

BART Police Use of Force Annual Report

2020

This report contains data and analysis of reported use of force incidents compiled by the Operations Bureau.

Report Content

Use of Force Policy 300.9 requires the following:

At least annually, the Patrol Division Commander should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the Office of the Independent Police Auditor, and the BART Police Citizen Review Board. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.*
- (b) Training needs recommendations.*
- (c) Equipment needs recommendations.*
- (d) Policy revision recommendations.*

This report will also incorporate the following statistics as they relate to the above topics:

1. Types of force used
2. Cause for use of force
3. Service being rendered at time of use of force
4. Suspect custody status
5. Suspect injuries
6. Officer injuries

Year in Review

While generally overused, no word better describes 2020 than “unprecedented.” From a global pandemic and the resulting economic fallout, to widespread civil-unrest over social justice issues, 2020 was a year shaped by incidents on a global-scale that had a major impact on the entire law enforcement profession.

Prior to 2020 the BART Police Department had already implemented progressive changes related to use of force, and in 2020 Chief Alvarez implemented additional changes which will continue the progress which has been made on reducing the use of force by the BART Police Department. These changes put greater focus on progressive policing strategies such as an awareness of bias-based policing, use of crisis intervention, increasing cultural competence, and continued use of de-escalation. The changes implemented by Chief Alvarez included:

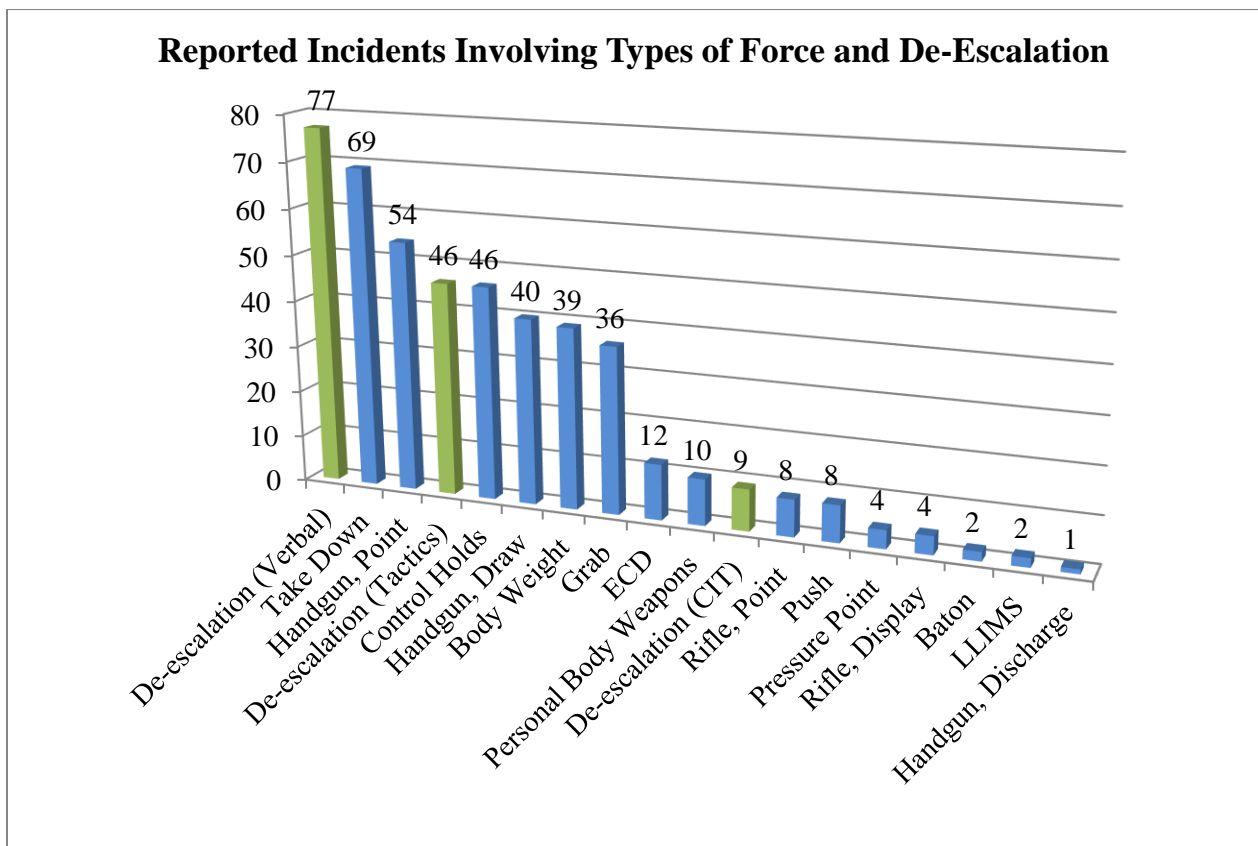
- Established the Progressive Policing and Community Engagement Bureau headed by a Deputy Chief.
- Worked with stakeholders to complete the Board of Directors’ Roll Call for Introductions (RCI) on community engagement which helped to provide guidance to the new Progressive Policing and Community Engagement Bureau.

- Voluntarily committed to an early implementation during calendar year 2021 of the California Racial and Identity Profiling Act (RIPA) data collection for the Department in advance of the deadline mandated in legislation. The data collected for RIPA beginning in 2021 may assist the Department with identifying solutions for decreasing disparities in detentions and uses of force.
- Prohibited the use of the carotid restraint and choke holds in all situations. Prior policy had prohibited choke holds but allowed the carotid restraint in situations where deadly force was authorized. The change to prohibit the carotid restraint was implemented several months before Governor Newsom signed legislation which prohibited the use of the carotid restraint or choke holds by law enforcement.
- Implemented the Integrating Communications Assessment and Tactics (ICAT) program from the Police Executive Research Foundation (PERF) as department-wide training. ICAT is described by PERF as “*a use-of-force Training Guide designed to fill a critical gap in training police officers in how to respond to volatile situations in which subjects are behaving erratically and often dangerously but do not possess a firearm. The Training Guide includes model lesson plans and support materials (including Power Point presentations, videos, and other resources) in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics.*” According to PERF, a recent evaluation of the ICAT training in Louisville, Kentucky suggests overall use of force rates can decline through this training.

REPORT TOPIC: TRENDS IN THE USE OF FORCE

In 2020, there were 190 reported incidents that involved an officer’s use of force. This was a 32% decrease from 278 incidents reported in 2019. It should be noted that each use of force included in this report was given a thorough review through the chain of command, was subject to independent civilian review, and the use of force by officers is also included as one of the factors considered in the Department’s Early Warning System for employee performance.

The data on the below chart counts the total reported number of incidents that involve each type of force used, but not the number of times that force was applied in each incident. This method of reporting gives a better overall comparison of the types of force used in incidents.



The most frequently reported tactic used by BART PD in use of force situations is de-escalation (which is depicted in the above graph with green bars summarizing the different types of de-escalation). The BART Police Department utilizes the BlueTeam data collection software which captures the de-escalation statistics only when there is a use of force investigation by a supervisor. As a result, the data set that the BlueTeam software records does not fully capture every instance when a BART Police Officer employs a de-escalation tactic. For example, there are many instances where de-escalation is used with the result that there is no force used by the officer and no

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BlueTeam entry generated by a supervisor. Therefore, not all de-escalation used by officers is captured in this use of force data (recorded by the BlueTeam software). BART Police Officers use de-escalation tactics frequently to successfully resolve situations without a use of force during the normal course of duty, and this is essentially a “blind-spot” in the use of force statistics. Another potential area for improvement in use of force data collection is to better define what tactics constitute a use of de-escalation and train supervisors to record de-escalation in a more consistent manner to better record comparable data.

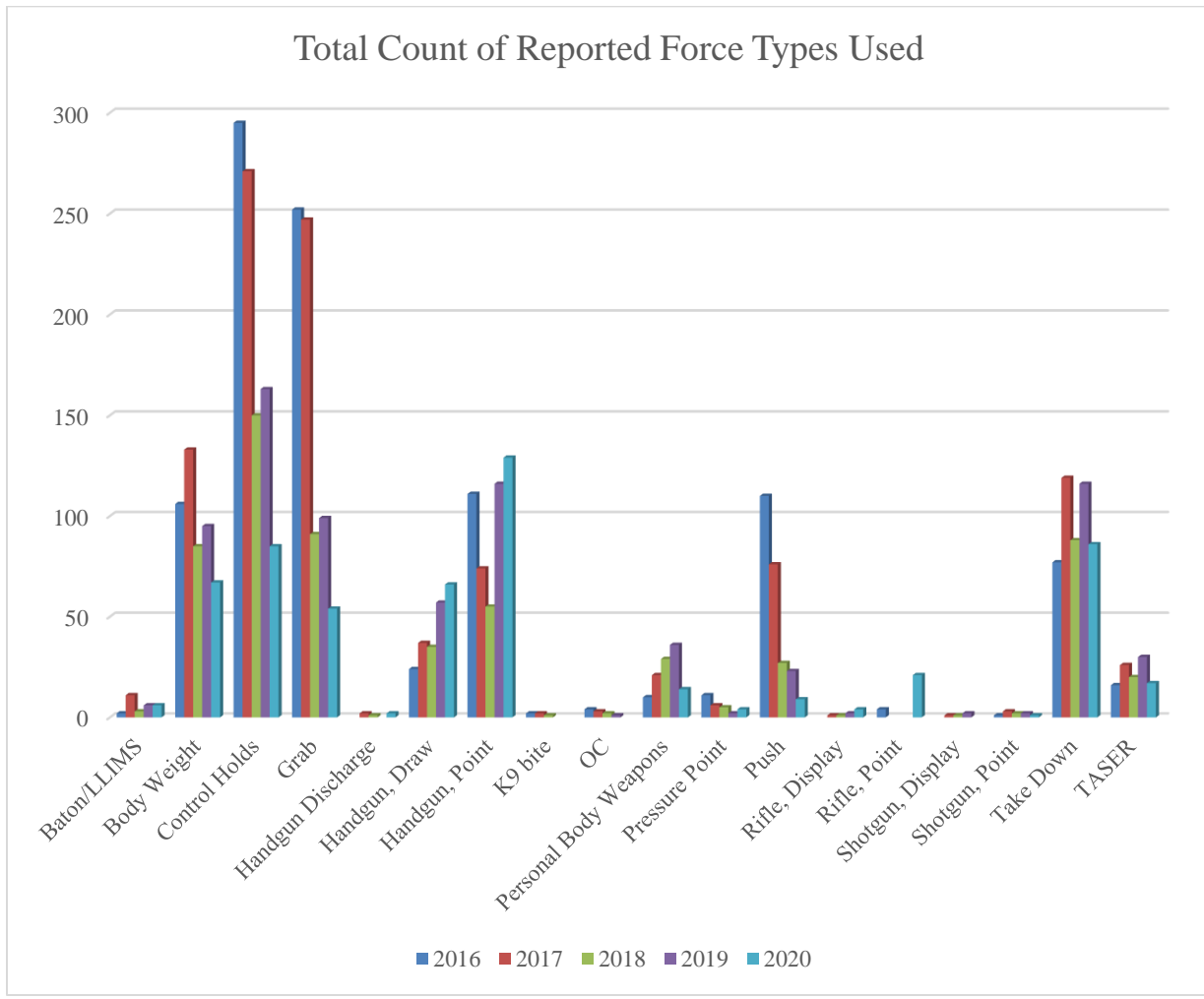
The following table shows the total number of times, including multiple uses in a single incident, that each type of de-escalation was used during 2020. As mentioned above, these figures also do not include de-escalation that was used in incidents that did not result in a use of force.

2020 De-escalation	
Verbal Techniques	109
Tactical Techniques (time, distance, etc.)	57
Crisis Intervention Techniques	14
Total	180

A potential area for improvement in the analysis of use of force data is to find a way to compare incidents where force was used with similar types of incidents where force could have been used but was not. If possible, future work with groups such as the Center for Policing Equity should go beyond basic use of force counts and explore a deeper comparison of similar incidents to look at the contributing factors that determine why force is used (also known as a causal inference analysis).

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The following data compares year to year reported totals of the types of force used. The data shows that the comparative proportions of force options are similar from year to year. It should be noted that the reported number of rifle point incidents increased as the Department increased the deployment of patrol rifles. Patrol rifles are generally a safer weapon to deploy as the risk of weapon confusion is eliminated, accuracy is improved, and the risk to bystanders from errant projectiles is reduced.



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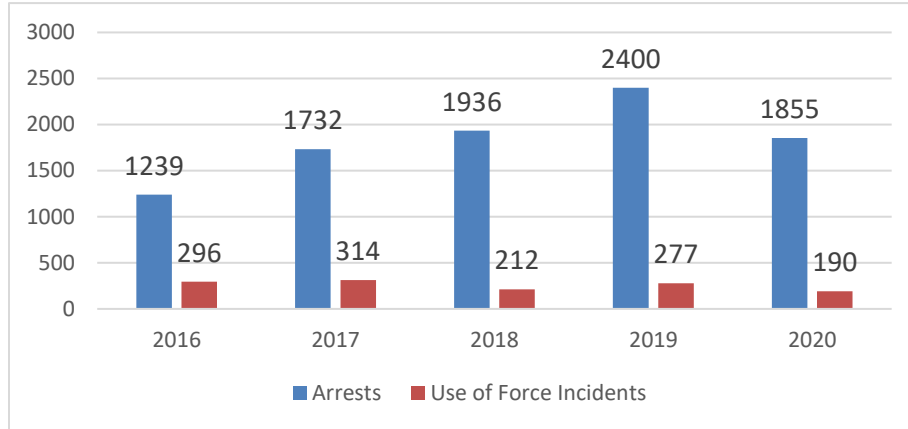
The following data shows a five-year comparison of the reported number of use of force incidents per month. 2020 recorded the fewest use of force incidents in the past 5-years.

Annual Summary of Use of Force Incidents by Month												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2020	21	26	13	10	21	11	13	12	14	17	13	19
YTD 2020	21	47	60	70	91	102	115	127	141	158	171	190
2019	27	21	16	31	20	19	28	26	28	20	17	25
YTD 2019	27	48	64	95	115	134	162	188	216	236	253	278
2018	20	10	21	14	15	15	16	18	23	15	19	26
YTD 2018	20	30	51	65	80	95	111	129	152	167	186	212
2017	30	31	33	36	28	35	23	22	25	22	13	16
YTD 2017	30	61	94	130	158	193	216	238	263	285	298	314
2016	37	24	32	13	24	31	30	20	14	20	29	22
YTD 2016	37	61	93	106	130	161	191	211	225	245	274	296

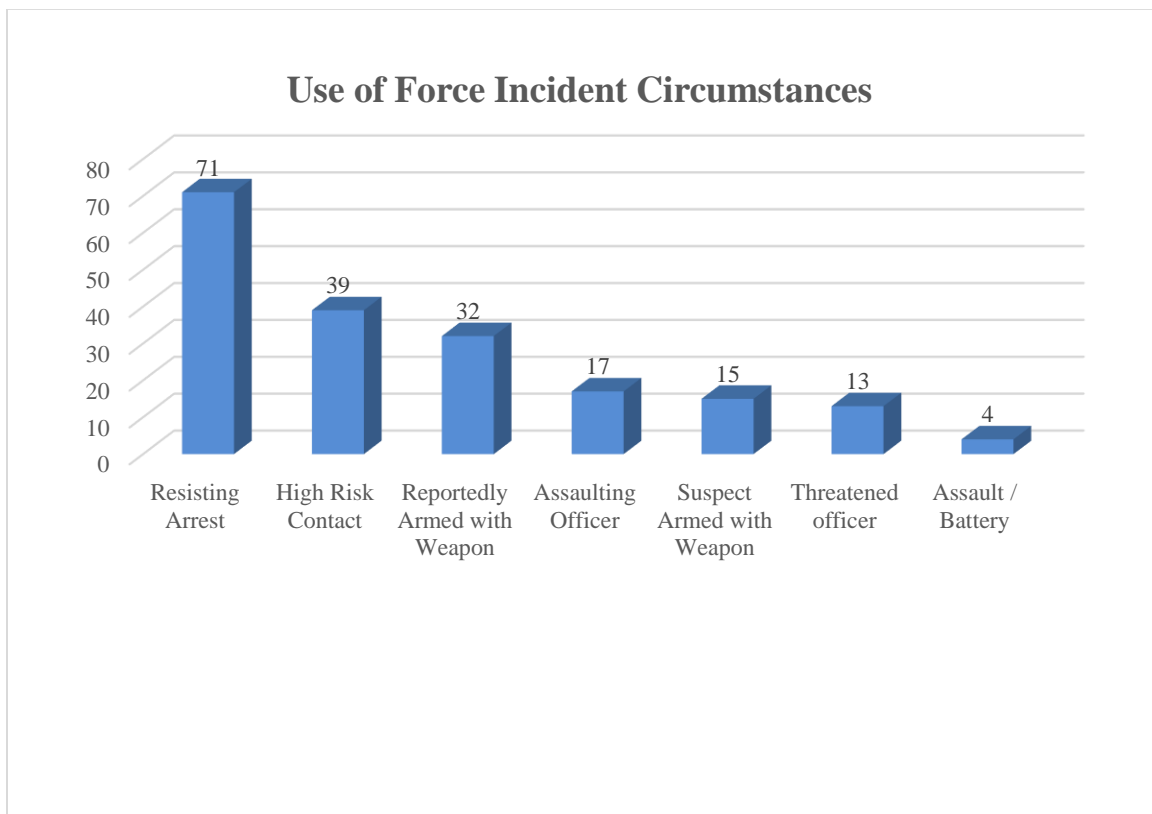
The following data shows that the number of arrests steadily increased over the last 4 years (with a slight decrease in 2020, likely due to COVID); however, use of force incidents have not increased proportionally and the reported number of incidents in 2020 show a decrease even from years with fewer arrests. At the same time, the levels of community-violence have increased substantially (as demonstrated by the fact that homicides and other acts of violence in California are reaching record levels). According to an article about community violence nationwide, there were over 19,000 people killed in shootings and firearm-related incidents in 2020 (and this figure did not include suicide related deaths) (Bates, Josiah. “2020 ends as one of America’s most violent years in decades.” Time Magazine, 30 December 2020, <https://time.com/5922082/2020-gun-violence-homicides-record-year>). Additionally, a study by the Epic Health Research Network concluded that “Healthcare visits for firearm injuries increased significantly for all patients in 2020, particularly for non-White populations.” (Bohochik, Lindsay, Lindgren, Thayer, Teriakidis. “2020 Firearm Injuries Up More Than 70%—Worse in Black and Hispanic Young Men.” EHRN, 15 September 2021, <https://ehrn.org/articles/2020-firearm-injuries-up-more-than-70-worse-in-black-and-hispanic-young-men>).

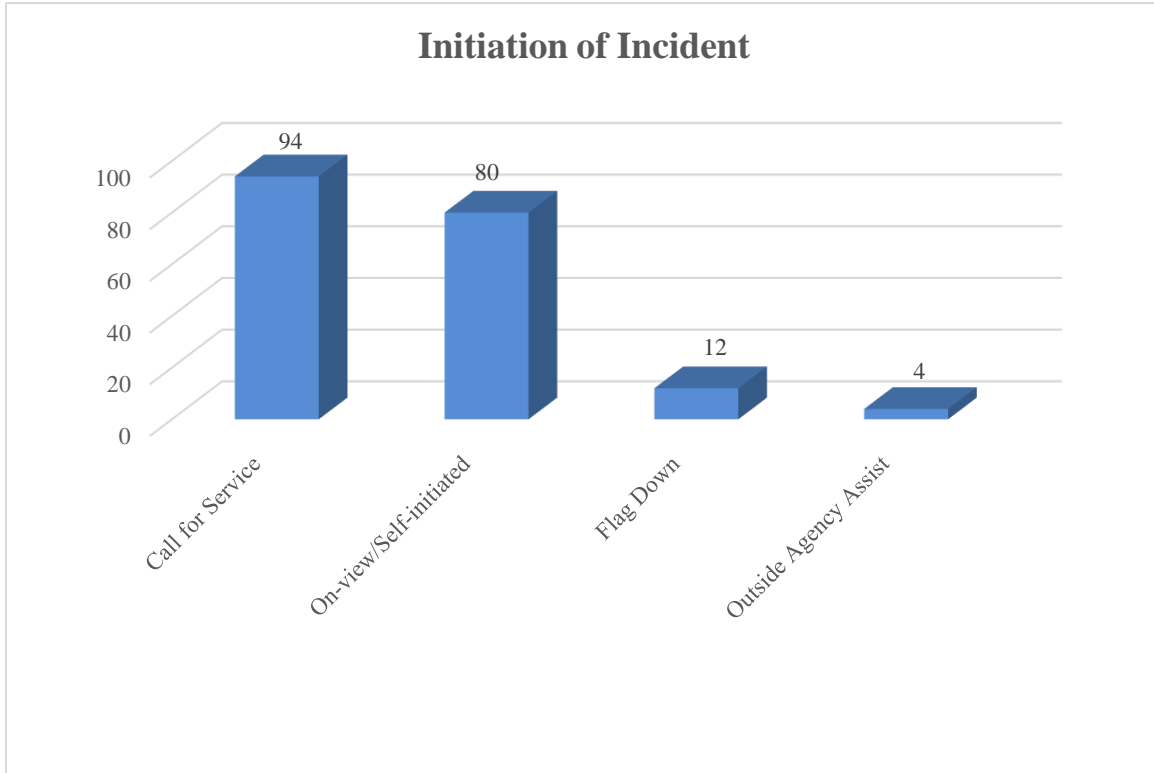
In the face of the increasing numbers of arrests and levels of community violence, it appears that the reduction in the use of force by officers indicates better training and the continued use of de-escalation.

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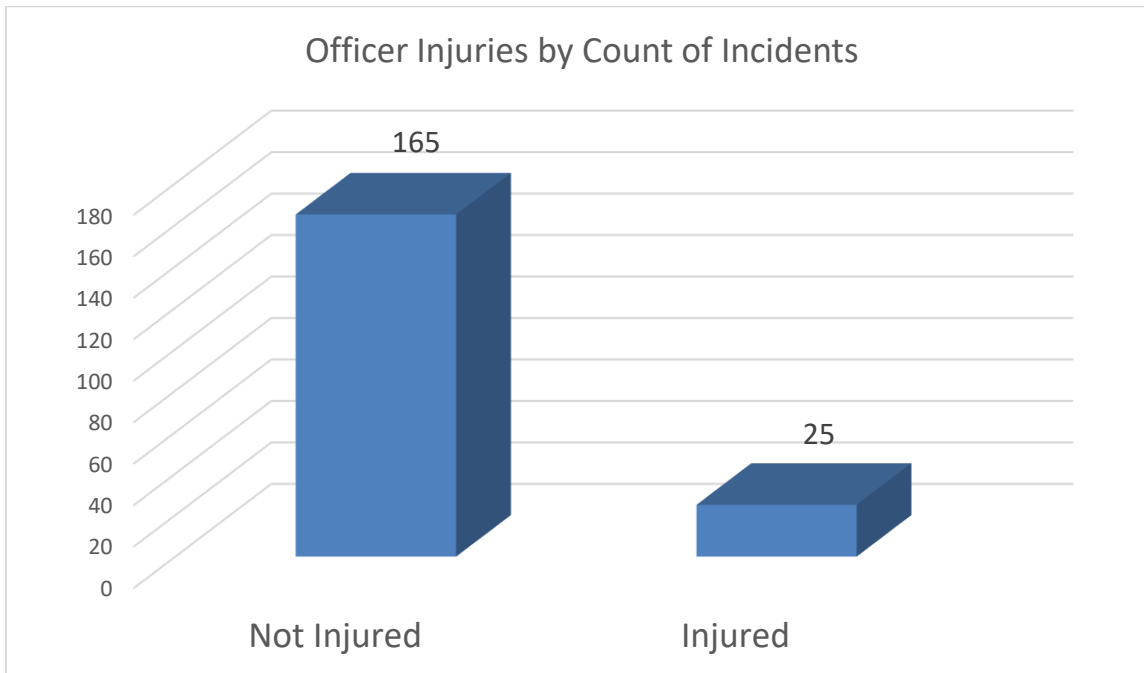
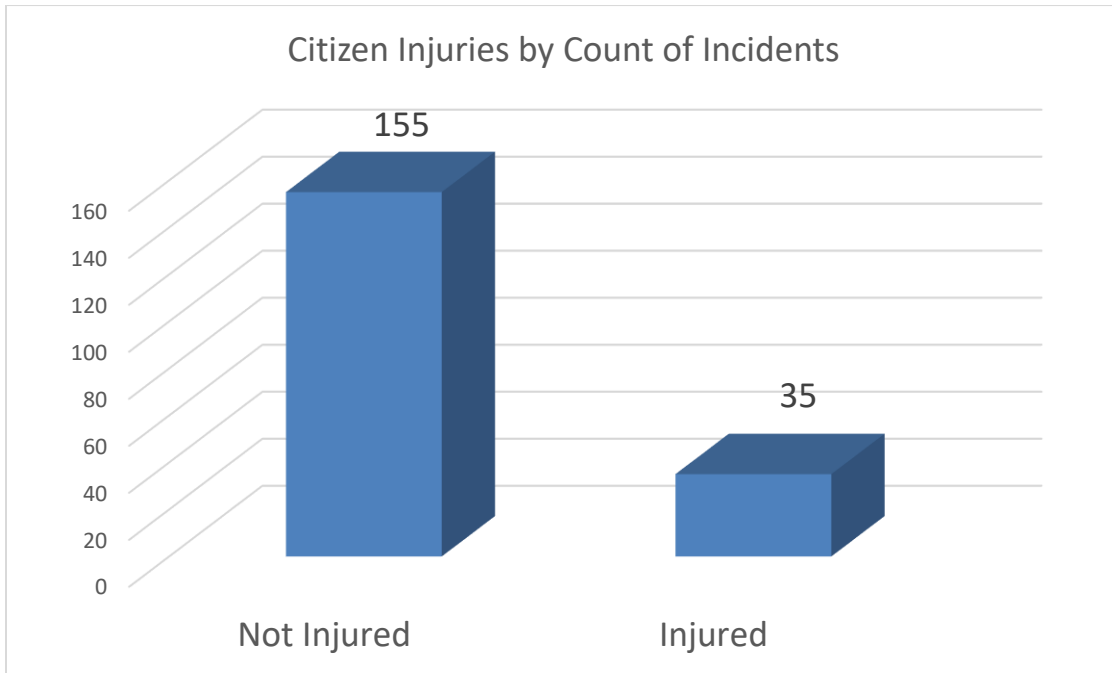


The following graph shows the circumstances involved in use of force incidents. Each incident may have multiple contributing factors. The most common element in use of force incidents is resisting arrest.





Note: Reasons for not arresting a person upon whom force was used include psychiatric detentions, or the detention of a person who is later released without criminal charges (such as the investigative detention of a passenger involved in a high-risk car stop).



Note: Between 2019 and 2020, reported injuries to citizens were reduced from 62 to 35 which could be indicative that officers are striving to use the minimal amount of force.

Demographics from Use of Force Incidents

Age Groups of Involved Persons	Number of Persons	Percentage
under 20	25	12.4%
20 - 29	67	33.2%
30 - 39	58	28.7%
40 - 49	28	13.9%
50 - 59	17	8.4%
60 and up	7	3.4%
Total	202	

Ethnicity/Gender of Involved Persons	Number of Persons	Percentage
Black Male	112	55.4%
Hispanic Male	31	15.3%
White Male	25	12.4%
Black Female	17	8.4%
Asian Male	4	2.0%
Hispanic Female	4	2.0%
Native American Male	2	1.0%
Other Male	2	1.0%
Pacific Islander Male	2	1.0%
Hispanic Transgender	1	0.5%
Middle Eastern Male	1	0.5%
White Female	1	0.5%
Total	202	

There were 202 persons associated with the 190 use of force incidents that were reported in 2020. This difference in numbers is because some of the use of force incidents involved more than one subject upon whom force was used. An analysis of the data determined that there were four individuals during this time period who were each involved in two separate use of force incidents. The demographic breakdown of those individuals who were involved in two incidents was: one Black Male, one Black Female, one Hispanic Male, and one White Male.

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Black Males account for 55.4% of the persons upon whom force was used. The next most frequent persons upon whom force was used were Hispanic Males (15.3%), White Males (12.4%), and Black Females (8.4%). To examine the disparity in these outcomes, the following tables were prepared. The tables analyze the use of force data for Black Males reporting the reason that force was used, and the force types by age demographics.

Use of Force Reason (Black Males)	
Resisting Arrest	44
High Risk Contact	22
Reportedly Armed with Weapon	18
Threatened officer	10
Suspect Armed with Weapon	8
Assaulting Officer	7
Assaulting Citizen	4
Total Persons	112

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Force Types and Age Demographics (Black Males)								
	<20	20-29	30-39	40-49	50-59	60-69	70-79	Grand Total
Take Down	4	16	9	6	2	3	1	41
Handgun, Point	7	11	8	4	1			31
Control Holds	3	7	7	3	2	1	1	24
Handgun, Draw	4	5	7	4	3	1		24
Body Weight	4	6	6	2	4		1	23
Grab	5	5	6	1	2			19
Rifle, Point		3	3	3				9
Push	2	4			1			7
Personal Body Weapons	1	1	1	2	1			6
ECD	1	1	2	1				5
Rifle, Display			2	1		1		4
Pressure Point	1		2		1			4
Collapsible Baton					1			1
Shotgun, Point	1							1
Baton		1						1
Handgun, Discharge	1							1
Total Persons	16	37	27	17	9	4	2	112

De-escalation and Age Demographics (Black Males)								
	<20	20-29	30-39	40-49	50-59	60-69	70-79	Grand Total
De-escalation (Verbal)	5	18	10	7	3	2	2	47
De-escalation (Tactics)	3	11	7	5	2	1	1	30
De-escalation (CIT)		2	2	1				5

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While a full analysis of the factors driving the disparity in use of force upon Black Males is beyond the scope of this report, the data above indicates several areas where the Department could focus to ensure that force is being applied in a manner that is compliant with the Constitution, law, and department policy.

- “Resisting Arrest” is the most commonly reported reason for the use of force, generally and also for Black Males. In many cases the citizen’s resistance is beyond the control of the officers, but this is an area that could benefit from training and community outreach focused on building trust and legitimacy for law enforcement. Trust and legitimacy are essential to gain the cooperation of community members, and this is an area in which the Black community’s history of oppression works against the maintenance of effective relationships with law enforcement.
- “High Risk Contact” is the second most commonly reported reason for the use of force, again generally and also for Black Males. Again, the circumstances of a situation are mostly outside of the control of the involved officers but providing additional training on subjects such as implicit bias may have positive results in ensuring that officers do not incorrectly categorize Black Males as “high risk” in situations where other persons would not be seen in the same manner. The “Tactics” component of the Department’s ICAT training also provides an opportunity to reduce the level of force used in these types of scenarios by implementing sound tactics that reduce the need to use force.
- Persons between the ages of 20-29 and 30-39 account for the majority of persons who are involved in reported use of force incidents. For Black Males, these age-groups account for 57.1% of the reported use of force incidents. Community outreach should focus on persons in this age group for all members of the community to build trust and relationships and reduce conflict that often leads to use of force.

As mentioned in prior reports, the BART Police Department voluntarily participated in a multi-year study conducted by the Center for Policy Equity (CPE) to examine policing practices and behavior as part of the National Justice Database (NJD) project. The study includes extensive data of law enforcement contacts over multiple years (2012-2017) and a rigorous analysis of the data. The results of the study were released in early-2020 and showed racial disparities between persons who are subjected to uses of force. While the report found evidence of racial disparities, CPE also included the following statements to put those findings in context.

...Disparities do not necessarily indicate that police officers have engaged in biased or discriminatory behavior. Disparities in rates of police contact and the outcomes of this contact mean that racial groups in California’s Bay area have different experiences of BART PD policing. This is important to measure, as these differences can represent pain points for communities. Factors outside of a department’s control (e.g. poverty and crime rates) contribute to disparities. Measuring these factors can help infer what portion of the disparity is likely related to officer behavior and/or departmental policies and practices.

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

The report also contains the following information about CPE's explanations for racial disparities in policing:

National Justice Database Analytic Framework

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

- 1) **Individual characteristics or behaviors:** individual attributes or behaviors that may lead to interactions with law enforcement, such as mental health challenges, homelessness, or participation in criminal activity.*
- 2) **Community characteristics:** neighborhood conditions, such as poverty or high crime rates, that may result in higher rates of interaction with law enforcement.*
- 3) **Individual officer characteristics or behaviors:** Some officers may view members of certain communities with a higher level of suspicion, resulting in a disproportionate rate of stops or more punitive disposition after the stop for these individuals*
- 4) **Departmental culture, law, or policy:** institutional policies, practices, or norms may increase law enforcement contact with some members of the population more than others. For example, officers may be deployed to patrol some communities more intensively than others. Moreover, police departments may be constrained by federal, state, or local laws that may contribute to disparate interactions with individuals and communities.*
- 5) **Relationships between communities and police:** Mistrust of law enforcement can reduce community members' willingness to cooperate with police. Similarly, a sense that communities do not trust or respect police may cause officers to feel unsafe or defensive in some neighborhoods.*

There are two recommendations in the CPE report dealing with use of force. Both recommendations were accepted by Chief Alvarez for implementation.

- **Updating use of force, stops, and searches data collection.** CPE recommends that BART PD adopts a written policy requiring officers to collect data on all stops in accordance with the Racial and Identity Profiling Act of 2015, ensures that officers are trained to record racial data for stops and use of force, and requires that arrests at vehicle/rider stops or after a use-of-force incident are recorded.
- **Adopting a new policy on drawing or displaying firearms.** CPE recommends BART PD revise Policy 300.3.5 by adopting a policy stating that officers may only draw or display their firearms if they reasonably believe that there is a substantial risk that the situation may escalate to the point where deadly force may be justified.

The BART Police Department has committed to continuing the partnership with CPE for further data collection and analysis of our enforcement and use of force data. The Department has also made a request to CPE to see whether future data analysis by CPE may include a "causal inference analysis" for our use of

force data. This type of analysis can assist in determining what factors contribute to the cause/decision to use force which would be helpful in identifying areas for change or improvements.

REPORT TOPIC: TRAINING

The Department presented the following use of force related training during 2020. Employees received the following advanced officer training in 2020:

Advanced Officer Training - 2020	
Active Shooter Response Course (continued from 2019)	8 hours
AB 392 Use of Force Legal Update Training	2 hours
POST Certified Force Options Training	4 hours
Firearms Training and Qualification including LLIMS and Use of Force policy review	9 hours
BART Roadway Worker Protection Safety Training	4 hours
Vehicle Pursuit Policy	2 hours
Emergency Vehicle Operations Driving Simulator	4 hours
Dispatcher Training	
Mental Health Update for 9-1-1 Dispatchers	2 hours

Assembly Bill 392 was passed in 2019 and enacted in 2020. The bill made changes to Penal Code section 835a, which sets conditions for lawful use of force by peace officers. BART Police Policy 300, Use of Force, was updated to incorporate the new standards for use of force, and department-wide training was completed during 2020. Recently, BART PD was recognized as one of only two police agencies in California to complete the required AB-392 training in a timely manner.

Based on the annual CALEA review of use of force incidents and officer assaults in 2020, the following training will be recommended for FY-2022:

- The department should consider increasing the frequency of perishable skills training involving de-escalation, tactical communication, and defensive tactics skills. Increasing officers' competency in these areas will assist with making good use of force decisions during the dangerous and rapidly evolving situations routinely encountered.

The Department will also continue to work through the Progressive Policing and Community Engagement Bureau to identify community engagement opportunities to build stronger ties with the citizens in the communities we serve.

REPORT TOPICS: EQUIPMENT AND POLICY

The TASER conducted energy weapons (CEW's) currently deployed by the Department have reached the end of life and are scheduled for replacement in late-2021. The Department is in the process of procuring a comprehensive package of equipment and services which will include new TASER CEW's, body worn cameras (BWC's), and online storage for BWC video and CEW data. The new CEW's will automate the data upload process to enable the Department to better track the data associated with CEW activations. The new BWC's will also have the ability to automatically enable recording during incidents involving the use of a firearm or CEW, thereby reducing the number incidents with a late or missing BWC activation.

As per the recommendations in the CPE report, the Department will continue to work with the Office of the Independent Police Auditor (OIPA) and the BART Police Citizen Review Board (BPCRB) to implement recommendations from the CPE report. The Department is currently discussing updates to the Fare Evasion and Use of Force policies with stakeholders to keep the policies current with best practices and legislative/case law updates.