

## INTRADEPARTMENTAL CORRESPONDENCE

August 28, 2018  
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**BPC #18-0290**

**TO:** The Honorable Board of Police Commissioners

**FROM:** Inspector General, Police Commission

**SUBJECT:** REVIEW OF ARRESTS FOR VIOLATIONS OF CALIFORNIA PENAL CODE SECTION 148(A)(1)

### **RECOMMENDED ACTION**

REVIEW and APPROVE the Office of the Inspector General's (OIG) Review of Arrests for Violations of California Penal Code Section 148(a)(1).

### **DISCUSSION**

At the direction of the Los Angeles Board of Police Commissioners (Commission), the Office of the Inspector General (OIG) undertook a review of misdemeanor arrests involving California Penal Code section 148(a)(1) (148 PC). This code section is commonly referred to as "resisting arrest" but applies to any actions by a person to willfully resist, delay, or obstruct an officer in the performance of his or her official duties.

The OIG's review population was selected from all 148 PC arrests that took place between June 2016 and March 2017. The OIG's review was narrowed to include only those incidents where the arresting officers were assigned to Areas/divisions equipped with video and where the encounter stemmed from an officer-initiated stop rather than a radio call. In all, the OIG reviewed 123 incidents, which involved the arrest of 132 individuals for 148 PC; this was approximately 35 percent of all 148 PC arrests during the review period.

This review was primarily qualitative in nature, although there are some general statistics of interest included in the report. The OIG collected and included information about the characteristics of the officers and individuals arrested, as well as characteristics of the incidents, including the reason for the initial stop, the actions resulting in the arrest, and the disposition of the arrest. At the request of the Commission, the OIG also included a section at the end of the report that looks specifically at those arrests involving individuals experiencing homelessness at the time of their arrest, which made up approximately 29 percent of the cases reviewed.

The two primary goals of each case review were to first examine the officers' adherence to Department policy, as well as the applicable laws, and then to assess the quality of the interaction overall. For its assessment of the quality of the interaction, the OIG examined whether de-escalation techniques were utilized, if feasible under the circumstances, and the extent to which

the principles of procedural justice were employed. For each case, the OIG reviewed the information available from various sources, including arrest reports, in-car or body-worn video, and any related use of force or complaint investigations.

Based on its review, and with feedback from the Department, the OIG has developed a series of recommendations designed to improve the Department's oversight of these types of arrests, as well as officers' understanding of the Department's expectations. These include, for example, a recommendation to provide a more structured review by Watch Commanders of 148 PC arrests that will focus on some of the issues identified. The OIG also recommends the Department conduct additional analysis of officers' decision making during stops and review its training to ensure that officers understand the elements of select code violations identified in this report.

I am available to provide any information the Commission may require.

**E-Copy – Original Signature on File with the Police Commission**

MARK P. SMITH  
Inspector General  
Police Commission

Attachment

# LOS ANGELES POLICE COMMISSION

## REVIEW OF ARRESTS FOR VIOLATIONS OF CALIFORNIA PENAL CODE SECTION 148(A)(1)



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

MARK P. SMITH  
Inspector General

August 28, 2018

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# **REVIEW OF ARRESTS FOR VIOLATIONS OF CALIFORNIA PENAL CODE SECTION 148(A)(1)**

## **I. EXECUTIVE SUMMARY**

At the direction of the Los Angeles Board of Police Commissioners (Commission), the Office of the Inspector General (OIG) undertook a review of misdemeanor arrests involving California Penal Code section 148(a)(1) (148 PC). This code section is commonly referred to as “resisting arrest” but applies to any actions by a person to willfully resist, delay, or obstruct an officer in the performance of his or her official duties. This charge has historically been viewed as vulnerable to abuse and was the subject of reform during the Consent Decree. Therefore, the OIG initiated this review in order to assess whether these types of arrests comply with current legal standards and the existing procedures of the Los Angeles Police Department (LAPD or Department). Arrests for 148 PC provide a useful lens to review not only officers’ understanding of Fourth Amendment principles but also the way they treat members of the public and handle difficult incidents. As is described in greater detail in the report, the issues identified by the OIG in these areas have application beyond just 148 PC arrests and can provide valuable insight into areas of improvement.

### **A. Scope of Review**

The OIG’s review population was selected from all the 148 PC arrests that took place between June 2016 and March 2017. The OIG’s review was narrowed to include only those incidents where the arresting officers were assigned to areas/divisions equipped with either in-car or body-worn video for at least part of the review period. This was done to increase the amount of information available for the OIG to review in evaluating the incident. Finally, the OIG focused on those arrests stemming from officer-initiated stops rather than radio calls. The intention was to specifically focus on officers’ decision making as it relates to Fourth Amendment standards, including conducting detentions and searches. In all, the OIG reviewed 123 incidents, which involved the arrest of 132 individuals for 148 PC; this was approximately 35 percent of all 148 PC arrests during the review period.

This review was primarily qualitative in nature, although there are some general statistics of interest included in the report. The OIG collected and included information about the characteristics of the officers and individuals arrested, as well as characteristics of the incidents, including the reason for the initial stop, the actions resulting in the arrest, and the disposition of the arrest. At the request of the Commission, the OIG also included a section at the end of the report that looks specifically at those arrests involving individuals experiencing homelessness at the time of their arrest, which made up approximately 29 percent of the cases reviewed.

The two primary goals of each case review were to first examine the officers’ adherence to Department policy, as well as the applicable laws, and then to assess the quality of the interaction overall. For its assessment of the quality of the interaction, the OIG examined whether de-escalation techniques were utilized, if feasible under the circumstances, and the extent to which the principles of procedural justice were employed. For each case, the OIG reviewed the

information available from various sources, including arrest reports, in-car or body-worn video, and any related use of force or complaint investigations.<sup>1</sup>

To prepare for its case review, the OIG also conducted an assessment of the quality and frequency of the Department's training on Fourth Amendment principles, including concepts such as reasonable suspicion, searches and seizures, and laws of arrests. The OIG generally found that these trainings, both at the Academy and in-service levels, provided accurate and relevant information to officers, and that the Department makes numerous reference resources on these topics available on its internal website.<sup>2</sup>

## **B. Compliance with Applicable Policies and Standards**

Overall, the majority of cases reviewed by the OIG appeared, based on the available evidence, to comply with Department policies and relevant legal standards. The OIG did not identify specific concerns with any detention, post-stop activity, use of force, or arrest in approximately two-thirds of the cases reviewed. In the remainder, however, the OIG identified one or more areas that could be improved. These included, for example, incidents with insufficient documentation or articulation for the basis for the stop or other officer decisions, as well as cases where there did not appear to be a sufficient basis for one or more decisions.

Additionally, the OIG found that approximately 54 percent of cases included a use of force or canine contact (bite).<sup>3</sup> In approximately 27 percent of these cases, the OIG identified concerns about the use of force, such as the use of a TASER for compliance purposes. The OIG notes the Department has also identified this issue and is in the process of clarifying and strengthening its standards and training in the use of the TASER.

## **C. Quality of Interactions**

In general, officers conducted themselves in a professional, fair, and procedurally-just manner.<sup>4</sup> In approximately one-third of cases, however, the OIG found that their interactions with members of the public could have been improved. Some of the concerns identified by the OIG included the use of profanity or other disrespectful language, the use of seemingly retaliatory threats, or a lack of transparency about why decisions were being made or actions taken. The OIG noted that, in some cases, this appeared to escalate the incident and result in frustration on the part of detainees, possibly contributing to their noncompliance.

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<sup>1</sup> For more on the OIG's methods of review and findings related to video coverage, please see Appendix A.

<sup>2</sup> For a full description of the OIG's review of Fourth Amendment training, please see Appendix B.

<sup>3</sup> This included 2 canine contact incidents and 64 Non-Categorical Use of Force incidents.

<sup>4</sup> A full description of the concept of procedural justice can be found on page 31 of this report.

The issues identified in this review have broader application beyond 148 PC arrests to stops and arrests by LAPD officers, generally. Many of the same issues identified by the OIG, such as those related to documenting and articulating the basis for stops and post-stop activities, analyzing uses of force, and the utilization of de-escalation and procedural justice principles, are likely present in other types of stops and arrests. In addition to identifying these areas for improvement, the OIG's recommendations include specific examples of ways the Department can further implement the concepts of de-escalation and procedural justice.

#### **D. Recommendations and Next Steps**

Based on these findings, and with feedback from the Department, the OIG has developed a series of recommendations designed to improve the Department's oversight of these types of arrests, as well as officers' understanding of the Department's expectations. These include, for example, a recommendation to provide a more structured review by Watch Commanders of 148 PC arrests that will focus on some of the issues identified. The OIG also recommends the Department conduct additional analysis of officers' decision making during stops and review its training to ensure that officers understand the elements of select code violations identified in this report.

In preparing this report, the OIG met with the Department to discuss the report's findings and recommendations. Although there were some cases in which the Department's analysis differed from that of the OIG, the Department was generally receptive to the overall recommendations. Department representatives also provided significant information about steps already being taken to address several of the issues raised by the OIG. The Department has indicated a sincere desire to address the areas of improvement identified in the report and to continue to implement the Commission's direction regarding de-escalation and procedural justice.

## **II. BACKGROUND**

Section 148, subdivision (a)(1), of the California Penal Code ("148 PC") states, "Every person who **willfully resists, delays, or obstructs** any public officer, peace officer, or an emergency medical technician, [...], in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment." (Emphasis added.) A violation of Section 148 PC is considered a misdemeanor.

This Penal Code section covers a variety of different conduct. Some examples include physically resisting an officer's attempts to handcuff a person, refusing to provide information during a detention, or fleeing from officers when they attempt to contact an individual in furtherance of an investigation. These are by no means the only types of conduct that fall under this section, but they do provide some illustrative examples of "resisting, delaying, or

obstructing” an officer in the execution of his or her official duties.<sup>5</sup> To be guilty of this offense, the person must willfully resist, delay, or obstruct the officer; the officer must be engaged in the lawful performance of his or her duties; and the person must know (or reasonably should know) that the individual they are resisting, delaying, or obstructing is a police officer engaged in the performance of these duties.

Historically, this charge has been viewed as being vulnerable to abuse by officers.<sup>6</sup> The charge has been referred to by some as “contempt of cop” due to the perception that it can be used in a retaliatory fashion against individuals who are disrespectful or show contempt toward an officer. Another concern which has been raised is that this charge may be used by officers as a “cover charge” when they use force (and, potentially, unnecessary force) and subsequently seek to justify the need to use that force.

Because of the perceived potential for abuse, the LAPD imposes specific requirements for the review of 148 PC arrests in addition to the Department’s normal booking review procedures for misdemeanor arrests. These additional requirements date back to the Federal Consent Decree.<sup>7</sup> When officers arrest an individual and the primary charge is 148 PC, the Watch Commander is required to “conduct a pre-booking evaluation to determine whether issues or concerns regarding training, policy, or tactics need to be addressed.”<sup>8</sup> The Watch Commander is also required to document this evaluation in the Watch Commander’s Daily Report and “take appropriate action when the results of the evaluation raise issues or concerns regarding training, policy, or tactics.”<sup>9</sup>

### **III. SCOPE OF REVIEW**

The population used for the OIG’s review consisted of all incidents involving an arrest for Penal Code section 148(a)(1), where that code section represented the primary or most serious

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<sup>5</sup> There are other Penal Code sections that are more specific in the types or severity of the resistance. For example, Penal Code section 148, subdivision (c), addresses an individual who, while resisting an officer, also “removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer.” Where a person uses threats or violence to resist or prevent an officer from performing any duty, he or she may be charged with a felony under Penal Code section 69, subdivision (a). For the purposes of this report, the OIG only reviewed cases submitted under section 148(a)(1).

<sup>6</sup> See, for example, Lopez, Christy, “Disorderly (mis)Conduct: The Problem with ‘Contempt of Cop’ Arrests,” Issue Brief, American Constitution Society for Law and Policy, June 2010.

<sup>7</sup> “Supervisors shall evaluate each incident in which a person is charged with interfering with a police officer (California Penal Code § 148), resisting arrests, or assault on an officer to determine whether it raises any issue or concern regarding training, policy, or tactics.” (LAPD Consent Decree, filed 6/15/2001, Paragraph 70(b).)

<sup>8</sup> LAPD Manual, Volume 4, Section 216.23.

<sup>9</sup> LAPD Manual, Volume 4, Section 216.23.

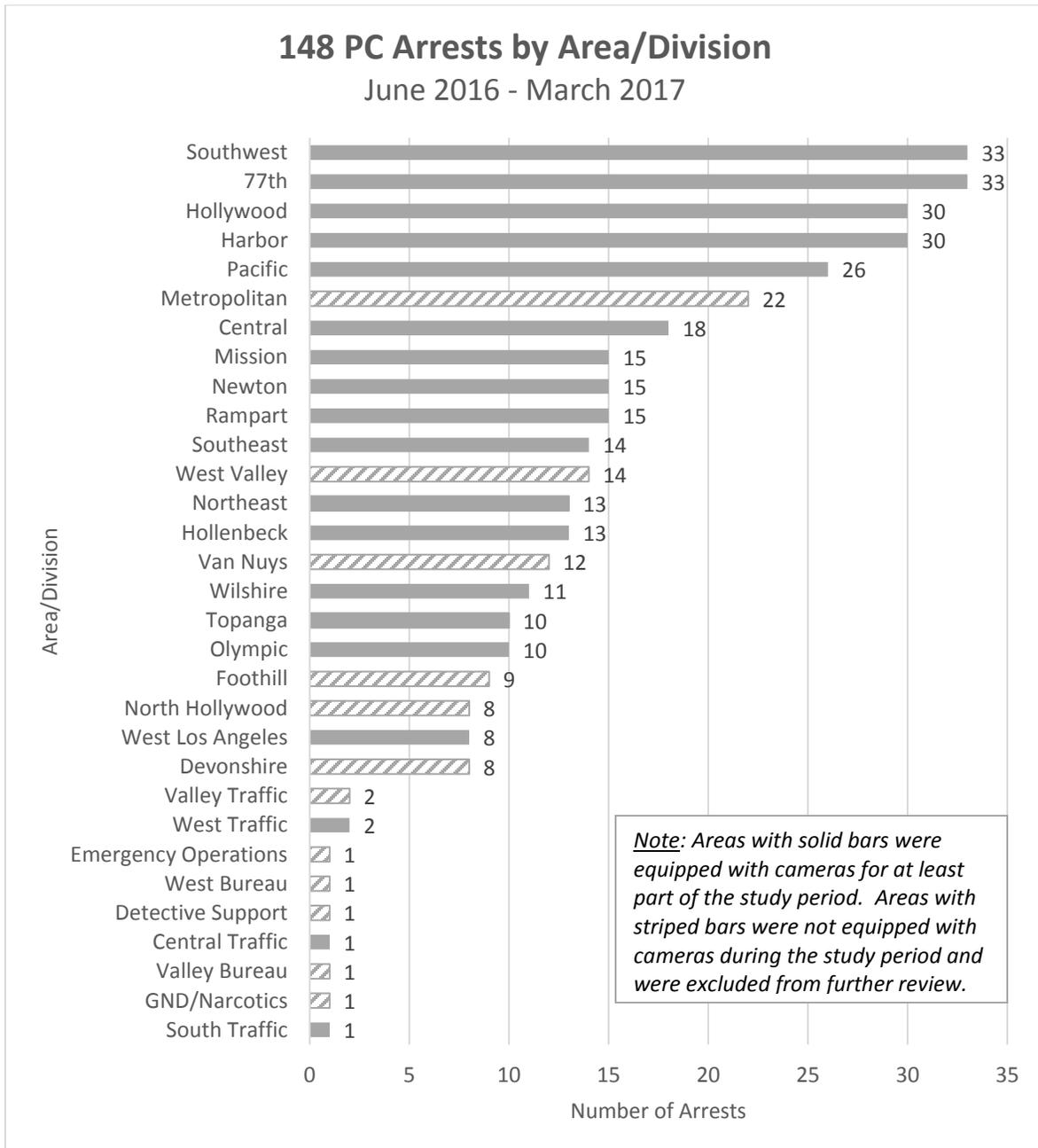
charge,<sup>10</sup> during a 10-month period from June 2016 through March 2017. Selecting only arrests where 148 PC was the primary charge allowed for a more focused review, without the complications of additional serious charges.<sup>11</sup> During the review period, there were a total of 378 such arrests by officers assigned to 31 different Areas/divisions. As shown in the chart on the following page, the arrests were not evenly split among all the Areas/divisions. The top five Areas all had more than 25 arrests each: Southwest (33 arrests), 77<sup>th</sup> Street (33 arrests), Hollywood (30 arrests), Harbor (30 arrests), and Pacific (26 arrests). The arrests from these five Areas made up approximately 40 percent of all the arrests in the population.

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<sup>10</sup> Arrestees in this population may have also been charged with lesser misdemeanors or infractions in addition to 148 PC, or they may have had outstanding warrants.

<sup>11</sup> Arrests where the person had an additional warrant, but where that warrant was not necessarily the primary reason for arrest, were retained in the study.



From the total population of 378 arrests, the review sample was judgmentally narrowed down to only those incidents involving arrests by officers assigned to Areas/divisions equipped with in-car video, body-worn video, or both at the time of arrest.<sup>12</sup> Selecting arrests where the officers

<sup>12</sup> The Areas/divisions that had neither in-car nor body-worn video in place during the review period were: Devonshire, Foothill, Valley Traffic, Van Nuys, and specialized divisions such as Metropolitan, Security Services,

and/or police vehicles were equipped with cameras enabled a more complete review of each arrest, including the ability to compare what was stated on the arrest report to what was captured on video.<sup>13</sup> This filtering resulted in a total of 280 arrests (74 percent of the full population) by officers assigned to 20 different video-equipped Areas/divisions.

Finally, the OIG chose to further focus this review on incidents involving arrests that stemmed from officer-initiated stops rather than radio calls. The purpose of concentrating on officer-initiated stops was to evaluate officers' application of Fourth Amendment standards in conducting detentions based on reasonable suspicion or probable cause, as well as in conducting searches. The legality of a detention or post-stop activity is particularly relevant in the context of 148 PC arrests since the charge itself is resisting, obstructing, or delaying the officer's lawful actions. As part of this process, the OIG reviewed all of the relevant actions taken during the incident, even if the initial detention or subsequent post-stop activity involved someone other than the person who was ultimately arrested for 148 PC.

Based on all these criteria, the OIG's final review sample included a total of 123 unique incidents, encompassing 132 persons arrested on a charge of 148 PC.<sup>14</sup> The final sample made up about 35 percent of the 378 total 148 PC arrests Departmentwide during the selected period.

#### **IV. GENERAL OVERVIEW OF CASES REVIEWED**

As part of its review, the OIG compiled statistics about the officers and arrestees involved in each 148 PC arrest reviewed, as well as the overall characteristics of the arrest. These characteristics are described in the following sections.

##### **A. Arresting Officers**

The 123 incidents selected for review involved 209 individual officers assigned to 20 different Areas/divisions in a variety of assignments.<sup>15</sup> Some officers were involved in more than one incident during the study period. Most of the arrests were made by officers assigned to general patrol duties (71 out of 123 incidents, or 58 percent). The next largest category involved gang

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etc. Additionally, although body-worn video was rolled out in West Valley during the review period, all of their 148 PC arrests during the study period occurred prior to camera implementation.

<sup>13</sup> Not all incidents were fully captured on video and audio. As such, it was not always possible to verify all aspects of the incident. For more on the OIG's findings related to video coverage, please see Appendix A.

<sup>14</sup> Some incidents resulted in more than one person being arrested for 148 PC.

<sup>15</sup> Most of the incidents involved two arresting officers.

units (41 incidents or 33 percent), and the remainder were conducted by officers assigned to traffic or special details.

The OIG calculated how long each arresting officer had been with the Department. Those statistics are below, with the majority of officers having worked 10 years or less at the LAPD.

<b>Arrests by Tenure of Officers at LAPD<sup>16</sup></b> (June 2016 – March 2017)				
<b>Department Tenure</b>	<b>All 148 PC Arrests</b>		<b>OIG Sample Only</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
One Year or Less	64	9%	18	7%
2 - 5 Years	188	26%	84	34%
6 - 10 Years	269	37%	89	36%
11 - 15 Years	122	17%	32	13%
More than 16 Years	91	12%	21	9%
<b>Total</b>	<b>734</b>	<b>100%</b>	<b>244</b>	<b>100%</b>

The study also looked at how many officers had made multiple 148 PC arrests during the review period. With respect to all 148 PC arrests, the OIG found that the majority of officers -- about 83 percent -- had been involved in just one such arrest. The remaining officers were involved in multiple 148 PC arrests, as shown below. Please note that most officers work in pairs and may be involved in multiple arrests together.

<b>Unique Officers by Number of 148 PC Arrests Made</b> (June 2016 – March 2017)				
<b>Number of Arrests Made by Officer</b>	<b>All 148 PC Arrests</b>		<b>OIG Sample Only</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
1	486	83%	181	87%
2	69	12%	21	10%
3	20	3%	7	3%
4	6	1%	0	-
5	4	1%	0	-
6	1	0%	0	-
<b>Total</b>	<b>586</b>	<b>100%</b>	<b>209</b>	<b>100%</b>

<sup>16</sup> Officers who made multiple arrests appear multiple times in the chart. Figures may not add up to the corresponding totals due to rounding.

**B. Arrestee Demographics**

As for the demographic characteristics of the arrestees, they included individuals from different age groups, genders, and races. The tables below illustrate these categories.

<b>148 PC Arrestees by Age at Time of Arrest<sup>17</sup></b> (June 2016 – March 2017)				
<b>Age Group</b>	<b>All 148 PC Arrests</b>		<b>OIG Sample Only</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Juvenile	21	6%	5	4%
18-25	140	37%	56	42%
26-35	128	34%	45	34%
36-45	54	14%	14	11%
46-55	28	7%	10	8%
56+	7	2%	2	2%
<b>Total</b>	<b>378</b>	<b>100%</b>	<b>132</b>	<b>100%</b>

Most arrestees during the study period were between the ages of 18 and 35 (268 total or 71 percent), with a total of 21 juveniles. The breakdown of age ranges for the OIG sample was similar, with a slightly higher proportion of those between the ages of 18 and 25. The next two tables illustrate the breakdowns by race/ethnicity.

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<sup>17</sup> Figures may not add up to the corresponding totals due to rounding.

<b>All 148 PC Arrestees by Race/Ethnicity and Gender<sup>18</sup></b> (June 2016 – March 2017)						
<b>Race/ Ethnicity</b>	<b>Female</b>		<b>Male</b>		<b>Total by Race</b>	
	<b>#</b>	<b>% of Total</b>	<b>#</b>	<b>% of Total</b>	<b>#</b>	<b>%</b>
Black	35	9%	101	27%	136	36%
Hispanic	26	7%	166	44%	192	51%
Other	2	1%	10	3%	12	3%
White	9	2%	29	8%	38	10%
<b>Total by Gender</b>	<b>72</b>	<b>19%</b>	<b>306</b>	<b>81%</b>	<b>378</b>	<b>100%</b>

<b>148 PC Arrestees by Race/Ethnicity and Gender<sup>19</sup></b> OIG Sample						
<b>Race/ Ethnicity</b>	<b>Female</b>		<b>Male</b>		<b>Total by Race</b>	
	<b>#</b>	<b>% of Total</b>	<b>#</b>	<b>% of Total</b>	<b>#</b>	<b>%</b>
Black	18	14%	47	36%	65	49%
Hispanic	8	6%	48	36%	56	42%
Other	2	2%	1	1%	3	2%
White	0	-	8	6%	8	6%
<b>Total by Gender</b>	<b>28</b>	<b>21%</b>	<b>104</b>	<b>79%</b>	<b>132</b>	<b>100%</b>

Hispanic arrestees, at approximately 51 percent, made up the largest proportion of those arrested Departmentwide for 148 PC, with Black arrestees making up the second largest group at 36 percent. (For reference, during this same time period, 47 percent of all arrests involved Hispanic individuals, 29 percent involved Black individuals, and 18 percent involved White individuals.)

The demographic breakdown for 148 PC arrests in the OIG's final sample differed from the original population somewhat, with Black arrestees making up nearly half of those involved in these cases and the other groups making up smaller proportions. In both groups, women made up approximately one-fifth of people arrested for 148 PC.

### **C. Incident Characteristics**

#### *1. Reason for the Initial Stop*

In reviewing the basis for the initial stop or encounter, the OIG found that two cases were reported to have begun as consensual encounters but quickly turned into detentions. The remaining cases began as detentions for an observed or suspected violation of state or municipal law. A full breakdown of each initial detention by reason provided is below. Please note that, in many cases, there were a number of factors that led to the stop. In such cases, the stop was

<sup>18</sup> Figures may not add up to the corresponding totals due to rounding.

<sup>19</sup> Figures may not add up to the corresponding totals due to rounding.

categorized by the primary reason identified by officers. For example, in a number of vehicle stops made based on an observed moving violation, officers also noted equipment violations such as tinted windows. In these cases, the moving violation was listed as the reason for the stop.

Type and Reason for Initial Stop	# of Incidents	% of Incidents <sup>20</sup>
<b>Bicycle</b>		
Equipment	5	4%
Moving Violation	5	4%
<b>Bicycle Total</b>	<b>10</b>	<b>8%</b>
<b>Pedestrian</b>		
Interfering	3	2%
Interfering/Filming	4	3%
Parole/Probation Check	3	2%
Pedestrian Violation	5	4%
Quality of Life - Alcohol	10	8%
Quality of Life - Homeless Enforcement	9	7%
Quality of Life - Loitering	5	4%
Quality of Life - Other	2	2%
Report of Crime/Matched Description	7	6%
Suspicious Activity	16	13%
Warrant Suspect	9	7%
Other	6	5%
<b>Pedestrian Total</b>	<b>79</b>	<b>64%</b>
<b>Motor Vehicle</b>		
Equipment	6	5%
Interfering	3	2%
Moving Violation	12	10%
Parking Violation	2	2%
Report of Crime/Matched Description	2	2%
Suspicious Activity	1	1%
Vehicle Registration	7	6%
Warrant suspect	1	1%
<b>Vehicle Total</b>	<b>34</b>	<b>28%</b>
<b>Grand Total</b>	<b>123</b>	<b>100%</b>

Overall, pedestrian stops made up nearly two-thirds of the stops reviewed that resulted in an arrest for 148 PC. Of those, the largest category of stops -- 26 incidents -- were for quality-of-

<sup>20</sup> Figures may not add up to the corresponding totals due to rounding.

life violations such as drinking, smoking, or urinating in public; sitting or sleeping on the sidewalk; loitering or trespassing; or violations related to a homeless encampment.

Approximately 7 percent of the stops -- 9 cases -- were classified by the OIG as being related to homeless enforcement in that the reported violation was directly related to the arrestee's homeless status, such as sleeping on the sidewalk or failing to take down a tent.<sup>21</sup> Another large category of stops, as articulated in the officers' reports, included the detention of a person for suspicious behavior. Such behavior included reaching for or grabbing a waistband, running away after seeing the officers, carrying a large can of pepper spray or what appeared to be a firearm, or possibly committing a burglary from a motor vehicle. Other notable categories included pedestrian violations such as jaywalking or walking in the road, and interfering in the investigation of another person.

About 28 percent of incidents began with a motor vehicle (traffic) stop. These were primarily due to observed or suspected moving violations, such as speeding or failing to signal, or for equipment or registration violations. Common equipment violations for vehicles included having missing or paper license plates, or tinted windows.

There were also 10 stops of a person riding a bicycle, which were generally also for moving or equipment violations such as riding without a light at night.

Please note that the table in this section, along with those in the next two sections, is calculated on a per-incident basis, rather than a per-arrest basis, as some incidents involve more than one person arrested for 148 PC.

## *2. Actions Resulting in Arrest*

The OIG also catalogued the types of resistance, obstruction, or delaying actions reported by officers as leading to the arrest. Some of these actions were physical while others were verbal in nature. For example, there were instances of individuals who obstructed or delayed the officers' investigation by simply not complying with the officers' commands or providing incorrect information when questioned. In other cases, the individual physically resisted being handcuffed during the detention by pulling away or running from the officers. The first table below categorizes the incidents according to the primary type of resistance reported by the officers to support the arrest for 148 PC.

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<sup>21</sup> For a broader discussion of 148 PC arrests stemming from homeless enforcement, please see page 27.

<b>148 PC Incidents by Primary Type of Resistance</b>		
<b>Primary Resistance</b>	<b>#</b>	<b>%</b>
Fleeing	42	34%
Not complying	34	28%
Physically resisting	17	14%
Interfering with other investigation	15	12%
Providing false identification	7	6%
Failure to provide identification	4	3%
Other	4	3%
<b>Grand Total</b>	<b>123</b>	<b>100%</b>

As indicated above, the largest proportion of cases reviewed for this report involved a person who fled from the officers (34 percent), followed by individuals who would not comply with the officers' directions or commands (28 percent). The third largest group involved individuals who physically resisted the officers (14 percent). Physical resistance can take many different forms, such as bracing or pulling away, and many of the cases involved multiple types of resistance.

The OIG found that a number of incidents involved multiple forms of resistance, interference, or delaying actions. This might include, for example, a person who initially flees from officers and subsequently resists the officers' attempts to take him or her into custody. As such, the table below provides the total number of cases that involved each different type of action, with cases involving more than one type of action appearing in each applicable category.

<b>148 PC Incidents by All Types of Resistance Involved</b>		
<b>Resistance Type (Detail)</b>	<b># of Cases</b>	<b>% of Cases<sup>22</sup></b>
Resisting or refusing initial detention	47	38%
Physically resisting hands-on action	39	32%
Failure to follow direction	39	32%
Failure to provide information/identification	17	14%
Physically resisting custody for 148 PC	12	10%
Interfering in other investigation (physical)	6	5%
Interfering in other investigation (verbal only)	6	5%
Other	11	9%

These last categories are different from the prior table in that they were designed to give a fuller picture of what actions the person was resisting and in what manner. Based on the OIG's review, the majority of the cases reviewed for this report involved at least one of three actions:

<sup>22</sup> This table allows for multiple types of resistance per incident; thus, these percentages do not add up to 100 percent.

resisting the initial detention (38 percent), resisting the hands-on actions<sup>23</sup> of the officers (32 percent), or failing to follow the officers’ directions (32 percent). While the individual reasons for the person’s resistance were likely different in each situation, these three categories clearly constituted the most common basis for 148 PC arrests. This information is useful in understanding how enforcement of seemingly low-level violations can escalate and result in an arrest. It may also be useful in developing strategies to reduce or minimize the amount of resistance officers encounter.

*3. Other Incident Characteristics*

Finally, the OIG tabulated other incident characteristics that had the potential for affecting the quality and outcome of the interaction, which are shown in the table below.

<b>Incident Characteristics</b>		
<b>Cases involving a:</b>	<b>#</b>	<b>%</b>
Person experiencing homelessness	36	29%
Person who appeared mentally ill	20	16%
Person who appeared under the influence	16	13%
Person with a language barrier	3	2%
Use of force incident	64	52%
Canine contact incident	2	2%
Person who was found to have a warrant	35	28%
Complaint filed	16	13%

Each of these various circumstances have the potential to contribute to the quality of the interaction and impact the result. For example, a person’s ability to understand and comply with an officer’s direction can be impacted by a person’s mental health disability, level of intoxication, or language barrier. These factors may also interact with other characteristics of an incident, such as homelessness and use of force, both of which are discussed in greater detail later in the report.

*4. Case Disposition*

The OIG also tracked the outcomes of each arrest in terms of whether charges were filed by the City Attorney’s Office. The OIG found that, for the 122 cases where a filing determination was

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<sup>23</sup> “Hands-on actions” would include actions such as grasping a person’s wrist in order to apply handcuffs or conducting a pat-down.

available, the City Attorney’s Office filed a charge for 148(a)(1) PC in 43 of the arrests reviewed, for a filing rate of approximately 35 percent.<sup>24</sup> These outcomes are in the table below.

<b>Case Dispositions<sup>25</sup></b>			
<b>148(a)(1) PC Charge Filed</b>	<b>#</b>	<b>% of Cases Filed</b>	<b>% of Total Cases</b>
Convicted	22	51%	18%
Convicted of another charge	9	21%	7%
Dismissed <sup>26</sup>	7	16%	6%
Acquitted	1	2%	1%
Unable to determine	2	5%	2%
Pending	2	5%	2%
<b>Total – 148 PC Charges Filed</b>	<b>43</b>	<b>100%</b>	<b>35%</b>
<b>No 148(a)(1) PC Charge Filed</b>	<b>#</b>	<b>% of Cases Not Filed</b>	<b>% of Total Cases</b>
<b>Interest of Justice</b>	<b>43</b>	<b>54%</b>	<b>35%</b>
<b>Arrest-Related Reason</b>	<b>7</b>	<b>9%</b>	<b>6%</b>
Insufficient Evidence	3	4%	2%
Inadmissible Search & Seizure	1	1%	1%
Stale Misdemeanor	1	1%	1%
Lack of Corpus	2	3%	2%
<b>Unrelated Reason</b>	<b>29</b>	<b>37%</b>	<b>24%</b>
Time Served	7	9%	6%
Warrant	9	11%	7%
Filed Other Charge	3	4%	2%
Parole/Probation Violation or Hold	10	13%	8%
<b>Total – No 148 PC Charges Filed</b>	<b>79</b>	<b>100%</b>	<b>65%</b>
<b>Grand Total</b>	<b>122</b>		<b>100%</b>

Of the instances where the City Attorney’s Office did file a charge for 148(a)(1) PC, 22 cases (51 percent of the 43 charges filed) resulted in a conviction on that charge. Nine other cases resulted

<sup>24</sup> The filing rate did not factor in the 10 cases where the OIG was unable to locate a record in the City Attorney database, often due to the person being a juvenile, or where the decision was listed as pending.

<sup>25</sup> Excludes cases where the filing decision was pending or not found in the database. Figures may not add up to the corresponding totals due to rounding.

<sup>26</sup> One case involved both a dismissal and conviction on another charge; this case was counted only once under the “Convicted of another charge” category.

in a conviction on other charges,<sup>27</sup> seven cases were dismissed,<sup>28</sup> and one person was acquitted.<sup>29</sup> Overall, excluding the ten cases that were pending or not found, the OIG determined that 18 percent of 148 PC arrests reviewed resulted in a conviction on that charge, and an additional seven percent resulted in a conviction on another charge.

The OIG found that the City Attorney's Office declined to file a charge of 148(a)(1) PC in 79 of the 122 cases with an available filing decision. In 43 of those cases -- or 54 percent -- the primary reason given was "Interest of Justice." For the remaining 36 cases, some of the reasons given were related to the 148 PC charge while others were not. Seven cases involved reasons that were related to the arrest, including a determination that there was insufficient or inadmissible evidence. The remaining 29 cases involved a reason unrelated to the 148 PC charge. For example, several individuals had outstanding warrants, others were on probation or parole at the time of their arrest, and, in a few cases, the person had already served significant time in jail following their arrest.

It is important to note that the decision to not file a charge by the City Attorney's Office does not necessarily mean that the underlying arrest was inappropriate. As has already been discussed, there may be a variety of reasons for a declination, both related and unrelated to the arresting officers' actions. The intent behind reporting these outcomes is to help inform the Department's discussions of how to improve these types of arrests, as well as the associated documentation, and to ensure they meet the standards for filing as often as possible.

## V. FINDINGS

The information reviewed by the OIG for each case included the written arrest report, which included the officers' articulation of their decisions, as well as any available video.<sup>30</sup> The OIG also reviewed statements or evidence gathered during the arrest process or any associated use of force or complaint investigation, as well as the ultimate case disposition for each arrest.

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<sup>27</sup> These other charges included violations related to providing false identification, driving on a suspended license, disorderly conduct, etc.

<sup>28</sup> Among the dismissed cases, different reasons were given such as insufficient evidence, unavailable witnesses, pleas in another case, or in the interest of justice. Additionally, one case involved both a dismissal and conviction on another charge; this case was counted only once under the "Convicted of Another Charge" category.

<sup>29</sup> At the time of this writing, two cases were still pending and the OIG was unable to determine the outcome in two additional cases.

<sup>30</sup> Approximately 58 percent of incidents were fully or partially captured on video, with another 20 percent captured on audio only. In cases where there was limited or no video footage of the incident, the OIG relied primarily on the officers' reports, as well as any associated investigative files or evidence.

## **A. Reasonableness of Stop**

Based on the available data, the OIG determined that the majority of the initial detentions, about 84 percent, appeared reasonable. In these cases, the officers articulated observed factors sufficient to support reasonable suspicion or probable cause that the person being detained had committed a violation of a state or municipal code. In most instances, the violation was directly observed by the officers, such as incidents where a person was seen speeding, holding an open container of alcohol in public, or conducting an illegal left turn. In others, officers articulated a series of factors that, when combined, appeared to support reasonable suspicion of criminal activity.

The OIG identified concerns with the stated basis for the initial encounter or detention, or the justification for prolonging the detention, in approximately 16 percent of cases. In making this assessment, the OIG focused primarily on the written justifications provided by the officers in the arrest report, as well as whether those justifications could be corroborated by video or other evidence. This assessment did not include consideration of other possible factors not mentioned or included by the officers as a basis for the detention, even in cases where such factors may have been visible on the video. The purpose of this was to focus the assessment on the officers' articulation and decision making based on that articulation. As such, it is important to note that the OIG's identification of concerns in these cases does not necessarily mean that the detention was objectively unreasonable. Rather, the purpose of identifying these issues is to provide a basis for making improvements in how officers document and handle such cases.

### *1. Insufficient articulation of the elements of a violation*

The OIG identified seven incidents where officers appeared to insufficiently articulate or misapply the elements of a suspected violation of the California Vehicle or Penal Code in order to justify a detention. This occurred in three general areas of violations: pedestrian violations (i.e., pedestrian in the roadway and jaywalking), under the influence/drunken in public, and trespassing.

#### **a. Pedestrian Violations**

In its review, the OIG identified four cases where officers appeared to stop or threatened to cite a person for crossing or standing in the street, but the available evidence did not appear to support a jaywalking or failure-to-yield violation (this is sometimes also referred to as a "pedestrian in the roadway" violation). While there are sections in the California Vehicle Code that address these actions, those sections appeared to be interpreted incorrectly or too broadly by officers in some cases.

- For example, in one case, officers appeared to detain a person who was standing in the street while talking to a person sitting in the driver's seat of a car stopped at a curb. The officers articulated the basis for this detention as "pedestrian in roadway." That violation, however, requires pedestrians who are on the road, but outside of a marked or

unmarked crosswalk, to “yield the right of way [to vehicles] so near as to constitute an immediate hazard.”<sup>31</sup> The video in this case showed that the person was not in a position to impact a vehicle’s right of way on the road nor did their location “constitute a hazard.”<sup>32</sup>

- In another case, officers stopped a person after she crossed the street mid-block. The officers conducted the stop, using a pedestrian violation as a pretext, because they had observed her “looking into properties.” In articulating the basis for the stop, the officers stated in the arrest report that her actions had the result of “forcing vehicles to slow to prevent collision,” and on the in-car video they can be heard telling her that she is being detained for jaywalking. Under the jaywalking statute, pedestrians may not cross the street “at any place except in a crosswalk” when “between adjacent intersections controlled by traffic control signal devices or by police officers.”<sup>33</sup> (Under this statute, “traffic control signal devices” refer to “mechanically controlled stop or go signals” and not stop signs.<sup>34</sup>) In this case, the crossing did not occur between two controlled intersections. Furthermore, the OIG’s video review found that the officers had already stopped their car prior to her stepping off the center median into the street, and there did not appear to be any other vehicles that were caused to slow down or were otherwise near enough to her while she crossed the street to present a hazard.

California case law has noted that, in general, “pedestrians are not restricted to the crossings in traversing a street, but may cross it at any point. And the same is true of their right to walk along the roadbed of a highway. [...] [A]ll parts of the highway are as open to the use of foot passengers as to vehicles.”<sup>35</sup> It is important for officers to understand the specific elements of these two pedestrian violations to ensure the basis for their stops are reasonable.

#### b. Being Drunk in Public or Under the Influence of Drugs

The OIG identified two cases where a person was reportedly detained for being drunk in public or being under the influence of alcohol or drugs, but the justification provided in the arrest

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<sup>31</sup> Vehicle Code §21954. Furthermore, this does not relieve drivers from “the duty to exercise care” for any pedestrian in the road. Persons who are in a marked or unmarked crosswalk have the right of way, providing they do not suddenly walk or run into the path of a vehicle close enough to constitute a hazard (Vehicle Code §21950).

<sup>32</sup> This person was not the person who was ultimately arrested for 148 PC (it was the driver of the vehicle).

<sup>33</sup> Vehicle Code §21955.

<sup>34</sup> *Quinn v. Rosenfeld* (1940) 15 Cal.2d 486. Additionally, a person who is jaywalking must actually be crossing the street and not simply be standing in the street or off of the curb (*People v. Hawkins* (1942) 51 Cal.App.2d Supp. 779).

<sup>35</sup> *People v. Cox* (2008) 168 Cal.App.4th 702.

reports did not fully articulate the basis for doing so. Notably, this followed a statement by the person that could be seen as disrespectful or critical of the police.

- In one case, a person approached some officers in their vehicle and stated, “I pay for your taxes!” The officers asked the individual for his name and attempted to verify his identity using the information he provided; however, they were unable to locate a record of him. When the person reportedly began to appear nervous and started walking away, the officers decided to detain him for being “drunk in public.” The relevant code for a “drunk in public” detention, Penal Code section 647, subsection (f), refers to a person who is found in a public place to be under the influence of alcohol or other substance “in a condition that he or she is unable to exercise care for his or her own safety or the safety of others” or who “interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.” While the officers documented several observations that supported the arrestee’s being intoxicated (bloodshot and watery eyes, stuttering speech, strong odor of alcohol on his breath, and he admitted he had been drinking), they did not provide any reason for believing that he was unable to care for his or others’ safety or that he was preventing the use of any street, sidewalk, or public way.
- In another case, an officer handcuffed a person he was arguing with “to investigate if he was under the influence of alcohol or drugs.” This occurred directly after the person, who had been arguing with the officer about an unrelated issue, questioned why it took multiple officers to deal with him. The officer did not articulate the basis for this investigation, and no clear signs of intoxication could be observed on the video. Although this person was not arrested for 148 PC, another person was arrested for interfering in his detention.

c. Trespassing

The OIG noted one case where officers inappropriately determined that a person was trespassing in a public park. The person had been asked to leave by park personnel and police due to his reportedly “disruptive behavior” at a Summer Night Lights festival. According to the arrest report, he had been talking to a group of children about not trusting the police, stating that “they are here to attack and kill you.” No other disruptive or illegal behavior was identified. The officers asked him to go to a different area of the park and stop talking to the children about these topics, but he did not. The man was then asked to leave the park by officers and program staff due to his disruptive behavior. He did so but later returned and was escorted away again. He then returned a second time and apologized for his previous actions. He asked to be allowed to walk around the park in a different area. He was told he could not and that if he did so, he would be trespassing. He was subsequently arrested for 148 PC after refusing to leave the park voluntarily. While there was no video of the incident, the OIG determined that, based on the evidence provided, the elements of trespassing did not appear to be met.

## *2. Other Insufficient Articulation of Reasonable Suspicion*

The OIG also noted 13 additional cases where officers' arrest reports did not appear to sufficiently articulate a basis for reasonable suspicion to detain an individual. For example:

- While officers were conducting a parole and probation check nearby, a group of juveniles approached their parked vehicle. They began taking pictures and making hand gestures while two of the juveniles sat on or leaned against the vehicle. The officers turned their attention to the juveniles and decided to initiate a vandalism investigation to determine whether the vehicle had sustained damage. As the officers waited for additional units to assist in conducting this investigation, several people were detained, including at least one person who had just entered the courtyard. The officers did not provide a reason for the detention of the juveniles who had not been sitting on the car, other than a concern that they had been flashing gang signs and/or taking photographs of each other doing so. The OIG determined that neither of these activities, on their own, amounted to a violation of the law.
- Two people sitting on the curb were detained because one of them had an open container of alcohol on the sidewalk next to him. The container was located adjacent to the first person (to his right) but not adjacent to the second person. The report did not articulate a basis for believing the second person had committed any violation related to an open container.

## *3. Recommendations*

In its review, the OIG noted that subsequent supervisory reviews of these incidents, including the Watch Commander reviews and use of force evaluations, generally did not identify the above issues. Because the reasonableness of a stop (and subsequent post-stop activities) may impact the reasonableness of a subsequent arrest for 148 PC or use of force, supervisors should explicitly scrutinize the basis for any searches and seizures as part of their review of each incident.

The OIG also recommends that the Department work to ensure that officers properly understand the rights and responsibilities of pedestrians and require officers to more clearly articulate the basis for suspected jaywalking and "ped in the roadway" violations. Additionally, the Department should review its training on drunk-in-public, under-the-influence, and other disorderly conduct offenses to ensure that officers are able to fully articulate the elements of these violations.

### **B. Post-Stop Activities**

The OIG conducted a review of post-stop actions taken by officers and particularly the basis for any decision to handcuff a person, conduct a pat-down (frisk), or complete a full search. These actions often take on particular importance in 148 PC cases as a significant proportion of

arrestees -- nearly a third of the cases reviewed -- were arrested as a result of their reported resistance to actions such as handcuffing or pat-downs. In some cases, the resistance to these actions also resulted in a use of force. For these reasons, the reasonableness of a post-stop action may affect the reasonableness of the subsequent use of force and/or arrest.

The OIG determined that the post-stop activity in approximately 69 percent of the cases appeared reasonable. It should be noted that, in many of these cases, the interaction progressed quickly to an arrest when a person failed or refused to stop in response to direction from officers, including several instances when the person fled almost immediately from the officers. In such cases, the OIG considered the person to be under arrest at the time that the handcuffing, pat-downs, or searches were conducted. As such, these actions were deemed to be appropriate as they were incident to the arrest, as opposed to being part of the initial detention. In the other cases, the officers took these actions prior to making the decision to arrest the person. The determination that these actions appeared reasonable was based on the circumstances articulated in the report, such as when the person was on parole or probation with search conditions; when consent was given to be searched or have property searched; when the person exhibited aggressive or belligerent behavior; or when there were specific facts pointing to the possible presence of a weapon.

In about 31 percent of cases, the OIG was either unable to determine whether the post-stop activity was reasonable or identified potential concerns with those actions.

*1. Limited documentation of post-stop activity*

In approximately 22 percent of cases, the OIG was not able to determine why post-stop actions were taken prior to an arrest or, in some cases, definitively determine whether they were taken at all. (There were a few cases in which there were audible indications that handcuffing, pat-downs, or other searches may have occurred, but these possible actions could not be confirmed through video or associated reports.) The OIG found that while arrest reports generally included written documentation of the basis for a stop, officers did not always document all of the actions taken during a stop, particularly their decision to handcuff and/or pat a person down. As such, in cases with minimal documentation, the OIG was unable to evaluate whether post-stop actions, if any, were reasonable or justified based on the situation.

Although written policy does not specifically require that these actions be documented in the arrest report, Department materials do direct that officers must be able to articulate a reasonable basis for each of these post-stop activities. For example, officers must be able to justify any use of handcuffs during a detention, as this is an action that is generally “associated with a formal arrest.”<sup>36</sup> According to Department training, the use of “handcuffs [...] will not automatically

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<sup>36</sup> “Laws of Arrest,” Learning Domain 15, Basis Course Workbook Series, Student Materials, Version 4.10, California Commission on Peace Officer Standards and Training (POST), June 2017.

convert a legal detention into an illegal arrest. But since employment of these measures tends to suggest an arrest, an officer must carefully articulate why he/she used force or restraints in the particular situation.”<sup>37</sup> An Operations Notice on the topic indicates that “[h]andcuffing a person as a matter of course, habit, or routine is inappropriate” and provides a list of factors that can be used to determine whether handcuffing is reasonable in a given situation.<sup>38</sup> The notice further indicates that “[t]raffic infraction violators (motorists, cyclists, pedestrians), juveniles who commit citable offenses, and others detained for non-violent offenses where an arrest and/or transport is not likely, should generally not be handcuffed unless an officer can clearly articulate a specific reason why the handcuffing was appropriate.”<sup>39</sup>

The use of a pat-down, as well as other searches, should be even more limited and must also be articulable. The law and Department policy indicate that, generally, “no searches are permitted during a detention unless the person gives voluntary consent,” but there are certain circumstances under which a pat-down or other search would be permitted.<sup>40</sup> For a pat-down, officers must be able to articulate specific factors, such as the presence of a bulge or suspicion of a violent crime, to support a reasonable belief that a pat-down of the outer clothing is justified in order “to protect the officer or others from unexpected assault.”<sup>41</sup> The threshold for conducting other searches of a person or property is generally probable cause.

## 2. *Insufficient articulation of the basis for post-stop activity*

The OIG identified specific concerns related to post-stop activities in approximately nine percent of the cases reviewed. In these cases, the circumstances, as articulated by the officer or as shown in the video, did not appear to support the action taken, particularly in cases with very minor violations.<sup>42</sup> For example:

- In the case described above involving the woman who was stopped for crossing the street mid-block after the officers had observed her “looking into properties,” she appeared to have been patted down, but the officers did not document the pat-down (and

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<sup>37</sup> “Distinguishing Between Detentions and Arrests,” Legal Bulletin, Los Angeles Police Department, Volume 19, Issue 1, March 15, 1995.

<sup>38</sup> “Handcuffing Protocols,” Operations Notice No. 2, Los Angeles Police Department, September 22, 2011.

<sup>39</sup> *Ibid.*

<sup>40</sup> “Legal Contacts with the Public,” Training Bulletin, Volume XXXVIII, Issue 1, Los Angeles Police Department, April 2006.

<sup>41</sup> *Ibid.*

<sup>42</sup> In several of these cases, the OIG had already identified concerns with the articulated basis for the original stop as well.

therefore did not articulate a reason) in the arrest report. Given the minor nature of the violation, it was not clear why the pat-down was conducted. (The statement about “looking into properties” was not explained further and would not appear to form the basis for any post-stop action as described.)

- In the case described above involving the detention of a group of juveniles, an officer was heard asking about, and seemingly attempting to obtain, the phone(s) used to take photos of the vehicle. The basis for this was not clear from the video footage or the arrest report. As previously noted, the officers stated that at least some of the juveniles had thrown up gang signs while taking the photographs, and two of them had been sitting or leaning on the car. These actions, however, would not appear to provide a basis for the significant intrusion caused by a warrantless search of a person’s cell phone.<sup>43</sup>

### *3. Recommendations*

The OIG recommends that the Department reinforce its expectation that officers document and clearly articulate the basis for any handcuffing, pat-downs, or searches, as well as other decisions such as directing a person to kneel, in their arrest reports.

Furthermore, the OIG notes that, as of July 2018, officers are required by state law to document whether they took certain actions -- including handcuffing, pat-downs, and searches -- for each stop they make. This is due to the implementation of the Racial and Identity Profiling Act of 2015, also known as AB 953, which requires officers to collect detailed data about the actions taken during stops, as well as the justification for any search and its result. The Department has already implemented the necessary systems and is currently delivering the required training to ensure that this data is collected in accordance with the law. As such, the OIG expects that these developments will improve documentation and articulation on every stop, not just those resulting in arrest.

With respect to handcuffing and pat-downs (including consensual pat-downs) specifically, the OIG recommends that the Department use the data that will be collected as part of AB 953 to review officers’ practices in these areas. As noted earlier in this report, these actions should not be part of a standard operating procedure, particularly in low-level offenses such as pedestrian violations, but rather only when the facts warrant them. The Department should use the forthcoming data to assess how often these activities occur, for what types of violations, and whether there are any apparent systemic disparities in how these practices are implemented. Such analysis would allow the Department to determine whether additional action is needed to ensure officers are complying with LAPD policy and the law.

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<sup>43</sup> *Riley v. California* (2014) 134 S.Ct. 2473.

Finally, as noted in a recent report by the OIG on national best practices, such analysis may also be useful in identifying the potential presence of biased policing or evidence of racially disparate outcomes.<sup>44</sup> That report included a recommendation that the Department “develop, in consultation with the Commission and the OIG, systems and mechanisms for the analysis of stop and search data to identify potential evidence of disparate treatment, implicit or explicit bias, differential enforcement practices, or Fourth Amendment concerns.”<sup>45</sup> The recommendation was adopted by the full Police Commission in May 2017, and its implementation is currently in progress.

### **C. Use of Force**

Approximately 54 percent of the 148 PC cases reviewed by the OIG (66 incidents in total) involved a use of force or canine contact. Two were canine contacts that were reviewed outside the use of force process, and the other 64 cases were investigated as Non-Categorical Use of Force (NCUOF) incidents. Of those, about 22 percent included the use of a TASER. Another 19 percent involved the use of a takedown, and 8 percent involved the use of kicks, punches, or strikes. The remaining cases involved a use of lesser force such as firm grips, joint locks, and other physical force. All of the relevant uses of force were determined by the Department to be within LAPD policy, but there were three cases that resulted in administrative disapproval on tactics for at least one of the officers. In 11 other cases, the chain of command identified concerns or deficiencies in the officers’ performance, which in most cases resulted in remedial training or counseling but did not impact the use of force or tactics findings.

The OIG reviewed each of the related use of force investigations, including any additional documentation about the incident collected by the investigator and the ultimate findings by the chain of command.

Based on the available evidence, the OIG did not identify issues with the force used in about 64 percent of the incidents reviewed. In general, these uses of force were fairly low-level and came in response to clear resistance by the person. In another nine percent (six cases), the OIG was unable to make a determination due to a lack of information or significant conflicts in the evidence.

The OIG noted some concerns with the use of force in about 27 percent of cases, as described below. Here, again, the assessment focused primarily on the facts articulated by the officers in the arrest report, as well as video evidence and other information gathered during the use of force investigation. Accordingly, it is important to note that the identification of a potential issue in

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<sup>44</sup> See, for example, a Stanford University report that recommends agencies review their policies and practices regarding handcuffing and searches. “Strategies for Change,” Social Psychological Answers to Real-World Questions (SPARQ), June 2016, pages 6, 55-56.

<sup>45</sup> “Review of National Best Practices,” Office of the Inspector General, May 2, 2017.

these cases does not necessarily mean that the use of force was objectively unreasonable or that it should have been found out of policy.

*1. Use of the TASER as a tool for compliance*

The Department policy in effect at the time these incidents took place stated:

The TASER may be used on suspects who are violent, or who pose an immediate threat to themselves or others, when an officer reasonably believes:

- Attempts to subdue the suspect with other tactics have been, or will likely be, ineffective in the situation; or
- It will be unsafe for officers to approach within contact range of the suspect.<sup>46</sup>

As such, the device is not approved for use as a tool for mere pain compliance in instances where additional facts authorizing its use have not been articulated. The OIG noted seven cases, however, where officers appeared to use the TASER against a non-threatening person to gain the person's compliance or overcome resistance. This issue was noted in about half of the cases where a TASER was used. For example:

- A person was subjected to the use of a TASER as he locked his hands together in front of his body. The officers were attempting to take him into custody after forcibly removing him from his tent; he had previously been informed of a street cleaning event but had refused to take the tent down over a prolonged period of time. Although the arrest report noted that the person had not been searched, and the officers did not know whether he had anything in his hands, neither the video nor the report indicated that he was displaying any threatening or potentially violent behavior. The arrest report also did not articulate any reason for officers to think he had anything dangerous in his hands, other than that he had them locked in front of his body. Furthermore, he was shirtless, wearing only a pair of boxer shorts, and under the control of the officers taking him into custody at the time the TASER was used.
- Officers used the TASER on a person who had walked into the street against a flashing-hand traffic signal and made a rude gesture at a passing motorcade. The officers attempted to detain him, but he refused to comply with their directions. At the time the TASER was activated, he had pulled away from the officers' attempts to physically detain him and was walking away. While the use of force was not fully captured on video (audio only), the arrest report did not articulate a specific threat or possibility of violence in this situation. Rather, the report stated that the officers deployed the TASER because of "prior incidents where he was combative with officers" and because of his

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<sup>46</sup> "Electronic Control Device – TASER," Use of Force-Tactics Directive No 4.4, Los Angeles Police Department, December 2015. As discussed below, the Department issued a revised directive in July 2018.

“demeanor and stature” but without providing sufficient details about how these factors created a threat to the officers at the time the force was used.

In January of this year, the Department distributed a notice clarifying the standards for the use of the TASER and other less-lethal force options. According to the notice, “Less-lethal force options shall not be used for a suspect or subject who is passively resisting or merely failing to comply with commands. Verbal threats of violence or mere non-compliance do not alone justify the use of Less-Lethal force.”<sup>47</sup>

The Department has also been working to further clarify and strengthen this standard by reinforcing it in training for command staff and others and by developing a revised TASER directive. The new directive, released in July 2018, states that the TASER may be a reasonable force option “when the suspect poses an immediate threat to the safety of officers or others.” It also states that use of the device is only permissible when “[a]n officer reasonably believes the suspect or subject is violently resisting arrest or poses an immediate threat of violence or physical harm.”<sup>48</sup> The Department has indicated that this directive should improve adherence to the relevant standard. The OIG supports these efforts and recommends the Department continue to monitor this issue to ensure that officers are not using the TASER as a compliance tool.

## *2. Potentially premature or unnecessary use of force*

The OIG noted 10 cases where a use of force appeared potentially premature or unnecessary given the person’s actions, or where the incident may have benefited from additional efforts at de-escalation prior to the use of force. For example:

- An officer asked a group of people to take down their tents, which were blocking the sidewalk. One person began packing his belongings but, when he was asked for his identification, he stated he did not have any and did not have to provide his name. The officer warned him that if he did not provide his name, he would take him to jail (according to the report, for the purpose of identifying him to issue a citation). The man continued packing up his property and went to move his bike. The officer, who had been joined by two additional officers, approached him and told him to put his hands behind his head. The man appeared confused and briefly protested, but he was quickly taken down to the ground by the officers. Although the arrest report indicated that the arrestee had attempted to walk away and then resisted, a review of the video did not corroborate that the arrestee was trying to walk away, and any resistance was only momentary prior to the use of the takedown.
- Officers responded to an Assault with a Deadly Weapon (ADW) call and approached a person they believed to be the possible victim. According to the report, the person

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<sup>47</sup> “Use of Less-Lethal Force – Clarification,” Office of Administrative Services Notice 1.3, January 22, 2018.

<sup>48</sup> “Electronic Control Device – TASER,” Use of Force-Tactics Directive No 4.5, Los Angeles Police Department, July 2018.

became agitated with the officers' questioning and began cursing at them, pacing, and saying he did not want anything to do with the officers. As the officers began to leave, the man approached the officers with clenched fists and, according to the report, said, "What the [expletive] you gonna do?" One of the officers believed the man was going to start a physical fight and directed him to stop, turn around, and put his hands behind his back. The man walked away from the officers and complied with the direction. The officer then ordered the man to go down to his knees, but he did not immediately comply.<sup>49</sup> At that point, the officers reported that they attempted to push him to his knees to take him into custody and, when he resisted, they conducted a takedown. Given the fact that the arrestee had generally been complying with the officers' directions, it was not clear why the takedown was conducted or why more attempts at de-escalation did not occur.

In October 2016, the Department published a directive on "Tactical De-Escalation Techniques" that states that officers "should consider tactics and techniques that may persuade the suspect to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation safely."<sup>50</sup> The document states that officers should attempt to determine whether a suspect's failure to comply with directions is due to cognitive or other issues that lead to an inability to comprehend the situation, requiring a different approach, and advises officers to use communication skills such as defusing, persuasion, and empathy. The Department has also been working to incorporate language about de-escalation into its use of force directives. For example, the new TASER directive, referenced in the previous section, states that "[w]henver practicable, officers shall exercise de-escalation techniques to resolve potential use of force incidents and seek voluntary compliance from suspects/subjects."<sup>51</sup>

These directives had not yet been published at the time some of the cases reviewed took place, but the underlying principles and techniques have long been a part of the Department's training and values. While there is no way to be sure, based on the OIG's review, it appears that de-escalation techniques might have been effective in avoiding or minimizing the amount of force used in some cases or in gaining voluntary compliance.

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<sup>49</sup> According to Department training, a high-risk kneeling search is used in situations where "the involved officer reasonably believes that the suspect poses a substantial risk of serious injury to the officer or the public." ("Personal Searches – Part II, High-Risk Kneeling Search," Training Bulletin, Volume XXXVI, Issue 3, Los Angeles Police Department, November 2004.)

<sup>50</sup> "Tactical De-Escalation Techniques," Use of Force-Tactics Directive No. 16, Los Angeles Police Department, October 2016.

<sup>51</sup> *Id.*

### *3. Review of Tactics*

The OIG also identified tactical concerns in a small number of cases reviewed. These included, for example, officers separating from one another while pursuing a suspect on foot, contacting a person while still seated inside the police vehicle, and the use of what is often referred to as “tactical language” (i.e., profanity designed to add emphasis and gain a person’s compliance). However, with the exception of some issues related to de-escalation, these tactical issues were generally identified and addressed by the chain of command as part of the use of force review.

### *4. Recommendations*

As noted above, the Department is currently working to clarify and strengthen its training and standards relating to the use of the TASER. The OIG has been involved in this process and recommends that the Department continue to monitor the use of the TASER to ensure that it is not being used solely for compliance purposes and that its use is consistent with relevant policies.

The Department has also been working to expand and reinforce training and expectations related to tactical de-escalation, and it has codified the concept into a number of policies and directives. The OIG recommends that Watch Commanders, in reviewing arrests and uses of force related to 148 PC, ensure they are explicitly evaluating the officers’ efforts to de-escalate the situation, where feasible.

#### **D. Basis for the Arrest**

In reviewing the ultimate arrest of persons for 148 PC, the OIG considered, based on the available evidence: 1) whether the action or direction of the officers that was being resisted by the arrestee appeared lawful, and 2) the extent to which the person willfully resisted, delayed, or obstructed the officers in the performance of their duties.

Overall, the OIG found that, based on the available evidence, about 80 percent of the arrests reviewed appeared to meet the basic elements of a 148 PC violation. This included cases involving, for example, arrestees who fled -- or attempted to flee -- when officers went to detain them for a suspected violation, people who repeatedly failed to comply with directions, or others who physically resisted the officers’ lawful attempts to handcuff or pat them down.

In the remaining cases, the OIG noted at least some concerns about the basis for the arrest based on the materials reviewed. In about eight percent of cases, this concern was due to the OIG’s determination that the person’s initial resistance leading to the arrest was to an officer’s action -- such as an attempted detention, handcuffing, or pat-down -- that was questionable, unreasonably prolonged, or not adequately articulated in the arrest report. Because the 148 PC violation requires that an officer’s actions be lawful, it is important that the arrest report clearly and accurately articulate a reasonable basis for the actions leading up to a 148 PC arrest.

In about 12 percent of cases, the person's actions did not appear to constitute willful resistance, delaying, or obstruction, as required by the Penal Code. These included, for example, a case where a person repeatedly yelled "Momma" upon being detained by police. (The officers believed that he was yelling to other suspects in the residence, which resulted in their being alerted to the presence of police and was followed by them leaving the location through the rear.) In other cases, the person was complying at the time of the arrest but had been slow to do so. Although there is no established "bright-line" rule regarding the length of time people are to be afforded when complying with an officer's direction, courts have found that a failure to respond "with alacrity" is not criminal and that a person has the right to verbally dispute or challenge an officer's actions.<sup>52</sup>

As part of this group, the OIG also identified four cases where officers arrested a person for 148 PC for refusing to provide their identification or name during an investigation of a suspected infraction. While Penal Code section 853.5 authorizes taking a person into custody when they refuse to provide satisfactory identification upon being arrested for an infraction or misdemeanor, this does not constitute a violation under 148 PC. In another case, a person was arrested the day after the purported 148 PC violation -- walking away from a detention when the officers became involved in another incident. At that point, the 148 PC violation was considered a "stale misdemeanor" and could not form the basis for a custodial arrest. The person was subsequently released.

### 1. Recommendations

As detailed on page 14, the OIG's review revealed that no 148 PC charges were ultimately filed by a prosecutor for nearly two-thirds of the adults arrested in our sample.<sup>53</sup> While 29 of those arrestees were referred for parole or probation violations, prosecution on other charges, or another unrelated reason, the remainder of the cases were not filed in the interest of justice or for other arrest-related reasons. The OIG found that, in about 25 percent of the cases where the City Attorney's Office declined to file charges, the record contained a substantive analysis of relevant facts and the officers' actions. According to the representatives from that office, this analysis is transmitted back to the station upon declination. The OIG recommends that, to the extent it has

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<sup>52</sup> See, for example, *People v. Quiroga* (1993) 16 Cal.App.4th 961. "[I]t surely cannot be supposed that Penal Code section 148 criminalizes a person's failure to respond with alacrity to police orders. Moreover, appellant possessed the right under the First Amendment to dispute Officer Stefani's actions. '[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.' (*Houston v. Hill* (1987) 482 U.S. 451, 461 [citations omitted].) Indeed, '[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.' (*Id.* at pp. 462-463 [citation omitted].) While the police may resent having abusive language 'directed at them, they may not exercise the awesome power at their disposal to punish individuals for conduct that is not merely lawful, but protected by the First Amendment.' (*Duran v. City of Douglas, Ariz.* (9th Cir. 1990) 904 F.2d 1372, 1378.)"

<sup>53</sup> This does not include the cases involving juveniles, those whose cases could not be found, or those that were listed as pending in the City Attorney's database.

not already done so, the Department develop a process to review this information and, where appropriate, address the issues noted with the officers and use them to inform future training.

Although this did not impact the assessment of the reasonableness of the arrest, the OIG also noted a sizeable group of cases -- about 26 percent -- where the resistance offered by the person was relatively minor or, in some instances, appeared to be related to a person's mental health disability. The majority of these stemmed from observed or suspected violations that were also minor in nature. Although the arrestees' actions in these instances may indeed have amounted to violations of 148 PC, the City Attorney's Office declined to file charges in some of these cases, generally stating that this was in the interest of justice.

The OIG recommends that the Department work with the City Attorney's Office to train officers on the filing guidelines for 148 PC to help ensure that the cases they submit meet these standards. This recommendation is based on information provided by the Department indicating that similar trainings conducted in the past have helped to reduce the overall numbers of 148 PC arrests while at the same time increasing the filing rate.

#### **E. Review of Procedural Justice Principles**

While one focus of the OIG's review of arrests for 148 PC was officers' adherence to Department policy and Fourth Amendment principles, the OIG also examined the incidents through the lens of procedural justice. When used in this context, the term procedural justice is based on the following premise: how members of the community are treated during a police encounter will have a greater impact on their perception of police legitimacy than the outcome of that encounter. Because of the emerging significance of procedural justice as a national best practice, the Commission recently took the step of directing the Department to explicitly incorporate its principles into all aspects of LAPD processes and practices.

As described by researchers, there are four components to procedural justice:

1. treating people with dignity and respect;
2. giving individuals a voice, or opportunity to explain their perspective, during encounters;
3. being neutral and transparent in decision-making, indicating that rules are applied consistently and fairly; and
4. conveying trustworthy or well-intentioned motives, in that the person can understand why the action is being taken.

Research has found that “[p]eople are more likely to obey the law when they believe that those who are enforcing it have the right -- the legitimate authority -- to tell them what to do.”<sup>54</sup> This means that fostering a sense of procedural justice may also help to gain cooperation during difficult encounters, de-escalate incidents, and reduce the need to use force. Adhering to

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<sup>54</sup> “Final Report of the President’s Task Force on 21st Century Policing,” President’s Task Force on 21st Century Policing, 2015, page 5.

procedural justice principles may additionally help to reduce the incidence of complaints against officers.

Because the question of compliance plays a central role in 148 PC arrests, the OIG took note of the dynamics in each interaction and, in particular, the officers' approach to detaining and investigating the individuals involved in the incident. In doing so, the OIG noted many cases in which officers appropriately employed procedural justice principles throughout the encounter. For example:

- Officers conducted a traffic stop on a vehicle for multiple moving violations. When approaching the vehicle, the officers noted that the front windows were tinted, obstructing the view of the driver (another Vehicle Code violation). The windows were mostly rolled up, leaving approximately two inches open. When asked multiple times to roll down the window, the driver of the vehicle refused several times before doing so, resulting in the officers being delayed in conducting the investigation and having to call for backup. The driver further refused to provide his driver's license, as required by state law, repeatedly asserting his right to a lawyer and to not provide his license or otherwise comply. During the stop, the officers also noted the smell of marijuana coming from inside the car. The OIG found that, over a period of several minutes, the officers showed a great deal of patience in respectfully and calmly explaining their decisions and requests to the driver. Although the person was ultimately arrested for 148 PC, this was only after officers provided him with multiple opportunities to comply.
- In another case, officers conducted a traffic stop for a vehicle with expired registration, along with other equipment violations, and determined that they would need to impound the vehicle due to the registration having been expired for more than six months. Upon being informed of this, the driver began to protest and requested that the officers call a supervisor. Two different supervisors responded and both attempted to explain the situation in order to persuade him to comply with the officers' requests. Although the person ultimately signed the citation, he continued to refuse to exit the car. After 47 minutes had elapsed, the officers explained that they would have to physically remove him from the vehicle, at which point he exited willingly. He was then arrested for 148 PC. As in the prior example, the OIG found that the officers effectively worked to de-escalate the situation and explain their actions to the driver, heard and addressed his concerns, and treated him with respect throughout the incident.

The OIG also noted several instances -- about a third of cases -- in which procedural justice on the part of the officers could have been improved. In at least some of those cases, the OIG found that the officers' approach and demeanor seemingly contributed to the escalation of an incident from a minor stop to a more serious event. Here are some examples:

- Treating people with dignity and respect: The OIG noted cases where officers repeatedly used profanity or were otherwise disrespectful to people being detained by belittling their statements, telling them to "shut up" or "stop talking," or calling them names. In some

cases, the profanity was in the form of what is referred to as “tactical language,” i.e., language that is designed to emphasize and add intensity to commands during tense situations. The OIG found, however, that the use of profanity in these instances often appeared unnecessary and rude, and, rather than resolving an incident, such language often appeared to escalate a minor incident by provoking frustration and protest on the part of the person being detained.

- Giving individuals a voice: The OIG noted a small number of cases where a person protested the perceived unfairness of officers’ actions, or made other complaints or requests that appeared to be ignored. The OIG noted a case where, for example, a person stated that it hurt to have his hands stretched behind his back due to a recent surgery, and the officer said that this did not change anything and continued to place the person’s hands behind his back in order to handcuff him. The person and his family members continued to protest, and the incident ultimately escalated into a use of force. It is certainly the case that officers may not always be able to address all of a person’s requests or concerns, particularly if they are unreasonable under the circumstances. Officers can, however, make an effort to ensure that the person feels listened to and, where feasible, communicate why the request cannot be accommodated.
- Neutrality and transparency: Maintaining a professional demeanor and avoiding the use of profanity or other disrespectful behavior is an important part of maintaining the appearance of neutrality. Another aspect, however, is treating members of the community fairly and explaining the legal process that is at issue when appropriate.

The OIG observed that people involved in a number of the cases protested or questioned their detention or subsequent actions by the officers, often asking why it was happening or why they were being directed to do something. This occurred, for example, with a person who asked why he was being asked to face the wall with his hands behind his back when he had not done anything and was not on parole or probation. In another case, after a person was told he would be arrested, he and a companion repeatedly asked why he was being arrested for sitting/sleeping on the sidewalk when others who were engaging in the same behavior were not.

While officers generally took the time to explain to their actions, this did not always occur, which appeared to cause additional frustration and agitation on the part of the subject of the interaction. In other cases, the explanation from the officers was delayed or limited. It is important to note that officers may not always have the opportunity to provide an immediate explanation, particularly under exigent circumstances. In some of these cases, however, it was not clear to the OIG why the officers delayed or did not provide an explanation given the relatively low-level nature of the incident.

- Conveying trustworthy motives: The OIG identified cases where officers’ explanations or actions may have been perceived as threatening, retaliatory, or focused on a person’s disrespectful attitude or statements. In one case, for example, an officer informed a

person whom he had stopped for a minor parking violation -- and who was protesting being ordered out of the vehicle -- that he might tow the car because of the person's attitude. Such actions on the part of an officer can lead to the undesired effect of escalating, rather than de-escalating, an encounter and negatively impacting the appearance that the officer is treating the person fairly. In most cases, it is appropriate and desirable for officers to explain the potential consequences of failing to comply with a lawful direction. Officers must also be aware, however, that the manner in which they explain those consequences may be interpreted by the person as threatening or retaliatory and, therefore, based on an improper justification.

As referenced earlier, the Commission adopted a series of recommendations in May 2017 related to procedural justice pursuant to a review of national best practices conducted by the OIG.<sup>55</sup> As part of that process, the Department has been directed to, among other things, incorporate procedural justice into the evaluation of officers' performance.<sup>56</sup> The Department is currently developing a working group, in consultation with the OIG, which will work to address this and related recommendations. Although already incorporated into some trainings, the Department is also working to expand its emphasis on procedural justice into additional courses, including the second phase of its Police Sciences and Leadership course, which has just completed its pilot stage.

One of the first steps that can be taken to expand the implementation of this recommendation beyond the training environment is to begin reviewing officers' use of procedural justice concepts as part of the Watch Commander's review of 148 PC arrests. To facilitate this review, the OIG recommends that Watch Commanders be required to watch relevant video from the arrest, and that they conduct a structured assessment of officers' adherence to the four procedural justice principles listed above.

#### **F. Focus on Homeless Enforcement**

At the request of the Commission, the OIG specifically identified and paid special attention to those arrests involving a person experiencing homelessness. As a result, it was determined that approximately 27 percent of the 132 people arrested in the OIG's study sample were experiencing homelessness at the time of their arrest. They were involved in about 29 percent of the 123 unique incidents reviewed by the OIG. The table below provides the demographic statistics for this subsection of arrestees.

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<sup>55</sup> This recommendation was adopted after the OIG's study period, and is therefore not specifically applicable to the cases in this report.

<sup>56</sup> "Review of National Best Practices," Office of the Inspector General, May 2, 2017.

<b>148 PC Arrestees by Race and Gender<sup>57</sup></b>						
Persons Experiencing Homelessness						
<b>Race/ Ethnicity</b>	<b>Female</b>		<b>Male</b>		<b>Total by Race</b>	
	<b>#</b>	<b>% of Total</b>	<b>#</b>	<b>% of Total</b>	<b>#</b>	<b>%</b>
Black	6	17%	15	42%	21	58%
Hispanic	1	3%	8	22%	9	25%
Other	2	6%	1	3%	3	8%
White	0	-	3	8%	3	8%
Total by Gender	<b>9</b>	<b>25%</b>	<b>27</b>	<b>75%</b>	<b>36</b>	<b>100%</b>

In terms of demographics, around a quarter of the arrestees in this category were female, a proportion similar to that of all arrestees included in the OIG sample (21 percent). In comparison to other 148 PC arrestees in the OIG's sample, arrestees experiencing homelessness were more likely to be Black (58 percent versus 49 percent), or "other" race/ethnicity (8 percent versus 2 percent), and much less likely to be Hispanic (25 percent versus 42 percent).

When comparing the type and reason for the initial stop of arrestees in this subcategory to those in the full OIG sample, many of the reasons and proportions were similar. One area that differed significantly was the proportion of stops resulting from homeless enforcement actions which, as might be expected, was much higher in this subcategory. In the OIG's sample, stops based on homeless enforcement represented seven percent of all the stops, while within the homelessness subcategory, this was the reason for the stop in 25 percent of the cases. These included cleanups of homeless encampments and enforcement for quality-of-life violations, such as sitting or sleeping on the sidewalk and camping on the beach. Additionally, the breakdown between pedestrian and motor vehicle stops was also different. For the overall review sample, approximately 64 percent were pedestrian stops and 28 percent were vehicle stops. Within the homelessness subcategory, however, pedestrian stops made up 78 percent and vehicle stops represented only 14 percent of all stops.

Another area where there were significant differences between the overall sample and this subcategory was in the use of force. Incidents involving persons experiencing homelessness were significantly more likely to involve a use of force than those involving non-homeless persons -- approximately 69 percent versus 47 percent. Persons experiencing homelessness were also more likely to have a TASER used on them during a 148 PC arrest -- 19 percent versus 8 percent.

### *1. OIG Review*

In reviewing arrests of persons experiencing homelessness, the OIG identified issues similar to those identified in the overall group. Although the majority of detentions in this subcategory appeared reasonable due to observed quality-of-life or other violations, there were questions about the extent to which -- or the reason why -- post-stop activity was conducted (handcuffing,

<sup>57</sup> Figures may not add up to the corresponding totals due to rounding.

pat-downs, etc.) in about 28 percent of the cases. The OIG also identified concerns related to the use of force in about a third of cases where force was used against individuals experiencing homelessness, and procedural justice issues were identified in about 42 percent of cases.

The OIG's review illuminated a few issues that appeared particularly pronounced in some 148 PC arrests involving the homeless population. The OIG noted indications of impairment, or possibly a mental health disability, in approximately a third of the cases. In a few of these cases, this factor appeared to contribute to the person's ability or inability to understand the situation or to comply with directions from officers.

## 2. *Recommendations*

In June 2016, the Police Commission approved a new policy relating to contacts with persons experiencing homelessness, which included the following guidance:

Department personnel are also reminded that requests for identification from a person who is or appears to be experiencing homelessness may sometimes be perceived by that individual to be harassing, intimidating, or threatening.<sup>58</sup> In addition, some individuals experiencing homelessness may be suffering from mental illness or other medical conditions that can limit their ability to communicate effectively with Department personnel. As such, Department personnel should take special consideration of the circumstances and always be guided by compassion and empathy in all of their interactions.<sup>59</sup>

The Department has indicated its intention to take homeless enforcement action only "in more aggravated circumstances or as a matter of last resort."<sup>60</sup> It also continues to expand the number of officers who have attended its week-long Mental Health Intervention Training (MHIT), with the goal of eventually providing it to all patrol officers.<sup>61</sup>

The OIG recommends that Watch Commanders give heightened scrutiny to 148 PC arrests of persons experiencing homelessness, particularly those stemming solely from quality-of-life

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<sup>58</sup> The OIG noted a small number of cases where a 148 PC incident escalated due to the detainee's refusal to provide correct identification when asked.

<sup>59</sup> "Policy Regarding Police Contacts with Persons Experiencing Homelessness – Established," Special Order No. 13, Los Angeles Police Department, June 22, 2016.

<sup>60</sup> "The Los Angeles Police Department's 2017 Year-End Report on Homelessness," Los Angeles Police Department, approved by the Board of Police Commissioners on March 6, 2018.

<sup>61</sup> "The Los Angeles Police Department's 2018 First Quarter Report on Homelessness," Los Angeles Police Department, approved by the Board of Police Commissioners on May 22, 2018.

violations, to determine whether they are in compliance with Department policies and directives on homelessness and de-escalation.

The OIG also noted in the Department's most recent published report on homelessness that the number of 148 PC arrests of persons experiencing homelessness had risen by 59 percent.<sup>62</sup> The OIG recommends that the Department further examine 148 PC arrests of persons experiencing homelessness in order to identify the factors contributing to this rise. This should include, but not be limited to, examining the underlying offense, the rate of force used (particularly the use of the TASER), mental health status, and the use of tactical de-escalation techniques. Once these factors have been identified, the Department can then develop appropriate response strategies if needed.

### **G. Identification of Next Steps**

As described in this report, the Department already has multiple mechanisms in place for the review of arrests for 148 PC, including the Watch Commander pre-booking evaluation and the investigation of any use of force that occurs during the incident. The Department also conducts regular audits of the Watch Commander evaluation process to ensure that evaluation procedures are being followed and that the written evaluations accurately represent the incident. The objectives of past audits have varied slightly over the years, but they focused primarily on the consistency of the Watch Commander's signature and documentation on the booking approval, arrest report, detention log, and daily report. Additionally, the audits verified that the daily report included an entry for each of these arrests, and that the entry "addressed policy, tactics, and training." The OIG recommends that the Department continue to conduct audits and/or inspections of 148 PC arrests, and that these be expanded to include an assessment of the basis for any detention, handcuffing, and search related to arrests conducted by the officers during the incident.

The OIG also found that 148 PC arrests touch on a number of other issues that have recently been the focus of attention by the Commission and the Department, including procedural justice, de-escalation, encounters with persons experiencing homelessness, and the use of TASERs. The Department has recently made efforts to clarify policy and improve training in each of these areas, and to use data analysis to illuminate practices and identify possible areas for improvement. These efforts include, for example, the development of updated policies and standards relating to homelessness, less-lethal weapons, and the use of tactical de-escalation; expanded training on mental health, implicit bias, and procedural justice; and regular reporting of statistics relating to homeless enforcement and use of force.

Following the completion of its review, the OIG met with Department representatives on multiple occasions to share its findings, discuss specific examples and concerns, and develop and refine possible next steps. Although its analysis of some cases differs from that of the OIG, the Department was receptive to the findings of the report as well as the proposed recommendations,

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<sup>62</sup> *Id.*

listed in the next section. Overall, the OIG has found the Department to be very open and proactive in working to identify possible solutions. As such, the OIG believes that the implementation of these recommendations will be effective in addressing the concerns identified in this report.

## **VI. RECOMMENDATIONS**

Based on the findings set forth in this report, the OIG recommends the Commission direct the Department to do the following:

1. Review training on pedestrian violations, drunk-in-public/under-the-influence codes, and trespassing, to ensure that officers understand, and are able to fully articulate, the elements of these violations.
2. Require sufficient documentation and articulation in arrest reports regarding the basis for detentions, handcuffing, pat-downs, searches, and other relevant law enforcement decisions.
3. Train Watch Commanders about the elements of 148 PC and what they should be looking for in their reviews. This should include an evaluation not only of whether the elements of 148 PC are satisfied, but also an evaluation of the basis for any searches and seizures leading up to the arrest, and any efforts to de-escalate the situation, where feasible. Watch Commanders should review any relevant videos in addition to the other sources of information available to them. Additionally, Watch Commanders should be expected to adhere to applicable policy and take appropriate actions when they identify issues with 148 PC arrests. These actions may range from informal counseling up to the initiation of a personnel complaint, where such action is warranted.
4. Include, as part of the Watch Commander review of 148 PC cases, an assessment of whether officers followed procedural justice (procedural fairness) principles to the extent possible. Specifically, the review should consider: a) whether each person involved was treated with dignity and respect; b) whether those people were given the opportunity to be heard during the incident; c) whether the officers appeared neutral and fair in their decision-making; and d) whether the officers were able to articulate or display trustworthy motives for their actions.
5. Conduct data analysis of officers' actions to see whether there are concerning trends in post-stop actions such as handcuffing, pat-down/frisks, or consent searches. Such analysis should assess how often these activities occur, for what types of violations, and whether there are any apparent systemic disparities in when or where these practices are implemented.

6. Further examine TASER usage to ensure that officers are not using the TASER as a compliance tool.
7. Further examine 148 PC arrests of persons experiencing homelessness, including examining the underlying offense, the rate of force used (particularly the use of the TASER), the mental health status of arrestees, and the use of tactical de-escalation techniques.
8. Work with the City Attorney's Office to train officers on the filing guidelines for 148 PC to help ensure that the cases they submit meet these standards. Additionally, to the extent it has not already done so, the Department should develop a process to ensure that any feedback provided by the City Attorney's Office in individual cases is reviewed and, where appropriate, discussed with the involved officers and used to inform future training.
9. Conduct inspections or audits related to these key areas: a) stop justification; b) documentation and articulation of the basis for handcuffing, searches, and arrest; and c) quality of Watch Commander reviews.

# **APPENDIX A**

## **Methods of Review**

The information reviewed by the OIG for each case included the written arrest report, which included the officers' articulation of their decisions, as well as any available video. The OIG also reviewed statements or evidence gathered during the arrest process or during associated use of force and complaint investigations, as well as the ultimate disposition of each arrest.

In reviewing each case, the OIG examined whether there appeared to be a reasonable basis -- as set forth by Fourth Amendment case law and Department policy -- for the initial detention that led to the arrest for 148 PC, as well as any subsequent post-stop actions such as handcuffing, frisks, or full searches. These assessments were based primarily on the observations and factors articulated by the officers in the arrest report, but the OIG also sought to verify or confirm these factors through a review of associated video or other material, where possible.

The OIG also assessed, to the extent possible, based on available information, whether each use of force was consistent with Department policies and standards. The OIG then looked at whether the ultimate arrest for 148 PC appeared to be appropriate based on the actions -- as known to the OIG -- of the officers and the person(s) arrested.

Finally, the OIG considered each incident from a general policy perspective. As noted in the introduction, this review was designed to be primarily qualitative, looking not only at each review factor in isolation, but at the dynamics of the entire incident as a whole. As such, the OIG also considered such factors as the officers' use of de-escalation and procedural justice (also known as procedural fairness) principles, and to see whether these aspects of the incident could be improved. In discussing these issues, it is important to note that the Department's "tactical de-escalation" standard was not in place during the time of some of the incidents, and that procedural justice is not specifically codified in the Department's policies or procedures. Nonetheless, these general concepts have long been part of the Department's training standards and values. They also provide a useful lens for reviewing encounters that result in an arrest for 148 PC for the purpose of identifying areas for improvement.

## **Video Coverage**

The OIG found that, although selected areas/divisions had been equipped with some type of camera system -- whether in-car, body-worn, or both -- not all of the incidents were fully captured on video. This occurred for a variety of reasons, such as the cameras not being activated, a late activation that missed some of the events, camera positioning issues, or audio issues. In such cases, the OIG could not directly observe what occurred during the incident or fully confirm the officers' account. In the absence of clear, relevant video or audio coverage, the review relied primarily upon those facts and observations articulated by the arresting officers and, where available, other accounts of the incident gathered as part of an associated investigation.

In all, approximately 58 percent of incidents were fully or partially captured on video and audio. In most of these instances, the OIG was able to verify some of what occurred, but it was not always possible to review all aspects of the incident. An additional 20 percent captured all or most of the events on audio but not on video, due to positioning issues. In 22 percent of cases, the incident was not captured on either video or audio.

# **APPENDIX B**

## **Review of the Department's Fourth Amendment Training**

A primary goal of this report was to review officers' implementation and understanding of Fourth Amendment principles. In order to determine the foundation officers have for making these decisions, the OIG conducted a review of the Department's core trainings on the Fourth Amendment, both at the Academy and in-service levels, that have been provided since January 2014.

LAPD officers receive training in Fourth Amendment topics throughout their careers. These topics include the following concepts:

- Laws of arrest
- Consensual encounters, reasonable suspicion, and probable cause
- Stops, detentions, and arrests
- Frisks/pat-downs and all post-stop searches
- Parole and probation checks (for the purposes of stops and searches)

To conduct its review, the OIG examined all materials, including videos, for all trainings focusing on these issues. OIG staff also attended a number of training sessions provided to officers of different ranks, including recruits and Field Training Officers. Generally, the OIG found that this training provided accurate and relevant information to officers. At the Academy level, recruit officers learned the basics through a combination of classroom lecture and scenario-based learning. For in-service officers, most of this training was conducted in 2015 through a series of Roll Call Trainings and two Department-wide training programs. Additionally, the Department makes numerous reference resources on these topics available to officers on its internal website.<sup>63</sup>

### *Academy Training*

In the Academy, approximately ten sessions totaling 25 hours of training focus on the following Fourth Amendment-related issues: Consensual Encounters, Detentions, Arrests, Interrogations, and Search and Seizure (including with and without warrants, vehicles, etc.). The OIG reviewed the training materials for these sessions and attended most of them.<sup>64</sup> These training sessions combined classroom lecture and scenario-based learning. The vehicle search sessions also included a practical application where recruit officers completed different scenarios with the instructors as role players. The OIG found that these trainings covered the basic elements of the Fourth Amendment and made effective use of examples and scenarios for recruit officers to work through.

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<sup>63</sup> These resources include training and legal bulletins, legal update videos, case law summaries, etc.

<sup>64</sup> The OIG did not attend the session related to Interrogations, as this was not a focus of this report.

### *In-Service Training*

The training in Fourth Amendment issues for in-service officers is much more diffuse than in the Academy setting, as these issues are infused into a number of different trainings. For this report, the OIG reviewed the training provided to patrol, gang, and RESET<sup>65</sup> officers assigned to all 21 geographic Areas, as well as officers assigned to the Department's Gang and Narcotics Division and Metropolitan Division's crime suppression details (Platoons A, B, C, and G). The OIG concentrated this review on those trainings that dedicated a substantial portion of the training to Fourth Amendment topics. The OIG determined that most of this target training was delivered through a series of Roll Call Training videos and two Department-wide training programs. Additionally, the OIG learned that some divisions reinforced these trainings by displaying visual aids (i.e., posters) in the stations and distributing cards for officers to carry with them which contained the key elements of these concepts.

In 2015, the Department distributed three Roll Call Training videos on the following topics: Consensual Encounters, Reasonable Suspicion, and Probable Cause. Each of these videos reviewed the key elements of one of the topics and provided examples or scenarios, and some included a short quiz at the end. All areas and divisions reported providing these trainings to their personnel during this period. Other training videos and materials were also available (and delivered at some areas/divisions) during this period on the following Fourth Amendment topics: pat-down searches, cell phone searches, protective sweeps, field show-ups, vehicle stops/searches, pedestrian stops, legal contacts with the public, search warrants, parole/probation procedures, etc. Also starting in 2015, all LAPD officers began attending two Department-wide training programs; one was the Use of Force Update, and the other was titled "A National Discussion: Public Trust & the Preservation of Life." Both of these programs discussed, among other topics, consensual encounters, reasonable suspicion, detentions, probable cause, and search and seizure.<sup>66</sup>

In addition to these Department-wide training programs, several specialized training programs delivered on an ongoing basis also devote time to Fourth Amendment issues. For example, the Mental Health Intervention Training (MHIT), which is required training for RESET officers (other officers also attend), provides instruction on effective ways to relate to individuals with mental illness. Another example is the Police Sciences and Leadership program (PSL I), which is attended by new officers who are about to finish their probation.<sup>67</sup> Several recurring in-service courses also include material on the Fourth Amendment: Arrest & Control Tactics, Force Option

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<sup>65</sup> The Resources Enhancement Services Enforcement Team (RESET) is responsible for responding to calls for service within the boundaries of the RESET area (Skid Row), providing uniformed foot beats, conducting homeless outreach and code enforcement, and providing security for City sanitation personnel. (The Los Angeles Police Department's 2017 Year-End Report on Homelessness, dated March 6, 2018.)

<sup>66</sup> For more information on the Use of Force Update, please see the OIG's "Comparative Review of Selected Agency Policies, Investigations, and Training: OIG Final Report," dated October 6, 2016. For more on the Public Trust & Preservation of Life training, please see the OIG's "Review of National Best Practices," dated May 2, 2017.

<sup>67</sup> PSL I also includes the MHIT training.

Simulator, Foot Pursuits, Defensive Tactics, Electronic Weapons (i.e., TASER), Officer Safety/Field Tactics (LETAC), Search Warrants, and both the Supervisor and Watch Commander schools. Finally, the specific training courses for Field Training Officers and officers entering Metropolitan Division, among others, also provide instruction on Fourth Amendment topics.