

# Report on the Public Intoxication Task Force and Recommendations

*June 2, 2009*

*Item 8.1*

# City Council Referral

1. Non-criminal sanctions and **alternatives to arrests** under Penal Code Section 647(f)
2. Procedures that an officer should satisfy in order to obtain **objective evidence** to support findings to arrest under Penal Code Section 647(f).

# Task Force Process

## Key Themes

- Community wants fairness, trust and respect
- Outcomes should reflect transparency and openness values
- More details desired in arrest reports
- Perceptions of over/selective enforcement of section 647(f) foster community resentment towards SJPD

## Three Phased Process

Phase 1: Identifying the Nature of the Problem

Phase 2: Identification and Analysis of Solutions/*Sampling of Incident Reports*

Phase 3: Prioritization of Recommendations

# Non-Criminal Sanctions/ Alternatives to Arrest Summary

Options	PITF Position
<b>1. Sobering Station.</b>	<b>Recommended</b>
2. Enforcement of existing Municipal Code provisions that would result in non-criminal sanctions such as drinking in public, disturbing the peace, or obstructing sidewalks.	Not Recommended
3. Enforcement of new Municipal Code provisions that would support business accountability measures.	Not Recommended
<b>4. Not prosecuting Penal Code 647(f) arrests until an individual is arrested for a sixth offense in a twelve month period.</b>	<b>Recommended</b>

# Objective Evidence Summary

Options	PITF Position
<b>1. Offer PAS device testing to those suspected of violating Penal Code 647(f).</b>	<b>Recommended</b>
2. Offer blood or urine chemical testing as an option for the arrestee, with the expense incurred by the arrestee.	Not Recommended
<b>3. Conduct Field Coordination Tests when practical and safe.</b>	<b>Recommended</b>
4. Legislative action to establish a “Drunk in Public” Blood Alcohol threshold.	Not Recommended
<b>5. Improve Police Officer training regarding Public Intoxication.</b>	<b>Recommended</b>

# Definition of Penal Code Section 647(f)

Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

- (f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor; drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

# **ANALYSIS OF OPTIONS**

## **Category 1:**

### **Non-criminal Sanctions/ Alternatives to Arrest**

# Option 1: Sobering Station

A sobering station is a facility where intoxicated individuals are temporarily housed to provide the opportunity to become sober.

## Policy and Fiscal Considerations

- Comprehensive model is desired.
- Staff estimates ongoing expenses for a new Sobering Station at \$680,000.
- One time funding would be needed to establish a facility with an on-going appropriation for maintenance.

**PITF Position: Recommend**

# Option 2: Enforcing Existing Municipal Code Sections (non-criminal sanctions)

## Policy Considerations:

- Violation of Municipal Code is a criminal offense, so option would not decriminalize 647(f).
- A “fine” alone would not address public safety issues.
- Concerns over a disproportionate impact on low-income individuals.

**PITF Position: Not Recommended**

# Option 3: New Municipal Code Provisions or Business Accountability Measures

- Businesses that serve alcohol could purchase PAS devices and administer or make test available to patrons;
- CMO Downtown Coordinator and Downtown Advisory Committee will be reviewing and implementing various tools that aim at business accountability in the Entertainment Zone.

## Policy Considerations:

- If an individual registers a high BA level, there is no requirement, nor authority, for a business owner to prevent the patron from leaving the establishment.

**PITF Position: Not Recommended**

# Option 4: Establish a Threshold for Prosecuting Public Intoxication Arrests

**An individual that violates PC Section 647(f) five times or less within a “rolling” one year period would not be criminally prosecuted for those violations**

- Model used successfully in Mountain View, Palo Alto, Los Altos, Morgan Hill, and Gilroy.
- If sixth offense during the “rolling” one year period, up to six can be prosecuted.

# Option 4: Establish a Threshold for Prosecuting Public Intoxication Arrests (continued)

## Policy Considerations:

- Achieves City Council goal of developing non-criminal alternative to Public Intoxication prosecutions.
- Less costly than a Sobering Station, easier to implement.
- SJPD recommends a one-year pilot implementation, with an evaluation and review in six months.
- Requires coordination with District Attorney's Office, Department of Corrections, Public Defenders Office and County Superior Court.

**PITF Position: Recommended**

# **ANALYSIS OF OPTIONS**

## **Category 2: Objective Evidence**

# Option 1: Offer PAS Device Testing

**Require Police Officers to offer PAS tests to individuals suspected of Public Intoxication, when practical and safe.**

In December 2008, SJPD began a pilot program

- “Unofficial” BA average **.17%**
- For example, during April 19-25, BA levels ranged **.108% to .323%** for those submitting to the PAS test.

# Option 1: Offer PAS Device Testing (continued)

## Policy and Fiscal Considerations

- No BA threshold to determine “drunk in public”
- Results would not be admissible in court
- Only 75 PAS Test Devices (70 over 10 years old); devices shared by officers citywide
- New PAS Devices range from \$1000 to \$4,000 per unit, approximately 300 are needed. A phased purchase plan could be implemented.

**PITF Position: Recommended**

## Option 2: Blood or Urine Chemical Testing

**Offer blood or urine chemical testing as a measure to develop objective evidence for Public Intoxication arrests.**

### Policy Considerations:

- Challenge of identifying a sanitary facility to conduct tests
- Costs of hiring medical technicians to administer tests
- Significant workload impacts on Santa Clara County Crime Lab
- May reveal other illegal substances which result in additional charges
- Amount of time police officer would be out of field
- Consent to test subject to challenge because of intoxication

**PITF Position: Not Recommended**

# Option 3: Field Coordination Tests

**Conducting Field Coordination Tests for individuals that are suspected of being intoxicated, if:**

- Officer can administer test in safe environment
- Individual is able to follow instructions for test
- Individual has agreed to participate
- Officer believes individual can do so safely

Officers received a refresher training course in December 2008, emphasizing documentation of Field Coordination Tests

**PITF Position: Recommended**

# Option 4: Legislative Action to Establish a “Drunk in Public” BA Test Threshold

California State Law does not establish a Blood Alcohol level to determine if an individual is “drunk in public”

- Alcohol tolerance per individual varies
- City would need to establish an intergovernmental strategy to advance through the state legislative process
- Consent to test subject to challenge because of intoxication
- Would not address influence of drugs

**PITF Position: Not Recommended**

# Option 5: Police Officer Training

## Improved training in the following areas:

- Recognizing someone who is subject to arrest for a violation of Penal Code 647(f)
- Identify and pursue alternatives to arrest
- Document the evidence supporting charges against those who are arrested, and
- Cultural/Inter-cultural Awareness
- “Community San José” Latino specific training video.

**PITF Position: Recommended**

# Proposed Public Intoxication Investigation Form (Tab 10)

Form is specific to PC Section 647(f) reports and is a collaborative Effort between the District Attorney's Office, SJPD, and City Attorney's Office.

- Elicits greater accounting of an officer's observations as the basis for his/her probable cause to arrest.
- On-going discussion to use this form County-wide but additional coordination required.
- Use of form will be reinforced through Continuous Professional Training and Training Bulletins.

# Task Force Recommendations Summary

## Alternatives to Arrest

- Sobering Station  
(May be cost prohibitive)
- Establish a Threshold for Prosecuting Public Intoxication Arrests

## Objective Evidence

- Offer PAS Testing
- Field Coordination Test
- Police Officer Training