

# Oakland Police Department Office of the Inspector General

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## 3<sup>rd</sup> Quarterly Report July – September 2021

**Oakland Police Department**  
**Office of Inspector General**

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## Introduction

The second half of 2021 showed little relief from the ongoing global pandemic and increase in violent crime. Like all other Department divisions, the Office of Inspector General (OIG) was impacted, as pandemic related disruptions continue to contribute to delays in reporting. Staffing changes have occurred since the 1<sup>st</sup> and 2<sup>nd</sup> Combined Quarterly Report was published in October 2021. In November 2021, I was appointed Acting Deputy Chief of the Bureau of Risk Management (BRM), while continuing my role as the Inspector General. Deputy Chief Angelica Mendoza, the first Deputy Chief of BRM, is currently in charge of the Bureau of Field Operations 2 (East Oakland).

The Office of Inspector General's 2021 3<sup>rd</sup> Quarterly Report includes an inspection of use of force reporting and an audit of Penal Code 69, 148, and 243(b) and (c) arrests<sup>1</sup>. There is overlap in the two reviews published in this report. The audit of Penal Code 69, 148, and 243(b) and (c) arrests focused on all arrests from January 1, 2020, to November 10, 2020, for which these penal codes were the sole arrest charges. The inspection of use of force reporting covered a sample of arrests from January 1, 2021, to June 30, 2021, and nearly half of the sample included arrests for one of the same penal codes. Therefore, both reviews address some similar issues.

As a result of an OIG [Special Report](#) on use of force reporting published in 2019, the Department committed to conducting annual reviews of use of force reporting. The inspection published in this report looked at a sample of 50 arrests to determine if uses of force were reported properly, body-worn cameras were activated in accordance with policy, and supervisors conducted the required reviews of body-worn camera footage for Penal Code 69, 148, and 243(b) and (c) arrests.

This report also includes an audit of supervisory review and approval of 22 adult arrests where Penal Code Sections 69, 148, and 243(b) and (c) were the sole arrest charges. The audit focused on policy compliance with supervisory arrest approval, supervisory review of body-worn camera footage, and standards for conducting stops.

Respectfully,



Acting Deputy Chief Clifford Wong  
Inspector General  
Oakland Police Department

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<sup>1</sup> Penal Code 69: attempt, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or knowingly resists the officer in the performance of their duty, by using force or violence.

Penal Code 148(a)(1): willfully resisting, delaying, or obstructing the officer in the discharge of the officer's duty. Penal Code 243(b) and (c): willfully and unlawfully using force or violence upon the person of the officer while engaged in the performance of the officer's duty.

## Inspection of Use of Force Reporting

*By Police Performance Auditor Juanito Rus*

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### Objectives

For the period of January 1, 2021, through June 31, 2021:

1. Determine if uses of force by OPD officers were going unreported.
2. Determine if OPD officers were properly documenting their uses of force, particularly the lowest level uses of force to overcome resistance (level 4 type 32 force), per Department General Order (DGO) K-4, (*Reporting and Investigating the Use of Force*) and Special Order 9202, modifying DGO K-4.
3. Determine if officers were complying with the Department's body-worn camera activation policy as set forth in DGO I-15.1, *Portable Video Management System* (PDRD).
4. Determine if sergeants reviewed body-worn camera video of arrests for Penal Codes 69, 148, and 243(b) and (c) within 2 business days of the arrest per the requirements of Special Order 9191, *Additional Audit of Portable Digital Recording Device Video*.

### Key Findings

1. The Office of Inspector General conducted a detailed review of 50 separate arrests from two arrest categories where there was an increased chance force would be used and only the lowest level of force (level 4 type 32) was observed by the audit team. In 36 of the 50 arrests, 100 officers used a type 32 use of force and only 2 officers (in the same arrest incident) did not report their type 32 use of force. In 14 of the 50 arrests, no force was observed by the audit team.
2. In the 50 arrests reviewed by the audit team, while all but two level 4 type 32 uses of force were

documented by the officers using the force in a written police report, only 75% of the officers documented their use of force in the VIEVU record of the body-worn camera video capturing that force.

3. In the 50 arrests reviewed by the audit team, most officers activated their body-worn cameras as required by the Department's body-worn camera policy (97% of the 462 activations reviewed were found to be activated as required by policy), and the inspection found no instances in which an officer failed to activate their body-worn cameras at an incident in which activation was required. The inspection additionally found that all 15 activations that were late under department policy came from two categories of activations, officers who failed to activate their body-worn cameras prior to contact with other officers already engaged with individuals for whom activation was required (11 delayed activations), and officers approaching individuals who were found inside or were seen to have crossed an established crime scene perimeter (4 delayed activations).
4. In the sample of 21 arrests reviewed which included violations of Penal Codes 69, 148, and 243(b) and (c), the inspection found that sergeants did not consistently review body-worn camera video of the arrests in a timely fashion as required by Special Order 9191.

### Key Recommendations

Overall, there are a total of five recommendations in this inspection. For details, see the Findings and Recommendations Section on pages 27-28.

## Executive Summary

The purpose of this inspection was to determine if uses of force by officers were going unreported during incidents where there was an increased chance force would be used. Prior to this inspection, the Office of Inspector General (OIG) conducted three audits to assess force reporting since 2019. The Department committed to conducting an annual review of use of force reporting after the second such audit, titled *An Assessment of the Oakland Police Department's Use of Force Reporting, Usage of Portable Digital Recording Devices, and Supervision of Incidents During Arrests for Offenses Where There is a Significant Chance That Force Would Be Used*, published in 2019.

The first audit, titled *Audit of the Downward Trend in the Number of Reported Police Officers' Intentional Pointing of a Firearm at Subjects*, published in February 2019, was initiated in early 2018 due to the continued downward trend in uses of force. The audit focused on the decline in pointing of a firearm at subjects (a reportable use of force that does not require a full investigation) and identified six significant factors that contributed to the downward trend in the Department's number of reported incidents involving police officers pointing their firearms at subjects.

The second audit, titled *An Assessment of the Oakland Police Department's Use of Force Reporting, Usage of Portable Digital Recording Devices, and Supervision of Incidents during Arrests for Offenses Where There Is A Significant Chance that Force would Be Used*, published in July 2019, was a follow-up audit to determine if additional types of force were going unreported, and to identify issues associated with the use of body-worn cameras and supervision of incidents more likely to involve force. The second audit found that uses of force involving weaponless defense techniques and pointing of a firearm at a subject were not always being reported in accordance with department policy and procedures.

The third audit, titled *Inspection of Use of Force Reporting*, published in May 2020, was designed to evaluate the accuracy of the Oakland Police Department's reporting of uses of force, determine whether sergeants were conducting timely reviews of arrests for violations of Penal Code 69, 148, and 243(b) and (c) per departmental policy as set forth in Special Order 9191, and to examine officer compliance with the body-worn camera activation policy found in Departmental General Order I-15.1, *Personal Digital Recording Devices*. The third audit found improvements in the reporting of force, however it identified issues with sergeants conducting timely video review as required by Special Order 9191, and compliance with the Department's body-worn camera activation policies, including delayed activations and officers with no record of body-worn camera video where such video was required by policy.

Accordingly, the OIG made policy, training, and monitoring of force recommendations to address the issues found in all three audits, including a recommendation to revise the Department's policy on reporting and investigating force (Department General Order K-4, *Reporting and Investigating the Use of Force*). In response to the OIG's recommendations, the Department, in conjunction with the Oakland Police Commission, revised the Department's use of force policy. Changes were implemented through Special Order 9196 on February 15, 2020, which included the creation of a new reportable level 4 use of force – type 32 – designed to capture any force employed to counter resistance during a detention or arrest or protect any individual from a combative person, even if that force does not result in injury or

complaint. After implementing Special Order 9196, the increased workload resulting from reporting and reviewing type 32 uses of force and its potential impact on public safety caused the Department to temporarily modify the reporting requirements for type 32 uses of force via Special Order 9202, published February 27, 2020.

There were four objectives for this inspection. First, determine if uses of force by OPD officers were going unreported during the inspection period. Second, determine if level 4 type 32 uses of force (the lowest level use of force to overcome resistance) were documented in accordance with Special Order 9202. Third, determine whether sergeants conducted a review of body-worn camera footage for Penal Code 69, 148, and 243(b) and (c) arrests within two days of the arrest. Fourth, determine whether police officers properly activated their body-worn cameras.

In this inspection of use of force reporting, the audit team reviewed a sample of 50 arrest incidents between January and June 2021 for crimes that the audit team determined had an increased chance of force being used, but for which no uses of force were reported in Vision.<sup>2</sup> In the 50 incidents reviewed, the only force observed was level 4 type 32<sup>3</sup> force (force used to overcome resistance), and in every incident where a type 32 use of force was observed, the force was reported by at least one involved officer. In one incident, two officers failed to report their own participation in a level 4 type 32 use of force which was reported by the third officer involved in that incident. And, while compliance with the requirement to document type 32 uses of force in written reports was high (only the two officers noted above were found to have not documented their force in a written report), 25% of officers did not document their type 32 use of force in the VIEVU record of their body-worn camera footage of the incident, as required by Special Order 9202.

Officer compliance with the Department's body-worn camera activation policies was found to be high, with 97% of the 462 separate body-worn camera videos viewed by the audit team found to have been activated in accordance with policy. Finally, in 5 of the 21 incidents in which individuals were arrested for Penal Code 69, 148, and/or 243(b) and (c) offenses, there were no annotations indicating a sergeant had reviewed the respective police officers' body-worn camera footage within the two-days required by policy. This was an improvement from the last inspection published in May 2020, which found that 11 of 20 Penal Code 69, 148, and/or 243(b) and (c) arrests were missing the sergeant's review within two-days.

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<sup>2</sup> Vision is an electronic database that stores employee records such as assignments, training, uses of force, pursuits, etc. All reportable uses of force, except for level 4 type 32 force, are entered into Vision.

<sup>3</sup> Per Special Order 9202, level 4 type 32 uses of force are not required to be reported in the Department's use of force tracking system (Vision). Therefore, when selecting the sample of incidents to review for this inspection, the audit team was unable to deselect incidents involving type 32 uses of force. Additionally, one of the objectives of this inspection was to determine if type 32 uses of force were being documented as required by policy.

## Background

An officer's use of force to physically control a subject is a seizure. The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures by the government. In *Graham v. Connor*, 490 U.S. 386 (1986), the United States Supreme Court decided that the reasonableness of a use of force must be judged from the perspective of a reasonable officer on the scene, without regard to the officer's underlying intent or motivation. The determination of reasonableness must be based on the totality of circumstances and must include a consideration that police officers are often forced to make split second decisions in circumstances which are tense, uncertain, and rapidly evolving. The determination of reasonableness is not based on the 20/20 vision of hindsight.

There are four levels of force the Oakland Police Department requires its police officers to report and their respective supervisors to investigate to determine reasonableness which are detailed in Departmental General Order K-4, *Reporting and Investigating the Use of Force* and Special Order 9196. Level 1 is the most serious and it includes any use of force resulting in death; any force which creates a substantial risk of causing death; serious bodily injury; and any intentional impact weapon strike to the head. Level 2 includes personal weapon strikes to the head or to a restrained subject; use of impact weapons; police canine bites; and any use of force resulting in an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid. Level 3 includes the use of pepper spray or other chemical agent (not on a restrained subject); a Taser (not on a restrained subject); and weaponless defense techniques such as hand/palm/elbow strikes and kicks; and all non-carotid takedowns on a restrained subject. Finally, Level 4 includes the intentional pointing of a firearm; weaponless defense techniques such as hair grab, pressure to mastoid or jaw line; a weaponless defense technique control hold<sup>4</sup> (i.e., an elbow escort, twist lock, arm-bar, or bent wrist); all non-carotid takedowns not on a restrained subject; and a canine deployment in which a suspect is located by the canine, but no bite occurs.

### **Force Type 32 – Special Orders 9196 and 9202**

In 2020, the Department revised Departmental General Order K-4, *Reporting and Investigating the Use of Force*. That revision was implemented department-wide through Special Order 9196 issued on February 15, 2020. Among other provisions, that Special Order included changes in the way certain reportable force was defined and the addition of a force type that had not previously been reported – type 32 use of force (categorized as a level 4 use of force). This new type 32 use of force was defined as:

“Members who use any force as defined in DGO K-03 that is not listed under Types 1-31 to either:

- Overcome resistance of a person during an arrest or a detention; or
- Defend oneself or another from combative action by another person”

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<sup>4</sup> Special Order 9196, pg. 7 states “handcuffing and escorting techniques which incorporate elements common to control holds and are not used to overcome resistance or inflict pain are NOT reportable uses of force.”

Upon implementation of Special Order 9196, the increased workload due to the reporting and review of type 32 uses of force, which occur at a higher frequency than other force types, impacted the Department's response time to calls for service. This led the department to issue Special Order 9202 on February 27, 2020, which modified Special Order 9196 by temporarily removing type 32 uses of force from the standard level 4 use of force reporting requirements of Departmental General Order K-4 and instead require that all officers participating in a type 32 (also referred to as "K32") use of force:

"Shall do the following:

1. Document their actions in the applicable Offense, Supplemental, or FI/SDR narrative;
2. Write the word "K32" in the above narrative;
3. Use the CAD<sup>5</sup> disposition code "K32" to note the incident; and
4. Write the word "K32" in the annotations for any associated PDRD/body-worn camera video."

For the purposes of this inspection, the audit team only assessed the requirements to document "K32" uses of force in police reports (offense and supplemental reports) and in the VIEVU-VERIPATROL video record software system<sup>6</sup> (VIEVU or VIEVU record). However, if no documentation was found in either place, the audit team did review the CAD purges to check for the "K32" disposition code.

#### **Sergeants' Responsibilities for Arrests/Incidents Involving Penal Codes 69, 148, and 243 (b) and (c)**

In Special Order 9191, dated November 27, 2018, the Department's former Chief of Police stated that recent audits conducted by the Office of Inspector General and the Independent Monitor found that use of force was not consistently reported in accordance with Departmental General Order K-4. The former Chief noted that frequently, the lack of reporting came from incidents involving Penal Codes 69, 148, and 243(b) and (c) arrests. To correct the inconsistent reporting of force, all sergeants are required to audit the body-worn camera footage of arrests involving Penal Codes 69, 148, and 243 (b) and (c), and to review the footage within two business days of the incident. Sergeants are required to view the footage from the beginning of the incident through the arrest and annotate their review of the footage in the "Comment" area of the VIEVU record.

In California, a police officer may charge an individual with Penal Code 69 if the individual attempts, by means of any threat or violence, to deter or prevent the police officer from performing any duty imposed upon the officer by law, or if the individual knowingly resists, by the use of force or violence, the officer in the performance of his or her duty.

A police officer may charge an individual with Penal Code 148 if the individual willfully resists, delays, or obstructs the police officer's performance of his or her duties.

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<sup>5</sup> Computer Aided Dispatch (CAD) is the Department's communication system that tracks calls for service.

<sup>6</sup> VIEVU-VERIPATROL is a secure evidence management software system for the storage, retrieval, and management of video files from VIEVU cameras.  
(<http://storage.VIEVUsolution.com/documents/VERIPATROL%20Admin%20User%20Guide.pdf>)

A police officer may charge an individual with Penal Code 243(b) if the individual commits battery against the police officer or other first responder engaged in the performance of his or her duties and/or charge the individual with Penal Code 243(c) if the individual committing the offense knows or reasonably should know that the victim is a peace officer or other first responder engaged in the performance of his or her duties.

### **Activation of Body-Worn Cameras**

The Department requires that officers activate their body-worn cameras prior to contacting members of the public under several circumstances, including but not limited to:

- Citizen contacts to confirm or dispel a suspicion that the citizen may be involved as a suspect in criminal activity
- Detentions and arrests
- Conducting searches of a person and/or property incident to arrest
- Transporting any detained or arrested citizen (excluding prisoner wagon transport)<sup>7</sup>

### **Prior Audits**

In early 2018, the Office of Inspector General noted the continued downward trend in uses of force, specifically the decline in pointing of a firearm at subjects, and therefore initiated an audit titled *Audit of the Downward Trend in the Number of Reported Police Officers' Intentional Pointing of a Firearm at Subjects*, published in February 2019. That audit identified deficiencies in the Department's use of force reporting policy. A follow-up audit titled *An Assessment of the Oakland Police Department's Use of Force Reporting, Usage of Portable Digital Recording Devices, and Supervision of Incidents during Arrests for Offenses Where There Is a Significant Chance that Force would Be Used*, published in July 2019, found reporting issues with certain force types, as well as deficiencies in the supervisory review of incidents where there was an increased chance force would be used.

The most recent review titled *Inspection of Use of Force Reporting*, published May 2020, found deficiencies in the sergeant's review of Penal Code 69, 148, and 243(b) and (c) arrests, which is required to ensure use of force does not go unreported, and body-worn camera activation violations. The following recommendations were made:

- **Recommendation #1:** The Department should ensure its sergeants are annotating their review of police officers' body-worn camera footage in which offenses of Penal Code 69, 148(a)(1), and/or 243(b) and (c) allegedly occurred.
  - **Status:** Assessed in this inspection.
- **Recommendation #2:** The Department should provide guidance on the placement of body-worn cameras during transport of detainees/arrestees.

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<sup>7</sup>Departmental General Order I-15.1, Portable Video Management System, pgs. 2-4

- **Status:** The Department will begin implementing new body-worn cameras in the beginning of 2022 and will address placement of the cameras during transport of detainees/arrestees during training on the new cameras.
- **Recommendation #3:** The Department should also assess the feasibility of outfitting patrol cars with in-car video cameras. In-car video cameras would capture additional angles not captured by body-worn cameras, including the rear seat of the transporting vehicle.
  - **Status:** Although the Department entered into a contract for the procurement of new body-worn cameras in late 2021, in-car video cameras were not included due to budget constraints.

## Scope/Population

This inspection focused on use of force reporting; sergeants' review of body-worn camera footage of Penal Code 69, 148, and 243(b) and (c) arrests; and body-worn camera activation. The inspection covered arrest incidents occurring between January 1, 2021, and June 30, 2021. Incidents involving arrests for crimes that had an increased chance of force being used during apprehension were selected from a list of all arrests during the inspection period (See Table 1). All incidents that had an associated use of force report in Vision<sup>8</sup> were eliminated from the population so that the inspection could determine if force was being used but not properly reported.<sup>9</sup>

The audit team received a department arrest report for the period of January 1, 2021, to June 30, 2021, which included 2,811 arrests. Incidents involving arrests for select penal code violations were grouped into two categories:

1. Group A – Resisting and Obstructing Arrest and Battery on a Peace Officer/Emergency Personnel
2. Group B – Crimes involving firearms and violence

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<sup>8</sup> Vision is an electronic database that stores employee records such as assignments, training, uses of force, pursuits, etc.

<sup>9</sup> There is one force type (Type 32 - Any use of force, as defined in DGO K-03, used to overcome resistance of a person during an arrest or a detention; or defend oneself or another from combative action by another person and which is not categorized in reporting types 1-31) that is not required to be entered into the Department's Vision system. Therefore, incidents reviewed for this inspection included incidents that involved Type 32 uses of force.

**Table 1: List of Penal Codes (PC) for Resisting Arrest, Battery on a Police Officer/Emergency Medical Personnel, Firearms Related Crimes and Violent Crimes**

Statute	Description	Group
PC148 (A)(1)	OBSTRUCT/RESIST/ETC PUBLIC/PEACE OFFICER/EMERGENCY MED TECH	A
PC148 (D)	ATTEMP TO REMOVE/ETC FIREARM FROM, PEACE OFFICER/ETC	A
PC148.9(A)	FALSE IDENTIFICATION TO SPECIFIC PEACE OFFICER	A
PC241 (C)	ASSAULT ON PEACE OFF/FF/ETC	A
PC243 (B)	BATTERY ON PEACE OFFICER/EMERGENCY PERSONNEL/ETC	A
PC243 (C)	BATTERY ON PEACE OFFICER/EMERGENCY PERSONNEL/ETC W/INJURY	A
PC243 (C)(1)	BATTERY AGAINST EMERGENCY PERSON/ETC	A
PC243 (C)(2)	BATTERY AGAINST PO	A
PC69	OBSTRUCT/RESIST EXECUTIVE OFFICER-FEL	A
PC187 (A)	MURDER:FIRST DEGREE:SHOOT FROM VEHICLE	B
PC211	ROBBERY-FIREARM	B
PC212.5 (A)	ROBBERY/INHABITED DWELLING - KNIFE OR CUTTING INSTRUMENT	B
PC215(A)	CARJACKING WITH KNIFE	B
PC245 (A)(1)	FORCE/ADW-KNIFE:GBI	B
PC245 (A)(2)	ASSAULT WITH FIREARM ON PERSON - PISTOL WHIP	B
PC245 (A)(4)	ADW WITH FORCE: POSSIBLE GBI	B
PC245 (B)	ASSAULT PERSON WITH A SEMIAUTOMATIC FIREARM	B
PC245 (C)	ADW NOT F/ARM:PO/FIRE:GBI	B
PC245 (D)(1)	ASSAULT W/FIREARM ON PEACE OFFICER/FIREFIGHTER	B
PC25400 (C)(4)	CARRY CONCEALED WEAPON- UNLAWFUL POSSESS	B
PC25400 (C)(6)	CARRY A LOADED CONCEALED WEAPON ON PERSON	B
PC25400 (C)(6)(A)	CARRY LOADED CONCEALED WEAPON ON PERSON	B
PC25850 (A)	CARRY LOADED FIREARM IN PUBLIC UNDER SPEC CIRCUMSTANCES	B
PC25850 (C)(1)	CARRY LOADED FIREARM W/PRIOR FELONY CONVICTION	B
PC25850 (C)(2)	CARRY STOLEN LOADED FIREARM	B
PC25850 (C)(4)	CARRY LOADED FIREARM:UNLAWFUL/PROHIBATED POSSESSION	B
PC25850 (C)(5)	CARRY LOADED FIREARM WHILE /PROHIBATED: SPEC PRIOR	B

**Group A**

There were 43 incidents involving arrest charges for resisting/obstructing arrest and battery on a peace officer/emergency personnel – Penal Codes (PC) 69, 148, 241(c), and 243(b) and (c). Nineteen incidents were eliminated from the population because they had an associated use of force report. The remaining 24 incidents were included in the inspection.

### Group B

There were 433 incidents involving arrest charges for select violent and firearms related crimes. Of the 433 incidents, 118 had an associated use of force report and were therefore eliminated from the population. Of the remaining 315 incidents, the Auditor reviewed crime reports for a random sample of 50 incidents and selected 26 for further review (16 with a reported Type 32 use of force and 10 without any reported uses of force).<sup>10</sup>

Between Groups A and B, a total of 50 incidents were included in this inspection.

## Methodology

For all incidents involving arrests for violations of Penal Codes 69, 148, 241(c), and 243(b) and (c), the audit team reviewed all police reports and body-worn camera footage (Portable Digital Recording Device or PDRD) from every officer on scene<sup>11</sup> from first police contact to the end of police engagement with the subject whether released or processed at jail to determine if:

- There was any force used that was not properly reported
- Type 32 uses of force were properly documented in police reports and in the VIEVU record.
- All officers involved in the incident activated their body-worn cameras according to policy
- Supervising sergeants reviewed body-worn camera footage of incidents involving arrests for violations of Penal Codes 69, 148, and 243(b) and (c) within two days of the incident

For all incidents involving arrests for select firearms-related and violent crimes, the Auditor reviewed all police reports and body camera footage (PDRD) from involved officers from first police contact to the end of police engagement with the subject whether released or processed at jail to determine if:

- There was any force used that was not properly reported
- Type 32 uses of force were properly documented in police reports and in the VIEVU record
- All officers involved in the incident activated their body-worn cameras according to policy

## References

1. Departmental General Order K-4, *Reporting and Investigating the Use of Force*, dated October 16, 2014
2. Departmental General Order K-3, *Use of Force*, dated October 16, 2014

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<sup>10</sup> After reviewing police reports from the initial random sample of 50 arrests, the Auditor selected every incident which had some indication that a type 32 use of force was employed by the arresting officers (16 incidents), as well as a random selection of 10 additional arrests in which there was no record of force for further review.

<sup>11</sup> One of the incidents reviewed from the first sample was of an individual who was initially arrested and charged with PC 148 for actions related to his participation in a protest who later became combative at the hospital. Due to the large number of officers at the protest, the audit team only reviewed body worn camera video of the arresting officers during the protest for the purposes of this inspection, but reviewed all body worn camera of officers in contact with that individual after the initial arrest.

3. Departmental General Order I-15.1, *Portable Video Management System*, effective date July 16, 2015
4. Office of the Chief of Police, Special Order 9191, *Additional Audit of Portable Digital Recording Device Video*, effective date November 27, 2018
5. Office of the Chief of Police, Special Order 9196, *Documentation of the Use of Force*, effective date February 15, 2020
6. Office of the Chief of Police, Special Order 9202, *Documentation of Specific DGO K-03 Force*, effective date February 27, 2020

## Findings

### FINDING #1

**The Office of Inspector General conducted a detailed review of 50 separate arrests from two arrest categories where there was an increased chance force would be used and only the lowest level of force (level 4 type 32) was observed by the audit team. In 36 of the 50 arrests, 100 officers used a type 32 use of force and only 2 officers (in the same arrest incident) did not report their type 32 use of force. In 14 of the 50 arrests, no force was observed by the audit team.**

The Office of the Inspector General (OIG) conducts periodic reviews of use of force reporting to determine if the Department is recording every use of force against a member of the public and officers are correctly following Department policy when reporting that force. For this inspection, the OIG conducted an in-depth review of 50 arrests from the first 6 months of 2021 randomly selected from two arrest categories which the Auditor believed would be the most likely to involve a use of force. The incidents reviewed did not have an associated use of force report in the Department's Vision<sup>12</sup> system. However, they did include incidents involving level 4 type 32 uses of force, which were not being entered into Vision during the review period selected.

The first sample consisted of 24 arrests for attempting to deter or prevent the officer from performing a lawful duty (PC 69), resisting or obstructing officers from performing lawful duties (PC 148), or assault or battery on officers and/or other first responders (PC 241(c) and 243(b) and (c)). The second sample consisted of 26 arrests for serious offenses including murder, robbery, assault, and a variety of weapons related crimes (see the Scope and Population section for the full list of included penal code violations). For every arrest in both samples, the audit team read all relevant police reports, and reviewed every body-worn camera video of the incident from the moment police first contacted the subject of the arrest to the time those persons left the Department's control either for booking to county jail or because they were released with a citation. In a few instances, the initial arrest resulted in officers transporting the suspect to the hospital for further medical evaluation prior to booking. In those cases, the audit team reviewed body-worn camera footage and other documentation related to the hospital stay. For this inspection, the audit team paid special attention to any interaction in which officers may have exerted even minimal amounts of physical force to overcome an arrested person's resistance –

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<sup>12</sup> Vision is an electronic database that stores employee records such as assignments, training, uses of force, pursuits, etc.

categorized as a level 4 type 32 use of force – and failed to document that use of force in the appropriate written reports and associated body-worn camera footage saved in the VIEVU record.

In the first sample of 24 arrests involving violations arising from that arrestee’s interaction with the police, 20 arrests included at least one type 32 use of force, and all those uses of force were found to have been documented in police reports and/or the VIEVU record by the officers who used the force. In the remaining four arrests, no force was used.

The second sample of 26 arrests for more serious offenses included 16 in which officers documented using one or more type 32 uses of force when detaining individuals, and 10 in which no force was used. In reviewing the arrests in this sample, the audit team found one arrest in which two officers who used a type 32 use of force did not report the use of force as required by department policy. In that arrest, three officers were seen to physically remove a resistant individual from their vehicle and place them in handcuffs – all of which was documented properly by one of the three officers in both that officer’s written report and body-worn camera record. However, the audit team was unable to find any documentation of that use of force by the other two officers who participated in the arrest.<sup>13</sup>

In one other arrest, the audit team observed an interaction in which it appeared officers may have physically intervened to prevent an individual from escaping detention through an open doorway – which would have constituted a reportable level 4 type 32 use of force. However, there was no mention of the individual’s attempt to evade arrest or a type 32 use of force in any of the associated police reports or other documentation of the incident. The tight confines of the hallway and presence of the door prevented any of the officers’ body-worn cameras from capturing a clear view of officers and the arrestee at the time that a type 32 use of force would have occurred. Therefore, the audit team concluded there was insufficient evidence to determine if this constituted an unreported use of force.

## **FINDING #2**

**In the 50 arrests reviewed by the audit team, while all but two level 4 type 32 uses of force were documented by the officers using the force in a written police report, only 75% of the officers documented their use of force in the VIEVU record of the body-worn camera video capturing that force.**

All officers must properly report all uses of force as required by Department General Order K-4, *Reporting and Investigating the Use of Force*. Per Report Writing Manual U-01, *Use of Force Report: Vision Form Completion Instructions*, uses of force are documented in the Department’s Vision system. In February 2020, the Department revised the use of force policy through Special Order 9196 that

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<sup>13</sup> Although the audit team did not include a review of CAD dispatch codes to confirm if officers were noting their type 32 (coded as “K32”) in CAD, the CAD purge for this incident was reviewed to confirm if the two officers’ type 32 use of force was documented in CAD. A review of the CAD purge for this incident only found one reported “K32” when there should have been three. Additionally, the team looked for any record of the use of force in stop data forms and other documentation of the arrest and was unable to find any mention of the type 32 use of force by either of these officers in any record of the incident.

redefined force such that previously unreportable actions by officers were reclassified as reportable uses of force, including *any* type of physical intervention to overcome resistance or protect an officer or member of the public. Initially, this new category of force was integrated into the Department’s regular force reporting structure under DGO K-4. However, the additional reporting requirements had a significant impact on workload and the ability to respond to calls for service. Therefore, the Department issued Special Order 9202, temporarily modifying the reporting requirements for the most minor uses of physical force used to overcome resistance (level 4 type 32). Under that Special Order, officers who employ a type 32 use of force are required to document that force by writing “K32” in the police report of the incident (if they write the main crime report) or in a supplemental report (if they are not the primary reporting officer). Additionally, the Special Order requires officers to document the type 32 with a notification to dispatch, and by including a “K32” notation in the VIEVU record for the body-worn camera footage that captures their participation in the type 32 use of force.<sup>14</sup> After Special Order 9202 was executed, officers no longer had to enter type 32 uses of force into Vision.

To assess officer compliance with the reporting requirements of Special Order 9202, the audit team reviewed crime reports and supplemental reports associated with every one of the 50 arrests selected in both samples. Additionally, the team reviewed the documentation in the VIEVU record of the officers’ body-worn camera footage. The review showed that 98 of the 100 officers (98%) involved in a type 32 use of force documented their involvement in a written police report and 2 did not document their type 32 uses of force at all (though those 2 officers’ involvement in the use of force was documented by another officer on scene as detailed in Finding #1). However, only 75 (75%) made a notation in the video record in which force was observed. Overall, 25 (25%) of the 100 officers involved in a type 32 use of force across 21 separate arrests in which force was used did not fully document that force in both a written police report and in the body-worn camera record, as required by Special Order 9202 (See Table 2).

**Table 2: Officer Compliance with Level 4 Type 32 Use of Force Reporting Requirements**

*This table contains information on both individual officer compliance with the Department’s type 32 use of force reporting requirements per Special Order 9202, and the number of incidents in which either all involved officers complied with the policy or at least one did not report their participation in a type 32 use of force per the requirements of that policy.*

	<b>Officers</b>	<b>Incidents</b>
<b>Observed Type 32</b>	<b>100 (100%)</b>	<b>36</b>
<b>Type 32 Documented in Both Written Reports and VIEVU (In Policy)</b>	<b>75 (75%)</b>	<b>15 (all officers correctly reported force)</b>
<b>Type 32 Not Documented in Both Written Reports and VIEVU (Not in Policy)</b>	<b>25 (25%)</b>	<b>21 (at least one participating officer did not report force in every place it was required by policy)</b>

<sup>14</sup>Although Special Order 9202 requires officers to document type 32 uses of force using a CAD disposition code that is reported to dispatch, this inspection did not assess this requirement. Rather, it only focused on the recording of type 32 uses of force in police reports and body worn camera records. This is because the Department found that documenting type 32 uses of force using a CAD disposition code was not as reliable as the other methods due to CAD technology and reporting capabilities.

Documented in a written report, but not in VIEVU	23 (23%)	20 (at least one participating officer <b>did not</b> document their use of force in VIEVU)
No Documentation of the K32	2 (2%)	1 (at least one participating officer <b>did not</b> document their use of force in any of the places required by policy)

**Additional Observation #1**

**The audit team noted that the lack of specificity with respect to exactly where the “K32” reporting was mandated to appear led to a great deal of variation in the way individual officers chose to comply with the reporting requirements of Special Order 9202.**

In the written reports which correctly included the “K32” notation in the report narrative – both main crime reports and supplementals – the exact placement of that “K32” varied. Most reports that correctly included this flag had some discussion of the force in the body of the report but included the “K32” notation at the end of the report along with various other required notations and statements (affirming that body-worn cameras were correctly activated, etc.). However, in some cases “K32” was written at the beginning of the report, and in others it was included parenthetically when describing the use of force itself. While a keyword search of these reports would find the “K32” regardless of its placement in the text of the document, the variation required the audit team to carefully review each report in its entirety to assure that variation in placement of the notation was not categorized as non-compliance with the reporting policy.

Likewise for the reporting in the VIEVU record, some officers included the “K32” notation in the “category” field of the video record, others in the “tags” field, and some noted it in the video’s “comment” section. In some videos the “K32” notation could be found in multiple places. Upon further examination, the audit team found that the dropdown menus for both the “category” and “tag” fields in VIEVU included “K32” as an optional entry, adding confusion to the choice of how to document these uses of force. The audit team was careful to record the notation wherever it appeared in the video’s documentation, as the policy does not specify which field the officer must use, only that the “K32” notation must exist. However, that variation and the potential that the K32 notation could exist in multiple fields for a single video could prove problematic insofar as keyword searches are used to generate statistics on the prevalence of type 32 uses of force. This variation could have been avoided by specifying a field as opposed to referring to the generic “annotations” in policy, and by limiting the use of “K32” as a drop-down option to a single field. These changes would have made both this analysis easier and would improve the utility of the data set for statistical purposes.

The audit team also noted some of the issues identified in this inspection are not specific to this Special Order and provide insight for drafting and training on future Department reporting policies, temporary or otherwise.

### **Recommendation #1**

**The Department should consider formally restructuring or streamlining the requirements for reporting level 4 type 32 uses of force to bring their documentation in line with the requirements for other force reporting, or to at least make such reporting more consistent and searchable.**

The Department is currently reviewing type 32 reporting requirements under Special Order 9202, and the audit team believes that an updated reporting policy on these lowest level uses of force will be forthcoming. Based on the language of the Special Order, the type 32 reporting requirements were considered a temporary measure while more permanent reporting requirements were designed.<sup>15</sup>

### **FINDING #3**

**In the 50 arrests reviewed by the audit team, most officers activated their body-worn cameras as required by the Department's body-worn camera policy (97% of the 462 activations reviewed were found to be activated as required by policy), and the inspection found no instances in which an officer failed to activate their body-worn cameras at an incident in which activation was required. The inspection additionally found that all 15 activations that were late under department policy came from two categories of activations, officers who failed to activate their body-worn cameras prior to contact with other officers already engaged with individuals for whom activation was required (11 delayed activations), and officers approaching individuals who were found inside or were seen to have crossed an established crime scene perimeter (4 delayed activations).**

The Oakland Police Department issues all sworn members a body-worn camera, and requires that officers activate those body-worn cameras prior to contacting members of the public under several circumstances, including but not limited to:

1. *Citizen contacts to confirm or dispel a suspicion that the citizen may be involved, as a suspect, in criminal activity;*
2. *Detentions and Arrests; and*
3. *Assessment or evaluation for a psychiatric detention (5150 W&I).*<sup>16</sup>

Additionally, body-worn cameras are used to document important facts related to an incident for both internal review and potential prosecution of crimes. Officers use their assigned body-worn cameras to record statements made by witnesses or subjects of arrest; to capture and preserve a video record of evidence, occasionally including video captured by other cameras when a recording of that video is otherwise unavailable; and to document searches of property and persons. Because many incidents are complex and may require officers to document several citizen interactions or separately document some other aspect of the scene such as a witness statement or other evidence, a single officer may be required to activate and de-activate their camera several times during a single incident. Therefore, it

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<sup>15</sup> Special Order 9202 begins: "Special Order 9196 took effect on 15 Feb 2020. Due to an unexpectedly high volume of calls standing after that date, which has potentially jeopardized public safety, Special Order 9196 is **temporarily** modified..."

<sup>16</sup> Department General Order I-15.1, *Portable Video Management System (PDRD)*, Effective Date July 16, 2015. Section II. A. Pg. 2-3

makes sense to look not just at whether an officer has activated their camera during an incident, but whether each activation is timely and in policy.

If placed in standby mode per department policy, the body-worn cameras used by the Oakland Police Department include a 30 second video buffer which captures video without any sound for the 30 seconds prior to an officer's manual activation.<sup>17</sup> To fully comply with DGO I-15.1 however, an officer must manually activate their camera *before* contacting an individual in a circumstance requiring activation. Therefore, most body-worn camera video segments begin with 30 seconds of buffered video with no sound but must have both video and sound for the entirety of the relevant public contact. If an officer contacted a member of the public for any of the reasons outlined in DGO I-15.1 in the 30 seconds of video buffer before sound begins, that is considered a late activation under the Department's body-worn camera activation policy.

As part of this inspection, the audit team reviewed video from 462 separate body-worn camera activations from 216 officers associated with the 50 arrests examined and noted any instances in which the officer's activation of their camera's record function was delayed when making contact with a member of the public for which body-worn camera activation was required.<sup>18</sup> Of these 462 activations, 15 (3%) spanning 14 arrests were found to have been late. If counted by officer, this equates to late activations by 7% (15 of 216) of the officers participating in the incidents reviewed. There were also two arrests in which an officer's body-worn camera failed to activate or suffered a late activation due to technical issues, and in both cases that officer documented and described the reason for that failure or delay in their written report – the correct reporting practice in the case of such a delay according to the Department's body-worn camera policy. All the late activations found by the audit team in this inspection fell into two categories that deserve further explanation.

The first group, consisting of 11 late activations, were by officers arriving as backup or approaching other officers who were already engaged with a suspect. In several of these incidents, an officer newly arriving at an incident approached another officer or officers who were already engaged with a member of the public. In all 11 late activations, the cover officer had sufficient details prior to arrival to expect a detention or arrest. Also in this category were a few instances in which an officer was seen to delay activation when moving from activities for which activation is not required (such as completing reports or canvassing an area) toward officers actively engaged with a suspect. In each of these cases the delayed activations were minor and the interaction requiring activation was fully captured by body-worn cameras of the other officers on scene.

The second category of delayed activations were of officer encounters with individuals who were within or crossed over an established police perimeter around a crime scene. There were four delayed

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<sup>17</sup> Only 1 of the 462 video activations reviewed as part of this inspection did not include the 30 second video buffer, indicating that the officer's body worn camera was not in standby mode prior to the incident.

<sup>18</sup> The count of 216 officers includes each individual officer in each incident. If the same officer was involved in more than one incident, they were counted multiple times, depending on how many incidents they were involved in.

activations (three incidents) in this category, including the only two incidents in which the audit team found a late activation by the first officer to contact a person for whom activation was required by policy. In two of these incidents, officers did not activate their body-worn cameras until determining there was a possibility the engaged member of the public was not going to leave the crime scene voluntarily. In both incidents, the officers were observed talking to the individuals prior to activating their body-worn cameras and capturing audio. In discussing these activations with department personnel, assessment prior to activation appears to be a department practice in such encounters. Often, officers request that an individual leave a crime scene and they voluntarily comply.

In the third incident, an individual rode his scooter through the police tape around the perimeter of a homicide scene after an officer yelled at him not to cross the tape. Several officers then immediately ran toward the scooter rider to detain him. All but one officer activated their body-worn cameras as soon as they began running toward the scooter rider. One officer did not activate their body-worn camera until the scooter rider was already being handcuffed, and the audit team deemed it a late activation. This officer was also one of the officers who had a late activation in one of the other incidents reviewed in this category, and the only officer to have more than one late activation in all incidents reviewed.

While sensitive to the need for officer assessment, the audit team determined that an individual who has already crossed an established crime scene perimeter may reasonably be suspected of interfering with police activity (PC 148), and therefore any such encounter constitutes a “[civilian] contact to confirm or dispel a suspicion that the citizen may be involved, as a suspect, in criminal activity.” Indeed, in two of the three arrests described above, the PC 148 for entering or failing to leave a crime scene perimeter was the only charge against the arrestee, and the third only had a minor additional charge for public intoxication at the time of the arrest. The audit team determined that to comply with the policy as written, officers should have activated their body-worn cameras prior to making contact in these incidents even if those officers were initially unsure if arrest was warranted.

Finally, because the review of body-worn camera activations for the purposes of this audit was specifically related to the question of whether the department was adequately reporting and capturing officer uses of force, the audit team checked to determine whether there was any correlation between late activations and officer uses of force. Upon review, in 10 of the 14 incidents (or 71%) in which there was at least one late activation noted, there was also a reported type 32 use of force. This is nearly the same percentage as the entire sample reviewed. There was a type 32 use of force in 72% (36 of the 50) of incidents reviewed. Therefore, there does not appear to be a correlation between reported type 32 uses of force and late body-worn camera activations.

#### **Recommendation #2**

**Officers should receive additional training and reminders that any officers approaching an encounter between another officer and a suspect are bound to the same activation rules as the primary officer, and that activations after making contact in such encounters are considered delayed activations under the policy. Likewise, officers assigned to a crime scene perimeter should always activate their body-worn cameras when approaching individuals who have crossed that perimeter as any such person is, by definition, suspected of potentially interfering in a lawful police investigation.**

The audit team recognizes that the Department has recently entered into a contract with Axon Enterprise, Inc. for the purchase of new body-worn cameras which are expected to be distributed to all personnel over the first few months of 2022. The new cameras come equipped with several features that are not available with the current system, including automatic activation and the ability to capture sound as well as video during the automatic buffer period prior to a manual activation. However, the audit team believes that the additional training recommendations pertaining to activation inside crime scene perimeters and for officers approaching other officers already engaged with a member of the public are still relevant – especially during the transitional period before the new system is fully implemented.

### **Additional Observation #3**

**In the 50 arrests reviewed by the audit team, officers did not always label the body-worn camera video records of incidents in which they were involved with the appropriate record number in VIEVU, undermining that system’s effectiveness as a tool to conduct systemic audits and in violation of the documentation and chain of custody requirements of Department General Order I-15.1 (PDRD).**

For this inspection, one of the largest impediments to the audit process was the large number of body-worn camera (PDRD) videos in VIEVU that were not tagged with the record number (RD#) or incident number associated with the incident. In some cases, this difficulty was compounded by incidents in which not only were the videos themselves not labeled with the appropriate report number, but the written reports detailing the incident also did not include the names of all officers present on scene for which video was available, thereby complicating records searches.

Officers are responsible for labeling their own stored video in the VIEVU record and without proper labels in the video records, or a written record of an officer’s presence at an incident or arrest scene, subsequent review of that incident and the Department’s ability to learn from it and improve – especially in a systemic way – is undermined.

Due to the lack of report or incident numbers attached to body-worn camera video records, the audit team was often required to review all departmental body-worn camera footage around the time of an arrest to determine which of these captured the incident under review. Given the number of officers on patrol with active body-worn cameras at every period during the day, this often necessitated at least cursory review of dozens of extraneous videos simply to determine which might be of the incident selected for the inspection. This issue appeared to be driven not by individual officers, but by a structural bias toward good record keeping for larger incidents and less emphasis on such record-keeping for lower profile arrests.

As an example, for the 16 incidents from the second sample panel of serious arrests in which there was a type 32 use of force recorded in a police report, 155 separate video activations were ultimately reviewed as part of the audit process. Of these, 26 activations (17%) were not tagged with the record number of the incident, and one was tagged with the wrong record number. However, that statistic does not properly capture the difficulty of finding the proper videos to review across incidents driven by the structural bias noted above. To illustrate this point, two major incidents out of the 16 detailed here accounted for 99 of the videos in this portion of the review, all of which were found to have been tagged

with the appropriate report number. On the other hand, 3 incidents accounting for 13 of the video activations reviewed had no videos labeled with the report number in the VIEVU record, and 2 other incidents had only 1 video each properly associated with a report number (or 2 of the 11 total body-worn camera video activations found to have captured those two incidents). While these incidents were smaller and required less total review time for the stated purpose of this use of force inspection, simply finding the appropriate records became a large part of the time dedicated to the review of these smaller incidents.

Of the 462 total body-worn camera video activations viewed as part of this inspection, 96 (21%) were only found after additional searches by the date and time of the arrest either to find the video of officers who were identified as being on scene in reports, or to find the identities of additional officers on scene who had not been identified in such reports. Of the 96 videos that required additional searches, 76 were not labeled with any report number (RD#). An additional 20 were labeled with a report number different from the one associated with the arrest (because the incidents were linked in some way) without a clear way to connect them. There are legitimate reasons for different report numbers being used in the same incident, but VIEVU only displays one report number, so finding the proper videos to review in these incidents can be challenging.

For a review of a single incident or officer, such as an internal affairs review of a misconduct complaint, this lack of identifiers in the VIEVU record might only present a minor inconvenience (though it would still require additional searches by officer serial number and date/time of the incident), but for systemic review of a large sample of incidents such as those carried out by the Office of the Inspector General or commanders, the lack of appropriately labeled video records presents a much larger hurdle, and reduces the effectiveness of these records as tools to conduct efficient and accurate systematic reviews.

For the individual officer, the labeling of body-worn camera video files in the VIEVU record is also a requirement under Section V of the Department's body-worn camera policy (DGO I-15.1<sup>19</sup>), which states in part:

*V. Video File Documentation and Chain of Custody*

*To ensure accountability for the proper identification, tracking and chain of custody for all original PDRD video files stored on the Department server and external copies of the PDRD video files, all personnel shall follow the protocols below.*

*A. PDRD File Information Documentation*

- 1. Members shall enter in VERIPATROL the RD # associated with each video file. If no RD# is created for the video, the full CAD incident number shall be entered. Members shall add this data to the file by using the "Add Details" button in the VERIPATROL software program:*

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<sup>19</sup> DGO I-15.1, *Portable Video Management System*, published July 16, 2015, is the Departmental policy on the use of Portable Digital Recording Devices (PDRD) – more commonly referred to as body-worn cameras.

- a. *Category column – Select the appropriate category from the drop-down menu; and*
- b. *Case # column – Enter the report number if one exists, or if none exists, the full 15 digit incident number (i.e., LOP141002001196); or*
- c. *If a PDRD video file was created and does not have an associated RD or incident number, the member shall enter “NONE” in the comment column.*

*This task should be completed by logging into VERIPATROL Mobile in the patrol vehicle where viewing and annotation can be completed daily throughout the member’s shift.<sup>20</sup>*

Therefore, the lack of appropriate labeling of body-worn camera video files with report numbers also reflects noncompliance with policy.

### **Recommendation #3**

**Members should be reminded to label all body-worn camera video files with the report number associated with any incidents those videos capture to facilitate review. Furthermore, supervisors should be reminded to examine whether officers have properly labelled their videos with the correct report or incident number according to department body-worn camera policy when conducting reviews of body-worn camera video.**

### **FINDING #4**

**In the sample of 21 arrests reviewed which included violations of Penal Codes 69, 148, and 243(b) and (c), the inspection found that sergeants did not consistently review body-worn camera video of the arrests in a timely fashion as required by Special Order 9191.**

In November 2018, the Department issued Special Order 9191 requiring additional audits of video associated with Penal Code 69, 148, and 243(b) and (c) arrests. The stated purpose of the Special Order was to “do as much as possible to avoid missing *any* reportable force”<sup>21</sup> and both Special Order 9191 and the Information Bulletin issued regarding its requirements specify the steps that supervising sergeants must take in conducting their review of the video of all such incidents.

According to Special Order 9191 (Nov 27, 2018):

*All Sergeants are required to audit the PDRD video of arrests/incidents involving 69PC, 148PC, and 243(b)&(c)PC arrests. Sergeants are required to view video footage from beginning of the incident to the arrest. The Sergeant shall annotate their view of the PDRD footage in the “Comment” area of the VIEVU-VERIPATROL software system...*

*... Like all UOF incidents, Sergeants shall be required to view the PDRD footage within 2 business days of the incident.*

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<sup>20</sup> Department General Order I-15.1. Section V. Pg. 11.

<sup>21</sup> Information Bulletin about Special Order 9191 issued on May 22, 2020.

To assess whether supervising sergeants were complying with Special Order 9191, the audit team reviewed the viewing and comment logs of every body-worn camera video in VIEVU for all Penal Code 69, 148, and 243(b) and (c) arrests included in this inspection. Of note, this review only included 21 arrests (as opposed to the 24 sampled in part A of the use of force inspection) because one of the arrests in that first sample included a charge of 241(c) (assault on a police officer), and two others included a charge of Penal Code 148.9 (providing a false name) which are not covered under this policy.

In this review, the audit team considered:

- 1) Whether video of each incident had been reviewed by a sergeant;
- 2) Whether the sergeant noted the reason for the review in the “Comments” field of the video in the VIEVU record; and
- 3) How long after the initial arrest this review had occurred.

In its review of these 21 arrests, the audit team determined that sergeants reviewed body-worn camera footage within the required 2 days of the arrest in 76% (16 of 21) of the arrests observed. In 2 of the arrests which the audit team documented as having received video review per policy, a sergeant who was on scene for the entirety of an arrest only reviewed their own video of the incident.

For the 5 arrests (24% of the total) for Penal Codes 69, 148, and 243(b) and (c) in which the audit team determined that sergeant review was out of policy, one incident was reviewed by two sergeants as part of a monthly “K32” use of force audit, however those reviews came 6 and 19 days after the arrest and only encompassed videos in which that use of force was documented. The other four arrests (19% of the total) had no record that a sergeant viewed any of the body-worn camera video associated with the incident. In three of the incidents without sergeant review, all or most of the body-worn camera video of the arrest were not tagged with the relevant report number (RD#) as required by policy and required additional searches to find (See Additional Observation #1).

**Table 3: Sergeant Review of Body-worn Camera Video for Penal Code 69, 148, and 243(b) and (c) Arrests per Special Order 9191**

	Number of Arrests	Percentage of total
<b>Arrests for 69, 148, 243(b) and (c)</b>	<b>21</b>	<b>100%</b>
<b>In Policy (Review by Sergeant within 2 business days)</b>	16	76%
Sergeant Reviewed Own Video	2	10%
<b>Not in Policy</b>	<b>5</b>	<b>24%</b>
Sergeant Review for monthly K32 audit not within 2 days	1	4%
No Sergeant Review	4	19%

Even in those cases in which sergeants were found to have reviewed video of these arrests in a timely manner, it was difficult to determine whether the review had encompassed the entire time “from the beginning of the incident to the arrest” as mandated under the policy. While reviewing sergeants were found to have reviewed some video, generally including the video of the arrest itself (in those cases in which this review occurred and was timely), in many cases it was clear that not enough of the videos

had been reviewed to comply with the directive to review the entire incident up to the time of arrest. For example, in one incident in which the audit team observed a use of force (type 32) during the initial contact between an officer and the arrestee, no sergeant had viewed the specific video in which that use of force was seen to occur. Because the video that captured this use of force was from the first officer on scene, a review of video “from the beginning of the incident” would necessarily have included the use of force if the sergeant had correctly followed the review policy.

Although the Information Bulletin related to this Special Order issued on May 22, 2020, clarifies that the sergeant who approves the arrest and reviews the primary report is the one who is required to view the video of the incident, the audit team found incidents in compliance if any sergeant had viewed any videos associated with these arrests in a timely manner. The audit team noted that in some instances, multiple officers involved in an arrest for Penal Codes 69, 148, and 243(b) and (c) had different supervising sergeants. In these cases, the Information Bulletin could be read to require each of these sergeants to view all videos from initial contact to arrest/citation. Another interpretation might require that one sergeant determine all officers on scene and review body-worn camera video from officers they do not supervise. And because many officers are not labelling their video records with the appropriate report number (as noted in Additional Observation #2), this potentially adds an administrative burden to any sergeant attempting such a review.

Finally, in addition to the five incidents in which sergeant review of video of these incidents was not in compliance with policy per Special Order 9191, the audit team also encountered difficulties in assessing compliance with this policy due to the lack of sufficient annotation describing the purpose of post-incident views of body-worn camera videos in the VIEVU record. While sergeants reviewing these videos generally did note that they were a sergeant and sometimes that they were performing a sergeant review in the system’s viewing history for each video so viewed, they didn’t specify that the purpose of their review was to comply with Special Order 9191. Likewise, the fact that some body-worn camera videos are viewed by multiple officers for a variety of purposes (criminal investigations, complaint investigations, etc.) and few of these additional views include sufficient notation to determine the reason for the view without further inquiry, the audit team had to perform personnel searches related to the viewing histories attached to many videos to determine whether those views constituted review by sergeants to comply with Special Order 9191 or by other personnel for some other reason. Lastly, for the two arrests in which sergeants were on scene for all or most of an incident, but were only found to have watched their own video after the incident, the audit team was unable determine whether those sergeants’ reviews of their own video were to search for uses of force per Special Order 9191. The audit team chose to count those instances as being in compliance with policy because the sergeants viewed their own video within 2 days as required by the special order. However, there was no written notation to positively affirm that those views had anything to do with Special Order 9191.

#### **Recommendation #4**

**The Department should revise Special Order 9191 to clarify sergeant responsibilities around video review of arrests for violations of Penal Codes 69, 148, and 243(b) and (c). This revision should specify which sergeant is responsible for assuring that a review occurs, clarify expectations around the span**

**of review required to comply with policy, and specify the notation that sergeants should make in the VIEVU records of body-worn camera video to document that the review has occurred.**

Special Order 9191 and the Information Bulletin issued to sergeants about its provisions detail the requirement that supervisors must review body-worn camera video of the entire incident from initial contact to the time of the arrest, and that this review is to occur within 2 days of the arrest. The stated purpose of the Special Order and Information Bulletin is for sergeants to review these videos for potential unreported uses of force. This inspection revealed that during the first 6 months of 2021, 91% of the Department's arrests for Penal Codes 69, 148, and 243(b) and (c) included an officer use of force.<sup>22</sup> Therefore, the audit team believes that the additional review of these incidents as required under Special Order 9191 continues to be justified.

However, the Special Order as written provides insufficient guidance about which sergeants are responsible for assuring that the mandated reviews occur and what is required of the reviewing sergeant. While the information bulletin regarding Special Order 9191 clarifies some of these responsibilities, that document is not policy. The Department should therefore consider revising Special Order 9191 to add specificity as to which sergeants bear the responsibility to assure that these reviews take place and to detail the steps sergeants are required to undertake to comply with the Order. Additionally, the Department should conduct additional training for sergeants of all requirements of Special Order 9191, and that training should clarify that the purpose of this review is to look for unreported uses of force. While these mandates do not require a sergeant to watch every moment of every video associated with such an arrest, they at least need to scan video spanning the entirety of the encounter from first contact to arrest, and then to perform a more detailed examination around those moments in which officers are seen to place hands on any member of the public to see whether any uses of force went unreported.

**Additional Observation #4**

**In reviewing arrests for Penal Codes 69, 148, and 243(b) and (c), the audit team determined that all decisions to charge individuals for such crimes were justified by law, policy, and the actions of the arrestee; and observed officers demonstrating great restraint in the face of many difficult interactions. The audit team also identified opportunities for improvement in how some officers respond to individuals being arrested for obstructing or resisting arrest (PC 148).**

The audit team conducted additional review of arrests for Penal Codes 69, 148, and 243(b) and (c) when those penal codes were the only arrest charges or additional arrest charges were misdemeanors, which included five PC 241(c) and 243(b) and (c) arrests and thirteen PC 148 arrests. The purpose of this additional review was to assess each interaction that led to the decision to charge for these specific violations from a more holistic perspective.

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<sup>22</sup> 39 of the 43 total arrests for PC 69, PC 148, and PC 243(b) and (c) during these 6 months had some force reported, including both the 20 arrests with a type 32 use of force examined in this inspection and the 19 with a use of force reported in Vision that were excluded from the sample for this inspection.

The review determined that in the five instances in which the arrest included a charge for assaultive behavior on officers or other first responders (PC 241(c) and PC 243(b) and (c)), those arrest charges were justified by the actions of the arrested persons, and the arresting officers could have done little to change or improve the outcomes of those encounters. Individuals arrested for these arrest charges in the sample were seen to engage in various levels of active aggression, from kicking, hitting, and headbutting officers and medical personnel attempting to arrest or restrain them, to spitting directly into an officer's face – an offense more dangerous given the ongoing Covid pandemic. In each of these cases, officers demonstrated patience and restraint – sometimes in the face of aggressive hostility – and were not seen to engage in any type of retaliation or to use any additional force beyond that necessary to effectuate an arrest and/or safely restrain an individual requiring medical attention.<sup>23</sup>

Additionally, for the 12 individuals charged with resisting, delaying, or impeding officers' performance of lawful duties (PC 148), officers were entirely justified in the arrest based on the behavior of the arrestee, current law, and department policy. However, the audit team did identify variation in officer approaches to these interactions that demonstrated opportunities for improvement in how some officers explain the reasons for the arrest, the timing of this explanation, and in the evaluation of whether the arrest was necessary to accomplish the primary police purpose in the incident or for the safety of the participating officer(s). Even when officers have a legitimate reason to arrest an individual for obstructing or resisting arrest, the officer retains discretion over whether a formal charge is in the best interests of the officer, the individual, and the Department. Likewise, even in the most difficult interactions, an officer's demeanor, and ability to de-escalate conflict and clearly explain the reason for the arrest was observed to impact the arrest dynamics. Because these arrest charges almost always arise from behavior exhibited during the arrested individual's interaction with the arresting officers, clear and continuous communication and explanation may be required.

#### **Recommendation #5**

**The Department should consider using Penal Code 148 arrests as a training tool for sergeants to review the incidents, including body-worn camera video, with the officers who were involved in the arrest.**

While supervisory review of any arrest, including the review of body-worn camera video, is a useful tool in assessing officer behavior, arrests for resisting or obstructing legitimate law enforcement purposes (PC 148) provide a special opportunity for supervisors to engage officers in critical conversations about their interactions with members of the public because the behavior of resisting obstructing or failing to comply with officers can serve as an indicator that there has been a breakdown in communication between the officer and the member of the public. Video of these incidents, reviewed timely, provides a supervising sergeant a powerful tool to engage in specific conversations about how subordinate officers engage with the public, what level of tolerance and tools they have for interacting with community members with differing responses and levels of compliance with police demands, and what impact the

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<sup>23</sup> The only force observed to have been used by officers in any of these arrests was minor physical force used to overcome the arrestee's resistance to detention (Level 4 type 32).

decision to engage the criminal justice system in punishing such behavior may have on the individual so charged.

Some conflicts with members of the public, for instance when individuals prevent officers from accomplishing a law enforcement goal, may require officers to issue a citation or arrest the offending parties. However, to achieve the best outcomes for both officers and the community members they interact with, officers might need to consider different approaches depending on their assessment of the totality of the situation in each interaction of this type. Guidance from supervisors who themselves have been through similar situations is key to officer development in this area.

The Department should consider devising a strategy of sergeant engagement with officers about their participation in arrests of individuals charged with Penal Code 148.

## Conclusion

This use of force reporting inspection is the fourth in a series of reviews of the Oakland Police Department to determine whether force is being reported and properly documented. Unlike the previous three reviews of this type, this inspection was the first since the publication of Special Order 9196 (modifying the Department's use of force policy) to examine instances in which Department personnel were required to report all uses of physical force to restrain or control resistant individuals even when that force did not result in a complaint or injury (level 4 type 32 use of force).

This inspection found improvement over past reviews in the primary audit goal of reporting uses of force. However, the inspection also showed that deficiencies exist in officers' compliance with documentation requirements for level 4 type 32 uses of force as required under Special Order 9202 – especially the requirement to note such uses of force in the documentation of body-worn camera video saved in the VIEVU record.

Additionally, while there has been measurable improvement in the percentage of arrests for Penal Codes 69, 148, and 243(b) and (c) that are being reviewed by sergeants within the two days required under Department Special Order 9191 – an issue first highlighted in the third use of force review – the current inspection was still unable to find any record that a supervising sergeant had reviewed the required videos in 19% of the arrests requiring such review.

At the conclusion of the inspection, the audit team referred the incident with two officers failing to report their type 32 uses of force, all violations of the Department body-worn camera activation policy, and supervising sergeants who did not perform required video review per Special Order 9191 to the chain of command for further review and potential corrective action.

## Recommendations

OIG Findings	OIG Recommendations
<p><b><u>Finding #2</u></b> In the 50 arrests reviewed by the audit team, while all but two level 4 type 32 uses of force were documented by the officers using the force in a written police report, only 75% of the officers documented their use of force in the VIEVU record of the body-worn Camera video capturing that force.</p> <p><b><u>Additional Observation #1</u></b> The audit team noted that the lack of specificity with respect to exactly where the “K32” reporting was mandated to appear led to a great deal of variation in the way individual officers chose to comply with the reporting requirements of Special Order 9202.</p>	<p><b><u>Recommendation #1</u></b> The Department should consider formally restructuring or streamlining the requirements for reporting level 4 type 32 uses of force to bring their documentation in line with the requirements for other force reporting, or to at least make such reporting more consistent and searchable.</p>
<p><b><u>Finding #3</u></b> In the 50 arrests reviewed by the audit team, most officers activated their body-worn cameras as required by the Department’s body-worn camera policy (97% of the 462 activations reviewed were found to be activated as required by policy), and the inspection found no instances in which an officer failed to activate their body-worn cameras at an incident in which activation was required. The inspection additionally found that all 15 activations that were late under department policy came from two categories of activations, officers who failed to activate their body-worn cameras prior to contact with other officers already engaged with individuals for whom activation was required (11 delayed activations), and officers approaching individuals who were found inside or were seen to have crossed an established crime scene perimeter (4 delayed activations).</p>	<p><b><u>Recommendation #2</u></b> Officers should receive additional training and reminders that any officers approaching an encounter between another officer and a suspect are bound to the same activation rules as the primary officer, and that activations after making contact in such encounters are considered delayed activations under the policy. Likewise, officers assigned to a crime scene perimeter should always activate their body-worn cameras when approaching individuals who have crossed that perimeter as any such person is, by definition, suspected of potentially interfering in a lawful police investigation.</p>
<p><b><u>Additional Observation #2</u></b> In the 50 arrests reviewed by the audit team, officers did not always label the body-worn camera video records of incidents in which they were involved with the appropriate record</p>	<p><b><u>Recommendation #3</u></b> Members should be reminded to label all body-worn camera video files with the report number associated with any incidents those videos capture to facilitate review.</p>

**OIG Findings**

**OIG Recommendations**

<p>number in VIEVU, undermining that system’s effectiveness as a tool to conduct systemic audits and in violation of the documentation requirements of Department General Order I-15.1 (PDRD).</p>	<p>Furthermore, supervisors should be reminded to examine whether officers have properly labelled their videos with the correct report or incident number according to department body-worn-camera policy when conducting reviews of body-worn camera video.</p>
<p><b><u>Finding #4</u></b> In the sample of 21 arrests reviewed which included violations of Penal Codes 69, 148, and 243(b) and (c), the inspection found that sergeants did not consistently review body-worn camera video of the arrests in a timely fashion as required by Special Order 9191.</p>	<p><b><u>Recommendation #4</u></b> The Department should revise Special Order 9191 to clarify sergeant responsibilities around video review of arrests involving violations of Penal Codes 69, 148, and 243(b) and (c). This revision should specify which sergeant is responsible for assuring that a review occurs, clarify expectations around the span of review required to comply with policy, and specify the notation that sergeants should make in the VIEVU records of body-worn camera video to document that the review has occurred.</p>
<p><b><u>Additional Observation #3</u></b> In reviewing arrests for Penal Codes 69, 148, and 243(b) and (c), the audit team determined that all decisions to charge individuals for such crimes were justified by law, policy, and the actions of the arrestee; and observed officers demonstrating great restraint in the face of many difficult interactions. The audit team also identified opportunities for improvement in how some officers respond to individuals being arrested for obstructing or resisting arrest (PC 148).</p>	<p><b><u>Recommendation #5</u></b> The Department should consider using Penal Code 148 arrests as a training tool for sergeants to review the incidents, including body-worn camera video, with the officers who were involved in the arrest.</p>

## Audit of the Oakland Police Department Supervisors' Review and Approval of Adult Arrests for Alleged Violations of Penal Codes 69, 148(a)(1) and/or 243(b) and (c)

By Lead Auditor Rebecca Johnson and Contributor Sergeant Ann Pierce

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### Objective

1. For adult arrests solely for Penal Code Section 69, 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020:
  - a. Determine whether there is evidence in the Oakland Police Department's Computer Aided Dispatch System that supervisors advised the Communications Division of their arrival on scene to incidents to approve the arrests.
  - b. Determine whether there is evidence in the Oakland Police Department's Computer Aided Dispatch System that supervisors advised the Communications Division of their approvals of the arrests.
  - c. Determine whether supervisors endorsed the electronic Probable Cause Declarations in the Alameda County Consolidated Records Information Management System (CRIMS).
  - d. Assess whether supervisors viewed, within two business days of the incidents, the officers' body-worn camera footage of the arrests, in the Oakland Police Department's VIEVU-VERIPATROL system.
  - e. Determine whether supervisors annotated in the "Comment" area of the VIEVU-VERIPATROL system their viewing of the officers' body-worn camera footage of the arrests.
2. For adults experiencing symptoms of a mental health condition arrested solely for offenses of Penal Codes 69, 148(a)(1) and/or 243 (b) or (c) from

January 2, 2020, to November 10, 2020, assess whether the officer, during contact with the subjects, used the techniques in Training Bulletin III-N, *Police Contact with Mentally Ill Persons*, for slowing down the course of events and calming down the subjects.

3. For adult subjects arrested solely for offenses of Penal Codes 69, 148(a)(1) and/or 243 (b) or (c) from January 2, 2020, to November 10, 2020, determine whether officers, during investigative encounters with the subjects, complied with the standards for conducting stops outlined in Department General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*.

### Key Recommendations

- The Department should collaborate with Alameda County to ensure there is a rule in CRIMS that requires Probable Cause Declarations and Consolidated Arrest Reports created by OPD officers for subjects arrested for Penal Code Section 243(b) to be approved by a supervisor.
- To build a relationship with the community based on trust and respect, the Department should ensure all persons know why they were stopped or encountered by an officer.

For all recommendations, see the *Findings and Recommendations* Section on pages 59-62.

## Executive Summary

This audit focused on Oakland Police Department supervisors' review and approval for adult arrests where Penal Code Sections 69, 148(a)(1), and/or 243(b) or (c) were the only alleged violations. Penal Code Section 69 offenses occur when a subject attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or when the subject knowingly resists the officer in the performance of their duty, by using force or violence. Penal Code Section 148(a)(1) offenses occur when a subject willfully resists, delays, or obstructs a police officer(s) in the discharge of their duties. Penal Code Section 243(b) or (c) offenses occur when a subject willfully and unlawfully uses force or violence upon the person of a police officer while engaged in the performance of their duties.

Penal Code 69, 148(a)(1) and/or 243(b) and (c) arrests, especially when they are the sole violations, can be associated with "contempt of cop,"<sup>24</sup> where an arresting officer uses the arrest to punish the individual for challenging that officer's authority or for being disrespectful, rather than for a legitimate law enforcement purpose. Additionally, when a subject interferes with the performance of a police officer's duties, via threats, violence, or resistance, and the subject does not obey the officer's verbal commands to cease the threats, violence, or resistance, the scene may become volatile, and the police officer may have to use some type of physical force against the subject to effect the arrest. The Department, therefore, requires additional oversight for these types of arrests.

If a subject is arrested for an alleged violation of Penal Code Section 69, a misdemeanor or felony, Section 148(a)(1), a misdemeanor, or Section 243(b) or (c), a misdemeanor or felony, the Oakland Police Department requires the arresting officer's immediate supervisor, or a supervisor assigned to the area, to respond to the scene. Upon arrival, after speaking with the arresting officer(s), if the supervisor determines there is probable cause to arrest the subject, the supervisor is required to approve the arrest and the associated paperwork (i.e., Consolidated Arrest Report, Probable Cause Declaration, Crime/Supplemental Reports, etc.) completed by the arresting officer(s). The supervisor is also required to review all involved officers' body-worn camera video footage to ensure all reportable force was reported and identify any officer performance deficiencies and correct them, if necessary.

Over the last five years, annually, OPD reported that less than 50 subjects were arrested solely for alleged violations of Penal Code Section 69, 148 (a)(1) and/or 243(b) or (c). The table below shows the number of subjects arrested each year from 2016 to 2020:

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<sup>24</sup> "Contempt of cop" is law enforcement jargon in the United States for behavior by people toward law enforcement officers that the officers perceive as disrespectful or insufficiently deferential to their authority. [https://en.wikipedia.org/wiki/Contempt\\_of\\_cop](https://en.wikipedia.org/wiki/Contempt_of_cop)

Year	2016	2017	2018	2019	2020
Arrests	39	26	33	43	49
Percentage Change +/-	N/A	-33%	27%	30%	14%

Note: The numbers in the table also include subjects arrested during protests.

Even though the numbers are relatively low, considering the thousands of arrests the Department makes annually, on December 9, 2020, the Office of Inspector General initiated an audit of supervisors' protocol for review and approval of arrests when subjects are arrested solely for alleged violations of Penal Code Section 69, 148 (a)(1) and/or 243(b) or (c). The audit period was from January 1, 2020, to November 10, 2020, and the Department reported that there were 21 incidents, involving 31 officers, in which 22<sup>25</sup> adult subjects were arrested solely for the alleged violations. The table below shows the offense for which each subject was arrested:

#### Subjects' Offenses Allegedly Committed

Penal Code Violation	No. of Subjects	%
69	0	0%
148(a)(1)	7	32%
243(b)	6	27%
243(c)	2	9%
148(a)(1) and 243(b)	6	27%
148(a)(1) and 243(c)	1	5%

Based on the data in the table above, 19 of the 20 arrests were for resisting a police officer, Penal Code Section 148(a)(1), using force or violence against a police officer, Penal Code Section 243(b), or a combination of the two. The data also shows that OIG's sample did not include any arrests for alleged violations of Penal Code Section 69, and from this point forward, the audit will not mention Penal Code Section 69 unless quoting a Department policy.

Upon conducting the audit of supervisors' protocols for review and approval of subjects arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, the results were positive for the most part:

- There was evidence that supervisors responded to the scene of 20 of the 21 incidents by advising the Communications Division of their arrivals. **(Finding #1)**
- There was evidence that supervisors approved 21 of the 22 arrests by advising the Communications Division of their approvals. **(Finding #2)**
- Officers made 22 probable cause adult arrests solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c), and there were 22 Probable Cause Declarations (PCDecs)

<sup>25</sup> All subjects arrested during protests were removed from the population since supervisors are on scene during protests.

prepared by arresting officers in the Alameda County Consolidated Records Information Management System (CRIMS), accounting for all 22 adult subjects arrested. Furthermore, of the 22 PCDecs prepared, 15 were endorsed by supervisors and there was a CRIMS programming issue that precluded supervisors from endorsing the other seven PCDecs. **(Finding #3)**

- Twenty of the 22 subjects were physically taken into custody, and there were 20 corresponding Consolidated Arrest Reports completed by arresting officers in CRIMS. However, 14 of the 20 Consolidated Arrest Reports were approved by supervisors, and there was a CRIMS programming issue that precluded supervisors from approving the other six CARs. **(Finding #4)**
- Evidence showed that supervisors viewed officers' body-worn camera video footage in 19 of the 21 incidents. There were two incidents in which there was no evidence that supervisors viewed the officers' body-worn camera footage, as required by policy. **(Finding #5)**
- For 17 of the 19 incidents in which the officers' body-worn camera footage was reviewed, the Auditor deemed that supervisors reviewed enough footage to determine if reportable force was used on the subjects. For the remaining two incidents, the Auditor deemed that not enough footage was reviewed by the supervisors to determine if reportable force was used on the subjects. **(Finding #5 Additional Observation)**
- For 17 of the 19 incidents in which footage was viewed, evidence showed that the respective supervisors viewed the footage within two business days of the incident as required by policy. **(Finding #6)**
- Evidence showed that supervisors annotated their viewing of the officers' body-worn camera footage, as required by policy, in only 11 of the 19 incidents in which footage was viewed. **(Finding #7)**

Using the officers' body-worn camera footage associated with the sample in this audit, OIG also reviewed the Department's performance when encountering the subjects, and their performance was rated using the techniques in Training Bulletin III-N, *Police Contact with Mentally Ill Persons*, for slowing down the course of events and calming down the subjects or the standards for conducting stops outlined in Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. Below are highlights of those findings:

- Officers arrested eight subjects potentially experiencing symptoms of a mental health condition in eight of the 21 incidents involving 22 adult subjects arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c). In three of the eight incidents, officers were able to use most of the techniques for approaching persons experiencing symptoms of a mental health condition offered in Training Bulletin III-N for slowing down the course of events and calming down subjects. In these instances, the Auditor noted that, even though the subjects later committed alleged offenses of Penal Codes 148(a)(1) and/or 243(b) or (c), the officers' encounters with the subjects were attentive and humane and thereby created an "I am here to help" environment. However, in most of the incidents, the techniques could not be used because the subjects were not in a mental state to cooperate with the officers. **(Finding #8)**

- Officers arrested 14 subjects who were not known to be suffering from a potential mental health condition at the time of the arrests in 13 incidents reviewed. For nine of the 13 incidents, involving nine subjects, the Auditor reviewed the officers' body-worn camera footage and determined that the Department, when encountering subjects to confirm or dispel a suspicion that the persons may be involved in criminal activity, did not consistently comply with one of the standards for conducting stops outlined in Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*<sup>26</sup>. Specifically, officers did not identify themselves during encounters with six of the nine subjects. The Auditor also noted that for two of the nine subjects, even after the review of additional officers' body worn camera footage – officers other than the arresting officer – the Auditor was unable to locate evidence that the Department explained the reasons for the stop to the subjects. **(Finding #9)**

Based on the findings, the OIG made seven recommendations: four procedural recommendations, two policy recommendations, and one computer programming recommendation. For details, see the *Findings and Recommendations Section* on pages 59-62.

## Background

When an officer makes a probable cause arrest<sup>27</sup> because the subject was willfully resisting, delaying, or obstructing the officer in the discharge of the officer's duty, a violation of Penal Code Section 148(a)(1), or because the subject was willfully and unlawfully using force or violence upon the person of the officer while engaged in the performance of the officer's duty, a violation of Penal Code Section 243(b) or (c), the officer is required to request their immediate supervisor to respond to the scene of the incident and obtain arrest approval prior to transporting the arrestee.<sup>28</sup>

In addition, the arresting officer is required to complete the appropriate arrest reports, documenting the probable cause for the arrest and, if applicable, the reasonable suspicion for the detention that preceded the arrest.<sup>29</sup>

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<sup>26</sup> Department General Order (DGO) M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, effective 15 Nov 2004, lists the standards for conducting stops specifically for "pedestrian, bicycle, or vehicle stops." Encounters resulting from a dispatched call for service are not explicitly covered by policy, and therefore, the standards for officer conduct for dispatched calls are not clearly addressed in policy. For purposes of this audit, the standards for conducting stops listed in DGO M-19 were used to assess officer conduct during encounters, even though some of the stops were dispatched calls for service.

<sup>27</sup> Departmental General Order M-18, *Probable Cause Arrest Authorization and Report Review*, effective 13 Nov 2014, pg. 2, states, "Probable cause to arrest exists when, under the totality of the circumstances known to the arresting officer(s), a prudent person would have concluded that there was a fair probability the arrestee had committed a crime."

<sup>28</sup> DGO M-18., pg. 3.

<sup>29</sup> DGO M-18., pg. 3.

- The Probable Cause Declaration (PCDec) is an electronic form located in the Alameda County Consolidated Records Information Management System (CRIMS). The Department requires that the form be prepared by an arresting officer. The form provides a brief synopsis that includes factual and conclusion statements of the incident to support the arrest or the probable cause for an arrest. PCDecs are completed and submitted for judicial review. Whenever the adult arrestee will be charged and brought before a magistrate within 48 hours of arrest, the PCDec is labeled as a “Daily” and requires no finding from a judge. Whenever the adult arrestee will be charged and seen by a magistrate more than 48 hours after arrest, the PCDec is labeled as a “Holdover” and requires a finding from a judge on the Holdover PCDec within 48 hours of the suspect’s arrest.<sup>30</sup> The form is ultimately submitted for a complaint with the District Attorney’s Office.
- The Consolidated Arrest Report (CAR) is also an electronic form located in CRIMS. The Department requires that this form, too, be prepared by an arresting officer. The form provides the arrest information (i.e., arrestee’s name, date of birth, age, clothing, offense, location of arrest, etc.) for an adult arrestee to be processed at a jail facility.<sup>31</sup>

Once an officer requests their immediate supervisor to respond to the scene of an incident in which a subject is being arrested for violations of Penal Code Section 148(a)(1) and/or 243(b) or (c), the supervisor is required to complete nine tasks:

1. Respond to the scene of the arrest.<sup>32</sup>
2. Advise the Communications Division of his/her arrival on scene via radio using the code 997, or, if the supervisor’s vehicle is equipped with a Mobile Data Computer (MDC), the supervisor may manually change their status to OS (on scene).<sup>33</sup>
3. Review the specific facts articulated by the arresting officer justifying the arrest (and detention, if applicable) as documented by the arresting officer on the electronic PCDec.<sup>34</sup>
4. Determine whether reasonable suspicion for the detention and/or probable cause for the arrest exists. If it is determined that probable cause exists and has been properly documented on the electronic PCDec, approve the electronic CAR in CRIMS<sup>35</sup> and endorse the [arresting officer’s] electronic PCDec.<sup>36</sup> In addition, whenever an arrestee will be charged and seen by a magistrate more than 48 hours of arrest, monitor the pending Holdover PCDec to ensure the On-Call Judge issues a finding on the PCDec within 48 hours of the suspect’s arrest.<sup>37</sup>

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<sup>30</sup> Departmental General Order E-7, *Probable Cause Declaration*, effective 15 Jul 2011, pgs. 1, 3.

<sup>31</sup> Departmental General Order E-7.1, *Electronic Consolidated Arrest Report*, effective 03 Oct 2014, pg. 1.

<sup>32</sup> DGO M-18, pg. 4.

<sup>33</sup> DGO M-18, pg. 4.

<sup>34</sup> DGO M-18., pg. 5.

<sup>35</sup> DGO M-18, pg. 6.

<sup>36</sup> DGO E-7, pg. 2.

<sup>37</sup> DGO E-7, pgs. 1, 3.

5. Document on the electronic CAR where the approval was made (i.e., on scene, Alameda County Hospital, Santa Rita Jail, etc.).<sup>38</sup>
6. Upon completion of the assignment, provide the disposition of SAA (supervisor's approval of arrest) for the incident to the Communications Division via radio or MDC.<sup>39</sup>
7. To avoid missing any reportable use of force, audit the officer/officers' body-worn camera video of the incident involving Penal Code Section 148(a)(1) and 243(b) or (c).<sup>40</sup> At minimum, audit the primary arresting officer's body-worn camera video, but watch enough video to confidently state whether there was reportable force used during the arrest(s).<sup>41</sup>
8. View the body-worn camera footage within two business days of the incident.<sup>42</sup>
9. Annotate the viewing of the body-worn camera footage in the "Comment" area [for each officer's body-worn camera footage that was viewed] in the VIEVU VERIPATROL system.<sup>43</sup>

It should be noted that, although this audit focuses on supervisors' procedures for arrests for Penal Code Section 148(a)(1) and 243(b) or (c), officers are also required to request their immediate supervisor respond to the scene and obtain arrest approval prior to transporting the arrestee when making a probable cause arrest for these offenses:

- Felonies;
- Arrests for possession of narcotics, drugs, or marijuana if the arrestee is to be transported to jail for possession of narcotics, drugs, or marijuana; and
- Penal Code Section 69.

## Scope/Population

The audit focused on supervisors' responsibilities when officers make probable cause arrests because the subjects were allegedly willfully resisting, delaying, or obstructing the officers in the discharge of their duties, a violation of Penal Code Section 148(a)(1), or because the subjects were allegedly willfully and unlawfully using force or violence upon the persons of the officers while the officers were engaged in the performance of their duties, a violation of Penal Code Section 243(b) or (c).

It should be noted that during the audit period, the Department reported that there were no incidents in which juvenile subjects were arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c);

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<sup>38</sup> DGO M-18, pg. 6.

<sup>39</sup> DGO M-18, pg. 6.

<sup>40</sup> Special Order 9191, Additional Audit of [Body Worn Camera] Video, effective 27 Nov 2018.

<sup>41</sup> Information Bulletin, *Purpose of Portable Digital Recording Device Review for Penal code 69, 148(a)(1), and 243(b) and (c) Arrests and Clarifications on Sergeant Responsibilities under Special Order 9191*, dated 22 May 2020. It should be noted that Information Bulletins are not official policy.

<sup>42</sup> S.O. 9191.

<sup>43</sup> S.O. 9191.

therefore, supervisors' responsibilities when officers make probable cause arrests due to juveniles' alleged offenses of Penal Code Section 148(a)(1) and/or 243(b) or (c) are not included in this audit.

It should be noted that this audit does not include any probable cause arrests made by officers during protests within the audit period since supervisors are typically on scene approving arrests.

In addition, the audit does not include any arrests made by officers when the subject's arrest was due to a preexisting arrest warrant<sup>44</sup> for resisting a police officer, Penal Code Section 148(a)(1), and/or using force or violence against a police officer, Penal Code Section 243(b).

The audit period was from January 1, 2020, to November 10, 2020.

### **Population**

The population used to conduct the audit consisted of all incidents in which adult subjects were arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) during the audit period. There were 21 incidents involving 22 adult subjects that fit the criteria. Below are supporting data related to the arrests used to conduct specific audit objectives:

### **Crime/Supplement Reports**

There were 127 Crime/Supplemental Reports authored by 110 officers involved in the 21 incidents that resulted in 22 subjects being arrested during the audit period.

### **Objective 1(a) and Objective 1(b)**

There were 21 Computer Aided Dispatch Reports associated with the 21 incidents during the audit period.

### **Objective 1(c)**

There were 22 *Probable Cause Declaration Reports* associated with the 22 subjects arrested during the audit period.

### **Objective 1(d)**

There were 20 *Consolidated Arrest Reports* associated with 20 subjects arrested during the audit period. However, there were 2 subjects who were cited and released and therefore not taken into physical custody, exempting the need for the completion of a CAR.

### **Objective 1(e), Objective 1(f), Objective 2, and Objective 3**

The officers' body-worn camera footage associated with the 21 incidents.

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<sup>44</sup> An arrest warrant is defined as a judge's order to law enforcement officers to arrest and bring to jail a person charged with a crime. The warrant is issued upon a sworn declaration by the district attorney, a police officer or an alleged victim that the accused person committed a crime. (<https://legal-dictionary.thefreedictionary.com/warrant+of+arrest>).

## Methodology

See **Appendix A** for the methodology.

## Findings

### FINDING #1

**Evidence in the Computer Aided Dispatch (CAD) system indicated that supervisors advised the Communications Division of their arrivals on scene to approve the adult arrests for Penal Code Section 148(a)(1) and/or 243(b) or (c) for 20 of the 21 incidents from January 1, 2020, to November 10, 2020.**

During the audit period, the Department reported that there were 21 incidents in which 22 adult subjects were arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c), and department policy requires supervisors, at the request of an on-scene officer, to respond to the scene of these incidents to approve the arrests and advise the Communications Division of their arrival on scene.<sup>45</sup>

Upon the review of each incident in CAD, the Auditor sought the supervisor's call sign<sup>46</sup> and the code "OS" on the same line in CAD. There was evidence in the CAD printouts for 19 of the incidents, in which 20 adult subjects were arrested, that indicated those supervisors advised Communications Division (Dispatchers) of their arrivals on scene to approve the subjects' arrests. There were two incidents, related to the remaining two adult subjects, in which there was no documented evidence in the CAD printouts that the respective supervisors advised the Communications Division (Dispatchers) of their arrivals on scene.

For the two incidents in which there was no documented evidence in CAD of the supervisors' arrivals on scene, OIG requested audio tapes from the Communications Division and the Auditor listened to the recordings. In one incident, the Auditor did hear the supervisor say, "... [supervisor's call sign] can you put me on [OPD Unit call sign] call, please?... [supervisors call sign] SAA here." Although the supervisor did not say the words "on scene" or "code 997," and the Communications Dispatcher did not document the supervisor's arrival on scene, the Auditor deemed the supervisor's call sign and the word "here," meaning here at the site of the incident, to comply with policy. As a result, supervisors advised the Communications Division of their arrivals on scene to approve the adult arrests in which the subjects were arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) for 20 of the 21 incidents from January 1, 2020, to November 10, 2020.

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<sup>45</sup> DGO M-18, pgs. 3-4.

<sup>46</sup> Police radio traffic is handled by OPD's Communications Division and documented in OPD's Computer Aided Dispatch system. A call sign is how an officer identifies him/herself while patrolling the streets in his/her car and reporting to crime scenes. Whenever the officer talks to dispatch, they state their call sign.

But in the other incident, the Auditor did not hear the supervisor state whether they were on scene or provide the code 997 (the code for on scene). The Auditor did note that in this incident, the respective supervisor's body-worn camera footage shows him at the scene of the incident and two officers, in their respective Crime/Supplemental Reports, documented his arrival at the scene of the arrest. Additionally, one of those officers also documented that the supervisor "approved the arrest."

#### **Additional Observation**

**For 21 of the 22 adults arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, officers documented in their respective Crime/Supplemental Reports the respective supervisors' arrivals on scene to approve the arrests.**

The Department requires arresting officers to document in their offense reports (also known as Crime/Supplemental Reports) whether the supervisor responded to the scene to approve the arrest.<sup>47</sup>

There were 21 incidents in which 22 subjects were arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020. The Auditor reviewed the associated Crime/Supplemental Reports and determined that, for 21 of the arrests, associated with 20 of the 21 incidents, there was documentation of the respective supervisors' arrivals on scene in one or more officers' Crime/Supplemental Reports. There was one incident in which none of the associated officers' Crime/Supplemental Reports documented the supervisor's arrival on scene, but one officer's Crime Report did document the supervisor "approved the arrest." Although the officers did not document in their reports that a supervisor arrived on scene to approve the arrest, there was documented evidence in CAD that a supervisor arrived on scene to approve the arrest. See Finding #2's "Additional Observations" section for additional information regarding officers documenting in their Crime/Supplemental Reports the supervisor's approval of the arrest.

#### **FINDING #2**

**Documentation in the Computer Aided Dispatch (CAD) system substantiated that supervisors advised the Communications Division of their approvals of 21 of the 22 adult subjects arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020.**

For the 22 adult subjects arrested in 21 incidents solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) during the audit period, the Department requires its supervisors to determine whether probable cause existed for the arrests, and, if so, provide the disposition of "SAA" (supervisor's approval of arrest) for each arrest to the Communications Division. Upon the Auditor's review of each incident in CAD, the supervisor's approval code (SAA) was documented on 20 incidents, approving 21 adult arrests. Therefore, the documentation substantiated those supervisors advised the Communications Division (Dispatchers) of their approvals for the 21 associated adult subjects' arrests.

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<sup>47</sup> DGO M-18, pg. 4.

There was one instance in which one subject was arrested, but there was no supervisor's approval code (SAA) on the incident in CAD. OIG requested the audio tape from the Communications Division and the Auditor listened to the recording but did not hear the supervisor in question state the arrest was approved (SAA). Nevertheless, the Auditor noted that, for this incident, the respective supervisor's body-worn camera footage shows the supervisor on scene of the incident speaking to the arrested subject, who was secured in the rear of the patrol vehicle, which is an indication that the supervisor was aware of the arrest and approved the arrest. On the other hand, none of the officers documented in their respective Crime/Supplemental Reports the supervisor's approval of the arrest.

### **Additional Observations**

#### **Observation #1**

**The Auditor identified issues with two of the supervisors' approval entries in CAD in two separate incidents.**

Although 21 of the adult subjects' arrests were shown to be approved in CAD, the Auditor identified issues with two of the supervisors' approval entries in two separate incidents. There was one incident in which the on-scene supervisor's call sign was different than the supervisor's call sign approving the arrest. The Auditor was unable to determine whether this was a typographical error or whether the approving supervisor did not advise the Communications Division (Dispatcher) of their arrival on scene. In another incident, there was a supervisor's approval code (SAA) documented on the incident, but the supervisor's call sign was not entered on the same line, line above, or line under as the approval code. Therefore, the Auditor was unable to determine whether the supervisor documented as having arrived on scene was the same supervisor who approved the arrest since there are times that more than one supervisor arrives on scene at an incident.

#### **Observation #2**

**Upon reading the Crime/Supplemental Reports associated with the 22 adult subjects arrested in 21 incidents solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c), one or more of the reports associated with 10 of the arrests included documentation stating a supervisor arrived on scene to approve the arrest, which complies with department policy.**

The Department requires its arresting officers to document in their Crime/Supplemental Reports whether a supervisor arrived on scene to approve the arrest.<sup>48</sup> Upon reviewing the 127 Crime/Supplemental Reports, authored by 110 officers involved in the 21 incidents regarding subjects arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c) during the audit period, the Auditor noted that one or more of the reports associated with 10 of the arrests included documentation stating a supervisor arrived on scene to approve the arrest.

In contrast, the Crime/Supplemental Reports associated with the other 12 adult arrests included a documented sentence stating a supervisor arrived on scene or the supervisor approved the arrest, but

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<sup>48</sup> DGO M-18, pg. 4.

none of the reports included both sentences. Specifically, the reports associated with 11 of the arrests included wording stating that a supervisor arrived on scene, and the reports associated with the other arrest included wording stating that a supervisor approved the arrest.

An officer's documentation of the supervisor's arrival on scene to approve the arrest of a subject who allegedly violated Penal Code Section 148(a)(1) and/or 243(b) or (c) aids the Department in meeting two of its objectives:

- Ensure officers are not making these types of arrests without the consent of their supervisors.
- Ensure supervisors are, in fact, responding to the scene of these arrests and approving them after determining whether there was probable cause or reasonable suspicion for the officer to arrest the subject.

Although the Department can use the officer's/supervisor's body-worn camera footage, the electronic Consolidated Arrest Report, the electronic Probable Cause Declaration, and/or the Computer-Aided Dispatch system to determine whether a supervisor arrived on scene and approved the arrest, none of these methods, as this audit will show, is foolproof. Hence, to meet the two objectives above, the Department should remind its officers to follow policy by documenting in their Crime/Supplemental Reports that a supervisor arrived on scene to approve the arrest. An officer's documentation of the supervisor's arrival on scene to approve the arrest ensures that if the online systems fail, there is evidence that a supervisor arrived on scene to approve the arrest of a subject who allegedly violated Penal Code Section 148(a)(1) and/or 243(b) or (c).

### **FINDING #3**

**From January 1, 2020, to November 10, 2020, officers made 22 probable cause adult arrests solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c), and there were 22 Probable Cause Declarations (PCDecs) prepared by arresting officers in the Alameda County Consolidated Records Information Management System (CRIMS), accounting for all 22 adult subjects arrested. Furthermore, of the 22 PCDecs prepared, 15 were endorsed by supervisors and there was a CRIMS programming issue that precluded supervisors from endorsing the other seven PCDecs.**

A Probable Cause Declaration provides a brief synopsis containing factual and conclusion statements of an incident to support an arrest, or the probable cause for an arrest. The Department requires arresting officers to complete PCDecs for all arrests unless the arrest is for a warrant only.<sup>49</sup> Arresting officers complete the PCDecs online in the Alameda County Consolidated Records Information Management System. The Department reported that there were 22 adult subjects arrested for the sole charge of Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, and via CRIMS, the Auditor retrieved 22 prepared PCDecs, which accounted for all 22 arrests.

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<sup>49</sup> DGO E-7, pg. 2.

The Department also requires its supervisors to approve their subordinates' PCDecs in their supervisory queues for these arrests to ensure the PCDecs are complete, [the crime(s) is/are] correctly classified, and the necessary information [elements of the crime(s)] is included in the PCDecs' narrative section.<sup>50</sup> Upon review of the 22 PCDecs prepared by arresting officers, the Auditor noted that 15 of them included a box containing the wording "Reviewed and approved, the date, [the supervisor's name], and badge [serial] number." These 15 forms were deemed to have been endorsed by supervisors. In contrast, the Auditor noted the absence of a box containing the wording "Reviewed and approved, the date, [the supervisor's name], and badge [serial] number" on seven of the 22 PCDecs. These seven forms were deemed not to have been endorsed by supervisors. The Auditor noted that in all seven instances in which there was no evidence of supervisors endorsing the PCDecs, each of the seven subjects was charged with a violation of Penal Code Section 243(b).

Because there were seven instances in which there was no evidence of supervisors endorsing PCDecs for subjects arrested for Penal Code Section 243(b), and, in the next finding, finding #4, there were six instances in which there was no evidence of supervisors approving Consolidated Arrest Reports for subjects arrested for the said penal code section,<sup>51</sup> the Auditor conducted research to determine if there was a reason other than supervisors not following protocol.

On May 21, 2021, via email, the Auditor contacted the Communications Division Manager, who is also the Department's liaison with Alameda County for CRIMS, inquiring whether there is a rule in CRIMS that requires PCDecs and CARs created by OPD officers for subjects arrested for PC 243(b) to be approved by a supervisor, and she responded, via email, on the same day, that she would "refer [the Auditor's] inquiry to the County." Subsequently, on June 18, 2021, via email, the Manager, stated that the County's response was, "243(B) is not a felony charge so there should be no supervisor approval needed." Based on the County's response, the Auditor deduced that there is no rule in CRIMS that requires PCDecs and CARs created by OPD officers for subjects arrested for Penal Code Section 243(b) to be approved by a supervisor. Not having such a rule in CRIMS means that PCDecs and CARs created by officers for subjects arrested for Penal Code Section 243(b) are not transmitted to the supervisors' queue for approval.

Again, the Department requires its supervisors to approve their subordinates' PCDecs in the supervisory queue for Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests to ensure the PCDecs are complete, [the crime(s) is/are] correctly classified, and the necessary information [elements of the crime(s)] is included in the PCDecs' narrative section. The supervisors' approval of the PCDecs for Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests is an internal control the Department uses to ensure there is documented probable cause for its officers to arrest the subjects based on articulated crimes and elements of the crimes. If the PCDecs created in CRIMS by officers for subjects arrested for Penal Code

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<sup>50</sup> DGO E-7, pg. 1, 3 and DGO M-18, pg. 9.

<sup>51</sup> There were only six Consolidated Arrest Reports because one of the seven subjects arrested for Penal Code Section 243(b) was cited and released and did not go to jail, exempting the arresting officer from completing a CAR for the arrest.

Section 243(b) are not transmitted to the supervisors' queue for approval, the internal control is deficient since the task of approving the PCDec cannot be executed by supervisors as stated in policy due to a programming issue. The Department should collaborate with Alameda County to ensure there is a rule in CRIMS that requires PCDecs created by OPD officers for subjects arrested for Penal Code Section 243(b) to be approved by a supervisor.

#### **Additional Observation**

**For all 16 Holdover Probable Cause Declarations, a judge determined that there was probable cause to detain the arrestee.**

There are two types of PCDecs, a "Daily" and a "Holdover," but both types are completed and submitted for judicial review:

- Whenever the adult arrestee will be charged and brought before a magistrate within 48 hours of arrest, the PCDec is labeled as a "Daily" and requires no finding from a judge.
- Whenever the adult arrestee will be charged and seen by a magistrate more than 48 hours after arrest, the PCDec is labeled as a "Holdover" and requires a finding from a judge on the Holdover PCDec within 48 hours of the suspect's arrest. If the judge finds there is probable cause to detain the arrestee, the finding is documented in a box on the PCDec form that includes the wording "On the basis of the foregoing declaration, I hereby determine that there is probable cause to detain this arrestee; the date; the time; and the [name of the judge]."
- In addition, supervisors are responsible for monitoring pending Holdover PCDecs to ensure an On-Call Judge issues a finding on the PCDec within 48 hours of the suspect's arrest.<sup>52</sup>

Of the 22 prepared PCDecs, there were 6 Daily PCDecs and 16 Holdover PCDecs. For each of the 16 Holdover PCDecs, a judge determined, within 48 hours or less, that there was probable cause to detain the arrestee.

#### **FINDING #4**

**From January 1, 2020, to November 10, 2020, officers made 22 probable cause adult arrests solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c). Twenty of the 22 subjects were physically taken into custody, and there were 20 corresponding Consolidated Arrest Reports completed by arresting officers in the Alameda County Consolidated Records Information Management System. However, 14 of the 20 CARs were approved by supervisors, and there was a CRIMS programming issue that precluded supervisors from approving the other six CARs.**

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<sup>52</sup> Departmental General Order E-7, *Probable Cause Declaration*, effective 15 Jul 2011, pgs. 1, 3.

An electronic Consolidated Arrest Report provides the required arrest information for an adult arrestee to be processed at a jail facility.<sup>53</sup> For subjects arrested for Penal Code Section 148(a)(1) and/or 243(b) or (c), and physically taken into custody, the Department requires arresting officers to complete CARs in CRIMS.<sup>54</sup> Subsequently, supervisors are required to approve these CARs<sup>55</sup> and document on the CARs where the approvals were made (i.e., on scene, Alameda County Hospital, Santa Rita Jail, etc.).<sup>56</sup>

The Department reported that there were 22 probable cause adult arrests solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020. Upon review of the officers' associated Crime/Supplemental Reports for the 22 arrests, the Auditor noted that two subjects were cited for their alleged offense(s) and released from custody on scene in two separate incidents and the remaining 20 subjects were physically taken into custody in 19 separate incidents.

Seeking the CARs for each of the 20 subjects who were physically taken into custody, the Auditor accessed CRIMS and retrieved all 20 CARs completed by the arresting officers. The Auditor reviewed the CARs and determined there was evidence on 14 of them that supervisors approved the forms since four boxes were completed on each form: (1) *Supervisor on Scene [Y/N]*; (2) *Arrest Approved by [Supervisor's Name]*; (3) *[Supervisor's] Serial Number*; and *Arrest Approval Time*. These CARs were deemed to have been approved by supervisors. In contrast, there were six forms in which the four boxes were not completed, and these CARs were deemed not to have been approved by supervisors. The Auditor noted that in all six instances in which there was no evidence of supervisors approving the CARs, each of the six subjects was charged with a violation of Penal Code Section 243(b).

As stated in Finding #3, paragraph three, the Auditor conducted research to determine if there was a reason other than not following protocol that caused supervisors not to approve the CARs and reasoned that, based on the Alameda County's response, there is no rule in CRIMS that requires CARs created by OPD officers for subjects arrested for Penal Code Section 243(b) to be approved by a supervisor. Not having such a rule in CRIMS means that CARs created by officers for subjects arrested for Penal Code Section 243(b) are not transmitted to the supervisors' queue for approval.

Again, the Department requires its supervisors to approve these CARs and document on the CARs where the approvals were made (i.e., on scene, Alameda County Hospital, Santa Rita Jail, etc.). The supervisors' approval of the CARs for Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests is another internal control the Department uses to ensure there is documented evidence of its supervisors' approval of the subjects' arrests for the said penal code violations. If the CARs created in CRIMS by officers for subjects arrested for Penal Code Section 243(b) are not transmitted to the supervisors' queue for approval, the internal control is deficient since the task of approving the CAR cannot be executed by supervisors as stated in policy due to a programming issue. The Department should collaborate with Alameda County

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<sup>53</sup> DGO E-7.1, pg. 1.

<sup>54</sup> DGO E-7.1, pg. 2 and DGO M-18, pg. 3.

<sup>55</sup> DGO E-7.1, pg. 3.

<sup>56</sup> DGO M-18, pg. 6.

to ensure there is a rule in CRIMS that requires CARs created by OPD officers for subjects arrested for Penal Code Section 243(b) to be approved by a supervisor.

#### **FINDING #5**

**Evidence showed that OPD supervisors viewed officers' body-worn camera video footage in 19 of the 21 incidents in which adult subjects were arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020. There were two incidents in which there was no evidence that supervisors viewed the officers' body-worn camera footage, as required by policy.**

For incidents in which subjects committed alleged offenses of Penal Code Section 148(a)(1) and/or 243(b) or (c), the Department requires its supervisors, within two business days, using the VIEVU VERIPATROL<sup>57</sup> system, to audit the officers' body-worn camera video footage of the arrests/incidents to determine whether there was any "reportable"<sup>58</sup> force used on the subjects to subdue them, and if so, was the force reported by the officer(s) using the force.<sup>59</sup>

The Department reported there were 21 incidents in which 22 adults were arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020. Using the officers' Crime/Supplemental Reports associated with the incidents, the Auditor determined which officers experienced resistance, delay, or obstruction in the discharge of their duties and/or officers against which force or violence was used while the officers engaged in the performance of their duties. The Auditor also determined which officers physically detained the subject(s) when different than the aforementioned officers in each of the incidents.

For each incident, the Auditor accessed the VIEVU VERIPATROL system and retrieved the body-worn camera footage of the officers who experienced resistance, delay, or obstruction in the discharge of their duties and/or officers against which force or violence was used while the officers engaged in the performance of their duties. When necessary, the Auditor also retrieved the body-worn camera footage of the officers who physically detained the subject(s).

Using the "History"<sup>60</sup> section of the footage, there was documented evidence that for 19 of the 21 incidents, supervisors viewed officers' body-worn camera footage to determine whether reportable

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<sup>57</sup> VERIPATROL is a secure digital evidence management solution that provides law enforcement agencies the flexibility to control their IT and video storage environments. [www.viewu.com/software-plans-on-site/](http://www.viewu.com/software-plans-on-site/).

<sup>58</sup> See Appendix B for a list of reportable uses of force.

<sup>59</sup> Special Order 9191 and Information Bulletin, *Purpose of Portable Digital Recording Device Review for Penal Code 69, 148(a)(1), and 243(b) and (c) Arrests and Clarifications on Sergeant Responsibilities under Special Order 9191*.

<sup>60</sup> The "History" section in the VIEVU VERIPATROL system records the name of any OPD personnel who add, view, copy, comment on, etc., body worn camera footage in the system. The date of the action (i.e., add, view, copy, etc.) is also recorded in the "History" section.

force was used on the subject(s) and, if so, was it reported. There were two incidents in which the Auditor noted that there was no documented evidence in the “History” section of the officers’ body-worn camera footage indicating that the footage was viewed by a supervisor, which does not comply with policy.

A supervisor’s viewing of the involved officers’ footage within two business days of an incident involving Penal Code 148(a)(1) and/or 243(b) or (c) arrests ensures reportable force, if used on a subject and not reported, is detected in a timely manner. For incidents in which the officers’ body-worn camera footage is not viewed by a supervisor, there is a risk that reportable force that should have been reported, but was not, goes undetected, which can result in the Department underreporting its reportable uses of force. In addition, if there were any officer performance deficiencies, they would have gone undetected.

#### **Additional Observation**

**For 17 of the 19 incidents in which the officers’ body-worn camera footage was reviewed, the Auditor deemed that supervisors reviewed enough footage to determine if reportable force was used on the subjects. For the remaining two incidents, the Auditor deemed that not enough footage was reviewed by the supervisors to determine if reportable force was used on the subjects.**

There were 19 incidents in which supervisors reviewed body-worn camera footage. To assess whether they viewed enough officer body-worn camera footage to determine if reportable force was used on the subjects, for each incident, the Auditor accessed the VIEVU VERIPATROL system and retrieved the body-worn camera footage of the officers who, based on documentation in the associated Crime/Supplemental Reports, experienced resistance, delay, or obstruction in the discharge of their duties and/or officers against which force or violence was used while the officers engaged in the performance of their duties. When necessary, the Auditor also retrieved the body-worn camera footage of the officers who, based on documentation in the associated Crime/Supplemental Reports, physically detained the subjects.

Using the “History” section of the footage, for 17 of the 19 incidents, the Auditor deemed that supervisors viewed enough body-worn camera footage to determine if officers used reportable force.

For the remaining two incidents, the Auditor deemed that supervisors did not view enough body-worn camera footage to determine if officers used reportable force. In both incidents, there was documented evidence in the “History” section of the footage that supervisors viewed the body-worn camera footage of the officers who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties. However, different officers detained the subjects, and the Auditor, upon reviewing the footage, noted that the detention could not be seen through the lens of the body-worn camera footage that the supervisors viewed. There was no documented evidence in the “History” section that supervisors viewed the footage of the officers who physically detained the subjects.

If the goal is for supervisors to determine whether there was any “reportable” force used on subjects during incidents involving offenses of Penal Code Section 148(a)(1) and/or 243(b) or (c), then the body-worn camera footage of the officers who physically detained the subjects should also be viewed when these officers are not the same officers who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties. Otherwise, there is a risk that force that should have been reported, but was not, goes undetected, which can result in the Department underreporting force. In addition, if there were any officer performance deficiencies, they would have also gone undetected.

#### **FINDING #6**

**As expressed in Finding #5, there was documentation in the VIEVU VERIPATROL system to substantiate that supervisors viewed the officers’ body-worn camera video footage for 19 of the 21 incidents in which adult subjects were arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c). And, for 17 of the 19 incidents in which footage was viewed, the respective supervisors viewed the footage within two business days of the incident as required by policy.**

The Department requires its supervisors to view the body-worn camera footage of officers involved in Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests/incidents within two business days of the incident.<sup>61</sup> From January 1, 2020, to November 10, 2020, the Department reported that there were 21 incidents in which adult subjects were arrested solely for alleged offenses of Penal Code Section 148(a)(1) and/or 243(b) or (c). As expressed in Finding #5, there was documentation in the VIEVU VERIPATROL system to substantiate supervisors viewed the respective officers’ body-worn camera video footage for 19<sup>62</sup> of the 21 incidents.

For each of the 19 incidents, the Auditor subtracted the date the respective supervisors viewed the officers’ body-worn camera footage, based on the date documented in the “History” sections of the body-worn camera database portal, from the date of incident listed in the officers’ Crime/Supplemental Reports. Upon calculating the days that elapsed between the two dates, there were 17 incidents in which supervisors reviewed the officers’ body-worn camera video footage within two business days, and there were two incidents that did not comply with policy:

- There was one incident in which the supervisor, according to the “History” section of the VIEVU VERIPATROL system, reviewed the officers’ body-worn camera footage 22 days after the incident occurred.

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<sup>61</sup> Special Order 9191.

<sup>62</sup>For 17 incidents, there was evidence that OPD supervisors viewed the body-worn camera footage of officers who experienced resistance, delay, or obstruction while discharging their duties; officers against which force or violence was used while performing their duties; and/or the officers who physically detained the subject(s) when different than the aforementioned officers. For two incidents, there was no evidence that supervisors viewed any footage of the officers involved in the incidents.

- There was one incident in which an officer who experienced resistance, delay, or obstruction while discharging their duties worked an overtime assignment, and, according to the “History” section of the VIEVU VERIPATROL system, did not upload their body-worn camera footage in a timely manner, contributing to the footage being reviewed in four business days instead of two. Explicitly, the officer worked overtime on 3/8/20, and, instead of uploading their body-worn camera footage in the VIEVU VERIPATROL system at the end of their shift as required by policy,<sup>63</sup> they uploaded their footage on 3/10/20 when they returned to work for their regular shift, causing the availability of the footage to be delayed. Also, the supervisor who reviewed and approved the officer’s Crime Report on 3/8/20 worked on 3/10/20 but did not view the officer’s footage.

The Auditor did note that the officer’s regularly assigned supervisor did review their footage on 3/12/20, which was within two business days of their return to work and uploading of the body-worn camera footage to the server, but the footage of the officers who physically detained the subject was not viewed by any supervisor.

A supervisor’s viewing of the involved officers’ footage within two business days of an incident ensures reportable force, if used on a subject and not reported, is detected in a timely manner. Late review can delay the detection of unreported force which can lead to accountability and supervision issues. The Department should follow its policy by ensuring its supervisors view the body-worn camera footage of its officers involved in Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests within two business days.

#### **FINDING #7**

**Documentation in the VIEVU VERIPATROL system substantiated that supervisors annotated their viewing of the body-worn camera footage of officers involved in Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests, as required by policy, in only 11 of the 19 incidents in which footage was viewed.**

In addition to requiring supervisors to view, within two business days, the body-worn camera footage of the officers involved in Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests, the Department requires its supervisors to annotate their viewing of the officers’ footage for these incidents in the “Comment” area in the VIEVU VERIPATROL system.<sup>64</sup>

As stated in Finding #5, there were 19 incidents in which supervisors viewed the officers’ body-worn camera video footage of arrests involving offenses of Penal Code Section 148(a)(1) and/or 243(b) or (c), and for each incident, the Auditor accessed the VIEVU VERIPATROL system and retrieved body-worn camera footage of the officers who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties. The Auditor also retrieved the body-worn camera footage of the officers who physically detained the

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<sup>63</sup> Departmental General Order I-15.1, *Portable Video Management System*, 16 Jul 2015, pg. 6.

<sup>64</sup> Special Order 9191.

subjects when different than the aforementioned officers in each of the incidents. Using the “Comment” section of the body-worn camera database portal, there was documented evidence that, for 11 of the 19 incidents, supervisors annotated their viewing of the officers’ body-worn camera video footage. There were eight incidents in which there was no documented evidence that supervisors annotated their viewing of the officers’ body-worn camera video footage even though the “History” section included documented evidence that they viewed the footage.

The Department’s main objective for having its supervisors view body-worn camera video footage of Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests is to ensure all reportable force, if used on subjects during an incident, is, in fact, reported by its officers. If a supervisor views an officer’s body-worn camera video footage and does not annotate their viewing of the footage, the Department is still able to meet its objective. However, although not stated in policy, annotating the footage can be viewed as an additional accountability measure by having a supervisor explicitly state that they viewed the officer’s footage to check for reportable force. In addition, annotating the footage is part of department policy, and if a supervisor does not annotate their viewing of the footage, the supervisor is not complying with policy. The Department should ensure its supervisors annotate the footage.

#### **Additional Observation**

**There were five incidents in which supervisors annotated the officers’ body-worn camera video footage in the “Comment” section within two business days, and the supervisors’ annotations for the other six incidents occurred within 7 to 41 days.**

Policy does not expressly state when a supervisor is supposed to annotate the officer’s body-worn camera footage after viewing it in the VIEVU VERIPATROL system. However, to determine if the annotations were occurring within two days, the Auditor calculated the days between the annotation date (date of documentation in the “Comment” section in VIEVU) and the date each incident occurred based on the officers’ Crime/Supplemental Reports. Upon calculating the days that elapsed between the two dates, there were 5 incidents in which supervisors annotated the officers’ body-worn camera video footage in the “Comment” section within two business days. For the other six incidents, the days that elapsed between the two dates ranged from 7 to 41 days. In these six incidents, a supervisor reviewed the video within one day of the incident, as reported in the VIEVU history section of the footage, but there was no documentation in the “Comment” section at the time of the initial review. The “Comment” section is where policy requires supervisors to annotate their review. Rather, the six supervisors made comments about their review at a later date. Table 1 below shows the number of elapsed days for each incident.

**Table 1: Number of Days that Elapsed between the Supervisors’ Annotations and the Date of the Incident**

Incident #	Date of Incident	Date of Initial Supervisor Review	Date of Annotation	Number of Days Between Incident and Annotation
1	3/5/20	3/6/2020	4/15/20	41
2	3/12/20	3/12/2020	4/3/20	22
3	3/12/20	3/12/2020	4/3/20	22
4	4/15/20	4/15/2020	4/30/20	15
5	4/28/20	4/28/2020	5/20/20	22
6	7/23/20	7/23/2020	7/30/20	7

Department policy does not state how soon a supervisor should annotate an officer’s body-worn camera video footage in the “Comment” section after viewing the footage; it merely says that supervisors shall view the footage within two business days. If the Department’s goal is to have its supervisors annotate the officers’ body-worn camera video footage the same day as they view the footage, its policy should be revised by including wording that clearly states when the supervisors’ annotations should occur relative to the date of the viewing of the officers’ body-worn camera video footage.

**FINDNG #8**

**Officers arrested eight subjects potentially experiencing symptoms of a mental health condition in eight of the 21 incidents involving 22 adult subjects arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c). In three of the eight incidents, officers were able to use most of the techniques for approaching persons experiencing symptoms of a mental health condition offered in Training Bulletin III-N for slowing down the course of events and calming down subjects. In these instances, the Auditor noted that, even though the subjects later committed alleged offenses of Penal Codes 148(a)(1) and/or 243(b) or (c), the officers’ encounters with the subjects were attentive and humane and thereby created an “I am here to help” environment. However, in most of the incidents, the techniques could not be used because the subjects were not in a mental state to cooperate with the officers.**

The Department, in its Training Bulletin<sup>65</sup> III-N, *Police Contact with Mentally Ill Persons*, effective September 29, 2006, advises its officers that when interacting with subjects who are suffering from a mental illness safety is first and foremost. The bulletin reads, in part:

Safety is the ultimate concern when interacting with a subject who is suffering from a mental illness. Safety of the subject, safety of other involved parties, and the safety of

<sup>65</sup> According to Departmental General Order A-1, effective July 28, 2008, pg. 2, “A Training Bulletin is designed to keep sworn personnel and designated employees advised of current policy, procedures, and techniques. TBs serve as a continuous training program and a stimulus to further study. The information contained in a TB also constitutes official Departmental policy on the subject matter.”

the officers who have responded to the call are of equal importance. Barring exigent circumstances, officers who respond to a call for service which involves a subject who is thought to be suffering from a mental illness, shall proceed slowly and cautiously (pg. 7).

The Department also advises its officers in Training Bulletin III-N that approaching a person potentially experiencing symptoms of a mental health condition in a cautious and patient way can be less disturbing and less confrontational, and provides its officers some techniques to use to slow the course of events and calm down the subject as stated below (pg. 3):

1. Identify and contact family, friends, or the reporting party to obtain updated details since initial call to the dispatcher and, if known, historical information.
2. Move slowly and assure the person that you are there to help them.
3. Turn down the volume on your radio, when possible, to [reduce] stimuli which could add to the subject's confusion. If outside, turn off emergency lights and sirens.
4. Ask the subject to turn off stereos, televisions, or other distractions under their control.
5. Avoid giving the commands or orders traditionally used to control a crime scene or dispute. Permit one officer to communicate with the subject; and avoid multiple conversations.
6. Simplify directions and conversations. Recognize that an anxious or confused subject may only understand a few words.
7. Attempt to determine what the immediate problem is and relate concerns for their feelings.
8. Be truthful with the subject and try to develop a rapport.
9. Allowing extra distance between the officer(s) and a mentally ill subject affords more time for the officer(s) to react and may be less likely to disturb the subject.

The Auditor noted that the Department uses Training Bulletin III-N to advise its officers of the nine techniques for slowing the course of events and calming down subjects and that the techniques are not mandates since there is no wording that states officer "shall" use the techniques to slow the course of events and calm the subjects down. With that being said, the Auditor assessed the value in officers, during contact with the subjects, using the techniques for approaching persons experiencing symptoms of a mental health condition in Training Bulletin III-N for slowing down the course of events and calming down the subjects.

The Department reported there were 22 adult subjects arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020. Using the officers' Crime/Supplemental Reports associated with the incidents, the Auditor determined officers arrested eight people experiencing apparent symptoms of a mental health condition.

To assess whether officers, during contact with the subjects, using the techniques stated above in Training Bulletin III-N for slowing down the course of events and calming down the subjects, the Auditor viewed the officers' body-worn camera footage for the incidents involving the eight subjects. Upon review of the officers' body-worn camera footage, the Auditor deemed that there were three incidents,

involving 3 subjects, in which officers were able to use most of the techniques; 2 incidents, involving 2 subjects, in which officers were unable to use most of the techniques; and 3 incidents, involving 3 subjects, in which officers did not appear to use the techniques.

The results of the Auditor’s rating of the officers’ use of the techniques outlined in Training Bulletin III-N are listed Table 2 below:

**Table 2: Techniques Outlined in Training Bulletin III-N**

	<b>Subject</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
<b>Tips</b>	<b>The Officers' reason for encounter with subject</b>	On View	Dispatched						
<b>1</b>	<b>Obtained updated details since initial call to the dispatcher, and, if known, historical information?</b>	N/A	Yes	Yes	N/A	Yes	Yes	Yes	No
<b>2</b>	<b>Did Officers move slowly and assure the person that they were there to help them?</b>	Yes	No	No	Yes	N/A	N/A	Yes	No
<b>3</b>	<b>If outside, did Officers turn off emergency lights and sirens?</b>	Yes	N/A	No	N/A	N/A	N/A	N/A	Yes
<b>4</b>	<b>Did Officers ask the subject to turn off stereos, televisions, or other distractions under his/her/their control?</b>	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A
<b>5A</b>	<b>Did Officers avoid giving the commands or orders traditionally used to control a crime scene or dispute?</b>	Yes	No	No	Yes	Yes	Yes	Yes	No
<b>5B</b>	<b>Was only one Officer permitted to communicate with the subject?</b>	Yes	No	No	No	Yes	Yes	Yes	No
<b>5C</b>	<b>Did Officers avoid having multiple conversations while interacting with the subject?</b>	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>6</b>	<b>Did the Officers simplify directions and conversations?</b>	Yes	No	Yes	Yes	Yes	Yes	Yes	No
<b>7</b>	<b>Did the Officers attempt to determine what the immediate problem was and relate concerns for the subject's feelings?</b>	Yes	Yes	No	Yes	N/A	N/A	Yes	No
<b>8</b>	<b>Were Officers truthful with the subject and try to develop a rapport?</b>	Yes	No	No	Yes	Yes	N/A	Yes	No
<b>9</b>	<b>Did the Officers allow extra distance between themselves and the mentally ill subject to afford more time to react and to, perhaps, less likely disturb the subject?</b>	Yes	No	Yes	Yes	N/A	N/A	Yes	Yes

The table excludes a rating related to whether officers were able to turn down the volume on their radios, when possible, to [reduce] stimuli which could add to the subjects’ confusion. The exclusion occurred because it was difficult for the Auditor, while reviewing the officers’ body-worn camera footage, to discern how high or low the officers’ radios were.

The table shows that, upon review of the officers' body-worn camera footage involving Subjects 1, 4, and 7, the Auditor deemed that, in these three instances, officers, when contacting the subjects, were able to use most of the techniques for slowing down the course of events and calming down the subjects. In these instances, the Auditor noted that when officers used most of the techniques for slowing down the course of events and calming down subjects, even though the subjects later committed alleged offenses of Penal Codes 148(a)(1) and/or 243(b) or (c), their encounters with the subjects were attentive and humane and thereby created an "I am here to help" environment. The Auditor also noted that in these instances, the officers' reasons for encountering the subjects were not because they had committed offenses against another person but because they, themselves, were potentially experiencing symptoms of a mental health condition causing them to be a danger to themselves and others.

The table also shows that, upon review of the officers' body-worn camera footage, the Auditor deemed that, when officers contacted Subjects 5 and 6, they were unable to use most of the techniques to slow the course of events and calm them down because the subjects appeared to be in a state that caused them to be very aggressive and combative. In both instances, officers had to use force almost immediately upon encountering the subjects to gain control of the subjects and to ensure the safety of the subjects, the public, and the officers themselves.

The table also shows that, upon review of the officers' body-worn camera footage involving Subjects 2 and 8, the Auditor deemed that, in these two instances, officers, when contacting the subjects, could not use the techniques, because the subjects would not cooperate. Subjects 2 and 8 appeared to be in distress at the onset of the encounter between the subjects and the officers. Subject 2 was very agitated and verbally combative, which made it difficult for the officers to effectively communicate with the subject in a manner to calm the subject down. However, officers did allow the subject to continue to speak in an aggressive manner, a de-escalation technique, in hopes that that subject would calm themselves but to no avail. For Subject 8, officers, while talking to the subject to determine the issue(s) the subject was having, the subject repeatedly kept putting their hands in their pockets and the officers repeatedly had to tell the subject to stop. This made it difficult for the officers to focus on the subject's issue(s) and during the encounter the subject became agitated and hit one of the officers with an object that was in their pocket.

Lastly, for Subject 3, the Auditor noted that the officers may not have known Subject 3 had a potential mental health condition upon contact. In this instance, the Auditor noted that the officers appeared to give commands or orders to the subject traditionally used to control a crime scene or dispute. The Auditor also noted that in this instance, the officers' reason for encountering the subject included an alleged offense against another person and the victim was on scene and identified the subject as the one who committed the alleged offense.

It should be noted that the Auditor deemed the Department to be unprofessional during the encounter with Subject 3 because an officer used profanity. The Auditor reviewed the officer's Supervisory Notes

File in the Vision<sup>66</sup> system to determine whether a supervisor addressed the profanity issue, and there was evidence that a supervisor addressed the profanity issue with the respective officer.

### **Additional Observation**

#### **Officers were injured in seven of the eight incidents.**

During the review of the officers' body-worn camera footage, the Auditor noted that in seven of the eight incidents, officers were either slapped, struck in the face with a fist, kicked in the stomach, etc., during contacts with a person potentially experiencing symptoms of a mental health condition.

### **FINDING #9**

**Officers arrested 14 subjects who were not known to be suffering from a potential mental health condition at the time of the arrests in 13 incidents reviewed. For nine of the 13 incidents, involving nine subjects, the Auditor reviewed the officers' body-worn camera footage and determined that the Department, when encountering subjects to confirm or dispel a suspicion that the persons may be involved in criminal activity, did not consistently comply with one of the standards for conducting stops outlined in Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. Specifically, officers did not identify themselves during encounters with six of the nine subjects.**

The Department is committed to providing service and enforcing laws in a fair and equitable manner while also establishing a relationship with the community based on trust and respect. To meet these goals, the Department requires its officers to follow the criteria below when conducting pedestrian, bicycle or vehicle stops:<sup>67</sup>

- Be courteous, respectful, polite, and professional.
- Explain the reason for the stop while asking for identification, unless impractical.
- Identify yourself.
- Ensure the length of the detention is no longer than necessary to take appropriate action for the known or suspected offense and explain the reason for any delays.
- Answer questions the person may have regarding the stop and explain the disposition (i.e., arrested, citation, released, etc.) of the stop.
- Apologize for the inconvenience when appropriate.
- If asked, provide the procedures for filing a complaint about police services or conduct outlined in Departmental General Order M-3, *Complaints Against Departmental Personnel or Procedures*, effective December 22, 2017.

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<sup>66</sup> Vision is the system that OPD uses to document, maintain, and track its employees' performance, training, uses of force, complaints, discipline, etc.

<sup>67</sup> DGO M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, effective 15 Nov 2004, pg. 3.

Special Order 9042, *New Procedures Regarding Stop Data Collection*, effective June 11, 2010, revising DGO M-19, defines an investigative contact as “any police encounter with a member of the public when the officer contacts a person to confirm or dispel a suspicion that the person may be involved in criminal activity,” including detentions, vehicle stops, walking stops and consensual encounters. It also clarifies when a stop data form must be completed:

- Certain arrests,
- Every detention not resulting in an arrest (vehicle, walking, and bicycle stops),
- Every consent search of a person conducted, and
- Any other investigative encounter.<sup>68</sup>

Some non-discretionary arrests do not require the collection of stop data, for example, member receives arrest from a private person or member of another law enforcement agency; officer is directed to the arrested person by a credible witness, complainant, or other person who is on the scene of the arrest; officer is directed to the arrested person by the Communications Section and the arrestee is reasonably identifiable based on details provided; or arrest is incident to a search warrant service.<sup>69</sup> Because policy distinguishes between encounters like vehicle, walking and bicycle stops and non-discretionary arrests (often resulting from a dispatched call for service), it is unclear if the standards for conducting stops listed in DGO M-19 apply to all stops, detentions, and arrests. However, for the purposes of this audit, regardless of how the encounter was initiated or the outcome of the encounter, the standards for conducting stops were used to assess officer conduct during the encounters reviewed.

To determine whether officers, during investigative encounters with the subjects, complied with the standards for conducting stops outlined in Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, the officers’ body-worn camera footage was reviewed for incidents involving nine of the 14 subjects not suffering from a potential mental health condition and arrested solely for alleged violations of Penal Code 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020. Upon review of the footage, the Auditor determined that the Department does not consistently comply with one of the standards. Specifically, officers did not identify themselves during encounters with six of the nine subjects. Table 3 below reflects the Auditor’s rating of the Department’s performance during the encounter with each subject:

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<sup>68</sup> Special Order 9042, page 2.

<sup>69</sup> Special Order 9042, pages 2-3.

**Table 3: Standards for Conducting Stops/Investigative Encounters**

	Subject	1	2	3	4	5	6	7	8	9
Standards	The Officers' reason for encounter with subject	Dispatched	Responded	Responded	Responded	On View	Intelligence	Intelligence	Responded	Intelligence
1	Were Officers respectful and professional to subject?	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes
2	Did Officers explain the reason for the stop, unless impractical?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No
3	Did Officers identify themselves to subjects?	No	Yes	Yes	No	No	No	No	Yes	No
4	Did Officers ensure the length of the detention was not longer than necessary to take appropriate action for the known or suspected offense and explain the reason for any delays?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
5	Did Officers answer questions the subject had regarding the stop and explain the disposition of the stop?	Yes	N/A	Yes	Yes	No	No	No	N/A	N/A
6	Did the Officers apologize for the inconvenience when appropriate?	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7	If asked, did the Officers provide the procedures for filing a complaint about police services or conduct?	N/A	N/A	N/A	N/A	Yes	Yes	Yes	Yes	N/A

As expressed in the table, the Auditor deemed that the Department was unprofessional during the encounters with Subjects 1, 6 and 8, and following are the reasons for the rating:

- In the two incidents involving Subjects 1 and 8, officers used profanity near the end of their encounters with the subjects. The Auditor reviewed the officers' Supervisory Notes File in the Vision system to determine whether supervisors addressed the profanity issues, and there was evidence that a supervisor addressed the profanity issue with the respective officer in the incident involving Subject 1. However, there was no evidence that a supervisor addressed the profanity issue with the officer in the incident involving Subject 8. OIG referred the name of the officer who used profanity to their supervisor for further handling.

- In the incident involving Subject 6, an officer attempted to arrest, based on intelligence, a subject known to be violent and who also had a warrant out for their arrest. To make a safe arrest, the officer chose a verbal tactic to gain cooperation and compliance from the subject, but the tactic was ineffective. Instead of de-escalating the incident, the officer's tactic inadvertently escalated the incident, causing the length of the subject's detention and subsequent arrest to take longer than necessary and the gathering bystanders to verbally intervene in the arrest. The Auditor reviewed the officer's Supervisory Notes File to determine whether a supervisor addressed the ineffective tactic, and there was evidence that a supervisor addressed the issue with the respective officer.

During the encounters with Subjects 5, 6, 7, and 9, the Auditor noted that the Department did not explain the reasons for the stops, and three of the subjects who were being detained asked the respective officers the reasons for the stops but did not get a response. In one of the incidents, Subject 5 asked the officer, "Why are you grabbing me?" The officer never advised the subject of their investigation. In another incident, Subject 6 asked the officer, "Is there a problem?" The officer states, "I'm going to explain to you everything. Put the phone down..." But the officer never advises the subject about their warrant for arrest. In the last incident, Subject 7 asks the officer, "What [are you] going to arrest me for? Why [you all] messing with me? [You all] is harassing me. Let me go." But the officers never advised the subject about his arrest warrant.

On October 14, 2021, the Auditor met with the Training Division Commander to clarify an officer's responsibility to explain the reason for a stop. The Auditor mentioned that Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, Section V.B, page 3 of 8, states, "In conducting pedestrian, bicycle, or vehicle stops, members shall explain the reason for the stop while asking for identification, unless impractical." Subsequently, the Auditor asked, "Under what circumstances is it impractical to explain to a subject the reason for the stop?" The Commander replied, "If running away; if the stop is high risk (e.g., murder), or when the circumstances of exigency do not allow the officer to reasonably convey his/her reason." The Auditor then asked, "When are officers supposed to explain the reason for the stop?" And the Commander replied, "When the officer has physical control of the subject, and the situation allows for the officer to communicate with the subject effectively."

Realizing the situations may not have allowed for the respective arresting officers to effectively communicate with Subjects 5, 6, 7, and 9, the Auditor reviewed the body-worn camera footage of all officers involved in the incidents relating to the subjects to determine whether someone else explained the reasons for the stops. The review of the footage showed that there were two incidents, involving Subjects 6 and 7, in which officers, other than the arresting officers, explained the reasons for the stops to the subjects:

- For Subject 6, an officer's body-worn camera footage showed that it was not until an OPD investigator arrived to interview Subject 6 that Subject 6 was able to get answers about the

detention and subsequent arrest. The investigator explained the detention and the arrest and provided the subject with a copy of the arrest warrant. Because the interview occurred prior to Subject 6 being taken to jail, the Auditor credited the Department with explaining the reason for the stop to the subject.

- For Subject 7, a sergeant's body-worn camera footage shows that upon the sergeant's arrival to the scene, the sergeant spoke with the subject and explained the stop and subsequent arrest to the subject by informing the subject of an existing warrant for his arrest. Because the sergeant's explanation occurred prior to Subject 7 being taken to jail, the Auditor credited the Department with explaining the reason for the stop to the subject.

For Subjects 5 and 9, even after the review of additional officers' body-worn camera footage, the Auditor was unable to locate evidence that the Department explained the reasons for the stops to the subjects. For Subject 5, the Auditor noted that the arresting officer did attempt to communicate with the subject by stating, "...are you done yelling, so I can talk to you, please?" but the subject refused to speak with the officer. The Auditor was unable to locate any evidence that anyone attempted to explain the stop to Subject 9. Nevertheless, the Auditor noted that in both incidents the officers had lawful reasons (e.g., alleged broken vehicle window and sexual assault) for detaining the subjects.

During investigative encounters with a person to confirm or dispel a suspicion that the person may be involved in criminal activity, when officers do not identify themselves and explain the reasons for the stop, these actions can negatively impact the Department's relationship with the community especially if subjects are arrested without ever knowing why they were stopped in the first place. Not advising subjects of the lawful reason(s) they were stopped may cause additional anxiety and impact how the subjects perceive the officers and the Department, potentially creating reputational risks such as the community's distrust of the police. To build a relationship with the community based on trust and respect, the Department should ensure all persons know why they were stopped or encountered by an officer.

In six of the nine incidents officers did not identify themselves to the respective six subjects during the encounter. However, the sample of arrests reviewed is from 2020 and the Auditor noted that in the Department's Information Bulletin, *Force Review Boards Information Updates/Findings for First Quarter 2021*, dated May 19, 2021, on page 2, the Department instructed its officers on the subject by writing, "Although police identification and announcements are improving in some incidents, it has been noted that officers still do not identify themselves as police officers when detaining or attempting to detain an individual, particularly during high risk stops or foot pursuits. Officers are reminded to announce and/or identify themselves as peace officers when appropriate and if there are no other safety and/or tactically sound reasons present as to why the announcements are not made." Despite this additional training provided, the OIG is recommending that the Department clarify the standards for conducting stops, including officers identifying themselves. Specifically, the Department should clarify if the standards apply to every encounter, including dispatched calls for service.

For four incidents involving five of the 22 adult subjects arrested solely for alleged violations of Penal Code 148(a)(1) and/or 243(b) or (c), because there was no body-worn camera footage to view, the Auditor was unable to assess whether officers complied with the standards for conducting stops outlined in Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*. Table 4 below documents the reasons there was no footage to view in the four incidents:

**Table 4: Reasons There Was No Body-worn Camera Footage to View**

<b>No.</b>	<b>Reason There Was No Body-worn Camera Footage to View</b>
1	The subject ran from officers upon sight of the officers and the body-worn camera of the officer who detained the subject fell off during the encounter. There was no footage of the initial encounter with the subject. The lack of footage was NOT due to the officer's late activation of his body-worn camera.
2	It was documented in the officer's Crime Report that the subject pushed the officer. However, due to the officer's late activation of their body-worn camera, the footage begins with the subject already detained. The officer's initial encounter with the subject could not be assessed. Because of the delayed body-worn camera activation, OIG referred the name of this officer to their supervisor for further handling.
3	A person poured beer on an officer's neck and back while the officer was arresting another subject. The officer never approached the person who poured beer on them but continued arresting the subject. The beer was poured on the officer outside the officer's body-worn camera's view and other officers were directed to make the arrest of the person who poured the beer.
4	A person hit an officer with a beer can while the officer was arresting another subject. The officer never approached the person who hit them with a beer can but continued arresting the subject. The uninvolved party hit the officer with a beer can outside the view of the officer's body-worn camera and other officers were directed to make the arrest of the uninvolved party.
5	A person obstructed and delayed an officer's duties by tripping the officer while the officer was pursuing a subject. The officer never approached the uninvolved party who tripped them but instead got up from the ground and continued pursuing the subject. Other officers were directed to make the arrest of the uninvolved party who tripped the officer.

## Findings and Recommendations

### OIG Findings

### OIG Recommendations

<p><b><u>Finding #2 (Additional Observation)</u></b>                  Upon reading the Crime/Supplemental Reports associated with the 22 adult subjects arrested in 21 incidents for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c), one or more of the reports associated with 10 of the arrests included documentation stating a supervisor arrived on scene to approve the arrest, which complies with department policy. On the other hand, the Crime/Supplemental Reports associated with the other 12 arrests included a documented sentence stating a supervisor arrived on scene or the supervisor approved the arrest, yet none of the reports included both sentences.</p>	<p><b><u>Recommendation #1</u></b>                  When an adult subject is arrested for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c), the Department should ensure its officers adhere to <i>DGO M-18</i> by documenting in their respective Crime/Supplemental Reports that “a supervisor arrived on scene AND approved the arrest.”</p>
<p><b><u>Finding #3</u></b>                  From January 1, 2020, to November 10, 2020, officers made 22 probable cause adult arrests for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c), and there were 22 Probable Cause Declarations prepared by arresting officers in the Alameda County Consolidated Records Information Management System (CRIMS), accounting for all 22 adult subjects arrested. Furthermore, of the 22 PCDecs prepared, 15 were endorsed by supervisors and there was a CRIMS programming issue that precluded supervisors from endorsing the other seven PCDecs.</p> <p><b><u>Finding #4</u></b>                  From January 1, 2020, to November 10, 2020, officers made 22 probable cause adult arrests for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c). Twenty of the 22 subjects were physically taken into custody, and there were 20 corresponding Consolidated Arrest Reports completed by arresting officers in the Alameda County Consolidated Records Information Management System. However, 14 of the 20 CARs were approved by supervisors, and there was a CRIMS programming issue that</p>	<p><b><u>Recommendation #2</u></b>                  The Department should collaborate with the County of Alameda to ensure there is a rule in CRIMS that requires PCDecs and CARs created by OPD officers for subjects arrested for Penal Code Section 243(b) to be approved by a supervisor.</p>

**OIG Findings**

**OIG Recommendations**

<p>precluded supervisors from approving the other six CARs.</p>	
<p><b><u>Finding #5</u></b> Evidence showed that supervisors viewed officers’ body-worn camera video footage in 19 of the 21 incidents in which adult subjects were arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020. There were two incidents in which there was no evidence that supervisors viewed the officers’ body-worn camera footage, as required by policy.</p> <p><b><u>Finding #5 (Additional Observation)</u></b> For 17 of the 19 incidents in which the officers’ body-worn camera footage was reviewed, the Auditor deemed that supervisors reviewed enough footage to determine if reportable force was used on the subjects. For the remaining two incidents, the Auditor deemed that not enough footage was reviewed by the supervisors to determine if reportable force was used on the subjects.</p>	<p><b><u>Recommendation #3</u></b> To diminish opportunities for reportable force to be used, and possibly not reported, during incidents involving arrests for violation of Penal Code Section 148(a)(1) and/or 243(b) or (c), the Department should revise <i>DGO M-18</i>, or <i>Special Order 9191</i>, by including language that requires its supervisors to view the body-worn camera footage of the officer(s) who experienced resistance, delay, or obstruction in the discharge of their duties and/or officers against which force or violence was used while the officers engaged in the performance of their duties; and the officers who physically detained the subject when different than the aforementioned officers.</p>
<p><b><u>Finding #6</u></b> As expressed in Finding #5, there was documentation in the VIEVU VERIPATROL system to substantiate that supervisors viewed the officers’ body-worn camera video footage for 19 of the 21 incidents in which adult subjects were arrested solely for Penal Code Section 148(a)(1) and/or 243(b) or (c). And, for 17 of the 19 incidents in which footage was viewed, the respective supervisors viewed the footage within two business days of the incident as required by policy.</p>	<p><b><u>Recommendation #4</u></b> A supervisor’s viewing of the involved officers’ footage within two business days of an incident ensures reportable force, if used on a subject and not reported, is detected in a timely manner. Late review can delay the detection of unreported force which can lead to accountability and supervision issues. The Department should follow its own policy, <i>Special Order 9191</i>, by ensuring its supervisors view the body-worn camera footage of its officer(s) involved in Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests/incidents within two business days.</p>
<p><b><u>Finding #7</u></b> Documentation in the VIEVU VERIPATROL system substantiated that supervisors annotated their viewing of the body-worn camera footage of</p>	<p><b><u>Recommendation #5</u></b> Annotating the footage is part of department policy, <i>Special Order 9191</i>, and if supervisors do not annotate their viewing of the footage, they</p>

**OIG Findings**

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<p>officers involved in Penal Code Section 148(a)(1) and/or 243(b) or (c) arrests, as required by policy, in only 11 of the 19 incidents in which footage was viewed.</p>	<p>are not complying with policy. If the Department’s goal is to have its supervisors annotate the officers’ body-worn camera video footage the same day as they view the footage, it should scrutinize supervisors’ annotations.</p>
<p><b><u>Finding #8</u></b> Officers arrested eight subjects suffering from a mental illness in eight of the 21 incidents involving 22 adult subjects arrested solely for alleged violations of Penal Code Section 148(a)(1) and/or 243(b) or (c). In three of the eight incidents, officers were able to use most of the techniques for approaching persons experiencing symptoms of a mental health condition offered in Training Bulletin III-N for slowing down the course of events and calming down subjects. In these instances, the Auditor noted that, even though the subjects later committed alleged offenses of Penal Codes 148(a)(1) and/or 243(b) or (c), the officers’ encounters with the subjects were attentive and humane and thereby created an “I am here to help” environment.</p>	<p><b><u>Recommendation #6</u></b> Although officers are not required to follow the useful techniques for approaching persons experiencing symptoms of a mental health condition, outlined in Training Bulletin III-N, <i>Police Contact with Mentally Ill Persons</i>, the Department should remind its officers that the techniques are available for their use.</p>
<p><b><u>Finding #9</u></b> Officers arrested 14 subjects who were not known to be suffering from a potential mental health condition at the time of the arrests in 13 incidents reviewed. For nine of the 13 incidents, involving nine subjects, the Auditor reviewed the officers’ body-worn camera footage and determined that the Department, when encountering subjects to confirm or dispel a suspicion that the persons may be involved in criminal activity, did not consistently comply with one of the standards for conducting stops outlined in Departmental General Order M-19, <i>Prohibitions Regarding Racial Profiling and Other Bias-Based Policing</i>. Specifically, officers did not identify themselves during encounters with six of the nine subjects.</p> <p>The Auditor also noted that for two of the nine subjects, even after the review of additional officers’ body-worn camera footage—officers</p>	<p><b><u>Recommendation #7</u></b> To build a relationship with the community based on trust and respect, the Department should ensure all persons know why they were stopped or encountered by an officer.</p> <p>The Department should clarify the standards for conducting stops, including officers identifying themselves. Specifically, the Department should clarify if the standards apply to every encounter, including dispatched calls for service.</p>

**OIG Findings**

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other than the arresting officer—the Auditor was unable to locate evidence that OPD explained the reasons for the stops to the subjects.	
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# APPENDIX A

## References

The policies below were referenced to conduct the audit:

- Departmental General Order I-15.1, *Portable Video Management System*, effective July 16, 2015
- Departmental General Order M-3, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, effective November 15, 2004
- Departmental General Order M-18, *Probable Cause Arrest Authorization and Report Review*, effective November 13, 2014
- Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, effective November 15, 2004
- Special Order 9191, *Additional Audit of Portable Digital Recording Device Video*, effective November 27, 2018
- Information Bulletin, *Purpose of Portable Digital Recording Device Review for PC 69, 148(a)(1), and 243(b) or (c) arrests and Clarifications on Sergeant Responsibilities under Special Order 9191*, dated May 22, 2020

## Methodology

To conduct the audit, the Auditors took the following steps:

### Policy Review

The Auditor reviewed the Oakland Police Department's policies and procedures related to the supervisors' responsibilities when officers make probable cause arrests because subjects were willfully resisting, delaying, or obstructing the officers in the discharge of their duties, a violation of Penal Code Section 148(a)(1), or because the subjects were willfully and unlawfully using force or violence upon the persons of the officers while the officers were engaged in the performance of their duties, a violation of Penal Code Section 243(b) or (c):

- Departmental General Order M-18, *Probable Cause Arrest Authorization and Report Review*, effective November 13, 2014
- Departmental General Order I-15.1, *Portable Video Management System*, effective July 16, 2015
- Special Order 9191, *Additional Audit of Portable Digital Recording Device Video*, effective November 27, 2018
- Information Bulletin, *Purpose of Portable Digital Recording Device Review for PC 69, 148(a)(1), and 243(b) or (c) arrests and Clarifications on Sergeant Responsibilities under Special Order 9191*, dated May 22, 2020

### Crime/Supplement Report Review

To ensure the subjects were arrested solely for alleged violation(s) of Penal Code Section 148(a)(1) and/or 243(b) or (c) on the day of the incidents, the Auditor read all associated Crime/Supplemental

Reports completed by officers involved in the incidents and stored in the Department's Field Based Reporting system.

**Objective 1(a)**

To determine whether there is evidence in the Oakland Police Department's Computer Aided Dispatch System that supervisors advised the Communications Division of their arrivals on scene to incidents to approve adult arrests solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020 to November 10, 2020, the Auditor, for each incident, sought, from a Communications Division Dispatcher, an entry of the responding supervisor's call sign and an entry of "OS" near the supervisor's call sign on the CAD report. If the supervisor's call sign and the "OS" were entered on the same line or if the "OS" was entered on a line above or below the supervisor's call sign, the Auditor deemed there to be evidence that the supervisor advised the Communications Division of their arrival on scene to the incident to approve the adult arrest.

**Objective 1(b)**

To determine whether there is evidence in the Oakland Police Department's Computer Aided Dispatch System that supervisors advised the Communications Division of their approvals of the adult arrests solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, the Auditor, for each incident, sought, from a Communications Division Dispatcher, an entry of the responding supervisor's call sign and an entry of "SAA" near the supervisor's call sign on the CAD report. If the supervisor's call sign and the "SAA" were entered on the same line or if the "SAA" was entered on a line above or below the supervisor's call sign, the Auditor deemed there to be evidence that the supervisor advised the Communications Division of his/her approval of the arrest.

**Objective 1(c)**

To determine whether supervisors endorsed the electronic Probable Cause Declarations in the Alameda County Consolidated Records Information Management System for the adult arrests solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, the Auditor, upon reviewing the electronic PCDecs in CRIMS, for each PCDec, sought a box containing the following wording, "Reviewed and approved, the date, [the supervisor's name] and [serial] number." If the box was present on the form, the Auditor deemed the supervisor to have endorsed the form.

**Objective 1(d)**

To determine whether supervisors approved the electronic Consolidated Arrest Reports in the Alameda County Consolidated Records Information Management System for the adult arrests solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, the Auditor, upon reviewing the electronic CARs in CRIMS, for each CAR, for each CAR, sought the supervisor's completion of four boxes on the form: (1) *Supervisor on Scene*; (2) *Arrest Approved by*; (3) *Serial Number*; and *Arrest Approval Time*. If data was entered in each of the four boxes on the CAR, the Auditor deemed the supervisor to have approved the form.

**Objective 1(e)**

To assess whether supervisors viewed, within two business days of the incidents, the officers' body-worn camera footage of the adult arrests solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, in the VIEVU VERIPATROL system, to determine whether reportable force was used on the subjects and, if so, was it reported, the following steps were taken:

- For each incident, the Auditor reviewed the associated officers' Crime/Supplemental Reports to determine the officer(s) who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties. The Auditor also reviewed the reports to determine which officers physically detained the subject when different than the aforementioned officers. The Auditor noted the reports' documented date of the subject's arrest.
- For each incident, using the VIEVU VERIPATROL system, the Auditor retrieved the body-worn camera footage of the officer(s) who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties. The Auditor also retrieved the body-worn camera footage of the officers who physically detained the subject when different than the aforementioned officers.
- Using the "History" section of the officers' body-worn camera footage in the VIEVU VERIPATROL system, the Auditor sought the name of the supervisor who viewed the footage and the date of their viewing. If a supervisor viewed, at minimum, the footage of the officer(s) who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties; and the body-worn camera footage of the officers who physically detained the subject when different than the aforementioned officers, the Auditor deemed the supervisor's viewing of the footage in compliance with policy.

**Note:** If the supervisor viewed only the footage of the officer(s) who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties, the Auditor viewed the same footage to evaluate whether the supervisor should have viewed additional officers' footage to assess whether reportable force was used on the subject. Based on the footage the supervisor viewed, if the supervisor could not determine whether reportable force was used on the subject without viewing additional officers' footage, the supervisor's viewing of the officer's body-worn camera footage was considered out of compliance.

- The Auditor subtracted the date the supervisor viewed the footage from the date of the incident documented in the officers' Crime/Supplemental Reports. If the viewing was within two business days of the incident, the Auditor deemed the supervisor's completion of the assignment to comply with policy.

The Auditor defined business days as the days of the week the supervisor who was responsible for viewing the footage was scheduled to work. Therefore, if the days between the date of the incident and the supervisor's viewing of the footage totaled more than two days but less than six days, the Auditor considered the supervisor's work schedule to determine compliance. For example, if an incident happened on a Tuesday, and the supervisor's days off were Wednesday, Thursday, and Friday, if the supervisor, upon returning to work, viewed the footage on Saturday or Sunday, the Auditor deemed the supervisor's completion of the assignment to comply with policy.

### **Objective 1(f)**

To determine whether supervisors annotated in the "Comment" area of the VIEVU VERIPATROL system their viewing of the officers' body-worn camera footage of the adult arrests solely for Penal Code Section 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, the Auditor took the following steps.

- For each incident, using the VIEVU VERIPATROL system, the Auditor retrieved the same body-worn camera footage of the officers in Objective 1(e) who experienced resistance, delay, or obstruction while discharging their duties and/or the officers against which force or violence was used while performing their duties. The Auditor also retrieved the same body-worn camera footage of the officers who physically detained the subjects, when necessary.
- Using the "Comment" section of the officers' body-worn camera footage in the VIEVU VERIPATROL system, for each incident, the Auditor sought an annotation from the supervisor. In addition, the Auditor reviewed the "History" section of the officers' body-worn camera footage in the VIEVU VERIPATROL system, seeking the name of the supervisors who added the annotation and the date of their annotation.

### **Objective 2**

For adult subjects potentially experiencing symptoms of a mental health condition arrested solely for offenses of Penal Code 69, 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, to assess whether officers, during contact with the subjects, used the techniques for approaching subjects potentially experiencing symptoms of a mental health condition in Training Bulletin III-N for slowing down the course of events and calming down the subjects, the Auditor, for each incident, read the officers' Crime/Supplemental Reports to determine which officers encountered the subject upon arrival to the scene of the incident. The Auditor then viewed the appropriate officers' body-worn camera footage in the VIEVU VERIPATROL system and used the following criteria to assess the officers' contact with the subject:<sup>70</sup>

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<sup>70</sup> Training Bulletin III-N, *Police Contact with Mentally Ill Persons*, effective 29 Sep 2006, pg. 3.

- Officer(s) identified and contacted family, friends, or the reporting party to obtain updated details since initial call to the dispatcher, and, if known, historical information.
- Officer(s) moved slowly and assured the [subject] that they were there to help them.
- Officer(s) turned down the volume on his/her/their radio(s), when possible, to lower the [number] of outside stimuli, which could add to the subject's confusion. If outside, did Officers turn off emergency lights and sirens.
- Officer(s) asked the subject to turn off stereos, televisions, or other distractions under his/her/their control.
- Officer(s) avoided giving the commands or orders traditionally used to control a crime scene or dispute. Only one officer was permitted to communicate with the subject, and multiple conversations were avoided.
- Officer(s) simplified directions and conversations, recognizing that an anxious or confused subject may only understand a few words.
- Officer(s) attempted to determine what the immediate problem was and related concerns for the subject's feelings.
- Officer(s) were truthful with the subject and tried to develop a rapport.
- Officer(s) allowed extra distance between himself/herself/themselves and the mentally ill subject to afford more time to react and to [lessen the chance of disturbing] the subject.

### **Objective 3**

For the subjects arrested for offenses of Penal Code 69, 148(a)(1) and/or 243(b) or (c) from January 1, 2020, to November 10, 2020, to determine whether officers, during investigative encounters with the subjects, complied the standards for conducting stops outlined in Departmental General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, the Auditor, for each incident, reviewed the officers' body-worn camera footage in the VIEVU VERIPATROL system and used the following criteria to assess the officers' contact with the subject:

- Officer(s) was respectful and professional.
- Officer(s) explained the reason for the stop, unless impractical.
- Officer(s) identified himself/herself/themselves.
- Officer(s) ensured the length of the detention was no longer than necessary to take appropriate action for the known or suspected offense and explained the reason for any delay(s).
- Officer(s) answered questions the person had regarding the stop and explained the disposition of the stop.
- Officer(s) apologized for the inconvenience when appropriate.
- If asked, Officer(s) provided the procedures for filing a complaint about police services or conduct outlined in Departmental General Order M-3, *Complaints Against Departmental Personnel or Procedures*, effective December 22, 2017.

# APPENDIX B

## Four Levels of Reportable Force

There are four levels of force the Oakland Police Department requires its police officers to report and their respective supervisors to investigate to determine reasonableness which are detailed in Departmental General Order K-4, *Reporting and Investigating the Use of Force* and Special Order 9196. Level 1 is the most serious and it includes any use of force resulting in death; any force which creates a substantial risk of causing death; serious bodily injury; and any intentional impact weapon strike to the head. Level 2 includes personal weapon strikes to the head or to a restrained subject; use of impact weapons; police canine bites; and any use of force resulting in an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid. Level 3 includes the use of pepper spray or other chemical agent (not on a restrained subject); a Taser (not on a restrained subject); and weaponless defense techniques such as hand/palm/elbow strikes and kicks; and all non-carotid takedowns on a restrained subject. Finally, Level 4 includes the intentional pointing of a firearm; weaponless defense techniques such as hair grab, pressure to mastoid or jaw line; a weaponless defense technique control hold<sup>71</sup> (i.e., an elbow escort, twist lock, arm-bar, or bent wrist); all non-carotid takedowns not on a restrained subject; and a canine deployment in which a suspect is located by the canine, but no bite occurs.<sup>72</sup>

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<sup>71</sup> Special Order 9196, pg. 7 states “handcuffing and escorting techniques which incorporate elements common to control holds and are not used to overcome resistance or inflict pain are NOT reportable uses of force.”

<sup>72</sup> Departmental General Order K-4, *Reporting and Investigating the Use of Force*, 16 Oct 2014, pgs. 4-7.