

# Monthly Progress Report

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Of the Office of Inspector General



**September 2016**

**Office of the Inspector General**

**Oakland Police Department**

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## CONTENTS

### Table of Contents

CONTENTS.....	2
INTRODUCTION.....	3
AUDITS, REVIEWS, and/or INSPECTIONS .....	4
<b>Tracking of Policy and Training Recommendations in IAD Cases</b> .....	4
<b>Review of Department Handcuffing Data</b> .....	9
NEXT MONTH'S PLANNED REVIEWS .....	15

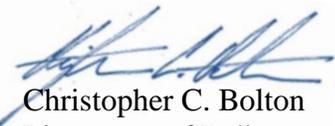
## INTRODUCTION

In March 2016, the Court appointed investigator, Swanson & McNamara, LLP, released a second report on the City's discipline and arbitration process. In that report, Swanson & McNamara recommended that the Office of Inspector General (OIG) conduct audits of the discipline process. In response to those recommendations, the OIG has completed its third review related to that recommendation: In this report, we evaluate the accuracy and consistency of identifying and correcting policy, procedure, or performance issues which have been identified through an investigation of misconduct.

This report also formally addresses Oakland Police Department handcuffing data in a manner most recently recommended by Dr. Jennifer Eberhardt and her team of researchers at Stanford University's SPARQ. In this spirit, we wholeheartedly agree that public safety data should routinely and continuously be utilized by the Department to gauge our success in reducing crime while also concurrently strengthening community trust.

Disproportionate rates of handcuffing are evident. There is no shortage of painful incidents to fuel our collective conversations about race and policing in America. And while discussing race and policing in today's environment is personally difficult, it is my sincerest intent and hope that thoughtful analysis of more and better data may lead to improved policing, more informed decision making, better constructed policies, and increased dialogue with the communities we serve. A responsible review of data provides opportunity to examine and direct actions and results that can be seen with - and for - our community as effective, legitimate and fair.

Respectfully submitted,



Christopher C. Bolton  
Lieutenant of Police  
Office of Inspector General

## AUDITS, REVIEWS, and/or INSPECTIONS

### Tracking of Policy and Training Recommendations in IAD Cases

**Auditor:** Charlotte Hines, Office of Inspector General

**Objective:**

Determine if current procedures effectively and efficiently capture and track all policy, training issues and recommendations identified in Internal Affairs Division (IAD) cases.

**Policies Referenced:**

Edward Swanson, Swanson & McNamara, LLP Report dated March 21, 2016; Delphine Allen v. City of Oakland, et al – Progress Report No. 4 dated June 28, 2016

**Significant Finding(s):**

1. There are no written policies or procedures for the process of tracking policy and training recommendations identified in IAD cases.
2. Training and policy recommendations resulting from IAD investigations are being tracked, however, the current method of tracking is limited.

**Recommendation(s):**

1. As soon as practical, each unit should compile written procedures on the process of tracking recommendations identified in IAD investigations for their specific area. Written procedures would allow for continuity of work effort and ensure that this process is performed and managed efficiently on an ongoing basis, even in the event of personnel changes.
2. The Department should explore the advantages of broadening the centralization of all training and policy recommendations resulting from IAD investigations (including Skelly officers, supervisors, attorneys, arbitrations), as well as Force Review Board and Executive Force Review Board (FRB/EFRB) hearings and Department audits/reviews/inspections.

**Overview/Background:**

This is the first review conducted by the Office of Inspector General regarding the process of tracking recommendations for policy and training issues resulting from IAD investigations. Prior to the Swanson report, policy and training issues resulting from IAD investigations were not systematically tracked. The Swanson Report recommended that:

*“The Department should establish a process to seek from IAD, Skelly officers,*

*Monthly Progress Report of the Office of Inspector General*

*September 2016*

*Page 4 of 15*

*supervisors, attorneys, or others recommendations to improve Department policies, trainings, and police discipline process. One possibility is to assign a coordinator, possibly within OIG, to serve as a clearinghouse for these recommendations. Whatever process is established for responding to these recommendations, it should result in (a) recommendations being routed to the appropriate personnel for response and, if appropriate, implementation of necessary changes; (b) a response to the party making the recommendation; and (c) documentation of the process.”<sup>1</sup>*

In response to the Swanson report recommendation, the City provided the Court with an update in June 2016.

*“The IAD Civilian Manager is currently tracking all closed IAD investigations and logging each matter in which a training or policy recommendation was issued. The tracking process began with cases that closed from January 1, 2016 to the present. The IAD Civilian Manager has designated an IAD staff member to perform a monthly query that reports all closed cases for the previous month. Each closed case is then reviewed to determine whether a policy or training recommendation had been issued by the investigator. If a policy or training recommendation was issued, that specific recommendation is logged and reported to both the Training Division and to Research and Planning for review, discussion, and potential modification of training and/or policy. This process has been in effect for nearly three months and there has been sound dialogue. Because this is an open and ongoing project, the IAD Civilian Manager will continue to elicit feedback from all parties on methods that will generate the most effective means of incorporating viable recommendations.”<sup>2</sup>*

The Department is currently implementing a new policy management system, Lexipol. The implementation process requires a review of all Department policies, and updates are being made on an on-going basis as the system prepares to go live in 2017.

There are two types of training recommendations: 1) training for individuals and 2) Department-wide training. When a training need is identified for an individual, the normal course of action is to provide remedial training and document the training in that individual’s Supervisory Notes File (SNF). Per Department General Order B-22, *“The purpose of a Supervisory Notes File (SNF) is to centralize information to help supervisors, commanders, and managers identify patterns of exemplary and substandard performance and behavior. Additionally, the SNF is utilized to document incidents deserving of a commendation or award, to document non-disciplinary corrective action taken, and to prepare performance appraisals.”* Individual training is most often handled by the individual’s direct chain of command.

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<sup>1</sup> Edward Swanson, Swanson & McNamara LLP – report dated March 21, 2016

<sup>2</sup> Delphine Allen v. City of Oakland, et al. – Progress Report No. 4 June 28, 2016

Department-wide training happens when a training deficiency is identified for a larger population (i.e. sergeants, officers, all personnel). The Training Section handles this type of training through their Training Needs Assessment Form.

**Methodology:**

The IAD Civilian Manager maintains a spreadsheet (*Training Policy Tracking Deliverables – IAD Master*) that tracks all policy and training recommendations listed in completed cases with formal findings. As of the initiation of this review, cases closed between January and May 2016 had been reviewed and entered by IAD. The spreadsheet included 56 cases with a total of 79 recommendations. The OIG auditor requested a list of all IAD closed cases dated January 1, 2016 through May 31, 2016. During the period of January 1, 2016 through May 31, 2016 a total of 168 cases were closed.

The OIG auditor selected a sample of 23 cases that were listed on IAD’s spreadsheet and a sample of 43 closed cases with formal findings that were not included on the spreadsheet, for a total of 66 cases. The 23 cases that were on IAD’s spreadsheet were reviewed in order to confirm that all policy and training recommendations were identified and tracked. The 43 cases that were not on the spreadsheet were reviewed to confirm that no training/policy recommendations were missed.

The OIG auditor reviewed the Report of Internal Investigation (ROI) and the Summary Finding Memorandum for all 66 cases in the sample. The reviewer determined if each training and/or policy related recommendation listed in the investigation had been captured on IAD’s spreadsheet. A spreadsheet listing all selected cases was created that detailed the following variables:

- ❖ Case #
- ❖ Finding
- ❖ Violation
- ❖ Date Closed
- ❖ Listed on IADs’ spreadsheet
- ❖ Brief statement of training/policy recommendation, if applicable

Finally, the IAD Civilian Manager, the Training Commander, and the Manager of Research and Planning were interviewed.

**Finding(s):**

1) *Are there written procedures or policies for the tracking and status of recommendations regarding training and policy issues identified in IAD investigations?*

There are currently no written procedures or policies, however, there have been discussions regarding this process and the most efficient way in which the process should be documented. During our interview with the IAD Civilian Manager, he stated that he is in the process of revising the IAD Manual and that the process for tracking training issues and policy updates

identified in IAD investigations will be included. During our interview with the Training Section Commander, he stated that while there is no specific written policy for training recommendations identified in IAD investigations, all valid recommendations are processed according to the Training Section's general process. During our interview with the Research and Planning Manager, he stated there is no specific written policy for processing policy recommendations resulting from IAD investigations.

2) *Are training and policy recommendations resulting from IAD investigations being tracked?*

The Department is tracking training and policy recommendations; however, the method of tracking is somewhat limited.

**IAD** – IAD staff run a monthly query of all cases closed, and the IAD Civilian Manager identifies which cases were fully investigated, resulted in a formal finding (i.e. Exonerated, Unfounded, Sustained, and Not Sustained) and included either policy or training recommendations made by the case investigator or his/her chain of command. All such cases are entered in a spreadsheet, which is forwarded to both the Training Section and the Research and Planning Section. Upon IAD's notification of the status of the recommendations, the spreadsheet is updated.

During the period of January 1, 2016 through May 31, 2016, there were 65 training recommendations and 13 policy recommendations listed on IADs' spreadsheet. OIG reviewed a sample of cases that were included on the spreadsheet and a sample of cases that were not included. Of the 66 cases reviewed, 23 were listed on IAD's tracking spreadsheet. All policy/training recommendations (2 policy recommendations, 1 Department-wide training recommendation, and 20 individual employee training recommendations) were identified and tracked.

In the 43 cases reviewed by OIG that were not listed on IAD's tracking spreadsheet, there were five cases that had policy/training recommendations (1 policy recommendation, 2 individual employee training recommendations and 2 Department-wide training recommendations). The five policy/training recommendations found in these 43 cases were not recorded on the spreadsheet, and therefore not tracked by IAD.

**Training** – the Training Section Commander reviews IAD's spreadsheet and determines which entries require action. Once identified, the required action is either processed or delegated to the appropriate person for completion. After corrective action has been completed, IAD is notified.

This review identified 22 individual employee training recommendations. The review confirmed that 20 recommendations were listed on IAD's spreadsheet and 2 recommendations were not listed. Nineteen of these recommendations were handled and documented by a SNF entry in the officers' IPAS record. The auditor was unable to find two of the individual employee training recommendations in the officers' SNF files. The Training section does not take any action on

these individualized trainings, since these trainings are generally handled by the employee's supervisor or chain of command.

There were three cases with Department-wide training recommendations; only one of these cases was listed on IAD's spreadsheet. The Training Section Commander did however offer that the recommendations in all three cases are covered with relevant and current examples in the Departments' Continued Professional Training (CPT) for officers and sergeants. These recommendations are very broad in nature and are usually directed Department-wide rather than one-on one.

**Research and Planning** – the Research and Planning Manager reviews IAD's spreadsheet and determines whether the recommended policy update is already in progress or not. If the recommended action has been completed, IAD is notified. During our interview with the Research and Planning Manager, he stated Research and Planning notifies IAD upon completion of policy updates.

This review identified three cases in the population with policy related recommendations; only two cases were listed on IADs' spreadsheet. There was no record of completion for any of these cases.

### 3) *Should the current tracking process be restructured?*

This review recommends that this process should be re-evaluated and improved where needed. The Department currently tracks similar recommendations resulting from Force Review Board (FRB) and Executive Force Review Board (EFRB) Hearings. In addition, the OIG tracks recommendations from audits, reviews and inspections. However, these tracking processes are completed separate from IAD's tracking system. IAD's tracking system includes only recommendations from IAD cases. During our interview with the IAD Manager, he indicated that to date he has not received any training or policy recommendations from any other sources (i.e. Skelly officers, arbitrations, etc.). Centralizing tracking of all policy and training recommendations, regardless of the source, would add value to the process, including a more complete understanding and status of all identified training and policy issues. Also, centralized tracking would facilitate the ability to perform trend analysis on data that may overlap multiple scenarios (i.e. IAD investigations, FRB/EFRB, Skelly hearings, arbitrations, SNF's).

There was definitely a consensus amongst each of the contacted parties (i.e. IAD, Training and Research and Planning) and OIG that improving the centralization of tracking would not only be more efficient and effective, but it could also eliminate the issue of possible duplication of efforts between multiple units. A comprehensive centralization process in which a robust electronic site includes all training and policy recommendations will make available a complete representation of historical issues and remedies that could potentially reduce the need for discipline and also provide insight into any instances or occurrences that reflect a possible weakness in Department policy.

**Conclusion:**

While there has been progress since the Swanson Report was published, there are opportunities for improvements that would provide the Department with better data for identifying trends and patterns in behaviors and potentially reduce redundancies in work. Research and Planning has taken the lead and has already contacted Department representatives from all impacted areas to meet and discuss the practicality and necessity of a single source for all policy and training recommendations. A possible consideration, as the Department is already in the process of implementing the PRIME System, is perhaps a centralized tracking process for training and policy recommendations added to the current capabilities of PRIME.

**Review of Department Handcuffing Data**

**Reviewer:** Lt. Chris Bolton, Office of Inspector General

**Overview:**

This review explores relationships between racially disparate handcuffing data and potential causes such as organizational culture, policy, training or practices. The objectives of this review were encouraged by the Stanford research team SPARQ [reports](#)<sup>3,4</sup> and recommendations, and the Department's continued focus on utilizing stop data information to improve public safety services and community trust. The data reviewed suggests that disproportionate handcuffing rates may be primarily influenced by circumstances related to search conditions and law, policy or procedure related to those conditions rather than potentially discriminate handcuffing at the officer level.

**Objective(s):**

1. Assess the presence or absence of patterns and trends within Oakland Police Department (OPD) handcuffing data by comparing current 2016 handcuffing rates to 2013 - 2014 handcuffing rates as most recently assessed by Stanford SPARQ.
2. Evaluate current 2016 handcuffing incidents and data to assess the presence or absence of potential circumstantial cause or reasoning based on policy, training, or practice.

**Policies Referenced:**

Oakland Police Department Training Bulletin III-B.07, *When to Use Handcuffs (1998)*; Training Bulletin I-O.02, *Legal Aspects of Searching Persons (2013)*; and Report Writing Manual R-1, *Field Interview and Stop data Report (2013)*

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<sup>3</sup> Eberhardt, J. L. (2016). *Strategies for change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.* Stanford University, SPARQ: Social Psychological Answers to Real-world Questions.

<sup>4</sup> Hetey, R. C., Monin, B., Maitreyi, A., & Eberhardt, J. L. (2016). *Data for change: A statistical analysis of police stops, searches, handcuffings, and arrests in Oakland, Calif., 2013-2014.* Stanford University, SPARQ: Social Psychological Answers to Real-World Questions.

**Finding #1:****Current Oakland police handcuffing data is consistent with previously evaluated periods.**

Past Stanford SPARQ findings regarding handcuffing rates are assumed to be applicable to current 2016 data. Data spanning from 2013 to 2014 demonstrated that 32% of persons described as Black who were detained, arrested or searched were also handcuffed, while only 7% of persons described as White were handcuffed in similar situations. Recent data from 2016 show a similar difference; current handcuffing rates are calculated as 28% for Blacks and 8% for Whites.

**Finding #2:****Handcuffing decisions are primarily linked to search decisions.**

After accounting for errors<sup>3</sup> within the 2016 data, 99% (5,055 of 5,120) of persons handcuffed by Oakland police officers were also searched in some manner during their encounters with police.

**Finding #3:****Handcuffs appear to be applied to persons of all races at relatively equal rates when data is examined when controlling for search activity.**

This finding suggests that handcuffing decisions may be influenced by guiding principles of search policy and search tactics.

**Finding #4:****Probation and parole searches are the primary cause for the appearance of racially disparate handcuffing.**

Although persons of different races are handcuffed at consistent rates during probation or parole search activity, the number of Black probationers and parolees searched far exceeds the number of probationers and parolees belonging to other races who were searched.

**Methodology and Analysis:**Overall Handcuffing Data

All discretionary stop data were queried and produced for incidents between April 1, 2013 and April 30, 2014 (Table 1).<sup>4</sup> Results were grouped by whether or not handcuffs were applied to the person contacted. Results were listed by race after excluding all contacts and uses of handcuffs where the person was searched pursuant to an arrest (use of handcuffs in these situations is nearly mandatory). This same query, categorization and method of exclusion was performed for incidents between January 1, 2016 and June 26, 2016, in order to evaluate whether a recent multiple month time span reflected similar patterns or trends (Table 2).

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<sup>3</sup> OIG reviewed all 127 reports of encounters where data demonstrated that handcuffing occurred without a contemporaneous search; OIG determined that 65 of the 127 incidents did not involve the use of handcuffs and had been incorrectly documented by the reporting officer.

<sup>4</sup> OIG attempted to examine the exact population of data as provided to Stanford SPARQ for their research. Although unknown why it was not precise, the resulting query produced 0.01% less stops for analysis.

Table 1

"Stops" by Race/Ethnicity April 1, 2013 - April 30, 2014 *(Incident to Arrest Excluded)				
Handcuffing Incidents by Race/Ethnicity				
African-American	White	Hispanic	Asian	Other
3465	230	623	140	25
Non-Handcuffing Incidents by Race/Ethnicity				
African-American	White	Hispanic	Asian	Other
10883	3177	3834	1556	731
Handcuffing Rate by Race/Ethnicity				
African-American	White	Hispanic	Asian	Other
32%	7%	16%	9%	3%

Table 2

"Stops" by Race/Ethnicity January 1, 2016 - June 26, 2016 *(Incident to Arrest Excluded)				
Handcuffing Incidents by Race/Ethnicity				
African-American	White	Hispanic	Asian	Other
2866	148	548	75	41
Non-Handcuffing Incidents by Race/Ethnicity				
African-American	White	Hispanic	Asian	Other
7365	1738	2975	889	547
Handcuffing Rate by Race/Ethnicity				
African-American	White	Hispanic	Asian	Other
28%	8%	16%	8%	7%

It may be inappropriate to use the above tables as a valid comparison or benchmark for change since these dissimilar time periods spanned different seasons, levels of staffing, and varying models of staff deployments. However, the resulting handcuffing data tends to show that handcuffing rates remain significantly consistent.

Handcuffing Data when Viewed by Search Type

OIG then reviewed each period’s handcuffing data by type of search after grouping persons searched by race. Whereas the disparate results of handcuffing are immediately obvious from the two tables above, the below tables make clear that search circumstances and search decisions affect a far greater number of African-Americans, but ultimately demonstrate that when handcuffs are applied during these search circumstances they are done so proportionately regardless of race or ethnicity. See Tables 3 and 4.

**Table 3: Stop Data by Search and Handcuff application by Race: January 1, 2016 through June 26, 2016**

TypeOfSearch	Race	Handcuffed	Not Handcuffed	Grand Total	Handcuff %
Prob./Parole	Afr American	1539	247	1786	86%
	Asian	32	5	37	86%
	Hispanic	188	27	215	87%
	White	52	16	68	76%
	Other	20	2	22	91%
<b>Prob./Parole Total</b>		<b>1831</b>	<b>297</b>	<b>2128</b>	<b>86%</b>
Incident to Arrest	Afr American	991	7	998	99%
	Asian	61	2	63	97%
	Hispanic	240	1	241	100%
	White	117	1	118	99%
	Other	27	0	27	100%
<b>Incident to Arrest Total</b>		<b>1436</b>	<b>11</b>	<b>1447</b>	<b>99%</b>
P/C	Afr American	859	294	1153	75%
	Asian	27	25	52	52%
	Hispanic	204	82	286	71%
	White	36	16	52	69%
	Other	11	7	18	61%
<b>P/C Total</b>		<b>1137</b>	<b>424</b>	<b>1561</b>	<b>73%</b>
Weapons	Afr American	368	179	547	67%
	Asian	10	5	15	67%
	Hispanic	126	63	189	67%
	White	47	12	59	80%
	Other	10	9	19	53%
<b>Weapons Total</b>		<b>561</b>	<b>268</b>	<b>829</b>	<b>68%</b>
Consent	Afr American	18	47	65	28%
	Asian	1	6	7	14%
	Hispanic	3	28	31	10%
	White	0	6	6	0%
	Other	0	0	0	-
<b>Consent Total</b>		<b>22</b>	<b>87</b>	<b>109</b>	<b>20%</b>
Inventory	Afr American	4	65	69	6%
	Asian	1	4	5	20%
	Hispanic	0	28	28	0%
	White	1	7	8	13%
	Other	0	2	2	0%
<b>Inventory Total</b>		<b>6</b>	<b>106</b>	<b>112</b>	<b>5%</b>
No Search Conducted	Afr American	78	6533	6611	1%
	Asian	4	844	848	0%
	Hispanic	27	2747	2774	1%
	White	12	1681	1693	1%
	Other	6	527	533	1%
<b>No Search Total</b>		<b>127</b>	<b>12332</b>	<b>12459</b>	<b>1%</b>
<b>Grand Total</b>		<b>5120</b>	<b>13525</b>	<b>18645</b>	<b>27%</b>

**Table 4: Stop Data by Search and Handcuff application by Race: April 1, 2013 through April 30, 2014**

TypeOfSearch	Race	Handcuffed	Not Handcuffed	Grand Total	Handcuff %
Prob./Parole	Afr American	1769	390	2159	82%
	Asian	44	6	50	88%
	Hispanic	228	59	287	79%
	White	86	25	111	77%
	Other	21	4	25	84%
<b>Prob./Parole Total</b>		<b>2148</b>	<b>484</b>	<b>2632</b>	<b>82%</b>
Incident to Arrest	Afr American	2271	25	2296	99%
	Asian	114	1	115	99%
	Hispanic	420	6	426	99%
	White	221	3	224	99%
	Other	66	0	66	100%
<b>Incident to Arrest Total</b>		<b>3092</b>	<b>35</b>	<b>3127</b>	<b>99%</b>
P/C	Afr American	664	160	824	81%
	Asian	25	5	30	83%
	Hispanic	158	36	194	81%
	White	34	7	41	83%
	Other	16	3	19	84%
<b>P/C Total</b>		<b>897</b>	<b>211</b>	<b>1108</b>	<b>81%</b>
Weapons	Afr American	793	331	1124	71%
	Asian	52	21	73	71%
	Hispanic	180	94	274	66%
	White	62	24	86	72%
	Other	17	9	26	65%
<b>Weapons Total</b>		<b>1104</b>	<b>479</b>	<b>1583</b>	<b>70%</b>
Consent	Afr American	56	118	174	32%
	Asian	1	10	11	9%
	Hispanic	20	36	56	36%
	White	3	22	25	12%
	Other	0	2	2	0%
<b>Consent Total</b>		<b>80</b>	<b>188</b>	<b>268</b>	<b>30%</b>
Inventory	Afr American	6	74	80	8%
	Asian	0	2	2	0%
	Hispanic	2	24	26	8%
	White	1	6	7	14%
	Other	0	3	3	0%
<b>Inventory Total</b>		<b>9</b>	<b>109</b>	<b>118</b>	<b>8%</b>
No Search Conducted	Afr American	177	9810	9987	2%
	Asian	18	1512	1530	1%
	Hispanic	35	3585	3620	1%
	White	44	3093	3137	1%
	Other	9	723	732	1%
<b>No Search Total</b>		<b>283</b>	<b>18723</b>	<b>19006</b>	<b>1%</b>
<b>Grand Total</b>		<b>7613</b>	<b>20229</b>	<b>27842</b>	<b>27%</b>

When handcuffing data is viewed by its association to search activity, handcuffs appear to be evenly and consistently applied to persons who are contemporaneously searched.

### Handcuffing Incidents Where No Search Occurred

Review of the 127 incidents in 2016 which showed handcuffing occurred without a search determined a form completion error rate of 51%. OIG coded errors when a handcuffing box on a stop data form was affirmatively filled-in, but either the narrative or OIG review of body camera footage clearly showed that handcuffs were not applied during the encounter. When this error rate is considered, only 0.01% of handcuffed persons within the OPD 2016 data set were not contemporaneously searched during their contact with an officer.

These preliminary OIG findings regarding the association of search activity with handcuffing behavior were shared in collaboration with Professor Benoit Monin of the Stanford University research team, SPARQ. A resulting regression analysis concluded that whether a search occurs is a statistically significant predictor of whether handcuffing occurs, but that ethnicity isn't once one controls for search. The analysis continued:

“The table below...makes clear that there is no apparent racial differences in handcuffing rates once one controls for whether a search was conducted or not. When a search is conducted, the person was handcuffed between 80% and 85% of the time; when a search isn’t conducted, the person is handcuffed between 1 and 2 % of the time.”<sup>5</sup>

**Table 5**

	Whites		Afr American		Asian		Hisp		Other	
	S	No S	S	No S	S	No S	S	No S	S	No S
No H	89	3,113	1,114	9,880	45	1,524	258	3,613	21	727
H	414	45	5,645	179	240	18	1,026	36	123	9
	82%	1%	84%	2%	84%	1%	80%	1%	85%	1%

**Probation and Parole Searches – Identifying Levers for Potential Change**

Referring back to Tables 3 and 4, probation and parole search practice and procedure clearly stand out as reason for the greatest number of handcuffing incidents and are a major contributor to racially disparate handcuffing results.<sup>6</sup>

Oakland police officers are neither required by law nor policy to conclude a standard of probable cause, reasonable suspicion, or any level of suspicion before searching pursuant to a probation or parole condition.<sup>7</sup> The intent and purpose of probation and parole searches is to “minimize the risk to the public safety”<sup>8</sup> because the probationer or parolee will be “less inclined” to possess the fruits and instrumentalities of crime, such as weapons.<sup>9</sup>

Formal probation statuses are afforded to persons who agree to certain non-custodial conditions after being convicted of a crime. Search conditions may be an integral part of this agreement and – depending on the individual conditions set by a judge – may include consent to the search of the person, home, vehicle, and effects without warrant or cause. Parole searches result from state mandated requirements for persons released from prison to submit to warrantless searches.

The search and handcuffing data alone does not provide opportunity to assess whether persons other than African-American are being searched at impartial rates (and thereby exposed to associated handcuffing). To help guide further assessment, OIG utilized previously gathered data for all persons with Oakland addresses sentenced to probation between January 1, 2015 and September 30, 2015. 67% of persons within this probation population were identified as Black, while those persons listed with full probation search conditions comprised 93% of all

<sup>5</sup> Data used by SPARQ did not factor the OIG handcuff error rate found for non-search incidents as the error rate data was not shared at the time of this collaboration.

<sup>6</sup> Officers are only able to document/code one type of search per report when, in reality, multiple justifications or circumstantial reasons may support two or more search types; additional incidents may therefore exist in which the person was subject to probation or parole conditions but an alternative search was listed.

<sup>7</sup> Probation and Parole Searches. (2016). Alameda County District Attorney’s Office [Point of View – Fall 2016](#).

<sup>8</sup> *People v. Constancio* (1974) 42 Cal.App.3d 533, 540. Cite courtesy of Alameda County DA [Point of View](#)

<sup>9</sup> *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002, fn.1., Cite courtesy of Alameda County DA [Point of View](#)

such probationers.<sup>10</sup> Although persons of different races are handcuffed at consistent rates during probation and parole search activity, the exposure to possible probation or parole searches is not equal among all races.

Rather than surmise that racial bias is likely not a primary factor for disproportionate handcuffing data, these results may be utilized to examine the efficacy of related policies or practices which produce disparities and therefore most impact community perception and trust.

### **Recommendation(s):**

#### **1. Evaluate and update the Department's current policy covering the application of handcuffs.**

Under the ultimate reality that handcuffs may be reasonably and necessarily applied to better promote public, officer, and subject safety, the OIG recommended – with the aid and benefit of technical assistance from the Independent Monitoring Team – that Department Training Bulletin III-B.07, *When to Use Handcuffs*, be evaluated and updated. The policy was last updated in 1998. OIG requested evaluation of the policy by the Monitor and coordinated an initial meeting between Department leadership, training staff, and the Independent Monitoring Team. The policy is currently being revised for renewed publication and related training.

#### **2. Evaluate and update the Department's current policy and procedure governing searches pursuant to probation and parole conditions.**

The fact that a large number of racially disparate outcomes may be traced to a single type of search or search procedure warrants examination. In addition to the extent that handcuffs may be warranted during such searches or circumstances, recommended considerations include the degree of effectiveness these searches produce and whether to provide additional direction regarding the use of probation and parole searches as part of crime reduction strategies.

#### **3. Include the discussion, evaluation and articulation of handcuffing and/or probation and parole search decisions within existing training scenarios where the physical application or techniques of handcuff use are taught.**

OPD training bulletins and training sessions are well detailed on the mechanics of handcuff technique (e.g., application, locking, positioning, and removal), and officers routinely receive updated class instruction on these techniques. These existing sessions can be used to increase and expand associated instruction on the assessment, justification, cause, and purpose of applying handcuffs. By including discussion, review, or report writing elements during the practice of handcuff application, all aspects of handcuffing may be trained and better decisions and justifications may result.

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<sup>10</sup> Monthly probation reports compiled from Alameda County Consolidated Records Information Management System (CRIMS)

**4. Any training or policy which ultimately impacts the privacy or liberty interests of its community members should also comprehensively consider and include the tenets of procedural justice.<sup>11</sup>**

The Department has achieved a high level of commitment to the tenets of procedural justice with the goal of embedding procedural justice philosophy within organizational culture. Each policy or procedure related to a topic or practice which may likely result in – or be perceived as resulting in – an adversarial action or result should be evaluated through a high level lens of procedural justice. The Department should examine 1) if known practices and results are ultimately deemed appropriate, in what ways may community trust and legitimacy benefit by way of education, explanation or consideration, and 2) in what ways may procedural justice be successfully modeled during and after handcuffing or searches.

**5. Evaluate to what extent documented handcuffing data is entered in error by reporting officers**

This review determined an overall error rate of 51% when reporting officers documented that handcuffing occurred during an encounter where no search was conducted. While these errors are expected to be identified and corrected by reviewing supervisors before the report is finalized, OIG will conduct a supplementary review of handcuff incidents in which searches occurred in order to ascertain the extent or potential for errors in additional situations. OIG has already begun a system of data and report evaluation and validation which addresses this and other related issues of accuracy and consistency. OIG is also in the process of training all officers in small group classes on the importance of stop data accuracy and consistency.

## NEXT MONTH'S PLANNED REVIEWS

The reviews scheduled for October 2016 are:

1. Performance Appraisals
2. Preliminary Recommendations for Hiring and Training Practices

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<sup>11</sup> Procedural Justice refers to the philosophy and practice of fairness within public safety processes, transparency in actions, opportunities for voice, and impartiality in decision making: <http://www.cops.usdoj.gov/Default.asp?Item=2866>