White riders.
- The crime rate was predictive of the number of stops, but not of racial disparity. That is, BART PD made more stops in or near stations in

13 The crime rate is calculated using the rate of BART PD arrests for Part I crimes (as classified by the Uniform Crime Reporting system) in neighboring census tracts.

14 As noted in the preceding section, “Methodology for Estimating Benchmark Population at Each BART Station,” the homeless population was not accounted for in this analysis.

higher-crime neighborhoods than in lower-crime ones, but this did not explain the racial disparity in the rates at which Black and White riders were stopped.

- Latinx persons experienced BART PD rider stops at about the same rate as White persons.

- Asian persons experienced BART PD rider stops at a much lower rate than White persons. After controlling for local poverty rates, crime rates, and racial demographics, the per capita stop rate for Asian persons was 0.21 (about one fifth) the per capita rate for White persons.

**Table 2. Regressions Predicting Rider Stop Frequency**

	Model 1		Model 2	
	Estimated Incidence Ratio	95% Confidence Interval	Estimated Incidence Ratio	95% Confidence Interval
Intercept	0.02***	(0.01, 0.02)	0.02***	(0.01, 0.02)
Asian	0.20***	(0.17, 0.24)	0.21***	(0.18, 0.25)
Black	7.88***	(6.64, 9.37)	8.01***	(6.75, 9.50)
Latinx	0.81	(0.68, 0.97)	0.83	(0.70, 0.99)
Black % of Population	1.02	(0.75, 1.38)	1.00	(0.74, 1.36)
% of Population in Poverty	1.27	(0.94, 1.71)	1.57**	(1.15, 2.15)
Number of Arrests	1.20	(0.95, 1.52)	1.20	(0.95, 1.52)
Asian: % of Population in Poverty			0.79	(0.66, 0.95)
Black: % of Population in Poverty			0.73***	(0.61, 0.87)
Latinx: % of Population in Poverty			0.77**	(0.65, 0.92)

# SECTION III: RACIAL DISPARITIES IN BART PD USE OF FORCE

This section describes findings related to use-of-force incidents reported by BART PD. In addition to presenting descriptive statistics, we describe findings from multilevel regression models designed to assess whether any observed racial disparities in BART PD use of force can be explained by neighborhood characteristics. Such characteristics include poverty, crime rates, and racial demographics.

When multiple types of force were reported to have been used on a single person during a given incident, or when multiple officers were involved in a given incident, our analysis counts the event as a single incident. A single incident, then, could include multiple force types, multiple applications of force, or multiple officers using force against a single individual.

In Figures 18 and 19, on page 30, though, the types of force used in use-of-force incidents are presented differently: Each different force type used on an individual in a single incident is counted once, regardless of the number of officers involved or the number of times the force type was used.

## Summary of Findings

Racial disparities were observed in incidents resulting in use of force by BART PD officers. Although Black persons make up less than 9% of the residential population, 63% of persons to experience force were Black. On a per capita basis, Black persons were 13 times more likely than White persons to have BART PD force used upon them. All other racial groups were subjected to force at per capita rates lower than that of White persons.

As is typical in police departments, the force type most commonly used in BART PD use-of-force incidents was hands-on, accounting for 66% of incidents. The second most frequent force type was firearms (23%), which

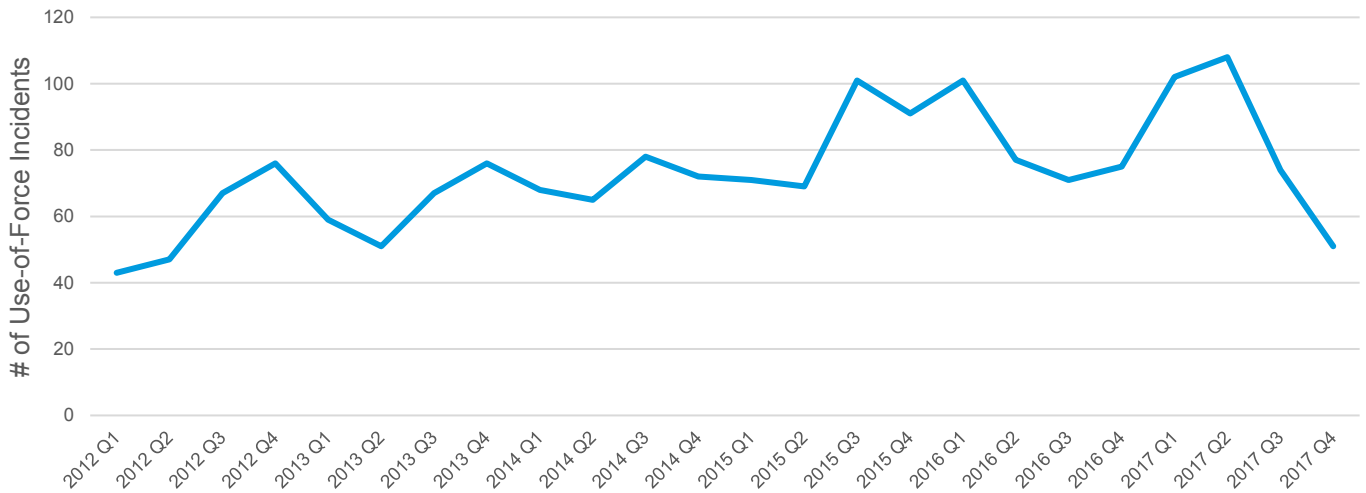
included 322 incidents of a firearm display or pointing and one recorded incident in which a firearm was discharged.<sup>15</sup> The frequency of firearm incidents by BART PD officers may warrant additional attention within a law enforcement agency whose primary responsibilities are passenger safety and fare enforcement, and whose activities take place largely in confined spaces such as train cars and BART stations.

As with other BART PD force incidents, most people who experienced firearm incidents were Black (63%). Most firearm incidents occurred in Zone 1 or Zone 3 (that is, in or south of Oakland). No other BART zone recorded more than 35 firearm incidents across the observation period.

To evaluate whether observed racial disparities in use-of-force incidents might be explained by variations in local crime rates, poverty, or neighborhood demographics, we conducted statistical analysis that controls for these factors. In short, we found that crime rates, poverty rates, and neighborhood demographics explained little of the observed racial disparity in use of force. Even when these factors were taken into account, Black persons remained 15 times more likely than their White counterparts to experience BART PD use of force. To the extent that this observed racial disparity is not explained by crime rates, poverty rates, or local demographics, it may be (but is not necessarily) attributable to factors within the control of BART PD.

<sup>15</sup> Incidents involving the discharge of a firearm were not consistently included in the use-of-force datasets shared with us. But per email from BART PD personnel, September 9, 2019, we were advised that five OIS and two other discharges were recorded by BART PD from 2009 through 2017."

**Figure 16. Number of Use-of-Force Incidents per Quarter, 2012–2017**



**Use-of-Force Findings**

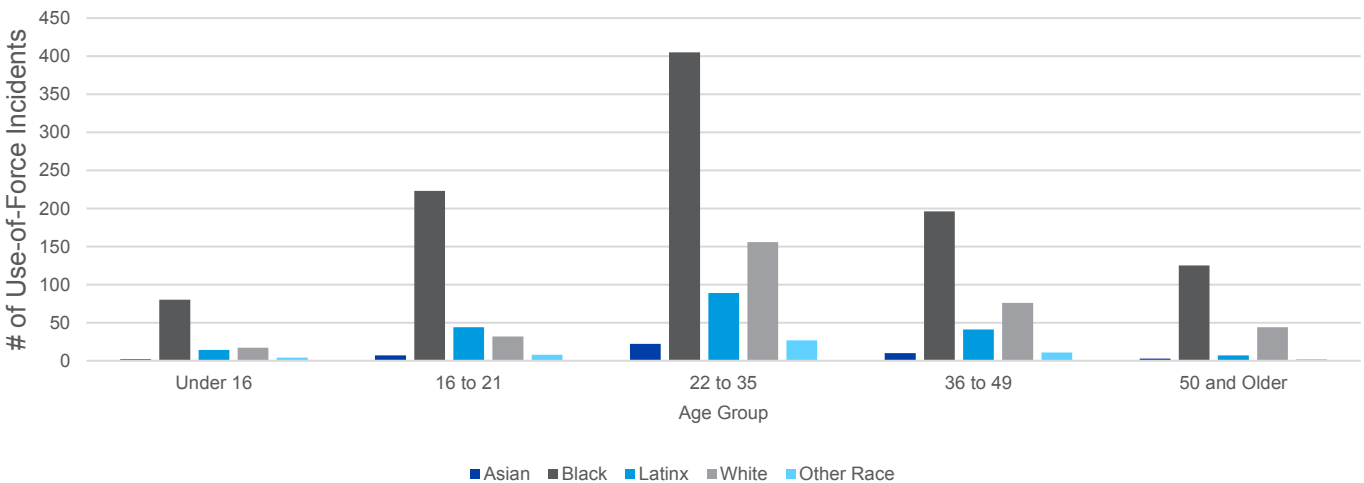
Figure 16, above, reports the number of use-of-force incidents that BART PD recorded for all racial groups each quarter from January–March 2012 through October–December 2017.

In the six years of the observation period, BART PD officers recorded 1,760 incidents in which force was used. The number of recorded incidents varied by quarter, with a high of 108 incidents recorded in the second quarter of 2017 and a low of 43 incidents recorded in the first quarter of 2012. The number of recorded incidents increased annually from 233 in 2012 to 335 in 2017.

Figure 17 shows the race and age of persons upon whom force was used for incidents recorded by BART PD between 2012 and 2017.

In every age group, Black persons constituted a large majority of persons upon whom force was used, while White persons made up less than a quarter of persons who experienced force, Latinx persons made up less than 15%, and Asian persons made up less than 5%. Overall, of 1,645 incidents for which racial data were available, 63% of people who experienced force were Black, 20% were White, 12% were Latinx, 2.7% were Asian, and 3.2% were classified Other.

**Figure 17. Number of Use-of-Force Incidents by Race and Age, 2012–2017**



**Figure 18. Force Types Recorded in Use-of-Force Incidents, 2012–2017**

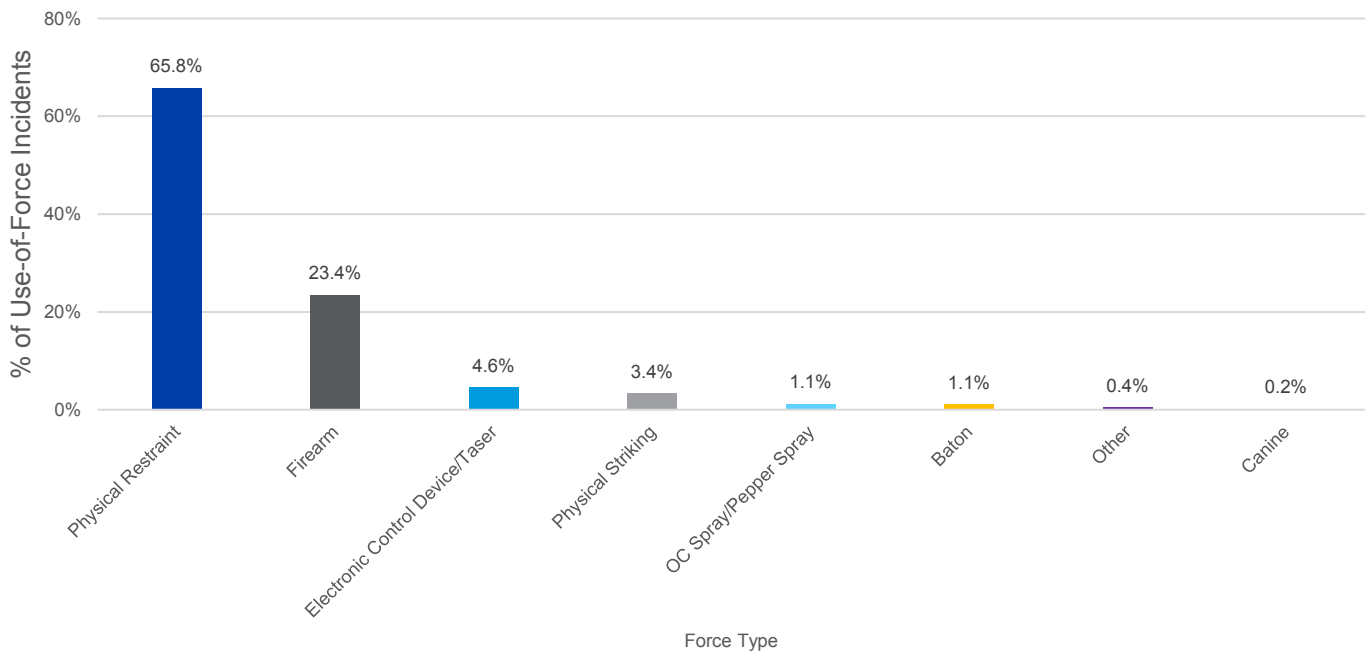
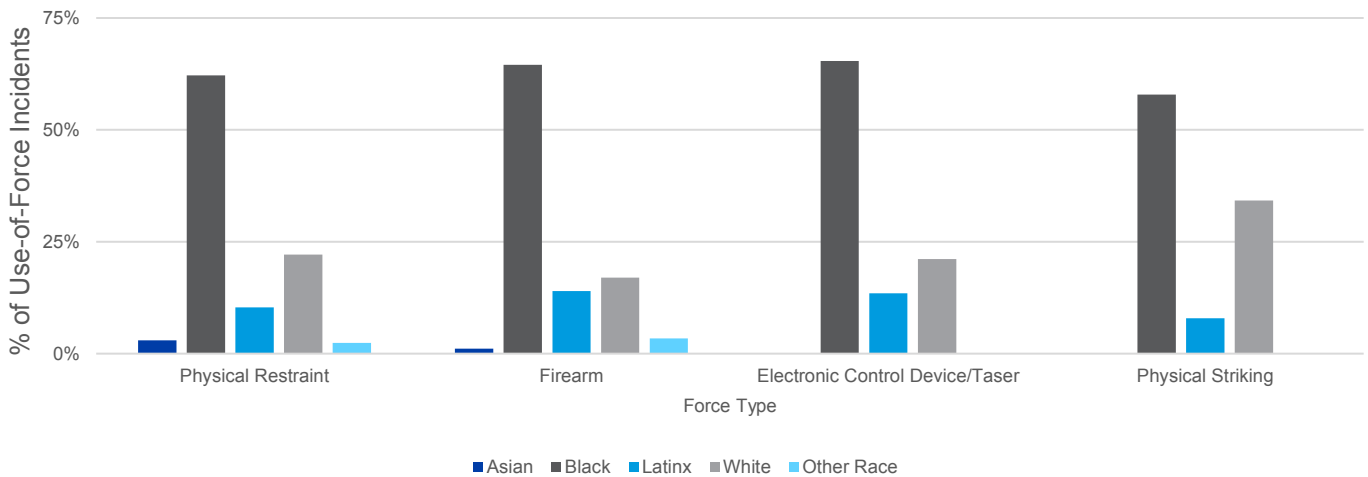


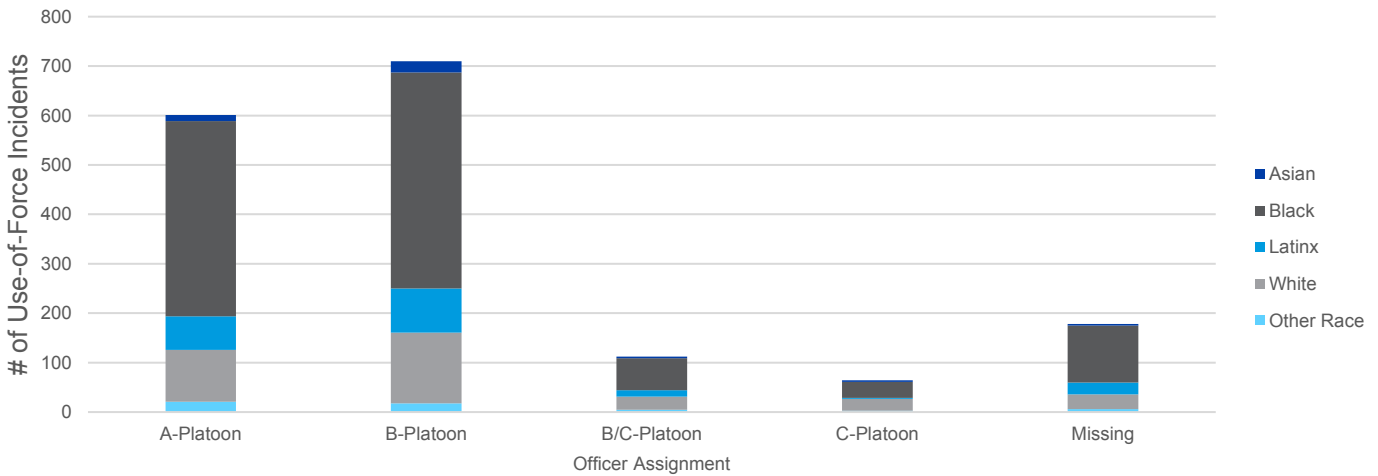
Figure 18 depicts the relative frequency of force types used by BART PD officers in incidents recorded between 2012 and 2017. Unlike the incident counts otherwise reported in this chapter, Figures 18 and 19 count each force type reported in an incident separately (regardless of the number of officers involved in the incident). For example, if, on a single individual on a single occasion, one officer used physical restraint and a Taser electronic weapon, and another officer also used physical restraint, we would count two force types used in the incident: one physical restraint and one Taser.

The most frequent force type used in BART PD use-of-force incidents was hands-on: Physical restraint was recorded in 66% of all use-of-force incidents, with another 3.4% of force incidents involving physical striking. The second most common force type recorded in BART PD use-of-force incidents was firearm (display, pointing, or discharge), which was recorded in 23% of all incidents. (Firearm incidents are examined in greater detail later in this section.) Electronic Control Device/Taser was recorded in 4.6% of incidents, and all other force types (pepper

**Figure 19. Force Types Recorded in Use-of-Force Incidents by Race, 2012–2017**



**Figure 20. Number of Use-of-Force Incidents by Race and Officer Platoon Assignment, 2012–2017**



spray, baton, canine, and other) were each recorded in fewer than 1.5% of all force incidents.

Figure 19 depicts the race of persons upon whom each of the four most common force types was used in incidents recorded by BART PD between 2012 and 2017.

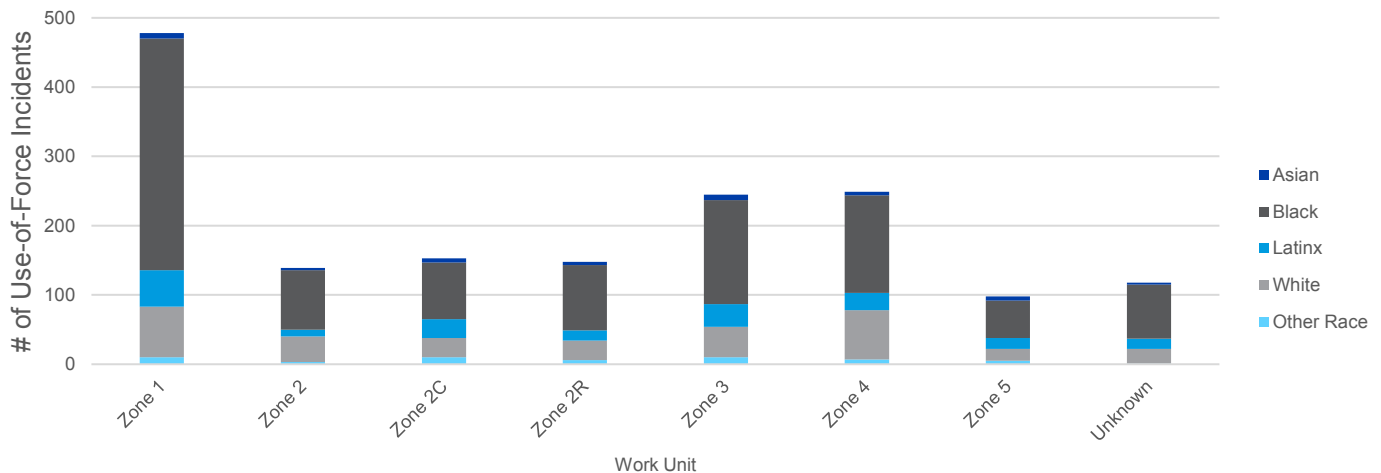
Every force type recorded by BART PD was used more frequently on Black persons than on persons of any other racial group. Black persons made up 62% of those who experienced physical restraint, 65% of those who experienced firearm incidents, 65% of those who experienced ECD/Taser, and 58% of those who experienced physical striking. Black persons also made up 67% of those who

experienced the baton and 65% of those who experienced pepper spray (not shown).

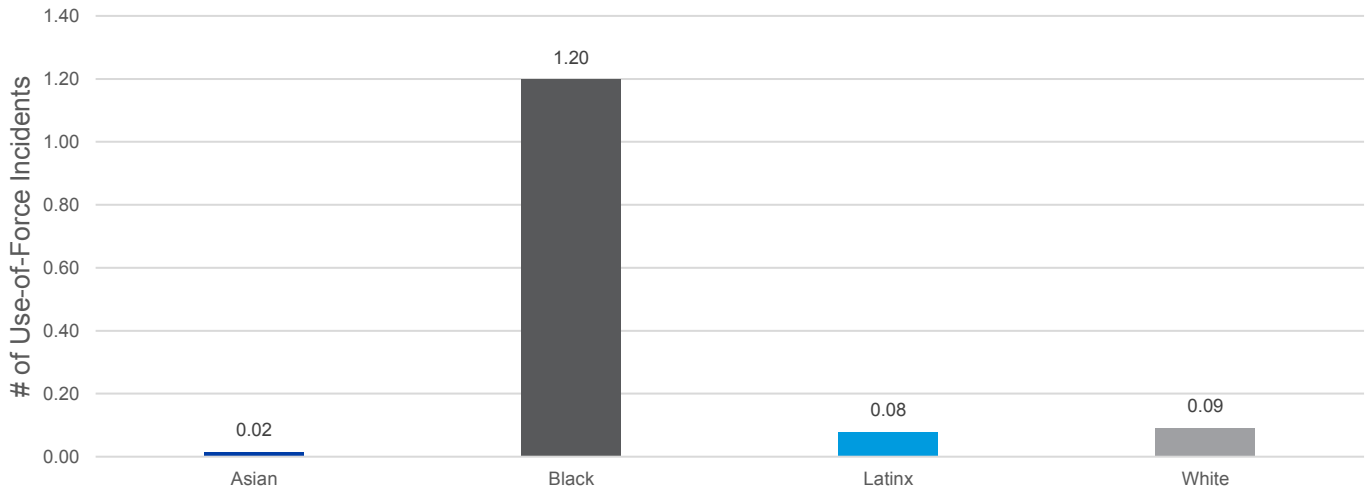
Figure 20 shows BART PD use-of-force incidents by race and officer assignment between 2012 and 2017. “A-Platoon” refers to the morning shift; “B-Platoon” refers to the afternoon shift; and “C-Platoon” refers to the night shift.

The racial distribution of force incidents was roughly similar across officer assignments—a majority or plurality of force incidents in every unit involved Black persons—but the number of incidents recorded varied widely by assignment, from fewer than 100 incidents in C-Platoon (the night shift) to more than 600 incidents recorded in

**Figure 21. Number of Use-of-Force Incidents by Race and Geographic Work Unit, 2012–2017**



**Figure 22. Rate of Use-of-Force Incidents per 1,000 Residents by Race, 2012–2017**



A-Platoon and more than 700 in B-Platoon across the same time period.

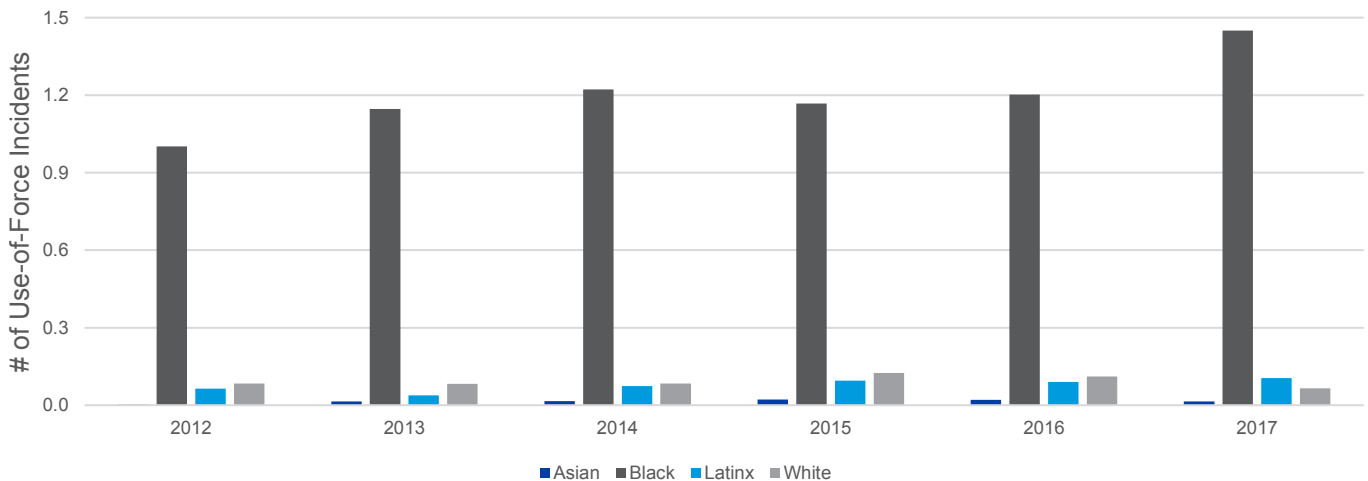
The racial distribution of force incidents was roughly similar across geographic zones—a majority of force incidents in every zone involved Black persons. The number of incidents recorded by each unit in the six-year period varied widely, however, from fewer than 100 in Zone 5 to more than 450 in Zone 1 (Figure 21).

Figure 22 shows the number of force incidents as a proportion of the benchmark population for each racial group.

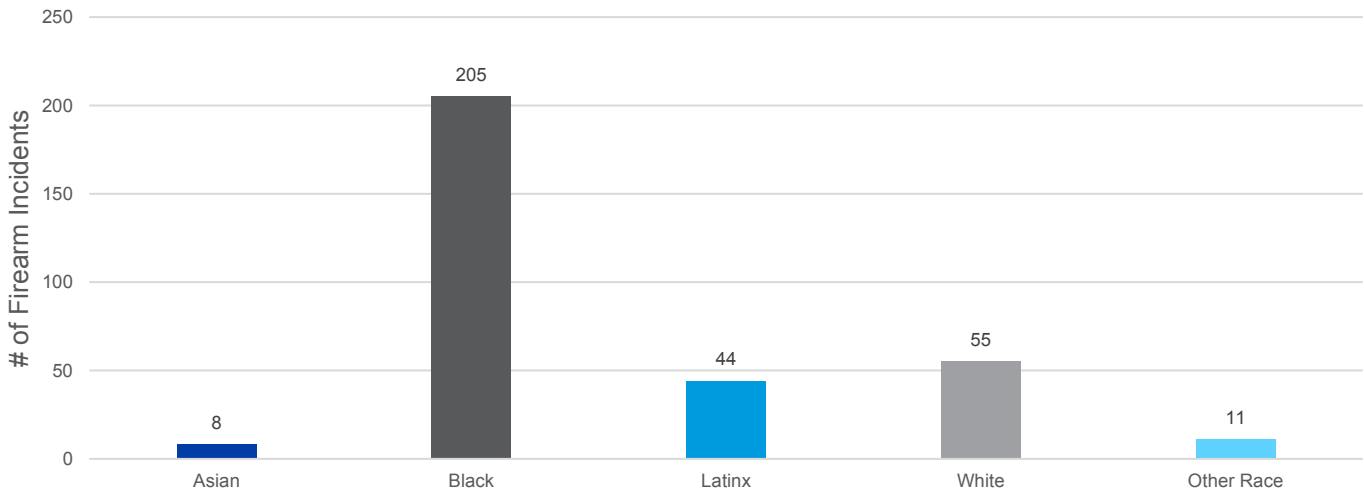
Because force is used on Black residents more frequently despite their making up just 8.7% of the population served by BART, the per capita rate at which Black riders were subjected to force was higher than for any non-Black group. As noted earlier, of 1,645 force incidents for which BART PD officers recorded racial data, 63% involved force being used upon a Black person.

A Black resident was 13 times more likely to have BART PD force used upon them than their White counterpart. Specifically, BART PD recorded 1.2 use-of-force incidents per 1,000 Black residents, compared to 0.09 incidents per 1,000 White residents. Per capita, BART PD recorded

**Figure 23. Rate of Use-of-Force Incidents per 1,000 Residents by Race and Year, 2012–2017**



**Figure 24. Number of Firearm Incidents by Race, 2012–2017**



slightly fewer use-of-force incidents involving Latinx residents (0.07 per 1,000 residents) and Asian residents (0.02 per 1,000 residents).

Figure 23 shows the number of force incidents as a proportion of the benchmark population for each racial group, for each year of the observation period.

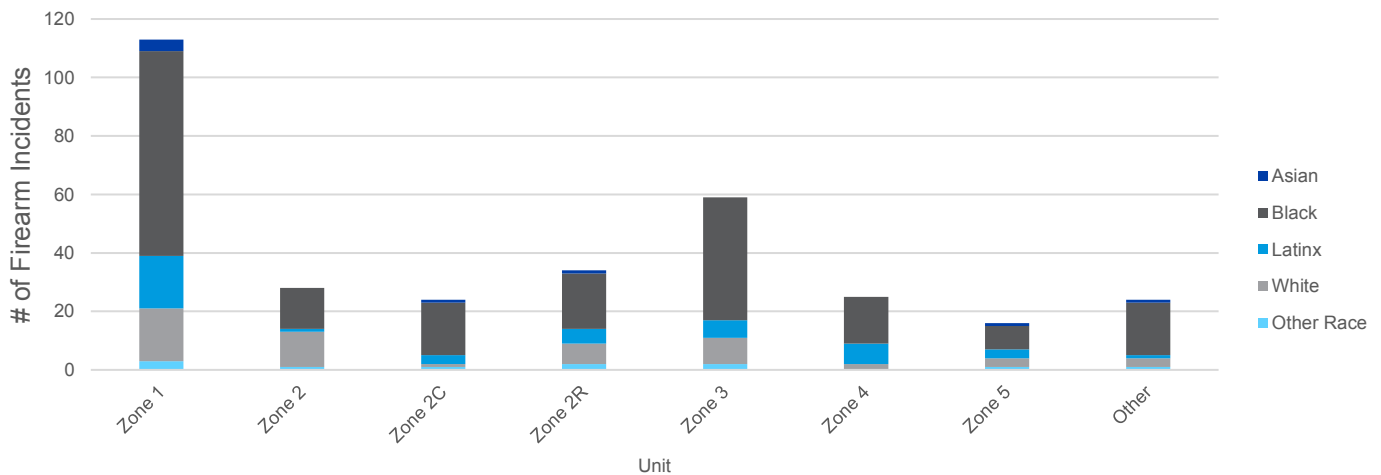
The large racial disparity in per capita use of force was observed in every year for which data were collected. In no year did any other group experience force at more than a tenth of the per capita rate at which Black residents experienced force. For Black residents, the per

capita use-of-force rate ranged from 1.0 to 1.5 per 1,000 Black residents. By comparison, White persons experienced force at rates ranging from 0.07 to 0.12 per 1,000 residents; the Latinx per capita rate ranged from 0.04 to 0.10 per 1,000 residents; and the Asian per capita rate ranged from 0.0 to 0.02 per 1,000 residents. The per capita rate for Native American persons is not reported due to low frequency (two incidents).

### Use of Firearms in Force Incidents

Firearms were the second most common force type recorded by BART PD officers: Overall, 23% of recorded use-of-force incidents involved a firearm, with a total 323

**Figure 25. Number of Firearm Incidents by Race and Geographic Work Unit, 2012–2017**





incidents recorded in the six-year period (one incident involved discharge of a firearm; 322 involved the display or pointing of a firearm).<sup>16</sup> We did not receive information about the reasons for the display, pointing, or discharge of firearms. The proportion of recorded use-of-force incidents that involved firearms warrants further investigation.

As with other BART PD use-of-force incidents, a majority of firearm incidents involved Black persons (Figure 24). Of 323 firearm incidents, 205 (63%) involved Black persons. White persons were involved in 55 firearm incidents (17%), Latinx persons in 44 (14%), and Asian persons in eight (2.5%). In 11 firearm incidents (3.4%), the person was described as being of “Other” racial ascription.

Firearm incidents were much more common in and around Oakland than elsewhere: As shown in Figure 25, more than half of all firearm incidents (53%) were recorded in BART Zones 1 or 3. Firearm incidents were by far the most frequent in Zone 1, which accounted for 113 such incidents, or 35% of the total. This was nearly twice the frequency as in the next highest work group, Zone 3 (South Bay), which logged 59 incidents across the six-year period. Every other BART PD work group recorded fewer than 35 firearm incidents.

In every work zone across BART, Black persons made up a majority of individuals who experienced firearm incidents. The disparity was lowest in Zones 2 and 5, where Black persons accounted for 50%, and highest in Zone 2C and the “Other” work group, where 75% of persons involved in firearm incidents were Black.

## Multilevel Regression Analysis

To better understand factors that might contribute to the observed Black–White disparity in BART PD use of force, we turned to multilevel regression analysis. We used this technique to explore whether factors other than a person’s race might be statistically associated with observed disparities. For example, higher crime rates in neighborhoods with larger shares of Black residents might explain,

at least in part, the disproportionately high rate at which force is used against Black persons.

The statistical analysis we conducted examined whether the following factors may explain why Black persons are overrepresented, relative to population, in BART PD use-of-force incidents: (1) the race of individual riders; (2) neighborhood demographics surrounding a BART station; (3) poverty rates surrounding a BART station; and (4) local crime rates surrounding each BART station.<sup>17</sup> Our statistical analysis calculates whether, alone or in combination, these factors may contribute either to the overall number of stops at a BART station or to the Black–White racial disparity observed at the station. The findings are reported in Table 3 and summarized on below.

Using this methodology, our findings were as follows:

- After controlling for crime rates, poverty rates, and racial demographics, Black persons experienced use of force at a rate approximately 15 times higher than the use-of-force rate for White persons. Thus, the Black–White racial disparity in use-of-force incidents was not fully explained by local crime rates, poverty rates, or the racial demographics of surrounding station areas.
- Racial disparity in use-of-force incidents was higher in wealthier neighborhoods and lower in neighborhoods with higher poverty rates. That is, the Black–White disparity was larger in wealthier neighborhoods than in poorer ones.
- Latinx persons experienced use of force at about the same rate as White persons.
- The number of use-of-force incidents involving Asian persons was too small to be used in the regression analysis.

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16 Per email from BART PD personnel, September 9, 2019, we are advised that from 2012 to 2015, OIS and discharges were not necessarily recorded in the use-of-force dataset but were recorded in separate, handwritten files. We are further advised by BART PD that it recorded five OIS from 2009 through 2017, as well as two non-OIS firearm discharges.

17 The crime rate is calculated using the rate of BART arrests for Part I crimes (as classified by the Uniform Crime Reporting system) in neighboring census tracts.

**Table 3. Regressions Predicting Frequency of Use of Force**

	Model 1		Model 2	
	Estimated Incidence Ratio	95% Confidence Interval	Estimated Incidence Ratio	95% Confidence Interval
Intercept	0.00***	(0.00, 0.00)	0.00***	(0.00, 0.00)
Black	14.43***	(10.42, 19.98)	15.03***	(10.93, 20.67)
Latinx	0.84	(0.59, 1.18)	0.87	(0.61, 1.24)
Black % of Population	1.31	(1.00, 1.71)	1.25	(0.98, 1.59)
% of Population in Poverty	0.86	(0.66, 1.11)	1.25	(0.92, 1.69)
Number of Arrests	1.42***	(1.17, 1.74)	1.40***	(1.17, 1.68)
Black: % of Population in Poverty			0.49***	(0.36, 0.65)
Latinx: % of Population in Poverty			0.82	(0.58, 1.16)

# SECTION IV: OFFICER CLIMATE SURVEY

We now turn to the results of the climate survey administered to BART PD officers.

Decades of empirical research reveals that social attitudes, including those not consciously recognized or acknowledged by an individual, can make that individual vulnerable to enacting bias—sometimes more so than conscious intent. Accordingly, it is important to assess attitudes that can have implications for how officers operate in the field. Attitudes are often interconnected with beliefs, so it is important to evaluate beliefs as well. Consequently, the climate survey measured attitudes and beliefs that social science has shown can:

- increase the risk that officers will engage in inequitable and burdensome policing practices;
- increase the likelihood that officers will be resistant to policies and procedures that enhance community trust; and
- undermine the optimal job performance of officers.

The climate survey assessed BART PD officers' implicit and explicit bias as well as perceptions of organizational justice, all of which may affect the risk that cognitive bias could result in racially disparate behavior. The presence of risk factors, or even the presence of biased perceptions, does not guarantee that officers will behave in biased ways. Rather, these factors signal cognitive vulnerabilities, which can be compounded or mitigated by situational factors, such as departmental policy or customary norms and practices. Awareness and mitigation of these risks can help ensure more equitable treatment of community members by BART PD officers.

Each sworn BART PD officer was invited to complete the climate survey. The survey was administered electronically,

and officers had the option to take it during or after work hours. In total, 41 officers completed the survey. Of the 40 respondents who provided racial identity data, 35% identified as White, and 65% identified as non-White.<sup>18</sup>

The small sample size precludes detailed analysis of gender or racial disparities in the survey results. Moreover, the sample was composed largely of supervisors and executives. As such, the results are unlikely to reflect the views of most BART PD officers. Nonetheless, they illuminate the views of the officers who responded to the survey. They may highlight strengths that the department can build on, as appropriate, as well as opportunities for intervention to address attitudes that can undermine optimal police practices and community relationships.

## Summary of Climate Survey Results

Among officers who participated in the survey, responses were suggestive of both departmental strengths as well as risk factors that may affect the fairness of BART PD policing practices. On the positive side, survey respondents expressed egalitarian views with respect to the social groups our survey asked about. They gave broadly similar favorability ratings to different major racial groups, immigrants, Muslims, gay men, lesbians, persons with mental health challenges, and transgender persons. Respondents also expressed strong commitment to community-oriented and procedurally just policing, and strong disapproval of corrupt practices. All of this tends to favor the development of police–community trust.

On the other hand, survey respondents expressed considerable distrust of the community; they believed that community members in general, and Black persons in

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<sup>18</sup> We do not present findings related to rank or gender to protect the anonymity of survey participants.

particular, hold negative attitudes toward police, and they reported some concern that community members may stereotype them as racist.

Finally, the survey results indicate that respondents are well positioned to perform optimally when engaging in their duties. General job satisfaction, moderate job stress, and sound physical and emotional/mental health all contribute to optimal job performance.

### Climate Survey Results

In this section we outline the social constructs measured in relationship to inequitable and burdensome policing, community trust, and optimal job performance. A social construct is an idea or viewpoint constructed by a group of people to make sense of the world; it is held as true,

whether or not it reflects actual reality. The beliefs and attitudes measured by these constructs are described in this section, as is their relevance to the enhancement of equitable policing practices. All were assessed in the officer climate survey.

The tables that follow define the survey measures that addressed each of these outcomes of interest, and present the mean (average) scores and standard deviations for all respondents who provided usable answers to the survey questions. The discussion following each table summarizes the results, emphasizing responses to questions with average scores that tend toward the high or low side of the measurement scale, which may indicate attitudes or beliefs that could substantially influence officers' behavior in the field.

**Table 4. Constructs Related to Inequitable and Burdensome Policing**

Construct	Definition and Scaling	Mean	SD
Social Dominance Orientation	The endorsement of social hierarchies in which some groups have power and privilege while others do not. Such a perspective can make individuals feel justified in treating others inequitably. <i>[Measured on a scale from 1 to 7, with higher values indicating stronger endorsement of social hierarchies.]</i>	2.5	1.0
Stereotype Threat	Anxiety that one will inadvertently confirm a stereotype related to a social group in which one has membership. This anxiety can cause individuals in positions of power to escalate tense interactions (particularly with marginalized groups) in ways that can be harmful to those they interact with. <i>[Measured on a scale from 1 to 7, with higher values indicating greater worry about confirming stereotypes about police officers.]</i>	4.2	1.2
Mental Health Stigma	Harboring prejudicial attitudes toward individuals with mental health challenges <i>[Measured on a scale from 1 to 7, with higher values indicating greater stigmatization of individuals with mental health challenges.]</i>	3.5	0.9

*Continued on the next page*

<p>Perceptions of Juvenile Responsibility</p>	<p>Perceptions about the ability of adolescents to function with the same level of maturity and rational thinking as adults. More lenient attitudes about adolescent responsibility align with biological research on adolescent development, wherein youth do not fully develop maturity and the understanding of long-term consequences until they have reached young adulthood. Misconceptions about juvenile responsibility place one at risk of interacting with and punishing youth in inappropriate ways. <i>[Measured on a scale from 1 to 7, with higher values indicating more lenient attitudes about juvenile responsibility.]</i></p>	<p>3.8</p>	<p>1.0</p>
<p>Positive or Negative Feelings Toward Various Social Groups</p>	<p>Self-assessment of “warm” or “cold” feelings toward a particular social group. <i>[Measured on a scale from 0 (cold) to 100 (warm).]</i></p>		
	<p>Black persons</p>	<p>75</p>	<p>25</p>
	<p>White persons</p>	<p>74</p>	<p>23</p>
	<p>Latinx persons</p>	<p>77</p>	<p>23</p>
	<p>Asian persons</p>	<p>78</p>	<p>23</p>
	<p>Immigrants</p>	<p>77</p>	<p>23</p>
	<p>Muslims</p>	<p>75</p>	<p>25</p>
	<p>Gay men</p>	<p>76</p>	<p>24</p>
	<p>Lesbians</p>	<p>76</p>	<p>24</p>
	<p>Transgender women</p>	<p>74</p>	<p>24</p>
	<p>Transgender men</p>	<p>74</p>	<p>24</p>
	<p>Persons with mental illness</p>	<p>74</p>	<p>24</p>
<p>Perceptions of Community Attitudes Toward Police</p>	<p>Self-assessment of “warm” or “cold” feelings a particular social group has toward police. <i>[Measured on a scale from 0 (cold) to 100 (warm).]</i></p>		
	<p>BART community toward police</p>	<p>41</p>	<p>29</p>
	<p>Black persons toward police</p>	<p>42</p>	<p>20</p>
	<p>White persons toward police</p>	<p>59</p>	<p>26</p>
	<p>Latinx persons toward police</p>	<p>48</p>	<p>21</p>
	<p>Asian persons toward police</p>	<p>58</p>	<p>27</p>

## INEQUITABLE AND BURDENSOME POLICING

The inequitable or burdensome policing of others is characterized by biased judgments and behaviors as well as by engaging with individuals in ways that are unnecessarily confrontational, demeaning, or otherwise taxing. The beliefs and attitudes in Table 4 are considered risk factors for engaging in inequitable or burdensome policing.

Survey respondents expressed a relatively egalitarian perspective toward different social groups and showed little evidence of a **social dominance orientation**. Endorsement of a social dominance orientation would be measured by agreement with statements such as “It’s probably a good thing that certain groups are at the top and others are at the bottom” and “Some groups are simply inferior to other groups.” Rejection of a social dominance orientation might be indicated by agreement with a statement such as “No one group should dominate in society.” Because endorsement of a social dominance orientation can lead to inequitable behaviors, this finding is encouraging.

Five questions on the climate survey were designed to assess **stereotype threat**, or anxiety about confirming a stereotype related to police officers. Feelings of stereotype threat were measured by agreement with statements such as “I worry that people may stereotype me as prejudiced because I am a police officer,” “I worry that something I say might be misinterpreted as prejudiced because I am a police officer,” and “I worry that people’s evaluations of me might be negatively affected because I am a police officer.” The absence of such feelings would be indicated by agreement with statements such as “I never worry that someone will suspect me of being prejudiced just because I am a police officer.”

The average score across all questions was 4.2 on a 7-point scale, indicating neither affirmation nor denial that respondents experienced stereotype threat. The experience of anxiety as a result of stereotype threat can be mentally taxing, triggering defensiveness that can undermine respectful officer–community communications and prompt inadvertent and sometimes unjust errors in judgment or behavior. Survey respondents may be vulnerable to the effects of stereotype threat, even if they

are not aware that such anxiety might negatively affect their interactions with the community.

Stereotype threat may be related in part to officers’ views that some members of the community hold the police generally in low regard. On a “feeling thermometer” from 0 (most unfavorable rating, or “coldest”) to 100 (most favorable rating, or “warmest”), BART PD officers expressed a belief that the BART community and Black persons in particular hold cold feelings toward police, rating community feelings toward BART PD at 41 and Black people’s feelings toward BART PD at 42. By contrast, survey respondents perceived Latinx persons to feel neither cold nor warm toward police (48), and perceived that White and Asian persons felt positively toward police (59 and 58, respectively).

An encouraging finding was that survey respondents themselves expressed fairly consistent favorability ratings on the feeling thermometer toward members of different major racial groups, toward Muslims and immigrants, and toward gay men, lesbians, and transgender persons, with favorability scores for all groups in the range of 73 to 78 on a 100-point scale.

The survey also revealed some **misconceptions about juvenile responsibility** among officers. Beliefs about adolescent development and juvenile responsibility were measured by agreement or disagreement, on a scale from 1 to 7, with statements such as “An adolescent’s ability to control their impulses and understand the consequences of their actions should be taken into consideration when deciding the punishment for an adolescent,” “An adolescent who commits a violent offense should be eligible to receive the same punishment an adult would receive,” “Peer pressure should be taken into consideration when deciding the punishment for an adolescent,” and “Adolescents convicted of committing violent offenses should not be sentenced to prison for life.”

The average score on such survey measures was 3.8, indicating that survey respondents did not strongly agree or disagree with such statements. To the extent that officers may expect children or teenagers to control their impulses and exercise judgment the way adults are expected to do, they may be inclined to interact with youth

as if they were adults, instead of relying on age-appropriate methods that meet the needs of youth and yield better results. Furthermore, because Black children and youth are more likely to be judged older than their actual age, they are at heightened risk of being subjected to inappropriately punitive treatment.<sup>19</sup>

The climate survey showed some evidence of **mental health stigma** among BART PD officers. Endorsement of mental health stigma was measured by agreement with statements such as “A person with mental health issues could snap out of the problem,” “People with mental health issues are unpredictable,” “A mental health issue is a sign of personal weakness,” “People with mental health issues are dangerous,” and “I would not want to work with a person with mental health issues.” On average, survey respondents did not reject such prejudices, but were neutral toward them.

## **COMMUNITY TRUST**

Community trust is present when community members perceive police officers to be reliable stewards of goodwill and guardians of public safety in whom they have confidence. Trust is earned, and law enforcement officials must continually demonstrate their trustworthiness through policies and daily interactions with the public. However, there are certain perspectives and attitudes that may make individual officers more or less inclined to support policies or practices that create or enhance community trust. Such perspectives and attitudes are captured in the constructs in Table 5.

BART PD officers expressed substantial support for both **community-oriented policing** and **procedurally just policing**. These findings are encouraging, as fair and responsive interactions with community members are critical to building community trust in the police force.

Support for community-oriented policing was measured by agreement with statements affirming that it is important to “be responsive to issues people in the community think are important, even if they are minor issues” and to “allow community members to voice their opinions when you interact with them.” Survey respondents expressed strong support for community-oriented policing, with a mean score of 5.5 on a scale of 1–7.

Support for procedural justice in policing was even stronger: The mean score was 6.6 on a 7-point scale. Such support was measured by agreement with statements affirming that it is important to “treat community members with respect during your encounters with them,” “be impartial in the way you interact with community members,” and “be fair in your treatment of community members.”

At the same time, officers expressed moderate distrust of community members. **Trustworthiness of community members** was measured by agreement with statements such as “Community residents tell the police the whole story when they are being questioned,” “Community residents can be trusted to do the right thing,” and “Community residents are willing to help the police identify criminals.” On average, respondents expressed somewhat low trust in the community, averaging 3.0 on a scale from 1 to 7. These findings may be consistent with respondents’ perceptions that the BART community as a whole has a negative attitude toward them (see Perceptions of Community Attitudes Toward Police in Table 4). This finding may indicate a need for building greater trust between BART PD officers and the communities they serve and protect.

Survey respondents believed that **critical media coverage** of the police had deleterious effects, as measured by agreement with statements such as that adverse publicity had “negatively impacted the way I do my job,” “forced some U.S. law enforcement agencies to make policy changes that ultimately threaten officer safety,” “made it more difficult for me to be motivated at work,” “caused me to be less proactive on the job than I was in the past,” or “caused me to be more apprehensive about using force even though it may be necessary.” Their responses averaged 5.0, indicating that these respondents did share such concerns.

Overall, the survey results show BART PD officers hold attitudes and beliefs that can encourage community trust in the department. Officers strongly supported community-oriented policing and procedurally just policing practices, both of which are critical to building

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19 Goff, Jackson, DiLeone, Lewis, Culotta, and DiTomasso (2014).

confidence in the police among community members. However, officers did also express a distrust of community members, which can undermine reciprocal trust. Officers overwhelmingly rejected a departmental culture that tolerates corruption, and they expressed concern that unfavorable media coverage could affect their work and their interactions with the community.

## WORKPLACE WELL-BEING AND OPTIMAL JOB PERFORMANCE

Workplace well-being and optimal job performance empower officers to police in ways that are equitable and enhance public safety. However, optimal job performance is conditioned upon good mental and physical health. Health challenges can disrupt the best efforts of law enforcement

**Table 5. Constructs Related to Community Trust**

Construct	Definition and Scaling	Mean	SD
Support for Community-Oriented Policing	The perspective that community-oriented policing is a worthwhile endeavor. Officers who harbor this perspective are assumed to be more likely to support and engage in practices that enhance community trust, which is a necessary component of community policing. Officers who do not support community policing would be expected to do the opposite. <i>[Measured on a scale from 1 to 7, with higher values indicating stronger endorsement of procedurally just policing.]</i>	5.5	1.1
Trust in Community	Perceptions of the level of trustworthiness of community members. Officers who feel they cannot trust the community are likely to be less inclined to support practices or policies that will build community trust overall. <i>[Measured on a scale from 1 to 7, with higher values indicating stronger endorsement of procedurally just policing.]</i>	3.0	1.1
Support for Procedurally Just Policing	Procedurally just policing is characterized by respectful interactions with individuals and objective decision making on the part of law enforcement. Officers who support these practices are likely to be more inclined to support policies and practices that enhance community trust; the opposite would be the case for officers who do not support procedurally just policing. <i>[Measured on a scale from 1 to 7, with higher values indicating stronger endorsement of procedurally just policing.]</i>	6.6	0.47
Effects of Publicity	The perspective that negative media coverage of police officers has made the job of law enforcement more dangerous and has depressed morale. Officers who feel this way may be more apprehensive about engaging with community members, and therefore be less inclined to engage in practices or support policies that enhance community trust. <i>[Measured on a scale from 1 to 7, with higher values indicating greater agreement with statements about the negative effects of media coverage on officer safety.]</i>	5.0	1.2



**Table 6. Constructs Related to Workplace Well-Being and Optimal Job Performance**

Construct	Definition and Scaling	Mean	SD
Physical Health	A state of physical well-being. Those reporting sound physical health are better positioned to perform competently within their professional roles. <i>[Measured on a scale from 1 to 7, with higher values indicating better physical health.]</i>	5.0	1.4
Mental Health	A state of mental well-being. Those reporting sound mental health are better positioned to perform competently within their professional roles.		
	Positive affect <i>[Measured on a scale from 1 to 7, with higher values indicating the experience of positive emotions and/or a healthy self-concept.]</i>	5.0	1.1
	Negative affect <i>[Measured on a scale from 1 to 7, with higher values indicating the experience of negative emotions and/or a poor self-concept.]</i>	1.9	0.88
	Overall affect <i>[A cumulative score summing a respondent's positive affect scale with a reverse scoring of the negative affect scale. Measured on a scale from 1 to 7, with higher values indicating the experience of greater positive emotions relative to negative emotions.]</i>	5.7	0.77
Job Stress	Mental or emotional strain caused by the workplace environment. Those reporting low levels of job stress are better positioned to perform competently within their professional roles. <i>[Measured on a scale from 1 to 7, with higher values indicating higher levels of stress.]</i>	4.3	1.2
Job Satisfaction	Satisfaction in response to the workplace environment. Those reporting high levels of job satisfaction are better positioned to perform competently within their professional roles. <i>[Measured on a scale from 1 to 7, with higher values indicating greater job satisfaction.]</i>	4.0	1.1

*Continued on the next page*

<p>Organizational Distributive Justice</p>	<p>Perceptions by individuals within an organization that they are treated fairly with regard to the outcomes of decisions and the distribution of organizational resources. Individuals who perceive a lack of organizational distributive justice are at risk of engaging in inappropriate and unethical behaviors. <i>[Measured on a scale from 1 to 7, with higher values indicating greater distributive justice.]</i></p>	<p>4.5</p>	<p>1.5</p>
<p>Organizational Interactional Justice</p>	<p>Perceptions by individuals within an organization that they are treated with dignity and respect within the organization. Individuals who perceive a lack of organizational interactional justice are at risk of engaging in inappropriate and unethical behaviors. <i>[Measured on a scale from 1 to 7, with higher values indicating greater interactional justice.]</i></p>	<p>5.2</p>	<p>1.4</p>

officials, as they can deplete the physical and mental energy necessary to be effective in the workplace. The states of physical, mental, and emotional health relevant to job performance are described in Table 6.

On average, respondents reported good physical and mental health, rating their physical health at 5.0 on a 7-point scale. They reported frequent experience of positive emotions—such as feeling alert, inspired, determined, attentive, and active—and infrequent experience of negative emotions, such as feeling upset, hostile, ashamed, nervous, afraid, angry, angry at self, disgusted, or disgusted with self. The climate survey also asked officers how often in the past six months they had experienced an array of other symptoms of emotional or mental distress, such as finding it difficult to relax, getting agitated, or finding it hard to work up the initiative to do things. Overall, on a scale of 1 (greatest emotional comfort) to 7 (greatest emotional discomfort), officers’ negative affect score averaged 1.9, indicating robust emotional well-being.

Responding officers, on average, expressed neither satisfaction nor dissatisfaction with their jobs (with a mean of 4.0 on a scale of 1–7). They experienced moderate

levels of on-the-job stress (mean of 4.3), as measured by responses to statements such as “How often do you feel calm and at ease when you are working?” and “How often do you feel tense or uptight when you are working?”

The survey revealed generally positive officer perceptions of organizational distributive and interactional justice within BART PD. Respondents ranked the department’s distributive justice (that is, the fairness of departmental procedures defining officer misconduct and governing officer assignments and promotion) fairly positively, averaging 4.5 on a scale of 1 to 7. They expressed strong agreement on measures of organizational interactional justice, averaging 5.2 on measures such as whether their supervisors held values similar to their own and stood up well for values important to them, gave them opportunities to express their opinions and concerns, and treated them with dignity and respect and without personal bias. These survey items also addressed whether fellow officers treated respondents with dignity and respect and without personal bias, gave them the opportunity to express their opinions and concerns, and cared about their well-being.

# SECTION V: SUMMARY AND RECOMMENDATIONS

Overall, the results of our analysis find reasons for optimism along with room for improvement toward advancing the goal of equitable policing.

Based on these findings, we offer six specific recommendations for BART PD. While this is not an exhaustive list of possible solutions to the disparities and risk factors we have identified, we recommend that BART PD adopt the following actionable steps to enhance their commitment to fair and equitable policing:

**1. Implement key changes to data collection efforts**, specifically with respect to stops, searches, and use-of-force incidents, as follows:

**a. Update the BART PD policy manual** by adopting a written policy requiring officers to collect data on all stops in accordance with the Racial and Identity Profiling Act of 2015 (RIPA).

**b. Adopt a policy requiring supervisors to review stop and use-of-force records in a timely fashion** to ensure that their supervisees are completing them properly.

**c. Ensure that officers are trained to record racial data for every stop and use-of-force incident.** Officers should not ask persons for racial self-identification, but should record their perception of the person's racial identity. If they are not sure, they should record "Unknown."

**d. Record every search, and include in these records the reason for the search and whether contraband was found.** Yield rate

data can be calculated based on categorical lists of contraband or a more detailed accounting that allows for specific weapons or drugs to be identified. These categories are listed in the RIPA stop data regulations and are also required to be reported under BART PD Policy 322.5.

**e. Record the nature of the offense(s)** when a person is arrested at a vehicle or rider stop or after a use-of-force incident.

**f. In use-of-force incidents involving firearms, record whether the weapon was discharged and whether any person was injured.** Officer-involved shootings should be included in use-of-force data sets.

**g. Implement the recommendations for RIPA compliance** outlined in the *COPS Stop Data Guidebook: Pilot Implementation Reports*, which was drafted by CPE and the Policing Project.

**2. Adopt a policy requiring officers to write a brief narrative explanation of the reason for each stop they conduct** and submit the same to their supervisors at the end of each shift. While RIPA already requires that this information be collected and submitted to the California Attorney General,<sup>20</sup> we recommend that BART PD establish a policy requiring that it also be submitted to supervisors on a daily basis for review. We further recommend

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20 Racial and Identity Profiling Act, Cal. Code Regs. Tit. 11 § 999.226(a)(10)(B).

that BART PD adopt a policy requiring supervisors to review these reports in a timely manner to ensure that stops are supported by reasonable suspicion and consistent with BART PD policy and applicable law.

- 3. Monitor the locations and times of fare enforcement operations**—which represent a large majority of BART PD’s activities—to ensure efficient and equitable deployment.
- 4. Revise the BART PD policy on drawing/deploying firearms** (Policy 300.3.5) to clarify when an officer may draw a firearm or point a firearm at a member of the public, and about the role of bystander safety in the determination of whether to draw, point, or discharge a firearm. We recommend that BART PD adopt a policy stating that officers may only draw or display their firearms if they reasonably believe that there is a substantial risk that the situation may escalate to the point where deadly force may be justified.
- 5. Redouble efforts to build mutual trust and open productive channels of communication between BART PD and the community.** The climate survey data show that some officers distrust the community and believe that community members, especially members of Black communities, have a negative attitude toward police. We recommend BART PD explore the underlying causes of distrust for both officers and community members. This could include hosting open dialogues (e.g., listening sessions) or administering a community survey. Once the core issues are brought to light, BART PD must implement responsive change in a way that is transparent to both officers and community members.
- 6. Work in collaboration with the BART Office of the Independent Police Auditor and the BART Police Citizen Review Board** to implement the recommendations made in this report.

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# BART POLICE USE OF FORCE, 2017-2019

BART PD CITIZEN REVIEW BOARD MEETING

March 2021

# DATA

- 2017-2019 BART Police Use of Force Annual Reports & Data
  - <https://www.bart.gov/about/police/reports>
- 792 reported incidents involving use of force
- Independent analysis of BART PD data
  - [https://github.com/sohanmurthy/bartpd\\_force](https://github.com/sohanmurthy/bartpd_force)
- Center for Policing Equity Report
  - <https://www.bart.gov/sites/default/files/docs/CPE%20Report.pdf>



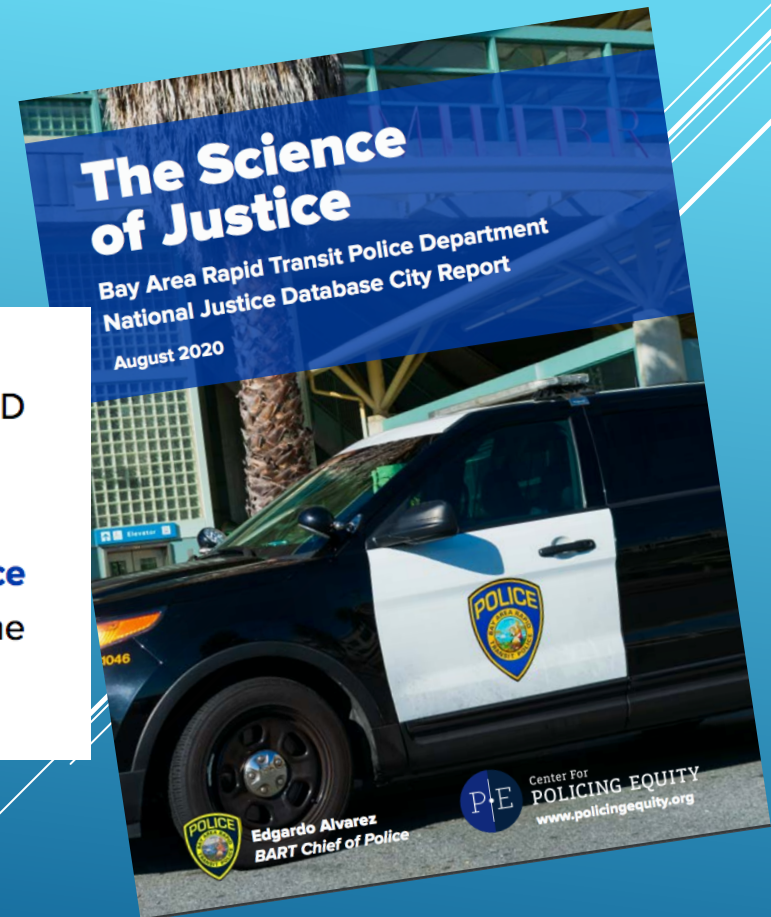
# RACE

2012-2017

## Use of Force

Among other important findings, our analysis of BART PD use-of-force incidents revealed the following:

- **Overall, 63% of persons who experienced force were Black** (compared to their 8.7% share of the population served by BART).



# RACE

2018

Ethnicity/Gender of Involved Persons	Number of Persons	Percentage
Black Males	110	48.5%
White Males	33	14.5%
Black Females	30	13.2%
Hispanic Males	25	11.0%
Other Male	8	3.5%
Unknown, Male	2	0.9%
White Females	5	2.2%
Middle Eastern Male	3	1.3%
Hispanic Females	4	1.4%
Pacific Islander Males	1	0.4%
Asian Males	2	0.9%
Asian Females	1	0.4%
Other, Transgender	1	0.4%
No data entered	2	0.9%
<b>Total</b>	<b>227</b>	

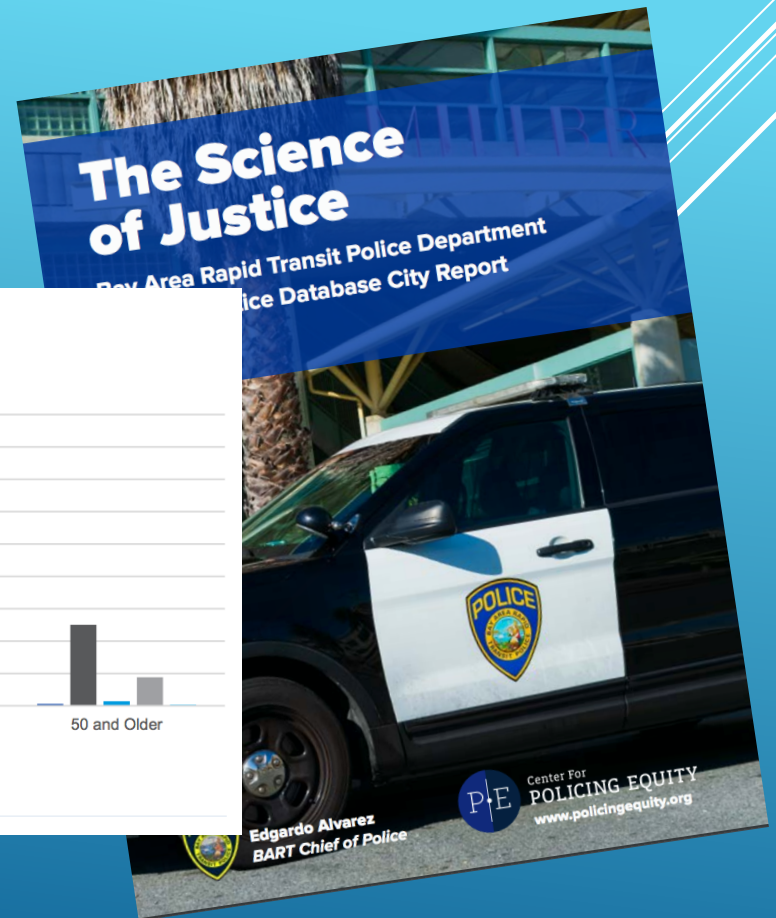
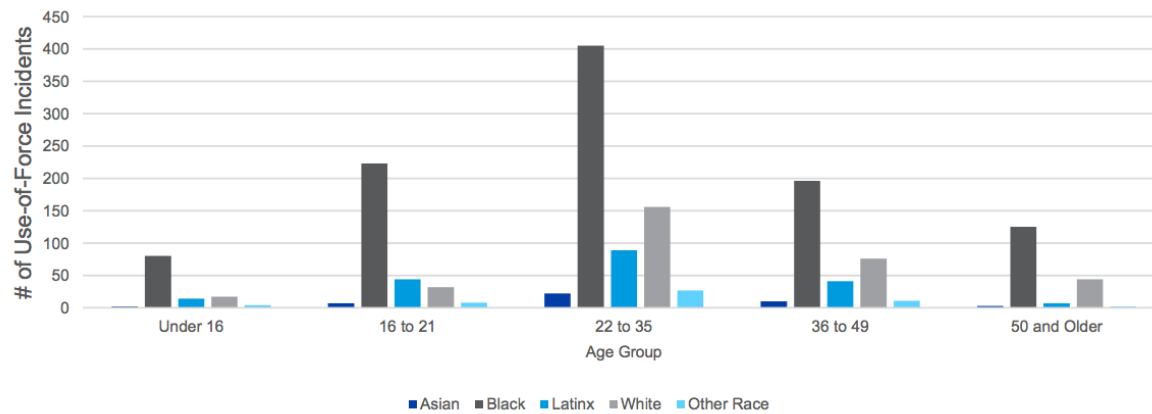
2019

Ethnicity/Gender of Involved Persons	Number of Persons	Percentage
Black Males	151	48.9%
Hispanic Males	45	14.6%
White Males	43	13.9%
Black Females	37	12.0%
Other Males	13	4.2%
White Females	9	2.9%
Asian Males	6	1.9%
Hispanic Females	2	0.6%
Other Females	2	0.6%
Pacific Islander Female	1	0.3%
<b>Total</b>	<b>309</b>	

# AGE

2012-2017

**Figure 17. Number of Use-of-Force Incidents by Race and Age, 2012–2017**



# AGE

2018

Age Groups of Involved Persons	Number of Persons	Percentage
under 20	36	15.8%
20 - 29	70	30.8%
30 - 39	48	21.1%
40 - 49	24	10.6%
50 and up	25	11.0%
no data entered (John Doe's)	24	10.6%
Total	227	

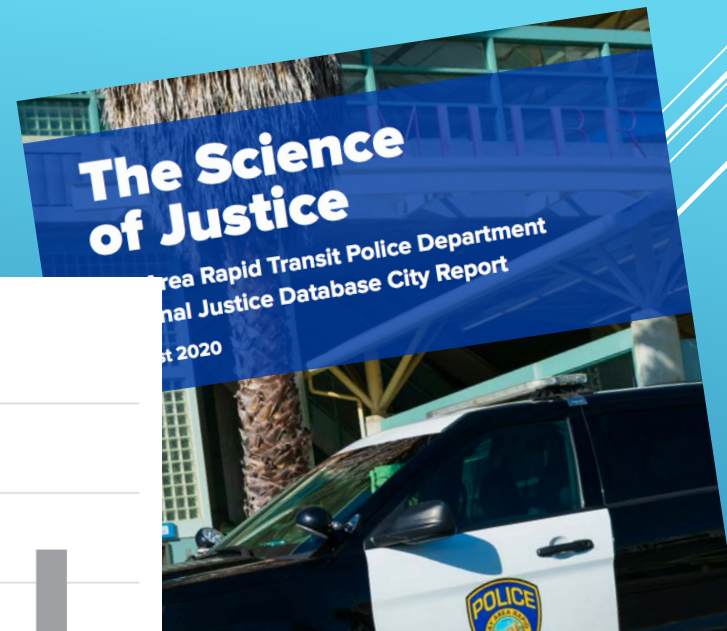
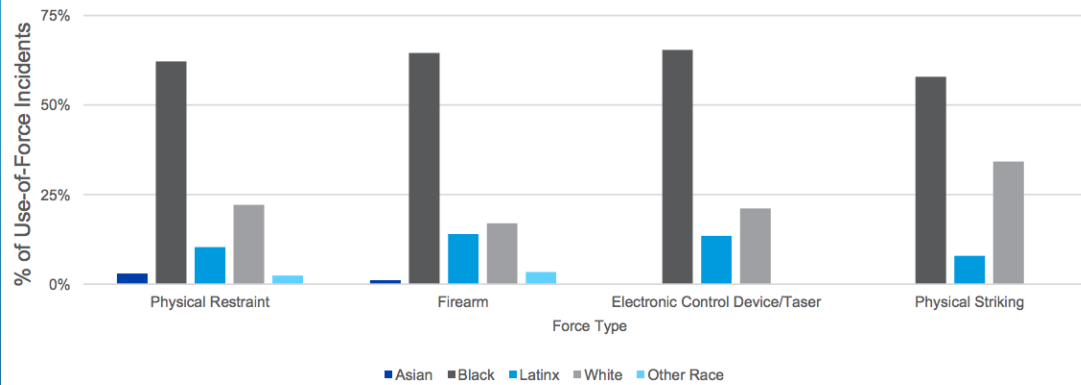
2019

Age Groups of Involved Persons	Number of Persons	Percentage
under 20	55	17.8%
20 - 29	121	39.2%
30 - 39	69	22.3%
40 - 49	40	12.9%
50 - 59	19	6.1%
60 and up	5	1.6%
Total	309	

# TACTICS

2012-2017

Figure 19. Force Types Recorded in Use-of-Force Incidents by Race, 2012–2017



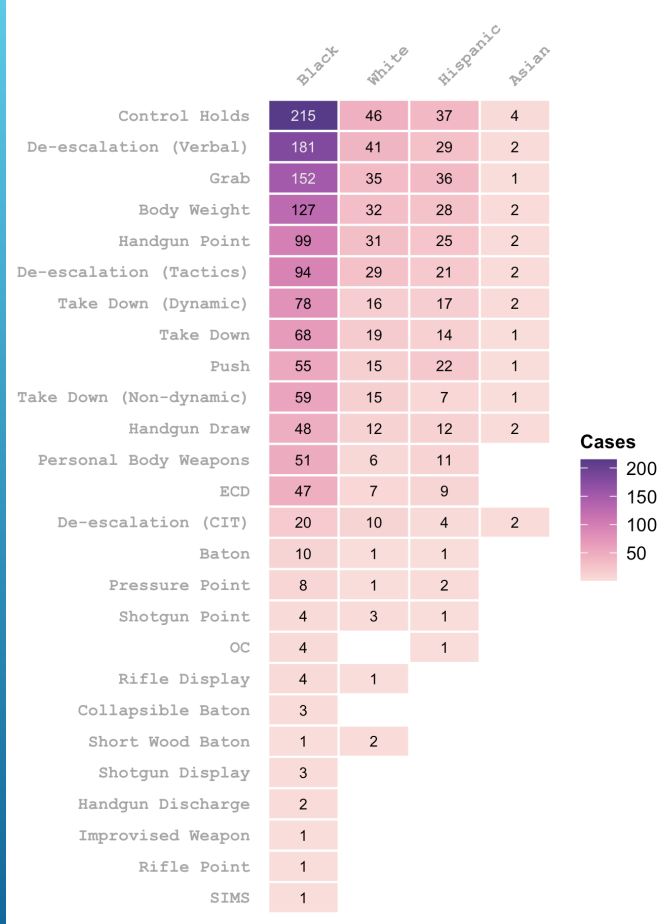
Frequency of firearm incidents varied across racial groups and geographic locations.

- Overall, 63% of incidents of pointing or display of a firearm involved persons who were Black. White persons were the subjects of the next largest proportion of firearm incidents (17%).

# TACTICS

- Persistent racial disparities across all force tactics
- Persistent disparities in use of firearm point

Distribution of Force Tactics by Race  
Total cases



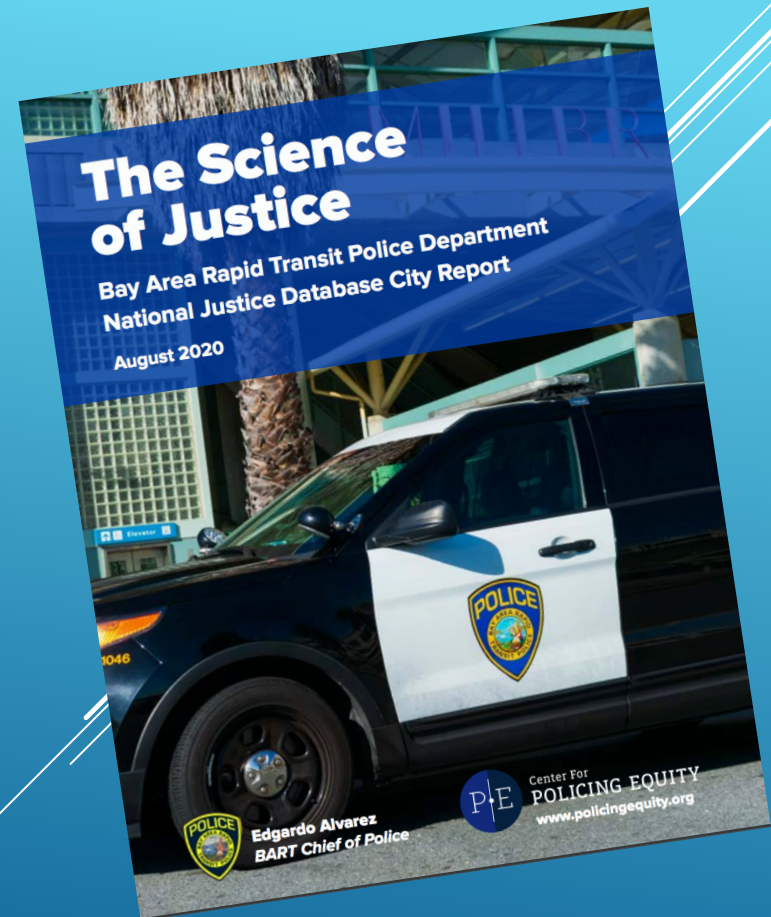
2017-2019



# DATA DEFICIENCIES

- “We encourage BART PD to continue its collection of stop and search data, and to include information on whether these stops lead to criminal charges.”

**e. Record the nature of the offense(s) when a person is arrested at a vehicle or rider stop or after a use-of-force incident.**



# DATA DEFICIENCIES

2017-2019

- Currently no data collection re: whether use of force incidents lead to charges
- “Resisting arrest”- type offenses, mental health calls, & fare enforcement appear to be the leading causes of use of force

charge_norm	code_type	statutory_code	literal_display	num_cases	pct_cases
PC148A1	PC	148(A)(1)	OBSTRUCT/ETC PUB OFCR/ETC	363	0.458333
WI5150	WI	5150	MNTLY DISORD 72 HR OB	160	0.20202
PC640C1	PC	640(C)(1)	FAIL PAY:PUB TRANSIT SYS	100	0.126263
PC243B	PC	243(B)	BATT PO/EMERG PRSNL/ETC	86	0.108586
PC69	PC	69	OBSTRUCT/RESIST EXEC OFF	68	0.085859
PC647F	PC	647(F)	DISORD CONDUCT:UI/DRUG	53	0.066919
PC1203.2A	PC	1203.2(A)	PROB VIOL:REAREST/REVOKE	46	0.058081
HS11364A	HS	11364(A)	POSS UNLAW PARAPHERNALIA	42	0.05303
OUTSIDEWARRANT	NA	NA	NA	42	0.05303
PC148.9A	PC	148.9(A)	FALSE ID TO SPECIFIC PO'S	41	0.051768
PC243.3	PC	243.3	BAT:TRANSPORT PERSONNEL	30	0.037879
SUSCIRC	NA	NA	NA	29	0.036616
OSCRM	NA	NA	NA	28	0.035354
PC417A1	PC	417(A)(1)	EXHIBIT DEADWPN:NOT F/ARN	28	0.035354
PC211	PC	211	ROBBERY	27	0.034091
OUTSIDEWARRANT	NA	NA	NA	24	0.030303
WEAPONINVOLVE	NA	NA	NA	23	0.02904
VIOLPROB/MISD	ZZ	VIOLPROB/MISD	VIOLATE PROBATION/MISD	19	0.02399
PC459	PC	459	BURGLARY	18	0.022727



# DATA DEFICIENCIES

BART PD and the Center for  
Policing Equity Study  
A PROGRESSIVE PARTNERSHIP

## #1: Updating use of force, stops, and searches data collection

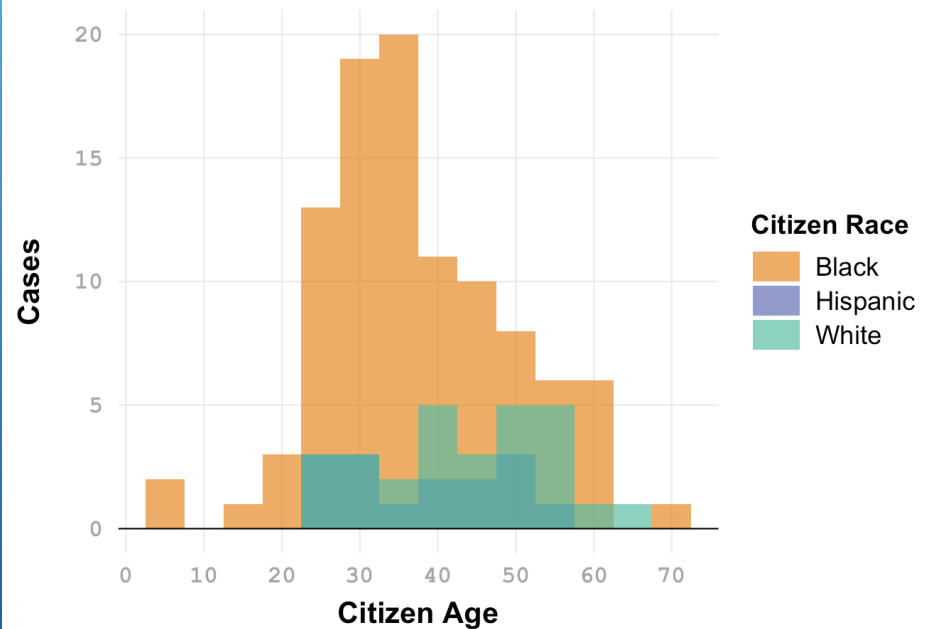
**BPD Action:** Advancing procedures to comply with the California Racial Identity and Profiling (RIPA) Act of 2015. BPD is required to issue its first RIPA report by April 2023 but anticipates being able to do so well before deadline.

# MENTAL HEALTH

2017-2019

- Far more force used against for younger and middle aged Black subjects
- Distribution is broader for Whites and Hispanics

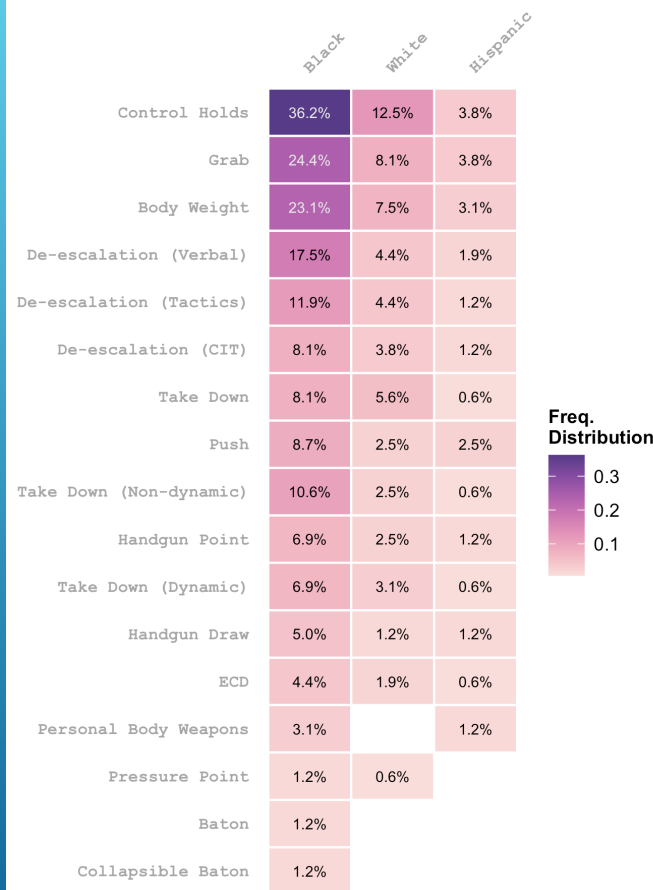
Age distribution of cases involving mental health



# MENTAL HEALTH

- Persistent racial disparities in mental health incidents that lead to the use of force
- Officers frequently use force that is not “body weight” only

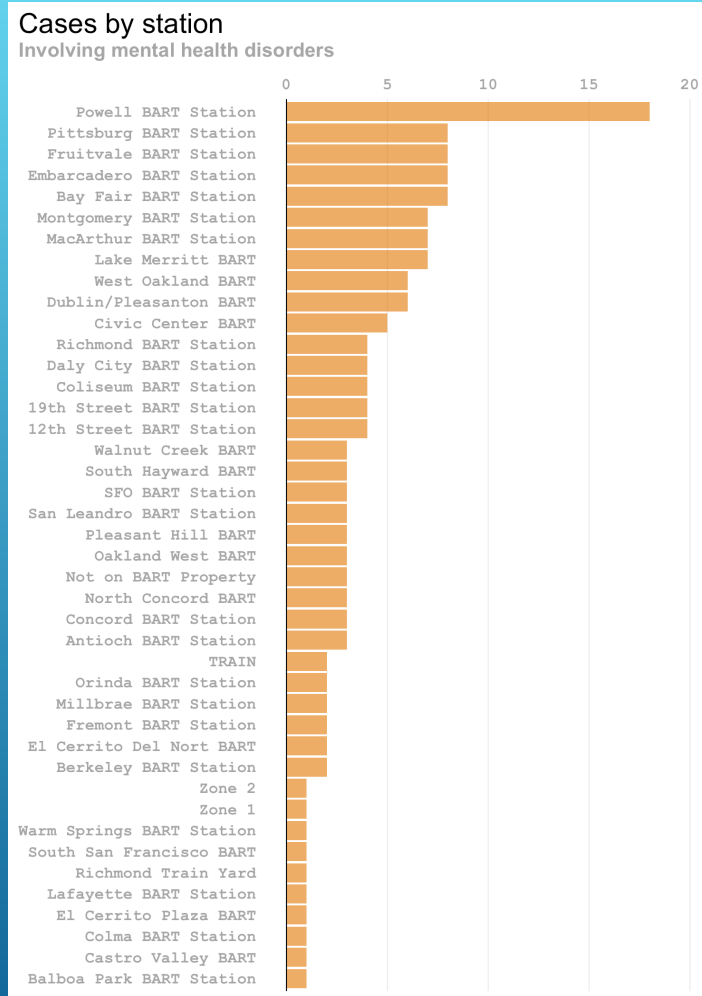
**Distribution of Force Tactics by Race**  
As percent of cases involving mental health disorders



2017-2019

# MENTAL HEALTH

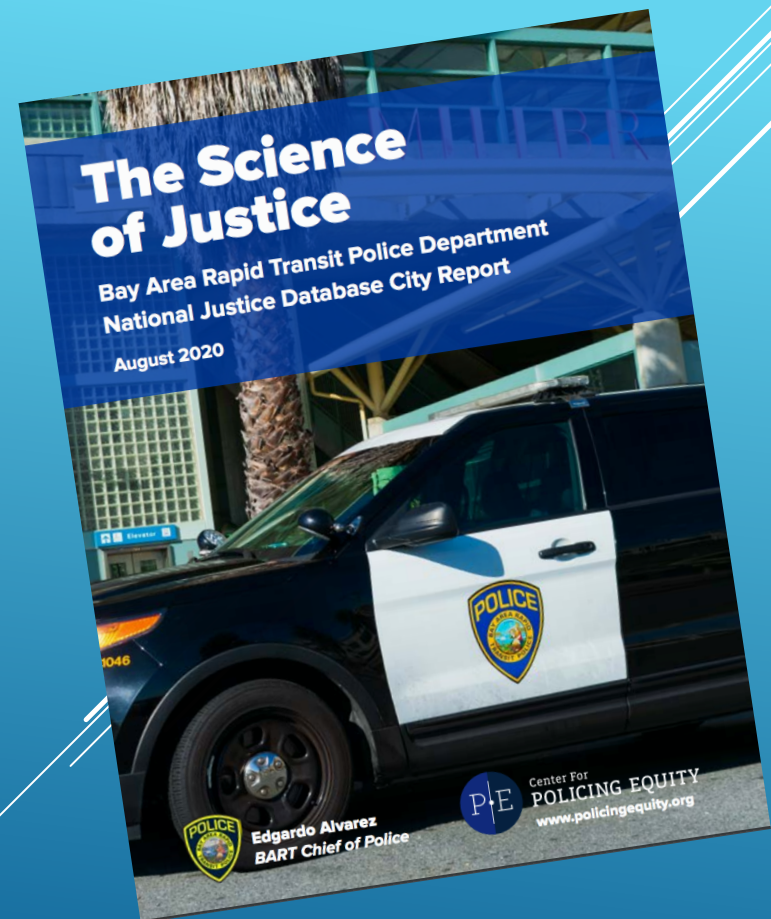
- Force is used against those suffering from mental health crises most often in certain Oakland and San Francisco stations



2017-2019

# FARE EVASION

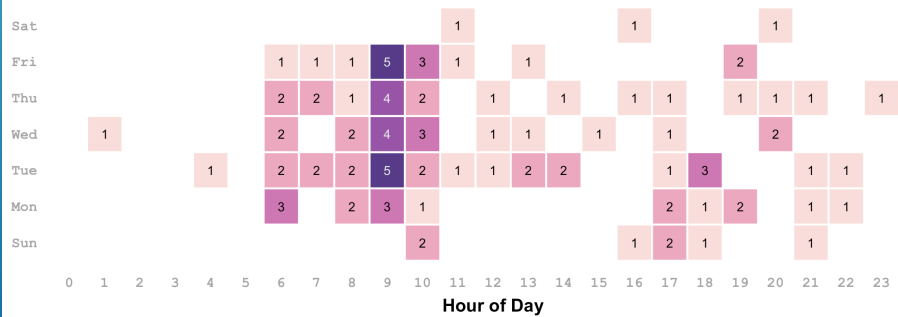
3. Monitor the locations and times of fare enforcement operations—which represent a large majority of BART PD's activities—to ensure efficient and equitable deployment.



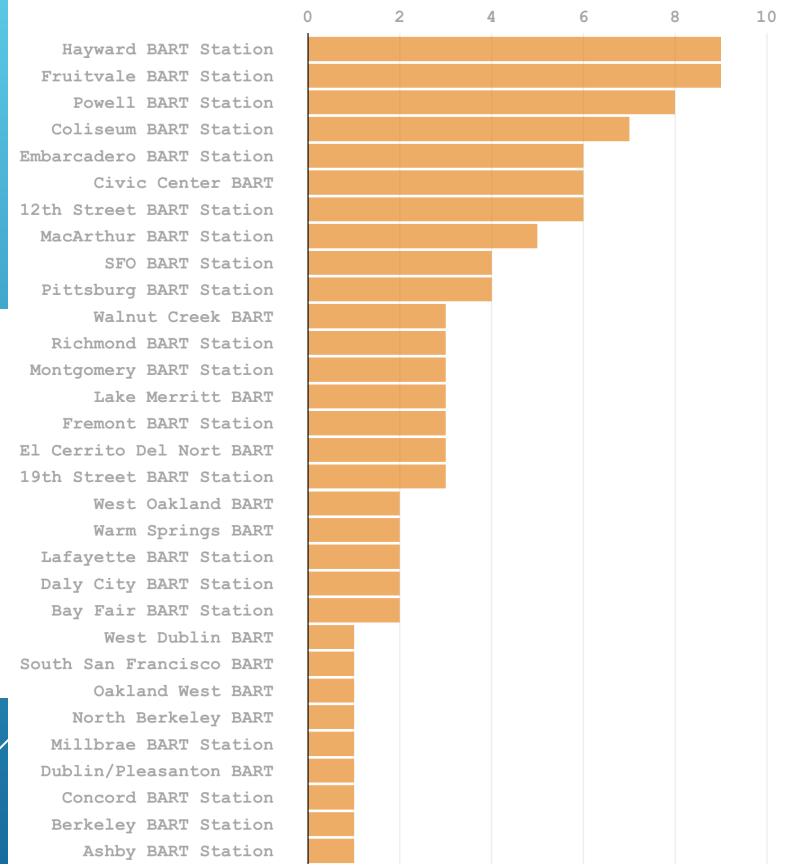
# FARE EVASION

2017-2019

Cases by hour of day and day of week  
Involving fare evasion charges



Cases by station  
Involving fare evasion charges

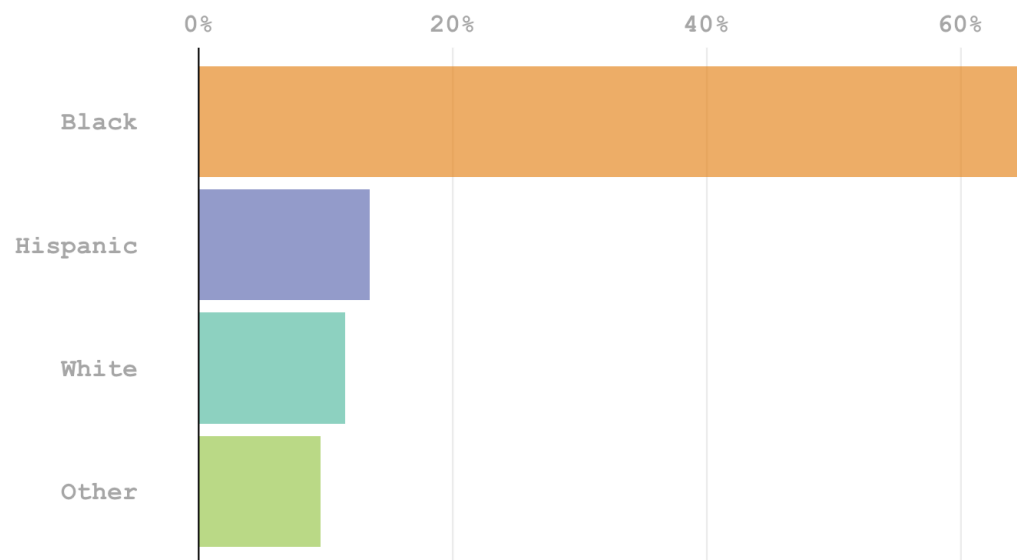


# FARE EVASION

2017-2019

- Overwhelmingly disproportionate use of force against people of color

**Distribution of cases by race**  
Involving fare evasion charges

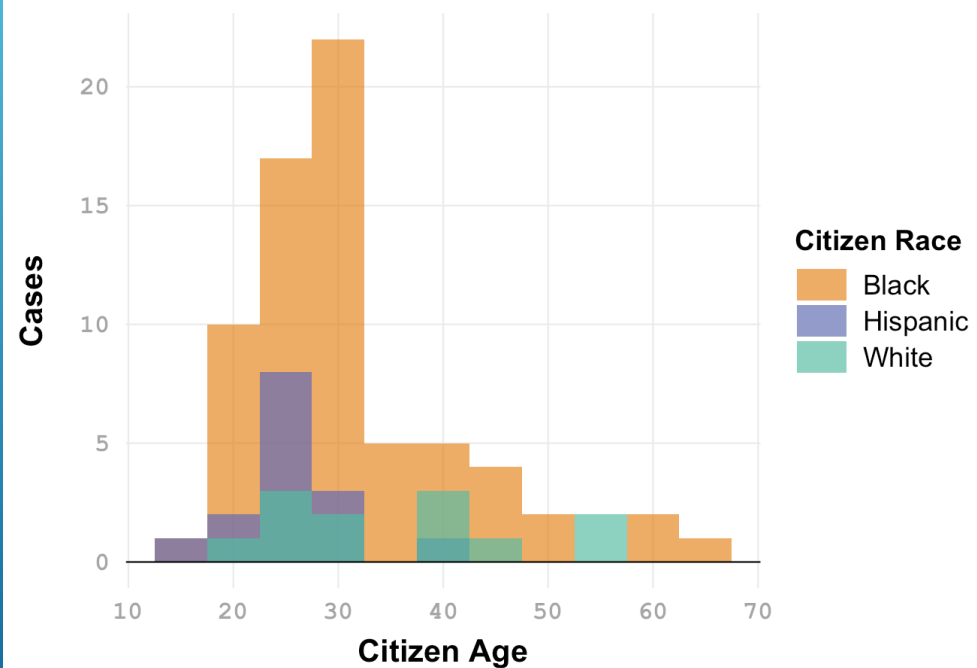


# FARE EVASION

- Use of force as a result of fare evasion incidents overwhelmingly targets younger people of color
- Distribution is broader for white subjects

2017-2019

Age distribution of cases involving fare evasion

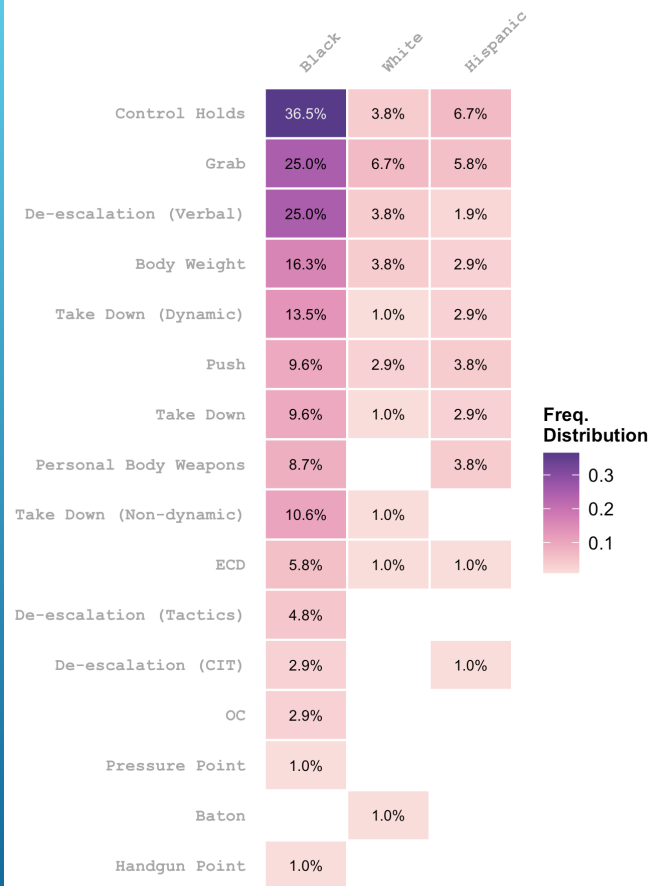




# FARE EVASION

- Persistent racial disparities across all types of tactics

Distribution of Force Tactics by Race  
As percent of cases involving fare evasion charges



2017-2019

# FARE EVASION



BART PD and the Center for  
Policing Equity Study  
A PROGRESSIVE PARTNERSHIP

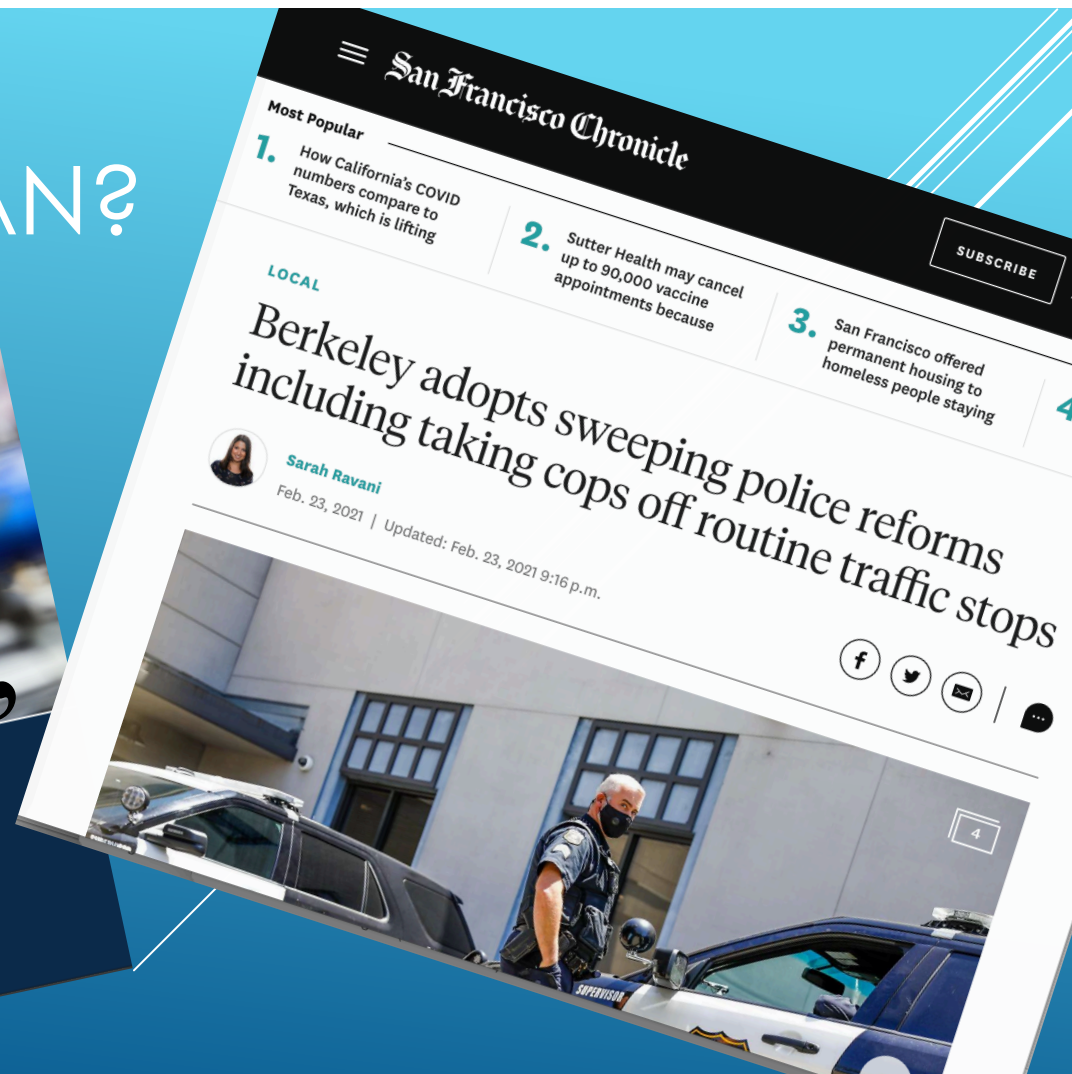
## #3: Review fare enforcement policies

**BPD Action:** Reviewed policy and practice to ensure Fare Inspectors approach every single rider during focused enforcements in downtown SF. No exclusion policy ensures equitable policing.

# WHAT'S THE PLAN?

“The Berkeley City Council adopted sweeping reforms to the city’s Police Department on Tuesday that will require written consent for police searches, the firing of racist officers and elimination of police stops for low-level offenses — such as failing to wear a seat belt or driving with expired license plate tags.”

 Center For  
**POLICING EQUITY**  
**The Science of Justice:**  
Berkeley Police Department  
National Justice Database City Report  
May 2018  
[www.policingequity.org](http://www.policingequity.org)



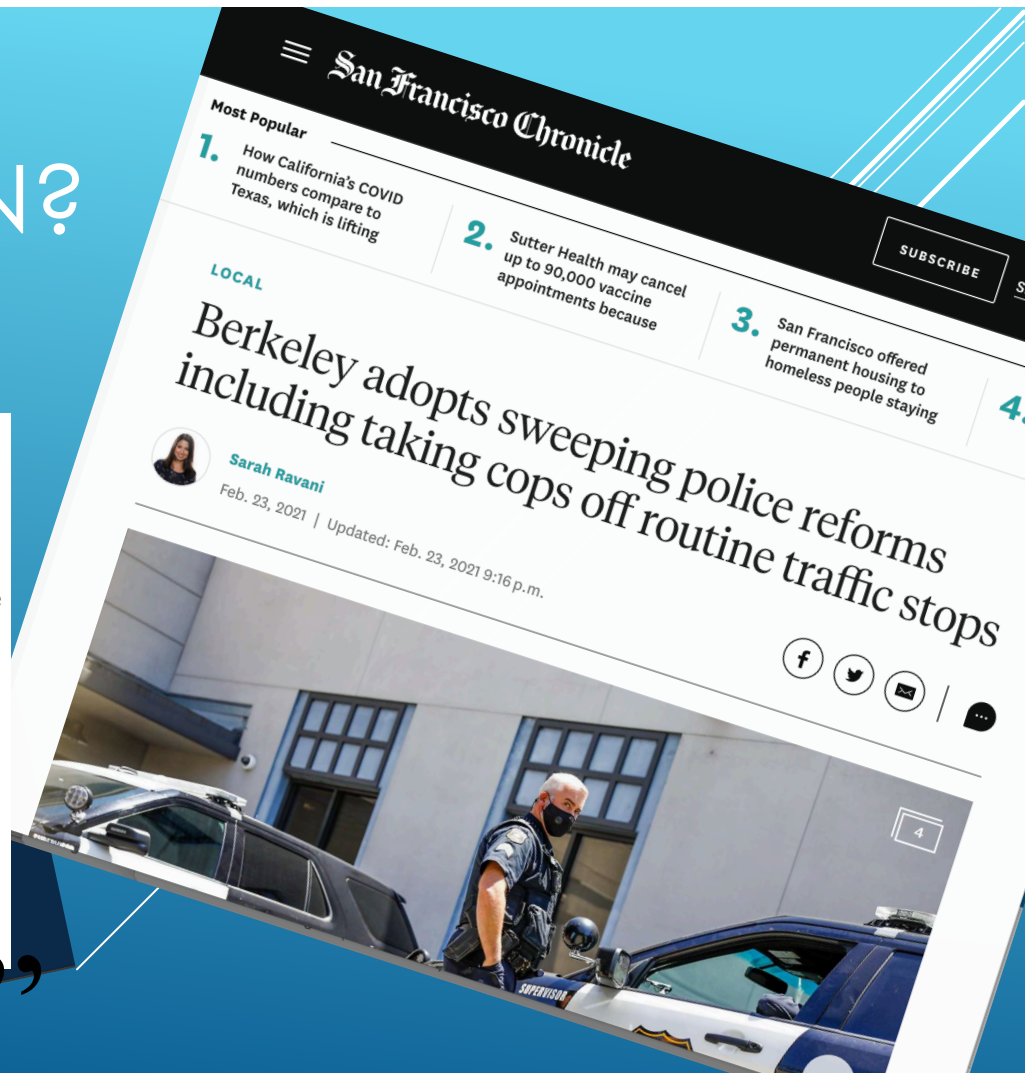
# WHAT'S THE PLAN?

“We work within policies and the law to make sure we don't have racist officers,” Greenwood said.

His comments drew ire from speakers during public comment. Speakers spoke for nearly an hour and overwhelmingly supported the changes. During public comment, Chanin said it's important for the chief to acknowledge that there is a problem based on the police stop data.

“It seems to me that acknowledging a problem, which police chiefs have done all across the country, is the first stage to solving it,” he said. “If you don't acknowledge it, you're going to have a lot of trouble solving it.”

National  
May 2019  
www.policingequity.org





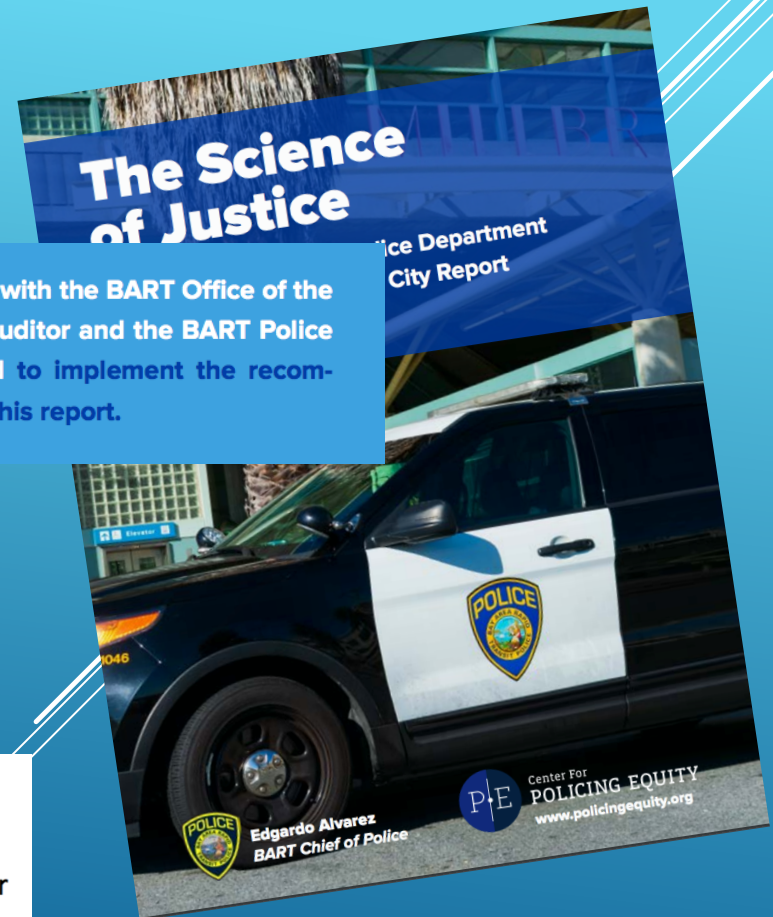
# WHAT'S THE PLAN?

BART PD and the Center for Policing Equity Study  
A PROGRESSIVE PARTNERSHIP

6. Work in collaboration with the BART Office of the Independent Police Auditor and the BART Police Citizen Review Board to implement the recommendations made in this report.

## #6: Collaborating with other officials

BPD Action: Committed to building up collaborative relationship with the Office of the Independent Police Auditor, the Citizen Review Board and other entities.



# WHAT'S THE PLAN?

- Community has experienced years of unchanged practices that have resulted in disparate use of force and enforcement targeting people of color
- Data collection & existing collaborative oversight relationships have not reduced racial disparities
- BART PD must acknowledge the racial disparities, based on the data
- The answer is not simply “we can’t control who commits crimes” or “BART officers are not biased”
- BART PD needs a plan to ensure compliance with CPE recommendations & further policy changes that reduce harm to the community