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Pursuing Excellence Through Science and Innovation

Summarizing Use of Force Data for the Public

A HOW-TO GUIDE FOR LAW ENFORCEMENT IN NEW JERSEY

This guide, created by the National Policing Institute, is intended for law enforcement personnel or representatives who actively develop annual reviews to summarize their agency's use of force. We encourage law enforcement executives to provide this document to their staff so that they may review and use the guide as a framework. This document was developed specifically for law enforcement agencies in New Jersey but may benefit others in the field.

ABOUT NPI

The National Policing Institute is a non-partisan and independent nonprofit organization dedicated to pursuing excellence in policing through science and innovation. We envision police and communities working together to implement best practices that are informed or supported by research, resulting in safe, healthy, economically thriving, and mutually trusting communities. Learn more at www.policinginstitute.org.

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I. Introduction

In December 2020, the New Jersey Office of the Attorney General (NJOAG) announced that each law enforcement agency in New Jersey would adopt a new statewide use of force policy, effective December 31, 2021.[1] Core Principle Seven of this policy states that agencies must "conduct an annual review of use of force incidents in their department." Specifically, Section 7.6 of the policy states that these annual reviews must include the following:

- *analytical reports from the NJOAG's Use of Force Portal;*
- *an audit of body-worn cameras and other videos on a risk-based and randomly selected basis;*
- *any internal affairs complaints; and*
- *an analysis of the uses of force to ensure that force is being applied without discrimination based on race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.[2]*

These annual reviews are designed to evaluate whether any changes to departmental structure, policy, training, or equipment are appropriate. The written report on this review must be provided to each agency's county prosecutor's office. However, agencies will also benefit by sharing these reviews publicly, thereby increasing transparency and accountability within their communities.

> *The National Policing Institute created this guide to help agencies discover and implement best practices for reviewing and disseminating use of force statistics to the public.*

The layout of use of force reviews will vary across agencies. For example, some agencies only have a few use of force incidents per year, while others have several hundred. Agency size and the count of use of force incidents will drive how agencies present and share use of force data in publicly released reviews. This guide will advise agencies on fulfilling mandatory reporting requirements, describe the critical sections to include, and provide recommendations for presenting and interpreting data.

II. Explaining the Use of Force Reporting Policy

Agencies should begin annual reviews with a statement from their chief executive that briefly introduces the New Jersey statewide use of force policy and describes the agency's duty to report and review uses of force.

- Agencies may refer to Core Principle Seven to help explain their reporting requirements to the public. Critical statements from the NJOAG's policy include:

  - "Every use of force must be reported and receive a meaningful command level review as set forth in a written department policy that includes review by the law enforcement executive."
  - "The law enforcement executive shall also conduct an annual review of use of force incidents in their department."
  - "Thorough and meaningful review of use of force incidents is vital to ensuring a positive law enforcement and community relationship."

- Agencies should also include statements relating to the department's:

  - mission and vision statements
  - core values and agency objectives
  - desire for transparency
  - commitment to serving the public and ensuring safety

- Agencies should describe how frequently their use of force policy is reviewed and updated with new changes. Law enforcement agencies in New Jersey must comply with the NJOAG directive—policies may be more restrictive than this directive, but they may not be less restrictive.

- The introduction to the use of force review should also briefly summarize important content and findings.

- The introduction may need to explain any analysis limitations due to missing data or data that does not capture certain information.

III. Use of Force Dashboard

Agencies may consider directing community members to the NJOAG's interactive, public-facing dashboards for more information and the opportunity to view use of force data and complaints directly. For example, an annual review may include links/directions on how to access the NJOAG's dashboards:

- use of force homepage:
  - https://www.njoag.gov/force
- use of force policy
  - https://www.njoag.gov/force/#policy
- use of force portal (Benchmark Analytics platform):
  - https://www.njoag.gov/force/#dashboard
- internal affairs complaints dashboard:
  - https://www.njoag.gov/iadata

IV. Definitions for Use of Force

The public may be unfamiliar with some of the language commonly used in law enforcement. Agencies should include a section in their annual review that provides community members with clear, understandable definitions of the key terms used.

- Some examples of terms that may need defining include:

  - active assailant
  - active resistor
  - chokehold
  - Conducted Energy Device (CED)
  - constructive authority
  - contact and cover
  - critical decision-making model
  - deadly force
  - de-escalation
  - enhanced mechanical force
  - law enforcement incidents

  - mechanical force
  - passive resistor
  - physical force
  - positional asphyxiation
  - proportional force
  - reasonable belief
  - strategic redeployment
  - threatening assailant

- The NJOAG's use of force policy includes a definitions section. Agencies should include those definitions in the review document so the public can better understand its contents.
- Additionally, agencies should clearly define constructive authority and physical contact, along with the distinct levels of force—distinguishing between what constitutes physical force, mechanical force, enhanced mechanical force, deadly force, etc.

  - Agencies should describe any decision-making models they may employ.
  - If agencies have graphics or images of the decision-making model, these would be especially useful as a visual aid.

- Ensure that reviews **define the unit of force counts**. For example, define whether force is counted by the number of incidents, the number of subjects who had force used against them, the number of force actions, or the number of officers who used force during the incident.

  - Reporting more than one or all of these may be appropriate in some circumstances.
  - Explaining how and why these counts can differ based on the circumstances of an incident is also instructive for the public. (See Section VI for additional information.)

V. Description of Use of Force Training

To provide some context around each agency's use of force patterns, include a section that summarizes the types of training related to use of force that officers have received.

- Specifically, **agencies should highlight any use of force trainings**—such as Integrating Communications, Assessment, and Tactics (ICAT) and Active Bystandership for Law Enforcement (ABLE)—that officers participated in over the past few years. Both programs are mandated for all law enforcement officers in New Jersey.

  - ICAT is designed to enhance officers' de-escalation skills through critical decision making, crisis recognition and management, communication, and safe and effective tactics. A complete definition can be found on the Police Executive Research Forum's website.[3]
  - Agencies may also mention that the goals of ABLE training are to prevent misconduct (including excessive force), avoid law enforcement mistakes, and promote officer health and wellness.[4]
  - Agencies may feature other training related to the use of force, such as CED training/refreshers, defensive tactics, etc. If applicable, include descriptions of how these trainings also reinforce the sanctity of human life, de-escalation, or other similar principles.

- Agencies can also highlight who receives this training (all officers or only select officers), what proportion of officers have been trained, when this training occurs (in-service or during the academy), and how frequently officers are re-trained and/or provided refresher courses.

- Agencies may consider including short descriptions of other in-service training provided—whether agency-wide or to particular units—related to crisis response and community trust, for example.
- Finally, agencies may also describe any training developed specifically for the community, such as citizen police academies, police youth camps, police explorer programs, or similar programs.

VI. Use of Force Data

This section should include data on the number of calls for service, arrests, use of force incidents, and what types of force are most common. **When presenting use of force data, there are several important considerations and best practices to remember.**

- Clarify the unit of analysis.

  - Use of force can be counted in several different ways:

    - *Incident-level:* number of use of force incidents;
    - *Report-level:* number of use of force reports submitted to the system;
    - *Individual-level:* number of individuals who experience officer force during a use of force incident;
    - *Officer-level:* number of officers who use force during a use of force incident; and
    - *Action-level:* number of force actions officers use during a use of force incident.

  - How agencies define the unit of analysis will significantly impact the interpretation of their findings.

    - For example, the NJOAG's Use of Force Portal uses *reports* as the primary unit of analysis. Since every officer who uses force must complete their own use of force report, this is also equivalent to the officer-level count, and multiple reports may exist for a single incident.

- The presentation of use of force data will vary greatly depending on agency size and the number of force incidents. Consider these differences and choose the appropriate method for presenting data.

  - **Without the proper context, data can easily be misinterpreted.**

    - For example, agencies with small counts of force incidents should only present raw numbers.[5]

      - Percentages can be easily manipulated and taken out of context with a small sample size.

> ▶ **A good rule of thumb is that percentages should not be included if a count is below forty.**
>
> ▶ For example, if an agency has ten force incidents and five involve mechanical force, this should be presented as raw numbers (i.e., 5 out of 10 rather than "50%").

- On the other hand, agencies that have had several use of force incidents should present both percentages and raw numbers.
- Agencies with very few use of force incidents may elect to provide written summaries of what happened during each incident.

  > ▶ This would not be feasible for agencies with hundreds of force incidents. However, it could be beneficial and provide transparency for smaller-sized agencies.

- Include a graph (line graph, pie chart, bar chart, etc.) to illustrate statistical trends. These basic visuals, like the examples shown here, can often be created using Microsoft Excel.

  - ◆ This will also aid in comparing how use of force has increased or decreased from year to year.

Example Graph 1. Use of Force by Year by Division, Jan. 1, 2020 to Dec. 31, 2023 (n=1,484)
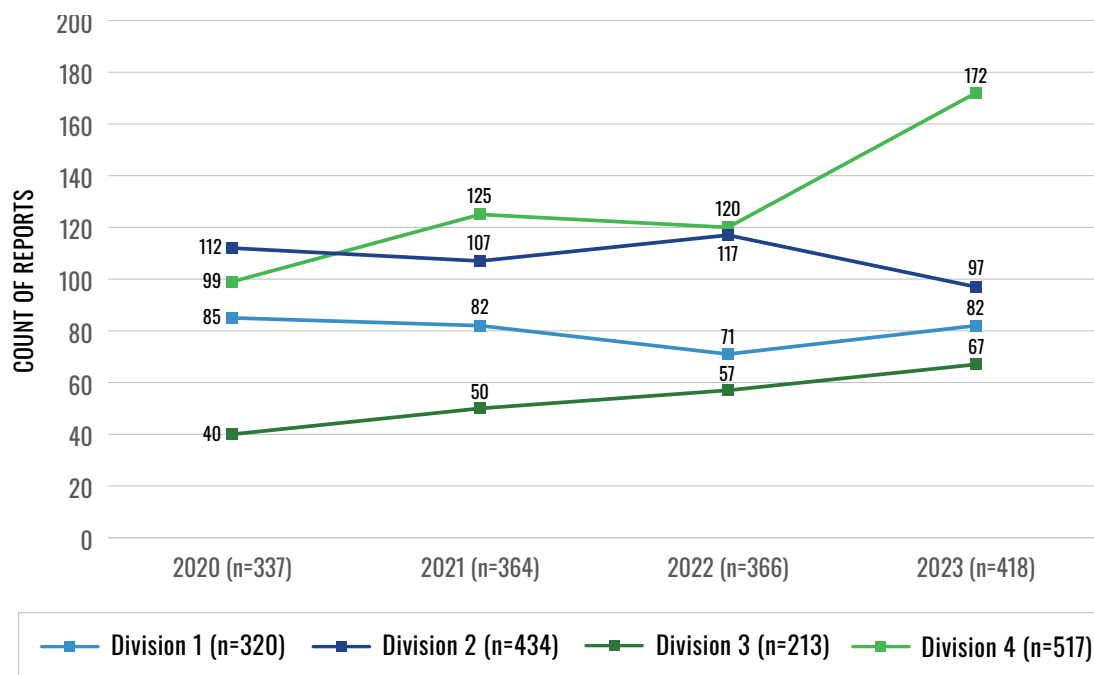
Example Graph 2. Percent of Arrests Resulting in Force by Year, Jan. 1, 2021 to Dec. 31, 2023 (Division Level, n=1484)
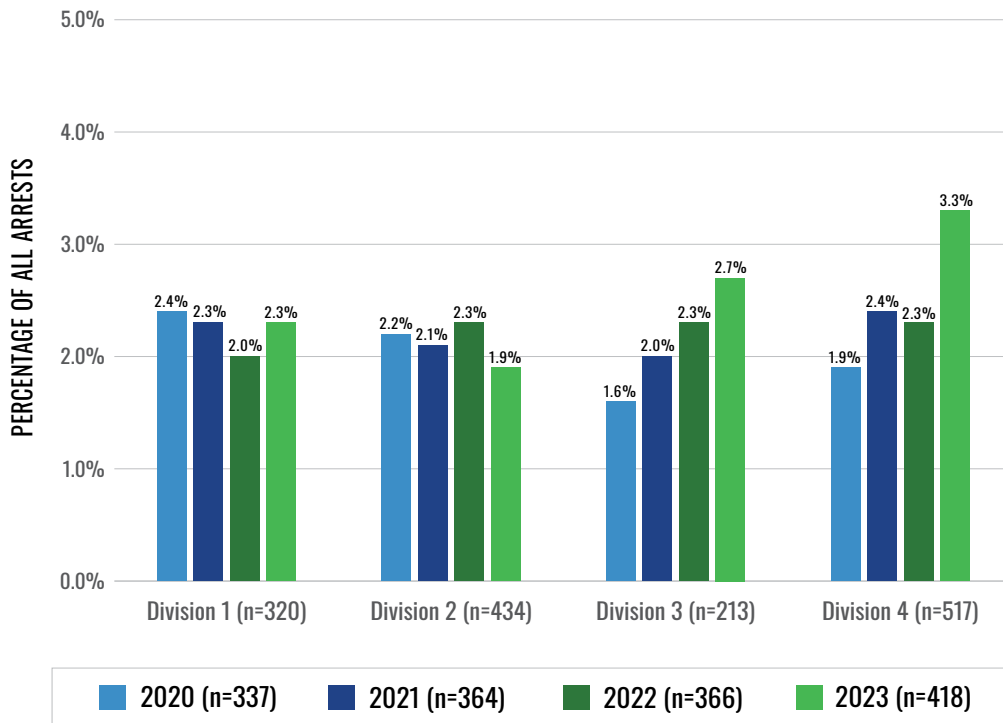
Example Table. Use of Force Incident Numbers

	2021	2022	CHANGE (%)
DISCHARGED CHEMICAL	485	278	-42.7 ↓
USED CED	91	72	-20.9 ↓
USED PRESSURE POINTS	1,348	1,149	-12.5 ↓
USED ARM BAR	3,107	2,764	-11.0 ↓
TAKEDOWNS	5,661	5,743	1.4 ↑
TOTAL USE OF FORCE INCIDENTS	8,704	9,263	6.4 ↑

◆ Be sure to provide context by including titles, identifying the sample size, and specifying the timeframes for any charts or graphs.

◆ When including charts or graphs, be sure to also incorporate a brief explanation of the results. This will help the public better understand the findings and prevent any misinterpretations of the data.

◆ Agencies may consider adding comparisons to 3-year or 5-year averages to provide context for the current year's data.

◆ Give special consideration to data in 2020 and 2021 due to unusual fluctuations in public and police activity from the COVID-19 pandemic.

● Agencies may direct the public to the NJOAG's use of force dashboard so the public can review more detailed use of force data for themselves.

VII. Presenting and Analyzing Demographic Data

The NJOAG requires annual reviews to include "an analysis of the uses of force to ensure that force is being applied without discrimination based on race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic."[6] Here are best practices for presenting demographic data.

A. Benchmark Analyses

To examine how agency use of force rates vary across racial/ethnic groups (or by other demographic characteristics), agencies may consider conducting a benchmark analysis. **Benchmark analyses** compare the percentage of racial/ethnic groups who experience force to the same groups' representation in a comparison data source. This estimates the groups' "expected" use of force.

Common sources of data that may be used as benchmarks include:

1. **Residential population statistics (e.g., census data)**
2. **Arrest data**
3. **Criminal suspect data**

These benchmark data sources vary widely in their ability to serve as proxy measures of individuals' risk of experiencing force. Here's a closer look at the reasons why.

1. **Residential population statistics (e.g., census data):** The percentage of racial/ethnic groups in the residential population is a readily accessible comparison data source. However, dozens

of studies point to the limitations of census-based benchmarks. These studies emphasize that census data do not capture most factors related to the likelihood of police contact, which is a rather complex interaction. Census data do not measure the legal and extralegal characteristics that research shows may increase individuals' risk of experiencing force— particularly individuals' *legally relevant behaviors*, like resistance, presence of a weapon, and criminal behavior.

- Consequently, using census data as a benchmark comparison is not recommended, particularly if it is the only benchmark used.
- Census-based benchmarks can provide a gross estimate of the racial/ethnic disproportionality in policing outcomes within a given jurisdiction. However, they cannot provide reliable information regarding the reasons for these differences and, therefore, *cannot be used to estimate the prevalence of police bias*.
- Making benchmark comparisons using arrest data or criminal suspect data is preferable. These data better represent the population of community members who encounter the police and may experience police use of force.
- If census data are included in agency reports, a cautionary note regarding the limitations of this dataset should be included for the public's review. For instance, specifying that census data are *estimates* and do not include individuals who fail to participate or are missed in the census counts.

2. **Arrest data:** The percentage of racial/ethnic groups in the agency's arrest data may better represent those whom officers typically must enforce the law against. Most use of force actions occur during arrest situations, making it a good proxy measure for the risk of experiencing force.[7]

- Under arrest data, agencies may distinguish arrests by crime type, such as arrests for all NIBRS crimes or only crimes against persons.
- However, one drawback of using arrest data is that there may be disparities in who is arrested.[8]
  - In this case, arrest data underestimates the disparity between arrestees and use of force rates.

3. **Criminal suspect data:** This data refers to the information collected when a crime is reported to the police by a victim. The race/ethnicity of suspects reported to the police may be the best data source for a benchmark analysis. This is because the data will be based on the best available proxy measure of the population of individuals at risk of being involved in interactions with police that subsequently result in the use of force.

- When using criminal suspect data, agencies may choose to examine the racial/ethnic compositions of suspects for all reported crime types, reported Part 1 crimes, and reported violent crimes.

B. Disproportionality, Disparity, and Bias

Understanding the difference between disproportionality, disparity, and bias is essential.

- Disproportionality refers to differences within a single racial or ethnic group compared to that group's representation in the comparison population of interest. This term is specific to the state of being out of proportion.

  - For example, X% of use of force incidents involve Black community members, while Black community members account for X% of the comparison population.

- Disparity refers to differences across groups of different races or ethnicities. This term is specific to the state of being unequal.

  - For example, X% of use of force incidents involve Black community members, while X% involve White community members.

- Bias refers to differences in outcomes that are due to individual opinions or prejudices regarding a racial or ethnic group. Bias offers a *reason* for potential disproportionality or disparity.

However, note that measures of racial/ethnic disparity cannot be reliably used to determine the reasons for these differences, including whether individual officers or the agency use bias as part of their decision making. There may be unmeasured factors contributing to disproportionality of disparity outside of bias. However, analyzing disparities and disproportionality helps identify patterns and trends agencies may use to understand potential factors and reasons for disparities.

C. Conducting Analyses

Once an agency's preferred benchmark data is ready, it is recommended that agencies calculate a **Disproportionality Index (DI)** and a **Disparity Ratio (DR)**. These will help agencies interpret the findings of their use of force analyses to determine how much difference there is between observed and expected percentages.

- **Disproportionality Index (DI):** DIs capture the difference between the actual rate of force used against a racial/ethnic group and the expected rate of force against this group.

  - This equation can represent the DI:

$$\frac{\textit{Proportion of racial ethic groups observed uses of force}}{\textit{Proportion of racial ethnic groups expected uses of force using benchmark}}$$

  - If the DI value is greater than 1, then force has been used more than would be expected against that racial/ethnic group based on their representation in the benchmark data.

- ◆ If the DI value is less than 1, then force has been used less than expected against that racial/ethnic group based on their representation in the benchmark data.
- ◆ The higher the DI value, the greater the disproportion.

- **Disparity Ratio (DR):** DRs compare the DI of racial/ethnic minority groups to the DI of the majority group.

  - ◆ This equation can represent the DR:

$$\frac{\text{Minority group's DI value}}{\text{Majority group's DI value}}$$

- DR values indicate the likelihood of having force used against a person within a racial/ethnic minority group compared to the majority group.

  - ◆ For example, if the DI value for a minority group is three and the DI value for the majority group is one, the resulting DR value would be 3.0 (3/1=3).
  - ◆ A disparity ratio of 3.0 indicates that the minority group is three times more likely to have force used against them compared to the majority group.

D. Interpreting Findings

- Note that not all benchmarks are of equal validity, and a benchmark with a higher degree of validity will produce disproportionality indices with more credible results.
- While the disparity ratio is often preferred to the disproportionality index (for interpretability reasons), these measures are not perfect.
- There is no strict line at which a DI or DR is "too high" or indicates bias or discretion.[9]
- Law enforcement researchers commonly conduct more sophisticated analyses in this area. Agencies may consider partnering with an academic institution or technical expert for more advanced and robust statistical analyses.

VIII. Body-Worn Camera Audit

The NJOAG use of force policy states that the annual force summary review should include "an audit of body-worn cameras (BWCs) and other videos on a risk-based and randomly selected basis." Since law enforcement agencies must employ BWCs in their daily law enforcement functions,[10] each agency should include this audit in its review. Suggested best practices are provided below.

- Be sure to include excerpts from the agency's BWC policy, including:
    - the policy's intent, when officers are expected to turn on their cameras, the footage review process, and any other important information regarding BWCs;
    - descriptions of who must wear a BWC and exemptions from BWC activation; and
    - if the agency does not have BWCs or a BWC policy, that should also be mentioned.
- It may be beneficial for audits to be conducted more frequently than the annual requirement (e.g., every quarter).
    - Be sure to detail how often the audit is conducted in the annual review.
- **A risk-based review refers to specific reviews of critical incidents, while randomly selected reviews should be random.**
    - Critical incidents and routine encounters should both be included in the audit. Agencies may also consider including officers who trigger warnings from early intervention systems in the audit.
- The amount of footage reviewed may depend on each agency's size. For example, larger agencies should review a higher number of videos than smaller agencies.
- The audit is conducted to determine whether any enhancements to departmental structure, policy, training, or equipment might be needed.
- If an agency makes BWC footage publicly available, directions should be included regarding how the public can access it.[11]

IX. Internal Affairs Section

The NJOAG's use of force policy states that the annual use of force review should include a review of "any internal affairs complaints."[12] Agencies may include a few paragraphs, graphs, or tables to help communicate their internal affairs processes and changes in reports over time to the public.

- In this section, briefly describe the investigative process of internal affairs. A link to the policy would be helpful.[13]
- Agencies should state the number of complaints they have received and summarize the outcomes of those complaints.
    - Provide a synopsis of the reasons behind the complaints.
    - Include sources for the complaint, detailing whether the complaints were received from members of the community, anonymously, from the agency, or instances where this data was not captured.

- ◆ Consider including the percentage of complaints sustained, the percentage of complaints exonerated, the percentage of complaints unfounded, and the percentage of complaints sustained due to policy failure.

- **When presenting complaint numbers, the same consideration of counts should be made. For counts less than forty, ensure that raw numbers are provided.**

- If an agency makes internal affairs complaints available publicly on its website, include a link to it in the report so the public can access it.

- Agencies may also include a link to the New Jersey internal affairs complaints dashboard here so that the public can review complaints data for themselves:

  - ◆ https://www.njoag.gov/iadata

Example Graph 3. Agency Internal Affairs Investigations (N=509)
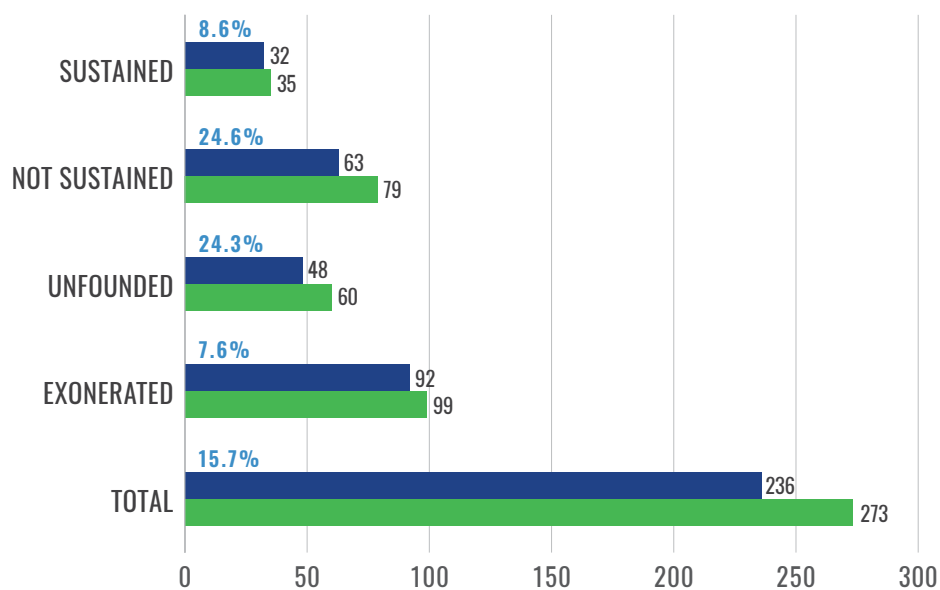
	TOTAL	EXONERATED	UNFOUNDED	NOT SUSTAINED	SUSTAINED
Change (%)	15.7%	7.6%	24.3%	24.6%	8.6%
2022	273	99	60	79	35
2021	236	92	48	63	32

X. Summary

Each agency should conclude its review by providing a summary of the review's main findings and a summary of the agency's future plans.

- Here, agencies can provide an overview of the findings, whether racial, ethnic, or gender disparities were found, and whether there was an overall increase or decrease in the number of use of force incidents at the agency.
- Be sure to include any agency plans for further training, policy changes, disciplinary action, or administrative action that may be in some way related to use of force.
- Agencies can also provide the public with updates on any reform measures being implemented and how the agency has changed since the last summary review.
- Summary sections at the end of a review do not need to be lengthy but should offer some form of conclusion to the public.

Endnotes

1   The NJOAG's statewide use of force policy can be found here: https://www.njoag.gov/force/

2   Note that agencies can only review patterns of use of force for data collected. If reports do not include areas for a subject's religion or sexual orientation, for example, agencies will be unable to conduct this analysis.

3   Integrating Communications, Assessment, and Tactics (ICAT): https://www.policeforum.org

4   Active Bystandership for Law Enforcement (ABLE): https://www.law.georgetown.edu/cics/able/

5   Raw numbers refer to data that has not been analyzed, processed, or changed in any way (i.e., the total count of use of force incidents).

6   Use of force reports do not include information about all demographic characteristics listed in the NJOAG policy. Race/ethnicity and gender should be analyzed with official data, but an examination of whether other characteristics impacted the use of force likely will have to rely on arrest and complaint data and body-worn camera footage review.

7   For example, see Davis et al., 2018; Garner et al., 2018; Hickman et al., 2008.

8   For example, see Fryer, 2020; Shjarback & Nix, 2020; Tregle et al., 2019.

9   For example, see Farrell et al., 2004; Fridell, 2004; Geller et al., 2021.

10 https://www.nj.gov/oag/dcj/agguide/ag-Directive-2021-5-BWC-Policy.pdf

11 Note that agencies are not permitted to release or view BWC footage or comment on certain force incidents in accordance with NJOAG Directive 2019-4.

12 https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2022-4_Statewide-Vehicular-Pursuit-Policy-and-Use-of-Force-Policy-Addendum-A-Addendum-B.pdf

13 Please visit https://www.njoag.gov/iapp/ for additional guidance on New Jersey statewide standards for internal affairs policies and procedures.