Update on Stops, Searches, and Arrests

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Legal Research and Planning

In 2023 NOPD created the Legal Research and Planning Section

Policy and Review

Legal Training
• DTBs
• In person

Legal Updates
• Legislative
• Case law

Sustainability In Action

Feedback
• Internal
• External

PSAB Review
• Audits
• Reviews

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Evolution of Training

Prior to 2019

NOPD heavily relied on lecturing to PowerPoint slides to provide information.

2020-2023

NOPD transitioned to a Problem Based Learning (PBL) model.

Where does it start?

- Reasonable Suspicion – Specific articulable facts that would lead a reasonable officer to believe a crime is, has, or is about to be committed to justify a stop. (NOPD requires additional facts to handcuff a person).

- Probable Cause - The facts and circumstances known to the officer at the time that would justify a reasonable person in believing the suspect committed or was committing an offense.

- Pat-down / Frisk - checking a person for weapons when specific articulable facts lead a reasonable officer to believe that person may be armed and dangerous.

Problem Based Learning Example

Facts:

- Information provided at roll call about business burglaries:
- Video of the suspect shows dark clothing, black gloves, a dark hooded sweatshirt, and a black medical mask covering his face. He breaks a window with a brick and loads items into a large black backpack.
- Dispatch notifies you of a burglar alarm in the area of the crimes.
- While enroute you observe an individual who matched the description just blocks from the dispatched alarm, he appears to be holding a black bag against his chest. When he notices you, he quickly moves around a corner.
- You turn the corner and see the subject, now without the bag.
- You conduct a stop on the subject and observe a black medical mask hanging from his front pants pocket.
- You then conduct a pat-down of the subject and remove a pair of black gloves from the sweatshirt pocket. The gloves are covered in broken glass.
- You handcuff the subject and request a backup unit to assist.

Problem Based Learning Example

Questions:

- Identify the crime(s) as justification to initiate the stop.
- List the target factors that would lead to the conclusion that the stop should or should not be made.
- List the target factors that would lead to the conclusion that the pat-down/frisk should or should not be made.
- List the target factors that would lead to the conclusion that the handcuffs should or should not be applied.
- What factors would you list to determine if probable cause existed for an arrest?
  - If no probable cause what information do you need to gather?
- Identify what procedural justice principals were or were not applied.

Evolution of Training

Currently

For 2024 NOPD has incorporated some lecture-based learning where appropriate to make the PBL more meaningful, enhance understanding in training, and reinforce the subject material.

This is combined with additional electronic learning to reinforce the most important information.

Content	Instructor Notes
	Handcuffing suspicious persons merely for officer safety (boilerplate language) or because the suspects outnumber the officers involved, does not meet the threshold afforded to reasonable suspicion or danger.
	Specific articulable facts must be associated whenever this decision is made, as handcuffing a person not under arrest significantly raises the bar and interaction from simple questioning to this order: Stop (a verbal limited detention), Pat-down frisk (heightened to hands-on limited search), Physical Restraint handcuffing (physical denial of freedom).
Closing Discussions	Summary Discussions — Note the difference in reporting when a "search incident to arrest" (SITA) technically occurs while conducting a pat down/frisk. Evidence or contraband seized "when probable cause exists for an arrest" is admissible in court under SITA even if the suspect has not been formally placed under arrest or handcuffed at the time of the seizure. Any questions on the discussion points identified in this presentation?
	Slide #18 Officers are confusing the difference between a pat down versus SITA in their reports. For example, using the phrase, "the arrested subject was patted down for weapons prior to being placed into the police vehicle" is incorrect. Similarly, when making a stop with sufficient probable cause apparent to effect the arrest, the timing is not relative as to the pat down and/or retrieval of evidence and contraband, as the search would have been justified under SITA anyway.

The remainder of this two-hour course will utilize Problem Based Learning groups to review scenarios and to then apply the principles presented in the instructor led session.

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Evolution of Training

The remainder of this two-hour course will utilize Problem Based Learning groups to review scenarios and to then apply the principles presented in the instructor led session.

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FOB Inspection Background

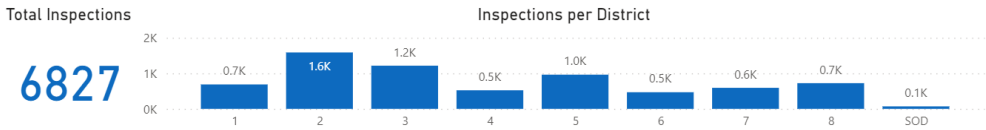- Developed in 2021 by FOB as a corrective action plan following PSAB SSA Audits

- Works as augmented SSA training for officers and supervisors

- Quickly corrects deficiencies in the field between annual audits

- Conducted by platoon and DSA sergeants regularly

- Includes reviews of inspections by District Lieutenants

- Weekly reporting on results from District Captains to Deputy Chief of FOB

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FOB SSA Inspections

Snips from the FOB Inspections Dashboard

FOB Inspections Dashboard

| Stats | Data | Progress |

Total Inspections

6827

Inspections per District

0.7K, 1.6K, 1.2K, 0.5K, 1.0K, 0.5K, 0.6K, 0.7K, 0.1K (SOD)

Stops SSA Documentation

1. Based on all the evidence available to you, did the officer(s) have reasonable suspicion or probable cause to stop each subject who was stopped?

District	1	2	3	4	5	6	7	8	SOD	Total
Yes	667	1562	1183	437	949	457	573	713	61	6602
No	0	2	1	0	0	0	0	0	0	3
%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

FOB Inspection Form Data

| Stats | Data | Progress |

District	Platoon	Item	Review Date	Created Date	Person Auditing	PC/RS to Stop by Officer	FIC exists, if require
1	B	B-24708-24	3/5/2024		Sgt. Charles Hoffacker	Yes	Yes
2	"B" SQUAD	B-13099-24	3/5/2024		SGT. GINA M. COUSIN	Yes	NA
2	A PLATOON	B-27728-24	3/5/2024		SGT. A. EDENFIELD	Yes	NA

District: All **Platoon:** All **Item:** All **Review Date:** 10/10/2021 – 3/5/2024 **Review Month:** All **Reviewer Concurs:** All

20. Did you take corrective action to address non-compliance found in this inspection?

District	1	2	3	4	5	6	7	8	SOD	Total
SFL Redirection	7	11	13	25	2	3	20		1	82
SFL Counseling	2	10	12	6	5	10	9	2		56
Verbal Redirection/Counseling	4	7	4	3	3	7	7	5	2	42
PTTR										
PRR										
Roll Call	1	10	3	2	5	3	2	4	1	31
FDI		1	1	2			2	1		7
Other	1	6	1		6	6	1	2	2	29

FOB Inspections Progress Over Time

| Stats | Data | Progress |

Review Date: 10/10/20 **Review:** All **Review:** Last ⌕ No filte

1. Based on all the evidence available to you, did the officer(s) have reasonable suspicion or probable cause to stop each subject who was

District	2022-11	2022-12	2023-01	2023-02	2023-03	2023-04	2023-05	2023-06	2023-07	2023-08	2023-09	2023-10	2023-11	2023-12	2024-01	2024-02
1	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
2	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
3	100%	98%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
4	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
5	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
6	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
7	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
8	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
SOD	100%		100%	100%		100%	100%	100%	100%	100%	100%	100%		100%		
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

9. If reasonably possible, does the video show the officer(s) verbally identify themselves when interacting with the subject(s) or other civilians during the stop?

District	2022-11	2022-12	2023-01	2023-02	2023-03	2023-04	2023-05	2023-06	2023-07	2023-08	2023-09	2023-10	2023-11	2023-12	2024-01	2024-02
1	100%	100%	100%	90%	90%	100%	100%	100%	100%	100%	100%	100%	100%	100%	95%	100%
2	100%	98%	100%	100%	99%	98%	97%	96%	92%	95%	91%	96%	100%	91%	100%	100%
3	100%	98%	100%	100%	100%	100%	100%	96%	100%	100%	100%	100%	91%	100%	100%
4	89%	100%	83%	100%	89%	89%	100%	91%	100%	100%	100%	100%	100%	100%	100%	100%
5	97%	100%	100%	98%	97%	90%	100%	100%	100%	100%	100%	100%	100%	90%
6	100%	100%	100%	91%	86%	100%	100%	100%	94%	100%	100%	100%	100%	100%	95%
7	94%	96%	92%	91%	93%	89%	100%	95%	100%	100%	79%	100%	100%	95%	97%	93%
8	100%	97%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
SOD	100%		100%	100%	100%		100%	100%	50%	100%	100%	100%		100%		
Total	98%	98%	99%	98%	97%	97%	98%	98%	96%	99%	96%	99%	100%	96%	98%	97%

22. If this inspection was reviewed by a Lt, Capt, or FOB HQ, does the reviewer concur with the results

District	1	2	3	4	5	6	7	8	SOD	Total
Concur	111	197	272	100	100	102	94	117	16	1109
Does Not Concur	1	4	1	2	1	2	2	1	0	14

DSA Role in SSA inspection process

- What it's like to do FOB Inspections
- Addressing PSAB daily FIC reviews

Field Operations Bureau

DA Coordination

- A District Attorney Screener is assigned to each district
  - Chief of Screening   Andre Gaudin
  - Deputy Chief of Screening   Autumn Harrell
  - 1st District   Susan Ciaravella
  - 2nd District   Sharry Scott
  - 3rd District   Joe Larre'
  - 4th District   Jake Lemmon
  - 5th District   Lance Engolia
  - 6th District   Stephen Shapiro
  - 7th District   Lisa Parker
  - 8th District   Graham da Ponte

- More direct interaction with the DA and District DIU Lieutenant and A Case officer

- Arrest case management portal improvements and training for NOPD personnel and DA screeners
  - Facilitate and speed-up document sharing and therefore screening decisions

- Bi-monthly meetings with A-Case officers and DA screeners

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SSA Audit

- How the audit is conducted
  - Multiple layers of review (double blind)
  - Tripled number of auditors in the department
- Sampling
- Audit Protocol development and revisions based on practical lessons identified by all parties
- Review by all parties
- Publication to public

Stop, Search & Arrest
Audit Trends - Compliance Score Trends (Major Categories)

SSA Audit Category	¶ Scores >95%	¶ Opportunities for Improvement	2020	2021	2022	2023	Trend
Incidents (Category includes sample of "FIC Events" /"EPR Incidents", which measure timeliness of submittal and approval of reports. boilerplate language used, video to reporting consistency, supervisor made scene and FIC exists if required, evidence properly handled and reported.)	123, 124, 126, 136, 145, 149, 150 (sub-paragraph: Evidence).	150 (sub-paragraph: report submittal and approval timeliness).	83%	87%	90%	90%	↑
Procedural Justice (Sub-category of incident category that measures officer self-identifying, engagement with citizen, listening to concerns, explaining reason for stop, timeliness in completing stop, professionalism, etc.)	181 (sub-paragraph 2-:Explanation, Timely, Professional).	181 (sub-paragraph: 1-Identified).	93%	94%	98%	97%	↑
Stops (Subject based category which measures RS/PC review, documentation of RS/PC, handcuffing reasons documented, and handcuffing within policy.)	122, 123, 126, 149, 150 (Documentation).	Handcuffing is audited as part of NOPD Policy.	87%	93%	97%	98%	↑
Searches (Subject based category which measures determining if search legal, legal basis for search documented, pat-down justifications valid.)	123, 149, 150(Documentation).	130 (Probation/Parole)	79%	79%	93%	96%	↑
Arrests (Subject based category which includes determining if arrest legal, legal basis for arrest documented, supervisor approved each arrest..)	141, 144, 145 (including Miranda)		99%	99%	96%	98%	↑

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Stop, Search & Arrest
(Sub-Categories)

SSA Audit Category	¶ Scores >95%	¶ Opportunities for Improvement	2020	2021	2022	2023	Trend
Strip/Cavity (Subject based category like above with focus on video and reporting, privacy provided, gender consideration, etc.)	132, 133, 134	None	100% 4 .06%	NA	94% 3 .07%	100% 3 .07%	↑
Search Warrants (Warrant based category measures PC, Completeness of log, risk assessments, videos, approvals, etc.)	135, 136, 137, 138, 139	140 (Logbook data lagged in previous audits; Created a new cloud-based entry system.)	NA	97%	99%	97%	↑
Probation & Parole (Incident & subject based audit focused on persons on probation and parole specifically).	130 (search legal)	None	100%	100%	100%	100%	↑
Consent to Search (Subject based category which measures if search legal, search documented, supervisor approved, supervisor made scene, form properly completed and explained.	131 (Explained rights)	Erroneous documentation where no Consent to Search occurred but was incorrectly selected on FIC.	55% 12 .168%	90% 3 .072%	20% 5 .114%	24% 4 .097%	☐

SSA Audit Growth and Challenges

Miranda, Consent to Search

- Consent Search
  - All from audit period included (4 out of 4,112 incidents involving searches)
  - Non-compliance due to inaccurate documentation, missing consent search forms
  - Low audit scores do not reflect issue with unlawful consent searches

- Miranda
  - Added after 2021 review (Miranda Given if Required, Q15 of SSA Subject Audit Form)
  - Scores over time:
    - 2023 97% (p20 of 2023 SSAPJ Audit)
    - 2022 87% (p20 of 2022 SSAPJ Audit)
  - Measuring Miranda in Audits and FOB inspections drove increased compliance

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SSA Issues Identified in Past Audits

I. Timeliness of reviews and approvals by field supervisors

II. Officers "self-identifying" during a stop (Procedural Justice)

III. Identifying & justifying Pat Down vs. Search Incident to Arrest

IV. Miranda Rights advisements both given and documented

V. Vehicle exit / handcuffing justification (threats, escape risk)

(All issues noted above are being addressed in Enhanced FIC review.)

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Enhanced FIC Review Project

"PSAB is trying to facilitate greater understanding of the policy requirements for FIC completions to assist in overcoming issues related to use of correct terms and classifications (ex: pat down vs. SITA) and to promote clearer justification language for reasonable suspicion (RS). We will also point out any other relevant issues that come up. Comments will be sent to the DSA and the Captain for the related District."

The reviews of the FICs each day were to:

1. Provide a standardized approach to review, both legal, policy wise and tactically and offer those observations to the supervisors and the officers to correct and enhance their capabilities.
2. Identify serious issues immediately so that corrective action can be initiated immediately to minimize negative effects.
3. Identify trends across units and Districts to allow for quicker adjustments in training.
4. Identify individual aspects of the FIC that can be adjusted or improved to allow for quicker completion and greater data mining of information.
5. Provide immediate information for enhanced training in real time.

Outcomes – May 2023 to March 2024

I. Issues with reviews over time: **(Have improved and changed based on feedback.)**

   A. Terminology issues (pat down vs. SITA)

   B. Event Type classifications

   C. Incomplete forms (info left out that was available to officer at time)

   D. Better Reasonable Suspicion statements (describing objective factors)

   E. Justifications for handcuffing, exiting vehicles, identifying occupants, etc.

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Enhanced FIC Project – Currently Underway

1. Use all the information from the daily reviews of FICs to develop a better FIC format with less writing, more drop-down lists and logical fields. Identify required fields (information) when certain selections are made to prompt officers to use correct terms and prevent conflicting information. Working with City ITI to revise the FIC form to reflect the changes. **(Estimated completion Mid-year)**

2. Develop a "User's Guide" for the updated FIC for each specific "Event Type" in a "How To" format. This will help officers to focus on the key elements of each "type" of FIC, its critical elements and the common issues/mistakes found in previous FICs.

Enhanced FIC Project – Future Possibilities

1. Explore allowing the PSAB reviewer to "Approve" the FICs that have <u>no issues</u> and return those that do to the member's supervisor to review the FIC and address the identified issues. Based on the FICs reviewed over the previous 10 months this will eliminate from 70-85% of all supervisory level reviews and have a significant positive impact on workload reduction <u>without limiting</u> the supervisor's knowledge of the officers' issues and performance and close and effective supervision. It would immediately improve the reviewing time constraints that are problematic now (FICS will be reviewed the next working day). **This would require a consent decree modification.**

2. Identify those police signal types (misdemeanors, property crimes) that currently require an EPR (police report) that <u>could</u> be adequately addressed with an FIC and additional forms that already exist (i.e. Arrest Gist, CE&P Receipt, Summons/Affidavit form, etc.). This will reduce the existing duplication and workload. Currently an officer might have to do an FIC + EPR + Forms. This could reduce to just an enhanced FIC + Forms.

FIC Reviews - Graph

- **<mark style="background-color:#00FF00">Green</mark>** The FICs that were acceptable as submitted

- **<mark style="background-color:yellow">Gold</mark>** The FICs that were acceptable but had <u>minor issues</u> or suggested improvements

- **<mark style="background-color:red">Red</mark>** The FICs that had <u>issues that needed corrections</u> (blank entries, conflicting info, etc.)

*Only 4 of over 8000 FICs (to date) had serious issues that required FDI level intervention or 0.05%.
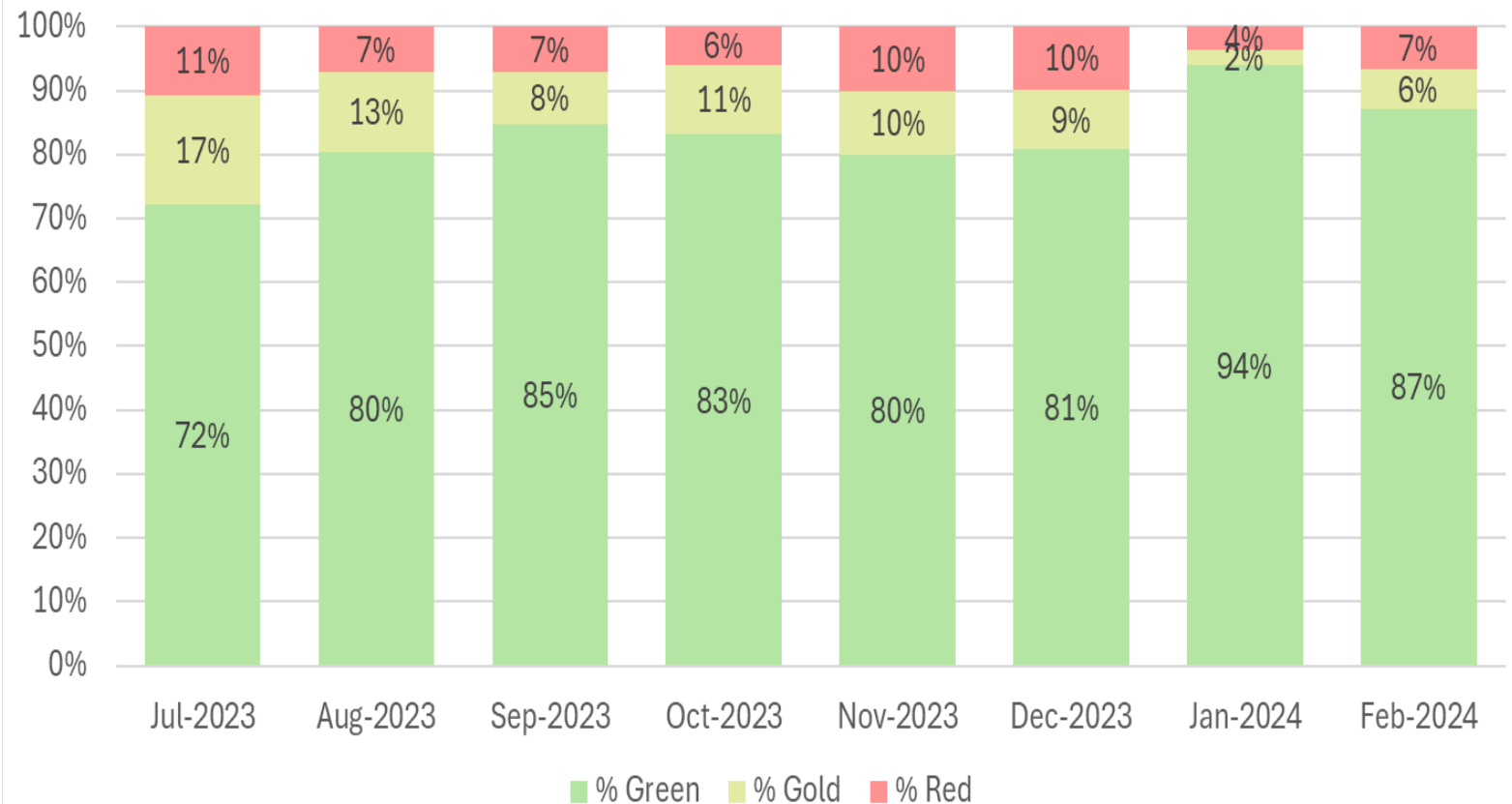
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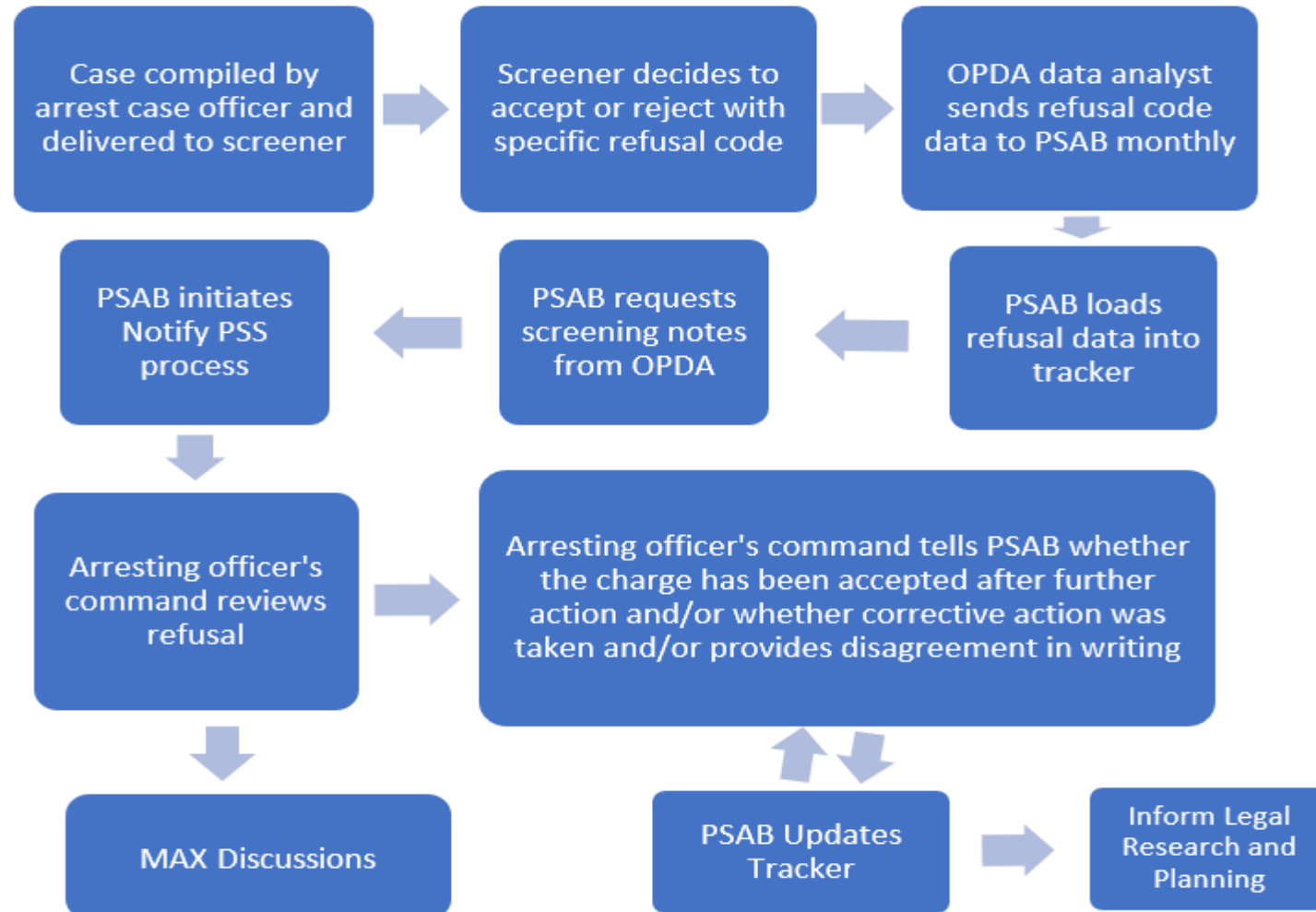*Compliance and Sustainment Through a Holistic Approach*

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Addressing DA Refusals that Indicate an NOPD Mistake

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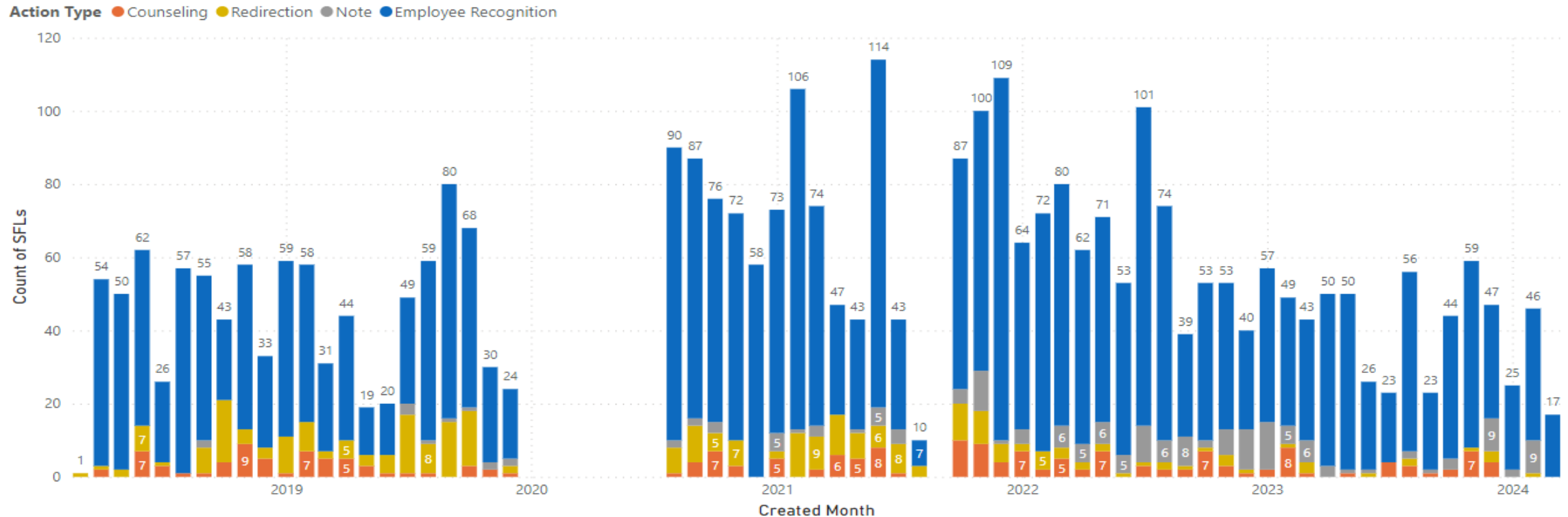*Compliance and Sustainment Through a Holistic Approach*

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SSA-related Non-disciplinary Corrective Action

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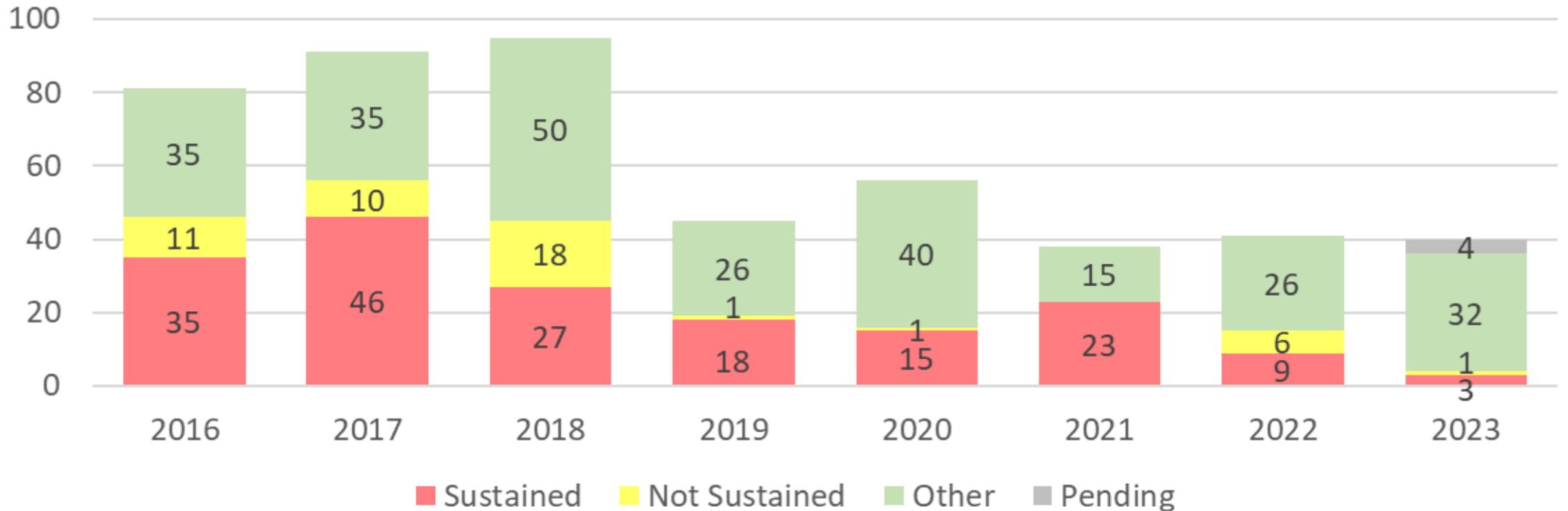*Compliance and Sustainment Through a Holistic Approach*

Misconduct Investigations regarding Stops Searches and Arrests

Should Policy, Training and Supervision not achieve our goals, NOPD turns to conducting misconduct investigations into SSA violations.

SSA-related Misconduct Allegations by Year and Finding

Legend: Sustained (red), Not Sustained (yellow), Other (green), Pending (gray)

Year	Sustained	Not Sustained	Other	Pending
2016	35	11	35	
2017	46	10	35	
2018	27	18	50	
2019	18	1	26	
2020	15	1	40	
2021	23		15	
2022	9	6	26	
2023	3	1	32	4

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